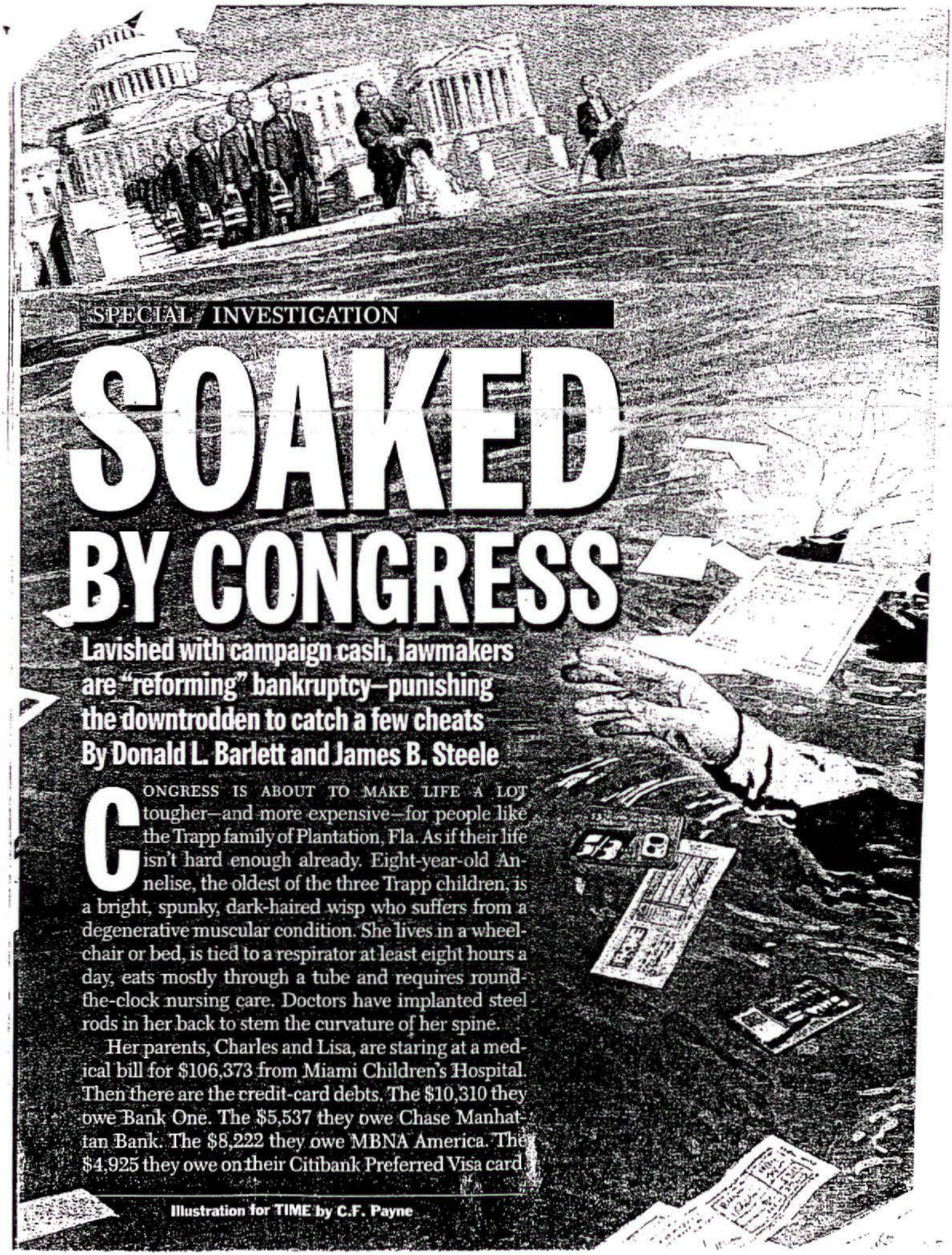


SPECIAL INVESTIGATION

SOAKED BY CONGRESS

Lavished with campaign cash, lawmakers are "reforming" bankruptcy—punishing the downtrodden to catch a few cheats

By Donald L. Barlett and James B. Steele

CONGRESS IS ABOUT TO MAKE LIFE A LOT tougher—and more expensive—for people like the Trapp family of Plantation, Fla. As if their life isn't hard enough already. Eight-year-old Annelise, the oldest of the three Trapp children, is a bright, spunky, dark-haired wisp who suffers from a degenerative muscular condition. She lives in a wheelchair or bed, is tied to a respirator at least eight hours a day, eats mostly through a tube and requires round-the-clock nursing care. Doctors have implanted steel rods in her back to stem the curvature of her spine.

Her parents, Charles and Lisa, are staring at a medical bill for $106,373 from Miami Children's Hospital. Then there are the credit-card debts. The $10,310 they owe Bank One. The $5,537 they owe Chase Manhattan Bank. The $8,222 they owe MBNA America. The $4,925 they owe on their Citibank Preferred Visa card.

Illustration for TIME by C.F. Payne

WHO GETS HURT?

The $6,838 they owe on their Discover card. The $6,458 they owe on their MasterCard. "People don't understand, unless they have a medically needy child, these kinds of circumstances," says Charles Trapp, 42, a mail carrier.

Why would Congress add to the burdens of folks like the Trapps? The family has filed for bankruptcy, and Congress wants to make it a lot more difficult for other Americans to do the same, a change that would hit especially hard at women. And poor people. And the recently jobless. And the sick.

Under legislation Congress is expected to take up soon, families like the Trapps will be required to go through a series of means tests to justify their medical and other expenses. That will cost them: more money in legal bills, more days lost from work, more mental aggravation. Even worse, in the end they still might not qualify for bankruptcy assistance.

Most members of Congress believe in what they are doing. Senator Charles Grassley, an Iowa Republican, speaks for many of his colleagues when he says, "I hope this bill does make bankruptcy more embarrassing—and more difficult. In fact, I plead guilty that that is a motive behind our legislation."

The House passed its version of the bankruptcy bill last year. The Senate enacted its bill in February. Now members of both chambers are meeting in secret to iron out differences and put their finishing touches on what they call the Bankruptcy Reform Act, which has the ostensible goal of curbing abuses.

What is the real reason Congress is doing this? Because the legislation is just what banks, credit-card companies, debt consolidators and other financial-services businesses ordered. To get it, they retained high-powered Washington lobbyists, among them Haley Barbour, former chairman of the Republican National Committee, and Lloyd Bentsen, onetime Senator and Treasury Secretary. The price tag for lobbying: more than $5 million.

At the same time, the lending industry poured contributions into the coffers of the national committees of both political parties and into the campaigns of individual lawmakers whose support was crucial. Some of the giving was appropriately timed. A $200,000 contribution to the National Republican Senatorial Committee by MBNA Corp.—which is to credit cards what Pepsi is to soft drinks—was delivered on the day of an earlier House vote on the bankruptcy bill. It passed handily, 300 to 125. The price tag for political contributions: more than $20 million. Says a Capitol Hill staff member who worked on the bankruptcy legislation: "If this were NASCAR, the members would have to have the corporate logos of their sponsors sewn to their jackets."

The Bankruptcy Reform Act is typical of legislation that Congress writes for the benefit of special-interest groups that are hefty campaign contributors—at the expense of ordinary Americans who contribute nothing. The proposed legislation would treat a bankrupt man's credit-card debt the same as his obligation to pay child support, meaning that MasterCard and an unmarried mother would compete for the same limited pool of cash. And the law would create hurdles intended to discourage or prevent people from filing for bankruptcy protection.

If, for example, a bankruptcy filer was left with more than $1,200 a year (beyond his basic expenses) over five years, that would be considered an abuse. If a mother tapped an ATM to buy necessities such as food or prescription drugs six weeks before filing for bankruptcy, the withdrawal could be considered a fraudulent transaction. If a family planned to file for bankruptcy, it would first have to undergo credit counseling, in some cases at its own expense. If a child or some other member of the family received medical treatment within 90 days before the bankruptcy filing, the bills could never be written off, no matter how poor the family.

To get into bankruptcy court, a filer would have to produce a variety of financial documents, including statements of projected monthly income and expected pay raises over the next year, and tax returns for the previous three years. No one of these requirements may look particularly onerous. But taken together, these and other provisions would impose additional burdens and legal costs on individuals and families already struggling to survive. "It's a thousand paper cuts," says Elizabeth Warren, a Harvard Law School professor and bankruptcy specialist. "And some people will bleed to death from a thousand paper cuts."

That includes people like the Trapps, who, after years of meeting their bills, were finally engulfed in a sea of debt through circumstances beyond their control. In that, they fit the classic image of a family seeking help in bankruptcy court. Contrary to the popular view of bankruptcy filers as free spenders who vacation in the Caribbean and buy expensive jewelry on their credit cards, the vast majority turn to bankruptcy court only after one of three events: loss of job, divorce or extraordinary medical expenses—in short, the kind of misfortune that can befall anyone. For the Trapps, it was two out of three. Just as

CASE NO. 1: MEDICAL BILLS

The Trapp Family

Charles and Lisa Trapp met as mail carriers in Plantation, Fla. When Annelise, 8, developed a muscular disorder, she needed round-the-clock nursing care. Lisa had to quit her job. With $124,000 in doctor bills that insurance won't cover, paying off credit cards is the least of their worries. They've filed for Chapter 7 bankruptcy

BURK UZZLE FOR TIME

Second in a series of Investigative Reports on campaign finance

the family was consumed by medical bills, Lisa Trapp had to give up her job as a mail carrier to manage her daughter's care.

Current bankruptcy law allows most individuals and families to file under Chapter 7. Here, assets—if there are any—are pulled together by a trustee and sold off. The bankruptcy filer may be able to keep his home and a few personal possessions. Retirement accounts and pensions also cannot be touched. Proceeds from the asset sale are divided among creditors. Outstanding debts, such as credit-card or medical bills, are discharged, meaning they do not have to be paid. Again there are certain exceptions: most taxes, child support, alimony and student loans cannot be discharged. Other individuals and families—those who are deemed able to pay back a larger portion of their debt—may file under Chapter 13. Here, the debtor agrees to pay a percentage of his income every month for up to five years to a trustee, who distributes the money to creditors.

During the 1990s, there were two filings under Chapter 7 for every one under Chapter 13. But the overwhelming majority of Chapter 13 bankruptcy cases ended in failure, with the debtors unable to complete the payment plan because they had insufficient income.

Under the legislation before Congress, new means tests would force more borrowers into Chapter 13—leading to still more failures—and would eliminate bankruptcy as an option for others. For this second group, life will be especially bleak. Listen to their future as described by Brady Williamson, who teaches constitutional law at the University of Wisconsin in Madison and was chairman of the former National Bankruptcy Review Commission, appointed by Congress in 1995: "A family without access to the bankruptcy system is subject to garnishment proceedings, to multiple collection actions, to repossession of personal property and to mortgage foreclosure. There is virtually no way to save their home and, for the family that does not own a home, no way to ever qualify to buy one." The wage earner will be "faced with what is essentially a life term in debtor's prison."

CASE NO. 2: JOB LOSS

Marilynn Curry

After 13 years with a Fayetteville, Ark., law firm, Curry lost her job as a secretary. The single mother found another job, but it pays $15,000 less. Now she's in bankruptcy court

Personal bankruptcy filings ...

CHAPTER 7 of the Bankruptcy Code is for individuals unable to pay their debts. The trustee sells assets, if any, and turns the proceeds over to creditors. **All remaining unsecured debts,** like credit cards and medical bills, usually **are canceled.**

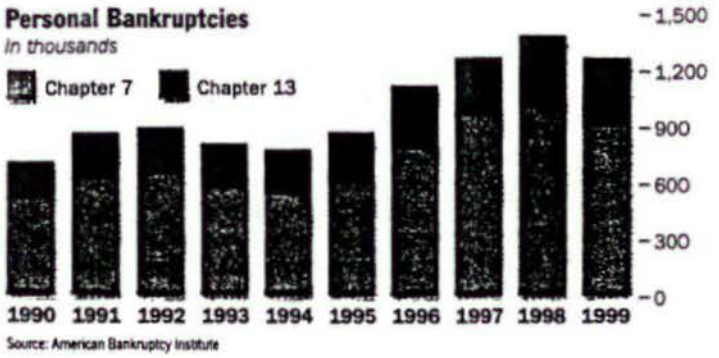
CHAPTER 13 of the Bankruptcy Code is for individuals who have income and can afford to pay at least a portion of their debts. Under a court-approved plan, **debtors pay, for up to five years, a fixed monthly sum** to the trustee, who distributes the money among creditors.

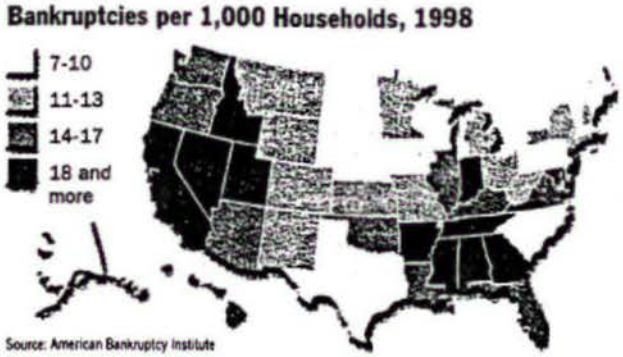
... affecting mainly the poor

The median characteristics of a person declaring Chapter 7 bankruptcy

Source: Executive Office for United States Trustees

... climbed through most of the '90s



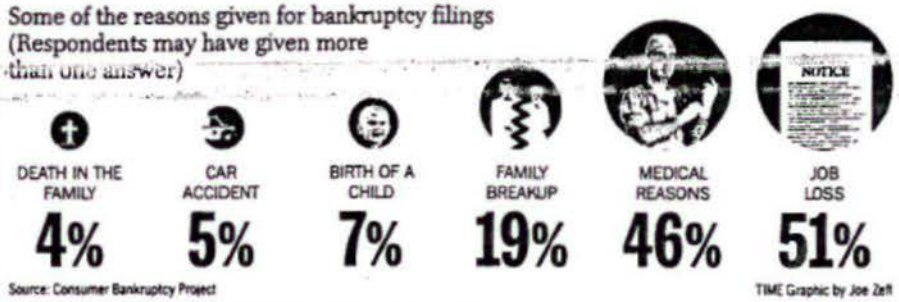


... and women

Who filed for bankruptcy in 1999

... for a variety of reasons

Some of the reasons given for bankruptcy filings (Respondents may have given more than one answer)



How did this come about? The credit-card industry seized on a sharp increase in bankruptcy filings in 1996 and 1997 to mount an intensive lobbying campaign for legislation that would make it easier to collect from borrowers who file for bankruptcy. A sophisticated public-relations blitz created the image of a bankruptcy system rife with abuse and in need of reform. That campaign told of rich people walking away from their debts, courtesy of bankruptcy court. It told of responsible families who paid their bills being forced to pick up the costs of more affluent Americans and others who were bilking the system. And it warned that bankruptcy had lost its "stigma."

The industry bankrolled studies to back its claims. In February 1998 the WEFA Group, a Philadelphia-based economics consulting firm, released a report contending that personal bankruptcies cost each American household an average of $400 a year. Paid for by MasterCard International and Visa USA, the WEFA study put the overall cost to the economy at $44 billion in 1997. Said Mark Lauritano, a WEFA senior vice president: "Clearly, the American consumer is facing a significant burden as the result of bankruptcy, both through higher prices and increased interest rates." The dollar-cost claims—which were disingenuous at best—would become the most widely quoted statistics in the campaign that produced the legislation now before Congress.

To apply pressure on lawmakers, the industry ran a series of ads in newspapers calling for bankruptcy reform. "What Do Bankruptcies Cost American Families?" asked a typical ad in the Washington *Post* on June 4, 1998. The answer: "A month's worth of groceries." Sponsored by a consortium of credit-industry trade associations, the ad showed a shopping cart filled with groceries. "Today's record number of personal bankruptcies costs every American family $400 a year. Now Congress has an opportunity to enact bankruptcy reform that reduces this burden and is fair to everyone ... while ensuring that people who can pay their debts do so."

Other Visa- and MasterCard-financed studies asserted that many whose debts are discharged in bankruptcy could actually pay some of their bills but don't. The Credit Research Center at Georgetown University estimated that 25% of the debtors who file in Chapter 7 could repay more than 30% of their nonhousing debt over five years. The study warned that the continuing rise in bankruptcy filings would increase the cost of credit. It concluded: "Our results imply that the bankruptcy system itself is contributing to these rising costs by offering the opportunity to wipe out debt with a single signature to many borrowers that have the ability to repay."

Industry lobbyists promoted the themes. George Wallace, a lawyer representing the American Financial Services Association, contended that there is "growing statistical evidence that there's a significant group of American consumers who are using bankruptcy when they have some ability to pay. We have a system today that is broken, a system that provides a welfare benefit without a means testing."

Members of Congress echoed the industry line. Declared Representative George Gekas, the Pennsylvania Republican who shepherded the legislation through the House (and who has collected $30,000 in political contributions since 1997 from bankers and credit-card companies): "In 1997 Americans filed an all-time record of 1.33 million consumer-bankruptcy petitions, which erased an estimated $40 billion in consumer debt. Those losses are passed on to [other] consumers, resulting in a hidden tax for every American household. The only reasonable explanation is that the stigma of bankruptcy is all but dead. It is simply too easy to file."

Representative Bill McCollum, a Florida Republican who has received

$225,000 from the lending industry, upped the ante: "Bankruptcy will cost consumers more than $50 billion in 1998 alone. That translates into more than $550 per household in higher costs for goods, services and credit."

Senator Robert Torricelli of New Jersey, a strong advocate of the Senate bill and head of the Democratic Senatorial Campaign Committee, last year pocketed a $150,000 contribution from MBNA. "What every American needs to understand is that somebody is paying the price," says Torricelli. "I believe this is the equivalent of an invisible tax on the American family, estimated to cost each and every American family $400 a year."

There is only one problem with all this rhetoric: it's not true. That's the finding of a TIME investigation based on interviews with those directly involved in the system—judges, lawyers, trustees, bankruptcy professors and the bankrupt themselves—along with an examination of court records across the country and an array of statistical evidence. While lenders do indeed lose money on those who fail to pay their bills, the U.S. Bankruptcy Court maintains no statistics on the types of debt written off—credit cards, medical, personal loans—or the total dollar amount discharged. But whatever that number may be, it misses the point: there is little more to be extracted from those in bankruptcy. Some people unquestionably use bankruptcy court to escape bills they could afford to pay, but their numbers are insignificant. The vast majority of bankruptcy filers have neither the income nor the assets to pay creditors. Most turn to bankruptcy as a last resort.

To understand how much at odds with the real world the bankruptcy scene imagined by Congress and the lending industry is, spend a moment with the people who have a street-level view of the system. Steven Friedman, a bankruptcy judge in West Palm Beach, Fla., describes the people who pass through his courtroom as "average citizens who have worked hard to obtain a decent standard of living and, through unfortunate circumstances such as medical problems or financial or job loss, are down on their luck." He adds, "The instances of abuse, where people who file bankruptcy are attempting to defraud their creditors or to be dishonest, are very [few]."

Says attorney Judith Swift, a former president of the bankruptcy bar in Dallas: "I keep a box of tissues in my office because people are mortified that they have to file bankruptcy. I've seen grown men break down. They take the financial crises as a sign of personal failure. A lot of people who come to my office have been holding down one full-time job and two piddly little part-time jobs, trying frantically not to have to file a bankruptcy. It's a very, very difficult decision for most people."

It was for Maxean Bowen, a single mother raising an 11-year-old daughter. A social worker in the foster-care system in New York City, Bowen helped rehabilitate parents with substance-abuse problems. In 1998 she developed a painful condition in both feet that made it difficult for her to walk. Because her job required her to make house calls, she had to give it up and go on unemployment, hoping the condition would ease up. Her take-home pay dropped from about $1,600 a month to $800. To get by, she borrowed from relatives and started using credit cards to pay for food, clothing, utilities and rent. "I thought, 'As soon as I get back to work, I'll try to pay these off,'" she says.

By 1999, when she got a job interviewing families in an office, she owed thousands of dollars to the credit-card companies—much of it in late fees. That's when the threatening calls and letters surged. "They would call me on the job," she says. "That was very embarrassing. They call you early in the morning. They call you late at night. Sometimes I get calls at 10 o'clock at night. And they are very nasty." To placate them, she sent $200 to $300 on occasion. "But when the bill came the next month, it seemed like it went higher," she says. "I was going crazy."

A co-worker suggested bankruptcy, and Bowen filed a petition in U.S. Bankruptcy Court in New York. She still gets calls demanding payment. At least now, she says, she knows her creditors can't attach her salary, no matter how ugly the conversation turns.

Bowen's discovery that she was treading water despite her partial payments—and that the outstanding balance never went down—is not unusual. A government study showed that by the time individuals and families seek bankruptcy protection, more than 20% of income before taxes is going toward paying interest and fees on their unsecured debt.

This helps underscore why the notion that debtors in bankruptcy court are sitting on many billions of dollars that they could turn over to their creditors is a figment of the imagination of lenders and lawmakers. Consider:

- A study of 1,955 Chapter 7 bankruptcy filers in 1997-98 by the Executive Office for U.S. Trustees, which monitors the bankruptcy system, concluded that "by the time they filed, they had little if any capacity to repay. In fact, most will have to increase income or reduce expenses to remain solvent after bankruptcy."
- The same study projected that the to-

MAKING THEIR PITCH: THE LENDERS' SIDE

STUDIES commissioned by credit-card companies—and cited by congressional supporters—contend that bankruptcy filers are dumping debts they could pay in taxpayers' laps


IAN WAGREICH—UPI


MARKEL—LIAISON

LOBBYISTS hired by the industry to push for tougher bankruptcy laws include **Lloyd Bentsen,** former Senator and Treasury Secretary, and **Haley Barbour,** former RNC chairman. The lobbying effort costs millions

CONTRIBUTIONS from banks, credit-card companies and other lenders since '97 totaled more than $20 million. Both parties benefited

PAC/Soft-Money Contributions From Consumer Creditors

1997-99 totals

To Democrats	$8.2 million
To Republicans	$15.2 million

Who Gave Money in 1999 ...

LEADING DONORS—CONSUMER CREDITORS

MBNA Corp.	$668,500
American Bankers Assn.	633,108
Credit Union Natl. Assn.	572,594
Citigroup Inc.	509,171
Bank of America Corp.	460,805

... And Who Got Money

LEADING HOUSE RECIPIENTS

Bill McCollum (R., Fla.)	$88,499
Richard Baker (R., La.)	85,677
Rick Lazio (R., N.Y.)	85,500
Dennis Hastert (R., Ill.)	58,061
Marge Roukema (R., N.J.)	53,750

LEADING SENATE RECIPIENTS

Rod Grams (R., Minn.)	$76,359
Robert Kerrey (D., Neb.)	59,050
Rick Santorum (R., Pa.)	58,929
Spencer Abraham (R., Mich.)	55,369
Phil Gramm (R., Tex.)	51,417

Source: Common Cause

tal amount that unsecured creditors, like credit-card companies, might be expected to collect from all Chapter 7 filers added up to "less than $1 billion annually."

■ A study by two law professors at Creighton University, funded by the nonpartisan American Bankruptcy Institute, found that only 3.6% of Chapter 7 debtors would be able to pay more. "The vast majority belong in that chapter," the study stressed. "They have too little income after necessary expenses to repay unsecured debt. It is vital, therefore, that no undue burdens be thrust on that needy majority in order to flush out a small minority of abusers." The amount that might be collected: less than $1 billion.

■ Congress's own investigative arm, the General Accounting Office, criticized two studies financed by the credit-card industry that purported to show that a substantial number of debtors could pay more. Questioning their assumptions, data and sampling procedures, the GAO said that "neither report provides reliable answers to the questions of how many debtors could make some repayment and how much debt they could repay."

As all of this suggests, there is little money to be squeezed out of those in bankruptcy, especially since trustees already collect about $4 billion from debtors each year, a sum that includes proceeds from liquidated assets. Even if they could find an additional $1 billion, the economic and emotional costs of doing so would far outweigh the return. To put it in perspective, the estimated $1 billion that might be collected would amount to two-tenths of 1 percentage point of outstanding revolving credit. If trustees were able to scare up another $4 billion—as the industry claims but few in the bankruptcy system believe possible—it would still amount to less than seven-tenths of 1 percentage point of revolving credit.

To further undercut claims by the lending industry that it needs get-tough legislation, 82 professors at 66 law schools, from Harvard to UCLA, last September signed a letter itemizing the consequences the proposed bankruptcy legislation would have on those in need of financial relief. It was sent to every U.S. Senator.

What would motivate a sizable majority of Congress to support such legislation? Money. Lots of it. In addition to the $5 million the lending industry spent on lobbyists who worked exclusively on pushing the bankruptcy bill through Congress, it shelled out $50 million that went to firms that lobbied on bankruptcy and other issues.

To be sure, some lawmakers who voted for the bill believe bankruptcy is out of control, that many filers just want to walk away from debts they can afford to pay. Some were angered by the procession of Hollywood entertainers and other wealthy prominent citizens who used the system in the 1990s. Some were annoyed by lawyers who advertised bankruptcy as an easy solution for overextended consumers. And some were troubled by what they saw as a decline in values. "We have had a general lack of shame or personal responsibility that used to be associated with paying bills or not paying bills and the filing of bankruptcy," said Senator Grassley, who has collected more than $100,000 in campaign contributions from credit-card companies and other lenders since 1997.

While the bill contains some genuine reforms, on balance the harm that it would do far outweighs the good. At the same time Congress has written legislation to make life more burdensome for low- and middle-income filers, it has declined to put any curbs on practices of the financial industry that are leading many individuals deeper and deeper into debt. Beverly Fox, a bankruptcy lawyer in Plantation, told TIME: "[You] have a family with an annual gross combined income of $35,000. I see they owe Citibank $10,700. At the time Citibank gave them that credit limit, which is almost 33% of their annual gross income, Citibank looked at their credit report, or should have, and could see that they already owed three or four other credit cards $3,000, to $4,000, to $5,000. They were already $15,000 in debt, and the banks continued to raise [the family's] credit limits because they are making the minimum payments. Once a family is over 30% debt-to-income ratio, it should stop using unsecured credit. But people don't know that. They think that because they've been approved for this higher credit limit, they can manage it." Because many people pay only the minimum amount due or a few dollars more, Fox says, they think everything is fine. But the balance on the cards "continues to grow, more as a result of the interest than the use of the cards."

Consumer advocates urged Congress to include in the legislation a provision requiring credit-card companies to spell out on each monthly statement the number of years it would take a cardholder to pay off the debt by making minimum payments, and how much that would cost overall. But that proposal went nowhere because it was opposed by the credit-card industry. The Senate version of the bill requires compa-

STEVE MYHRA FOR TIME

CASE NO. 3: DIVORCE

Martha Pouliot

Divorced after 18 years, Pouliot moved into a mobile home in Minnesota with her two sons. An office administrator, she couldn't pay the bills. In March she filed for bankruptcy, $16,000 in debt

nies to include on monthly statements a toll-free number that cardholders can call to find out how long it would take them to pay off their loan.

Congress also turned back an amendment by Senator Paul Wellstone, a Minnesota Democrat, who proposed that lenders who charged more than 100% annual interest should be barred from collecting their debts in bankruptcy court. One-hundred percent interest? Actually, that's the bargain-basement rate. In some cases, interest rates run upwards of 1,000%.

Welcome to the world of payday lending, where annual interest rates would times the value of the check, plus interest.

An Illinois study found the average annual interest rate for such services in that state was 533%. One customer was charged 2,007%.

Senator Orrin Hatch, a Utah Republican who has championed the bankruptcy legislation, defended payday loans. Said Hatch: "These lenders provide a vital service to the poorest borrowers. With this check-cashing service, borrowers can get the emergency cash they need without telling the boss they need a cash advance or giving up their televisions and furniture."

The burgeoning payday-loan industry includes publicly owned companies. Ace Cash Express, Inc., of Irving, Texas, operates more than 900 stores in 28 states and the District of Columbia where it cashes checks, sells lottery tickets and provides money-transfer and bill-paying services. At a third of its stores, Ace offers payday loans. Its stock is traded on the NASDAQ.

For a fee of $30, Ace will advance cash for a $200 check for two weeks. That works out to an annual rate of 391%. Income from the company's lending operations jumped from 7% of its total revenue in 1997 to 12% in 1999.

The company's largest stockholder is Edward ("Rusty") Rose III of Dallas. Rose owns 11% of Ace's outstanding stock, according to documents filed with the U.S. Securities and Exchange Commission. Rose is the millionaire Dallas investor who helped George W. Bush turn a $600,000 investment in the Texas Rangers baseball team into $15 million—a 2,400% profit. Rose is one of the Bush Pioneers, the élite group of fund raisers who each promised to raise $100,000 for the Texas Governor's presidential race.

While Rose has done quite nicely from his investments, customers of Ace Cash Express and other payday lenders have not fared nearly so well. As you might expect, people who pay interest charges of 300% or more often end up in bankruptcy court. Says David Nixon, a lawyer in Fayetteville, Ark.: "The kinds of people who use payday loans are just barely getting by. They have jobs. They work hard. They try to pay their bills, but they come up short. Here's an easy way to get cash fast—at least it seems easy. But it's like getting on a treadmill. Once they get on it, it's impossible to get off."

Sometimes the people on the treadmill aren't those you might expect. In Greenwood, Ind., one of Ace's customers was Eva Rowings, 60, a retired high school Latin teacher. In 1995 Rowings began teaching part time at a reduced salary. "I tried to make ends meet," she says, "and I did pretty well for a couple of years, but then it all went downhill." She had four operations,

ANDREW ITKOFF—SILVER IMAGE FOR TIME

CHRIS USHER FOR TIME

KEEPING THE HOME

James Villa

REED HOFFMANN—ROCHESTER DEMOCRAT AND CHRONICLE

▲ When his brokerage went broke, Villa had lots of creditors. But Florida's homestead exemption keeps them off his $1.4 million mansion

LOSING THE HOME

Allen Smith

► After his wife's death from diabetes, Smith faces losing his modest Delaware home. He fell behind on mortgage payments and other bills. Creditors will divide the proceeds from the sale of what little he has

including gall bladder surgery and orthoscopic procedures on both shoulders.

The debts piled up. She owed $5,800 in medical bills, $5,900 on credit cards and $8,100 in loans, plus other miscellaneous bills. Her debts matched her total annual income.

She began borrowing at two other payday-lending firms before turning to Ace, where she was "astonished at the number of senior citizens that were coming in each month." In a typical transaction, she borrowed $200 for 12 days and paid a $30 fee—an annual interest rate of 456%. If she missed a payment, she says, she would owe an additional $30. "By the end of the month," she says, "I would have no money." Finally, a distressed Rowings, who had always believed in paying her debts but was worn down by the endless dunning calls from bill collectors day and night, decided there was never going to be an end. She filed for bankruptcy. "It was humiliating," she says. "I wished I had never stopped teaching full time."

Another point should be noted. Rowings did not contribute to the election campaigns of candidates for Congress. Nor did Charles and Lisa Trapp. Nor Maxean Bowen. Their creditors, on the other hand, have contributed millions and millions of dollars to get the legislation they want—from thousands of small donations of less than $5,000 to hundreds of large ones ranging from $5,000 to more than a quarter-million dollars. Since 1997 credit-card companies and other lenders have given $2.2 million to the House and Senate Judiciary Committee members responsible for drafting the legislation, according to data compiled by the Center for Responsive Politics.

While the industry got much of what it wanted, Congress thus far has sidestepped an opportunity to enact a genuine reform and end one of the most blatant bankruptcy inequities—the homestead provision.

If you live in a $2 million home in Texas or Florida and file for bankruptcy, you are guaranteed you can keep your home. If you live in a $75,000 home in Pennsylvania or Delaware and file for bankruptcy, you may lose it. How is this possible? People who file for bankruptcy claim their exemptions under state law. In the case of the homestead law, the provision varies from state to state. Five states—Florida, Iowa, Kansas, South Dakota and Texas—have unlimited exemptions. Whether a residence is worth $10,000 or $10 million, it can't be touched by creditors. Five other states—Delaware, Maryland, New Jersey, Pennsylvania and Rhode Island—along with the District of Columbia, have no homestead provision, meaning a person can lose his home in bankruptcy. The value of the exemption in the remaining 40 states ranges from $2,500 in Arkansas to $200,000 in Minnesota.

Advocates of bankruptcy overhaul outside Congress have argued for years that federal law should be amended so that all Americans are treated alike, no matter where they live. But Congress doesn't see it that way. The reason? States' rights. Says Senator Sam Brownback, a Kansas Republican: "What is being attempted here is to take a right away from states that they've had for over a hundred years. It's contrary to states' rights."

Not exactly. The Constitution expressly gives Congress the power to establish "uniform laws on the subject of bankruptcies throughout the United States." Both the House and Senate bills contain homestead provisions. Neither deals with the basic unfairness of the exemption. The Senate bill would permit bankruptcy filers to retain up to $100,000 in equity in their home. Any amount over that would go to creditors. The House bill would allow homeowners to retain up to $250,000 in equity. But that cap would be meaningless, since any state could opt out of it under the bill. Key members of Congress are on record as saying there will be no bill that limits the exemption.

To understand how the current system works, how it would work under "reform"—most likely the same—and how it should work if Congress were crafting a law that treated all people equally, let's consider the story of two homeowners in bankruptcy. One is James Villa, a 42-year-old onetime stockbroker who lives in a $1.4 million home in Boca Raton, Fla. The other is Allen Smith, a 73-year-old retired autoworker with throat cancer who lives in a deteriorating $80,000 home in Wilmington, Del.

Let's begin with Villa. Through most of the 1990s, he was president, chief executive officer and indirect owner of 99.5% of the stock of H.J. Meyers & Co., Inc., a brokerage firm based in Rochester, N.Y., with branch offices in more than a dozen cities. H.J. Meyers was a boiler room. Its most significant feature, according to an investigation by Massachusetts securities authorities, "was the high-pressure tactics of management continually exerted on brokers, who then used high-pressure tactics on their customers." Brokers cold-called people urging them to invest in speculative securities and initial public offerings underwritten by the firm. Brokers "implied to investors that they were in possession of important nonpublic information concerning an issuer."

One investor bought stock on his credit card after being assured that he would double his $25,000 investment and that "nothing can go wrong." He didn't and it did. He lost $15,000 and was forced to take out a home equity loan to cover his losses.

Villa profited handsomely from the business. For himself, he collected cigarette speedboats and vintage autos and

TOM FOX—ARLINGTON MORNING NEWS

OUTRAGEOUS RATES

Edward Rose

Rose says of his investment in Ace Cash Express, a payday loan company. "I do not think we make an outrageous profit ... It's a valid service"

CHRIS USHER FOR TIME

racing cars, from a 1957 Cadillac to a 1990 Ferrari. For his wife, he collected jewelry—a $22,000 Rolex watch, a three-carat $44,000 wedding ring and $9,000 diamond earrings.

In October 1998, Massachusetts securities authorities ruled that H.J. Meyers had engaged in fraudulent and unethical practices. They revoked the broker-dealer registrations of the firm, Villa and four of his associates. Shortly before the crackdown, H.J. Meyers closed its doors, and in November 1998 Villa packed up and headed for Florida and its generous homestead exemption. He left behind a countryside littered with investors who had lost money, including some whose retirement savings had disappeared. Some of the unlucky H.J. Meyers clients took their cases to arbitration, won awards and filed claims in Villa's bankruptcy case.

How much the creditors will eventually receive is up in the air. Charles Cohen, Villa's lawyer, says that "obviously, Mr. Villa is going to try to pay back everything he can. How much I can't tell you at this point." In the assets column, Villa's most valuable possession is his $1.4 million Boca Raton home. But it's beyond the reach of his creditors, thanks to the homestead exemption.

By contrast, 1,100 miles to the north, in Wilmington, Del., 73-year-old Allen Smith is about to lose his home in bankruptcy court. Smith was born in Birmingham, Ala., and served in the Coast Guard during World War II. After his discharge in 1945, he attended an auto-mechanics school in Detroit and then went to work as a metal finisher and body repairman for Chrysler. The company transferred him to its Delaware plant in 1959, where he worked until he was forced out after 35 years during one of the automaker's downsizings.

Smith bought his modest home in Wilmington in 1964. In 1970, at age 44, he married. His wife Carolyn worked at a neighborhood florist. "I was living good, having a good time," Smith told TIME, "giving my wife everything she needed. Tried to make her happy."

When Smith lost his job at Chrysler in 1982, he was too young to collect Social Security so he took a new job as a security guard. Two years later, his world began to unravel. "Everything just went bad at one time. It waited until I got retired. If I had been working, it would have been different, but I had retired before everything started to happen."

"Everything" began with his wife's diabetes. "She just lost her toe in 1984," he says. Then "they had to cut her leg. And they had to keep cutting it off." Finally, they amputated both legs. To accommodate her wheelchair, Smith built a ramp and made other renovations. To pay for it all and to keep up with the monthly payments on all his credit cards, he borrowed against his house, which had been paid off. "I had what they called triple-A credit," he says.

Along the way, Smith's physical condition deteriorated, and he had to quit his security job. He developed throat cancer and now speaks through a voice box. "I got sick," he says. "I got a thyroid [condition], cancer, low sugar, high blood pressure, heart murmur. I got everything. I'm lucky to be alive."

In June 1998 the Smiths filed a bankruptcy petition under Chapter 13, with the understanding they would make $100 [illegible] trustee.

monthly payments to a trustee who would distribute the money to creditors. By that time, the loan against their home had swelled to $64,000, and they owed $51,000 on their credit cards and charge accounts, double their annual income. That November, Carolyn Smith died. With the loss of her Social Security income, Smith struggled. His situation was further complicated by a run of misfortune. He was hospitalized after a stroke; he had cataract surgery; the friend who promised to collect his pension and Social Security checks and make his mortgage payments didn't, and the mortgage company moved to foreclose. That's when his Chapter 13 case collapsed—as happens in two-thirds of all Chapter 13 proceedings—and he was switched to Chapter 7. Now he's awaiting his discharge. He will lose his home and move to Toledo, where he will live with a niece. "I wasn't planning to move," he says. "It hurts. I don't want to be nobody's responsibility because I've always been my own man all my life."

To create a level playing field for everyone, Congress would need to enact a flat exemption that covers all assets—from home to pension. Otherwise there is the kind of inequity described by A. Jay Cristol, the chief U.S. bankruptcy judge in Miami:

"Let's assume you have two very decent, honest people and one of them has a million-dollar home and one of them has a million dollars in cash and they go into bankruptcy. The one with the million-dollar home keeps a million bucks and the one with the million dollars in cash gives all but a thousand dollars in cash to the trustee."

The same scenario applies to retirement accounts. The wealthy investor who puts $1 million into a retirement plan gets to keep the money. The middle-income family with $10,000 in a savings account loses it.

The simple solution: Establish one exemption that covers all assets, from homesteads to pensions. Says Judge Cristol: "Why not just say you can have as a fresh start $55,000 or $100,000, or whatever the legislature decides is the right amount, and it doesn't make a difference if it's equity in your home or whether it's cash in the bank. That's what you get to keep. And that would be fairer and simpler, and the poorest people would be treated the same as the wealthiest people. But as it is now, the worse off you are, the worse you're treated."

Lenders and lawmakers maintain that the bankruptcy laws need to be toughened

TWO SIDES: THE CREDIT-CARD STORY

Invitation to Endless Debt

TOM FOX—ARLINGTON MORNING NEWS

THE TALK Bruce Hammonds, vice chairman and COO of MBNA America Bank, the world's third largest credit-card issuer, in testimony before a congressional committee:

"Card issuers use highly sophisticated and expensive 'prescreening' underwriting techniques, which involve consideration of as many as hundreds of factors about a consumer"

THE REALITY Solicitations bombard consumers daily, offering high credit limits no matter what their past credit history holds. Make basic payments and those limits rise

to reverse the sharp growth in filings during the 1990s. While bankruptcy cases did indeed rise through 1998, they fell in 1999. But what Congress and credit-card companies neglected to say was that the increase was largely attributable to one group—women with modest or low incomes. For this group, reform is going to be especially bad.

Although courts do not keep data on the number of men, women and couples who file for bankruptcy, academic studies have developed estimates. Research conducted by Elizabeth Warren, a Harvard law professor, and Teresa Sullivan, dean of graduate studies at the University of Texas, shows the pattern. From 1981 to 1999, bankruptcy filings by women shot up 838%—four times as fast as for all others—jumping from 53,000 to 497,000. In contrast, filings by husbands and wives rose just 138%, from 178,000 to 423,000. Once a small minority in bankruptcy court, women now comprise the largest single bloc—35% of all personal-bankruptcy cases—more than men or couples.

Despite all the glowing economic indicators that point up—stock-market indexes, employment, corporate profits—the income gap continues to widen, and those most often found toward the bottom are women. Even women in jobs that pay solid middle-class wages find themselves in financial trouble and must seek bankruptcy protection when they are overwhelmed by debt following a breakup or a divorce.

Women such as Lucy Garcia. The 26-year-old mother of two boys, ages 9 and 6, Garcia is a payroll coordinator at the Sheraton New York, one of midtown Manhattan's largest hotels. Assigned to the food-and-beverage department, she helps compute wages, overtime payments and other payroll items for the department's 800 employees. And she balances the department's checkbook.

But in her personal life, balancing finances hasn't been easy since Garcia and her sons' father separated more than a year ago. Family finances had always been tight, and with just one paycheck, Garcia found herself using credit cards to buy the basics. "Sometimes when you don't have money and you need to buy things for your kids, like food and stuff like that, you use the credit card because it's so easy," she says.

After payroll deductions for taxes and Social Security, she had about $1,850 a month to pay her bills. After her rent of $580, a car loan of $400 and an insurance premium of $200, she was left with $670 a month to feed and clothe the boys and herself and pay for her utilities, child care, other miscellaneous expenses—and her credit-card bills.

To bring the ballooning debt under control, she stopped using credit cards and made nominal payments on her accounts. "I thought if I sent them something, $10 or $20, they would leave me alone," she says. But she only fell further behind. Even in months when she didn't use the credit cards, the amount she owed rose because of late-payment penalties and interest charges. Before long, she needed to pay at least $300 a month just to stay even.

CHRIS USHER FOR TIME

A VIEW FROM THE BENCH

Judge A. Jay Cristol

The colorful, outspoken chief U.S. bankruptcy judge in Miami sympathizes with the people who appear before him. "Day after day, we see decent, honest, hardworking people who have suffered one type or another of financial misfortune," says Cristol. "We also occasionally see the person trying to perpetrate a fraud. But in most instances the system deals with them. The problem is not in the evil debtors. It's in the stupidity of lending to people who are not creditworthy."

Unable to do so, she became increasingly short of cash and unable to pay her bills—rent, car, credit cards. She began alternating payments—the rent one month, credit cards the next, making a car payment after that. That didn't work either, and soon she was getting dunning letters and phone calls. One credit-card company threatened to attach her wages.

"It is just so frustrating to know you owe this much money," she says. "I wish I had the money to pay it off and be O.K. I can't sleep at night. I have tried to no let it affect me with my children. Kids don't know. They say, 'Mommy, I want this.' 'Can we do that?' My God, if they only knew."

When she fell behind in the rent and her landlord warned that he would evict her, she knew she had to do something. She turned to a Manhattan consumer-bankruptcy lawyer, Charles Juntikka. Garcia was typical of many of his clients—embarrassed by her debts, upset over not being able to pay her bills, not knowing where to turn. "There is this image of middle-class people running up huge debts, then declaring bankruptcy and laughing at everyone," he says. "I've just never seen that. These people hurt."

Juntikka filed a petition for Garcia under Chapter 7, seeking to have her unsecured credit-card debt discharged. Garcia says she intends to give up the car to further reduce her debt load, and Juntikka is optimistic she will get a fresh start. Now, for the first time in months, Garcia says, she can sleep at night.

But if the Bankruptcy Reform Act pending in Congress were the law, Garcia would not be able to rest so easy. "Lucy wouldn't be able to obtain a discharge under this bill," says Juntikka. "Under the new standards Congress has put in the bill, she earns too much money. She could not get a discharge. She would still be stuck with some of the credit-card bills she can't pay now."

The standards referred to by Juntikka concern the means testing that allocates a fixed amount of expenses to debtors in computing their ability to pay their debts. And as Juntikka interprets them, Garcia would not be able to seek relief in Chapter 7. Even if by some chance she could prove her case in court, he says, the process would be lengthy and costly. "People aren't going to be able to deal with these draconian measures," he says. As a result, some people will be permanently indebted to credit-card companies, others will see their wages attached, some may lose their homes. "This is going to cause so much misery," he says.

Warren, the Harvard law professor and longtime student of bankruptcy, marvels at how a piece of legislation that could penalize so many people has come this far. "This is one of those things with low visibility, and therefore it's easy to give in to the interest group," says Warren. "It all flies below the radar screen. That's the best place for the lobbyists. That's where the pickings are the fattest. The only way to explain it is campaign contributions." *—With reporting by Laura Karmatz and Andrew Goldstein and research by Joan Levinstein*

THE WHITE HOUSE

WASHINGTON

June 2, 2000

MEMORANDUM FOR HILLARY RODHAM CLINTON

FROM: ANN O'LEARY A.O'L.
HEATHER HOWARD
ERIC MORSE EMJ

CC: MELANNE VERVEER
SHIRLEY SAGAWA
LISSA MUSCATINE
PATTI SOLIS DOYLE

SUBJECT: ISSUES UPDATE

The purpose of this memo is to provide you with brief updates on a number of national issues in which you have been involved or expressed interest.

LEGISLATIVE AND ISSUES UPDATE

ECONOMY

Bankruptcy Bill. In an informal conference, Republican and Democratic House Members and Senators continue to narrow down their issues of disagreement. Currently, the most contentious issue of disagreement is the Schumer clinic-violence amendment. Schumer is working directly with Hyde to try to develop a compromise on this issue. Hyde's counter proposal on this issue, however, sets a very high standard that would prohibit discharge of debts only if perpetrators had an "intent" to harm and were "willfill and malicious" in their actions. If these standards could not be proved, perpetrators would continue to be able to discharge their debts related to clinic-violence. This issue is proving to be the most difficult to resolve and the Administration would consider vetoing over this issue. Currently, Senator Lott is considering attaching the bankruptcy bill to the electronic signature bill that is expected to move to the Senate floor in the next two weeks.

EDUCATION

Hispanic Education. As a follow-up to your Hispanic Convening, Maria Echaveste has planned a White House Strategy Session on Hispanic Education. This event will take place on June 15th and is intended to bring together the public and private sectors to improve education for Hispanics. Originally, this meeting was intended to be a small working group, but it is now a large meeting in the East Room. At the meeting, five goals will be presented to help focus the group on improving education from early childhood to college access and completion (see

attached goals and agenda). At the event, the President will release a report from the Council of Economic Advisors on the state of Hispanic Education and a report card produced by the Department of Education.

WOMEN

Reauthorization of the Violence Against Women Act (VAWA). Two weeks ago, in U.S. v. Morrison (also known as Brzonkala), the Supreme Court invalidated the civil remedy provision in VAWA that allowed victims of gender-motivated violence to sue their attackers. Although the decision does not affect other provisions of VAWA, such as the federal criminal provisions and grants to law enforcement and battered women shelters, it has provided momentum for efforts to reauthorize VAWA ("VAWA II"). In addition, a report recently released by the Bureau of Justice Statistics demonstrated that domestic violence has declined since 1993 and that VAWA programs are working. In 1998, for example, women experienced 20.3% fewer violent offenses at the hands of an intimate partner than in 1993. In 1996, 1997, and 1998, intimate partners committed fewer murders than in any other years since 1976. A copy of the report is attached.

VAWA II is an opportunity not only to reauthorize the critical funding programs, but also to make improvements to existing law. These include technical fixes that ensure that Native American women are protected, as well as substantive improvements that would protect immigrant women and children, facilitate filing and service of protection orders, improve the enforcement of protection orders, and enhance the ability of victims fleeing from abuse with their children to obtain custody orders without returning to the dangerous jurisdiction. The most controversial provision in VAWA II would expand both the grant programs and criminal provisions to cover "dating relationships." Current law only covers couples who are or have been married, have a child together, or who are or have lived together; amending the definition of domestic violence to include dating relationships is important because data suggest that domestic violence occurs at the highest rates among young persons aged 16-24, who tend not to be married or living together and thus are not covered under VAWA.

VAWA II is currently stalled in Congress. Rep. Connie Morella's bill was marked up in subcommittee but has not been scheduled for a full Committee mark-up. At the insistence of Senator Hatch's staff, "dating relationships" was removed from the bill, but Rep. Morella has vowed to try to put it back in at full Committee. In the Senate, Senator Biden is close to reaching a compromise with Senator Hatch, but they are looking for legislative vehicles. (One possibility is the Trafficking bill). Their compromise, however, would probably not include the dating relationships language.

We have been working to increase the pressure for reauthorization and to signal that it is a top Administration priority. Several weeks ago, senior Administration officials met and strategized with women's groups, and last week we met with members of the law enforcement community to broaden the coalition. This weekend, the board of the International Association of Chiefs of Police will meet and is expected to endorse VAWA II, and the National Conference of Mayors may do so as well at their conference.

We are planning a White House event to highlight the need for reauthorization and the importance of the issue to you and the Vice President. In addition, DOJ and HHS will be working VAWA II into principals' speeches and highlighting successful programs at the local level when they travel.

HEALTH

Children's Health Bill. On May 9th, the House passed "The Children's Health Research and Prevention Amendments of 1999" (Rep. Bilirakis) with broad bipartisan support. The bill is a "catch-all" bill with numerous children's health research, prevention and treatment initiatives. It would:

1) establish a pediatric research initiative at NIH;
2) establish a National Center on Birth Defects and Developmental Disabilities within the CDC;
3) authorize programs to promote the use of folic acid to prevent birth defects;
4) establish a safe motherhood monitoring initiative, to monitor deaths and severe complications from pregnancy, and increase research on strategies to ensure safe motherhood; and
5) authorize additional federal funding targeted at: autism, fragile X, birth defects, early hearing loss, poison prevention, epilepsy, asthma, juvenile arthritis, skeletal malignancies, and juvenile diabetes.

The Senate has no plans for action at this time.

Breast and Cervical Cancer Treatment Act. As you know, earlier this year the President announced a new initiative to help cover uninsured women who have breast and cervical cancer. The FY 2001 budget invests $200 million over five years in a new Medicaid option that allows states to provide low income, uninsured women who were diagnosed with breast or cervical cancer through the National Breast and Cervical Cancer Early Detection Program with the full Medicaid benefits package for the duration of their treatment. On May 9, 2000, the House passed a version of this proposal overwhelmingly. That legislation, H.R. 4386 (Reps. Danner, Lazio, and Myrick), is similar to the Administration's proposal except that it contains an additional incentive for states to adopt the option, in the form of an enhanced 80/20 match. The Senate bill is languishing in the Finance Committee, where Senator Roth has not scheduled a mark-up and is apparently not enthusiastic about the enhanced match because of the additional costs it imposes. The National Breast Cancer Coalition is urging the White House to endorse the enhanced match.

Mental Health Parity. In Mid-May, the General Accounting Office released a report to the Senate HELP Committee on the Mental Health Parity Act entitled "Despite New Federal Standards, Mental Health Benefits Remain Limited." The report found that 86% of responding employers are complying with the federal parity requirement that annual and lifetime dollar limits for mental health benefits be no more restrictive than those for all medical and surgical benefits. In contrast, in 1996 before the parity law was enacted, only about 55 % of responding employers reported offering parity in dollar limits.

The report found, however, that compliance may have had little effect on employees' access to mental health services, because of the narrow scope of the law and reductions in mental health benefits that employers have made to offset the required enhancements. 87% of those that

comply contain at least one other plan design feature that is more restrictive for mental health benefits than for medical and surgical benefits, such as restrictions on the number of covered outpatient office visits or hospital. In addition, many employers may have adopted newly restrictive mental health benefit features specifically to offset the more generous dollar limits they adopted as a result of the federal law -- two-thirds of these newly compliant employers changed at least one other mental health benefit design feature to a more restrictive one.

The good news is that the parity law appears to have had a negligible effect on claims costs. Only three percent of employers responded that compliance increased their claims costs, and virtually no employers have dropped their mental health benefits or health coverage altogether, as had been feared. According to the report, estimates of the cost of federal parity are typically less than one percent; more comprehensive parity laws as enacted by some states are estimated to have higher but still modest cost increases of about two to four percent.

Unless reauthorized, the law sunsets on September 30, 2001. A copy of the Congressional testimony summarizing the report is attached.

INTERGOVERNMENTAL AFFAIRS UPDATE

INSULAR AREAS

FBI Puerto Rico Files. Director Freeh released to Representative Jose Serrano (D-NY) 8,600 pages of files of a former LFBI program that watched Puerto Rican nationalists and leaders and disrupted nationalist efforts. Earlier, Freeh reportedly acknowledged destructive and illegal acts to Serrano. That statement came after Governor Pedro Rossello (D)) released Puerto Rican police files on hundreds of thousands of people and proposed compensation for them.

Lazio on Puerto Rico. Representative Rick Lazio (R-NY) stated his support for a referendum on Puerto Rican statehood and closing the Vieques bombing range.

Vieques Outreach. Maria Echaveste, Jeff Farrow and Mickey Ibarra updated elected officials of Puerto Rican descent living in the States and U.S. religious leaders about the Administration's solution to the Vieques issue. Several national Hispanic groups that had earlier said the President's proposal did not go far enough began to lobby the Senate in favor of the land transfer legislation the solution proposed.

CABINET UPDATE
Below are selected Cabinet reports:

DEPARTMENT OF TREASURY

Digital Signatures. During the week of May 22, staff from the Office of Domestic Finance participated with DOC in extensive bipartisan negotiations with conferees on electronic signature legislation. The legislation removes unintended barriers to electronic commerce and clarifies the legality of certain electronic transactions by stating that such transactions may not be denied legal effect, validity, or enforceability solely because they are in electronic form. Treasury is

working to ensure that the legislation includes the same consumer protections for electronic transactions as for transactions conducted on paper.

Estate and Gift Taxes. On May 25, the House Ways and Means Committee voted to approve legislation sponsored by Chairman Archer that would repeal estate and gift taxes. The legislation calls for reductions in the estate and gift tax rates over the next several years, followed by a complete repeal of these taxes in 2009. House Democrats intend to offer a substitute, which would include broadening the estate tax base but lowering rates and expanding the unified credit to $1.5 M. On May 25, Secretary Summers and Chief of Staff Podesta sent a letter to Chairman Archer and Ranking Member Rangel stating that the Administration opposes the legislation because it would reduce the overall fairness and progressivity of the tax system, would be fiscally unwise, and would harm charitable giving, and that the President would veto the legislation if it were presented to him.

DEPARTMENT OF JUSTICE

Union Officers Indicted on Embezzlement Charges. On May 17th, a couple was charged in an 8-count indictment with embezzlement and other crimes committed while both were high-ranking officers of Buffalo's AFL-CIO Hospital and Nursing Home Council. The indictment accuses the defendants with systematically embezzling thousands of dollars in "severance" pay from the council and its pension fund. The stolen funds totaled approximately $235,000.

Court Strikes Down Telecommunications Act Provision. On May 22, the Supreme Court ruled that section 505 of the Telecommunications Act of 1996 violates the First Amendment. Section 505 requires a cable operator providing sexually explicit adult programming either to scramble the signal or to limit the programming to evening hours. In a 5-4 decision, the Supreme Court held that section 505 is a content-based regulation that singles out particular programmers for regulation. In applying strict scrutiny, and finding that the statute did not survive that standard, the majority emphasized two factors. First, it noted that another section of the Act provides for blocking particular channels by subscriber request and is thus more narrowly tailored to the government's goal of supporting parents who want sexually explicit channels blocked. Second, the majority concluded that there is no proof as to how likely any child is to view a discernible explicit image, and that the First Amendment requires a more careful assessment in order to justify a regulation as sweeping as this.

UNITED STATES DEPARTMENT OF AGRICULTURE

Crop Insurance Reform. On May 24, the joint House and Senate Conference Committee met and approved the Conference Report for the Agricultural Risk Protection Act of 2000. The Conference Report now goes to the House and Senate floors along with the $7.1B package to strengthen the farm safety net for producers, most of which will be distributed by September 30.

Freedom to E-file Act. On May 18, the Senate passed the Freedom to E-file Act by unanimous consent. It is anticipated that the House will act this week on the bill, as amended by the Senate. The bill requires USDA to establish an Internet based filing system enabling farmers to complete and submit forms electronically. To ensure speedy and effective implementation of the bill,

USDA Service Center agencies will require full funding for the Common Computing Environment initiative.

Gulf War Illness. The Director of the Presidential Commission for Gulf War Illness has requested that NOAA provide satellite images of the Persian Gulf region in January and February 1991. The Satellite Services Group of the National Climatic Data Center compiled 38 cloud free, or almost cloud free, NOAA Polar Orbiter Satellite scenes.

E-Commerce Small Business Summit. On June 23, DOC, USDA, and SBA will sponsor the E-Commerce Small Business Summit. This conference will provide small business owners with information necessary to assess the impact of electronic commerce on their industries, to develop a strategic framework for participating in the new digital economy, and to evaluate potential solutions. Secretaries Daley and Glickman are expected to speak.

National Nutrition Summit. HHS and USDA sponsored the National Nutrition Summit on May 30-31 in Washington, DC. Among other things, the Departments announced a year-2000 edition of Dietary Guidelines for Americans – the Federal Government's most basic guidance on healthful eating patterns; and new Pediatric Growth Charts – which show average height, weight, and body mass index by age and sex for children and teens, and are widely used in clinical practice, epidemiologic research, and program development.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

New Home Sales. The nation's housing sector is on pace for a record year in new-home sales after registering first quarter increases in building permits, housing starts and completions, according to a report released by Secretary Cuomo. HUD's *U.S. Housing Market Conditions 1st Quarter Report* shows that in March new home sales were at the second-highest monthly level ever recorded and the first quarter level was the second highest quarterly value. If this level continues throughout the year, 2000 will be the best year ever for new home sales.

DEPARTMENT OF TRANSPORTATION

Proposal to Include Auto Safety Rollover Ratings. On May 25, responding to growing public interest in safety information, Secretary Slater will propose a rating program to provide consumers with a measure of a vehicle's likelihood to rollover. The program would provide star ratings for rollover performance, the same approach currently used for providing information about performance in frontal and side crashes in the New Car Assessment Program. A key component of the DOT rollover information campaign will be to continue educating the public about the importance of always using seat belts and age appropriate child restraints. DOT will open a 90-day comment period to solicit public comment on its proposed rollover rating program. Final decisions on the rollover rating program, which is set to begin with 2001 model vehicles, will be made this summer.

ENVIRONMENTAL PROTECTION AGENCY

Supreme Court Review of Ruling on Clean Air Rules. Earlier this week, the Supreme Court accepted EPA and DOJ's petition to review the DC Circuit Court of Appeals ruling that blocked EPA from enforcing tightened smog and particulate matter standards. The Supreme Court left pending additional petitions for review of the decision from MA, NJ, and the American Lung association, as well as a cross-appeal by an industry group fighting the petition for review. EPA expects oral arguments to be heard on the case later this year, with a decision from the Supreme Court in 2001.

Dioxin Exposure. EPA is progressing toward completion of its reassessment of dioxin exposure and human health effects which began in 1991. As part of the planned internal government review, EPA conducted a series of briefings for its federal partners beginning on April 25. On or about June 9, EPA expects to provide copies of these external review drafts for an independent scientific peer review and will also begin the process of public review. Based on the comments received, the documents will be revised and submitted to EPA's Science Advisory Board for final peer review scheduled for October.

SOCIAL SECURITY ADMINISTRATION

Annual Report on the SSI Program. By May 30 of each year, the Commissioner of Social Security is required to submit a report to the President and Congress on the SSI program. The report provides estimates of program participation and costs over a 25-year period, as follows: By 2024, the Federal SSI recipient population is estimated to reach 7.7 million (from 6.3 million in 1999); growth in SSI program outlays during the next 25 years is projected to remain relatively modest; and Federal expenditures for SSI payments in calendar year 2000 are estimated to total $29.4B, an increase of roughly $1.2B from 1999 levels.

LEGISLATIVE CALENDAR

House

The House is expected to begin work on the following appropriations bills next week: Defense, Labor-HHS, Agriculture, and Legislative Branch. In addition, they may consider the Estate Tax Elimination Act.

Senate

The Senate may begin consideration of the Agriculture appropriations bill.

U.S. Department of Justice
Office of Justice Programs

Bureau of Justice Statistics
Special Report

May 2000, NCJ 178247

Intimate Partner Violence

Bonnie Fisher, Henderson, Ph.D.
and Sarah Welchans
BJS Statisticians

Estimates from the National Crime Victimization Survey (NCVS) indicate that in 1998 about 1 million violent crimes were committed against persons by their current or former spouses, boyfriends, or girlfriends. Such crimes, termed *intimate partner violence*, are committed primarily against women. About 85% of victimizations by intimate partners in 1998, about 876,340, were against women.

Intimate partner violence made up 22% of violent crime against women between 1993 and 1998. By contrast, during this period intimate partners committed 3% of the violence against men.

Women experienced intimate partner violence at lower rates in 1998 than in 1993. From 1993 to 1997 the rate of intimate partner violence fell from 9.8 to 7.5 per 1,000 women. In 1998 the rate was virtually unchanged from that in 1997 (7.7 per 1,000 women). Males experienced intimate partner violence at similar rates in 1993 and 1998 (1.6 and 1.5 per 1,000 men, respectively).

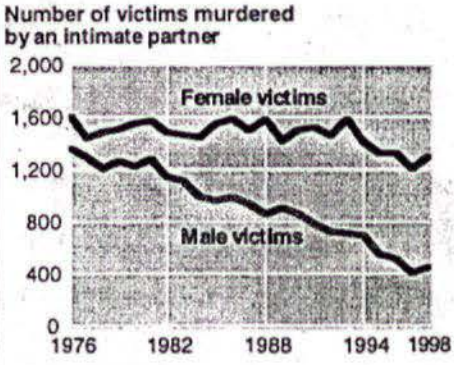
In 1998 about 1,830 murders were attributable to intimate partners, down substantially from the 3,000 murders in 1976.

Highlights

Intimate partners: current or former spouses, boyfriends, and girlfriends

Violent crimes include lethal (homicide) and nonlethal (rape, sexual assault, robbery, aggravated assault, and simple assault) offenses.

Lethal



- Intimate partners committed fewer murders in each of the 3 years 1996, 1997, and 1998 than in any other year since 1976.
- Between 1976 and 1998, the number of male victims of intimate partner homicide fell an average 4% per year and the number of female victims fell an average 1%.
- In 1998 women were nearly 3 out of 4 victims of the 1,830 murders attributable to intimate partners. In 1976 women were just over half the approximate 3,000 victims.
- The percentage of female murder victims killed by intimate partners has remained at about 30% since 1976.

Nonlethal

- The number of female victims of intimate violence declined from 1993 to 1998. In 1998 women experienced an estimated 876,340 violent offenses at the hands of an intimate, down from 1.1 million in 1993.
- In both 1993 and 1998, men were victims of about 160,000 violent crimes by an intimate partner.
- Between 1993 and 1998 women ages 16 to 24 experienced the highest per capita rates of intimate violence (19.6 per 1,000 women).
- About half the intimate partner violence against women, 1993-98, was reported to the police; black women were more likely than other women to report such violence.
- About 4 of 10 female victims of intimate partner violence lived in households with children under age 12. Population estimates suggest that 27% of U.S. households were home to children under 12.
- Half of female victims of intimate partner violence reported a physical injury. About 4 in 10 of these victims sought professional medical treatment.

Measuring intimate partner victimization

This report updates findings presented in *Violence by Intimates* (March 1998, NCJ 167237) and provides more complete statistics of intimate partner violence against men.

Data

Findings regarding violent crime came from National Crime Victimization Survey (NCVS) data collected by the Bureau of Justice Statistics (BJS). The NCVS collects data about criminal victimizations from an ongoing nationally representative sample of households in the United States. Homicide data came from the Supplementary Homicide Reports (SHR) of the Uniform Crime Reporting Program (UCR).

Definitions

As defined in this report, intimate relationships involve current or former spouses, boyfriends, or girlfriends. These individuals may be of the same gender.

Violent acts examined include murder, rape, sexual assault, robbery, aggravated assault, and simple assault. Definitions of these violent crimes are provided in the definitions section on page 9.

Rate of violence by an intimate partner, by gender, 1993-98

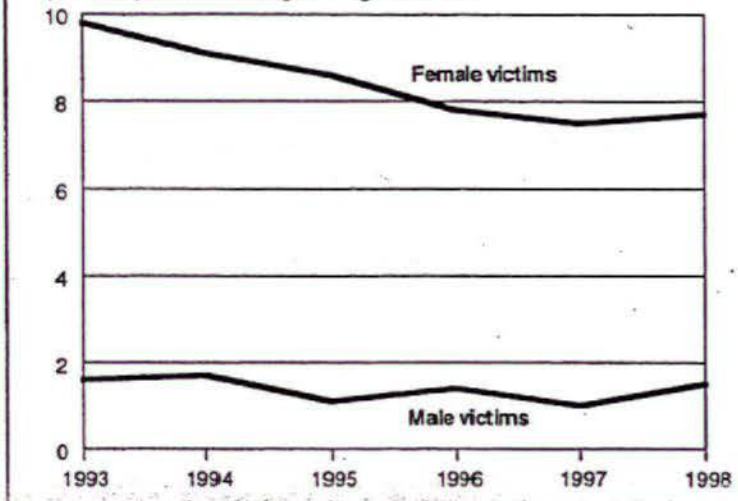


Figure 1

Intimate partner violence in 1998

In 1998 women were victims in about 876,340 violent crimes and men were victims in about 157,330 violent crimes committed by an intimate partner (table 1). Women were victims of intimate partner violence at a rate about 5 times that of males (767 versus 146 per 100,000 persons, respectively). Women were more likely to be victimized by a nonstranger, which includes a friend, family member, or intimate partner, while men were more likely to be victimized by a stranger (appendix table 2, page 10). Sixty-five percent of all intimate partner violence against women and 68% of intimate partner violence against men involved a simple assault, the least serious form of violence studied.

Table 1. Violence by intimate partners, by type of crime and gender, 1998

	Intimate partner violence by gender					
	Total		Female		Male	
	Number	Rate per 100,000 persons	Number	Rate per 100,000 persons	Number	Rate per 100,000 persons
Overall violent crime	1,033,660	465.9	876,340	766.8	157,330	146.2
Murder	1,830	0.8	1,320	1.2	510	0.5
Rape/sexual assault	63,490	28.6	63,490	55.6	--	--
Robbery	103,940	46.8	101,830	89.1	--	--
Aggravated assault	187,970	84.7	140,050	122.5	47,910	44.5
Simple assault	676,440	304.9	569,650	498.4	106,790	99.2

Note: Rates for this table only are the number of victimizations per 100,000 persons. Rates reported in other tables are the number of victimizations per 1,000 persons. Populations for calculation of rates are presented in appendix table 9, page 11. The difference in male and female intimate partner victimization rates is significant at the 95%-confidence level within each victimization category presented.
--Based on 10 or fewer sample cases.

In 1998 intimate partner homicides accounted for about 11% of all murders nationwide. Of the 1,830 persons murdered by intimates in 1998, 72% or 1,320 were women. Female murder victims were substantially more likely than male murder victims to have been killed by an intimate partner. In 1998 intimate partner homicides comprised about 33% of the murders of women but about 4% of the murders of men.

Trends in violence against intimate partners, 1993-98

The rate of intimate partner violence against women decreased 21% from 1993 to 1998. The estimated number of violent crimes against women by intimate partners decreased from the 1993 level of about 1.1 million to 848,480 in 1997. The victimization rate over the same period fell from 9.8 to 7.5 per 1,000 women. A nominal but not statistically significant increase in female intimate partner violence rates occurred from 1997 to 1998 (7.5 to 7.7 per 1,000 women) (figure 1, table 2, appendix table 2).

Intimate partner victimization rates for males were similar in 1993 and 1998 (1.6 and 1.5 men victimized per 1,000 males), despite some fluctuation during intervening years. The rate of victimization of male intimate partners in 1998 represented an increase from 1.0 per 1,000 in 1997.

Homicide of intimate partners, 1976-98

Overall, the number of women killed by an intimate partner was stable between 1976 and 1993 and then declined 23% between 1993 and 1997. The number of women murdered by an intimate partner increased 8% between 1997 and 1998. The number of men murdered by an intimate partner fell 60% from 1976 to 1998 (*Highlights* figure, page 1).

Most victims of intimate partner homicide are killed by their spouses, although much less so in recent years. In 1998 murders by spouses represented 52% of all intimate partner homicides, down from 73% in 1976 (figure 2).

White females represent the only category of victims for whom intimate partner homicide has not decreased substantially since 1976 (figure 3). The number of intimate partner homicides for all other racial and gender groups declined during the period. The number of black females killed by intimates dropped 45%; black males, 74%; and white males, 44%. Between 1997 and 1998 the number of white females killed by an intimate partner increased 15%.

For additional information on trends of intimate partner homicide, refer to the BJS website: **http://www.ojp.usdoj.gov/bjs/homicide/intimates.htm**

Table 2. Violence by intimate partners, by gender, 1993-98

	Violent victimization by intimate partners			
	Female victims		Male victims	
Year	Number	Rate per 1,000	Number	Rate per 1,000
1993	1,072,090	9.8	163,570	1.6
1994	1,003,180	9.1	176,180	1.7
1995	953,700	8.6	115,490	1.1
1996	879,290	7.8	150,730	1.4
1997	848,480	7.5	107,850	1.0
1998	876,340	7.7	157,330	1.5

Note: See appendix table 9, page 11, for the populations used to calculate rates.

The difference between male and female rates of intimate partner victimization for every year is significant at the 95%-confidence level. The rates for males in 1993 and 1998 were not significantly different. Male intimate partner victimization rates fell significantly between 1994 and 1995, fell slightly between 1996 and 1997, and increased significantly between 1997 and 1998. Rates of intimate partner violence against females declined from 1994 to 1997 and slightly between 1994 and 1998.

Homicides of intimate partners, by victim-offender relationship, 1976-98

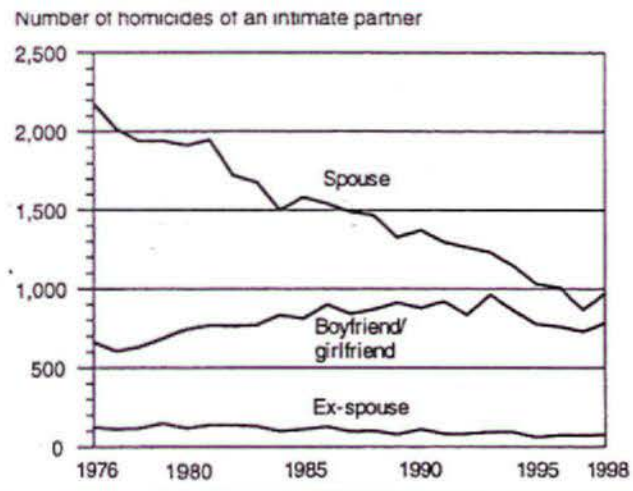


Figure 2

Characteristics of intimate partner violence victims, 1993-98

Regardless of the demographic characteristics considered, women experienced intimate partner violence at higher rates than men between 1993 and 1998.* Among women, being black, young, divorced or separated, earning lower incomes, living in rental housing, and living in an urban area were all associated with higher rates of intimate partner victimization between 1993 and 1998. Men who were young, black, divorced or separated, or living in rented housing had significantly higher rates of intimate partner violence than other men.

*The remainder of the report examines nonlethal violent victimization, although inclusion of homicides would not affect the findings.

Homicides of intimate partners, by gender and race of the victims, 1976-98

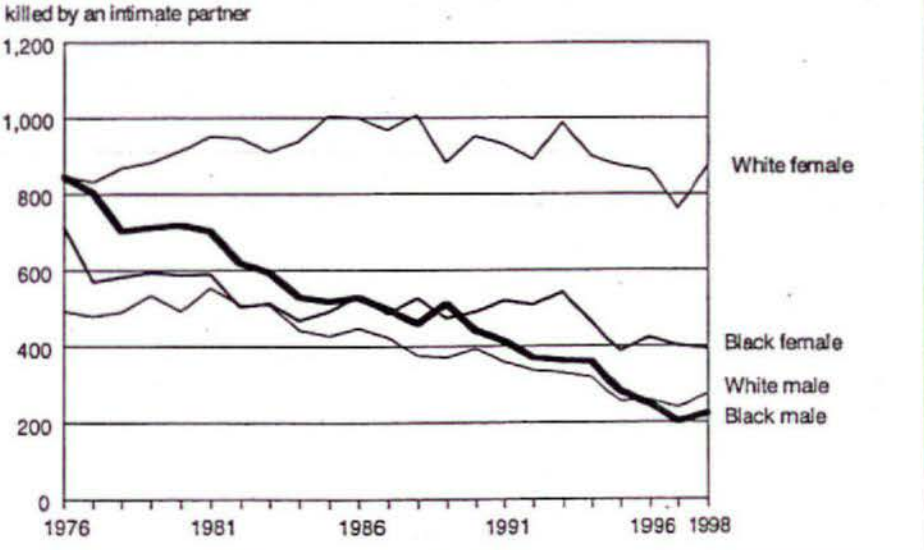


Figure 3

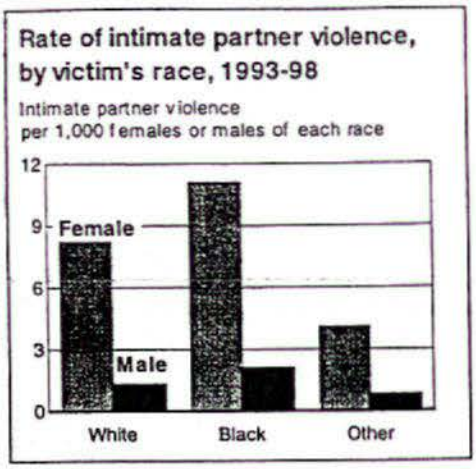


Figure 4

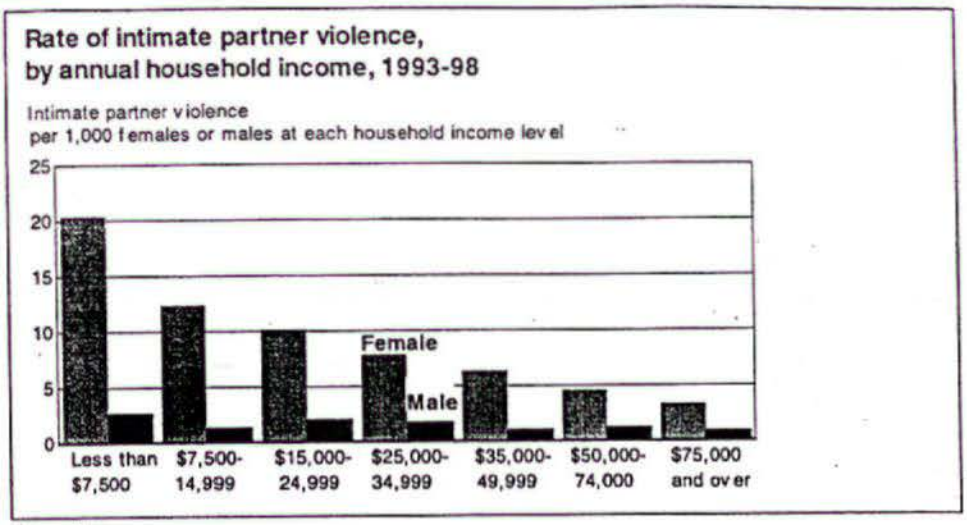


Figure 7

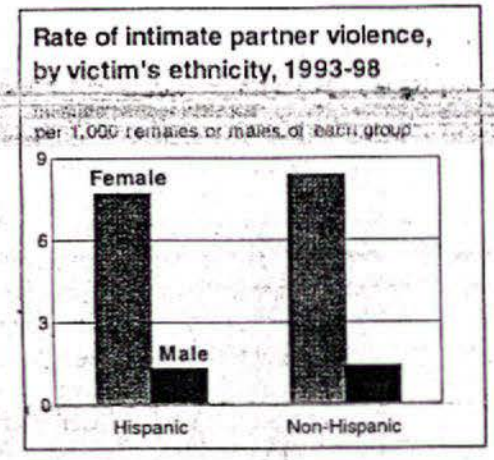


Figure 5

Race and ethnicity

Overall, blacks were victimized by intimate partners at significantly higher rates than persons of any other race between 1993 and 1998 (figure 4, appendix table 3). Black females experienced intimate partner violence at a rate 35% higher than that of white females and about 2½ times the rate of women of other races. Black males experienced intimate partner violence at a rate about 62% higher than that of white males and about 2½ times the rate of men of other races.

No difference in intimate partner victimization rates between Hispanic and non-Hispanic persons emerged, regardless of gender (figure 5).

Age

For both women and men, rates of violence by an intimate partner were below 3 victimizations per 1,000 persons under age 16 or over age 50 (figure 6 and appendix table 4). Women ages 20-24 were victimized by an intimate partner at the highest rate, 21 per 1,000 women. This rate was about 8 times the peak rate for men (3 victimizations per 1,000 men ages

Household income

Women living in households with lower annual household incomes experienced intimate partner violence at significantly higher rates than women in households with higher annual incomes (figure 7, appendix table 5). Intimate partners victimized women living in households with the lowest annual household income at a rate nearly 7 times that of women living in households with the highest annual household income (20 versus 3 per 1,000). No discernible relationship emerged between intimate partner violence against males and household income.

Figure 6

Figure 8

Marital status

For both men and women, divorced or separated persons were subjected to the highest rates of intimate partner victimization, followed by never-married persons (figure 8, appendix table 6). Because the NCVS reflects a respondent's marital status at the time of the interview, it is not possible to determine whether a person was separated or divorced at the time of the victimization or whether separation or divorce followed the violence.

Home ownership

Intimate partner victimization rates were significantly higher among persons living in rental housing regardless of the victim's gender (figure 9, appendix table 7). Females residing in rental housing were victimized by intimate partner violence at more than 3 times the rate of women living in owned housing, and males residing in rental housing were victimized by an intimate partner at more than twice the rate of men living in purchased housing.

Urban, suburban, and rural households

Women in urban areas were victims of intimate partner violence at significantly higher rates than suburban women and at somewhat higher rates than rural women. Ten per thousand urban women were victims of intimate partner violence compared to 8 per 1,000 women in suburban and rural areas between 1993 and 1998.

Urban and suburban males were victims of intimate partner violence at similar rates. Men in urban areas experienced violence at a rate slightly higher than that of men in rural areas. No significant difference emerged between the rates for suburban and rural men.

Rate of intimate partner violence, by home ownership and location of household, 1993-98

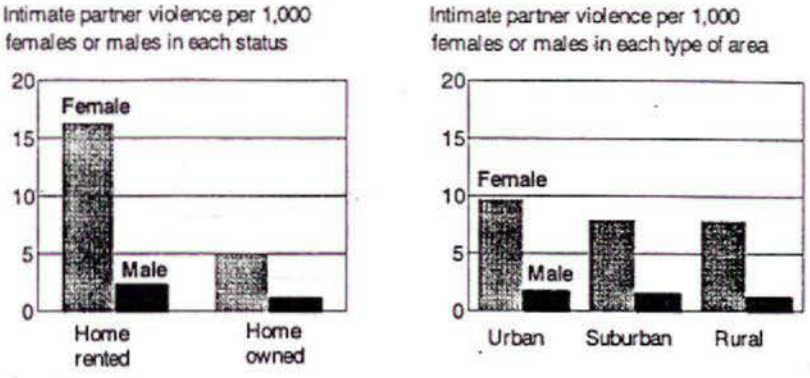


Figure 9

Table 3. Location and time of intimate partner violence, by gender of victim, 1993-98

Location and time	Female victims Number	Percent	Male victims Number	Percent
Total intimate partner victims	937,490	100%	144,620	100%
Victim's home	590,030	63%*	74,480	52%
Near victim's home	81,600	9*	23,910	17
Friend/neighbor's home	115,430	12	22,300	15
Commercial place	24,020	3	5,820	4
Parking lot or garage	34,800	4	5,860	4
School	11,350	1	--	--
Other	80,260	9	9,630	7
Daytime (6 a.m. to 6 p.m.)	353,560	38%	58,900	41%
Nighttime	558,130	60	84,910	59
Don't know	25,800	3	--	--

--Based on 10 or fewer sample cases.
*The difference between male and female percentages is significant at the 95%-confidence level.

Table 4. Households with children under age 12, by gender of victims of intimate partner violence, 1993-98

Present	Total annual average Number	Percent	Female average annual Number	Percent	Male average annual Number	Percent
Total intimate partner victims	1,082,110	100%	937,490	100%	144,620	100%
Children in household	459,590	43%	424,140	45%	35,450	25%
Children not in household	462,090	43	364,720	39	97,370	67
Unknown	160,430	15	148,630	16	11,800	8

Note: The difference between male and female percentages is significant at the 95%-confidence level for each category shown. The difference in having children as household members and not having them is significant at the 95%-confidence level for both women and men.

The nature of intimate partner victimization

Location and time

Between 1993 and 1998 almost two-thirds of intimate partner violence against women, and about half of all intimate partner violence against men, occurred in the victim's home (table 3). Intimate partner violence occurred most often between 6 p.m. and 6 a.m., accounting for about 6 in 10 female and male victimizations by intimate partners (60% and 59%).

Table 5. Percent of threats, attempted attacks, and physical attacks in intimate partner violent crimes, 1993-98

Type of violence	Victims of intimate partners: Female	Male
Attempt or threat	31%	35%
Threatened to kill	32	27
Threatened to rape	1	--
Threatened in "other" way	52*	41
Threatened with a weapon	18	22
Threw object at victim	4*	11
Followed/surrounded victim	4	--
Tried to hit, slap, or knock down victim	13	15
Physically attacked	69%	65%

Note: Detail may not add to total because victims may have reported more than one type of threat.
--Based on 10 or fewer sample cases.
*The difference in male and female percentages is significant at the 95%-confidence level.

Percent of intimate partner victimization reported to police, by gender, race, and ethnicity, 1993-98

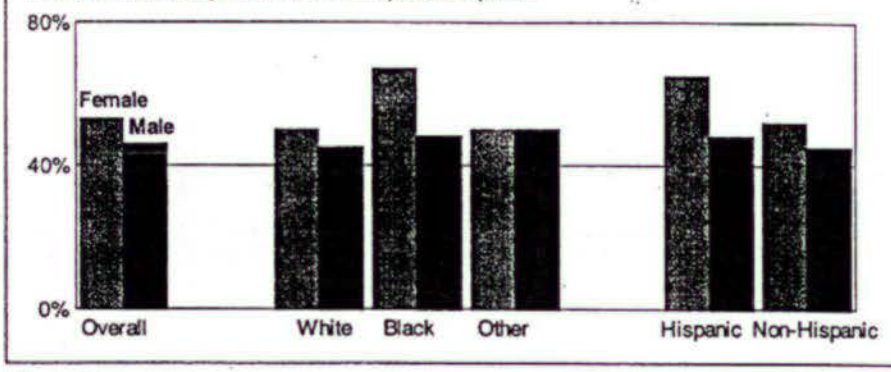


Figure 10

Children less than 12 present in the household

Between 1993 and 1998 children under the age of 12 resided in 43% of the households where intimate partner violence occurred (table 4). Population estimates suggest that in general, 27% of households in the United States were home to children under the age 12. This study is not able to determine the extent to which young children witnessed intimate partner violence.

Injuries and treatment

Between 1993 and 1998, about two-thirds of the male and female victims of intimate partner violence were physically attacked (table 5). The remaining third were victims of threats or attempted violence. Though percentages of males and females being attacked were similar, the outcome of these attacks differed (table 6). Fifty percent of female victims of intimate partner violence were injured by an intimate partner versus 32% of male victims.

Among those injured, similar percentages of men and women suffered [illegible] lively). A significantly higher percentage of women than men sustained minor injuries (more than 4 in 10 females and fewer than 3 in 10 males).

Most victims injured by an intimate partner did not report seeking professional medical treatment for their injuries. About 6 in 10 female and male [illegible] were injured but not treated. In general, injuries were minor, involving cuts and bruises. Most of those injured who were treated received care at home or at the scene of the victimization (17% of women and 24% of men).

Table 6. Injuries and treatment as a result of intimate partner violence, by gender, 1993-98

Injury and treatment	Female average annual: Number	Percent	Male average annual: Number	Percent
Total intimate partner victims	937,490	100%	144,620	100%
Not injured	466,380	50%*	97,620	68%
Injured	471,110	50*	47,000	32
Serious injury	43,910	5	6,380	4
Gunshot wound	--	--	--	--
Knife wounds	5,410	1	--	--
Internal injuries	10,170	1	--	--
Broken bones	16,380	2	--	--
Knocked unconscious	9,240	1	--	--
Other serious injuries	--		--	--
Rape/sexual assault without additional injuries	33,260	4	--	--
Minor injuries only	392,810	42*	39,690	27
Injuries unknown	--	--	--	--
Injured	471,110	100%	47,000	100%
Injured, not treated	297,800	63	28,090	60
Treated for injury	173,310	37	18,910	40
At scene or home	82,200	17*	11,240	24
Doctor's office or clinic	23,000	5	--	--
Hospital				
Not admitted	16,990	4	--	--
Emergency, not admitted	39,850	8	--	--
Emergency, admitted	5,840	1	--	--
Other locale	5,020	1	--	--
Don't know	--	--	--	--

--Based on 10 or fewer sample cases.
*The difference in male and female percentages is significant at the 95%-confidence level.

Reporting to police

About half of all victims of intimate partner violence between 1993 and 1998 reported the violence to law enforcement authorities (53% of women and 46% of men) (table 7, figure 10, and appendix table 8).

The percentage of victims reporting to police differed by race and ethnicity. Black women (67%) reported their victimization to police at significantly higher percentages than black men (48%), white men (45%), and white women (50%). No difference in white male and female percentages reporting emerged (45% versus 50%). Hispanic violence to the police at higher percentages than did non-Hispanic females (65% versus 52%).

Table 7. Percent of reporting intimate partner violence to police, by gender, 1993-98

Type of victim	1993	1994	1995	1996	1997	1998	1993-98
Female total	100%	100%	100%	100%	100%	100%	100%
Reported	48%	50%	52%	53%	58%	59%	53%
Not reported	52	50	47	46†	42*	41*	47*
Don't know	0	0	1	1	0	0	0
Male total	100%	100%	100%	100%	100%	100%	100%
Reported	47%	48%	49%	46%	38%	49%	46%
Not reported	53	50	51	52	60†	51	53
Don't know	0	2	0	2	2	0	1

*The difference in percent of within gender reporting and not reporting is signficant at the 95%-confidence level.
†The difference in percent of within gender reporting and not reporting is significant at the 90%-confidence level.

Among victims of violence by an intimate partner, the percentage of women who reported the crime was greater in 1998 (59%) than in 1993 (48%). There was no significant difference between 1993 and 1998 in the percentage of men's reporting their victimization to the police.

In 1997 and 1998 a significantly higher percentage of female intimate partner violence victims reported the victimizations to the police than did not. Prior to 1997 similar percentages of females reported and did not report.

For males, for all years but 1997, approximately half the victims did not report their victimization to the police. In 1997 a slightly higher percentage of male victims did not report to the authorities. About half of the male victims' reasons and a third of the female victims' reasons for not reporting their intimate partner victimization to the police was because it was a "private or personal matter" (table 8). While this reason was the most often given by both male and female victims, it was given by male victims in a significantly higher percentage than female victims.

Table 8. Reasons for intimate partner violence not reported to the police, by gender of victim, 1993-98

Reasons for not reporting to police	Female average annual Number	Female average annual Percent	Male average annual Number	Male average annual Percent
Total victimizations not reported	480,060		85,400	
Private or personal matter	151,900	35%*	39,690	52%
Afraid of reprisal	83,090	19	--	--
Minor crime	29,270	7*	11,480	15
Police will not bother	25,440	6	--	--
Protect offender	13,580	3*	8,400	11
Police biased	12,200	3%	--	--
Inconvenient	14,190	3	--	--
Reported to another official	11,910	3	--	--
Police ineffectiveness	15,290	4	--	--
Not clear a crime occurred	7,010	2	--	--
Don't know why I did not report it	7,100	2%	--	--
Other reason given	109,070	25	14,500	19

Note: Detail may not add to total because victims may have reported more than one reason and because of values not shown in instances in which the sample cases were fewer than 10.
--Based on 10 or fewer sample cases.
*The difference in male and female percentages is significant at the 95%-confidence level.

Fear of reprisal by the perpetrator made up 19% of the reasons females did not report their victimization to the police. About 1 in 10 male victims and fewer than 1 in 10 female victims said they did not report the crime to the police because they did not want to get the offender in trouble with the law.

Methodology

Except for homicide data obtained from the FBI's Uniform Crime Reporting Program, this report presents data from the BJS National Crime Victimization Survey. The NCVS gathers data about crimes using an ongoing, nationally representative sample of households in the United States. NCVS data include information about crime victims (age, gender, race, ethnicity, marital status, income, and educational level), criminal offenders (gender, race, approximate age, and victim-offender relations) and the nature of the crime

(for example, time and place of occurrence, use of weapons, nature of injury, and economic consequences). NCVS victimization data include incidents reported and not reported to police.

Between 1993 and 1998 approximately 293,400 households and 574,000 individuals age 12 or older were interviewed. For the NCVS data presented, response rates varied between 93% and 96% of eligible households, and between 89% and 92% of eligible individuals. The 1998 data presented in this report were collected during the calendar year being estimated. Data for 1993 to 1997 are based on crimes occurring during the year.

Appendix table 1. Average annual number and percentage of series and nonseries violent victimizations, 1993-98

Type of crime	Number of victimizations			Percent of victimizations		
	Total	Nonseries	Series	Total	Nonseries	Series
Violent victimizations	10,098,920	9,493,160	605,770	100%	94%	6%
Rape/sexual assault	394,600	368,430	26,170	100	93	7
Robbery	1,142,380	1,111,500	30,880	100	97	3
Aggravated assault	2,167,920	2,063,920	104,000	100	95	5
Simple assault	6,394,030	5,949,310	444,720	100	93	7
Intimate partner violence						
Female victims	937,490	835,850	101,630	100%	89%	11%
Male victims	144,620	132,030	12,600	100	91	9

Because the NCVS samples households, it does not capture the experiences of homeless individuals or those living in institutional settings such as homeless or battered persons' shelters. The experiences and estimates of intimate partner violence in this report reflect those of the individuals residing in households.

The exact impact of this sampling limitation is unknown. Several studies examined the relationship between intimate partner violence has on homelessness or on residing in shelters for homeless or battered persons. One study suggested that 50% of homeless women and children became homeless after fleeing abuse (Zorza, 1991). A 1998 study conducted in 10 cities in the United States estimated that of 777 homeless parents (most of whom were mothers) 22% stated they left their previous home due to intimate partner violence (*Homes for the Homeless*, 1998). A survey by the U.S. Conference of Mayors suggested that 46% felt that intimate partner violence was a primary cause of homelessness (U.S. Conference of Mayors, 1998).

Definitions of *intimate partner*

Intimate partner relationships involve current spouses, former spouses, current boy/girlfriends, or former boy/girlfriends. Individuals involved in an intimate partner relationship may be of the same gender. The FBI does not report former boy/girlfriends in categories separate from current boy/girlfriends. Rather, they are included in the boy/girlfriend category during the data collection process.

The FBI, through the Supplementary Homicide Reports (SHR), and BJS, using the NCVS, gather information about the victim's and offender's relationship, using different relationship categories. In this report responses to the victim-offender question from both datasets are collapsed into four relationship groups: intimate, friend/acquaintance, other family, and stranger. These groups are created from the following original response categories:

	NCVS categories	SHR categories
Intimate	Spouse	Husband/wife
	Ex-spouse	Common-law husband or wife
	Boyfriend/girlfriend	Ex-husband/ex-wife
	Ex-girlfriend/ex-boyfriend	Boyfriend/girlfriend
		Homosexual relationship
Friend/ acquaintance	Friend/ex-friend	Acquaintance
	Roommate/boarder	Friend
	Schoolmate	Neighbor
	Neighbor	Employee
	Someone at work/customer	Employer
	Other non-relative	Other known
Other family	Parent or step parent	Mother/father
	Own child or stepchild	Son/daugther
	Brother/sister	Brother/sister
	Other relative	In-law
		Stepfather/stepmother
		Stepson/stepdaugther
		Other family
Stranger	Stranger	Stranger
	Known by sight only	

Standard error computations for NCVS estimates

Comparisons of percentages and rates in this report were tested to determine if differences were statistically significant. Differences described in the text as higher, lower, or different and changes over time characterized as having increased or decreased passed a hypothesis test at the .05 level of statistical significance (95%-confidence level). That is, the tested difference in the estimates was greater than twice the standard error of that difference. For comparisons that were statistically significant at the .10 level of statistical significance (90%-confidence level), the terms *somewhat different, marginally different*, or *slight difference* are

used to note the nature of the difference.

Caution is required when comparing estimates not explicitly discussed in the text. What may appear to be large differences may not test as statistically significant at the 95%- or the 90%-confidence level. Significance testing calculations were conducted at the Bureau of Justice Statistics using statistical programs developed specifically for the NCVS by the U.S. Bureau of the Census. These programs take into consideration many aspects of the complex NCVS sample design when calculating generalized variance estimates.

Homicide data presented in this report are collected by the FBI, under the Supplementary Homicide Reports (SHR) of the Uniform Crime Reporting Program (UCR). The homicide data provide incident-level data on about 92% of the homicides in the United States, including the victim and offender relationship.

Definitions

An important consideration in generating intimate partner violence estimates using NCVS data is the treatment of "series data." Series data are defined as six or more incidents similar in nature, for which the victim is unable to furnish details of each incident separately. Because no information for each incident is available, information on the most recent incident in the series is collected. Generally, series victimizations represent 6%-7% of all violent victimizations recorded by the NCVS, though some variation exists among the types of crime and victim characteristics (appendix table 1).

Series crimes are problematic in estimation because how or whether these victimizations should be combined with the other crime incidents is unclear. BJS continues to study how these types of victimizations should be handled in our published estimates. Currently, series victimizations are excluded from the annual BJS estimates but included in Special Reports. In addition, series data are included for analyses where repeat victimization is an important aspect of the subject being analyzed. This report includes series victimizations in estimation of intimate partner violence, counting a series as one victimization.

Violent acts covered in this report include murder, rape, sexual assault, robbery, and aggravated and simple assault. Definitions used in this report are as follows:

• Murder and non-negligent manslaughter is defined as the willful killing of one human being by another.

• Rape is forced sexual intercourse, including both psychological coercion and physical force. Forced sexual intercourse means vaginal, anal, or oral penetration by the offender(s). This category includes incidents where the penetration is from a foreign object such as a bottle. Also included are attempted rapes, male and female victims, and heterosexual and homosexual rape.

• Sexual assault covers a wide range of victimizations, distinct from rape or attempted rape. These crimes include completed or attempted attacks generally involving unwanted sexual contact between the victim and offender. Sexual assaults may or may not involve force and include such things as grabbing or fondling. Sexual assault also includes verbal threats.

• Robbery is a completed or attempted theft directly from a person, of property or cash by force or threat of force, with or without a weapons, and with or without an injury.

• Aggravated assault is defined as a completed or attempted attack with a weapon, regardless of whether or not an injury occurred, and an attack without a weapon in which the victim is seriously injured.

• Simple assault is an attack without a weapon resulting either in no injury, minor injury (such as bruises, black eyes, cuts, scratches, or swelling) or an undetermined injury requiring less than 2 days of hospitalization. Simple assault also includes attempted assaults without a weapon.

References

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Appendix table 2. Victim-offender relationship, by gender, 1993-98

Gender of victim and victim-offender relationship	Rate of violent victimization						
	1993	1994	1995	1996	1997	1998	1993-98
Female victim							
Intimate partners	9.8	9.1	8.6	7.8	7.5	7.7*	8.4
Other relatives	3.3	2.9	2.2	3.0	2.4	2.7	2.8
Friends/acquaintances	17.1	16.7	15.2	14.5	14.1	12.5*	15.0
Stranger	15.4	16.8	13.2	11.8	10.7	9.5*	12.9
Male victim							
Intimate partners	1.6	1.7	1.1	1.4	1.0	1.5	1.4
Other relatives	1.6	2.2	2.0	1.3	1.5	2.0	1.8
Friends/acquaintances	23.0	21.5	19.3	19.1	18.5	17.2*	19.7
Stranger	38.8	38.2	33.8	29.2	26.6	24.9*	31.8

*The difference between 1993 and 1998 violent victimization rates is significant at the 95%-confidence level.
Source: BJS, National Crime Victimization Survey (NCVS), and FBI, Supplementary Homicide Reports (SHR), 1993-98.

Appendix table 3. Intimate partner violence, by race and ethnicity, 1993-98

Victims	Rate of nonlethal intimate partner violence (per 1,000 males and females)	
	Female victims	Male victims
Race		
White	8.2	1.3
Black	11.1	2.1
Other race*	4.1	--
Ethnicity		
Hispanic[b]	7.7	1.3
Non-Hispanic	8.4	1.4

Note: The difference between male and female intimate partner violence rates is significant at the 95%-confidence level for each race and ethnicity shown. Female intimate partner violence rates among races between Hispanic and non-Hispanic [illegible] emerged. Male intimate partner violence rates differed at the 95%-confidence level between whites and blacks and between blacks and persons of other races. No difference in the rates for white males and other race males emerged.
--Based on 10 or fewer sample cases.
*Denotes Asians, Native Hawaiians, other Pacific Islanders, Alaska Natives, and American Indians.
[b]Hispanic or Latino persons could be of any race.

Appendix table 4. Intimate partner violence, by age, 1993-98

Age of victim	Rate of nonlethal intimate partner violence (per 1,000 males and females)	
	Female	Male
12-15	2.5	0.6
16-19	17.4	1.7
20-24	21.3	2.4
25-34	15.5	2.6
35-49	8.1	1.5
50-64	1.5	0.4
65 or older	0.2	--

Note: The difference between male and female intimate partner violence rates is significant at the 95%-confidence level for every age group.
--Based on 10 or fewer sample cases.

Appendix table 5. Intimate partner violence, by household income, 1993-98

Household income of victim	Rate of nonlethal intimate partner violence (per 1,000 males and females)	
	Female	Male
Less than $7,500	20.3	2.6
$7,500 to $14,999	12.3	1.3
$15,000 to $24,999	10.1	2.0
$25,000 to $34,999	7.8	1.7
$35,000 to $49,999	6.3	1.0
$50,000 to $74,999	4.5	1.2
$75,000 or more	3.3	0.9

Note: The difference between male and female intimate partner violence rates is significant at the 95%-confidence level for every income category shown.

Appendix table 6. Intimate partner violence, by marital status, 1993-98

Victim's marital status	Rate of nonlethal intimate violence (per 1,000 persons)	
	Female	Male
Divorced/separated	31.9	6.2*
Never married	11.3	1.6*
Married	2.6	0.5*
Widowed	0.6	--

--Based on 10 or fewer sample cases.
*The difference between male and female rates of intimate partner violence is significant at the 95%-confidence level.

Appendix table 7. Intimate partner violence, by urbanization and housing, 1993-98

Area in which victim lives	Rate of nonlethal intimate partner violence (per 1,000 males and females)	
	Female	Male
Home owned	4.8	1.0
Home rented	16.2	2.2
Urban	9.5	1.6
Suburban	7.8	1.4
Rural	8.1	1.1

Note: The difference in male and female intimate partner violence victimization rates for each housing category is significant at the 95%-confidence level. Among females, intimate partner violence rates differ at the 95%-confidence level between urban and suburban areas and at the 90%-confidence level between urban and rural areas. Among males, rural rates differed significantly from urban rates.

Appendix table 8. Reporting intimate partner violence to police, by race and ethnicity, 1993-98

Victim	Female			Male		
	Number reported	Number of victims	Percent	Number reported	Number of victims	Percent
Total	498,210	937,490	53%	67,110	144,620	46%
White	384,030	763,100	50%	53,090	116,830	45%
Black	105,720	157,480	67*	11,910	24,780	48
Other	8,470	16,900	50	--	--	--
Hispanic	50,650	78,390	65%*	6,010	12,470	48%
Non-Hispanic	442,470	847,210	52	58,710	129,060	45

--Based on 10 or fewer sample cases.
*The difference in male and female percentages is significant at the 95%-confidence level.

Appendix table 9. Resident population of the United States age 12 or older, by gender, 1993-98

	Populations used to calculate victimization rates					
	1993	1994	1995	1996	1997	1998
Total	211,524,770	213,747,270	215,709,450	217,967,370	220,433,520	221,880,960
Female	109,176,670	110,378,010	111,440,640	112,490,440	113,540,360	114,285,430
Male	102,348,090	103,369,260	104,268,820	105,476,930	106,893,170	107,595,530

The Bureau of Justice Statistics is the statistical agency of the U.S. Department of Justice. Jan M. Chaiken, Ph.D., is director.

BJS Special Reports address a specific topic in depth from one or more datasets that cover many topics.

Callie Marie Rennison, Ph.D., and Sarah Welchans wrote this report. Cathy Maston provided statistical review. Tina Dorsey produced and edited the report under the supervision of Tom Hester. Jayne Robinson prepared the report for final publication.

May 2000, NCJ 178247

The primary source of data for tables presented in this report is the National Crime Victimization Survey (NCVS). Data for lethal violence or homicide were collected by the FBI, under the Supplementary Homicide Reports (SHR) of the Uniform Crime Reporting Program (UCR).

Data presented in this report can be obtained from the National Archive of Criminal Justice Data at the University of Michigan, 1-800-999-0960. When at the archive site, search for dataset ICPSR 6406.

The archive may also be accessed through the BJS website, where the report, data, and supporting documentation are available: *http://www.ojp.usdoj.gov/bjs/*

United States General Accounting Office

GAO

Testimony

Before the Committee on Health, Education, Labor, and Pensions, U.S. Senate

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MENTAL HEALTH PARITY ACT

Employers' Mental Health Benefits Remain Limited Despite New Federal Standards

Statement of Kathryn G. Allen, Associate Director
Health Financing and Public Health Issues
Health, Education, and Human Services Division

GAO/T-HEHS-00-113

Mental Health Parity Act: Employers' Mental Health Benefits Remain Limited Despite New Federal Standards

Mr. Chairman and Members of the Committee:

We are pleased to be here today to discuss the implementation of the Mental Health Parity Act of 1996. An estimated 40 million American adults suffer from some type of mental illness each year. Private health insurance plans typically provide levels of coverage for the treatment of mental illness that are lower than coverage levels for the treatment of other illnesses. Consequently, patients with severe mental illness can exhaust their mental health coverage before they are fully treated. As you know, the Mental Health Parity Act of 1996 established parity in coverage between mental health and other illnesses by establishing a new federal standard for mental health coverage offered under most employer-sponsored group health plans. Specifically, the law requires parity in dollar limits by prohibiting employers from imposing annual and lifetime dollar limits on mental health coverage that are more restrictive than limits imposed on all medical and surgical coverage. Without legislative action, the federal law will sunset on September 30, 2001.

We recently issued a report, prepared at your request, examining the implementation and effects to date of the federal parity law.[1] My remarks today will focus on our findings concerning (1) employers' compliance with the law and the changes they have made to their health benefit plans, (2) what is known about the costs of complying with the law, and (3) the oversight roles of the Department of Health and Human Services (HHS) and the Department of Labor (DOL) in enforcing this law.

In brief, we found that most—but not all—employers we surveyed reported that they comply with the law by having parity in mental health and medical and surgical annual and lifetime dollar limits. Among the 863 employers responding to our survey that offered mental health benefits in the 26 states and the District of Columbia with laws no more comprehensive than the federal law, the percentage reporting parity in dollar limits grew from 55 percent in 1996 (before the law was effective) to 86 percent in 1999. However, most of these newly compliant employers reported that they also made changes to make their plans more restrictive in the number of hospital days or outpatient visits covered for mental health than for other medical and surgical benefits. Very few employers reported that the law resulted in higher claims costs. Finally, the Mental Health Parity Act and other recent federal health insurance standards have expanded DOL's role in regulating health benefits and have created a

[1] *Mental Health Parity Act: Despite New Federal Standards, Mental Health Benefits Remain Limited* (GAO/HEHS-00-95, May 10, 2000).

regulatory role for HHS' Health Care Financing Administration (HCFA) that entails federal enforcement of the law when states do not adopt conforming insurance regulations. While HCFA has begun to review state conformance, it has not completely determined the full extent of its required oversight role or specific time periods for making this determination.

Private employer-sponsored health insurance plans typically provide lower levels of coverage for the treatment of mental illnesses than for the treatment of other illnesses. Issuers of coverage—employers that fund their own health plans and health insurance carriers—often limit mental health coverage through plan design features that can be more restrictive for mental health benefits than for medical and surgical benefits. Commonly found are lower service limits for mental health benefits such as the number of covered hospital days or outpatient office visits and higher cost-sharing features for mental health benefits such as deductibles or copayments.

Issuers limit mental health coverage primarily because of their concern about the high costs associated with long-term, intensive psychotherapy and extended hospital stays. An issuer may also restrict mental health benefits to protect itself from adverse selection. That is, a plan with relatively generous mental health benefits may be more likely to attract a disproportionate number of individuals who have high demands for mental health care services, thus driving up the claims and premium costs of the plan.

The Mental Health Parity Act of 1996 amended the Employee Retirement Income Security Act of 1974 (ERISA) and the Public Health Service Act to require that employer-sponsored health plans have annual and lifetime dollar limits for mental health coverage that are no more restrictive than those for all medical and surgical coverage.[2] The law does not apply to

- plans sponsored by an employer with 50 or fewer employees,
- group plans that experience an increase in plan claims costs of at least 1 percent because of compliance, or

[2]The Mental Health Parity Act of 1996, P.L. 104-204, title VII, 110 Stat. 2847, 2944-50 (to be classified at 29 U.S.C. 1185a and 42 U.S.C. 300gg-5).

- coverage sold in the individual (nongroup) market.

Furthermore, the law does not require any plan to offer mental health coverage, excludes substance abuse treatment, and does not prevent a plan from imposing more restrictive service limits (hospital days or outpatient visits) or higher cost-sharing requirements on mental health coverage than on medical and surgical coverage. The law became effective for group health plans for plan years beginning on or after January 1, 1998.

Within the past decade, many states have enacted laws regarding mental health benefits. As of March 2000, the National Conference of State Legislatures' (NCSL) Health Policy Tracking Service reported that 43 states and the District of Columbia had laws in effect addressing mental health benefits in employer-sponsored group health plans.[3] Twenty-nine states have laws that are more comprehensive than the federal parity law and require parity not only in dollar limits but also in service limits or cost-sharing provisions. Sixteen of these states require full parity. That is, they mandate that mental health coverage be included in all group plans sold, and they require parity in all respects, including dollar limits, service limits, and cost sharing. Laws in six states essentially parallel the federal law by only requiring parity for annual and lifetime dollar limits and not requiring parity in services or cost-sharing provisions. Laws in eight states and the District of Columbia are more limited and might not conform to the federal law, and seven states have no laws addressing mental health benefits. Appendix I compares state laws addressing mental health benefits with the federal Mental Health Parity Act.

Enforcement authority for the Mental Health Parity Act is divided between federal agencies and the states. DOL is responsible for ensuring that private employer-sponsored group health plans comply with the law—an extension of DOL's regulatory role under ERISA.[4] In states that do not adopt and enforce statutes or regulations that meet or exceed the federal parity standards, HCFA is responsible for directly enforcing the federal insurance standards on carriers. In states that have standards conforming

[3]A smaller number of state laws also apply to coverage sold in the individual insurance market.

[4]ERISA allows employers to offer uniform national health benefits by preempting states from directly regulating employer-sponsored benefit plans. As a result, states are unable to directly regulate self-funded plans but can regulate health insurers. Under ERISA, DOL is responsible for ensuring that employer-sponsored group health plans meet certain fiduciary, reporting, disclosure, and appeals requirements related to the provision of health benefits.

to the federal parity law, state insurance regulators have primary enforcement authority over insurance carriers.[5]

To determine employers' responses to the law, we surveyed 1,656 employers subject to the law, which statistically represented 103,000 employers in the District of Columbia and 26 states. We obtained a response rate of 52 percent. Because our goal was to measure the effect of federal rather than state parity requirements, we surveyed employers with more than 50 employees in the 26 states and the District of Columbia that did not have state laws that were more comprehensive than the federal law as of July 1999.[6] To identify actions the federal agencies have taken to ensure compliance with the law, we interviewed officials from HCFA and DOL's Pension and Welfare Benefits Administration.

Most Employers Report Compliance With the Federal Law but Continue to Limit Mental Health Benefits

Employers we surveyed reported that they are largely complying with the federal mental health parity law. Eighty-six percent of the employers responding to our survey reported complying with the federal parity requirement, as of December 1999, representing about 68,000 to 74,000 employers in the 26 states and the District of Columbia. However, 14 percent reported that they were noncompliant, representing about 9,000 to 13,000 employers. Both HCFA and DOL officials found the 14 percent noncompliance rate comparable to their own assessments. For example, DOL recently determined from a preliminary review of about 200 employers' health plans it investigated that 12 percent were out of compliance with federal parity standards.

The law has resulted in more employers reporting parity in dollar limits for mental health and medical and surgical benefits. In 1996, before the federal parity law was enacted, only about 55 percent of employers we surveyed reported parity in the annual and lifetime dollar limits for mental

[5]This federal and state regulatory scheme applies to other federal health insurance standards, including those established under the Health Insurance Portability and Accountability Act of 1996, the Newborns' and Mothers' Health Protection Act of 1996, and the Women's Health and Cancer Rights Act of 1998.

[6]GAO/HEHS-00-95 contains further details of our survey and the limitations of our data. Our survey population included all 21 states and the District of Columbia that had no law, a law more limited than the federal law, or a law that meets the federal law based on our review of data that NCSL provided (see app. I). We also surveyed employers in five states identified as exceeding the federal law because (1) two states implemented more comprehensive laws after we selected our sample, (2) two states mandate that mental health benefits be included in most coverage sold but otherwise mirror the federal parity law by requiring parity only in dollar limits, and (3) one state had unclear statutory language and was included by HCFA in its initial determination that the state may not be enforcing the minimum federal standards.

health and medical and surgical benefits.[7] When employers were asked why they changed their annual or lifetime dollar limits, more than 75 percent of those responding cited the federal Mental Health Parity Act as a significant or primary reason. Among the employer plans in our survey that were not in compliance with the federal parity law, most had lifetime limits for mental health coverage of $100,000 or less.

Most employer plans we surveyed contained other plan design features that were more restrictive for mental health than for medical and surgical benefits. Typically, these features involved limits on the number of covered hospital days and outpatient office visits as well as higher cost sharing such as copayments and coinsurance. As of December 1999, 87 percent of compliant employer plans contained at least one more restrictive provision for mental health benefits.[8] Most prevalent were restrictions on the number of outpatient office visits and hospital day limits, with nearly two-thirds of compliant employer plans having lower limits for mental health than for medical and surgical benefits. Very few employers we surveyed imposed any limits on office visits or hospital days for nonmental health conditions—about 8 and 10 percent, respectively.

Many employers in the states we surveyed changed mental health benefit design features specifically to mitigate the more generous annual and lifetime dollar limits required by the Mental Health Parity Act. About 65 percent of employers that changed annual or lifetime dollar limits after 1996 to be no less restrictive than dollar limits for medical and surgical coverage also changed at least one other mental health design feature to a more restrictive one. Most commonly changed were outpatient office visit limits and hospital day limits, as shown in table 1. Only 26 percent of employers that did not change dollar limits after 1996—that is, plans that were already in compliance or that remained out of compliance—changed at least one mental health design feature to something more restrictive.

[7]Because of respondent uncertainty and item nonresponse, we could not determine parity for 51 percent of employers in 1996. We were less likely to determine parity for both small employers (51 to 100 employees) and those in the South compared with employers of other sizes and in other areas of the country.

[8] As of December 1999, noncompliant plans did not differ significantly from compliant plans, with about 93 percent of noncompliant plans also containing at least one such restriction.

Table 1: Employer Plans That Have Added Restrictive Mental Health Benefits Provisions Since 1996

Change	Employers newly compliant with parity requirement	Other employers[a]
Fewer office visits covered	51%	11%
Fewer hospital days covered	36	11
Increased outpatient office visit copayments[b]	20	13
Increased outpatient office visit coinsurance	11	3
[illegible] costs	[illegible]	[illegible]
Increased hospital stay coinsurance	7	2
Increased hospital stay copayments[b]	3	7

[a]Includes employer plans that already had parity in 1996 and those that did not have parity in 1996 and remained out of compliance in 1999.

[b]The differences in the percentage of newly compliant and other employers that have increased hospital stay and office visit copayments since 1996 are not statistically significant.

Source: GAO survey of employers' mental health benefits.

Most Employers Are Not Aware of the Law's Effect on Claims Costs, Which Appears to Be Negligible

About 60 percent of the responding employers did not know whether compliance with the Mental Health Parity Act increased their plans' claims costs, and about 37 percent reported that compliance had not raised their claims costs. Only about 3 percent of the respondents reported that claims costs rose as a result of the act.[9] However, as noted above, compliance with the act was associated with a greater number of other restrictive provisions for other plan features, such as office visit or hospital day limits, which may have limited the extent to which claims costs would rise. Also, some employer-sponsored plans have increased their use of managed care techniques to better coordinate and control the use of mental health services. Moreover, less than 1 percent of responding employers have actually dropped coverage of mental health benefits or their health benefits plan altogether since the law was enacted, and most cited business reasons other than the cost of implementing the act's requirements for dropping coverage.

[9]The act allows an exemption for group plans that experience an increase in health benefit costs of 1 percent or more because of compliance with the law's requirements. Federal agencies estimated that as many as 10 percent of health plans affected by the law, or 30,000 health plans, could be eligible for the exemption. However, as of March 2000, DOL officials reported that only nine employers nationally had claimed an exemption.

Studies aimed at predicting the costs of the federal parity law generally corroborate our finding that requiring parity only in dollar limits resulted in cost increases of less than 1 percent. For example, in 1996, the Congressional Budget Office estimated that the Mental Health Parity Act would result in claims cost increases of 0.16 percent, and Coopers and Lybrand predicted that claims costs would rise by about 0.12 percent.[10] We are not aware of any additional studies after 1996 that have quantified the change in costs resulting from the federal parity requirements.

[illegible] have enacted [illegible] comprehensive than the federal Mental Health Parity Act and that are thus likely to have a greater effect on claims costs (see app. I). Unlike the federal law, these laws require parity not only in dollar limits but also in service limits, cost-sharing provisions, or both. In addition, many state laws mandate the inclusion of mental health benefits in fully insured group health plans and cover substance abuse and chemical dependency. Public and private health policy researchers have examined the estimated or actual costs resulting from more comprehensive state parity laws. In addition to estimating increased claims costs in several states, several studies have examined the potential premium cost increases associated with full parity nationally. Most of these studies have estimated the cost increase for full parity in individual states and nationally to be between 2 and 4 percent. These estimates represent a composite of the cost increases for fee-for-service, preferred provider organization, point-of-service, and health maintenance organization (HMO) plans. Typically, estimates assume that HMO and other managed care plans will have lower cost increases than fee-for-service plans.

[10]Coopers and Lybrand, *An Actuarial Analysis of S.2031, "The Mental Health Parity Act of 1996"* (n.p.: Sept. 1996).

Federal Agencies Have Made Varying Progress in Overseeing the Parity Law

DOL has traditionally relied on a complaint-driven approach to identify noncompliance with federal health plan standards. However, with the enactment of several federal health insurance reforms since 1996, including the Mental Health Parity Act, DOL's enforcement role has significantly expanded. Accordingly, it has undertaken several initiatives to improve and expand its oversight, customer service function, and consumer and employer education efforts.[11] On April 6, 2000, DOL published its strategic enforcement plan to make public its goals and intended approach to ensuring that employee benefit plans comply with federal standards, including mental health parity.

In particular, DOL has begun to rely on investigations to more systematically determine health plan compliance. As of March 2000, DOL officials said that they had completed investigating approximately 200 employers that varied by size and geography. In addition to reviewing employers' compliance with other health and pension standards, DOL found that 12 percent of these employers' health plans that were subject to the Mental Health Parity Act were not in compliance. These plans typically retained annual or lifetime limits that were lower for mental health coverage than for medical and surgical coverage or contained other violations of the law. According to officials, DOL sends letters to noncomplying employers outlining the violations and in the vast majority of instances is able to work with the employers to correct them without resorting to litigation. DOL plans to regularly conduct more investigations, perhaps as many as 1,000 annually, to help evaluate compliance.

HCFA has a new regulatory role since the enactment of the Mental Health Parity Act and other recent federal insurance reforms. The agency must enforce federal requirements in states where it determines that legislation has not been enacted that meets or exceeds the federal standards or has otherwise failed to "substantially enforce" the federal standards. HCFA's activities in support of this role have been evolving since the Health Insurance Portability and Accountability Act (HIPAA) was enacted in 1996.[12] On August 20, 1999, HCFA issued enforcement regulations that

[11]For additional information on DOL's initiatives, see *Private Health Insurance: Progress and Challenges in Implementing 1996 Federal Standards* (GAO/HEHS-99-100, May 12, 1999) and *Health Insurance Standards: New Federal Law Creates Challenges for Consumers, Insurers, Regulators* (GAO/HEHS-98-67, Feb. 25, 1998).

[12]For additional information on HCFA's activities, see *Implementation of HIPAA: Progress Slow in Enforcing Federal Standards in Nonconforming States* (GAO/HEHS-00-85, Mar. 31, 2000), (GAO/HEHS-99-100), (GAO/HEHS-98-67), and *Private Health Insurance: HCFA Cautious in Enforcing Federal HIPAA Standards in States Lacking Conforming Laws* (GAO/HEHS-98-217R, July 22, 1998).

prescribe how it assumes an enforcement role in a particular state and describe regulatory responsibilities it may perform.[13]

In mid-1999, HCFA undertook an initial state-by-state analysis of whether state laws conform to the federal standards—a precursor to its determining whether it is required to play an enforcement role in a particular state. HCFA officials said that this preliminary examination identified 7 states that appeared not to have laws addressing the federal parity standards, 24 states with laws about which the agency has questions [illegible] laws that appeared to conform fully.

In December 1999, HCFA sent letters to the seven states that appeared not to have laws, indicating that it had a reason to question whether a state's standards substantially met the specified federal parity requirements. As of May 2000, HCFA officials said that four of these states have enacted conforming laws or other directives or have otherwise demonstrated that they enforce the federal parity requirements. In any of the remaining three states that do not meet standards through other regulatory means, HCFA will begin its formal determination process in which it could ultimately assume direct enforcement responsibilities. As of April 2000, HCFA was continuing to examine the 24 other states where it had questions concerning conformance, but it has not provided a specific time period for the completion of this review or the initiation of the formal determination process.

Concluding Observations

The Mental Health Parity Act of 1996 sought to bring mental health benefits closer to parity with other health benefits. However, the scope of the law applies only to annual and lifetime dollar limits, allowing most employer-sponsored health plans to use other features, particularly hospital and office visit limits, to continue to provide less coverage for mental health than for other health services. The net effect is that consumers in states without more comprehensive laws have often seen only minor changes in their mental health benefits, resulting in little or no increase in their access to mental health services, and that the costs associated with the federal law have been negligible for most health plans. More than half of the states have enacted more comprehensive parity laws, requiring parity not only in dollar limits but also in service limits, cost-sharing requirements, or both, some of which have estimated cost increases of about 2 to 4 percent. Nonetheless, because the more comprehensive state laws apply only to a portion of the population and the

[13]64 *Fed. Reg.* 45,786 (45 C.F.R. Pt. 144, 146, 148, and 150).

federal law applies only to dollar limits and is disregarded by a significant minority of employers, many Americans are likely to remain in employer-sponsored health plans that continue to provide less coverage for mental illness than for other types of illnesses.

Mr. Chairman, this concludes my prepared statement. I will be happy to answer questions from you and other members of the Committee.

GAO Contacts and Acknowledgments

For more information regarding this testimony, please contact Kathryn G. Allen at (202) 512-7114 or John Dicken at (202) 512-7043. JoAnne Bailey, Randy DiRosa, Mary Freeman, and Betty Kirksey also made key contributions to this statement.

State Laws Affecting Mental Health Benefits Compared With the Federal Mental Health Parity Act

State	No law	More limited than federal law[a]	Meets federal law[b]	Exceeds federal law[c]	Full parity[d]
Alabama	X				
Alaska			X		
Arizona			X		
Arkansas				X	X
California[e]		X			
Colorado				X	X
Connecticut				X	X
Delaware					
District of Columbia		X			
Florida			X		
Georgia				X	
Hawaii				X	X
Idaho	X				
Illinois		X			
Indiana				X	
Iowa	X				
Kansas				X	
Kentucky				X	
Louisiana				X	X
Maine				X	X
Maryland				X	X
Massachusetts		X			
Michigan	X				
Minnesota				X	
Mississippi		X			
Missouri				X	
Montana				X	X
Nebraska				X	
Nevada				X	
New Hampshire				X	X
New Jersey				X	X
New Mexico[f]			X		
New York				X	
North Carolina				X	
North Dakota		X			
Ohio		X			
Oklahoma				X	X
Oregon[g]	X				
Pennsylvania				X	
Rhode Island				X	X
South Carolina			X		
South Dakota				X	X
Tennessee				X	
Texas				X	
Utah	X				
Vermont				X	X
Virginia				X	X

State	No law	More limited than federal law[a]	Meets federal law[b]	Exceeds federal law[c]	Full parity[d]
Washington		X			
West Virginia			X		
Wisconsin		X			
Wyoming	X				
Total	**7**	**9**	**6**	**29**	**16**

Note: State laws in effect as of March 1, 2000.

However, the law may require mandated mental health benefits, impose minimum service levels, or place limits on cost-sharing features for mental health benefits.

[b]Law requires parity in dollar limits but not in services or cost sharing.

[c]Law requires parity in dollar limits and requires parity in services or cost sharing or requires mandated mental health benefits.

[d]Law requires parity in all respects—dollar limits, services, and cost sharing—and also requires mandated mental health benefits.

[e]A law that exceeds the federal law becomes effective July 2000.

[f]A law that exceeds the federal law becomes effective October 2000.

[g]A law more limited than the federal law becomes effective July 2000.

Source: GAO review of data compiled by Tracy Delaney, the National Conference of State Legislatures' Health Policy Tracking Service.

THE WHITE HOUSE

WASHINGTON

June 7, 2000

MEMORANDUM FOR HILLARY RODHAM CLINTON

FROM: **HEATHER HOWARD**

CC: **MELANNE VERVEER**
SHIRLEY SAGAWA
LISSA MUSCATINE
ANN O'LEARY

SUBJECT: **RU-486**

As you know from news reports, pro-choice groups (Planned Parenthood, NARAL, National Abortion Federation and the Feminist Majority Foundation) are concerned that the FDA is considering placing restrictions on access to RU-486 (Mifepristone). I wanted to provide you with some background and context:

- Mifepristone is used in the first seven weeks of pregnancy. It has been shown in studies to be effective in ending pregnancy, but a small percentage of women require additional medical treatment such as blood transfusions or surgical procedures. It has been used over 500,000 times in Europe over the past 12 years.

- In 1989, the Bush Administration banned the importation of Mifepristone. In 1993, President Clinton reversed the importation ban. In 1998 and 1999, the Administration successfully fought for removal of an appropriations provision that would have prohibited the FDA from testing, developing or approving Mifepristone. We may face a similar amendment as early as next week when the House considers the Agriculture appropriations bill.

- In 1996 and again in February 2000, the FDA issued an "approvable" letter for Mifepristone, indicating that final approval was contingent upon additional information about manufacturing practices and labeling.

- Danco Laboratories – the company licensed for U.S. manufacture and distribution – is negotiating the conditions for the drug's manufacture, labeling and distribution. They claim that the FDA is considering requiring restrictions that would seriously limit access, including:

    - Requiring a "black box" to highlight certain warnings. According to the groups, the only other non-scheduled drug with such a black box is thalidomide.
    - Requiring that it only be distributed by "qualified physicians" who are trained and certified to distribute it, and who are trained and authorized to perform surgical

abortions. This would be problematic for two reasons: first, because it limits the number of doctors who would be able to prescribe, since there are already far too few doctors performing surgical abortions; second, because it would require a registry to keep track of who is authorized to distribute the drug, which would discourage doctors who fear anti-choice violence.

- Requiring that Misoprostol, the second pill taken to induce contractions, be taken in a doctor's office, which would require women to make a second trip and would in particular limit the access of rural women.

We do not know whether the conditions being considered by the FDA are reasonable, but we do know that the process is ongoing. The FDA is in negotiations with Danco, and Danco will have an opportunity to respond to these proposals within the next few weeks, and will be able to make their arguments based on the science. It is very important that the FDA's scientific approval process be credible; we should not interfere and politicize the issue. For this reason, we have had no contact with the FDA. Today's press reports are unfortunate because they politicize an issue that should be about the science.

Our message should be:

- We do not want women to face unnecessary access barriers, but we do want appropriate safety precautions.
- The FDA is doing what it should be doing at this stage in the review process -- it is in negotiations with Danco about manufacturing and distribution issues. Danco will have an opportunity to be heard and present its arguments. The FDA's final decision must be based on the science.
- RU-486 is an important, non-surgical option for women early in their pregnancies and will not result in more abortions.

THE WHITE HOUSE

WASHINGTON

May 5, 2000

MEMORANDUM FOR HILLARY RODHAM CLINTON

FROM: **HEATHER HOWARD**
ANN O'LEARY
ERIC MORSE

CC: **MELANNE VERVEER**
SHIRLEY SAGAWA
LISSA MUSCATINE

SUBJECT: **CHILDREN'S PRODUCTS SAFETY EVENT**

We are proposing an event, tentatively scheduled for May 12 in the Roosevelt Room, for you to announce proposals to improve the safety of consumer products, especially children's products.

A *USA Today* investigation recently found that at least 17 manufacturers of children's toys failed to warn the government or the toy owners of complaints about the safety of their products. According to *USA Today*, "an analysis of government documents shows that problems with 75% of the most dangerous children's products recalled during the past three years were not reported to the government until the Consumer Product Safety Commission, often alerted by consumers, got involved." For example, the Commission recently announced a $400,000 penalty against Hasbro, which waited until it had 12 reports of handles unlatching on infant carriers (resulting in seven skull fractures) before telling the Commission about the problem.

The Commission needs tougher penalties to deter companies from withholding complaints about their products. Currently, the Commission's penalty authority includes 1) civil penalties, which are capped at $1.6 million (the total fine is $7,000 per product, multiplied by the number of products sold, up to $1.6 million), and 2) criminal misdemeanor penalties, including imprisonment of up to one year and fines capped at $50,000.

The civil penalties are adjusted for inflation every five years, and were last adjusted in 1999. Even so, the cap is absurdly low. It is triggered when the number of products sold exceeds 228; the majority of cases the Commission handles involve, at a minimum, thousands of products sold. Under the criminal provisions of the statute, the Commission may charge anyone who "knowingly and willfully" violates the law, including the reporting requirements, "after having received notice of noncompliance." Thus, in effect, the criminal provisions only apply on a second offense. Given the high standard of the statute (knowledge of the law and willful violation), the Commission argues that the second offense requirement is unnecessary and hampers their ability to enforce the statute and protect consumer safety.

An additional problem is that, under current law, a company with a defective product that is being recalled has the right to select the remedy (repair, replacement, or refund), even if that remedy does not provide the most protection to consumers. Recently, General Electric came under fire for offering rebates for new GE dishwashers, rather than offering to fix the defective ones.

Proposals

First, you would highlight proposed legislation to strengthen the penalty authority of the Commission. (This legislation would be announced through a Presidential statement.) Increased penalties would provide obvious incentives for companies to avoid manufacturing defective products, as well as to come forward earlier when problems are detected, thus preventing harm to consumers. Tougher penalties would also generate more news coverage of Commission actions, which is important to making consumers aware of dangerous products. The legislation would: 1) lift the overall cap on civil penalties; 2) make criminal violations a felony and remove the second offense requirement; and 3) provide CPSC the authority to select the way a defective product will be fixed in a product recall.

Second, we hope to have a public-private partnership in place for announcement at the event. The partnership would include CPSC and different physician groups, which would commit to raising awareness among members of the need to inform CPSC (via their hotline or email) of potentially hazardous products. The trade groups would also commit to circulating to their members notices of CPSC product recalls.

Event

On Thursday or Friday, the President would send a letter submitting the proposed legislation to Congress. On Friday, you would highlight the legislative proposals and announce the public-private partnership with Ann Brown, Chairman of the CPSC, consumer groups, and possibly a Member of Congress who would announce the introduction of the proposed legislation. We are also looking for a family that has suffered an injury from a product, the defects of which were not reported to CPSC.

Monday, April 3, 2000

THE NATION'S NEWSPAPER

USA TODAY

NO. 1 IN THE USA . . . FIRST IN DAILY READERS

Child dangers ignored

17 firms kept problems quiet

By Jayne O'Donnell
USA TODAY

Since 1997, at least 17 companies kept quiet about products that were seriously injuring children until the government stepped in, a USA TODAY investigation finds.

The makers of cribs, infant carriers and other children's products heard complaints — sometimes thousands — from parents. They conducted internal investigations but never told the owners of the products or the government.

In fact, an analysis of government documents shows that problems with 75% of the most dangerous children's products recalled during the past three years were not reported to the government until the Consumer Product Safety Commission, often alerted by consumers, got involved.

▶ When safety is delayed. Special report, 1B

Today, the commission plans to announce a $400,000 civil penalty against Hasbro for waiting until it had 12 reports of handles unlatching on infant carriers — causing seven skull fractures — before telling the agency about the problem. The carriers were recalled in 1996. Hasbro denies wrongdoing and says it settled the matter to avoid prolonged legal proceedings.

Cosco, a maker of children's products, also might wind up in court on charges it ignored reports about four products, including a crib mattress that the safety commission says trapped 12 babies, killing one. If negotiations fail, the commission could sue Cosco.

Cosco says its recent recalls have involved "complex legal and interpretative issues" and often didn't involve serious injuries.

Hasbro is the sixth children's product company to face civil penalties since early 1998 because regulators say they waited too long to report safety hazards — or never told the government at all.

www.usatoday.com

USA TODAY

Money

SECTION B

Monday, April 3, 2000

Special report

78 children hurt

Century TravelLite Sport stroller

CPSC says:

- 1,400 reports of collapsing strollers
- 78 injuries
- Century had 560 reports and 29 injuries, before reporting the problem
- Recalled in April 1997

7 skull fractures

Playskool Fold N' Travel infant carrier

CPSC says:

- Seven skull fractures; one infant fell on face
- Hasbro waited four years to tell government
- Recalled in July 1996

Photos by Tim Dillon, USA TODAY

200 children hurt

Cosco Geoby Two Ways tandem stroller

CPSC says:

- 3,000 lock failures
- More than 200 children injured, including fractures and head injuries
- Cosco never voluntarily reported problem
- Recalled in February 1999

Suffering in silence

From unsafe strollers to cribs, companies fail to report flaws that amputate fingers, fracture skulls

USA Today, April 3, 2000, 1B

By Jayne O'Donnell
USA TODAY

Alexia Weber was pushing her two children along a South Lyon, Mich., street two years ago when the stroller they were riding in collapsed. Weber, relieved that the 3-year-old girl and 1-year-old boy were not hurt, assumed that she had done something wrong.

Only later did she learn that hundreds of other parents had experienced the same problem with their Cosco strollers — and many were not so lucky. Their children suffered head injuries, broken bones and cut fingers.

To Weber, the most disturbing news was that the Consumer Product Safety Commission says Cosco knew about those incidents but hadn't alerted parents to the potential danger. Cosco didn't tell CPSC about the problem until the agency learned of it on its own. And it didn't recall the stroller until February 1999 — at least a year after it began receiving what turned out to be 3,000 complaints about stroller locks failing and more than 200 injury reports.

This is a pervasive problem in a wide range of products used by children, a USA TODAY investigation shows. Product manufacturers frequently conduct internal investigations but remain publicly silent as complaints about alleged defects pile up. In the past three years, 75% of the most dangerous problems that led to recalls were never voluntarily reported to the government. During that period, there were at least 17 cases in which products stayed on the market while the company gathered reports of children suffering everything from lost fingers to brain injuries, an analysis of CPSC data shows.

"If I had known what happened to the other kids, I wouldn't have bought the thing," says Kristine Kwiecinski, whose 5-week-old son was dumped out of a Playskool carrier four years after CPSC says Hasbro began collecting reports of skull fractures. A lock on the handle could fail, turning the carrier upside down.

CPSC will announce today that Hasbro will pay the government $400,000 in civil penalties because, the agency says, it delayed reporting the carrier problem. Hasbro denies any wrongdoing and says it settled the matter to avoid prolonged legal proceedings.

Lawyers for Cosco and other child-product makers blame vague CPSC reporting rules and say it's difficult to know when complaints stem from a defect or owner misuse.

Federal law says a company must notify CPSC if it receives information that "reasonably supports the conclusion that its product creates an unreasonable risk of serious injury or death."

In the Cosco case, the company didn't think it

Please see SPECIAL REPORT next page ▸

By John Galloway for USA TODAY

Unsuspecting parent: Weber was pushing Katelynn, left, and Nicholas in a stroller when it collapsed. She was pregnant with Meghan, front, at the time.

Some product makers kept mum for years

Continued from 1B

was obligated to report the stroller problems to CPSC "due to the minimal number of reports and the minor nature of the injuries reported," says Cosco General Counsel Jonathan Reynolds.

The 3,000 complaints Cosco received represented 5% of 57,000 stroller owners.

"If someone has thousands of complaints, that's a pretty strong message about the quality or safety of their products," says R. David Pittle, a former CPSC commissioner and now vice president of Consumers Union. "That's not something you can say, 'We didn't know.' That's consumers telling you something."

Every year, more than 70,000 children are injured and about 60 die from injuries suffered in cribs, infant carriers and other non-toy items made just for kids, CPSC says.

"When you're talking about time with dangerous products, you're talking about deaths and injuries," says CPSC Chairman Ann Brown.

The companies put not only their customers but themselves at risk when they dawdle on reporting complaints. Since early 1998, manufacturers of six recalled children's products have agreed to pay the government civil penalties because they waited too long or never reported problems to CPSC. In addition to Hasbro, cited for the Playskool "Fold N' Travel" carrier:

▸ Baby's Dream Furniture in Georgia agreed to pay $200,000 in civil penalties in January. CPSC said the company waited until it had eight reports of children having their fingers amputated, cut or crushed in its "Generation" oak model cribs before it reported the problem to CPSC. The cribs were recalled in 1998. Baby's Dream President David Felfeli says the company didn't think it was late on reporting the injuries, but settled the matter to avoid court costs.

Special report

▸ Century Products paid $225,000 in civil penalties in 1998. CPSC said Century was told one child died and five became trapped in its Okla Homer Smith cribs before it reported the problem. The cribs were recalled in 1997. CPSC also said Century had 560 reports of collapsing "TravelLite Sport" strollers — including 29 injuries — before reporting. The strollers were recalled in 1997. Century had no comment.

▸ Safety 1st paid civil penalties of $175,000 in 1998. CPSC said Safety 1st had 27 injury complaints before it reported toddler bed support rails were breaking and children were dropping to the floor. The rails were recalled in 1995. Safety 1st denied its product was defective and that it knowingly violated reporting rules.

▸ Coaster paid $300,000 in civil penalties in 1998. CPSC said it failed to report defects or unreasonable risks in its full-size metal cribs despite independent lab test results showing the defect. Although no injuries were reported, the tests showed that crib slats and scrolls could strangle children and that children could choke on plastic end caps on the scrolls. The

▸ Binky-Griptight paid $150,000 in civil penalties in 1998. CPSC said it failed to report defects in Binky's Newborn Orthodontic Pacifiers. The company had six reports of pacifiers separating from the knob, creating a choking hazard, although no injuries were reported. The pacifiers were recalled in 1996. The company denied that it knowingly violated reporting rules.

Ongoing negotiations

In the case of the Cosco stroller, CPSC has been discussing possible civil penalties with the company for about a year. CPSC levies higher penalties for companies that are repeat offenders, and Cosco agreed to pay the government $725,000 in civil penalties in 1996 after the government sued it for failing to notify CPSC about hazardous toddler beds. If those negotiations fail, CPSC can take the company to court.

Cosco said in a statement to USA TODAY that it analyzed the product design and tested the strollers to ensure that any issues identified were corrected after it received complaints from consumers and retailers. The company also developed a repair kit.

Cosco, along with Kolcraft and Evenflo, has recalled an infant car seat that doubles as a baby carrier over the last two years because the handles released and babies fell to the ground. None of the three reported complaints or injuries until they were asked by the National Highway Traffic Safety Administration and CPSC, the government says.

By the time it recalled its carriers in December, Kolcraft had 3,000 reports of handle problems with 42 injuries, including a skull fracture and concussions, CPSC says. The agency says Cosco had 151 complaints the handles released, leading to 29 injuries, including skull fractures, and Evenflo knew of 176 carriers with handles that released, resulting in 89 injuries.

Evenflo spokesman Brian Bloom says the company made managerial changes and implemented an "ag-

USA Today, April 3, 2000, 2B

By Tim Dillon, USA TODAY

On the lookout: CPSC Chairman Ann Brown, director of recalls Marc Schoem, left, and his brother Alan, director of compliance, amid several of the products that the agency discovered on its own were unsafe.

gressive" quality-assurance program after the recall. The company "takes each recall very seriously because the safety of our customers and their families is our top priority," Bloom says.

Cosco blamed most of the carrier injuries on misuse and says federal tests for handles were not approved until after the carrier went on sale.

Kolcraft General Counsel Eileen Lysaught said the handle-related complaints it had in the fall of 1997 — when regulators asked for information — did not suggest a recall was needed. Along with injury reports, some of the handle complaints related to non-safety issues, such as color and smell.

Fuzzy rules?

"I don't think there's any excuse if a company knows something is causing harm to a child to not let CPSC know to help get the word out to parents," says Karen Sheehan, assistant professor of pediatrics at Northwestern University Medical School.

Lawyers who represent juvenile-product manufacturers blame CPSC regulations and methods for many of the delay problems:

▸ Peter Winik, an attorney with Latham & Watkins who represents Cosco and other manufacturers, says CPSC's reporting requirements are vaguely written, making it easy to see how companies might not think they need to report a hazard.

"The regulations leave plenty of gray areas for all different interpretations," Winik says. "In an awful lot of cases, the answer isn't clear. I suspect CPSC likes the regs just the way they are."

But Alan Schoem, CPSC's director of compliance, says the regulations are "pretty clear," and that companies simply prefer not to report. He says there is "no magic number" of injuries or complaints that suggests when a company should notify CPSC. But the agency

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gives companies from 24 hours to 10 days to investigate complaints and decide if a product hazard, rather than misuse, led to the complaint. He urges any company that is unsure of its reporting responsibility to call CPSC — anonymously, if necessary — to get a reading of the agency's position.

▸ Former CPSC general counsel Jeffrey Bromme, now a defense lawyer with Arnold & Porter, says CPSC's zeal in areas affecting children can catch some companies off guard.

"If your product has been involved in a child's death or in a horrible injury to a child, the staff is likely to move heaven and earth to get a recall," he told a child-safety conference recently.

Frederick Locker, legal counsel to the Juvenile Products Manufacturers Association and the Toy Manufacturers Association, says CPSC sets out to find a defect — and nearly always does — when it is investigating consumer complaints.

"It has to have chilling effect" on companies across the board, Locker says. "They want to encourage people to report insignificant or minor problems, but people think they'll all wind up being treated the same way" as those with deadly problems.

▸ Michael Brown, a former CPSC general counsel, now a defense lawyer with Brown & Freeston, says some firms complain it's difficult to predict how consumers might misuse a product and don't think they should be blamed for consumers' mistakes.

For instance, the handles on the combination car seat-infant carriers were unlocking when people propped them against their hips, CPSC says.

The companies considered it improper use of their products. But CPSC says the manufacturers should have known people would do that. The agency considered the lock failure in that position a defect.

"Say you make 3 million of something, and four people complain. Does that mean the design of the whole product is wrong?" asks Brown. "The government's answer is you should always come talk to us, but most of the time it's just a customer-satisfaction issue."

Alexia Weber disagrees.

When she called Cosco about the stroller that collapsed with her children in it, the company told her there was nothing wrong with it. But when she returned the stroller to the store, it wasn't being sold there anymore because management decided it was unsafe — even though it hadn't yet been recalled.

"It's scary that parents can have kids that have been injured after the company knew it was a problem, but decided, 'It's so rare,'" says Weber. "It's scary that companies can get away with it."

Web sites offer data on products' safety

Even the most diligent parent would have trouble keeping up with the children's product recalls announced every year. Here are the best bets for getting information:

▸ www.cpsc.gov: Includes all the recalls of infant and children's products, toys, household products and other consumer items announced since 1990. Recalls can be searched by name of product, company or product category. You can also sign up to be on CPSC's mailing list to get recall notices faxed or mailed. CPSC's hotline can be reached at 800-638-2772.

▸ www.nhtsa.gov: Has everything you need to know about child safety seats. You can search the National Highway Traffic Safety Administration's Web site for recalls, complaints and investigations related to any brand or model of child seat. (CPSC's site has only child seats that double as infant carriers.) Also includes tips on proper use of child safety seats. Information can also be obtained by calling 800-424-9393.

▸ www.registrationvillage.com: Allows consumers to register all their products in exchange for recall updates through e-mail or letters. Consumers also can search for historical recall data on any new purchases they make.

▸ www.parentsoup.com: Offers a "Consumer Retorts" board in the "Around the House" center, which is designed for parents who have found products they "can't live without" and ones they "want everyone to avoid."

▸ www.momsonline.com: Check "Product Watch" board in the "Homespace" area for information on recalls and other information moms want to share about their children's products.

By Jayne O'Donnell

Millions of weed trimmer heads recalled for dangerous chain flaw

By Jayne O'Donnell
USA TODAY

About 3.5 million weed trimmer heads are being recalled today because the metal chain links can fly off at speeds up to 240 miles an hour and injure or kill people.

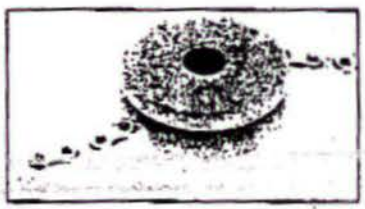
A 3-year-old girl was killed and 40 others have been injured when they were hit by the flying metal from Weed Wizard trimmer heads with metal chains.

In August 1997, Peyton Pytlewicz of Dothan, Ala., was playing when she was hit in the skull by a metal link as her grandfather was trimming weeds 35 feet away.

"The metal link becomes a deadly piece of shrapnel," Consumer Product Safety Commission Chairman Ann Brown says.

Weed Wizard Acquisition of Bradley, Mich., which acquired the product after the child's death, settled a lawsuit by her family for $7.35 million last year.

Spokesman Kevin McGrath says an engineering consultant concluded that the incidents wouldn't have occurred if the product had been used according to instructions.



Weed Wizard: Chain links have become deadly projectiles.

There were at least 12 reported accidents before the death, according to family attorney Sam Cherry of Cochran, Cherry, Givens and Smith. Most of those injuries were flesh wounds.

The company never reported the death or injuries to the agency, which is investigating whether Weed Wizard Acquisition should face civil penalties.

"It's a case that illustrates what can happen when a company is not reporting their accident histories," Cherry says. "The public is at peril for potentially dangerous products."

A USA TODAY analysis last month showed that 75% of the most dangerous child-product problems that led to recalls never were voluntarily reported to the government. That percentage is believed to apply to all products.

The Weed Wizard being recalled has a metal chain trimmer head that replaces the string trimmer head on gas-powered trimmers.

The Weed Wizards with metal chains were sold from May 1987 through April of this year for $19 to $25. The replacement chain kits were sold from January 1992 through April of this year for $8. They were sold in stores and on TV.

Consumers should stop using the Weed Wizards with metal chains immediately and contact the firm to obtain free plastic replacement blades and installation instructions. For a free replacement kit, call Weed Wizard at 888-810-7536 or check www.weedwizard.com.

GE Faces Lawsuits on Dishwasher-Recall Plan

By MATT MURRAY
Staff Reporter of THE WALL STREET JOURNAL

General Electric Co. is coming under increasing heat for a dishwasher-recall plan.

New York state's attorney general, Eliot Spitzer, said he formally notified GE he intends to file within days a lawsuit over its October recall of 3.1 million dishwashers containing a defective energy switch that could spark fires. In a statement, Mr. Spitzer said GE "deceived consumers in New York and across the country so they could sell more dishwashers."

Terry Dunn, a spokesman at GE Appliances, Louisville, Ky., called the action "grandstanding." Pointing out that the rebate program was implemented in conjunction with the federal Consumer Products Safety Commission, he said, "This has been, is and will continue to be about consumer safety and removing these hazards from the consumer marketplace. We are working very hard to communicate effectively with and to satisfy all our consumers during this recall."

Separately, a lawsuit accusing GE of attempting "to turn the CPSC procedures into a marketing program for the sale of new GE dishwashers" and seeking class-action status was filed yesterday in U.S. District Court in St. Petersburg, Fla. An earlier suit filed in Florida state court accuses GE of intentionally concealing the design defect in its dishwashers from the late 1980s until it notified the commission in November 1998.

GE has denied those allegations. But the commission said yesterday that it is investigating whether GE should have reported the problem sooner.

The recall concerns GE and Hotpoint brand dishwashers made from April 1983 to January 1989. GE and the commission said 50 fires caused by a defective energy switch on the dishwashers had been reported. Seven spread beyond the machines themselves. No injuries were reported.

The big question is how practical it is to repair the machines. GE offered individual owners rebates of $75 to $125 toward new GE replacements, or $25 toward a non-GE dishwasher. But it refused to pay for repairing them, citing the costs and the age of the appliances, and warns on its Web site, "If you choose to repair it independent of GE, you do so at your own cost and risk."

Yesterday, Mr. Dunn went further, insisting that the appliance cannot be repaired, but can only be altered to deactivate the switch, thus denying users a choice between heated drying and air drying of dishes. "There is no fix," he said. "You can disable the feature, but you cannot repair it to its original condition." The cost of such an action, Mr. Dunn said, is $75 to $100, but "it makes no economic sense for the consumer to spend this money to make an old dishwasher that's past its useful life not do something." The average dishwasher lasts nine to 11 years.

At the same time, GE has offered some big-volume customers, such as apartment managers, instructions and tools to correct the problems on existing dishwashers "if they have a financial hardship," Mr. Dunn said. "They can do this because they have qualified service technicians to safely do this." GE also offers such customers rebates on replacements, which run from $200 to $500 a unit.

GE had a choice under the law to offer a recall, a rebate or repairs, said Alan Schoem, director of compliance at the CPSC. He said the agency had urged GE to offer repairs to individual consumers but "they flat out refused."

Moreover, he said: "They might be splitting hairs or playing a semantic game when they talk about a repair. The hazard can be repaired from the dishwasher by rewiring the switch." He conceded that doing so wouldn't permit users to choose between heat drying and air drying their dishes.

He also said that since the recall was announced, the commission has gotten "many more complaints than we would normally get about a recall program."

GE said it has received mostly positive responses.

NEWS from CPSC

U.S. Consumer Product Safety Commission

Office of Information and Public Affairs Washington, DC 20207

FOR IMMEDIATE RELEASE
April 3, 2000
Release # 00-085

CPSC CONTACT: William J. Moore, Jr.
(301) 504-0626 Ext. 1348

Hasbro Pays $400,000 Civil Penalty for Delay in Reporting Infant Carrier Defect

WASHINGTON, D.C. - The U.S. Consumer Product Safety Commission (CPSC) announced today that Hasbro Inc., of Pawtucket, R.I., paid a $400,000 civil penalty to settle allegations that it violated the Consumer Product Safety Act by failing to timely report defects with its "PLAYSKOOL baby FOLD'N TRAVEL" infant carriers. Playskool Baby is a division of Hasbro.

CPSC alleges that Hasbro failed to report in a timely manner that the carrier's handle locking mechanism could fail, causing the seat to flip forward and infants to fall to the ground. Hasbro received nine injury reports, including seven serious head injuries, before it reported to CPSC. In agreeing to settle this matter, Hasbro denies that the product contained a defect and that Hasbro violated any law.

About 38,500 of these carriers were sold nationwide from 1991 to June 1993 for approximately $35. The infant carrier has a sleeping, sitting and rocking position and a handle for carrying baby out and about. Each carrier has the words "PLAYSKOOL baby FOLD'N TRAVEL" on a label where the handle connects to the seat.

Hasbro recalled the "PLAYSKOOL baby FOLD'N TRAVEL" carriers in 1996. Consumers still can participate in the recall by calling Hasbro toll-free at (800) 752-9755 anytime to receive a full $35 refund.

The U.S. Consumer Product Safety Commission protects the public from the unreasonable risk of injury or death from 15,000 types of consumer products under the agency's jurisdiction. To report a dangerous product or a product-related injury, you can go to CPSC's forms page and use the first on-line form on that page. Or, you can call CPSC's hotline at (800) 638-2772 or CPSC's teletypewriter at (800) 638-8270, or send the information to info@cpsc.gov. To order a press release through fax-on-demand, call (301) 504-0051 from the handset of your fax machine and enter the release number. Consumers can obtain this release and recall information from CPSC's web site at www.cpsc.gov or by calling the hotline or sending your request to info@cpsc.gov. You can also subscribe to CPSC's email subscription list which normally sends all press releases the day they are issued.

THE WHITE HOUSE

WASHINGTON

May 10, 2000

MEMORANDUM FOR HILLARY RODHAM CLINTON

FROM: **ANN O'LEARY**

CC: **MELANNE VERVEER**
SHIRLEY SAGAWA
LISSA MUSCATINE

SUBJECT: **BANKRUPTCY BILL**

I wanted to be sure that you saw this *Time* magazine article regarding the bankruptcy bill. It makes a powerful case that this bill would place an undue burden on low and middle-income bankruptcy filers who have been impacted by difficult life circumstances from job loss to serious illness to divorce. It argues that the bankruptcy reform agenda has been overtaken by campaign contributions from the credit card and banking industry which has prohibited most of the pro-consumer reforms advocated by the Administration and the consumer groups.

Today, Maria Echaveste with Gene Sperling conducted a conference call with a coalition of civil rights advocates who were making the point that this article is helping to slow-down movement on the bankruptcy reform bill. The group included Wade Henderson, Professor Elizabeth Warren from Harvard, and Senator Howard Metzenbaum among others. They made the point that we are at a critical juncture in the bankruptcy reform debate. The shadow conferees (an informal self-appointed Senate and House conference committee) are expected to come out with their proposal early next week and the Administration has yet to send a position letter to the Hill. The group recommended that we up the ante on our rhetoric and highlight the impact this bill will have on women, families, and low to middle-income homeowners. They also suggested that the President use the bully pulpit to closely link this bill to the need for campaign finance reform (as suggested in the *Time* article).

Gene Sperling made the point that our letter will be strong on our continued call for a veto on a final bill that is close to the House version of the bill. It will outline our substantive concerns from the homestead exemption to arbitrary means testing. In the end, however, we will recommend that the President sign a final bill that is close to the Senate version of the bill and we will not put him in a position of vetoing a bill with a certain veto override. Gene did offer, however, to increase the rhetoric and we will work with him to do so before the letter is sent to the Hill. Attached please find the latest version of the letter (without the turned-up rhetoric).

Please let me know if you agree with this strategy or if you would like to weigh in on any suggested changes to the attached letter before it goes to the Hill.

Thank you.

May 5, 2000

MEMORANDUM FOR THE PRESIDENT

CC: **JOHN PODESTA**

FROM: **GENE B. SPERLING**
SARAH ROSEN WARTELL

RE: **BANKRUPTCY LEGISLATION**

ISSUE PRESENTED:

The NEC Bankruptcy Working Group has prepared a letter to the Congress setting forth our detailed views on the House and Senate bankruptcy reform bills. Both of these bills passed by overwhelming margins, despite our threat to veto the House bill and the important reservations we expressed about the Senate bill. Consumer groups continue to oppose these bills. Many major editorial pages have been critical of both bills, although most are more favorable toward the Senate bill. We expect some will oppose the final product. The letter to Congress would reiterate our previous statements: It again threatens to veto the House bill and says that the Senate bill better meets your principles, although we have some serious concerns. Despite the lengthy criticism of the bills' provisions, the letter effectively signals that you are likely to sign the final legislation unless it contains the most noxious House provisions or drops most of the consumer and debtor protections achieved by Senate Democrats. We seek your reaction to this strategy before the letter is sent.

VIEWS OF YOUR ADVISORS:

All of your advisors support balanced bankruptcy reform. All believe that the final bill will do some good by encouraging personal responsibility and lowering credit card interest rates that are inflated because some debtors are too ready to use and even abuse Chapter 7's bankruptcy discharge. All of your advisors also agree that, due to an expensive lobbying effort by the credit card industry, the final bill will lack the balance we sought and will not demand similar responsibility from the credit card industry.

An important issue is whether or not the new rules, determining who should be required to go into Chapter 13 (which requires repayment of what a formula says you can repay), are flexible enough to deal with specific cases of hardship in unusual circumstances. The provisions we have pushed for – ultimately allowing the bankruptcy trustees and courts greater discretion – have been largely rejected. We have made reasonable progress in the bill in other areas; for example, the bill protects child support and alimony from competition from credit card debt in many cases and includes a safe harbor from the means test for below-median-income debtors.

Assuming that the final bill that comes to your desk is close to the Senate bill, all of your advisors agree that you should sign it, although for somewhat different reasons. Jack Lew, Chuck Brain, and Gene Sperling believe that, while the final bill may be on the whole a net minus, it is a relatively close call, and not worth the political downside of a veto override. Larry Summers believes that a final bill relatively close to the Senate bill is a net plus and should be signed on the merits. Bankruptcy reform, Larry argues, will have an impact similar to that of open trade: a few visible cases of hardship, but a larger less visible benefit of lower interest rates for credit card borrowers.

All of us feel that, while it is unfortunate that we do not have a more balanced bill, if the final bill stays relatively close to the Senate bill, it would be better to sign the bill with some reservations than to risk a veto override. For you to have any chance of sustaining a veto, or even to make a strong public statement through an override, we would need to launch a high profile battle against a "paid-for" bankruptcy bill – a battle that would indirectly put us at odds with friends like Senators Daschle and Torricelli, and allow others to say we were walking away from our individual responsibility message.

BACKGROUND:

Last May, the House bill passed by a veto-proof margin of 313 to 108. A Democratic substitute that we crafted with Congressman Nadler received only 149 votes and had no effect on our effort to give enough Democrats cover to help us achieve a veto-sustaining margin. Key House Democratic leaders, including Representatives Martin Frost, Bob Menendez, and Patrick Kennedy supported the underlying bill and opposed the Nadler substitute. Minority Leader Gephardt opposed the bill, although he announced his position well after other Members' positions in support had settled. When we talked to Senate Democrats, we found few were interested in our substantive concerns and many were eager to see a reform bill enacted. Some were willing to press for changes and modest improvements were achieved as a result. But few Senate Democrats were willing to oppose the legislation despite its imbalances. As a result, an improved but flawed bill passed the Senate by a vote of 83-14. Democrats opposing the bill on bankruptcy grounds were Senators Kennedy, Wellstone, Dodd, Feingold, Harkin, Reed, Sarbanes, Schumer, Lautenberg, and Moynihan. (A few of the 14 opposed the bill for other reasons.)

Although a formal conference committee has not been named, Congress is now working to reconcile the House and Senate bills. Republican and Democratic leadership expect to attach the bankruptcy provisions to a conference report on other legislation (perhaps Digital Signatures or Crop Insurance) in order to avoid procedural roadblocks placed by Senators Wellstone and Kennedy in trying to force another Senate vote on a two-year minimum wage increase.

The NEC working group drafted a letter to the informal conferees setting forth the Administration's detailed views on various provisions of both bills. It reiterates your senior advisors' veto threat that we issued on the House version of the legislation last May. It describes the Senate bill as more balanced and doing a better job of meeting your principles, although it details serious concerns we have about some of the Senate bill's provisions.

In a few cases, the letter explains that the House language is actually better than the Senate approach. (The letter also reiterates the veto threat on a bill including the minimum wage, tax, and school voucher amendments that were attached to the bill by the Senate, but we expect those non-relevant provisions to be dropped.) (Copy of cover letter at Appendix A.)

Your senior advisors believe that the relatively muted tone of this letter signals that you are likely to sign the final legislation, albeit with reservations. The details in the letter provide helpful guidance to the Democratic negotiators attempting to improve the bill in conference. Unless we significantly raise the level of our rhetoric now, your advisors will likely recommend that you sign the final bill, unless it drops the most visible improvement achieved by Senate Democrats or includes the most noxious aspects of the House bill.

Appendix B is a more detailed summary of some of our substantive concerns with the House and Senate Bills.

DECISION:

Proceed with Letter _____ ***Let's Discuss*** _____

APPENDIX A

[Date]

The Honorable Orrin G. Hatch
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Hatch:

The Administration understands that, although conferees have not yet been named, your staff are discussing ways to reconcile the House and Senate versions of H.R. 833, the Bankruptcy Reform Act. The attachment to this letter outlines the Administration's views on these two versions of the bill. As you and your staff develop an agreement on this bill, your consideration of these views would be appreciated.

The President supports balanced consumer bankruptcy reform that would encourage responsibility and reduce abuses of the bankruptcy system on the part of debtors and creditors alike. To meet the test of balance, the bill that emerges from conference should be consistent with the key principles set forth by the President, as described in the enclosure. The President was disappointed that the House once again failed to produce balanced bankruptcy legislation that he could support. As we stated when H.R. 833 came to the House floor last spring, the President's senior advisors would recommend that he veto the House bill if it were presented to him. The bankruptcy provisions of the Senate bill generally do a better job of meeting the President's principles, although the Administration has serious concerns about some provisions.

The Administration notes that certain non-relevant amendments have been included in the Senate version of the bill. The President has made clear on a number of occasions that he strongly supports an increase in the minimum wage of $1 over the next two years. However, as the Administration has stated previously, if Congress sends him a bill delaying the increase, repealing overtime protections for certain workers, adding costly and unnecessary tax cuts that threaten fiscal discipline and direct benefits away from working families, thwarting ongoing efforts to enforce pension law, and including an objectionable private school voucher provision, he will veto it.

Thank you for your consideration of the Administration's views on these bills. We would be happy to discuss any of these concerns with you or your staff.

Sincerely,

Jacob J. Lew

Enclosure

Identical letters sent to The Honorable Patrick J. Leahy,
The Honorable Henry J. Hyde, and The Honorable John Conyers, Jr.

APPENDIX B

SUBSTANTIVE CONCERNS WITH THE HOUSE AND SENATE BILLS

Homestead Exemption: The Senate bill includes a $100,000 cap on the amount of home equity that states can allow debtors to shield from their creditors. The House bill has a cap of $250,000, but allows a state to opt-out, effectively eviscerating the cap. We have argued that it is fundamentally unfair to ask moderate-income debtors to repay what they can, while wealthy debtors can shield their resources in expensive homes. Most expect that the Senate cap will be dropped in conference, although rhetoric on this issue has the greatest potential to embarrass bill proponents.

Credit Card Protections: Although the provisions in both bills are weak, the Senate is somewhat stronger, providing new disclosures on teaser rates and the impact of making only the minimum payment on the length of time one will be repaying debt. Senate Democrats, including the leading Democratic bill proponent Senator Torrecelli, say they will oppose a conference report that further weakens these provisions, so the Senate provisions are likely to survive intact.

Means Test for Chapter 7 Discharge: Both bills use IRS tax collection guidelines to establish tests to determine whether a debtor has the capacity to repay a portion of their debt under a Chapter 13 repayment plan. If so, filing for a Chapter 7 discharge is deemed abuse. The House test is very rigid; the Senate bill has a bit more flexibility. We have argued unsuccessfully that various changes are needed to build more discretion into the system to determine whether, in the debtor's individual circumstances, they really have the capacity to repay (like the IRS has when it used the guidelines for tax collection). We also sought less stringent thresholds and various technical changes to prevent unfairness in the application of the test. Some provisions from each bill are better, but neither bill would address our fundamental concern. We expect a compromise with some of the better and worse features of each.

Protection of Child Support and Alimony: In the last Congress, the First Lady wrote of her concern with provisions that made additional credit card debt nondischargeable in bankruptcy, thus leaving it to compete with higher societal priorities that also are nondischargeable – especially payment of child support and alimony. In response, the bill's proponents added numerous provisions to clarify that child support and alimony are the highest priority. We believe that these provisions will work in many cases to improve the payment of child support and alimony in bankruptcy; however, in a small portion of cases after bankruptcy discharge, where there is no court supervision of child support and alimony payments or wage garnishment, these credit card debts could crowd out child support or alimony. Our argument is very technical; rhetorically, they have neutralized our criticism.

Debtor Protections Against Coercion: During bankruptcy, too many debtors are misled or tricked into agreeing to repay debts that they cannot afford and have a legal right to discharge. The Senate bill contains provisions that make it significantly more difficult to mislead or deceive debtors who cannot afford to reaffirm their debts, although the provisions could be significantly improved to strengthen the hand of debtors seeking remedies when the bill's requirements are not observed. (Certain consumer groups actually oppose the stronger Senate provisions, even though they would prevent many more abusive reaffirmations, because they also may provide creditors with new legal arguments in defending litigation.)

The House bill has far weaker provisions and, most notably, a ban on class actions when seeking remedy for abuse of these requirements. We expect the class action ban to be dropped and the Senate provisions to be retained largely intact, but without the desired improvements. If the class action ban is retained, newfound opposition to the bill may arise.

Clinic Violence: Recently, anti-abortion protesters have used personal bankruptcy to avoid penalties for violence against family planning clinics, some even strategically sending protestors who are judgment proof. Senator Schumer offered an amendment in the Senate that would make court-ordered and other debts resulting from such violence nondischargeable. We strongly supported the amendment. The Vice President was present in the Senate Chamber when they voted on the amendment to break a tie, if needed. To avoid embarrassment, Republicans urged their members to vote for the amendment and it passed by a vote of 80-17. The House has no comparable provision. In conference, they are expected to modify the amendment so that it covers debts from acts of violence generally, so they can avoid special protection for clinic violence debts. There may be technical flaws in their drafting of the broader amendment, so it will not protect all clinic-related debts. Abortion rights groups are not sure whether they want to fix these flaws, preferring to have the issue. If the Republicans drop the provision, Senate Democrats will likely rally; but if they simply broaden it to cover other violence, those eager to vote for the bill will likely concur.

Pension Benefit Protections: The Senate bill also included a provision that would allow debtors to waive in advance bankruptcy protections for certain retirement assets (IRAs and non-ERISA plans). Senator Grassley had earlier offered a provision that would have capped the pension assets that debtors could shield from creditors in bankruptcy, but facing labor opposition to that he instead opted for this. We fear that those of limited means and sophistication could be compelled (perhaps in the boilerplate of a credit card or loan application) to waive protections for the retirement assets. As awareness of this provision has grown, it has provoked a firestorm. We expect it to be modified or eliminated.

June 23, 2000

MEMORANDUM FOR HILLARY RODHAM CLINTON

FROM: **ANN O'LEARY** A.O'L.
HEATHER HOWARD HH
ERIC MORSE EM

CC: **MELANNE VERVEER**
SHIRLEY SAGAWA
LISSA MUSCATINE
PATTI SOLIS DOYLE

SUBJECT: **ISSUES UPDATE**

The purpose of this memo is to provide you with brief updates on a number of national issues in which you have been involved or expressed interest.

LEGISLATIVE AND ISSUES UPDATE

Youth

- **Media and Entertainment Industry Web Site for Parents:** The media and entertainment industry recently announced that they had created a one-stop web site for parents who wish to find information about the various media rating systems and parental advisory guidelines. The idea for the web site grew out of the White House Conference on Teenagers and, at the conference, you announced the commitment by the media and entertainment industry to develop such a web site. The web site, called the P*arental Media Guide*, can be found at www.parentalguide.org. It was jointly developed and produced by the Motion Picture Association of America, the National Cable Television Association, the National Association of Broadcasters, the Recording Industry Association of America, and the Interactive Digital Software Association. On the day the web site was released, the President issued a supportive statement (see attached) and is sending thank you notes to the industry leaders on behalf of both of you.

- **Youth Risk Behavior Survey:** The Centers for Disease Control and Prevention (CDC) recently released the *1999 Youth Risk Behavior Surveillance System Report* showing improved behavior among high school students in risk-related activities. The report showed that since 1991 there has been a decreasing trend among adolescents who: (1) never or rarely wore a seatbelt (37 percent decrease) (2) carried a weapon (34 percent decrease) (3) ever had sexual intercourse (8 percent decrease). Among sexually active teens, there was an increase in the number using condoms (26 percent increase). The report, however, demonstrated that many young people are still participating in risky and unhealthy behaviors. Far too many young people

are drinking (50 percent), smoking (35 percent) and doing drugs (27percent reported current marijuana use). In addition, one third of the students had participated in a physical fight and 17 percent had carried a weapon. Finally, one in 10 high school students are overweight and less than one-quarter of high school students eat the recommended daily allowance.

- **Tenth Conference of Spouses of Heads of State of the Americas:** This year, Peru is hosting the First Ladies of the Americas conference and has chosen the theme of adolescent development. As part of this overarching theme, they hope to focus on several relevant sub-themes: teenage health, teenage education and job training, teenage social behavior, and teenage rights and citizen participation. Next week, Ann O'Leary will travel to Lima, Peru for a prepartory meeting and will provide you further information and follow-up after the meeting. The Conference is planned for the first week in October.

Bankruptcy

- **Bankruptcy Reform Act:** Last week, Senator Lott announced that negotiations on the bankruptcy bill were final and today he announced that he would like to hold a floor vote next week prior to the July 4th recess. Many Democrats, however, continue to express grave concern about a lack of agreement on three issues: (1) Schumer's clinic violence amendment; (2) the Hatch addition to undercut the Fair Debt Collection Practice Act (3) the loophole in the Homestead exemption that allows wealthy debtors to buy a home in another state with no homstead cap as long as they buy it two years prior to filing for bankruptcy. The President's senior advisors (including your office) have recommended to the President that he issue a letter threatening to veto the bill as now agreed upon. See attached memo to the President for more detailed information.

CABINET REPORT

Below are selected Cabinet reports:

Department of Treasury

- **Firearms Report:** On June 21, Secretary Summers held a press conference to release an ATF report on firearms trafficking entitled, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers* (attached). The report analyzes over 1,500 ATF firearms trafficking investigations initiated between July 1996 and December 1998, which involve over 84,000 firearms. The report reveals the degree to which corrupt Federal firearms dealers, unlicensed sellers, straw purchasers, gun shows, and theft contributed to the illegal distribution of firearms uncovered in those investigations.

- **Holocaust-Era Lawsuits:** On June 12, Treasury reached an agreement with German negotiators on the mechanism for achieving legal peace for German companies being sued in U.S. courts for slave and forced labor claims and other wrongs from the Nazi period. National Security Advisor Berger and Counsel to the President Nolan agreed to send a letter to German officials confirming the agreement. The next steps include: completing negotiations with attorneys for the victims on the definition of German companies covered and sequencing of payments to victims; German parliament approval of legislation establishing the Foundation that

would make payments to victims' organizations; and the signature of a final declaration by all governments and other parties involved. Possibly as soon as July, pending court cases against German corporations can be dismissed and payments could begin to reach victims by the end of the year.

United States Department of Agriculture

- **West Nile Virus (WNV) Detected in NY Crows:** On June 9, the NY State Department of Health announced that WNV had been isolated from two crows submitted from Rockland County, NY. Rockland County also had positive WNV crows last year. This is the first report of birds infected with WNV in the U.S. during the 2000 mosquito season. There are no reports in 2000 of any positive mosquito pools or sentinel birds in the U.S. There have been no known cases of human or equine illness caused by WNV this year, nor are there any ongoing investigations of WNV-related illness in horses or livestock.

- **Food Safety in MO, NY:** Due to routine USDA testing, on June 7, Schnuck Markets Inc., of O'Fallon, MO, recalled 60 pounds of product for *Listeria monocytogenes* contamination. On June 6, Mega Meats, Inc., of Bronx, NY, recalled 420 pounds of ground beef for *E. coli* contamination.

Department of Labor

- **Equal Opportunity Survey:** As of June 5, approximately 4,800 of the 7,000 Equal Opportunity (EO) Surveys sent out to Federal Contractors have been submitted to DOL's Office of Federal Contract Compliance Programs. The survey gathers certain employment information from federal contractors and subcontractors, including information on a federal contractor's affirmative action plan, as well as summary data on personnel data and compensation. The survey information will be analyzed to test both the usefulness and reliability of the EO survey instrument.

Department of Health and Human Services

- **Colorectal Cancer Action Campaign:** On June 26, the CDC and HCFA will launch the second year of *Screen for Life, A National Colorectal Cancer Action Campaign*, which will include a series of television public service announcements, posters, Internet postings, and print materials. This year, in addition to promoting colorectal cancer screening for all Americans aged 50 or older, the campaign will focus on prevention and early detection of colorectal cancer through regular screening. The mass media component of *Screen for Life* supports more intensive efforts at State and local levels to combat colorectal cancer, including health-care professional and patient education.

- **Immunization Meeting:** On June 21-22, CDC's Advisory Committee on Immunization Practices met in Atlanta, GA. Key agenda items include a vote on recommendations for use of the recently licensed pneumococcal conjugate vaccine, as well as coverage of this vaccine by the Vaccines for Children Program; a review of research on potential associations between vaccine preservatives and neurologic disorders; a possible policy recommendation regarding thimerosal

(a mercury-containing preservative) in vaccines; discussion of recommendations for influenza vaccination; discussion on vaccination of children adopted from other countries; and a vote on a draft statement regarding prevention of anthrax by vaccination and by use of prophylactic antibiotics.

- **West Nile Virus:** On June 16, *Connecticut Public Television* broadcast a documentary on last year's West Nile Virus Outbreak. On June 20, Dr. Stephen M. Ostroff, Associate Director, National Center for Infectious Diseases, presented "Unraveling the Mystery of West Nile Virus," at the National Press Club. The presentation is a part of an annual symposium on infectious diseases. On June 20, Dr. Ostroff and representatives from USDA, USGS, and EPA will brief interested parties on Capitol Hill. On June 29, Surgeon General Satcher will speak on Emerging Infectious Diseases, including West Nile Virus, before the House Committee on International Relations.

Department of Housing and Urban Development

- **Gun BuyBack:** The Chicago Housing Authority will reprogram $100,000 of its FY1999 Public and Indian Housing Drug Elimination Program grant funding and will receive $43,000 in matching funds from HUD for a total of $143,000 for its Gun BuyBack Initiative. The Housing Authority anticipates taking approximately 1,000 guns off the street at the cost of $100 each. The Gun Buyback Initiative will target fourteen CHA public housing developments currently funded under the Authority's Public Housing and Indian Housing Drug Elimination Program. The buyback will take place in early June, one week before the end of the school year.

- **Boosting Black and Hispanic Homeownership:** Secretary Cuomo has challenged all segments of the housing industry to work with HUD to raise the national homeownership rate among African Americans and Hispanics to a historic high of more than 50 percent in three years. To help achieve the short-term goal, Secretary Cuomo committed the FHA to insure mortgages for more than 765,000 African-American and Hispanic families over the next three years. Other parts of the housing industry would help create the remaining new minority homeowners to achieve the goal of homeownership for a majority of minorities. An estimated 423,000 additional African American families and about 420,000 additional Hispanic families would have to become homeowners to achieve the goal of homeownership for a majority of these minorities. In the first quarter of this year, 73.4 percent of white households across the nation owned their homes – but only 47.8 percent of African American households and 45.7 percent of Hispanic households were homeowners.

Department of Education

- **Commission to Study Senior Year of High School:** DOEd will establish a partnership with the Woodrow Wilson National Fellowship Foundation and form a Commission to study the senior year of high school and the transition from senior year to postsecondary education or work. The Commission will engage in extensive local and national outreach, related research, and policy analysis.

- **Reduction in Class Size:** A research study conducted by the University of Wisconsin at Milwaukee has concluded that a reduction in student-teacher ratios throughout Wisconsin has improved student test scores. The State's Student Achievement Guarantee in Education (SAGE) program pays schools up to $2,000 per low-income student in kindergarten through third grade to help schools hire enough staff members to lower student-teacher ratios to 15-to-1 or less. The SAGE students out-performed their peers in language arts, math, and reading in each grade tested.

Environmental Protection Agency

- **New Food Quality Protection Act Advisory Committee:** The new EPA-USDA Committee to Advise on Reassessment and Transition (CARAT) will hold its first meeting on June 23. This committee will provide advice and counsel to EPA and USDA regarding strategic approaches for pest management planning and tolerance reassessment for pesticides.

Office of Personnel Management

- **D.C. Summer Jobs:** OPM continues to work closely with Federal agencies to meet this summer's goal of 1,000 hires. To date, agencies have committed to hiring 870 students. As of June 12, 135 students had been hired.

TENTATIVE LEGISLATIVE CALENDAR

Senate

The Senate will convene at 1:00pm on Monday, with the first votes scheduled on Tuesday.

- **Labor/Health and Human Services Appropriations:** The Senate will resume consideration of H.R. 4577, the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, at 3:00 pm on Monday. Any votes in relation to the bill will first occur on Tuesday in a stacked series.

- **Department of Defense Authorization:** The Senate may resume consideration of S. 2549, the National Defense Authorization Act for Fiscal Year 2001.

House

The House will convene at 7:00 PM on Monday for legislative business.

- **Commerce, Justice, State Appropriations:** The House will begin considering HR 4690, the Commerce, Justice, State Appropriations.

On Tuesday and for the remainder of the week, the House will consider:

- **HR 4717-** Requiring 527 organizations and other tax-exempt organizations to disclose their political activities. (subject to a rule)

- **HR ____** - Energy And Water Appropriations (subject to a rule)
- **HR 4680** - The Medicare RX 2000 Act (subject to a rule)
- **HR 1304** - Quality Health-Care Coalition Act (subject to a rule)
- **HR 4461** - Agriculture Appropriations (subject to a rule)

June 22, 2000

MEMORANDUM TO THE PRESIDENT

FROM: **GENE B. SPERLING/SARAH ROSEN WARTELL**
CHARLES BRAIN/JOEL WIGINTON

SUBJECT: **DECISION ON BANKRUPTCY REFORM LEGISLATION**

CC: **JOHN PODESTA**

ISSUE PRESENTED:

Senator Lott has advised Senator Daschle that negotiations on bankruptcy reform legislation are over. The Republicans agreed to make some further concessions on a couple of the outstanding issues, but the final resolution fails to address our concerns on three key issues you noted in your recent letter to the Congressional leadership: the homestead exemption, discharge of penalties for violations of clinic access laws, and an exemption from the Fair Debt Collection Practices Act (FDCPA) for check collectors. These problems come on top of the dissatisfaction many of your advisors feel with the balance struck in the bill's other provisions. Senator Daschle has asked about your intentions and believes that a strong, clear message from you quickly could enhance the chances of obtaining a veto-sustaining margin.

Your advisors unanimously recommend that you send another letter to the Congress that: (1) indicates that you will veto the bill that Lott described as final; (2) strongly implies that you will sign no bill without adequate clinic access provisions; (3) stresses your concerns with the current resolution of the check collector and homestead issues and the lack of balance in the remainder of the bill; but (4) urges the Congress to fix these problems and leaves you room to decide how to proceed if the clinic access issue is resolved.

STATUS IN CONGRESS

Senator Daschle believes that the chances of achieving 34 Democratic votes are enhanced by your sending a clear, strong veto message as soon as possible. However, it is not certain that a veto-sustaining margin can be obtained. While Daschle would personally support the bill in its current form, if you have a strong veto message premised upon the clinic access and check collector provisions, Daschle may stand with you. Nonetheless, there is some risk, as we have never heard a credible assertion that even 25 Democrats are willing to oppose the bill.

Senator Torricelli, the lead Democratic sponsor of the legislation, also appears to be inclined to support the bill in its current form. Torricelli's staff, however, notes that if you come out with a clear and strong veto statement, the Senator may stand with you against the clinic access and check collector provisions.

Eleven Democratic Senators were opposed to the bill on relevant grounds when it passed the Senate. Senator Durbin, who led the bipartisan effort last year and voted for the Senate bill, has determined that the final bill is unacceptable to him, regardless of the outcome of these remaining issues. Senator Leahy, who voted for the Senate bill and has worked hard to ensure a fair process, believes that the clinic access and the check collector issue swing the balance against an already flawed product; he will vote against it in this form and recommend a veto. Senator Schumer, who strongly opposes the bill, believes that the clinic access issue will mobilize others.

There are five to seven Democrats, led by Senators Biden, Johnson, Breaux, and Reid of Nevada, however, who will likely support the bill in whatever form it is presented to them. Senator Jeffords is the only Republican who has publicly noted some concerns with the measure.

There is little prospect for overcoming the strong veto-proof margin of 313 to 108 by which the House passed its bill last May. Moreover, it is likely that the Republicans will send whatever vehicle they use for the bankruptcy bill to the House first to try to gather momentum.

ADMINISTRATION APPROACH TO BANKRUPTCY REFORM

We have said repeatedly that you support balanced consumer bankruptcy legislation that would encourage responsibility and reduce abuses of the bankruptcy system on the part of debtors and creditors alike. We can eliminate abuse without hurting those forced to turn to bankruptcy, the vast majority of whom are faced with some of the hardest circumstances that life has to offer – divorce, unemployment, illness, and uninsured medical expenses. Although we should not countenance people using bankruptcy to escape bills they can afford to repay, we also should not enact punitive legislation that places insurmountable barriers before the people who file for bankruptcy as a last resort.

To guide Congress in striking the proper balance, we have set forth principles that should be met by a final bill. Many of these issues were resolved on a bipartisan basis by Congressional staff. Others were reserved as "member issues." Just this week, Lott advised Daschle of the Republicans' final offer on these issues and their plan to move forward attaching bankruptcy to the next available vehicle.

ASSESSMENT OF NON-MEMBER ISSUES

In a letter to the informal conferees on May 12, 2000, Jack Lew set forth your key principles. A detailed assessment of the resolution of these issues is in the attached appendix.

In short, the final bill's provisions are closer to the Senate bill than the House bill, but they do not incorporate the balance that you have sought. They reflect a compromise between a House bill that we thought badly one-sided and a better Senate bill about which we still had significant concerns. While all of your advisors believed when we wrote you on May 5th that you should sign a bill close to the Senate bill, this bill is a somewhat closer call.

For example, our fundamental concern about the rigidity of the means test in the Senate bill was not addressed. Moreover, changes were made from the Senate bill to shift a few more debtors out of Chapter 7 and limit a bit further the court's discretion to determine whether a debtor has the capacity to repay. Similarly, flawed language from the Senate bill narrowly limiting the family household goods that debtors can protect from creditor seizure was included in the final bill. While no one of these provisions alone merits your veto, cumulatively they represent undesirable changes relative to the Senate bill.

ASSESSMENT OF RESOLUTION OF MEMBER ISSUES

You wrote to Congressional leaders on June 9th setting out your concerns about five open member issues. Our assessment of the resolution of these issues is below. In short, we believe two of those issues have been resolved to our satisfaction (pension cap and credit card disclosures, although Senator Kennedy is having trouble getting confirmation of the agreement on pension cap); one issue has been resolved to the satisfaction of key Senate Democrats but not to ours (homestead); and the Republican resolution of two issues (clinic access and check collector exemption) is unacceptable to us and the lead Democrats on those issues, although some Democrats would support the bill nonetheless.

Pensions: "The final bill may eliminate protections for reasonable retirement pensions that reflect years of contributions by workers and their employers."

The Senate bill included a noxious provision that would have allowed creditors to demand that debtors waive bankruptcy protection for pension assets as a condition of receiving credit. That was dropped in Conference, but Senator Grassley insisted on some limit on otherwise unlimited pension assets shielded from creditors. Senator Kennedy was deeply concerned that such a cap would send the wrong message about retirement savings. Moreover, seemingly large retirement accounts do not necessarily provide for extravagant lifestyles for workers with increasingly long life expectancies. A compromise was apparently reached between Kennedy and Grassley that caps only certain IRAs, excluding amounts rolled over from employer pension plans, at $1 million. Moreover, the court has discretion to waive the cap in the interests of justice. Senator Kennedy is having difficulty getting confirmation that the Republicans will stick with this agreement. ***If there is no backsliding, this resolution seems reasonable and consistent with our arguments in the homestead context.***

Credit Card Disclosures: "The final bill may weaken important credit card disclosure provisions that will help ensure consumers understand the implications of the debt they are incurring."

The Senate bill requires modest new credit card disclosures. Consumers would be given better information about credit card "teaser rates" and the impact of making only the minimum payment on the length of time one would be repaying debt. Your letter referred to an effort by Senator Gramm to exclude small banks from the provisions' scope. However, the provisions survived without the exclusion, although for two years the Federal Reserve Board will be asked to provide consumers with an 800 number for information about credit cards issued by smaller banks – an 800 number that larger banks will have to provide themselves. ***The Senate bill's modest disclosure requirements have been effectively preserved.***

Homestead: "The final bill may not adequately address the problem of wealthy debtors who use overly broad homestead exemptions to shield assets from their creditors."

State law allows debtors to exempt from the bankruptcy estate home equity valued up to specified homestead exemption thresholds. Five states (including Texas and Florida) have unlimited homestead exemptions, effectively allowing wealthy debtors to shield millions in assets in valuable mansions, while avoid repayment of their creditors. It seems to us fundamentally unfair to ask low- and moderate-income debtors to devote future income to repay all the debts that they can, while leaving loopholes that allow the wealthy to shield assets from their creditors.
The final bill has a modest limitation on unlimited homesteads to address abuse by those who move to states with unlimited homestead exemptions within two years of the bankruptcy filing. ***This does not address our fundamental issue.*** Moreover, wealthy debtors often can use bankruptcy planning to postpone bankruptcy for two years while they qualify for the unlimited homestead exemption.

Senator Kohl, the Democratic Senate champion of this issue, is satisfied that this resolution represents a good first step and establishes the principle that some nationwide limitation on homestead exemptions is appropriate. (Kohl is undecided whether he will support or oppose the overall bill.) Senator Leahy does not want to flank Senator Kohl on the left on this issue. Thus, if you take this issue to the public, you will have only long-time bankruptcy-bill opponents like Wellstone, Kennedy, and Nadler joining you from Congress. However, many editorial pages around the country have pressed this issue hard and would applaud your concern.

Fair Debt Collection Practices Act: "The final bill may include an anti-consumer provision eliminating existing law protections against inappropriate collection practices when collecting from people who bounce a check."

In conference, Senator Hatch has insisted on an anti-consumer provision (in neither the House or the Senate bill) which would eliminate attorneys fee awards for violations of the Fair Debt Collection Practices Act, if the defendant is collecting bounced checks rather than other defaulted debt. This is a pernicious provision because it could give check collectors de facto rein to intimidate and harass lower-income debtors, knowing that their financial position would prevent them from hiring counsel. Often, the only effective enforcement of the check collector provisions is class action litigation, financed by firms because of the potential for attorneys fee awards. Senator Torricelli suggested a minor change, which the Republicans accepted, that limits attorneys' fees to cases where the debtor can prove that he or she had no intent to defraud. Senators Leahy and Sarbanes argue that such a standard is impossible to prove. ***Our fundamental concerns have not been addressed.***

Clinic Access: "Some in Congress still object to a reasonable provision that would end demonstrated abuse of the bankruptcy system. We cannot tolerate abusive bankruptcy filings to avoid the legal consequences of violence, vandalism, and harassment used to deny access to legal health services."

The Senate bill included a Schumer amendment to address the announced strategy of anti-abortion protestors using bankruptcy to avoid penalties for violence against family planning clinics in violation of the Freedom of Access to Clinic Entrances Act (FACE) and its state counterparts. We strongly supported the amendment. The Vice President was in the Senate chamber when they voted to break a tie, if needed. To avoid embarrassment, the Republicans ensured that the amendment passed by a vote of 80-17. However, in conference, they have steadfastly refused to include it or a comparable measure. Their alternative, which they have unilaterally announced will be in the final bill, does little beyond current law. It precludes discharge of all judgements for acts of violence where behavior was shown to be willful and malicious. Advocacy groups argue that few of the actual judgements against, or settlements reached with, defendants who harassed clinic patients include a finding of willful and malicious behavior. Moreover, harassment and intimidation does not always include violence. ***Thus, the final unilateral resolution does not satisfy our concerns.***

This is the hardest issue for the Democrats who want to support the bill. Abortion rights groups are energized. If you take a strong position, this is the issue most likely to rally Democrats in opposition to the bill. Even Senator Torricelli may join you in opposing the bill if further changes are not made to this provision, although Senator Biden does not believe this issue should bring down the entire bill.

RECOMMENDATION

Your advisors unanimously recommend that you send another letter indicating that the Republicans' "final" bankruptcy bill is one that you would veto. The letter would note that there has been an acceptable resolution on pensions and credit card disclosures, but that you have continuing concerns about the check collector, homestead, and clinic access provisions. Special emphasis will be given to the clinic access issue, so that no one reading the letter would doubt you would veto any bill without its satisfactory resolution. A reader should also be concerned that you might veto a bill that does not resolve the homestead and check collection issues to your satisfaction, but the letter will give urge the Congress to fix these problems and give you sufficient latitude to make the veto decision later. There is a real risk that Congress could resolve the clinic access issue, leaving you with only a handful of Democratic Senators joining you in opposition to a bill with the other provisions.

DECISION

___ **1. Send the letter as proposed**

___ **2. Let's discuss**

APPENDIX
ASSESSMENT OF BANKRUPTCY BILL'S OTHER PROVISIONS

In a letter to the informal conferees on May 12, 2000, Jack Lew set forth your key principles. Our assessment of the resolution of these issues is below.

Means Test: "Access to Chapter 7 should not be governed by an arbitrary means test, but by reasonable guidelines that take into account individual circumstances."

We have argued unsuccessfully that various changes are needed to build more discretion into the system to determine whether, in the debtor's individual circumstances, they really have the capacity to repay. We have also sought less stringent thresholds and various technical changes to prevent unfairness in the application of the test. We did succeed in preventing creditors from filing motions to challenge low-income debtors' bankruptcy filings, but these below-median income debtors will be subject to the burdens of new means test paperwork and trustee scrutiny even though only a tiny fraction will have any capacity to repay their debts. While some modest improvements were made in conference, ***the final bill (like both House and Senate bills) does not address many of our fundamental concerns.***

Protection Against Coercive Reaffirmations and Practices: "There must be appropriate safeguards against coercive creditor practices that compel debtors to forgo their rights and that disadvantage more scrupulous creditors."

During bankruptcy, too many debtors are misled or deceived into agreeing to repay debts that they cannot afford and have a legal right to discharge. The final bill contains provisions, based on an Administration proposal, that make it significantly more difficult to mislead or deceive debtors who cannot afford to reaffirm their debts. To get our proposal included in the Senate, we had to make some significant compromises with the credit card industry that cause consumer advocates concern. We sought further improvements in conference but they were not made. However, truly offensive provisions from the House bill (that would have banned class actions as a remedy for existing law violations) were dropped. As a whole, your staff believe ***these provisions are a net improvement for consumers over current law.***

Improving Credit Card Practices: "Both debtors and creditors must be required to be responsible. Bankruptcy reform should be balanced by including provisions that address credit-card practices that may lead to bankruptcies."

As discussed in the body of the memorandum, modest new credit card disclosure requirements were included in the Senate. These largely survived in tact in the final bill. Consumers are given better information about credit card "teaser rates" and the impact of making only the minimum payment on the length of time one would be repaying debt. ***Overall, while we believe more information could be provided more clearly, these provisions are an improvement over current law.***

Non-dischargeable Debts and "Cram Downs": "The goal of repaying creditors must be balanced with the need to protect social priorities, such as payment of child support, alimony, and taxes, and to preserve a meaningful opportunity for a fresh start."

In the last Congress, the First Lady wrote of her concern with provisions that make additional credit card debt nondischargeable in bankruptcy, thus leaving it to compete with higher societal priorities that also are nondischargeable – especially payment of child support and alimony.
In response, the bill's proponents left the new categories of nondischargeable credit card debt, albeit somewhat narrower, but added provisions to clarify that child support and alimony are the highest priority. These provisions will work in many cases to improve the payment of child support and alimony

in bankruptcy; however, in a small portion of cases after bankruptcy discharge, these new nondischargeable credit card debts could crowd out child support or alimony. Our argument is very technical, however. ***Rhetorically, they have neutralized our child support and alimony criticism.***

We have a similar concern about provisions in the final bill that would give secured creditors unprecedented rights to collect amounts in excess of the value of their collateral. (Current laws "crams down" their claim to the value of the security. Thus, if a car is worth less than the amount originally borrowed, the claim is limited to the car's value.) Since secured debt must be satisfied if the collateral is to be kept, collection of other societal priorities (like child support, alimony, and taxes) might also suffer a bit. The bill also skews the distribution of scarce debtor assets toward undersecured creditors instead of unsecured creditors (like credit card companies). The latter firms support is ironic, but this was a political bargain they made with car financing firms to win Senator Abraham's support. While the final bill is better than the House provisions, ***our fundamental concern was not addressed.***

Barriers to Entry or Representation in the Bankruptcy System: "Inappropriate barriers should not be created to entry into or effective representation in the bankruptcy system."

The Administration has been concerned about inflexible pre-bankruptcy filing hurdles, including paperwork and counseling requirements and fees. We were also concerned about attestation requirements and sanction provisions that could deter attorneys from representing debtors or raise the costs of representation. The final bill waives fees for low-income debtors, reduces some of the paperwork requirements, and eliminates the most chilling requirements for debtors' attorneys. ***While hardly the provisions we would have written, we do not have strong objections to the remaining provisions.***

THE WHITE HOUSE

Office of the Press Secretary
(Aboard Air Force One)

For Immediate Release **June 8, 2000**

STATEMENT BY THE PRESIDENT

I applaud the media and the entertainment industry for announcing that they have answered our call to action to develop a one-stop web site for parents to learn more about how to monitor and understand their children's interaction with the media. This website is a positive step, but not the only one we need to take, to give parents the tools they urgently need to help them choose what media is appropriate for their children. The First Lady challenged the industry to develop this web site as part of the White House Conference on Teenagers, to give parents more and better information about how to use the current media rating systems and parent advisory guidelines voluntarily put in place by the movie, television, music, and computer/video game industries. Hillary and I will continue to call on the industry to take the next step of voluntarily creating a uniform rating system that would apply to movies, television, music, and video games.

The parental media guide can be found at www.parentalguide.org. This web site was jointly developed and produced by the Motion Picture Association of America, the National Cable Television Association, the National Association of Broadcasters, the Recording Industry Association of America, and the Interactive Digital Software Association.

30-30-30

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HEADLINE: Infectious Disease Concern Heightens

DATELINE: WASHINGTON, June 20

BODY:

Global travel, the use of antibiotics, and changes in lifestyle are significantly impacting the rise of infectious diseases, officials warned today at a press conference sponsored by the National Foundation for Infectious Diseases (NFID). The increased resilience of bacteria to antibiotics; outbreaks of foodborne and vectorborne diseases over wide geographic areas; and the continued global spread of acquired immunodeficiency syndrome without a vaccine available, continue to challenge global public health efforts. However, they stressed that active campaigns to educate the public, improved diagnostics and surveillance, restrictions on the use of antibiotics, and vaccines will help to reduce and control epidemics.

Will **West Nile Virus** Cause Annual Summertime Epidemics?

Viral persistence found in overwintering mosquitoes collected in New York City during January and February and three infected crows in New York State and New Jersey this spring indicate the **West Nile Virus** infections may reappear in New York and other areas of the United States this summer. Normally seen in the Middle East and some parts of Europe and Asia, this flavivirus produced an outbreak of encephalitis in the New York Metropolitan area in 1999. A total of 62 cases of encephalitis/meningitis, with seven deaths were diagnosed in New York City and adjacent Long Island and Westchester County. "This outbreak marked the first recognition of this virus in the Western hemisphere, demonstrating the ease of movement of microbes in an era of global travel and commerce," said Stephen M. Ostroff, M.D., associate director for Epidemiologic Sciences, National Center for Infectious Diseases, Centers for Disease Control and Prevention. The virus normally circulates in birds and mosquitoes. Humans and other mammals become infected when bitten by an infected mosquito. West Nile infections are mild or asymptomatic and surveys have shown that 2.5% of residents in the hardest hit area of Queens, New York had become infected. Severe disease is more common in elderly or immunocompromised persons. "The outbreak highlights the need for better communication between medical, public health, and veterinary communities," said **Dr. Ostroff.** States on the eastern bird flyway have received federal funding to conduct monitoring activities and perform diagnostic assays. This effort will be expanded nationwide.

Growing Concern About Antibiotics as Growth Promoters

Current trends suggest that with enough time and sufficient antibiotic exposure, bacteria can develop resistance to virtually any antibiotic. "The key question would appear to be 'how long before resistance develops,' not 'will resistance develop,'" said J. Glenn Morris, Jr., M.D., MPH, professor and chairman, Department of Epidemiology and Preventive Medicine, University of Maryland School of Medicine. Use and (overuse) of antibiotics in hospitals and by community physicians is clearly a major driving force for emergence of antibiotic resistance in human bacterial pathogens. At the same time, an estimated 40% of all antibiotic usage in the United States is in animals. Much of this usage is in animal feeds as growth promoters or enhancers. This usage has been paralleled by increasing problems with resistance in certain food borne pathogens. The impact of agricultural antibiotics in agriculture use on human health has been the subject of increasing public and scientific concern. "In parts of Europe, these

concerns have been sufficient to result in a ban on the use of antibiotics as growth promoters and restrictions on therapeutic use of key antibiotic classes in animals," said Dr. Morris. There have been demonstrable decreases in levels of resistance in certain pathogens coincident with these restrictions.

Same Bacteria Causing Stomach Cancer May Protect Against Esophogeal Cancer

Now, for the first time in human history, individuals are reaching adulthood and old age without Heliocobacter pylori in their stomach. The reasons for this include changes in lifestyle, clean water, smaller families, and the use of antibiotics. Consistent with the decline of H. pylori in Western populations have come declines in the incidence of both peptic ulcer disease and of gastric cancer, especially the type involving the lower stomach. However, diseases of the esophagus, such as gastro-esophageal reflux disease, Barrett's esophagus, and adenocarcinoma of the esophagus, have been increasing. Once rare, adenocarcinoma of the esophagus is the fastest increasing cancer in the U.S., rising at a rate of 11% a year. Over the past four years, a body of evidence has been growing that the disappearance of H. pylori is related to the rise of esophageal diseases, including cancer. "Changes in our indigenous bacterial flora (microecology) have been occurring over the last century, and these changes may have clinical consequences," says Martin J. Blaser, M.D., chairman, Department of Medicine, New York University School of Medicine.

The Future of HIV

The total number of patients infected or dead from HIV reached 50 million as we entered this millennium and while the infection rate is dropping in the western world, it is exploding elsewhere. There appears to be no effective vaccine on the horizon. This epidemic will continue to expand for at least the next ten years and it will leave possibly hundreds of millions infected and dead and nearly 50 million orphans. The current hot spots include Southeast Asia, the states of the former Soviet Union, and the southern part of the African continent. "There appears to be lethargy on the part of the western societies even in the face of the exploding epidemic in the emerging world," noted Merle A. Sande, M.D., chairman of the Department of Medicine, University of Utah School of Medicine. "The impact of this infectious disease could significantly alter progress that has been made in our civilization in the next ten years," warned Sande.

About the Press Conference

The 5th Richard J. Duma/NFID Annual Press Conference and Symposium on Infectious Diseases was sponsored by NFID and was supported, in part, through unrestricted educational grants from AlphaVax Human Vaccines, Inc., AstraZeneca Pharmaceuticals, Aventis Pharmaceuticals, Glaxo Wellcome Inc., Ortho-McNeil Pharmaceutical, Pfizer Inc., and Pharmacia Corporation. This event was named for former NFID President and Executive Director Richard J. Duma, M.D., Ph.D., director of infectious diseases at Halifax Medical Center in Daytona Beach, FL. Dr. Duma is an internationally renowned infectious disease expert.

NFID is a national, not-for-profit foundation established in 1973 to support public and professional education about and research into the causes, cures and prevention of infectious diseases.

SOURCE National Foundation for Infectious Diseases

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