man (News & Comment, 4 Sept., p. 1101), I know what "self-interest," "mutual interest," "common interest," and even "common self-interest" mean, but what is "mutual self-interest"?

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California's Proposition 65: A Reply

The recent editorial of Philip H. Abelson (25 Sept., p. 1553) concerning California's Proposition 65, the Safe Drinking Water and Toxic Enforcement Act of 1986, painted an unrealistically woeful picture. The implementation is being carried out in a manner that will not encumber industry with unnecessary burdens, yet it will protect the state's sources of drinking water and provide information to Californians about chemicals to which they are exposed.

The California Health and Welfare Agency is the agency responsible for the implementation of the Act. A Scientific Advisory Panel, consisting of 12 members from academia and industry, recommends to the agency those chemicals that are to be listed as chemicals known to the state to cause cancer or reproductive toxicity. Contrary to Abelson's views, it is unlikely that common table salt will be listed as a reproductive toxicant.

The 15,000 items on supermarket shelves will not require warnings. The public's first statewide introduction to warnings will be with regard to the reproductive toxicity of ethanol in alcoholic beverages. In this case, warnings will be required by 1 October 1988. Similar warnings for alcoholic beverages are already in place in Los Angeles and San Diego, the result of local actions. Labels are not required by the Proposition, nor by the agency's proposed regulations.

The Health and Welfare Agency has issued proposed regulations that address naturally occurring substances. The presence of such chemicals in food will not constitute an exposure under the Proposition. The agency intends to recognize regulatory levels for carcinogens and reproductive toxicants that are regulated by state and federal agencies, to the extent that they provide the same level of human health protection required by the Proposition.

California is implementing Proposition 65 in a manner that is fair, predictable, and based on a firm scientific foundation. When fully implemented, it will serve to complement existing laws concerned with environmental and public health protection. Those who comply with existing laws and regulations will, in most cases, be in compliance with Proposition 65. Those, however, who fail to comply with existing laws designed to protect the public health will also be out of compliance with Proposition 65. Such activities, if not addressed by government enforcement agencies, would be the most likely targets for the "bounty hunter" provisions of the Proposition.

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Cholesterol Guidelines

The report (*1*) of an expert panel of the National Cholesterol Education Program of the National Heart, Lung, and Blood Institute (NHLBI) announced on 5 October and discussed by Leslie Roberts (Research News, 23 Oct., p. 482) exaggerates the risks of coronary heat disease (CHD) from total serum cholesterol values and magnifies the predicted benefits of following the guidelines proposed. Although there is some evidence that a "desirable level" of serum cholesterol is less than 200 milligrams per deciliter (mg/dl), there is no convincing evidence that 199 mg/dl is less risky for CHD than 210 mg/dl (*2*). The range of 200 to 239 mg/dl is a gray area of mild risk reaching twice the baseline risk at 240 mg/dl.

The range of 200 to 239 mg/dl under no imaginable circumstance could be considered to be "borderline high." This is analogous to saying that a systolic blood pressure of 121 to 139 millimeters (mm) of mercury and a diastolic blood pressure of 81 to 89 mm are "borderline high." Borderline values in clinical medicine are single values that demarcate negligible risk from measurable risk. The usually accepted borderline value for blood pressure is 140/90 mm of mercury; for fasting blood sugar, 100 mg/dl; and for serum cholesterol, greater than 240 mg/dl. Most physician-scientists believe that values of serum cholesterol of 240 to 280 mg/dl constitute moderate risk and greater than 280 mg/dl, high risk.

Recommending that more than 25% of the adult population of this country go on fat-modified diets for cholesterol values in the gray zone is, in my opinion, a gross exaggeration of the hazards. If other risk factors are present, it might be important to do so. Furthermore, both low-density lipoprotein cholesterol and high-density lipoprotein (HDL) cholesterol should be measured because of the protective action of HDL cholesterol above 40 mg/dl. Most are agreed that intervention should begin at 240 mg/dl, first with diet and then with drugs, if necessary. It is also important to realize that in the moderate range of serum cholesterol, reduction of smoking and hypertension are more important than reduction of cholesterol levels (*3*).

With regard to the benefits of reduction of serum cholesterol, NHLBI director Claude Lenfant is quoted as saying that "If adopted, these recommendations could result in 300,000 fewer heart attacks each year." Since there are about 800,000 initial heart attacks per year in the United States (and about 550,000 deaths from coronary heart disease per year), this number represents a 40% reduction in initial heart attacks. None of the intervention studies, which have involved 36,000 persons worldwide with diet, or drugs, or both, has achieved a 40% decrease in heart attacks. Furthermore, these studies show only a slight reduction in mortality from CHD, with no change in all-cause mortality (*4*). These intervention trials, furthermore, have shown only a 5 to 13% change in serum cholesterol as a result of dietary modification over 6 to 8 years.

All of us are most concerned with developing strategies for the prevention of coronary heart disease. It is unjustifiable, however, to magnify the benefits of reduction of serum cholesterol, particularly for those persons at low risk.

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Liability Insurance and Litigation

The article by Peter Huber on "Injury litigation and liability insurance dynamics" (2 Oct., p. 31) asserts that the reason for the current crisis in liability insurance is an increase in liability law, inducing "mushrooming litigation" and an "avalanche of suits," leading to "unexpectedly large" payouts by insurance companies, thus causing the companies to sharply increase their rates. Huber cites as evidence the growth in the number of product liability suits in the federal district courts from 6,132 in 1979 to 13,554 in 1985, "an average annual litigation growth rate of 20 percent." These figures seem to match those that can be derived from the annual reports of the Administrative Office of the United States Courts, although Huber cites secondary sources. However, they have been examined closely by Galanter (*1*), who found that in 1985, 31.3% of the products liability cases were related to asbestos. Noting that the Dalkon Shield cases also were in the courts during some of this period, Galanter suggests that the increase in federal cases may not represent a general growth in litigation so much as several "epidemics" of suits about specific products. These mass injury suits may cause temporary distress to some insurers, but they cannot be seen as causing a general rise in rates. Such an "epidemic" will tail out as the suits are settled, a pattern exhibited by the "black lung disease" cases of the 1970s (*1*).

As this example tells us, the use of aggregate figures on increases in court case loads can be misleading unless we know what kinds of cases are included. In fact, the idea that there has been an "explosion" of litigation in this country has been criticized in a number of works (*1, 2*) not mentioned by Huber. Most injury cases are actually filed in state, rather than federal courts and tort cases in the state courts over the period 1978 to 1984 showed a rate of increase only slightly greater than that of the population (*1*). For this reason, other aggregate figures cited by Huber, such as a 50% increase since 1980 in personal injury lawsuits between private parties in the federal courts, should be viewed as possibly indicative of wider trends, but requiring further investigation.

The representativeness of other data used by Huber can be questioned in light of recent research. For example, he refers to a widely cited study of jury verdicts in Cook County, Illinois, that indicates a high rate of growth in average liability judgments there. However, research by Daniels and Martin on jury verdicts in the early 1980s in 43 counties in 10 states (*3*) lowers the impact of these data for two reasons. First, median figures are more appropriate than means in this context and, while median jury awards may be "drifting" upward, there is no skyrocketing trajectory (*3*). Second, the study by Daniels and Martin argues that there is no way that the data from one county can be seen as indicative of general trends in the country.

The findings of Daniels and Martin also lead one to question the representativeness of one of Huber's specific examples, the experience of New York City in paying out nearly twice as much in liability claims in 1985 as in 1983. Their data indicate that New York City is indeed a hotbed of litigation and high awards, but that it is unusual in this regard and not representative of conditions in the rest of the country.

Huber bases much of his argument on a model of the insurance system. However, the derivation of this model is not clearly specified. Further, the model includes statements of the respective contributions to inflows and outflows of capital within the system, but does not specify a source for the stated percentages.

Huber seems to imply that the fundamental causes of increasing rates in the insurance business are external to that business, that insurance companies are reacting to changes in the legal environment. Others have suggested that the fundamental causes of sharp fluctuations in rates lie in the actions of the insurance industry itself. Huber mentions the so-called "insurance cycle" as a potential cause of such fluctuations, but does not give that cycle serious analysis and in the end rejects it more or less out of hand as a major explanation.

That shrift is overly short, however, in light of the phenomenon of "cash-flow underwriting," a practice not discussed by Huber but generally given credence by such normally pro-business journals as *The Economist* (*4*). This practice occurs during times of high interest, when the insurance companies try to make short-term profits on premium dollars and accept dubious risks in their competition for those dollars. When interest rates go down, the companies are left paying the claims derived from the doubtful risks. There is evidence that this competitive cycle has recurred for at least the past half century; it is even acknowledged by insurance company executives (*5*).

In earlier instances of this cycle, attempts have been made to blame the ills of the liability insurance system on the courts. In this regard, it should be noted that "crises" are often political creations aimed at deflecting public attention from a recurring situation by blaming it on supposedly unique circumstances outside of the control of the party otherwise likely to be blamed (and who is, of course, trying to establish the existence of the "crisis") (*6*). In the present "crisis," the insurance industry is running a $6.5-million public relations campaign that appears to put the blame for the current crisis on the courts rather than the companies (*7*). Insofar as this campaign succeeds, political demands for a solution to the crisis will focus on reforming the courts rather than regulating the insurance industry.

Huber's conclusions are not necessarily wrong, but the available data do call into question what Huber views as the "most obvious" cause of rate increases: the actions of the legal system. Why are the courts, rather than the insurance companies themselves, so "obviously" the cause of insurance company actions? In a recent paper (*8*), I argue that the insurance industry has been able to blame the current "crisis" on the legal system by playing on an American cultural belief that noncontract civil litigation, such as product liability and personal injury suits, is a priori improper. Such cases seem to violate fundamental American values and principles, such as the importance of self-reliance and personal responsibility, and their acceptance by courts means to many people that the judicial system rewards improper behavior. Thus the court system is seen as flawed and in need of reform, and attention is diverted from the activities of the insurance companies themselves in raising their rates. By pursuing the "obvious cause" rather than looking deeper, Huber's article may be simply the latest addition to this genre.

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2. *Justice Syst. J.* **11** (no. 3) (entire issue) (winter 1986).
3. S. Daniels and J. Martin, *ibid.* p. 321.
4. *Economist* **303** (Insurance survey, p. 4) (6–12 June 1987); *Consum. Rep.* **51**, 544 (August 1986).
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6. M. Edelman, *Political Language: Words That Succeed and Policies That Fail* (Academic Press, New York, 1977). This point is explored in another context in P. Brass, *J. Asian Stud.* **45**, 245 (1986).
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Response: Hayden is right in stating that tort law is ultimately a political issue. This is itself a matter of some concern, because modern tort law has been constructed entirely by the courts, not by the political branches of government. But how changes in tort law have affected insurance costs is an apolitical question of markets, bookkeeping, and economics.

Hayden suggests that my numbers were not representative of larger trends, but he