

then existing at Hampton Roads, and the great interests at stake there, all of which were entirely dependent upon the MONITOR, good judgment and sound direction forbade it. It must be remembered that the pilot house of the MONITOR was situated well forward in her bows and that it was quite considerably damaged. In following in the wake of the enemy, it would have been necessary, in order to fire clear of the pilot house, to have made broad "yaws" to starboard or port, involving in the excitement of such a chase, the very serious danger of grounding in the narrower portions of the channel and near some of the enemy's batteries, whence it would have been very difficult to extricate her, possibly involving her loss. Such a danger her commanding officer would not, in my judgment, have been justified in encountering, for her loss would have left the vital interests in all the waters of the Chesapeake at the mercy of future attacks from the MERRIMACK. Had there been another iron-clad in reserve at that point, to guard those interests, the question would have presented a different aspect, which would not only have justified him in following, but perhaps made it his imperative duty to do so.

The fact that the battle with the MERRIMACK was not more decided and prompt was due to the want of knowledge of the endurance of the XI-inch Dahlgren guns with which the MONITOR was armed, and which had not been fully tested. Just before leaving New York, I received a peremptory order from the Bureau of Ordnance to use only the prescribed service charge, viz. 15 pounds, and I did not feel justified in violating those instructions, at the risk of bursting one of the guns, which placed as they were in turret, would almost entirely have disabled the vessel. Had I been able to have used the 30 pound charges which experience has since shown the guns capable of enduring, there is little doubt in my mind, that the contest would have been shorter and the result more decided. Further, the crew had been but a few days on board, the weather bad, mechanics at work on her up to the moment of sailing and sufficient opportunity had not been afforded to practice them properly at the guns, the mode of manipulating which was entirely novel. A few days at Hampton Roads to have drilled them and gotten the gun and turret gear in smooth working order (which from having been constantly wet on the passage was somewhat rusted) would have enabled the guns to have been handled more quickly and effectively and with better results.

And now sir, I desire to express my high appreciation of the zeal, energy and courage displayed by every officer and man under my command during this remarkable combat, as well as during this remarkable combat, as well as during the trying scenes of the passage from New York. I commend one and all most heartily to the favorable consideration of the Department and of the country.

Lieutenant Greene, the executive officer, had charge in the turret, and handled the guns with great courage, coolness and skill and throughout the engagement, as in the equipment of the vessel, and on her passage to Hampton Roads, exhibited and earnest devotion to duty, unsurpassed in my experience, and for which I had the honor in person to recommend him to the Department and to the board of admirals (some three years since) for advancement, in accordance with the precedent established in the case of Lieutenant Commander Thornton, the executive officer of the KEARSARGE. I beg leave now, most respectfully and earnestly to reiterate that recommendation.

Acting Master Saml. Howard, who volunteered as pilot, stood by me in the pilot house during the engagement and behaved

with courage and coolness. He has since been promoted to acting volunteer lieutenant for his services on that occasion.

Chief Engineer A. C. Stimers USN, made the passage in the vessel to report upon the performance of the machinery, etc., and performed useful service during the engagement in manipulating the turret.

First Assistant Engineer Isaac Newton, the chief engineer of the vessel and his assistants, managed the machinery with attention and skill and gave prompt and correct attention to all the signals from the pilot house.

Acting Assistant Paymaster W.F. Keeler and Captain's Clerk Danl. Toffey made their services very useful in transmitting my orders to the turret.

Peter Williams, quartermaster, was at the helm by my side and merited my admiration by his cool and steady handling of the wheel.

Very respectfully, your obedient servant,  
JOHN L. WORDEN,  
*Captain.*

Honorable Gideon Welles  
Secretary of the Navy, Washington, D.C.

#### APPENDIX II

LIST OF OFFICERS OF USS MONITOR, MARCH 6,  
1862

#### Lieutenant

Lieutenant Worden, John L., Commanding  
Lieutenant Greene, Samuel D., Executive Of-  
ficer

Stodder, Louis N., Master  
Webber, John J.N., Master  
Logue, Daniel C., Assistant Surgeon  
Keeler, W.P., Paymaster  
Newton, Isaac, 1st Assist. Engineer  
Campbell, Albert B., 2nd Assist. Engineer  
Hands, R.W., 3rd Assist. Engineer  
Sunstrum, A.T., 3rd Assist. Engineer  
Toffey, Daniel, Captain's Clerk  
Frederickson, Geo., Acting Master's Mate  
Stimers, A.C., Chief Engineer, passenger, and  
volunteer officer

MUSTER ROLL USS MONITOR BEFORE SAILING  
FROM NEW YORK NAVY YARD 6 MARCH, 1862

Augier, Richard, Quartermaster  
Atkins, John, Seaman  
Anderson, Hans, Seaman  
Bringman, Girick, Carpenter's Mate  
Baston, Anton, Seaman  
Bryan, William, Yeoman  
Crown, Joseph, Gunner's Mate  
Cuddeback, David, Capt. Steward  
Carroll, Thomas 1st, Capt. Hold  
Conklin, John P., Quarter Gunner  
Carroll, Thomas 2d, 1st Class Boy  
Connolly, Anthony, Seaman  
Driscoll, John, 1st Class Fireman  
Durst, William, Coal Heaver  
Fisher, Hugh, 1st Class Fireman  
Feeny, Thomas, Coal Heaver  
Fenwick, James, Seaman  
Garrety, John, 1st Class Fireman  
Geer, George S., 1st Class Fireman  
Hubbell, R.K., Ship's ———  
Hannan, Patrick, 1st Class Fireman  
Joyce, Thomas, 1st Class Fireman  
Leonard, Matthew, 1st Class Fireman  
Longhran, Thomas, Seaman  
McPherson, Norman, Seaman  
Moore, Edward, Wardroom Cook  
Murray, Lawrence, Wardroom Steward  
Mooney, Michael, Coal Heaver  
Mason, John, Coal Heaver  
Marion, William, Seaman  
Nichols, William H., Landsman  
Peterson, Charles, Seaman  
Quinn, Robert, Coal Heaver  
Riddey, Francis A., Seaman  
Rooney, John, Master-at-Arms  
Richardson, William, 1st Class Fireman  
Roberts, Ellis, Coal Heaver  
Sinclair, Henry, Ship's Cook  
Seery, James, Coal Heaver  
Stocking, John, Boatswain's Mate

Stearns, Moses M., Quartermaster  
Sylvester, Charles, Seaman  
Truscott, Peter, Seaman  
Tester, Abraham, 1st Class Fireman  
Viall, Thomas B., Seaman  
Williams, Peter, Quartermaster  
Williams, Robert, 1st Class Fireman  
Welch, Daniel, Seaman  
John L. Worden, Lt. Commander

#### A TRIBUTE TO HUMBLE MAYOR HADEN E. MCKAY, JR., M.D.

#### HON. JACK FIELDS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Thursday, February 1, 1996*

Mr. FIELDS of Texas. Mr. Speaker, it is with profound sadness that I bring to the attention of the House the passing of former Humble, TX, Mayor Haden Edwards McKay, Jr., M.D. Dr. McKay died on Saturday, January 13 in Humble—a town he lived in, helped build, and governed for more than three quarters of a century. Indeed, Dr. McKay was known throughout my home town simply as "Mr. Humble."

I know you join with me in extending your deepest sympathy to his loving wife of 55 years, Lillian McKay.

Dr. McKay served as an Humble city councilman for 14 years before beginning his 24-year tenure as mayor. During that time, he oversaw Humble's transition from a sleepy little town with wooden sidewalks and privately-owned utility companies to a modern, booming town with an unsurpassed quality of life for all of its people.

The impact Dr. McKay had on my home town—both as a respected medical doctor and a dedicated public servant—was demonstrated by the more than 1,000 persons who attended his funeral in the Humble Civic Center on Wednesday, January 17.

Dr. McKay was, first and foremost, a medical professional who delivered into this world and cared for generations of Humble-area residents—including generations in my own family. With his family, Dr. McKay moved to Humble in late 1919. He graduated from Charles Bender High School—now Humble High School—in 1926 before receiving his bachelor of science degree from Mississippi State University and his medical degree from the Chicago Medical School in 1936. With his father, the late Dr. Haden E. McKay, Sr., he opened a thriving medical practice in Humble in 1938.

Some health care providers might have retired to easier and more peaceful pastures as they aged. Not Dr. McKay. He passed away Saturday at 87; he saw his last patient on the day before his death.

It was that type of dedication that earned Dr. McKay innumerable medical and community service awards.

In 1993, Dr. McKay received the Dr. Nathan Davis Award, presented by the American Medical Association, in recognition of his long and distinguished medical career as well as his government and community service. In 1979, he received the Distinguished Service Award of the Texas Medical Association, only the fourth physician to receive the award.

Dr. McKay was a past president of the Texas Academy of Family Practice; a past chairman of the board of councilors to the

Texas Medical Association; a past president of the Harris County Academy of General Practice; and a former committee member of the American Medical Association. He found and served as the first chief of staff of the Northeast Medical Center Hospital, and he was a medical staff member at both St. Joseph Hospital and Memorial Baptist Hospital in Houston.

Dr. McKay even found a way to combine his love of medicine with his devotion to his country. In 1942, he enlisted in the U.S. Army Medical Corps as a 1st lieutenant. Serving until 1946, he held the rank of major at the time of his discharge.

Despite the pressures and long hours Dr. McKay spent caring for the health of his neighbors, he also found time to serve his community in other ways. A long-time member of the Humble Area Chamber of Commerce, Dr. McKay was the recipient of the chamber's Outstanding Citizen Award—which was later renamed the Haden E. McKay Award. Dr. McKay was a longtime member of the Humble Intercontinental Rotary Club, of which he was a charter member and a past president, and he was an active member of the First United Methodist Church of Humble.

Dr. McKay was a member of the Masonic Lodge and the Arabia Shrine. He not only was the recipient of a 50-year Masonic membership pin, but he was presented with the Sam Houston Award by the Most Worshipful Grand Master of the Grand Lodge of the State of Texas—the highest Masonic award for distinguished service that a Texas Mason can receive.

As mayor of Humble, Dr. McKay played a key role in building a new community center; in remodeling and expanding the new Humble City Hall; in building a new criminal justice center; in building a new fire/EMS center; in building a new public works center; in expanding city parks and the criminal justice center; in spearheading the effort to build Deerbrook Shopping Mall; and in offering a site for the Houston Intercontinental Airport.

Mr. Speaker, it is fair to say that Dr. Haden E. McKay, Jr., was larger than life. For several generations of Humble residents, he was the man who delivered them into this world; cared for them when they were sick; ensured the quality of their life and the lives of their fellow citizens as their mayor; and comforted their survivors following their passing.

Dr. McKay did for my home town what he did for many of his patients—helping it grow from infancy to maturity, providing his wisdom and compassion in time of need, and prescribing effective treatments for the problems that inevitably arise in any community as it grows and matures.

Mr. Speaker, those of us who knew him, loved him, and depended on his wise counsel, were deeply saddened at Dr. McKay's passing. But we know that our community, and those of us whose lives he touched, are much the better for his having spent his life among us. We will continue to honor his memory and the contributions he made to our city's well-being, and we will continue to keep him, and his beloved Lilian, in our thoughts and our prayers.

ANTITRUST HEALTH CARE  
ADVANCEMENT ACT OF 1996

HON. HENRY J. HYDE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Thursday, February 1, 1996*

Mr. HYDE. Mr. Speaker, today I am introducing legislation designed to ensure that the antitrust laws permit full utilization of private cooperative initiatives which can help make the Nation's health care system more efficient. H.R. 2925, the Antitrust Health Care Advancement Act of 1996, provides that when doctors, nurses, and hospitals form integrated joint ventures to offer health care services, their conduct will be reviewed on the basis of its reasonableness—rule of reason—for purposes of the antitrust laws. The end result of this case-by-case analysis will be to increase consumer choice while ensuring full competition in the marketplace.

Health care provider networks, or HCPN's—those composed of doctors, hospitals, and other entities who actually deliver health care services—are potentially vigorous competitors in the health care market. Their formation will lead to lower health care costs and higher quality of care. Costs will be lower because contracting directly with health care providers would eliminate an intermediate layer of overhead and profit. Quality will be higher because providers, and particularly physicians, would have direct control over medical decisionmaking. Physicians and other health care professionals are better qualified than insurers to strike the proper balance between conserving costs and meeting the needs of the patient.

Currently, however, there are obstacles to the formation of HCPN's. One of the most serious is the application of the antitrust laws to such groups in a manner which does not allow the network to engage in joint pricing agreements, regardless of whether its effect on competition is positive rather than negative. It is this obstacle, that H.R. 2925 will eliminate, by conforming agency enforcement practices to the manner in which courts have interpreted the law.

Antitrust law prohibits agreements among competitors that fix prices or allocate markets. Such agreements are per se illegal. Where competitors economically integrate in a joint venture, however, agreements on prices or other terms of competition that are reasonably necessary to accomplish to procompetitive benefits of the integration are not unlawful. Price setting conduct by these joint ventures should be evaluated under the rule of reason, that is, on the basis of its reasonableness, taking into account all relevant factors affecting competition.

The antitrust laws treat individual physicians as separate competitors. Thus, networks composed of groups of physicians which set prices for their services as a group will be considered per se illegal under the antitrust laws if they are not economically integrated joint ventures. In the typical provider network, competing physicians relinquish some of their independence to permit the venture to win the business of health care purchasers, such as large employers. These networks promise to provide services to plan subscribers at reduced rates. The ventures also achieve another central goal of health care reform: careful, common sense controls on the provision of unnecessary care.

However, agreements among physicians who retain a great deal of independence but set fees for their services as part of a network bear a striking resemblance to horizontal price fixing agreements. These are the most disfavored and most quickly condemned restraints in antitrust jurisprudence. The key factual question which distinguishes an arrangement that is per se unlawful from one which, upon consideration of the circumstances, is acceptable because it is not anticompetitive in nature, is the degree of integration of the individuals who form the network.

While the antitrust laws provide substantial latitude in the context of collaboration among health care professionals, there is an understandable degree of uncertainty associated with their enforcement. Because each network involves unique facts—differences not only in the structure of the network, but also in the market in which it will compete—the ability of providers to prospectively determine whether their arrangement will be considered legal is limited.

In order to eliminate this uncertainty, and to encourage procompetitive behavior that would otherwise be chilled, the Department of Justice and Federal Trade Commission have established a mechanism for prospective review of proposed HCPN's. In 1993, the antitrust enforcement agencies jointly issued "Statements of Enforcement Policy and Analytical Principles Relating to Health Care and Antitrust." These guidelines, which were amended in 1994, contain safety zones which describe providers network joint ventures that will not be challenged by the agencies under the antitrust laws, along with principles for analysis of joint ventures that fall outside the safety zones. A group of providers wishing to embark on a joint venture may request an advisory opinion from the agencies. The agencies, after reviewing the particulars of the proposed venture, then determine whether the network would fall within a safety zone, or otherwise not be challenged under the antitrust laws.

The problem is that these enforcement guidelines articulate standards that are more restrictive than the realities of the agencies' enforcement practices and the current state of the law. They treat as per se illegal many more networks than the antitrust laws would require.

The guidelines promise rule of reason treatment to ventures where the competitors involved are "sufficiently integrated through the network." This is consistent with judicial interpretations of the law. See, e.g., *Broadcast Music, Inc. v. Columbia Broadcasting Sys.*, 441 U.S. 1, 19–20 (1979). Where the guidelines diverge significantly from current law, however, is in defining integration solely as the sharing of "substantial financial risk." A network which integrates in any other way—regardless of the extent of that integration, or whether a court interpreting the antitrust laws would find it to be integrated—cannot qualify as a legitimate joint venture. This means that the agencies would not proceed to examine the specific facts of these joint ventures to determine their likely impact on competition; the arrangement would be deemed per se illegal.

This restrictive notion of what constitutes a legitimate joint venture discourages procompetitive ventures from entering the health care marketplace, under the guise of antitrust enforcement. It excludes potential provider networks which would mean an expanded set of