

SENATOR MCFARLAND: It should be pro-rated according to their fault.

SENATOR SMITH: Okay, now then I have another question. Is it possible, and thank you for that clarification then. Do you agree with him on that?

SENATOR ASHFORD: Pro-rata, so it would be...

SENATOR SMITH: All right.

SENATOR ASHFORD: The plaintiff would take (inaudible) 40 percent.

SENATOR SMITH: So he's correct.

SENATOR ASHFORD: Yes.

SENATOR SMITH: Okay, now let me ask you another question and that is, if the...can't, at the same time, since the plaintiff is more at fault than the person that he's suing, in effect, the individuals, not collectively but individually more at fault for what occurred, can they be in a position of suing him?

SENATOR ASHFORD: Sure.

SENATOR SMITH: So are we opening, is that presently...

SENATOR ASHFORD: Sure, and that's the law as it stands today, that in...in that scenario that you've raised, which is a good example, it's an excellent example, the scenario that you have raised the plaintiff would bring the action. And, if it's that close a case, where you have three defendants like that that are 20, 30 percent negligent, in almost all cases you're going to have a counter suit or a counter claim by those defendants back against the plaintiff. So then it would be no different, Senator Smith, than what we have now as far as the case would go the same way. But when the jury makes its determination as to fault and damages it would have that different standard or that allocation standard rather than slight gross.

PRESIDENT: Time.

SENATOR ASHFORD: That's, basically, how it would work. A different appli...a different standard is applied, the case is