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Collection/Office of Origin: Speechwriting, White House Office of
Series: Speech File Draft Files
Subseries: Chron File, 1989-1993

OA/ID Number: 13615
Folder ID Number: 13615-003

Folder Title:
American Society of Newspaper Editors 4/9/92 [OA 6100]

Stack:	Row:	Section:	Shelf:	Position:
G	26	18	1	2

Document No. 319459ss

WHITE HOUSE STAFFING MEMORANDUM

DATE: 4/2/92 ACTION/CONCURRENCE/COMMENT DUE BY: FRI. 4/3/92 NOON

SUBJECT: PRESIDENTIAL REMARKS: AMERICAN BUSINESS CONFERENCE
TUESDAY, 4/7/92 - 2:00pm

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	HORNER	<input type="checkbox"/>	<input checked="" type="checkbox"/>
SKINNER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	MCBRIDE	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SCOWCROFT	<input checked="" type="checkbox"/>	<input type="checkbox"/>	MOORE	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DARMAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	PETERSMEYER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BRADY	<input type="checkbox"/>	<input checked="" type="checkbox"/>	PORTER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BROMLEY	<input type="checkbox"/>	<input type="checkbox"/>	ROGICH	<input checked="" type="checkbox"/>	<input type="checkbox"/>
CALIO	<input type="checkbox"/>	<input type="checkbox"/>	ROLLINS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DEMAREST	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SMITH	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FITZWATER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	YEUTTER	<input type="checkbox"/>	<input checked="" type="checkbox"/>
GRAY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	FINDLAY	<input type="checkbox"/>	<input checked="" type="checkbox"/>
HOLIDAY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	KAUFMAN	<input type="checkbox"/>	<input checked="" type="checkbox"/>
BOSKIN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	MCGROARTY	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

REMARKS:

Please forward your comments directly to Dan McGroarty, Rm. 122, x2930, no later than NOON, FRIDAY, APRIL 3, with a copy to this office. Thank you.

RESPONSE:

Linda - Comments enclosed *Sda ff*

PHILLIP D. BRADY
Assistant to the President

02 APR 2 P12:13

(Ferguson/Simon)
April 2, 1992
Draft Two
BUSINESSPRESIDENTIAL REMARKS: AMERICAN BUSINESS CONFERENCE
WILLARD HOTEL
TUESDAY, APRIL 7, 1992
2:00 PM

[Acknowledgments, joke]

It is always a pleasure to speak with members of the American Business Conference, because it is always a pleasure to speak with the best.

I would like to talk to you today about the future -- the future of our country generally, and more particularly the future of our country's business environment. In fact, we cannot separate the two. The America of the 21st century -- its ability to make peace in the world, to foster strong families, to create rewarding jobs -- will be shaped today, in large part by how hospitable we make America for business.

We can learn from your success. The key to the success of any high-growth company is the wise deployment of resources. The successful company channels labor and investment into those areas with the potential for the greatest expansion and the highest return. You take the risk; you reap the reward; everyone, meanwhile, benefits from the wealth you create.

That, in brief, is the genius of entrepreneurial capitalism. Our system has made America the envy of the world, the most prosperous country on earth, affording the highest standard of living to the largest number of people in history. With one-

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twentieth of the world's population, we produce one-fourth of the world's goods and services.

What accounts for our preeminence? The answer, I believe, lies in our resiliency, our historic ability to innovate, to change as the world changes. America's world leadership is not automatic; it is not a birthright. We must continue to earn it, day by day, quarter by quarter, year by year. The world now is changing at a pace no one could have dreamed of a generation ago. And America, which has led the world's transformation, must change with it.

Over the last several years deadweights have begun to slow the engine of growth -- inefficiencies a competitive economy cannot tolerate. I have isolated five areas for reform, five critical ways in which America must change if we are to continue to lead the world. You understand the urgency, for each of these problems presents itself to American companies not as an abstraction but in the most immediate way: as a cost of doing business -- a cost you can't control, an expenditure with no possible return.

When our legal system becomes incapable of resolving disputes in a timely and civil manner, business loses the incentive to innovate and take risks. When health care costs escalate, business picks up much of the tab. When government imposes barriers to trade, business pays the price in opportunities lost. When our children leave school without rudimentary skills, business bears the burden in lowered

productivity. And when government freezes in gridlock, business can no longer plan rationally for the future.

Each of our system's failings saps your resources, drawing away your investment and manhours from productive tasks. Allow me to address them one by one.

I'll start with the crying need to reform our country's civil justice system. Every American has heard the stories of bizarre or frivolous lawsuits; but most of you have lived them, tales that could have been torn from the pages of Kafka. Consider one example, related by one of your members, Roger Coleman, president of Rykoff-Sexton, a food manufacturer and distributor.

After record earnings in 1989, Mr. Coleman publicly expressed his confidence that 1990 would be even better. When earnings fell short by two percent, his hopeful statement became the cause of a shareholder class-action lawsuit.

First came a meeting with plaintiffs' contingency-fee lawyers, at which the merits of the case were never even discussed. "The issue," says Mr. Coleman, "was the depths of our pockets." Next came the nightmare of discovery: endlessly expensive and invasive. The company's managers, instead of managing, spent their time preparing for depositions. The lawsuit, he says, "brought everything to a stop."

In the end, rather than permit the total exhaustion of company resources, Mr. Coleman decided to settle. The tab for this exercise in futility: \$8.7 million. As Mr. Coleman says:

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"That's over \$8.7 million that was diverted from new investments in jobs and facilities."

The scenario is repeated daily throughout American business. It is not repeated, let me stress, among our world competitors. This absurd drain on productivity is a peculiarly American phenomenon, putting us at an increasing disadvantage in the international marketplace.

Only the United States has seen a 382 percent increase in the number of lawyers over a twelve year period. Only the United States spends more than \$80 billion annually in direct litigation costs, perhaps four times that in indirect costs. Fear of lawsuits has driven almost half of U.S. manufacturers to withdraw products from world markets. One out of every four American companies has discontinued certain types of product research for the same reason.

We must remove this ball and chain from our ability to produce and compete worldwide. My competitiveness council, led by Vice President Quayle, has offered 50 recommendations for legal reform. They would limit discovery to reasonable proportions, discourage some frivolous suits through a "loser-pays" rule, and offer alternative means of resolving disputes.

Some of these 50 comprehensive recommendations I have instituted by Executive Order; others are contained in our Access to Justice Act; and still others will take place at the state level, using the model reforms we have proposed.

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The effects will be far-reaching, extending into another area critically in need of reform. Medical malpractice premiums almost doubled in the second half of the 1980s. Doctors have begun practicing "defensive" medicine, ordering unnecessary tests and procedures to protect against litigation.

This too drives up health care costs. The trends are simply unsustainable. From less than 6 percent 30 years ago, total health care expenditures are today about 13 percent of ~~GDP~~ *GNP* LT. Incredibly, some mid-range estimates put that figure at 30 percent by the year 2030 -- that's thirty cents of every dollar of national income spent on health care.

It is not hard to imagine what this would mean for American business. The average American company already spends more on health premiums each year than it earns in after-tax profits. And this trend too is heading upward toward disaster.

Reform of the system is inescapable. But we face a crossroads. Some have advocated nationalized care; others propose the so-called "pay or play" approach, which I am convinced is merely a step on the road to nationalized care.

Neither is acceptable. Neither will preserve the quality of our country's health care, which remains the best in the world. I will not let that high quality be taken away from the American people through some scheme of government control.

Nationalized care means rationed care; its promise of cost containment is a mirage. "Pay or play" would dump still more mandates on business. A 9 percent payroll tax would mean a 34

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percent increase in a company's insurance costs. That money must come from somewhere -- and for a company unable to pass along the added costs through higher prices, that means decreased investment, lower wages, and fewer jobs.

There is an alternative. My proposed health care reform will build on our system's strengths, preserving the quality of care. We will increase consumer choice. Through transferable credits, we will assure access to basic health insurance for the uninsured, and control costs through market incentives. And we will not raise taxes on American employers.

I have targeted a third area for attention -- like the others, absolutely critical to our success in the coming decades. You understand that for America to succeed economically at home, we must succeed economically abroad. The fastest growing companies among your group -- the ones creating the greatest number of jobs here at home -- are those with far-reaching involvement in foreign markets.

I am committed to opening markets to American products, removing the government-imposed barriers that act as a hidden tax on American business. Each market shut off by protection is a lost opportunity to sell your products. A successful conclusion to the current Uruguay round of trade negotiations, for instance, could increase world output by \$5 trillion over the next decade. More than \$1 trillion of that boom will go to the United States.

Even closer to home, exports to Mexico have more than doubled over the five years -- creating more than 260,000

LJ. - Should be organized better; put education stuff together and make stronger.

7

American jobs. Our North American Free Trade Agreement will lock in those gains, creating with Canada a \$6 trillion market, the largest in the world.

As world trade expands, the need for a sophisticated, well-educated workforce will intensify. Yet the fact is grim and undeniable: our current educational system is unable to produce the workers the highly competitive world market demands. And make no mistake: a failure to produce a world-class workforce will only provide an incentive to move new jobs overseas.

Our educational failures have hit American employers hard. English is now the language of international business; yet only 20 percent of 17-year-olds can write a simple two-paragraph letter applying for a job. The situation in geography, math and science is equally dire. Too many businesses are forced to pay twice for the education of prospective employees -- once through taxes that support our schools, and again through job training to remedy the failures of those schools in educating our young.

Communities have begun taking matters into their own hands, with local businesses often acting as catalyst. ABC's Vital Link, which works with local schools to establish learning incentives for students, is a perfect example of the community-based efforts our children need.

Still, there is much for government to do. This year, seven different federal agencies will spend \$18 billion on a patchwork of 60 vocational training programs. Is it any wonder that so many Americans who seek training don't know how to get it?

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Working with state and local governments, our Job Training 2000 initiative will bring coherence to these programs and offer "one-stop shopping" to aspiring workers. Private industry councils, composed mostly of businessmen, are crucial to our strategy. They would manage programs tailored to the specific needs of local labor markets. And they will be accountable for the quality and efficiency of their programs.

[Placeholder for Labor announcement] *Is this Beck? L.T.*

In stressing accountability and local control, Job Training 2000 perfectly complements a revolution now taking place in American education as a whole -- a revolution essential to creating a world-class workforce. Our America 2000 initiative aims to reinvent American schools. We know how to do it. We set high standards for students. We make teacher training a top priority. And we make schools more accountable, by forcing them to compete. That means giving parents the opportunity to choose their children's schools.

I am convinced that each of these major reforms -- restoring sanity to our legal system, ensuring quality health care for all, expanding world trade, and reinventing American education -- is essential to this country's future productivity. The time for tinkering is done; we can afford no more half-measures, no more pondering and chin-pulling. If business is to get on with its work of creating wealth and jobs for America, we must undertake real reform -- root-to-branch change -- wherever our system has failed us.

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No wonder, then, that each of the reforms I speak of faces powerful opposition from special interests who profit from the status quo. So I have targeted a final reform, no less important than the others. If America is to change, American government must change. Last week in Philadelphia, I spoke in some detail on the paralysis that grips the federal government. This paralysis prevents Washington from making even the most rudimentary decisions of public policy. The results are plain: a deficit that is a fiscal and a moral outrage, a permanent governing class oblivious to the national interest, hundreds of wasteful programs that live in perpetuity.

The steps I outlined in Philadelphia will restore accountability and responsiveness to a system that has been broken for too long. [Placeholder for economic analysis insert.]

A responsive government will give the reforms I've outlined today a fair hearing, even though the special interests are arrayed against them. These approaches are grounded in basic principles, a way of looking at the world. Government must trust the wisdom of markets more than the whims of bureaucrats. The freely made decisions of businessmen and women must take precedence over the engineering schemes of government. All of our institutions -- from the U.S. Congress to the local school board -- must be accountable to those they serve.

Over the last decade, America has changed the world. Today we are blessed with the opportunity to change America. With these principles as our guide, we will meet the challenges -- and

*To the Fed.
Bureaucracy*

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exploit the opportunities -- of the world that is even now being
born.

God bless you, and God bless the United States of America.

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Document No. 319459ss

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FITZWATER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	YEUTTER	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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REMARKS:

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RESPONSE:

See comments. And Justice attachment. Thanks.
PK
Paul Korfanta
04/03

Sec. Alexander will be providing comments on education section... will not be ready until 1:00 pm. Thanks.

PK

PHILLIP D. BRADY
 Assistant to the President
 and Staff Secretary
 Ext. 2702

(Ferguson/Simon)
April 2, 1992
Draft Two
BUSINESS

02 APR 2 12:13

PRESIDENTIAL REMARKS: AMERICAN BUSINESS CONFERENCE
WILLARD HOTEL
TUESDAY, APRIL 7, 1992
2:00 PM

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It is always a pleasure to speak with members of the American Business Conference, because it is always a pleasure to speak with the best.

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twentieth of the world's population, we produce one-fourth of the world's goods and services.

What accounts for our preeminence? The answer, I believe, lies in our resiliency, our historic ability to innovate, to change as the world changes. America's world leadership is not automatic; it is not a birthright. We must continue to earn it, day by day, quarter by quarter, year by year. The world now is changing at a pace no one could have dreamed of a generation ago. And America, which has led the world's transformation, must change with it.

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productivity. And when government freezes in gridlock, business can no longer plan rationally for the future.

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I'll start with the crying need to reform our country's civil justice system. Every American has heard the stories of bizarre or frivolous lawsuits; but most of you have lived them, tales that could have been torn from the pages of Kafka.

Consider one example, related by one of your members, Roger Coleman, president of Rykoff-Sexton, a food manufacturer and distributor.

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In the end, rather than permit the total exhaustion of company resources, Mr. Coleman decided to settle. The tab for this exercise in futility: \$8.7 million. As Mr. Coleman says:

See
Justice
attachment

4

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Only the United States has seen a 382 percent increase in the number of lawyers over a twelve year period. Only the United States spends more than \$80 billion annually in direct litigation costs, perhaps four times that in indirect costs. Fear of lawsuits has driven almost half of U.S. manufacturers to withdraw products from world markets. One out of every four American companies has discontinued certain types of product research for the same reason.

We must remove this ball and chain from our ability to produce and compete worldwide. My competitiveness council, led by Vice President Quayle, has offered 50 recommendations for legal reform. They would limit discovery to reasonable proportions, discourage some frivolous suits through a "loser-pays" rule, and offer alternative means of resolving disputes.

Some of these 50 comprehensive recommendations I have instituted by Executive Order; others are contained in our Access to Justice Act; and still others will take place at the state level, using the model reforms we have proposed.

(Justice) X others we have framed as revisions to the Federal rules of procedure and evidence;

See
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5

The effects will be far-reaching, extending into another area critically in need of reform. Medical malpractice premiums almost doubled in the second half of the 1980s. Doctors have begun practicing "defensive" medicine, ordering unnecessary tests and procedures to protect against litigation.

This too drives up health care costs. The trends are simply unsustainable. From less than 6 percent 30 years ago, total health care expenditures are today about 13 percent of GDP. Incredibly, some mid-range estimates put that figure at 30 percent by the year 2030 -- that's thirty cents of every dollar of national income spent on health care.

X It is not hard to imagine what this would mean for American ^(Labor) ^{and for employment prospects of America's working men and women.} business. The average American company already spends more on health premiums each year than it earns in after-tax profits. And this trend too is heading upward toward disaster.

Reform of the system is inescapable. But we face a crossroads. Some have advocated nationalized care; others propose the so-called "pay or play" approach, which I am convinced is merely a step on the road to nationalized care.

Neither is acceptable. Neither will preserve the quality of our country's health care, which remains the best in the world. I will not let that high quality be taken away from the American people through some scheme of government control.

Nationalized care means rationed care; its promise of cost containment is a mirage. "Pay or play" would dump still more mandates on business. A 9 percent payroll tax would mean a 34

percent increase in a company's insurance costs. That money must come from somewhere -- and for a company unable to pass along the added costs through higher prices, that means decreased investment, lower wages, ^{reduced benefits,} and fewer jobs. ^{(Labor) X}

There is an alternative. My proposed health care reform ^{(Labor) X} will build on our system's strengths, preserving the quality of care. We will increase consumer choice. ^{We will provide affordability of benefits,} Through transferable ^{so people won't be locked into their current job.} credits, we will assure access to basic health insurance for the uninsured, and control costs through market incentives. And we will not raise taxes on American employers.

I have targeted a third area for attention -- like the others, absolutely critical to our success in the coming decades. You understand that for America to succeed economically at home, we must succeed economically abroad. The fastest growing companies among your group -- the ones creating the greatest number of jobs here at home -- are those with far-reaching involvement in foreign markets. ^(USTR)

I am committed to opening markets to American ^{goods and services, ✓} ~~products~~ removing the government-imposed barriers that act as a hidden tax on American business. Each market shut off by protection is a lost opportunity to sell your products. A successful conclusion to the current Uruguay round of trade negotiations, for instance, could increase world output by \$5 trillion over the next decade. More than \$1 trillion of that boom will go to the United States.

Even closer to home, exports to Mexico have more than doubled over the five years -- creating more than ~~250,000~~ ^{300,000} ^(USTR) ^{they can defend this (includes 101 #10)}

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American jobs. Our North American Free Trade Agreement will ~~lock~~ ^{X(Labor)} ^{export these gains,} ~~in those gains,~~ creating with Canada a \$6 trillion market, ~~the~~ ^(USITR) ^{one of} largest in the world. ✓

As world trade ~~expands~~ ^{grows}, the need for a sophisticated, well-educated workforce will intensify. Yet the fact is grim and undeniable: our current educational system is unable to produce the workers the highly competitive world market demands. And make no mistake: a failure to produce a world-class workforce ^{X(Labor)} ^{the high-skilled, high-wage} will only provide an incentive to move ~~new~~ jobs overseas.

Our educational failures have hit American employers hard. English is now the language of international business; yet only 20 percent of 17-year-olds can write a simple two-paragraph letter applying for a job. The situation in geography, math and science is equally dire. Too many businesses are forced to pay twice for the education of prospective employees -- once through taxes that support our schools, and again through job training to remedy the failures of those schools in educating our young.

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Still, there is much for government to do. This year, seven different federal agencies will spend \$18 billion on a patchwork of 60 vocational training programs. Is it any wonder that so many Americans who seek training don't know how to get it?

Working with state and local governments, our Job Training 2000 initiative will bring coherence to these programs and offer "one-stop shopping" to aspiring workers. Private industry councils, composed mostly of businessmen, are crucial to our strategy. They would manage programs tailored to the specific needs of local labor markets. And they will ~~be accountable for~~ ^{ensure (labor)} the quality and efficiency of ~~their~~ ^{these} programs.

Delete →

~~[Placeholder for Labor announcement]~~

Pls. let me know if you decide on an insert here. Several depts. would be very interested.
Paul K.
x6630

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I am convinced that each of these major reforms -- restoring sanity to our legal system, ensuring quality health care for all, expanding world trade, and reinventing American education -- ^{(labor) and job training} is essential to this country's future productivity. The time for tinkering is done; we can afford no more half-measures, no more pondering and chin-pulling. If business is to get on with its work of creating wealth and jobs for America, we must undertake real reform -- root-to-branch change -- wherever our system has failed us.

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Over the last decade, America has changed the world. Today we are blessed with the opportunity to change America. With these principles as our guide, we will meet the challenges -- and

10

exploit the opportunities -- of the world that is even now being
born.

God bless you, and God bless the United States of America.

#



Office of the Attorney General
Washington, D. C. 20530

April 3, 1992

MEMORANDUM TO: PAUL KORFONTA

FROM:

EUGENE SCALIA

The Justice Department has the following comments on the American Business Conference speech:

1. The President should not refer to the Rykoff-Sexton suit as he does. As described, the suit is not self-evidently unwarranted. Nor is it self-evident that the \$8.7 million settlement was extortionary. The danger is that the President could be embarrassed by subsequent press investigations showing the strength of the shareholders' case. Such a rebuttal would also be a blow to civil justice reform argument generally. With this memo I am faxing a few articles the speechwriters might draw on. Again, though, I think we should be careful about the President opining on the merits of cases where the side we favor lost, unless the case is obviously absurd.

I also have a large package of statistics and horror stories the speechwriters should call for if interested.

2. If the the second full paragraph on page 4 of the speech was drawn from last summer's Competitiveness Council "Agenda," below are more precise accounts of what the surveys cited revealed. The present language overstates the case; I suggest a middle ground be considered:

"Half of the CEOs responding to a recent survey believe that liability concerns have a major impact on the ability of American firms to compete internationally."

"10 percent of the respondents to the same survey have discontinued certain types of products research. If they had been the target of a products liability suit, the number rose to 40%."

3. I have a small change on page four that I'm faxing in addition to those articles.

"That's over \$8.7 million that was diverted from new investments in jobs and facilities."

The scenario is repeated daily throughout American business. It is not repeated, let me stress, among our world competitors. This absurd drain on productivity is a peculiarly American phenomenon, putting us at an increasing disadvantage in the international marketplace.

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others we have framed as revisions to the federal rules of procedure and evidence

THE WALL STREET JOURNAL.

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With Punitive Damages, Let the Foreigner Beware

"So a bank from Finland owns a company in Dallas that makes a loan to Mrs. Barlow and sells it to some Japs."

This argument from the lawyer for Willie Mae Barlow could not have made it much clearer to jurors in Alabama that the defendants were not exactly 'Barna neighbors. The jury decided to award \$6 million in punitive damages based on a contract

Rule of Law

By L. Gordon Crovitz

dispute that left Mrs. Barlow with a profit.

The case of *Union Mortgage v. Barlow* is the latest fashion in punitive damages from Alabama, whose law already attracted the attention of the U.S. Supreme Court. It adds a new wrinkle to contingency-fee lawyering—that a little xenophobia goes a long way in a courtroom.

The case is one of many lawsuits based on loans to high-risk borrowers arranged through home-improvement firms. Mrs. Barlow contracted for an \$6,000 loan, \$2,000 in cash and \$6,000 for home repairs, secured by a mortgage on her house. She got the cash and about \$1,500 worth of home repairs, but stopped paying back the loan after about \$500 in payments. She and her son sued, and the jury ruled there was fraud in the relationship between the contractor and the bank that provided the funds. The jury awarded the plaintiffs \$150,000 in compensatory damages and \$6 million in punitive damages.

Now this kind of home-repair lending can be a sharp practice, most commonly used in lending to poorer homeowners. Still, one justice on the Alabama Supreme Court had an interesting proposal based on the plaintiffs being at fault for breaching the loan agreement. The justice said he

would "refuse to allow the plaintiffs to be rewarded for their misdeeds," but got no other justices to agree that the punitive-damages award should be given to the state treasury, not to the plaintiffs.

The jury heard very clearly that Union Mortgage, based in Dallas, is a subsidiary of Skopbank. One irony is that this is a government-owned bank in Finland, meaning that Finnish taxpayers are the ones who are in theory being sent the lesson of punitive damages. According to the court transcript, the plaintiffs' lawyer told the jury this involved a bank "over in Finland, if ya'll don't know that's a country up there where it's cold all the time and has reindeer up on the Baltic Sea."

The lawyer explained what happened when the Finnish bank sold mortgages in the secondary market. "The mortgage on Mrs. Barlow's house here in Lowndes County ended up with the Japanese over there being the people that own it." Then came the reference to "Japs." It's a wonder he didn't mention that Finland is near where all those communists used to be.

More than 50 similar lawsuits were brought against Union Mortgage in Alabama. So far, five other families have been awarded \$45 million, \$40 million of it in punitive damages.

These cases stand for the extraterritorial application of the sue-the-other-state's-defendant rule identified by Richard Neely, an outspoken justice of the West Virginia Supreme Court. He has written that "as long as I am allowed to redistribute wealth from out-of-state companies to injured in-state plaintiffs, I shall continue to do so." Foreigners are at even greater risk than American defendants who happen to be from out of state.

The *Union Mortgage* case also establishes the Supreme Court of Alabama as an excellent test case of tort reform undone. The last time the U.S. Supreme Court grappled with the issue of whether some

punitives are so grotesque that they violate the Due Process Clause of the Constitution came in another Alabama case, *Pacific Mutual v. Haslip*.

The court ruled in this case that punitive damages can be unconstitutional, but the award here was constitutional even though it was 200 times the amount of actual damages. The justices could find no bright-line test, concluding only that an Alabama statute protected defendants by instructing judges to make sure verdicts are "not grossly out of proportion to the severity of the offense."

Haslip was decided on March 4, 1991, but on March 8, the Alabama Supreme Court invalidated the Alabama tort-reform

*"If ya'll don't know,
that's a country up there
where it's cold all the time
and has reindeer."*

law the U.S. high court relied on to ensure defendants of due process. One Alabama justice dissented, noting that the *Haslip* opinion now "seems hollow."

Texas is at least as dangerous a place to do business. Joe Jamail, the contingency-fee lawyer who won the \$10 billion award in *Pennzoil v. Texaco* is back in the news. Last month he won a \$550 million

jury verdict—\$530 million of it in punitive damages—in a securities lawsuit against MiniScribe. MiniScribe is bankrupt, so the firm's accountants and investment bankers were stuck with the damages. The fraud, which they discovered, cost them more than it cost the plaintiffs. The defendants have since reached an undisclosed settlement with Mr. Jamail rather than risk the uncertainties of appeal.

The good news from Texas is that its Supreme Court recently agreed to review a \$30 million punitive-damages award in a

case where two fishermen died after using a chemical preservative in the hold of a ship. The manufacturer included very clear warnings that the chemicals must be used in an open, well-ventilated area.

Judges in some jurisdictions do exercise active discretion over outlandish awards. States including Wisconsin and Utah crafted higher tests for these quasi-criminal fines even before the U.S. justices ruled in *Haslip*. Despite Justice Neely's candid admission about the judicial interest in broad liability rules, he helped make West Virginia the most recent state to tighten its test for punitive damages.

There is more than one way to deal with absurd punitive damages. A group of 37 former casino dealers took a spin on the roulette wheel of justice in 1989 and won a \$45 million verdict in a Nevada court for wrongful termination by the Las Vegas Hilton. The jury verdict included \$30 million in punitive damages and an additional \$7 million for emotional distress from being fired.

Federal Appeals Court Judge Alex Kozinski plucked the ball out of the winning slot last week when he reversed the damage awards by declaring that the hotel had the right to fire its employees under Nevada law. The state has at-will rules, meaning that employers can terminate workers with or without cause. Some of the casino dealers tried to argue that they had oral agreements that they wouldn't be fired, but Judge Kozinski said that Nevada law makes it clear that vague communications are not binding contracts.

Some jurisdictions are getting some control over punitive damages, but others are losing what control they had. The world is on notice that our damage awards are unpredictable, arbitrary and capricious. Until the U.S. Supreme Court can find clear rules for when courts go too far, punitive damages will continue to mock the ideal of American justice.

Knocking the System

Dan Quayle found the right rhetoric with his broadsides against the legal system. But his proposed solutions face a fight from consumer groups and lawyers.

BY W. JOHN MOORE

CHICAGO—In the International Ballroom at the Fairmont Hotel, the tension mounts. The 600 litigators in the room have dined on good food, swapped trial stories, saluted each others' accomplishments. All of them are battle-scarred veterans of courtroom combat. Many have become wealthy because of their legal skills.

In the midst of the luncheon hubbub, Theodore R. Tetzlaff, chairman of the Litigation Section of the American Bar Association (ABA), strides to the microphone. The talk stops, the chatter ends. Tetzlaff is to introduce the next speaker, Vice President Dan Quayle, who two months ago, at the ABA's annual convention in Atlanta, harshly criticized the American legal system. Quayle's Atlanta speech provoked a vigorous rebuttal from the ABA president. It also instantly made the Vice President look like a populist challenging the entrenched interests of powerful lawyers perceived as protecting their livelihoods.

Now a less confrontational Quayle has come to Chicago to make peace. The ABA scheduled meetings to discuss the details of Quayle's 50-point plan for legal reforms. "This is not a lion's den," Tetzlaff began his remarks welcoming Quayle, producing nervous titters from his audience. "Nor is it a petting zoo."

To the relief of the assembled lawyers, the Vice President this time avoided a direct attack on their profession and his. But Quayle did not retreat from a 50-point plan that would, among its highlights, restrict punitive damages, limit pretrial demands for information and force the loser in a lawsuit to pay the winning side's legal fees. (See box, p. 2845.) Nor did Quayle abandon a popular theme. Americans, Quayle told the lawyers, "believe the current system favors the rich, big business and the lawyers." (For more on Quayle's strategy, see box, p. 2846.)

Lawyers have much more than Dan Quayle to worry about. Many of Quayle's recommendations provoked them to harsh criticism. But concern is growing about a legal system that amply rewards

attorneys without necessarily providing justice. "The chord Quayle touched was the discontent with a legal system that is expensive, complex, unresponsive and unaccountable," said Leonard Steinhorn, executive director of HALT—An Organization of Americans for Legal Reform.

"When you talk to foreign businessmen and government officials, you hear that our legal system is the subject of ridicule around the world," added Richard K. Willard, an attorney with the Washington law firm of Steptoe & Johnson and a former assistant attorney general in charge of the Justice Department's Civil Division.

Quayle's proposals came as both medical malpractice and product liability legislation are pending on Capitol Hill. The pro-business Washington Legal Foundation (WLF) has launched attacks on excessive contingency fees in California and New York. "Every unscrupulous trial attorney who rips off his client with excessive contingency fees is on notice that WLF will carry its program from coast to coast," WLF general counsel Daniel J. Popeo said.

In a flood of books and articles, conservatives have attacked the torrent of litigation they say burdens the court system, damages American competitiveness and rewards lawyers with huge fees while the victims are forced to play in a lottery system that provides riches to some but leaves others penniless.

Walter K. Olson, author of *The Litigation Explosion: What Happened When America Unleashed the Lawsuit* (E.P. Dutton, 1991), in an interview blamed the surge in lawsuits and rising litigation costs on a breakdown in the professionalism of the bar over the past two decades. In his book, Olson, a fellow at the conservative Manhattan Institute in New York City, concluded that "the unleashing of litigation . . . torments the provably innocent and rewards the palpably irresponsible."

CATALOG OF HORRIBLES

Horror stories and statistical nightmares abound. Repeated endlessly by

critics, the most famous is about the Philadelphia woman who, after undergoing a scanning procedure, filed suit against her doctor. She alleged that the dye used in the test had interfered with psychic powers that enable her to communicate with the 17th-century English poet John Milton. A jury awarded her \$986,000. The case was ultimately reversed.

There is the famous case of a woman who sued a state lottery after a ball with her number on it dropped in and then popped out of the hole. Had it stayed in, she would have won the grand prize of \$3 million. A jury awarded her the jackpot, plus \$400,000 for emotional trauma.

The driving force for these suits is legal entrepreneurs. "If you can make this stuff fly, there is a tremendous profit motive here," Peter W. Huber, a senior fellow with the Manhattan Institute, said.

Worse than these anecdotes, litigation critics say, is the plague of lawsuits based on faulty scientific data or so-called junk science. Despite thousands of lawsuits, and the occasional victory by plaintiffs' lawyers, most courts have rejected claims that the anti-nausea drug Bendectin causes birth defects. But those decisions came only after plaintiffs' lawyers rejected a \$120 million settlement offer from a pharmaceutical company as too low.

And then there was the spate of suits over the whooping cough vaccine in the mid-1980s that produced millions for trial lawyers. There is no proof that the vaccine caused brain damage. The great fear of the chemical dioxin led the U.S. government to evacuate the entire town of Times Beach, Mo., in 1982 and spend \$200 million on environmental cleanup costs. The health official whose research on dioxin led to the evacuation conceded that he was wrong in a May speech.

But those tales may not reflect the reality of the legal system, some experts noted. A recent study of personal injury lawsuits by the RAND Corp.'s Institute for Civil Justice in Santa Monica, Calif., found that 10 per cent of people injured in any type of accident filed lawsuits to recover damages. In fact, only a small percentage of those seriously injured even contemplate a lawsuit; and only a tiny fraction of them decide to file suits, the study said. "Americans' behavior does not accord with the more extreme pictures of litigiousness that have been put forward by some," the study concluded.

"What is offered rhetorically as the rationale for the [Quayle] proposals is not supported by the empirical data," RAND researcher Deborah R. Hensler said.

In fact, there is evidence that the product liability caseload has eased a bit over the past few years. Product liability suits filed in federal courts dropped 36 per



Manhattan Institute fellow Walter K. Olson, a leading critic of the law profession. The legal system "torments the... innocent and rewards the palpably irresponsible."

cent from 1985-91, according to the Administrative Office of the U.S. Courts.

Other legal experts complained that Quayle has exploited growing resentment of lawyers and court costs without understanding the realities of the legal system. "What Quayle is doing is mouthing the platitudes of a conservative group of business interests that he believes reflect the best interest of the Republican Party," argued Andrew F. Popper, deputy dean of the American University's Washington College of Law. "His rhetoric is shopworn, old school, anti-consumer nonsense."

Nor is it likely to produce a winner. Like other efforts to reform the legal system, the Quayle proposals face tremendous opposition from a powerful alliance of consumer groups and trial lawyers. No legislation to change product liability or medical malpractice laws has ever moved far in Congress. Even an effort to put railroad employees under a state workers' compensation system covering all other employees instead of the tort system has never advanced in Congress.

COMPETITIVENESS ISSUE?

Corporate laments about the legal system and the litigation explosion are nothing new. Many of today's outrageous anecdotes sound familiar to people acquainted with the liability crisis of the mid-1980s. Then, the issue was the unavailability of insurance that forced the closing of city swimming pools and the locking of the doors of neighborhood gyms. Efforts to deal with those problems came to naught when insurance companies refused to promise that rates would

drop if various liability reforms were adopted.

Now the buzzword is competitiveness. Almost half of all U.S. manufacturers have withdrawn products from world

QUAYLE'S PLAN

Here are highlights of the civil justice reform plan proposed by the President's Council on Competitiveness.

STREAMLINE PRETRIAL PROCEDURES

- Support greater use of alternative dispute resolution.
 - Encourage settlements by forcing the party rejecting the settlement to pay trial costs if award is less than the offer.
 - Restrict lawsuits filed by state prisoners.
 - Limit pretrial demands for information.
- Penalize lawyers who abuse this process.

SPEED THE TRIAL PROCESS

- Require federal courts to decide cases immediately if facts are not in dispute.
- Establish early trial dates.
- Allow expert testimony only if based on "widely accepted" scientific theories.

CURB LITIGATION COSTS

- Eliminate contingency fees for expert witnesses.
- Limit punitive damages to the amount of compensatory damages.
- Adopt a "loser pays" rule for attorneys' fees in some cases.
- Oppose legislation that provides attorneys' fees only for parties filing lawsuits.

QUAYLE TO LAWYERS: 'I HAVE THE CONSTITUENCY'

On his flight back from an Oct. 25 speech to members of the American Bar Association (ABA) in Chicago, Vice President Dan Quayle discussed Bush Administration initiatives to make major changes in the American legal system. Here is an edited version of the interview.

It seemed that your rhetoric was a little more restrained than it was during the ABA annual convention in Atlanta in August. Are you backing off from what has been called lawyer bashing?

No, not at all. I said I was going to talk about similar things that I talked about

these proposals. Aren't those groups primarily lawyers?

In my speech, I said that this reform is too necessary and the momentum is too great to be derailed by special interests or other institutions. That was a direct reference to the leadership of the ABA, which is very reluctant to support this, and other special-interest groups out there that just don't like it.

ABA president Talbot D'Alemberte said he was extremely pleased because, in Chicago, you no longer blamed the legal system for America's economic problems.

First of all, I never said that in Atlanta. I think the president of the ABA at the time tried to interpret it as such. That is why I came back to say: "Let's not be extreme about this whole matter. Let's take a commonsense approach." Today, I was very exact in saying education, capital gains and trade [are crucial to economic growth]. But I said the legal system and especially things like product liability are a factor to competitiveness. They don't even like to hear that. But it's true.

In terms of international competitiveness, we are really only talking about the costs of insurance. So how important can that be?

No, no, no. With product liability, there are the costs of insurance but also the cost of defending suits in court. There are lawyers' fees. There are all sorts of costs associated with this. I don't want to leave the impression that this [effort] is the only way to generate jobs and opportunities. There is a lot more to competitiveness than reforming the legal system.

We've seen product liability and medical malpractice reform proposals. Now, you've proposed what basically are procedural reforms. Do you think all of these reforms are needed?

Yes, I do. I think a test case for us on Capitol Hill, to see the political

strength, is the product liability legislation. It's further ahead than it has ever been before. We got it out of committee [in the Senate]. That's very constructive, very positive. We've got a little bit of momentum. Plus this and the new executive order [affecting federal lawyers]. You might see some changes in the federal rules of civil procedure.

What you call the fairness rule—which switches legal costs to the loser of a court case—is obviously a controversial part of your plan.

Limits on punitive damages is probably the most controversial. The fairness rule is certainly controversial, and one that I hope that they [ABA members] eventually accept, but I don't know.

Under the new executive order, do you think federal lawyers will hesitate to bring cases out of concern that if they lose, they'll have to pay the other side's legal fees?

I have never known bureaucrats to be terribly sensitive about spending taxpayer dollars. So I don't think that will be an inhibiting factor.

In an earlier speech, you spoke of trying to galvanize public support. Has there been any effort made yet?

Yes. We went to Harrisburg, Pa. We went to Columbus and had two roundtable discussions. I had a very diversified group. I have been putting together a constituency at the grass roots.

What's the timetable for your package?

Let me just say that the horsepower is there to have these reforms instituted. I'm realistic enough to know that I am not going to get everything. But I'm greedy enough to try to ask for everything. We will get some stuff this year. And what we don't get this year we will come back for next year.

Could there be a backlash against the bar if lawyers are too aggressive in opposing this? Your speech in Atlanta touched a nerve among people who don't like lawyers.

I have the constituency. They don't. I have the following. The American people want to do what I am talking about.



Vice President Dan Quayle

in Atlanta. We laid out essentially the same agenda. I think we've gotten people's attention, that this is an important issue, that it is a crisis that we face, that the legal system is in trouble. Now that we have gotten everyone's attention, we are not backing off one bit. Some will still interpret it as lawyer bashing. I did not want it interpreted in Atlanta as lawyer bashing. And I think here, we basically gave the same message.

In a recent speech to a business group, you made repeated mentions of "entrenched interests" that are opposed to

Richard A. Blum

markets, according to recent survey by the Conference Board, a business-supported group. A quarter of U.S. companies have discontinued some forms of product research. Approximately 15 per cent of companies have dismissed workers because of stringent product liability laws, the Conference Board added.

In some industries, the United States is no longer a world leader, the pro-business argument goes. Twenty years ago, 13 U.S.-based pharmaceutical companies conducted research on contraception and fertility. Now there is only one, according to a 1988 American Medical Association report.

Meanwhile, the U.S. legal industry has flourished, with the number of lawyers up 382 per cent between 1977 and 1989, according to the Commerce Department. The United States has 20 times the number of lawyers as Japan per 100,000 population, reported Great Britain's *Cambridge Law Journal*.

Although critics dispute their contentions, officials in the light aircraft industry say that product liability costs destroyed U.S. manufacturers. "We have not built a single-engine airplane for five years, and that is the reason," Jerry J. Pullen, corporate director-Washington for Cessna Aircraft Co., said. In the four years of the Carter Administration, the industry built 34,000 airplanes, he said. During the eight years of the Reagan Administration, the number was 10,000. Employment nosedived from 22,800 workers to 6,000 workers, Pullen said.

Virtually all of the recent lawsuits involving the aircraft industry have claimed that faulty design or manufacturing defects caused a crash that resulted in an injury or a fatality. But a Beech Aircraft Corp. study of 203 accidents involving its products from 1983-86 that were investigated by the federal government—and in which the cause of the crash could be determined—concluded that defects caused none of the crashes. Pilot error alone was responsible for 70 per cent of the crashes, the study ordered by Congress asserted. The average cost to the aircraft company to fight each lawsuit was \$530,000, the study said.

Neither the aircraft industry's laments nor the competitiveness arguments hold water, according to some legal experts. According to the American University's Popper, the U.S. aircraft industry made dangerous airplanes. Moreover, during a recession, American manufacturers are not going to sell many expensive aircraft,

especially in the face of the cheaper labor costs foreign competitors enjoy.

The scare stories, the competitiveness arguments and the growing dislike of lawyers have encouraged a spate of old and new proposals in Congress. In the face of rising medical costs, there is a renewed effort to change the medical malpractice laws.

The Quayle package, which emerged from the White House Council on Competitiveness, which he heads, is perhaps the most ambitious so far. Bush, in late October, announced that federal lawyers would unilaterally adopt at least some of these provisions by including the payment of legal fees in some cases when the Justice Department or other federal agencies lose a case.

Quayle's proposal has met with a great deal of resistance. At a press conference after the Vice President addressed the

On Capitol Hill, a long-standing effort to produce a uniform federal product liability statute seems to be gaining some momentum. But its prospects for enactment any time in the near future appear unlikely, at best. Despite rosy predictions from the business community about the prospects for product liability reform, Pamela Gilbert, the legislative director of Congress Watch, a pro-consumer group, flatly predicted that legislation won't pass Congress this session. "I think they have lost momentum over the last year, not gained it," she said.

Opposition from consumer organizations is a key reason why product liability reform may again be stuck in congressional quicksand. Although the Senate Commerce, Science and Transportation Committee has approved a bill, it is unlikely to reach the Senate floor until next year. Opponents include Judiciary



American University deputy law dean Andrew F. Popper. He says that Quayle's tort reform "rhetoric is shopworn, old school, anti-consumer nonsense."

Litigation Section here. ABA president Talbot D'Alemberte questioned Quayle's entire approach. "It would not be my starting point if you are going to use the word *justice* and couple it with the word *reform*," D'Alemberte said.

Even those experts who could be considered friendlier to the proposal questioned whether it can be turned into legislation. "They must know if they live in the real world that a lot of these provisions won't get adopted," Robert E. Litan of the Brookings Institution and the editor of *The Liability Maze* (Brookings, 1991) said. According to Litan, Quayle's proposals may be more about scoring political points than winning legislative victories.

Committee chairman Joseph R. Biden Jr., D-Del., and Majority Leader George J. Mitchell, D-Maine. On the House side, Judiciary Committee chairman Jack Brooks, D-Texas, remains a formidable foe.

FIGHTING THE LAWYERS

But the real obstacle is not just Capitol Hill barons such as Biden, Brooks and Mitchell; it's the Association of Trial Lawyers of America (ATLA). Their alliance with consumer groups and their ability to raise campaign money—mostly for Democrats—has made the trial attorneys a powerful force for years. (*See NJ*, 12/8/90, p. 2962.)

At least one Senate Republican who has advocated various changes in the tort liability system, Mitch McConnell of Kentucky, has a more limited goal at the moment. Frustrated with ATLA's success in thwarting any legislation, McConnell has devised a tactic to divide the trial lawyers and the consumer groups. During the recent debate on the 1991 Civil Rights Act, McConnell, himself a lawyer, offered an amendment that would have capped the amount lawyers could collect from their clients at 20 per cent of the judgment awarded. Currently, it's standard practice for lawyers to collect a third of the damages awarded, but often, higher percentages are charged.

"If the consumer groups are so interested in the victim, then why aren't they interested in capping fees?" McConnell said in an interview. "The plaintiffs' lawyers are interested in victims only insofar as that gives them a lawsuit. They are not interested in victims when it comes to distributing the proceeds from the lawsuit."

McConnell's amendment was handily defeated on the Senate floor. Consumer advocates contend that any limits on legal fees should inflict equal pain on defense lawyers as well as plaintiffs' lawyers. But McConnell intends to return with this proposal.

"It would be important to show that the trial lawyers can lose," said McConnell, who was strongly supported in his reelection bid by business and doctors and opposed by Kentucky's trial lawyers. "It would give people some stomach. Any time any aspect of tort law reform comes up, people are hiding under their desk."

McConnell has no illusions about his chances. "The perception is that AIPAC [American Israel Public Affairs Commit-



Republican Sen. Mitch McConnell of Kentucky
He wants to show that the trial lawyers can be beaten.

tee] is the strongest lobby in town. Wrong. The strongest lobby in Washington by far is ATLA," he said.

Just ask the railroad industry. For years, the industry has wanted to overturn the Federal Employers' Liability Act (FELA), a 1908 statute that gives railroad workers the right to sue when injured. It was enacted before most states passed workers' compensation statutes. In Congress, legislation has been introduced sporadically to repeal FELA, but only one hearing has ever been held on the issue. (See *NJ*, 11/25/89, p. 2895.)

The 1908 Federal Employers' Liability Act gives injured railway employees the right to sue, rather than claim workers' compensation benefits. It has resulted in a classic business-labor confrontation, in which railroad executives contend that the law is a costly anachronism.

Railroad executives have long squabbled with the unions over the issue, calling FELA an anachronism in an era of workers' compensation plans that cover employees in virtually every other industry. Railroad workers, by contrast, are free to file multimillion-dollar damage claims that, if won, can be far more lucrative than compensation plan awards. If workers lose, however, they get nothing.

Figures provided by the railroad industry indicate that FELA has been expensive for its member companies. Despite a drop in employees and fewer injuries, claims have increased and damage awards have skyrocketed. In 1981, according to the Association of American Railroads, railroads had 459,711 employees who reported 47,838 injuries. Payouts to workers totalled \$398.5 million. In 1990, the number of workers had dropped by almost half, to 254,661. Injuries fell to 20,970. But payouts more than doubled, to \$877.4 million.

The FELA battle has been a classic business-labor confrontation. But the railroads' position has received intellectual support from

a surprising quarter, the Council for Court Excellence, a federally supported organization involved in civil justice issues. In a report released in September, the council called for FELA's repeal, concluding that the existing system is "irrational." The FELA compensation system is too expensive and contributes to the logjam in the federal courts, the report said.

The council reported that FELA cases account for 5-8 per cent of all civil trials in federal court. FELA lawyers were also criticized. Litigation costs accounted for 43 per cent of the compensation received by victims, the study said. It concluded that "the highest transaction cost in FELA cases is the expense of attorneys' fees."

Samuel F. Harahan, the council's executive director, asserted in an interview that "the forces that benefit from this system are keeping this anachronism alive."

THE QUAYLE PLAN

The Bush Administration's 50-point plan sends much the same message about the costs and processes of the American legal system. The Vice President's message boosting the plan is a relatively simple one: too much discovery, too much litigating and, by extension, too many lawyers.

The public might like the sound of

Quayle's proposal. But all of its key provisions have been attacked. The proposed cap on punitive damages, for example, is not even supported by friendly Republicans such as McConnell, who said that the seriously injured deserved huge monetary judgments in some instances.

"Any study of punitive damages will demonstrate that the actual amount of dollars spent is so small that it can not be said to have an impact on any single industry, much less our national competitiveness posture," the American University's Popper said.

According to several recent studies, the actual number of huge punitive damage awards, of the sort listed as horrors by tort reform advocates, is actually quite small. Punitive damages were awarded in 9 per cent of the product liability cases won by plaintiffs from 1985-88, according to a comprehensive study by Stephen Daniels and Joanne Martin of the American Bar Foundation in a *Minnesota Law Review* article published last year.

The case studies also demonstrate that punitive damages are typically awarded only in the most egregious cases of deliberate corporate wrongdoing, contended Linda A. Lipsen, legislative counsel for Consumers Union of United States Inc. "We're talking about cases where there is a smoking gun in the company's file," she said.

SHOULD LOSERS PAY?

Quayle's idea that the loser should pay litigation costs also has numerous detractors. The so-called English rule, which Quayle calls the fairness rule, is used virtually everywhere except in the United States. Its goal is to eliminate nuisance suits and reduce the over-all amount of litigation. Supporters of the Quayle proposal, such as McConnell, say the rule would curb litigiousness by making those with grievances think twice about seeking redress in court.

But critics believe the loser-pays rule would discourage the average citizen from filing even a justifiable case, because an adverse verdict could result in huge legal fees. "It is a total nonstarter," the Brookings Institution's Litan predicted.

The Consumers Union's Lipsen added that "it creates a court system for the aristocracy."

Quayle is aware that this provision has been called unfair. In his Chicago speech, the Vice President added to his prepared text new language emphasizing that the proposal would not deny anyone access to the courts.

In an interview, Quayle said that a similar proposal enacted on a trial basis in Florida showed that the provision actually encouraged suits by those seeking smaller amounts of money because they were confident that the cost of the litigation would be paid by their opponent. The Florida plan, Quayle added, "had the opposite effect. It opened up access, it opened up doors and it allowed grievances to be aired in court."

The Bush Administration is so enamored of the fee-shifting proposal that the President issued an executive order on Oct. 23 mandating that the government experiment with the loser-pays provision in its civil lawsuits. Victor E. Schwartz, a leader in the tort reform effort and a partner in the Washington law firm of Crowell & Moring, saluted the federal government for first applying the change to itself.



Consumers Union's legislative counsel Linda A. Lipsen. Businesses suing businesses caused the litigation explosion.

But consumer advocates argue that the executive order could backfire if the Justice Department finds itself paying huge legal fees to Wall Street lawyers who win cases for savings and loan industry clients or alleged environmental polluters like Exxon Corp. Fear of losing a high-profile case could have a chilling effect on government lawyers, Congress Watch's Gilbert said. "Either the government is going to [have to risk] paying millions of dollars in attorneys' fees, or the government is not going to bring good cases," Gilbert added. "Nobody has thought through the ramifications of this proposal."

Some legal experts think the best way to try the fee-shifting proposal is in corporate legal fights. Disputes between businesses are a major contributor to the federal court backlog, they point out.

The fee-shifting arrangement would also be fairer in corporate legal battles, the experts argue, because such contests are usually between two roughly equal parties on a level playing field.

"The litigation explosion exists in one main area: where businesses are suing each other," Lipsen said. "Why aren't businessmen saying... 'We can't control ourselves?'"

Despite their criticisms of the Administration's proposals and their track record on Capitol Hill in rebuffing changes in the tort system, defenders of the status quo conceded that Quayle's anti-lawyer attack has given some oomph to the cause of tort reform. "We're very concerned that an effort like this could have an impact," Lipsen said. "They gin up people's distrust of lawyers and the process."

Of course, none of this is really new. In his *Commentaries on the Laws of England* written more than 200 years ago, the British jurist Sir William Blackstone called lawyers the "pests of civil society, perpetually endeavoring to disturb the repose of their neighbors and officiously interfering in other men's quarrels."

But those types of attacks have, over the years, had little impact. According to the Newtown (Pa.)-based Law School Admissions Service, 94,200 people applied to law school this year, for the fourth year in a row a record number.

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Quayle vs. Jamail

Dan Quayle owes a big thank you to Joe Jamail, the contingency-fee lawyer best known for winning \$11 billion for Pennzoil against Texaco. The Texas King of Torts did it again, just as the Vice President was renewing his campaign to reform the lawyers.

Mr. Jamail's latest spin at the lottery wheel of American justice is a good example of the excesses. He won a \$550 million judgment against MiniScribe Corp., \$530 million of it in punitive damages, from a Galveston jury last week. This 25-to-1 ratio of punitive to actual damages is typical of a legal system out of control, which is why Mr. Quayle wants states to limit punitives to an amount equal to the actual harm.

MiniScribe is in bankruptcy, so much of the ruinous judgment would be paid by its former accountants at Coopers & Lybrand and former investment bankers at Hambrecht & Quist—who point out they were also defrauded, for much more than Mr. Jamail's bondholder clients. It's also an irony that it was an internal investigation by MiniScribe that uncovered the falsifying of records by some of its employees. So whom is the legal system punishing for what by assessing punitive damages? The jury, by the way, decided Mr. Jamail should get some \$3 million for his labors.

Many lawyers are outraged by Jamail-style litigation, but the American Bar Association as a trade group is too busy circling the wagons to see the absurdities. Talbot D'Alemberte, the group's president, called Mr. Quayle's criticisms "stupid, silly, preposterous, gratuitously insulting and offensive." (*Gratuitously?*) His counterproposal is that the taxpayers provide "full and adequate funding" for the Legal Services Corp., which subsidizes litigation by making direct payments to ... lawyers.

The Access to Justice Act that Mr. Quayle proposed last week includes a limited federal application of what he

calls the Fairness Rule, which is also called the English Rule or the Everywhere-but-America Rule. This would require the losing side to pay the winning side's legal expenses. This should deter abusive lawyering. A contingency-fee lawyer would have a harder time getting defendants to settle cases for some amount less than their legal expenses to defend the lawsuit. By the same token, defendants who know they are liable could no longer simply pay lawyers to use delaying tactics in the hopes of wearing down plaintiffs.

The Quayle proposal would protect consumers in lawsuits against corporations. There is a provision that limits the amount of attorneys' fees that the losing side would have to pay to the amount he spent on his own lawyers. Judges would have broad discretion to award even less if the losing party has limited means. People with good legal claims would have better access to the courts because they'd know their legal fees would be compensated.

There is also a bill in Congress that would create new national rules for product-liability litigation. This bill, which the nation's Governors unanimously support despite federalism concerns, would begin to push the standard of liability back to where it was before the liability explosion 30 years ago. There would be a tighter definition of punitive damages, and plaintiffs would no longer be able to go after the deepest pockets regardless of fault.

There is a problem with these reform proposals. As President Bush noted in a recent speech, "There are 62 lawyers" in the Senate. The trial lawyers are also major financial contributors to Members of Congress. So the chances of new legislation are small, especially if lawyers prefer to serve as targets for the Bush-Quayle campaign rather than lead the reform themselves.

47

WHITE HOUSE STAFFING MEMORANDUM

DATE: 4/2/92 ACTION/CONCURRENCE/COMMENT DUE BY: FRI. 4/3/92 NOON

SUBJECT: PRESIDENTIAL REMARKS: AMERICAN BUSINESS CONFERENCE
TUESDAY, 4/7/92 - 2:00pm

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	HORNER	<input type="checkbox"/>	<input checked="" type="checkbox"/>
SKINNER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	MCBRIDE	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SCOWCROFT	<input checked="" type="checkbox"/>	<input type="checkbox"/>	MOORE	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DARMAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	PETERSMEYER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BRADY	<input type="checkbox"/>	<input checked="" type="checkbox"/>	PORTER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BROMLEY	<input type="checkbox"/>	<input type="checkbox"/>	ROGICH	<input checked="" type="checkbox"/>	<input type="checkbox"/>
CALIO	<input checked="" type="checkbox"/>	<input type="checkbox"/>	ROLLINS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DEMAREST	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SMITH	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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GRAY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	FINDLAY	<input type="checkbox"/>	<input checked="" type="checkbox"/>
HOLIDAY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	KAUFMAN	<input type="checkbox"/>	<input checked="" type="checkbox"/>
BOSKIN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	MCGROARTY	<input type="checkbox"/>	<input checked="" type="checkbox"/>

REMARKS:

Please forward your comments directly to Dan McGroarty, Rm. 122, x2930, no later than NOON, FRIDAY, APRIL 3, with a copy to this office. Thank you.

RESPONSE:

PHILLIP D. BRADY
 Assistant to the President
 and Staff Secretary
 Ext. 2702

decline of economic storm of growth of special interests

how growth occurs

Adam Simon Michael Port internal econ

(Ferguson/Simon)
April 2, 1992
Draft Two
BUSINESS

02 APR 2 12:13

Mancur Olson

Lead and Decline of Nations

PRESIDENTIAL REMARKS: AMERICAN BUSINESS CONFERENCE
WILLARD HOTEL
TUESDAY, APRIL 7, 1992
2:00 PM

[Acknowledgments, joke]

It is always a pleasure to speak with members of the American Business Conference, because it is always a pleasure to speak with the best.

I would like to talk to you today about the future -- the future of our country generally, and more particularly the future of our country's business environment. In fact, we cannot separate the two. The America of the 21st century -- its ability to make peace in the world, to foster strong families, to create rewarding jobs -- will be shaped today, in large part by how hospitable we make America for business.

We can learn from your success. The key to the success of any high-growth company is the wise deployment of resources. The successful company channels labor and investment into those areas with the potential for the greatest expansion and the highest return. You take the risk; you reap the reward; everyone, meanwhile, benefits from the wealth you create.

That, in brief, is the genius of entrepreneurial capitalism. ^{that} Our system has made America the envy of the world, ~~the most prosperous country on earth, affording the highest standard of living to the largest number of people in history.~~ With one-

~~twentieth of the world's population, we produce one-fourth of the world's goods and services.~~

What accounts for our preeminence? The answer, I believe, lies in our resiliency, our historic ability to innovate, to change as the world changes. America's world leadership is not automatic; it is not a birthright. We must continue to earn it, day by day, quarter by quarter, year by year. The world now is changing at a pace no one could have dreamed of a generation ago. And America, which has led the world's transformation, must change with it.

Over the last several years deadweights have begun to slow the engine of growth -- inefficiencies a competitive economy cannot tolerate. I have isolated five areas for reform, five critical ways in which America must change if we are to continue to lead the world. You understand the urgency, for each of these problems presents itself to American companies not as an abstraction but in the most immediate way: as a cost of doing business -- a cost you can't control, an expenditure with no possible return.

When our legal system becomes incapable of resolving disputes in a timely and civil manner, business loses the incentive to innovate and take risks. When health care costs escalate, business picks up much of the tab. When government imposes barriers to trade, business pays the price in opportunities lost. When our children leave school without rudimentary skills, business bears the burden in lowered

productivity. And when government freezes in gridlock, business can no longer plan rationally for the future.

~~Each of our system's failings saps your resources, drawing away your investment and manhours from productive tasks. Allow me to address them one by one.~~

Let me I'll start with the crying need to reform our country's civil justice system. Every American has heard the stories of bizarre or frivolous lawsuits; but most of you have lived them, tales that could have been torn from the pages of Kafka. Consider one example, related by one of your members, Roger Coleman, president of Rykoff-Sexton, a food manufacturer and distributor.

After record earnings in 1989, Mr. Coleman publicly expressed his confidence that 1990 would be even better. When earnings fell short by two percent, his hopeful statement became the cause of a shareholder class-action lawsuit.

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In the end, rather than permit the total exhaustion of company resources, Mr. Coleman decided to settle. The tab for this exercise in futility: \$8.7 million. As Mr. Coleman says:

"That's over \$8.7 million that was diverted from new investments in jobs and facilities."

The scenario is repeated daily throughout American business. It is not repeated, let me stress, among our world competitors.

~~This absurd drain on productivity is a peculiarly American phenomenon, putting us at an increasing disadvantage in the international marketplace.~~

Only the United States has seen a 382 percent increase in the number of lawyers over a twelve year period. Only the United States spends more than \$80 billion annually in direct litigation costs, perhaps four times that in indirect costs. Fear of lawsuits has driven almost half of U.S. manufacturers to withdraw products from world markets. One out of every four American companies has discontinued certain types of product research for the same reason.

We must remove this ball and chain from our ability to produce and compete worldwide. My competitiveness council, led by Vice President Quayle, has offered 50 recommendations for legal reform. They would limit discovery to reasonable proportions, discourage some frivolous suits through a "loser-pays" rule, and offer alternative means of resolving disputes.

~~Some of these 50 comprehensive recommendations I have instituted by Executive Order; others are contained in our Access to Justice Act; and still others will take place at the state level, using the model reforms we have proposed.~~

The effects will be far-reaching, extending into another area critically in need of reform. Medical malpractice premiums almost doubled in the second half of the 1980s. Doctors have begun practicing "defensive" medicine, ordering unnecessary tests and procedures to protect against litigation.

This too drives up health care costs. The trends are simply unsustainable. From less than 6 percent 30 years ago, total health care expenditures are today about 13 percent of GDP. ~~Incredibly~~, some mid-range estimates put that figure at 30 percent by the year 2030 -- that's thirty cents of every dollar of national income spent on health care.

~~It is not hard to imagine what this would mean for American business.~~ ^{Right now} The average American company ~~already~~ spends more on health premiums each year than it earns in after-tax profits. ~~And this trend too is heading upward toward disaster.~~

Reform of the system is ~~inescapable~~. But we face a crossroads. Some have advocated nationalized care; others propose the so-called "pay or play" approach, which I am convinced is merely a step on the road to nationalized care.

Neither is acceptable. Neither will preserve the quality of our country's health care, which remains the best in the world. I will not let that high quality be taken away from the American people through some scheme of government control.

Nationalized care means rationed care; its promise of cost containment is a mirage. "Pay or play" would dump still more mandates on business. A 9 percent payroll tax would mean a 34

percent increase in a company's insurance costs. That money must come from somewhere -- and for a company unable to pass along the added costs through higher prices, that means decreased investment, lower wages, and fewer jobs.

There is an alternative. My proposed health care reform will build on our system's strengths, preserving the quality of care. We will increase consumer choice. Through transferable credits, we will assure access to basic health insurance for the uninsured, and control costs through market incentives. And we will not raise taxes on American employers.

I have targeted a third area for attention -- like the others, absolutely critical to our success in the coming decades. You understand that for America to succeed economically at home, we must succeed economically abroad. The fastest growing companies among your group -- the ones creating the greatest number of jobs here at home -- are those with far-reaching involvement in foreign markets.

John
I am committed to opening markets to American products, removing the government-imposed barriers that act as a hidden tax on American business. Each market shut off by protection is a lost opportunity to sell your products. A successful conclusion to the current Uruguay round of trade negotiations, for instance, could increase world output by \$5 trillion over the next decade. More than \$1 trillion of that boom will go to the United States.

~~Even closer to home, exports to Mexico have more than doubled over the five years -- creating more than 260,000~~

~~American jobs. Our North American Free Trade Agreement will look in those gains, creating with Canada a \$6 trillion market, the largest in the world.~~

As world trade expands, the need for a sophisticated, well-educated workforce will intensify. Yet the fact is grim and undeniable: our current educational system is unable to produce the workers the highly competitive world market demands. ~~And make no mistake: a failure to produce a world-class workforce will only provide an incentive to move new jobs overseas.~~

Our educational failures have hit American employers hard. English is now the language of international business; yet only 20 percent of 17-year-olds can write a simple two-paragraph letter applying for a job. The situation in geography, math and science is equally dire. Too many businesses are forced to pay twice for the education of prospective employees -- once through taxes that support our schools, and again through job training to remedy the failures of those schools in educating our young.

Communities have begun taking matters into their own hands, with local businesses often acting as catalyst. ABC's Vital Link, which works with local schools to establish learning incentives for students, is a perfect example of the community-based efforts our children need.

Still, there is much for government to do. This year, seven different federal agencies will spend \$18 billion on a patchwork of 60 vocational training programs. Is it any wonder that so many Americans who seek training don't know how to get it?

*Cicero the more laws
the less
justice*

8

Working with state and local governments, our Job Training 2000 initiative will bring coherence to these programs and offer "one-stop shopping" to aspiring workers. ~~Private industry councils, composed mostly of businessmen, are crucial to our strategy. They would manage programs tailored to the specific needs of local labor markets. And they will be accountable for the quality and efficiency of their programs.~~

~~[Placeholder for Labor announcement]~~

In stressing accountability and local control, Job Training 2000 perfectly complements a revolution now taking place in American education as a whole -- a revolution essential to creating a world-class workforce. Our America 2000 initiative aims to reinvent American schools. We know how to do it. We set high standards for students. We make teacher training a top priority. And we make schools more accountable, by forcing them to compete. That means giving parents the opportunity to choose their children's schools.

I am convinced that each of these major reforms -- restoring sanity to our legal system, ensuring quality health care for all, expanding world trade, and reinventing American education -- is essential to this country's future productivity. The time for tinkering is done; we can afford no more half-measures, no more pondering and chin-pulling. If business is to get on with its work of creating wealth and jobs for America, we must undertake real reform -- root-to-branch change -- wherever our system has failed us.

performance standards
but we have to
change government

school
choice
religious

No wonder, then, that each of the reforms I speak of faces powerful opposition from special interests who profit from the status quo. So I have targeted a final reform, no less important than the others. If America is to change, American government must change. Last week in Philadelphia, I spoke in some detail on the paralysis that grips ^{Congress} the federal government. This paralysis prevents Washington from making even the most rudimentary decisions of public policy. The results are plain: a deficit that is a fiscal and a moral outrage, a permanent governing class oblivious to the national interest, hundreds of wasteful programs that live in perpetuity.

not helping people
they are
supposed
to help

The steps I outlined in Philadelphia will restore accountability and responsiveness to a system that has been broken for too long. [Placeholder for economic analysis insert.]

A responsive government will give the reforms I've outlined today a fair hearing, ^{despite} even though the special interests are arrayed against them. These approaches are grounded in basic principles, a way of looking at the world. Government must trust the wisdom of markets more than the whims of bureaucrats. The freely made decisions of businessmen and women must take precedence over the engineering schemes of government. All of our institutions -- from the U.S. Congress to the local school board -- must be accountable to those they serve.

Over the last decade, America has changed the world. Today we are blessed with the opportunity to change America. With these principles as our guide, we will meet the challenges -- and

exploit the opportunities -- of the world that is even now being
born.

God bless you, and God bless the United States of America.

#

WHITE HOUSE STAFFING MEMORANDUM

92 APR 3 P12:10

DATE: 4/2/92 ACTION/CONCURRENCE/COMMENT DUE BY: FRI. 4/3/92 NOON

PRESIDENTIAL REMARKS: AMERICAN BUSINESS CONFERENCE

SUBJECT: TUESDAY, 4/7/92 - 2:00pm

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	HORNER	<input type="checkbox"/>	<input checked="" type="checkbox"/>
SKINNER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	MCBRIDE	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SCOWCROFT	<input checked="" type="checkbox"/>	<input type="checkbox"/>	MOORE	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DARMAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	PETERSMEYER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BRADY	<input type="checkbox"/>	<input checked="" type="checkbox"/>	PORTER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BROMLEY	<input type="checkbox"/>	<input type="checkbox"/>	ROGICH	<input checked="" type="checkbox"/>	<input type="checkbox"/>
CALIO	<input checked="" type="checkbox"/>	<input type="checkbox"/>	ROLLINS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DEMAREST	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SMITH	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FITZWATER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	YEUTTER	<input type="checkbox"/>	<input checked="" type="checkbox"/>
GRAY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	FINDLAY	<input type="checkbox"/>	<input checked="" type="checkbox"/>
HOLIDAY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	KAUFMAN	<input type="checkbox"/>	<input checked="" type="checkbox"/>
BOSKIN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	MCGROARTY	<input type="checkbox"/>	<input checked="" type="checkbox"/>

REMARKS:

Please forward your comments directly to Dan McGroarty, Rm. 122, x2930, no later than NOON, FRIDAY, APRIL 3, with a copy to this office. Thank you.

RESPONSE:

TO: DAN MCGROARTY

The NSC staff has no objection to the proposed presidential remarks, subject to the change noted on page 2 of the attached text.

Brent Scowcroft

Attachment

cc: Phillip D. Brady

PHILLIP D. BRADY
Assistant to the President
and Staff Secretary
Ext. 2702

(Ferguson/Simon)
April 2, 1992
Draft Two
BUSINESS

02 APR 2 P12:13

PRESIDENTIAL REMARKS: AMERICAN BUSINESS CONFERENCE
WILLARD HOTEL
TUESDAY, APRIL 7, 1992
2:00 PM

[Acknowledgments, joke]

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We can learn from your success. The key to the success of any high-growth company is the wise deployment of resources. The successful company channels labor and investment into those areas with the potential for the greatest expansion and the highest return. You take the risk; you reap the reward; everyone, meanwhile, benefits from the wealth you create.

That, in brief, is the genius of entrepreneurial capitalism. Our system has made America the envy of the world, the most prosperous country on earth, affording the highest standard of living to the largest number of people in history. With one-

twentieth of the world's population, we produce one-fourth of the world's goods and services.

sounds chauvinistic What accounts for ^{this success} ~~our preeminence~~? The answer, I believe, ✓ lies in our resiliency, our historic ability to innovate, to change as the world changes. America's world leadership is not automatic; it is not a birthright. We must continue to earn it, day by day, quarter by quarter, year by year. The world now is changing at a pace no one could have dreamed of a generation ago. And America, which has led the world's transformation, must change with it.

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It is not hard to imagine what this would mean for American business. The average American company already spends more on health premiums each year than it earns in after-tax profits. And this trend too is heading upward toward disaster.

Reform of the system is inescapable. But we face a crossroads. Some have advocated nationalized care; others propose the so-called "pay or play" approach, which I am convinced is merely a step on the road to nationalized care.

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[Placeholder for Labor announcement]

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exploit the opportunities -- of the world that is even now being
born.

God bless you, and God bless the United States of America.

#

URGENT

NATIONAL SECURITY COUNCIL EXECUTIVE SECRETARIAT STAFFING DOCUMENT

TIME STAMP

SYSTEM LOG NUMBER: 2482

ACTION OFFICER: Roslow DUE: noon 3 April

- Prepare Memo For Scoocroft/Howe
- Prepare Memo For Brady
- Prepare Memo Scoocroft Appropriate Action
- Prepare Memo For Sittmann
- Prepare Memo to McGarity

CONCURRENCES/COMMENTS: PHONE: to action officer at ext. 6538

Concur	FYI	Concur	FYI	Concur	FYI
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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COMMENTS

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WHITE HOUSE STAFFING MEMORANDUM

92 APR 3 P12:48

DATE: 4/2/92 ACTION/CONCURRENCE/COMMENT DUE BY: FRI. 4/3/92 NOON

SUBJECT: PRESIDENTIAL REMARKS: AMERICAN BUSINESS CONFERENCE
TUESDAY, 4/7/92 - 2:00pm

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	HORNER	<input type="checkbox"/>	<input checked="" type="checkbox"/>
SKINNER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	MCBRIDE	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SCOWCROFT	<input checked="" type="checkbox"/>	<input type="checkbox"/>	MOORE	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DARMAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	PETERSMEYER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BRADY	<input type="checkbox"/>	<input checked="" type="checkbox"/>	PORTER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BROMLEY	<input type="checkbox"/>	<input type="checkbox"/>	ROGICH	<input checked="" type="checkbox"/>	<input type="checkbox"/>
CALIO	<input checked="" type="checkbox"/>	<input type="checkbox"/>	ROLLINS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DEMAREST	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SMITH	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FITZWATER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	YEUTTER	<input type="checkbox"/>	<input checked="" type="checkbox"/>
GRAY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	FINDLAY	<input type="checkbox"/>	<input checked="" type="checkbox"/>
HOLIDAY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	KAUFMAN	<input type="checkbox"/>	<input checked="" type="checkbox"/>
BOSKIN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	MCGROARTY	<input type="checkbox"/>	<input checked="" type="checkbox"/>

REMARKS:

Please forward your comments directly to Dan McGroarty, Rm. 122, x2930, no later than NOON, FRIDAY, APRIL 3, with a copy to this office. Thank you.

RESPONSE:

*Please see p. 7.
Thank you.*

PHILLIP D. BRADY
 Assistant to the President
 and Staff Secretary
 Ext. 2702

(Ferguson/Simon)
April 2, 1992
Draft Two
BUSINESS

02 APR 2 P12:13

PRESIDENTIAL REMARKS: AMERICAN BUSINESS CONFERENCE
WILLARD HOTEL
TUESDAY, APRIL 7, 1992
2:00 PM

[Acknowledgments, joke]

It is always a pleasure to speak with members of the American Business Conference, because it is always a pleasure to speak with the best.

I would like to talk to you today about the future -- the future of our country generally, and more particularly the future of our country's business environment. In fact, we cannot separate the two. The America of the 21st century -- its ability to make peace in the world, to foster strong families, to create rewarding jobs -- will be shaped today, in large part by how hospitable we make America for business.

We can learn from your success. The key to the success of any high-growth company is the wise deployment of resources. The successful company channels labor and investment into those areas with the potential for the greatest expansion and the highest return. You take the risk; you reap the reward; everyone, meanwhile, benefits from the wealth you create.

That, in brief, is the genius of entrepreneurial capitalism. Our system has made America the envy of the world, the most prosperous country on earth, affording the highest standard of living to the largest number of people in history. With one-

twentieth of the world's population, we produce one-fourth of the world's goods and services.

What accounts for our preeminence? The answer, I believe, lies in our resiliency, our historic ability to innovate, to change as the world changes. America's world leadership is not automatic; it is not a birthright. We must continue to earn it, day by day, quarter by quarter, year by year. The world now is changing at a pace no one could have dreamed of a generation ago. And America, which has led the world's transformation, must change with it.

Over the last several years deadweights have begun to slow the engine of growth -- inefficiencies a competitive economy cannot tolerate. I have isolated five areas for reform, five critical ways in which America must change if we are to continue to lead the world. You understand the urgency, for each of these problems presents itself to American companies not as an abstraction but in the most immediate way: as a cost of doing business -- a cost you can't control, an expenditure with no possible return.

When our legal system becomes incapable of resolving disputes in a timely and civil manner, business loses the incentive to innovate and take risks. When health care costs escalate, business picks up much of the tab. When government imposes barriers to trade, business pays the price in opportunities lost. When our children leave school without rudimentary skills, business bears the burden in lowered

productivity. And when government freezes in gridlock, business can no longer plan rationally for the future.

Each of our system's failings saps your resources, drawing away your investment and manhours from productive tasks. Allow me to address them one by one.

I'll start with the crying need to reform our country's civil justice system. Every American has heard the stories of bizarre or frivolous lawsuits; but most of you have lived them, tales that could have been torn from the pages of Kafka. Consider one example, related by one of your members, Roger Coleman, president of Rykoff-Sexton, a food manufacturer and distributor.

After record earnings in 1989, Mr. Coleman publicly expressed his confidence that 1990 would be even better. When earnings fell short by two percent, his hopeful statement became the cause of a shareholder class-action lawsuit.

First came a meeting with plaintiffs' contingency-fee lawyers, at which the merits of the case were never even discussed. "The issue," says Mr. Coleman, "was the depths of our pockets." Next came the nightmare of discovery: endlessly expensive and invasive. The company's managers, instead of managing, spent their time preparing for depositions. The lawsuit, he says, "brought everything to a stop."

In the end, rather than permit the total exhaustion of company resources, Mr. Coleman decided to settle. The tab for this exercise in futility: \$8.7 million. As Mr. Coleman says:

"That's over \$8.7 million that was diverted from new investments in jobs and facilities."

The scenario is repeated daily throughout American business. It is not repeated, let me stress, among our world competitors. This absurd drain on productivity is a peculiarly American phenomenon, putting us at an increasing disadvantage in the international marketplace.

Only the United States has seen a 382 percent increase in the number of lawyers over a twelve year period. Only the United States spends more than \$80 billion annually in direct litigation costs, perhaps four times that in indirect costs. Fear of lawsuits has driven almost half of U.S. manufacturers to withdraw products from world markets. One out of every four American companies has discontinued certain types of product research for the same reason.

We must remove this ball and chain from our ability to produce and compete worldwide. My competitiveness council, led by Vice President Quayle, has offered 50 recommendations for legal reform. They would limit discovery to reasonable proportions, discourage some frivolous suits through a "loser-pays" rule, and offer alternative means of resolving disputes.

Some of these 50 comprehensive recommendations I have instituted by Executive Order; others are contained in our Access to Justice Act; and still others will take place at the state level, using the model reforms we have proposed.

The effects will be far-reaching, extending into another area critically in need of reform. Medical malpractice premiums almost doubled in the second half of the 1980s. Doctors have begun practicing "defensive" medicine, ordering unnecessary tests and procedures to protect against litigation.

This too drives up health care costs. The trends are simply unsustainable. From less than 6 percent 30 years ago, total health care expenditures are today about 13 percent of GDP. Incredibly, some mid-range estimates put that figure at 30 percent by the year 2030 -- that's thirty cents of every dollar of national income spent on health care.

It is not hard to imagine what this would mean for American business. The average American company already spends more on health premiums each year than it earns in after-tax profits. And this trend too is heading upward toward disaster.

Reform of the system is inescapable. But we face a crossroads. Some have advocated nationalized care; others propose the so-called "pay or play" approach, which I am convinced is merely a step on the road to nationalized care.

Neither is acceptable. Neither will preserve the quality of our country's health care, which remains the best in the world. I will not let that high quality be taken away from the American people through some scheme of government control.

Nationalized care means rationed care; its promise of cost containment is a mirage. "Pay or play" would dump still more mandates on business. A 9 percent payroll tax would mean a 34

percent increase in a company's insurance costs. That money must come from somewhere -- and for a company unable to pass along the added costs through higher prices, that means decreased investment, lower wages, and fewer jobs.

There is an alternative. My proposed health care reform will build on our system's strengths, preserving the quality of care. We will increase consumer choice. Through transferable credits, we will assure access to basic health insurance for the uninsured, and control costs through market incentives. And we will not raise taxes on American employers.

I have targeted a third area for attention -- like the others, absolutely critical to our success in the coming decades. You understand that for America to succeed economically at home, we must succeed economically abroad. The fastest growing companies among your group -- the ones creating the greatest number of jobs here at home -- are those with far-reaching involvement in foreign markets.

I am committed to opening markets to American products, removing the government-imposed barriers that act as a hidden tax on American business. Each market shut off by protection is a lost opportunity to sell your products. A successful conclusion to the current Uruguay round of trade negotiations, for instance, could increase world output by \$5 trillion over the next decade. More than \$1 trillion of that boom will go to the United States.

Even closer to home, exports to Mexico have more than doubled over the five years -- creating more than 260,000

American jobs. Our North American Free Trade Agreement will lock in those gains, creating with Canada a \$6 trillion market, the largest in the world.

As world trade expands, the need for a sophisticated, well-educated workforce will intensify. Yet the fact is grim and undeniable: our current educational system is unable to produce the workers the highly competitive world market demands. And make no mistake: a failure to produce a world-class workforce will only provide an incentive to move new jobs overseas.

Our educational failures have hit American employers hard. English is now the language of international business; yet only 20 percent of 17-year-olds can write a simple two-paragraph letter applying for a job. The situation in geography, math and science is equally dire. Too many businesses are forced to pay twice for the education of prospective employees -- once through taxes that support our schools, and again through job training to remedy the failures of those schools in educating our young.

Communities have begun taking matters into their own hands, with local businesses often acting as catalyst. ABC's Vital Link, which works with local schools to establish learning incentives for students, is a perfect example of the community-based efforts our children need.

Still, there is much for government to do. This year, seven different federal agencies will spend \$18 billion on a patchwork of 60 vocational training programs. Is it any wonder that so many Americans who seek training don't know how to get it?

Economic growth, community initiatives, and government action must all work hand-in-hand to create excellent schools and an American culture that fosters lifelong learning.

Working with state and local governments, our Job Training 2000 initiative will bring coherence to these programs and offer "one-stop shopping" to aspiring workers. Private industry councils, composed mostly of businessmen, are crucial to our strategy. They would manage programs tailored to the specific needs of local labor markets. And they will be accountable for the quality and efficiency of their programs.

[Placeholder for Labor announcement]

In stressing accountability and local control, Job Training 2000 perfectly complements a revolution now taking place in American education as a whole -- a revolution essential to creating a world-class workforce. Our America 2000 initiative aims to reinvent American schools. We know how to do it. We set high standards for students. We make teacher training a top priority. And we make schools more accountable, by forcing them to compete. That means giving parents the opportunity to choose their children's schools.

I am convinced that each of these major reforms -- restoring sanity to our legal system, ensuring quality health care for all, expanding world trade, and reinventing American education -- is essential to this country's future productivity. The time for tinkering is done; we can afford no more half-measures, no more pondering and chin-pulling. If business is to get on with its work of creating wealth and jobs for America, we must undertake real reform -- root-to-branch change -- wherever our system has failed us.

No wonder, then, that each of the reforms I speak of faces powerful opposition from special interests who profit from the status quo. So I have targeted a final reform, no less important than the others. If America is to change, American government must change. Last week in Philadelphia, I spoke in some detail on the paralysis that grips the federal government. This paralysis prevents Washington from making even the most rudimentary decisions of public policy. The results are plain: a deficit that is a fiscal and a moral outrage, a permanent governing class oblivious to the national interest, hundreds of wasteful programs that live in perpetuity.

The steps I outlined in Philadelphia will restore accountability and responsiveness to a system that has been broken for too long. [Placeholder for economic analysis insert.]

A responsive government will give the reforms I've outlined today a fair hearing, even though the special interests are arrayed against them. These approaches are grounded in basic principles, a way of looking at the world. Government must trust the wisdom of markets more than the whims of bureaucrats. The freely made decisions of businessmen and women must take precedence over the engineering schemes of government. All of our institutions -- from the U.S. Congress to the local school board -- must be accountable to those they serve.

Over the last decade, America has changed the world. Today we are blessed with the opportunity to change America. With these principles as our guide, we will meet the challenges -- and

exploit the opportunities -- of the world that is even now being
born.

God bless you, and God bless the United States of America.

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WHITE HOUSE STAFFING MEMORANDUM

92 APR 3 AM: 52

DATE: 4/2/92 ACTION/CONCURRENCE/COMMENT DUE BY: FRI. 4/3/92 NOON

SUBJECT: PRESIDENTIAL REMARKS: AMERICAN BUSINESS CONFERENCE TUESDAY, 4/7/92 - 2:00pm

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	HORNER	<input type="checkbox"/>	<input checked="" type="checkbox"/>
SKINNER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	MCBRIDE	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SCOWCROFT	<input checked="" type="checkbox"/>	<input type="checkbox"/>	MOORE	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DARMAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	PETERSMEYER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BRADY	<input type="checkbox"/>	<input checked="" type="checkbox"/>	PORTER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BROMLEY	<input type="checkbox"/>	<input type="checkbox"/>	ROGICH	<input checked="" type="checkbox"/>	<input type="checkbox"/>
CALIO	<input checked="" type="checkbox"/>	<input type="checkbox"/>	ROLLINS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DEMAREST	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SMITH	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FITZWATER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	YEUTTER	<input type="checkbox"/>	<input checked="" type="checkbox"/>
GRAY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	FINDLAY	<input type="checkbox"/>	<input checked="" type="checkbox"/>
HOLIDAY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	KAUFMAN	<input type="checkbox"/>	<input checked="" type="checkbox"/>
BOSKIN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	MCGROARTY	<input type="checkbox"/>	<input checked="" type="checkbox"/>

REMARKS:

Please forward your comments directly to Dan McGroarty, Rm. 122, x2930, no later than NOON, FRIDAY, APRIL 3, with a copy to this office. Thank you.

RESPONSE:

See Comments

PHILLIP D. BRADY
 Assistant to the President
 and Staff Secretary
 Ext. 2702

(Ferguson/Simon)
April 2, 1992
Draft Two
BUSINESS

02 APR 2 P12:13

PRESIDENTIAL REMARKS: AMERICAN BUSINESS CONFERENCE
WILLARD HOTEL
TUESDAY, APRIL 7, 1992
2:00 PM

[Acknowledgments, joke]

It is always a pleasure to speak with members of the American Business Conference, because it is always a pleasure to speak with the best.

I would like to talk to you today about the future -- the future of our country generally, and more particularly the future of our country's business environment. In fact, we cannot separate the two. The America of the 21st Century -- its ability to make peace in the world, to foster strong families, to create rewarding jobs -- will be shaped today, in large part by how hospitable we make America for business.

We can learn from your success. The key to the success of any high-growth company is the wise deployment of resources. The successful company channels labor and investment into those areas with the potential for the greatest expansion and the highest return. You take the risk; you reap the reward; everyone, meanwhile, benefits from the wealth you create.

That, in brief, is the genius of entrepreneurial capitalism. Our system has made America the envy of the world, the most prosperous country on earth, affording the highest standard of living to the largest number of people in history. With one-

twentieth of the world's population, we produce one-fourth of the world's goods and services.

What accounts for our preeminence? The answer, I believe, lies in our resiliency, our historic ability to innovate, to change as the world changes. America's world leadership is not automatic; it is not a birthright. We must continue to earn it, day by day, quarter by quarter, year by year. The world now is changing at a pace no one could have dreamed of a generation ago. And America, which has led the world's transformation, must change with it.

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productivity. And when government freezes in gridlock, business can no longer plan rationally for the future.

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After record earnings in 1989, Mr. Coleman publicly expressed his confidence that 1990 would be even better. When earnings fell short by two percent, his hopeful statement became the cause of a shareholder class-action lawsuit.

First came a meeting with plaintiffs' contingency-fee lawyers, at which the merits of the case were never even discussed. "The issue," says Mr. Coleman, "was the depths of our pockets." Next came the nightmare of discovery: endlessly expensive and invasive. The company's managers, instead of managing, spent their time preparing for depositions. The lawsuit, he says, "brought everything to a stop."

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"That's over \$8.7 million that was diverted from new investments in jobs and facilities."

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41 Hale/3/20
Only the United States has seen a ~~32~~ percent increase in the number of lawyers over a twelve year period. Only the United States spends more than \$80 billion annually in direct litigation costs, perhaps four times that in indirect costs. Fear of lawsuits has driven almost half of U.S. manufacturers to withdraw products from world markets. One out of every four American companies has discontinued certain types of product research for the same reason.

Cannot Verify Hale/3/20
 We must remove this ball and chain from our ability to produce and compete worldwide. My competitiveness council, led by Vice President Quayle, has offered 50 recommendations for legal reform. They would limit discovery to reasonable proportions, discourage some frivolous suits through a "loser-pays" rule, and offer alternative means of resolving disputes.

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It is not hard to imagine what this would mean for American business. The average American company already spends more on health premiums each year than it earns in after-tax profits. And this trend too is heading upward toward disaster.

Reform of the system is inescapable. But we face a crossroads. Some have advocated nationalized care; others propose the so-called "pay or play" approach, which I am convinced is merely a step on the road to nationalized care.

Neither is acceptable. Neither will preserve the quality of our country's health care, which remains the best in the world. I will not let that high quality be taken away from the American people through some scheme of government control.

Nationalized care means rationed care; its promise of cost containment is a mirage. "Pay or play" would dump still more mandates on business. A 9 percent payroll tax would mean a 34

percent increase in a company's insurance costs. That money must come from somewhere -- and for a company unable to pass along the added costs through higher prices, that means decreased investment, lower wages, and fewer jobs.

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I am committed to opening markets to American products, removing the government-imposed barriers that act as a hidden tax on American business. Each market shut off by protection is a lost opportunity to sell your products. A successful conclusion to the current Uruguay round of trade negotiations, for instance, could increase world output by \$5 trillion over the next decade. More than \$1 trillion of that boom will go to the United States.

Even closer to home, exports to Mexico have more than doubled over the five years -- creating more than 260,000

American jobs. Our North American Free Trade Agreement will lock in those gains, creating with Canada a \$6 trillion market, the largest in the world.

As world trade expands, the need for a sophisticated, well-educated workforce will intensify. Yet the fact is grim and undeniable: our current educational system is unable to produce the workers the highly competitive world market demands. And make no mistake: a failure to produce a world-class workforce will only provide an incentive to move new jobs overseas.

Our educational failures have hit American employers hard. English is now the language of international business; yet only 20 percent of 17-year-olds can write a simple two-paragraph letter applying for a job. The situation in geography, math and science is equally dire. Too many businesses are forced to pay twice for the education of prospective employees -- once through taxes that support our schools, and again through job training to remedy the failures of those schools in educating our young.

Communities have begun taking matters into their own hands, with local businesses often acting as catalyst. ABC's Vital Link, which works with local schools to establish learning incentives for students, is a perfect example of the community-based efforts our children need.

Still, there is much for government to do. This year, seven different federal agencies will spend \$18 billion on a patchwork of 60 vocational training programs. Is it any wonder that so many Americans who seek training don't know how to get it?

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of Education
to verify
Scully
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Working with state and local governments, our Job Training 2000 initiative will bring coherence to these programs and offer "one-stop shopping" to aspiring workers. Private industry councils, composed mostly of businessmen, are crucial to our strategy. They would manage programs tailored to the specific needs of local labor markets. And they will be accountable for the quality and efficiency of their programs.

[Placeholder for Labor announcement]

In stressing accountability and local control, Job Training 2000 perfectly complements a revolution now taking place in American education as a whole -- a revolution essential to creating a world-class workforce. Our America 2000 initiative aims to reinvent American schools. We know how to do it. We set high standards for students. We make teacher training a top priority. And we make schools more accountable, by forcing them to compete. That means giving parents the opportunity to choose their children's schools.

I am convinced that each of these major reforms -- restoring sanity to our legal system, ensuring quality health care for all, expanding world trade, and reinventing American education -- is essential to this country's future productivity. The time for tinkering is done; we can afford no more half-measures, no more pondering and chin-pulling. If business is to get on with its work of creating wealth and jobs for America, we must undertake real reform -- root-to-branch change -- wherever our system has failed us.

No wonder, then, that each of the reforms I speak of faces powerful opposition from special interests who profit from the status quo. So I have targeted a final reform, no less important than the others. If America is to change, American government must change. Last week in Philadelphia, I spoke in some detail on the paralysis that grips the federal government. This paralysis prevents Washington from making even the most rudimentary decisions of public policy. The results are plain: a deficit that is a fiscal and a moral outrage, a permanent governing class oblivious to the national interest, hundreds of wasteful programs that live in perpetuity.

The steps I outlined in Philadelphia will restore accountability and responsiveness to a system that has been broken for too long. [Placeholder for economic analysis insert.] ✓

A responsive government will give the reforms I've outlined today a fair hearing, even though the special interests are arrayed against them. These approaches are grounded in basic principles, a way of looking at the world. Government must trust the wisdom of markets more than the whims of bureaucrats. The freely made decisions of businessmen and women must take precedence over the engineering schemes of government. All of our institutions -- from the U.S. Congress to the local school board -- must be accountable to those they serve.

Over the last decade, America has changed the world. Today we are blessed with the opportunity to change America. With these principles as our guide, we will meet the challenges -- and

exploit the opportunities -- of the world that is even now being
born.

God bless you, and God bless the United States of America.

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WHITE HOUSE STAFFING MEMORANDUM

92 APR 2 P6:01

DATE: 4/2/92 ACTION/CONCURRENCE/COMMENT DUE BY: FRI. 4/3/92 NOON

SUBJECT: PRESIDENTIAL REMARKS: AMERICAN BUSINESS CONFERENCE
TUESDAY, 4/7/92 - 2:00pm

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	HORNER	<input type="checkbox"/>	<input checked="" type="checkbox"/>
SKINNER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	MCBRIDE	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SCOWCROFT	<input checked="" type="checkbox"/>	<input type="checkbox"/>	MOORE	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DARMAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	PETERSMEYER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BRADY	<input type="checkbox"/>	<input checked="" type="checkbox"/>	PORTER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BROMLEY	<input type="checkbox"/>	<input type="checkbox"/>	ROGICH	<input checked="" type="checkbox"/>	<input type="checkbox"/>
CALIO	<input checked="" type="checkbox"/>	<input type="checkbox"/>	ROLLINS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DEMAREST	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SMITH	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FITZWATER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	YEUTTER	<input type="checkbox"/>	<input checked="" type="checkbox"/>
GRAY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	FINDLAY	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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BOSKIN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	MCGROARTY	<input type="checkbox"/>	<input checked="" type="checkbox"/>

REMARKS:

Please forward your comments directly to Dan McGroarty, Rm. 122, x2930, no later than NOON, FRIDAY, APRIL 3, with a copy to this office. Thank you.

RESPONSE:

OK
BT
SR SR

PHILLIP D. BRADY
Assistant to the President
and Staff Secretary
Ext. 2702

(Ferguson/Simon)
April 2, 1992
Draft Two
BUSINESS

02 APR 2 P12:13

PRESIDENTIAL REMARKS: AMERICAN BUSINESS CONFERENCE
WILLARD HOTEL
TUESDAY, APRIL 7, 1992
2:00 PM

[Acknowledgments, joke]

It is always a pleasure to speak with members of the American Business Conference, because it is always a pleasure to speak with the best.

I would like to talk to you today about the future -- the future of our country generally, and more particularly the future of our country's business environment. In fact, we cannot separate the two. The America of the 21st century -- its ability to make peace in the world, to foster strong families, to create rewarding jobs -- will be shaped today, in large part by how hospitable we make America for business.

We can learn from your success. The key to the success of any high-growth company is the wise deployment of resources. The successful company channels labor and investment into those areas with the potential for the greatest expansion and the highest return. You take the risk; you reap the reward; everyone, meanwhile, benefits from the wealth you create.

That, in brief, is the genius of entrepreneurial capitalism. Our system has made America the envy of the world, the most prosperous country on earth, affording the highest standard of living to the largest number of people in history. With one-

twentieth of the world's population, we produce one-fourth of the world's goods and services.

What accounts for our preeminence? The answer, I believe, lies in our resiliency, our historic ability to innovate, to change as the world changes. America's world leadership is not automatic; it is not a birthright. We must continue to earn it, day by day, quarter by quarter, year by year. The world now is changing at a pace no one could have dreamed of a generation ago. And America, which has led the world's transformation, must change with it.

Over the last several years deadweights have begun to slow the engine of growth -- inefficiencies a competitive economy cannot tolerate. I have isolated five areas for reform, five critical ways in which America must change if we are to continue to lead the world. You understand the urgency, for each of these problems presents itself to American companies not as an abstraction but in the most immediate way: as a cost of doing business -- a cost you can't control, an expenditure with no possible return.

When our legal system becomes incapable of resolving disputes in a timely and civil manner, business loses the incentive to innovate and take risks. When health care costs escalate, business picks up much of the tab. When government imposes barriers to trade, business pays the price in opportunities lost. When our children leave school without rudimentary skills, business bears the burden in lowered

productivity. And when government freezes in gridlock, business can no longer plan rationally for the future.

Each of our system's failings saps your resources, drawing away your investment and manhours from productive tasks. Allow me to address them one by one.

I'll start with the crying need to reform our country's civil justice system. Every American has heard the stories of bizarre or frivolous lawsuits; but most of you have lived them, tales that could have been torn from the pages of Kafka. Consider one example, related by one of your members, Roger Coleman, president of Rykoff-Sexton, a food manufacturer and distributor.

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Only the United States has seen a 382 percent increase in the number of lawyers over a twelve year period. Only the United States spends more than \$80 billion annually in direct litigation costs, perhaps four times that in indirect costs. Fear of lawsuits has driven almost half of U.S. manufacturers to withdraw products from world markets. One out of every four American companies has discontinued certain types of product research for the same reason.

We must remove this ball and chain from our ability to produce and compete worldwide. My competitiveness council, led by Vice President Quayle, has offered 50 recommendations for legal reform. They would limit discovery to reasonable proportions, discourage some frivolous suits through a "loser-pays" rule, and offer alternative means of resolving disputes.

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This too drives up health care costs. The trends are simply unsustainable. From less than 6 percent 30 years ago, total health care expenditures are today about 13 percent of GDP. Incredibly, some mid-range estimates put that figure at 30 percent by the year 2030 -- that's thirty cents of every dollar of national income spent on health care.

It is not hard to imagine what this would mean for American business. The average American company already spends more on health premiums each year than it earns in after-tax profits. And this trend too is heading upward toward disaster.

Reform of the system is inescapable. But we face a crossroads. Some have advocated nationalized care; others propose the so-called "pay or play" approach, which I am convinced is merely a step on the road to nationalized care.

Neither is acceptable. Neither will preserve the quality of our country's health care, which remains the best in the world. I will not let that high quality be taken away from the American people through some scheme of government control.

Nationalized care means rationed care; its promise of cost containment is a mirage. "Pay or play" would dump still more mandates on business. A 9 percent payroll tax would mean a 34

percent increase in a company's insurance costs. That money must come from somewhere -- and for a company unable to pass along the added costs through higher prices, that means decreased investment, lower wages, and fewer jobs.

There is an alternative. My proposed health care reform will build on our system's strengths, preserving the quality of care. We will increase consumer choice. Through transferable credits, we will assure access to basic health insurance for the uninsured, and control costs through market incentives. And we will not raise taxes on American employers.

I have targeted a third area for attention -- like the others, absolutely critical to our success in the coming decades. You understand that for America to succeed economically at home, we must succeed economically abroad. The fastest growing companies among your group -- the ones creating the greatest number of jobs here at home -- are those with far-reaching involvement in foreign markets.

I am committed to opening markets to American products, removing the government-imposed barriers that act as a hidden tax on American business. Each market shut off by protection is a lost opportunity to sell your products. A successful conclusion to the current Uruguay round of trade negotiations, for instance, could increase world output by \$5 trillion over the next decade. More than \$1 trillion of that boom will go to the United States.

Even closer to home, exports to Mexico have more than doubled over the five years -- creating more than 260,000

American jobs. Our North American Free Trade Agreement will lock in those gains, creating with Canada a \$6 trillion market, the largest in the world.

As world trade expands, the need for a sophisticated, well-educated workforce will intensify. Yet the fact is grim and undeniable: our current educational system is unable to produce the workers the highly competitive world market demands. And make no mistake: a failure to produce a world-class workforce will only provide an incentive to move new jobs overseas.

Our educational failures have hit American employers hard. English is now the language of international business; yet only 20 percent of 17-year-olds can write a simple two-paragraph letter applying for a job. The situation in geography, math and science is equally dire. Too many businesses are forced to pay twice for the education of prospective employees -- once through taxes that support our schools, and again through job training to remedy the failures of those schools in educating our young.

Communities have begun taking matters into their own hands, with local businesses often acting as catalyst. ABC's Vital Link, which works with local schools to establish learning incentives for students, is a perfect example of the community-based efforts our children need.

Still, there is much for government to do. This year, seven different federal agencies will spend \$18 billion on a patchwork of 60 vocational training programs. Is it any wonder that so many Americans who seek training don't know how to get it?

Working with state and local governments, our Job Training 2000 initiative will bring coherence to these programs and offer "one-stop shopping" to aspiring workers. Private industry councils, composed mostly of businessmen, are crucial to our strategy. They would manage programs tailored to the specific needs of local labor markets. And they will be accountable for the quality and efficiency of their programs.

[Placeholder for Labor announcement]

In stressing accountability and local control, Job Training 2000 perfectly complements a revolution now taking place in American education as a whole -- a revolution essential to creating a world-class workforce. Our America 2000 initiative aims to reinvent American schools. We know how to do it. We set high standards for students. We make teacher training a top priority. And we make schools more accountable, by forcing them to compete. That means giving parents the opportunity to choose their children's schools.

I am convinced that each of these major reforms -- restoring sanity to our legal system, ensuring quality health care for all, expanding world trade, and reinventing American education -- is essential to this country's future productivity. The time for tinkering is done; we can afford no more half-measures, no more pondering and chin-pulling. If business is to get on with its work of creating wealth and jobs for America, we must undertake real reform -- root-to-branch change -- wherever our system has failed us.

No wonder, then, that each of the reforms I speak of faces powerful opposition from special interests who profit from the status quo. So I have targeted a final reform, no less important than the others. If America is to change, American government must change. Last week in Philadelphia, I spoke in some detail on the paralysis that grips the federal government. This paralysis prevents Washington from making even the most rudimentary decisions of public policy. The results are plain: a deficit that is a fiscal and a moral outrage, a permanent governing class oblivious to the national interest, hundreds of wasteful programs that live in perpetuity.

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Simon

(Ferguson/Simon)
April 2, 1992
Draft Two
BUSINESS

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petence in five core subjects measured against world-class standards. And by the year 2000 our children will be the first in science and math. Our adults will be literate and able to compete in the work force. And sixth, finally, our schools will be safe, disciplined, and drug-free.

We'll achieve these goals by advancing four transforming ideas at the heart of America 2000:

First, flexibility for teachers and principals, freedom from the web of Federal regulations that impose a one-size-fits-all solution to our schools;

Second, a generation of new American schools. Teachers are critical to this exciting break-the-mold experiment in what education can be;

Third, world-class standards and voluntary national exams. Again, teachers are leading the way in defining standards, creating curriculum frameworks, developing exams to help us raise our sights and measure our performance;

And fourth and finally, parental choice of schools: public, private, religious.

Now, our plan is innovative. It is exciting. It is uniting this country. And it will work. Changing our schools is too important to wait or to waste a generation. And that's why education is one of the five urgent reform challenges that I've been talking about. We know we've got to be competitive in a changing world. We can't go on sending our children into the working world undereducated and ill-equipped and expect the business community to spend billions teaching new workers what they should have learned in school. Status quo schools simply will not carry us into the next century.

We set our goals for the year 2000 because we know our economic health, our economic survival depend on how we educate ourselves to face the challenges a new century will bring. Tom and the thousands of men and women like him will help us meet those challenges.

Teachers know that real excellence demands commitment from everyone in every community as we work to create communities where learning can happen. It demands that talented men and women give time to become tutors and mentors. It de-

mands that businesses, churches and synagogues, and civic groups join together to support local schools. It demands that every citizen help his community develop a plan of action based on America 2000 and help the Nation reach these national education goals. Together, we literally will reinvent the American school community by community, neighborhood by neighborhood, all across this country. And at the heart of this shining new school will be, as always, the teacher.

Last week at the Oscars, George Lucas, filmmaker, might have captured it best when he thanked the teachers of his childhood. And he said, "All of us are teachers, teachers with very loud voices. But we will never match the power of the teacher who is able to whisper in a student's ear."

And so, Tom, on behalf of all Americans who have had the rare and priceless privilege of having a fine teacher whisper in their ear, congratulations. You teach the one lesson that matters the most. There's no distinction between who you are and what you do. You've woven the values of your life into your work. And thank you, sir. And may God bless you.

And now I have something special for you. This apple is the traditional symbol of teaching, and crystal represents the clarity of vision and commitment that the great teachers possess. And so, on behalf of a grateful Nation, an admiring Nation, with great pride in you, sir, congratulations.

Now, may I hand you this apple?

Note: The President spoke at 11:22 a.m. in the Rose Garden at the White House. In his remarks, he referred to Robert Schiller, superintendent of public instruction for the Michigan Department of Education, and Michael O. Emlaw, superintendent of Washtenaw Intermediate School District, MI.

Remarks to the American Business Conference
April 7, 1992

Thank you, Jim, very, very much. Thank you all, and I'm just delighted to be back

with you. And Jim Jones, thank you, sir, for the introduction, for your leadership not just of this wonderful organization but of the exchange and for everything else you do for this economy.

Some people think I've been traveling a little too much so today, as an example of my new policy, no trips further than one block away from the White House. [Laughter]

It is a pleasure to be with you. I'm delighted to have been accompanied by Barbara Franklin, who many of you saw coming in, I think, our new Secretary of Commerce, in whom I have great confidence: Barbara. And she and I both agree that she has large shoes to fill over there at Commerce with one of your originators, one of your founders, my dear, close friend, Bob Mosbacher, sitting in the back, back here. What a job he did for his country as Secretary.

But let me just say it is always a pleasure to speak with the members of the ABC, the American Business Conference because it's a pleasure to speak with the best, people that get things done. And I'd like to talk to you today about the future, the future of our country generally, and more particularly, the future of our country's business environment. In fact, we cannot separate the two. The America of the 21st century—Jim talked about some of the aspects of this, what ABC's about, its ability to make peace in the world, but to foster strong families, to create rewarding jobs—will be shaped today, in large part, by how hospitable we make America for business.

We can learn from your achievement. The key to the success of any high-growth company is the wise deployment of resources. The successful company channels labor and investment into those areas with the potential for the greatest expansion, for the highest return. And you take the risk; you reap the reward; everyone, meanwhile, benefits from the wealth you create. And that, in brief, is the genius of entrepreneurial capitalism, a system that has made America the envy of the world.

For 200 years our prosperity has sprung from our ability to innovate, to create, to change as the world changes. But America's world leadership is not automatic; it's not a

birthright. We must continue to earn it day by day, quarter by quarter, year by year. And the world now is changing at a pace that no one could have dreamed of just a generation ago. And America, which has led the world's transformation, simply must change with it.

Over the last several years, deadweights have begun to slow the engine of growth, inefficiencies a competitive economy simply cannot tolerate. And today I want to discuss five areas of reform, five critical ways in which America must change if we are to continue to lead the world. You understand the urgency, for each of these problems presents itself to American companies not as an abstraction but in the most immediate way, as a cost of doing business, a cost you can't control, an expenditure with no possible return.

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depositions. The lawsuit, he says, "brought everything to a stop." In the end, rather than permit the total exhaustion of company resources, Mr. Coleman decided to settle. And the tab for this exercise in futility, \$8.7 million. And as he says, "That's over \$8.7 million that was diverted from new investments in jobs and facilities."

The scenario is repeated daily throughout American business. And it is not repeated, let me stress, among our world competitors. Only the United States has seen the number of lawyers double over a 20-year period. And only the United States spends more than \$80 billion annually in direct litigation costs, perhaps four times that in indirect costs. According to a recent survey, 40 percent of companies that had been the target of product liability suits have discontinued certain types of product research.

We must remove this ball and chain from our ability to produce, our ability to compete worldwide. And my Competitiveness Council, led by the Vice President, has offered 50 recommendations for legal reform. They would limit discovery to reasonable proportions, discourage some frivolous suits through a "loser pay" rule, and offer alternative means of resolving disputes.

This broad legal reform will not be easy. Just look at the fight that we've had on product liability reform. We introduced a reform bill in 1990 and again in 1991. And the Senate opposition, the majority in the Senate refused to bring it to a vote. And in the House it's stuck in two committees. The special interests are lining up against legal reform, and we could certainly use your help in moving it forward. We must reform the legal system of this country.

If we are successful, the effects will be far-reaching, extending into another area critically in need of change. Medical malpractice premiums almost doubled in the second half of the eighties. Doctors are practicing defensive medicine, ordering an estimated \$20 billion a year in unnecessary tests and procedures to protect against frivolous lawsuits.

The trends in health care costs are simply unsustainable. From less than 6 percent 30 years ago, total health care expenditures are today about 13 percent of GDP. Some mid-range estimates put that figure at 30 percent

by the year 2030. That's 30 cents of every dollar of national income spent on health care. Right now, according to one Federal study, American corporations already spend more on health care each year than they earn in aftertax profits.

We must reform the system, but we face a crossroad. Some have advocated nationalized care; others propose the so-called "pay or play" approach, which I am convinced is merely a step on the road to nationalized care. Neither is acceptable. Neither will preserve the quality of our country's health care, which remains the best in the entire world. And I will not let that high quality be taken away from the American people through some scheme of Government control.

Nationalized care means rationed care. Its promise of cost containment is a mirage. "Pay or play" would dump still more mandates on business. For employers, a 9-percent payroll tax would mean a 34-percent increase in health insurance costs. And that money has got to come from somewhere. And for a company unable to pass along the added costs through higher prices, that means decreased investment; it means lower wages; it means fewer jobs.

There is an alternative, a good one. And my proposed health care reform will build on the strengths of the existing system, preserving the quality of American care. We will increase consumer choice. And through transferable credits, we will assure access to basic health insurance for the uninsured and control costs through market incentives. And we will not have to raise taxes in the process, raise taxes on the employers.

I've targeted a third area for attention, like the others, absolutely critical to our success in the coming decades. You understand that for America to succeed economically at home we must succeed economically abroad. The fastest growing companies among your group, the ones creating the greatest number of jobs here at home, are those with far-reaching involvement in foreign markets.

I am committed to opening markets to American goods and services, removing the Government-imposed barriers that act as a hidden tax on American business. Each market shut off by protection is a lost opportunity to sell your products. A successful conclusion

to the current Uruguay round of trade negotiations, for instance, could increase world output by \$5 trillion over the next decade. More than \$1 trillion of that boom will go to the United States, creating a higher standard of living and, yes, more jobs for Americans.

And then, even closer to home, an area where Bob Mosbacher did so much and now Barbara Franklin has taken up the cause: exports to Mexico. They have more than doubled over the last years, creating more than 300,000 American jobs. Now, our North American free trade agreement, Mexico, Canada, and the U.S., will lock in and even multiply these gains, creating a \$6 trillion market for American products in Canada, Mexico, and the U.S.A.

As world trade expands, the need for a sophisticated, well-educated work force will intensify. And yet the fact is grim and undeniable, and Jim referred to this one in introducing me, our current educational system is unable to produce the workers the highly competitive world market demands.

Our educational failures have hit American employees hard. English is now the language of international business, and yet only 20 percent of 17-year-olds can write a simple two-paragraph letter applying for a job. The situation in geography, math, science is equally dire. Too many businesses are forced to pay twice for the education of prospective employees, once through taxes that support our schools and again through job training to remedy the failures of those schools in educating our young.

Communities have begun taking matters into their own hands, with local businesses often acting as catalysts. ABC's Vital Link, which works with local schools to establish learning incentives for students, is a perfect example of the community-based efforts that our children need.

And still, there is much for the Government to do. This year seven different Federal agencies will spend \$18 billion on a patchwork of 60 mandated vocational training programs. Is it any wonder that so many Americans who seek training don't know how to get it? Now, working with State and local governments, we've got a new program: our Job Training 2000 initiative we call it. And

that will bring coherence to these programs and try to offer "one-stop shopping" to aspiring workers. Job Training 2000 perfectly complements the revolution now taking place in American education as a whole.

And through this, I hope you've heard of it, our America 2000 initiative, we will reinvent, literally reinvent our schools. Your chairman, Jim Jones, is a leader in what we call the New American Schools Development Corporation. It's a private group created at my request to launch an entire generation of break-the-mold new American schools.

This revolution is essential to creating a world-class work force. Now to do that, we need to set world-class standards for students and create a system of voluntary national tests to measure their progress. We've got to redouble our efforts to rid our schools of drugs and violence, to cleanse America of this scourge that wastes so many young lives. And we must make schools more accountable by forcing them to compete. And that means giving parents the opportunity to choose their children's schools, public, private, or religious.

I am convinced that each of these major reforms, restoring sanity to our legal system, ensuring quality health care for all, expanding world trade, reinventing American education, is essential to this country's productivity. But each faces powerful opposition from special interests who profit from the status quo. And so, I've targeted a final reform, no less important than the others. If America is to change, our Government must change.

And last week in Philadelphia I presented seven specific programs, proposals really, to deal with the paralysis that grips the Congress. And the results of this gridlock are dimly plain. Congress was incapable even of passing a short-term, stimulative economic growth package. But they must understand I am going to continue to fight for measures essential to economic growth, and that includes something you know something about, a lot about, including a cut in the tax on capital gains.

And you have sitting here today a leader that knows something about the success of a capital gains cut, Jim Jones. Because if my memory serves me correctly, it was the Jones-Stieger initiative in '78 that showed

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what can happen in the way of new invest-
ment, entrepreneurship, when a capital gains
tax cut was enacted.

The American people, and I can under-
stand this, are rightly fed up with business
as usual, a deficit that is a fiscal and a moral
outrage, a permanent governing class obliv-
ious to the national interest, and hundreds
of self-perpetuating programs that don't even
aid the people they were designed to help.
Now, I refuse to believe that this is the legacy
we'll leave our kids. But it will be if we don't
reform. I'm talking here about perks. I'm
talking about the gymnasium. I'm talking
about fundamental reform of the United
States Congress.

The reforms that I've outlined here today
are grounded in basic principles, a way of
looking at the world. As Jefferson said, "The
pillars of our prosperity are the most thriving
when left most free to individual enterprise."
In practice, that means Government must
trust the wisdom of the markets more than
the whims of the bureaucrats. The freely
made decisions of business men and women
must take precedence over the engineering
schemes of Government. And all of our insti-
tutions, from the Congress to the local school
board, must be accountable to those that they
serve.

Over the last decade, America has changed
the world. Given what's happening out there
in this election year, we sometimes fail to
count our blessings. There have been funda-
mental changes in this world, changes for
world peace. And today we are blessed with
those changes, and we are also blessed with
the opportunity now to change America.
With these principles that I've outlined here
as our guide, I am absolutely convinced we
will meet the challenges and exploit the op-
portunities of the world that is now being
born.

Thank you all very much for what you do.
And may God bless our country. Thank you
all.

*Note: The President spoke at 2:11 p.m. at
the Willard Hotel. In his remarks, he referred
to James R. Jones, chairman of the American
Business Conference.*

Executive Order 12799—Navy and Marine Corps Reserve Officer Promotions

April 7, 1992

By the authority vested in me as President
by the Constitution and the laws of the United
States of America, including section 301
of title 3 of the United States Code and sec-
tion 5905(a) of title 10 of the United States
Code, and in order to delegate authority to
perform a certain function concerning the
promotion of commissioned officers of the
Naval Reserve and Marine Corps Reserve,
it is hereby ordered as follows:

Section 1. The authority vested in the
President by section 5905(a) of title 10 of
the United States Code to remove the name
of any commissioned officer of the Naval Re-
serve or Marine Corps Reserve from a pro-
motion list is delegated to the Secretary of
Defense in cases concerning promotion to
any grade below rear admiral (lower half) or
brigadier general, without need for approval,
ratification, or other action by the President.
Nothing in this section shall be deemed to
delegate the authority vested in the President
by section 5898(c) of title 10 of the United
States Code to remove a name from a selec-
tion board report.

Sec. 2. The authority delegated to the Sec-
retary of Defense by this order may be re-
delegated to the Deputy Secretary of De-
fense, any of the Assistant Secretaries of De-
fense, or the Secretary of the Navy, who may
further subdelegate such authority to sub-
ordinates who are appointed to their office
by the President, by and with the advice and
consent of the Senate.

Sec. 3. With respect to the functions dele-
gated by this order, all prior actions taken
for or on behalf of the President that would
have been valid if taken pursuant to this
order are ratified.

George Bush

The White House,
April 7, 1992.

[Filed with the Office of the Federal Register,
9:34 a.m., April 8, 1992]

*Note: This Executive order was published in
the Federal Register on April 9.*