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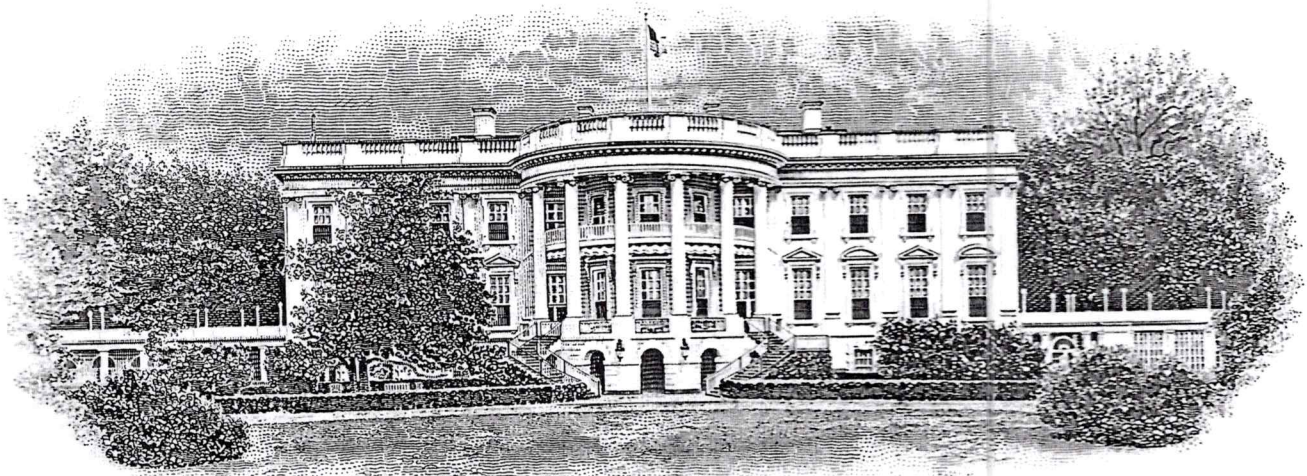
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The White House





OFFICE OF THE VICE PRESIDENT

WASHINGTON

WHITE HOUSE BRIEFING

FOR

PHILADELPHIA CHAPTER OF THE YOUNG PRESIDENT'S ORGANIZATION

April 3, 1992

8:30 a.m. - 10:00 a.m.

Indian Treaty Room, Old Executive Office Building

8:30am The Honorable **Richard Porter**, Counselor to the Vice
President

8:50am The Honorable **Karl Jackson**, Assistant to the Vice
President for National Security Affairs

9:10am The Honorable **Lawrence Lindsey**, Governor, Federal
Reserve Board

9:30am The Honorable **Charles Kolb**, Deputy Assistant to the
President for Domestic Policy



OFFICE OF THE VICE PRESIDENT

WASHINGTON

RICHARD W. PORTER

Richard W. Porter was appointed Counselor to the Vice President on January 7, 1992. He has responsibilities in the areas of politics and policy development.

Starting in July 1990, Mr. Porter served as Special Assistant to the President and Executive Secretary to the Domestic Policy Council. In this capacity, he coordinated the involvement of the Cabinet in advising the President on a wide variety of domestic policy issues.

Prior to this, he was Deputy Assistant Secretary for Policy Review and Analysis at the Department of the Treasury. At the Treasury, Mr. Porter monitored and reviewed the development of selected economic, tax and enforcement issues and advised the Secretary, the Deputy Secretary and the Assistant Secretary for Policy Management on those issues.

During 1988, Mr. Porter was an analyst and the chief writer on the domestic policy staff of Bush/Quayle '88. He also served as a law clerk to Judge Richard A. Posner on the U.S. Court of Appeals for the Seventh Circuit and worked as a lawyer/economist at Lexecon, Inc., a law and economics consulting firm in Chicago, Illinois. Mr. Porter started his career at IBM, where he was a Systems Engineer and a Marketing Representative.

Mr. Porter is a Phi Beta Kappa graduate of Middlebury College and received his law degree from the University of Chicago Law School where he was an Olin Fellow and a member of the Law Review. Upon graduation, he was awarded the John Olin Prize as the outstanding graduate in law and economics.

Mr. Porter was born and raised in Mount Kisco, New York. He is married to the former Karen Louise Andersen of Barrington Hills, Illinois. They have one son.

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THE VICE PRESIDENT'S OFFICE
Office of the Press Secretary

FOR IMMEDIATE RELEASE

KARL D. JACKSON
NATIONAL SECURITY ADVISOR TO THE VICE PRESIDENT

Mr. Jackson has been Special Assistant to the President for National Security Affairs and Senior Director of Asian Affairs since 1989. Prior to that, he served as Deputy Assistant Secretary of Defense for International Security Affairs from 1986-89. Mr. Jackson also served in the Department of Defense - as Deputy Director for Policy Planning from 1983-84 and as Assistant for the Philippines, Cambodia, Laos and Vietnam from 1982-83.

From 1972 to 1991 he served as a member of the faculty of the Department of Political Science at the University of California, Berkeley.

Mr. Jackson is the author of Traditional Authority, Islam and Rebellion and editor of Cambodia 1975-1978: Rendezvous with Death. He has co-edited several volumes: Political Power and Communication in Indonesia (with Lucian W. Pye), ASEAN Security and Economic Development (with M. Hadi Soesastro), ASEAN in Regional and Global Context (with Sukhumbhand Paribatra and Djiwandono Soedjati), and United States-Thailand Relations (with Wiwat Mungkandi).

Mr. Jackson was born on October 30, 1942 in Salem, Massachusetts. After graduating from Princeton University's Woodrow Wilson School of Public and International Affairs in 1965, he received his Ph. D. in political science from M.I.T. in 1971.

Mr. Jackson resides in Washington, D.C. with his wife, Jean Aden, and their four children, Colin, Andrea, Katharine, and Nate.

LAWRENCE B. LINDSEY

Board Member

Board of Governors of the Federal Reserve System

Lawrence B. Lindsey was sworn in as a member of the Board of Governors of the Federal Reserve System on November 25, 1991, to fill an unexpired term ending January 31, 2000.

Lawrence Lindsey was born on July 18, 1954, in Peekskill, New York. He received an A.B. (magna cum laude) from Bowdoin College in 1976, an M.A. in economics from Harvard University in 1981, and a Ph.D. in economics from Harvard in 1985. Dr. Lindsey was a teaching fellow (1978-81), an instructor (1984-85), an assistant professor (1985-88), and an associate professor (1988-90) at Harvard where he also administered the introductory economics program (1984-89) and taught American Economic Policy (1987-88).

Dr. Lindsey worked as a research assistant at the National Bureau of Economic Research from 1978-81. He then joined the staff of the Council of Economic Advisers during the Reagan Administration where from 1981-84 he was, successively, Junior Staff Economist, Public Finance; Staff Economist, Taxation; and Senior Staff Economist, Tax Policy. In 1984 he returned to the National Bureau of Economic Research, where he served as a Faculty Research Fellow until 1989.

Prior to becoming a member of the Board, Dr. Lindsey served at the White House as a Special Assistant to the President for Policy Development (1990-91) and Associate Director for Domestic Economic Policy (1989-90).

Dr. Lindsey is the author of The Growth Experiment: How the New Tax Policy is Transforming the U.S. Economy (Basic Books, New York, 1990) and has contributed numerous articles to professional publications. His honors and awards include selection as a Citicorp/Wriston Fellow for Economic Research, 1988; the Outstanding Doctoral Dissertation Award from the National Tax Association for his "Simulating the Response of Taxpayers to Changes in Tax Rates," 1985; and the Noyes Prize in Political Economy, Bowdoin College, 1976. He was elected to Phi Beta Kappa in 1975.

Dr. Lindsey has performed consulting services in the Federal Republic of Germany, the Republic of Ireland, Sweden, and the United Kingdom. He is a member of the National Tax Association and the American Economic Association. He, and his wife Susan reside in Clifton, Virginia.

THE WHITE HOUSE
WASHINGTON

CHARLES E.M. KOLB

Charles E.M. Kolb currently serves as Deputy Assistant to the President for Domestic Policy at the White House.

Mr. Kolb was previously Deputy Under Secretary for Planning, Budget and Evaluation at the U.S. Department of Education from September 1988 to May 1990.

Prior to this appointment, Mr. Kolb served as Deputy General Counsel for Regulations and Legislation at the Department of Education from January 1986 through September 1988. Mr. Kolb also served at the Office of Management and Budget as an Assistant General Counsel from July 1983 until January 1986.

Prior to government service, he was in private practice in Washington, D.C., with Covington & Burling and Foreman & Dyess.

Mr. Kolb was born in Salisbury, Maryland, on November 6, 1950. He is a graduate of Princeton University and has a Masters Degree in Philosophy, Politics and Economics from Balliol College, Oxford University. He received his law degree from the University of Virginia in 1978.

Mr. Kolb is married to the former Ingrid Ann Christner. He and his wife reside in Alexandria, Virginia.

A Report from the
President's Council on Competitiveness

Agenda for Civil Justice Reform in America



August 1991

A Report from the
President's Council on Competitiveness

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August 1991



THE VICE PRESIDENT
WASHINGTON

MEMORANDUM FOR THE PRESIDENT

FROM: THE VICE PRESIDENT

SUBJECT: PRESIDENT'S COUNCIL ON COMPETITIVENESS
AGENDA FOR CIVIL JUSTICE REFORM IN AMERICA

On behalf of the President's Council on Competitiveness, I am pleased to transmit our report, "Agenda for Civil Justice Reform in America."

Throughout our history, the United States has cherished our system of civil justice as one of the cornerstones of our free and democratic society. It is our civil justice system that protects the individual's rights to life, liberty and property by providing all Americans an opportunity to be heard in an impartial court of law.

In the past 30 years, our legal system has become burdened with excessive costs and long delays. Many features of the current legal system no longer serve to expedite justice or to ensure fair results. Instead, overuse and abuse of the legal system impose tremendous costs upon American society. Each year the United States spends an estimated \$300 billion as an indirect cost of the civil justice system.

To address these problems, the Council established a special working group, chaired by Solicitor General Kenneth W. Starr. The working group's recommendations, which were unanimously accepted by the Council, provide concrete steps that can be taken to restore our civil justice system as an institution that is fair to all and serves the ends of justice.

To implement these changes, the Council has recommended fifty specific changes to our current civil litigation system. These changes can be implemented through legislation, by amendment to the rules of civil procedure and evidence, and through administrative actions including an executive order. The Justice Department is preparing the documents necessary for implementation and will coordinate the Administration's civil justice reform effort.

I am confident that these reforms will greatly reduce the burden of excessive, needless litigation, while at the same time protecting and enhancing every American's ability to vindicate legal rights through our judicial system.

Introduction

Litigation and the American Economy

America has become a litigious society. In 1989 nearly 18 million new civil cases were filed in the state and federal courts. This amounts to one lawsuit for every ten

adults. In the federal courts alone, the number of lawsuits filed each year has almost tripled in the last thirty years — from approximately 90,000 in 1960 to more than 250,000 in 1990.

This dramatic growth in litigation carries with it very high costs

for the U.S. economy. A recent article in *Forbes* estimates that individuals, businesses and governments spend more than \$80 billion a year on direct litigation costs and higher insurance premiums, and a total of up to \$300 billion indirectly, including the cost of efforts to avoid liability.

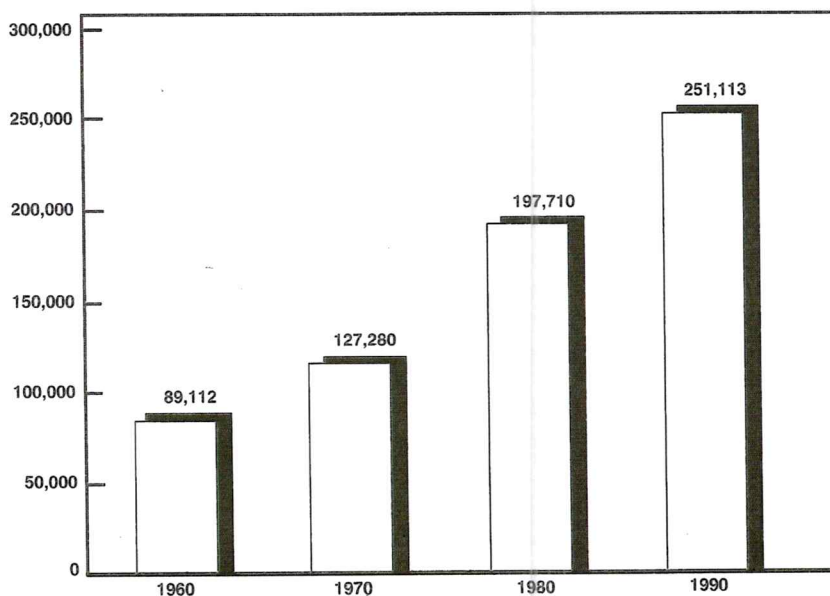
Unrestrained litigation necessarily exacts a terrible toll on the

U.S. economy. According to a recent report by a Professor of Finance at the University of Texas, it is esti-

mated that the average lawyer takes \$1 million a year from the country's output of goods and services. These baleful effects are

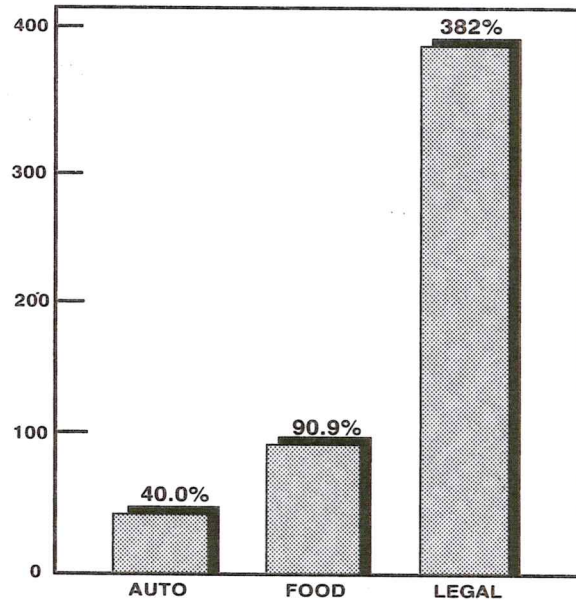
***Businesses and governments
spend more than
\$80 billion a year on direct
litigation costs . . .***

Total Federal District Court Filings



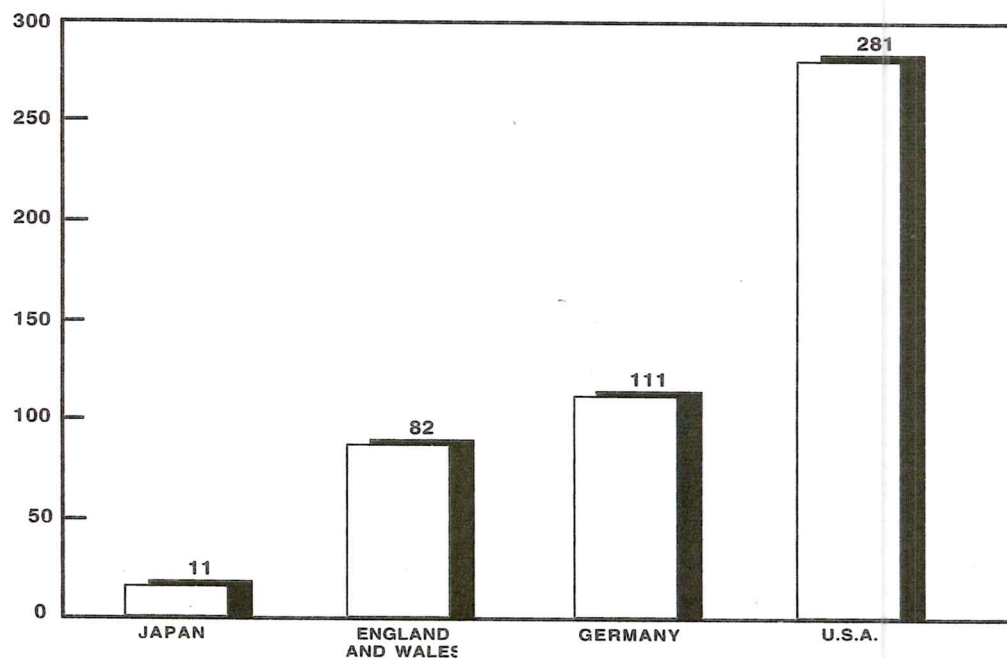
SOURCE: Federal Courts Study Committee - Working Papers and Subcommittee Reports; July 1990, Vol. 2; 1990 filings; 1990 Federal Court Management Statistics.

Growth of the Legal Industry 1977-1989



SOURCE: Survey of Current Business, April 1991; U.S. Department of Commerce.

Lawyers per 100,000 Population



SOURCE: Cambridge Law Journal, July 1990, Vol. 49 (2); Intro to Research in Japan, 1991.

not limited to the domestic economy. According to a 1984 study commissioned by the U.S. Department of Commerce, foreign competitors often have product liability insurance costs that are 20 to 50 times lower than U.S. companies. In a survey of over 250 American companies, more than three-quarters of the executives said they believe that the United States will be increasingly disadvantaged in world markets unless modifications are made in the liability system.

The adverse effects of unconstrained litigation are legion. A recent survey by the Conference Board, a group of 3,600 organizations in over 50 nations, reports that due to potential liability concerns:

- 47 percent of U.S. manufacturers have withdrawn products from the market;
- 25 percent of U.S. manufacturers have discontinued some forms of product research;
- Approximately 15 percent of U.S. companies have laid off workers as a direct result of product liability experience.

While some of these consequences result from meritorious lawsuits, the unnecessarily high cost of litigation is undoubtedly a major factor as well. The current *procedural* system adds costs by prolonging resolution of disputes and encouraging wasteful litigation.

Discovery

Over 80 percent of the time and cost of a typical lawsuit involves pretrial examination of facts through discovery. Discovery is the stage of the lawsuit where the parties are supposed to obtain and preserve information regarding the pending action, for later use as evidence in the trial. The current rules governing discovery

permit parties to roam unfettered through their opponent's most private documents.

An especially burdensome part of

discovery involves the taking of depositions — interviews of witnesses taken under oath, often lasting several days and occasionally even weeks. Another potentially intrusive and burdensome discovery practice is the use of interrogatories. The most onerous aspect of discovery, however, is the document demand, whereby litigants can force their opponents to open all of their file cabinets to inspection.

Although discovery requests are relatively inexpensive to make, the responding party's costs can be staggering, involving the time of employees to produce materials, attorneys' fees for reviewing materials to be produced, and the physical copying or recording costs.

There are currently no limits to the number of requests that a party can make for discovery items, as long as the requests are at least tenuously related to the action. In one antitrust case, the discovery stage lasted almost

The life of the average civil lawsuit in federal court - - from filing to completion - - is fourteen months.

a decade; the plaintiff's final pretrial statement, which was over 10,000 pages long, cross-referenced approximately 250,000 pages of documents.

The life of the average civil lawsuit in federal court -- from filing to completion -- is fourteen months. Fully 77 percent of litigators in one large American city acknowledged in a 1988 survey that they had used discovery as an economic weapon against their opponents. One result of this lengthy process is that attorneys' fees account for a substantial portion of all recoveries. In fact, when all of the expenses of the litigation process are added up, the claimants in tort cases often end up with compensation that amounts to only a small percentage of the total money spent. Professor O'Connell of the University of Virginia Law School estimates this figure to be about 15 percent of total litigation costs. A study by the Rand Corporation's Institute for Civil Justice

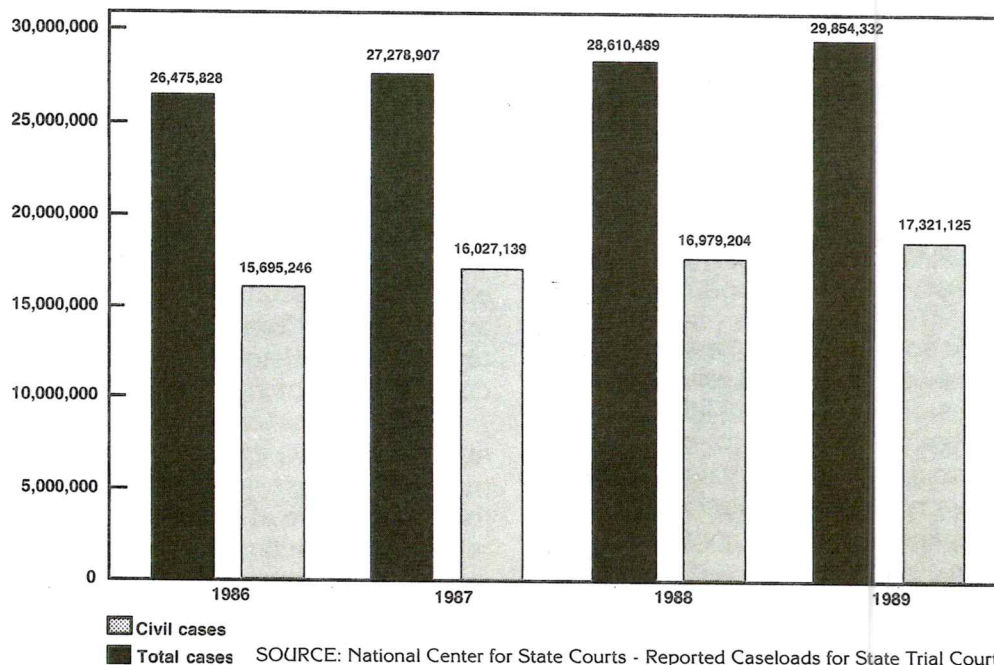
found that in 1985 the legal system incurred a total of \$16-\$19 billion in transaction costs to deliver \$14-\$16 billion to plaintiffs in net compensation.

Expert Witnesses and "Junk Science"

An area of the law particularly ripe for reform is expert witness practice. The Federal Rules of Evidence, which govern most expert testimony, eliminated many of the common law restrictions on the use of expert witnesses. The resulting uncontrolled use of expert witnesses has led to longer trials, more expensive litigation, and a reduction in the quality of expert testimony in many cases.

It has also allowed "junk science" to tarnish the legal process. Peter Huber,

Caseload for State Trial Courts



a leading observer of American courtrooms, has written recently that "scientific frauds . . . are attempted almost daily in our courts, and many succeed." Huber wrote that "the most fantastic verdict recorded so far was worthy of a tabloid:"

"With the backing of 'expert' testimony from a doctor and police department officials, a soothsayer who decided she had lost her psychic powers following a CAT scan persuaded a Philadelphia jury to award her \$1 million."

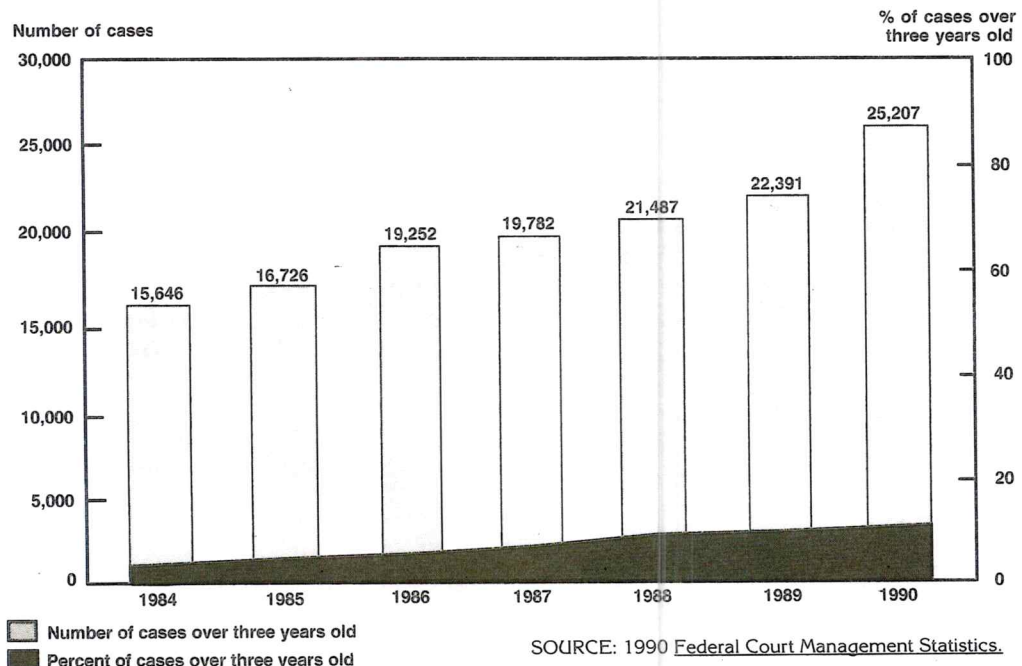
Stories such as this are becoming almost commonplace. "Expert" witnesses regularly offer their "scientific" opinions on the connections between automobile accidents and breast cancer or environmental pollutants and "chemically induced AIDS". As if the ability to fashion almost any opinion into expert testimony were not enough, there is considerable use of contin-

gency fees to pay expert witnesses. Although expert witnesses are supposed to give objective testimony based on scientific evidence in order to help judge and jury resolve complex matters, this practice easily turns too many expert witnesses into "hired guns."

Punitive Damages

In the past, punitive damages were assessed only in cases where the defendant was proved to have had a quasi-criminal intent to harm the plaintiff. Today, however, plaintiffs in civil lawsuits routinely ask juries to award not only compensatory damages (for their economic, or out-of-pocket losses) but also punitive damages. And juries are responding with enthusiasm. A 1987 study by the Institute for Civil Justice,

U.S. District Courts - Number (and %) of Civil Cases Over Three Years Old



which examined 24,000 jury trials in Cook County, Illinois, found that the average punitive damage award increased, in inflation-adjusted dollars, from \$43,000 in 1965-69 to \$729,000 in 1980-84 -- a jump of 1,500%. In personal injury cases, the rise has been even more dramatic.

A prominent insurance lawyer in Washington has said that punitive damages "have made civil litigation sort of like the lotteries you have in so many states." Justice O'Connor and Justice Scalia have observed that the "wholly standardless discretion" of punitive damages "appear[s] inconsistent with due process." And former Justices Brennan and Marshall noted that juries "are left largely to themselves in making this important and potentially devastating decision." Commenting on one particularly shocking case, federal appeals court Judge Alex Kozinski speculated: "I suppose next we will be seeing lawsuits seeking punitive damages for maliciously refusing to return phone calls or adopting a condescending tone in interoffice memos."

The working group was composed of representatives from the White House Counsel's office, the Domestic Policy Council, the White House Office of Policy Development, the Office of the Vice President, the Office of Management and Budget, the Council of Economic Advisers, the Environmental Protection Agency, and the Departments of Justice, Commerce, Treasury and Energy. In June and July 1991, the Council acted on the working group's recommendations and formulated 50 proposals for the nation's civil justice system.

Implementing the reforms proposed by the Council will bring direct economic benefits to the United States. The reforms will allow lawsuits to be resolved quickly so that individuals and companies will be able to redirect assets that were formerly wasted on frivolous and often defensive litigation. Our economy and our country will benefit.

The Federal Civil Justice Working Group

In January 1991, a working group on Federal Civil Justice Reform was established under the aegis of the Council on Competitiveness, chaired by Vice President Dan Quayle. The working group, chaired by Solicitor General Kenneth W. Starr, was asked to examine the federal civil justice process and to recommend efficient and effective modifications to reduce unnecessary litigation and to decrease the costs and time required to resolve legal disputes.

Council Recommendations: An Overview

Voluntary Dispute Resolution

Most potential litigants consider only two avenues for dispute resolution: informal negotiation and litigation. The Council on Competitiveness recommends providing greater access to alternative dispute resolution (ADR) techniques that would routinely be available as a substitute for traditional litigation. These techniques include (1) early neutral evaluation, (2) mediation, (3) arbitration, and (4) summary jury trials. The Council also encourages the private sector to employ contract provisions establishing non-judicial means of dispute resolution in order to introduce ADR into the corporate process.

Because more than 92 percent of all civil lawsuits are settled or otherwise disposed of prior to trial, the Council encourages mandatory settlement conferences soon after the commencement of any litigation. The Council suggests that litigants be required to notify the opposing parties of their intention to file suit before resorting to the courts. These actions will enhance the possibility that disputes may be resolved amicably without the courts.

Discovery

Pretrial discovery is frequently the source of needless delay and expense. Currently litigants have virtually unlimited ability to take sworn depositions of witnesses, request documents and submit written questions to parties.

The Council recommends several fundamental reforms to the discovery process, including disclosure of basic information and an initial round of discovery that would continue to be "free" to the requesting party. This would include an extensive document request, a limited set of depositions and written questions. Beyond this initial round, however, the requesting party would have to pay for additional discovery. The Council also recommends that greater sanctions be imposed if materials are wrongfully withheld.

***More than 92 percent of all
civil lawsuits are
settled . . . prior to trial . . .***

More Efficient Trials

Litigation is sometimes necessary when the parties are unable to resolve a dispute through less formal means. The Council recommends several reforms designed to make trial practice more efficient, including urging courts to set early trial dates and to employ summary judgment procedures more frequently to eliminate disputes that can be properly resolved by legal rulings alone.

Expert Evidence Reform

Reform of expert witness practice is also essential if trials are to remain fair and rational mechanisms for conflict resolution. One of the Council's principal recommendations in this regard is to require expert testimony to be based on "widely accepted" theories. This would eliminate testimony unsupported by professional practice or scientific knowledge. The Council also recommends banning contingency fees for expert witnesses. This should prevent expert witnesses from becoming mercenaries or advocates, instead of impartial and objective witnesses.

allowed to assign a specific dollar amount to their requests. Where there is clear and convincing evidence of the defendant's intent to cause injury, then punitive damages may be awarded in a separate phase of the proceeding. In any event, however, the amount of punitive damages should not exceed the plaintiff's actual damages.

Improved Use of Judicial Resources

The Council encourages courts to employ more efficient case management techniques, including flexible assignments of federal district judges. The Council also encourages greater emphasis on resolving intracircuit conflicts. The Council has

The Council recommends that greater sanctions be imposed if materials are wrongfully withheld.

proposed that circuit courts be maintained at a manageable number of judges, and that the Ninth Circuit, which

has almost thirty sitting judges, be split into two circuits.

Punitive Damages

The current common law approach to punitive damages frequently distributes awards in a random and capricious manner. While some states have attempted limited reform, the Council recommends a comprehensive package designed to limit and restrict punitive damages.

The Council recommends that punitive damages be awarded in a rational and consistent manner as part of a coherent system. Plaintiffs seeking punitive damages should not be

Enhanced Incentives for Reduced Litigation

In order to promote more disciplined and less wasteful litigation, the Council proposes to strengthen the current rules which authorize judges to sanction attorneys who file frivolous lawsuits.

The Council also recommends a test of a modified two-way fee-shifting

arrangement whereby the loser of a lawsuit pays the costs incurred by the winner. Although limitations would be built into this system to safeguard equal access to the courts, this reform would encourage pretrial settlements and impose market discipline on the litigation process.

The Council further proposes a moratorium on the more than 150 one-way fee shifting statutes under which victorious plaintiffs recover their fees from losing defendants, while victorious defendants get no such recovery.

Eliminating Litigation Caused by Poorly Drafted Legislation

The Council recognizes that the federal government bears a great deal of responsibility for the rise in litigation caused by poorly drafted federal statutes. The Council proposes that the Executive Branch closely review all legislative proposals against a "litigation hazards" checklist.

Reducing Unnecessary Burdens on Federal Courts

The federal district and appellate caseloads have skyrocketed in the past decade, creating endless delays, and adding substantially to the cost of litigation. The Council has proposed several reforms designed to unclog the federal courts, including revising the threshold for federal diversity jurisdiction, restoring judicial immunity to state court judges for official actions, and reducing abuse of habeas corpus petitions.

Council Recommendations: Implementation

The civil justice reforms proposed by the Council may be implemented through one of several approaches. The five principal methods of implementation are (1) federal legislation, (2) revisions to the federal rules of civil procedure and evidence, (3) judicial action, (4) model state legislation and rules, and (5) executive action. Some of the proposed reforms can be implemented through more than one approach. Changes to the discovery process, for example, may be accomplished either by federal statute or through rule changes. Most reforms are also suited to model state statutes, particularly because they permit reforms suggested for the federal systems to be applied in the state courts.

The Administration will draft legislation to implement these recommendations and will work with Congress toward reform. Other changes will require amendment to the Federal Rules of Civil Procedure, the Federal Rules of Evidence, and the Federal Rules of Appellate Procedure. The

Administration will draft proposed rules changes and submit the proposals to the Supreme Court's Rules Advisory Committees.

Some reforms can also be accomplished locally by the efforts of individual judges. The Administration will make available innovative management procedures and provide technical assistance to support these suggestions.

Although the reforms contemplate Federal law and rules changes, many of the reforms may be equally applicable to state court systems. The Administration will draft model legislation and model rules changes so that these reforms may be implemented at the state level.

The Administration is committed to the fair, efficient, and early resolution of disputes. To underscore this commitment, the Administration will apply many of the suggested reforms to the conduct of litigation by federal agencies.

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Recommendations

VOLUNTARY DISPUTE RESOLUTION

1. Promote Voluntary Use of Alternative Dispute Resolution (ADR) Techniques

Provide a Choice for Resolving Disputes: Create "Multi-door Courthouses"

Recommendation: Create a "multi-door courthouse" to permit the parties to choose between several different methods for resolving their dispute. Before the contest would be set for trial, the parties would attend a mandatory conference to identify the areas in controversy. At this conference the parties would be given the opportunity to resolve their claims through a variety of alternative dispute resolution mechanisms, including early neutral evaluation, mediation, arbitration, minitrial, and summary jury trial. (1)

Alternative Dispute Resolution (ADR) seeks to resolve controversies with less cost and burden imposed upon the parties. Remedies fashioned through ADR may be more flexible than the restricted relief available through the courts. Because ADR frequently relies upon consensus, its use may foster continuing relationships.

Requiring the parties to explore ADR options at the initial stages of the proceedings will motivate attorneys to analyze the case and prepare basic investigative homework at a much earlier point than would be required by the traditional system. Because this approach can help promote settlement, there could also be a reduction in transaction costs.

Although the parties would be given opportunities to elect ADR, they would not be required to do so. This voluntary approach avoids the danger of creating an additional, and costly, obstruction through which litigants must first travel before they enter the litigation system.

Action Required: Encourage and facilitate judicial action.

Promote Greater Awareness of ADR

Recommendation: Members of the legal, business, and government communities should advocate dispute resolution techniques as an alternative to litigation. (2)

The primary advantage of alternative dispute resolution is that it allows parties to avoid the time and expense of formal court proceedings. Unfortunately, this benefit may not be adequately publicized. Lawyers, business leaders, and government officials should take the initiative in disseminating the important message that ADR achieves justice.

Action Required: Executive Branch applies recommendation to federal agencies. Encourage actions to increase public awareness.

2. Require Notice Prior to Filing a Lawsuit

Recommendation: In most cases, the right to sue should be conditioned on a showing that the parties have attempted, and failed, to resolve their dispute. The party alleging harm would be required to prove that it gave timely notice of the grievance prior to filing the suit, except where emergency or

other circumstances require immediate resort to the courts without prior notice to the opposing party. (3)

A pre-complaint notice requirement provides both parties with an opportunity to resolve the dispute at the earliest stages. The parties would have the opportunity to reach an agreement and fashion appropriate remedies at lower transaction costs and without the constraints of court. At the same time, the dispute would be resolved without burdening the court.

Action Required: Propose legislation to amend appropriate federal statutes.

3. Encourage Earlier Settlement of Contested Cases

Provide Incentives for Settlement Offers

Recommendation: *Both parties should be encouraged to evaluate their claims closely and attempt to settle their dispute. Settlement offers advanced prior to trial should be reinforced with financial incentives such as requiring the party who rejected the compromise bear the additional costs of trial unless the outcome at trial exceeds the settlement offer. (4)*

The party continuing to maintain an improperly evaluated claim would be forced to pay the expenses of continuing prosecution after receiving a reasonable settlement offer. This reform creates incentives to make settlement offers early and compensates parties who make good faith offers that are nonetheless rejected.

Action Required: Propose amendments to Federal Rule of Civil Procedure 68 and Title 28 of United States Code.

Expand Settlement Opportunities Through Settlement Conferences

Recommendation: *Once a lawsuit has been filed, the parties should be required to attend regular conferences to discuss settlement. (5)*

Mandatory settlement conferences would compel the parties to reevaluate their claims and litigation position. These required meetings are currently used with success in several judicial districts. They promote settlement earlier because there are more opportunities to focus issues. Mandatory conferences also overcome posturing by lawyers who perceive that initiating settlement discussions, even in the most appropriate cases, will be seen as a sign of weakness.

Action Required: Encourage judicial action.

DISCOVERY

4. Reforms to the Pre-Trial Discovery Process

Require Disclosure of "Core Information"

Recommendation: *Parties should be required to disclose basic (or "core") information, such as the names and addresses of people having knowledge likely to bear on the claims and defenses and the location of documents most relevant to the case. This requirement would obligate the parties to make disclosure on their own initiative. Should the core information not be provided, the offending party would not be able to engage in any additional discovery. (6)*

Mandatory early disclosure of core information recognizes that in the vast majority of cases there are basic facts that should be exchanged by the parties in order to reach a satisfactory resolution and that this exchange should be accomplished without gamesmanship or expense. This early exchange would increase the opportunity for effective discovery planning and early settlement discussions.

Providing early disclosure of core information eliminates unnecessary filings and delays in exchanging basic information. Disclosure would be accompanied by the attorney's certification that reasonable inquiry had been made and that the information will be supplemented if additional details become known.

Action Required: Propose amendments to Federal Rule of Civil Procedure 26.

Presumptive Numerical Limits on Discovery, with Additional Discovery Governed by Market Incentives

Recommendation: *After the disclosure of core information, discovery should be conducted within presumptive quantitative limits and a market-based framework. The parties would be required to formulate a discovery plan within predetermined numerical limits. The parties would then be entitled to conduct any additional discovery, provided that each party would pay the opponent's "production" costs. Judges would be permitted to change the pre-set limits and review costs for good cause. (7-8)*

Parties should have access to relevant information but should not be able to use discovery to impose needless costs upon an opponent.

After reviewing the core information exchanged, the parties would meet to formulate a plan that would limit and direct discovery efforts within preset limits. Presumptive quantitative limits on discovery, established in the rules, would set the outer boundaries of the plan unless good cause for additional inquiry is established. The parties would then submit a discovery plan to the court for approval. Either party would be able to pursue additional discovery by paying the costs its opponent would incur in producing the information.

This approach would require the litigants to evaluate carefully their additional discovery requests because paying production costs would discourage marginal or abusive discovery. It also allows the parties significant opportunities to conduct discovery without judicial intervention.

Action Required: Propose amendments to Federal Rule of Civil Procedure 26.

Penalize Abusive Discovery

Recommendation: *Amend the Federal Rules of Civil Procedure to establish clear standards for imposing sanctions upon attorneys who abuse the system. The party whose conduct necessitated the discovery motion would bear the burden of establishing that its position was substantially justified. Sanctions would be automatic in instances where the court finds an unreasonable, vexatious, or abusive discovery practice. (9)*

While the current rules allow the court to impose penalties upon attorneys, judges should be encouraged to make greater use of sanctions for discovery abuse. At present, judges have the

authority to impose costs (including attorney's fees) incurred in responding to an abusive discovery request, but most judges remain reluctant to levy sanctions for unreasonable or vexatious discovery. Making the imposition of sanctions mandatory provides a further disincentive to litigants who would abuse the discovery process.

Action Required: Propose amendments to Federal Rules of Civil Procedure 26, 37. Recommend judicial efforts to make discovery sanctions more uniform and predictable.

Encourage Parties to Admit Facts Not in Dispute.

Recommendation: *After a party has admitted factual information, further discovery should not automatically be allowed. The court should have authority, where appropriate, to prevent further inquiry regarding the area admitted. (10)*

Admissions sharpen the dispute by narrowing the contested issues. Parties should be encouraged to admit facts or authenticate documents. Only the most marginal purpose would be advanced by allowing further inquiry once reliable factual information has been admitted. Preventing discovery of admitted facts will eliminate the potential for repetitive and abusive inquiry.

Action Required: Propose amendments to Federal Rule of Civil Procedure 26(b).

Tie Discovery Requests to the Pleadings

Recommendation: *In making discovery requests, the parties should be compelled to supply the rationale for*

the discovery by referring to the portion of the complaint, answer or other relevant pleading to be addressed in the desired discovery. (11)

Requiring parties to explain the relevancy of materials being sought in discovery encourages them to assess whether the request is necessary. This also provides the responding party the ability to evaluate the request in light of the issues in the case. Additionally, this procedure would help focus areas in controversy should resort to court be necessary to decide the discovery dispute.

Action required: Propose amendments to Federal Rule of Civil Procedure Rule 26.

5. Resolving Discovery Disputes: Reform of Discovery Motions

Require Parties to Consult Before Seeking Court Intervention in Discovery Disputes.

Recommendation: *Before requesting that the court resolve a discovery dispute, counsel should be required to certify that they have conferred with their opponent and, despite good faith negotiations, are unable to agree upon a resolution. (12)*

This proposal, currently used in many federal and state courts, would require efforts by attorneys to avoid burdening the court with resolving unnecessary discovery disputes. It recognizes that discovery should be structured to minimize judicial intervention to resolve most pre-trial disputes. As the certification requirement places a

premium upon cooperation, acceptable compromises often result.

Action Required: Propose amendments to Federal Rule of Civil Procedure 26. While awaiting full rule amendment, encourage judicial action, through adoption of local rules or standing orders.

“Loser Pays” Rule for Discovery Motions

Recommendation: *When the court decides a discovery motion, the losing party would pay to the winner the costs and attorney fees to vindicate the prevailing position. As with the other “loser pays” provisions, this cost and fee shifting could be limited by judicial discretion where appropriate. (13)*

Requiring reimbursement to the prevailing party encourages both sides to evaluate carefully their claims and defenses. This is particularly true for discovery, which is intended to be self-enforcing. Under the previous recommendation, discovery motions could only be pursued after the parties certified their inability to resolve their dispute. Fee-shifting for discovery motions will be an added incentive for the parties to limit unnecessary discovery and should help discourage abusive discovery practices.

Action Required: Propose amendments to the Federal Rules of Civil Procedure.

6. Maintain Safeguards for Trade Secrets

Recommendation: *Courts should retain the ability to preserve confidential and trade secret information. These safeguards should not be eroded*

by legislative action or rules changes. (14)

Most courts have broad authority to grant “protective” orders that forbid the disclosure of confidential or trade secret information required to be divulged in preparation for trial. Protective orders enable the parties to learn confidential information necessary to their cases while prohibiting them from using the knowledge outside the lawsuit. Legislatures should resist efforts to limit the ability of courts to grant this relief because these orders allow parties to discover the facts necessary to prepare and evaluate a case for trial, but protect the legitimate confidentiality interest of the parties.

Action Required: Oppose repeal efforts. Propose amendments to state codes where authority has been restricted.

MORE EFFECTIVE TRIAL PROCEDURES

7. Early Trial Dates

Recommendation: *Judges should establish an early trial date immediately after the initial pleadings are completed. Once established, the trial date should be delayed only for compelling reason or the needs of the court. (15)*

One of the most effective remedies to the costs of the litigation system is establishment of rigid trial dates. Trial dates have a galvanizing effect on attorneys and parties alike; establishing the date promptly and firmly reduces the occasions for delay and

gamesmanship. A side-benefit of this cost-free reform is more efficient use of discovery and the potential reduction of other litigation expenses. This reform need not mean that a “rocket docket” with very small allowances for discovery would be utilized.

Action Required: Encourage judicial action.

8. Summary Judgment Reforms

Mandatory Summary Judgment

Recommendation: *Courts must grant summary judgment when there is no genuine dispute as to any material fact and the party is entitled to prevail as a matter of law. The presiding judge must state reasons for denying or granting a motion for summary judgment. (16)*

Summary judgment is a method for resolving cases where the facts are not in dispute. Under Supreme Court precedent, federal courts are compelled to grant summary judgment when there is no genuine issue of material fact. Under the current rule, however, even when it is determined that there is no valid factual disagreement, the judge may refuse to dispose of the case. In addition to conforming the rule to Supreme Court precedents, it would eliminate unnecessary litigation expenses if judges were required to make explicit findings concerning the existence of a factual dispute and to grant summary judgment when no conflict exists. Because the judge would be required to make specific findings even when factual questions remain, the finding will help focus the factual issues for trial.

Action Required: Propose amendments to Federal Rule of Civil Procedure 56.

Provide Appropriate Deference to Trial Court Findings

Recommendation: *Courts of appeals should accord greater deference to the trial court findings whether a genuine issue of material fact exists. (17)*

The trial court’s discretion in reviewing the factual record should be more extensively recognized by the appellate courts. This acknowledgment would not only demonstrate an appreciation that trial judges are more knowledgeable about the dispute than appellate judges, but, more importantly, would also assist the court system in disposing of nonmeritorious cases at an earlier stage in the proceedings.

Action Required: Propose amendments to Federal Rule of Civil Procedure 56.

9. Hands-On Docket Management

Recommendation: *Judges should take a hands-on approach to case management. Their active involvement in the discovery process and other pre-trial matters should be encouraged. (18)*

By adopting a “hands-on” policy towards case administration, including the management of discovery, trial judges can play a vital role in expediting litigation and reducing costs. Active involvement by judges early in the proceedings is one of the most effective ways to reduce the time required to resolve a dispute. When judges efficiently manage their cases,

they assist the parties in resolving their disputes. Hands-on management policies have resulted in increasing settlements within nine months of filing to nearly 85 percent in some courts.

At the same time, the Council's recommended system of discovery incentives should make the judge's job easier. The market-based approaches are designed to be largely self-enforcing.

Action: Encourage greater judicial involvement.

EXPERT EVIDENCE REFORM

10. Reform the Rules Regarding Expert Witnesses.

Require "Widely Accepted" Theories

Recommendation: *Require expert testimony to be based on "widely accepted" theories. A party would have to prove that its expert's opinion is based on an established theory that is supported by a significant portion of experts in the relevant field. (19)*

This revision is designed to eliminate testimony that is far afield from mainstream professional practice or current scientific knowledge. Currently, "expert" witnesses are permitted to offer testimony even if their theories are unproven and are not corroborated by other experts. The Council's recommendations would allow testimony based on respected minority or majority theories while excluding fringe theories.

Action Required: Propose amendments to Federal Rule of Evidence 702.

Bar Contingency Fees for Expert Witnesses

Recommendation: *Ban contingency fees (compensation in return for a "successful outcome") for expert witnesses. (20)*

An expert witness should have no financial interest in any outcome of a case in which he or she testifies. This reform is designed to keep expert witnesses from becoming mercenaries or advocates, instead of remaining impartial and objective.

Action Required: Propose amendments to Federal Rule of Evidence 702.

Require Additional Disclosure from Expert Witnesses

Recommendation: *Permit more comprehensive inquiries of proposed "expert" witnesses through interrogatories and disclosure of additional core data, including a list of the expert's publications and a description of the compensation arrangement. (21)*

Compared to the discovery of other witnesses, discovery of experts is very limited. Litigants should be able to scrutinize experts by obtaining more information about them automatically - - namely, a list of publications and a description of the expert's compensation arrangement, without cost to the opposing party.

Action Required: Propose amendments to Federal Rule of Civil Procedure 26.

Permit Depositions without Leave of Court

Recommendation: *Additional expert discovery such as depositions for expert discovery should be permitted, subject to the market incentives regime outlined above. (22)*

Currently, discovery of experts requires a court order if accomplished through deposition. The Federal Rules of Civil Procedure should provide for deposition of experts without need for motion of court. Depositions are particularly useful for civil expert witnesses.

Action Required: Propose amendments to Federal Rule of Civil Procedure 26.

Expressly Require Courts to Determine that the Expert is Qualified in the Field of Testimony Offered

Recommendation: *Require courts to determine that proposed expert witnesses are legitimate experts in their field before they are permitted to testify. (23)*

This revision would involve judges directly in protecting cases in their courtrooms from unqualified experts. It should have the effect of discouraging parties from retaining unqualified experts

Action Required: Propose amendments to Federal Rule of Evidence 702.

Resist Efforts to Make Use of Court-Appointed Experts Mandatory

Recommendations: *Resist attempts to take the review of expert testimony*

away from juries or force the use of court-appointed experts. (24)

Judges already have the ability to call on experts. Mandating their use could lead to concerns about judicial favoritism, particularly in jury trials.

Action Required: Oppose repeal efforts.

PUNITIVE DAMAGES

11. Reform of Unlimited Punitive Damages

Recommendations: *Punitive damages should be awarded in a rational and consistent manner as part of a coherent system. Plaintiffs seeking punitive damages should not be able to assign specific dollar amounts to their request. Rather, punitive damages should be awarded in a separate proceeding. A jury should determine whether punitive damages are warranted based only on "clear and convincing" evidence supporting an award; the trial judge should determine the amount of punitive damages. The amount of punitive damages should not exceed the full amount of the compensatory damages. (25-29)*

The common law method of assessing punitive damages has developed virtually without restriction. Lacking a unifying structure, the current approach to punitive damages will continue to generate disproportionately high awards in a random and capricious manner. Because punitive damages are "quasi criminal," an award should be predicated upon standards of proof requiring some element of intent. Other limitations are needed to restrict the measure of punit-

tive damages that can be levied in any single case.

These reforms reduce the threat of runaway jury verdicts, promote settlements, and promote certainty in commercial transactions by establishing reasonable boundaries for awards. This unified approach will insure that punitive damages are effective in deterring and punishing extreme or egregious conduct.

Action Required: Encourage state legislative action by means of a model state code.

IMPROVED USE OF FEDERAL JUDICIAL RESOURCES

12. Flexible Assignments for District Court Judges

Recommendation: *Encourage more efficient use of judicial resources through temporary judicial reassignments. Judges from less busy districts should be assigned to districts where there is a more crowded docket. (30)*

Many district courts experience a disproportionate influx of cases from time to time. The result has been significant backlogs in some areas and underutilization in others. The judiciary can address this problem by creating a flexible system that would temporarily transfer judges in response to high caseload demand.

Action Required: Propose legislation to amend Title 28 United States Code.

13. Enhance Case Management Techniques

Recommendation: *To ensure cost-effectiveness, federal judges should utilize procedures to speed management of cases after a lawsuit has been filed. (31)*

Many courts have adopted procedures for speeding the processing of cases and for resolving disputes earlier. Continued innovation should be encouraged within the judiciary to process cases efficiently and fairly. The Federal Rules of Civil Procedure should continue to retain the flexibility to permit tests of promising case management approaches.

Action Required: Encourage judicial action. Provide necessary technical support.

14. Encourage Use of En Banc Panels to Resolve Conflicting Decisions

Recommendations: *Eliminate restrictions that prevent en banc panels where all sitting judges on a federal appeals court jointly decide important legal issues. The use of "mini-panels" with less than a full compliment of judges as a substitute for en banc panels should be eliminated. (32-33)*

En banc hearings occur infrequently because they are discouraged by the current rules. As both the number of appellate judges and cases have increased, most cases are decided by 3-judge panels. All too frequently, separate 3-judge panels in the same circuit answer the same questions differently. The resulting uncertainty from these conflicting decisions

increases litigation. Eliminating the restrictions from the current rule to encourage more frequent use of the en banc process would help promote consistency in the law.

Action Required: Propose amendments to Federal Rule of Appellate Procedure 35.

15. United States Courts of Appeals Should be Maintained at Manageable Levels/ Reducing the Size of the Ninth Circuit

Recommendations: *To avoid the potential for inconsistent decisions within the same judicial circuit, the number of judges on each federal circuit court of appeals should be maintained at a manageable level. The Ninth Circuit should be divided into smaller circuits. (34-35)*

Beyond a certain number of judges, the ordinary operation of a circuit court of appeals becomes unwieldy. The ability to issue clear guidance is often diminished in relation to the number of different decisionmakers. A limit on the number of judges assigned to a single circuit would help ensure a more manageable — and more productive — court. For example, the Ninth Circuit Court of Appeals, currently stretching from Montana to Guam with twenty-eight judges, should be divided in smaller circuits. Previously, other circuit courts of appeals have been split when the number of judges became unmanageable.

Action Required: Propose legislation to amend Title 28 United States Code, Section 44.

ENHANCED INCENTIVES FOR ENCOURAGING MERITORIOUS LITIGATION

16. “Loser Pays” Rule for Attorney Fees in Diversity Cases

Recommendations: *Adopt a “loser pays” rule in cases involving state law brought under the federal courts’ diversity jurisdiction. The loser would pay the winner’s legal expenses incurred in vindicating its prevailing position, subject to two limitations: 1) fee shifting would be restricted to the amount of fees the loser incurred and 2) could be further limited by judicial discretion where appropriate. (36)*

Adopting a “loser pays” rule for payment of attorney’s fees will provide those bringing suit with a choice of methods to finance their litigation. The rule would help fund meritorious claims not currently initiated because the cost of pursuing the claim would have exceeded the expected recovery. The “loser pays” rule (sometimes called the English Rule) is grounded in fairness — in the equitable principle that a party who suffers should be made whole. Where the rule operates, it also prompts more realistic case evaluation. Because the losing party will be obligated to pay the winner’s fees, this approach will encourage litigants to evaluate carefully the merits of their cases before initiating a frivolous claim or adopting a spurious defense.

The “loser pays” rule approach recommended would limit the amount a losing party might have to pay to the sum it expended in litigating the suit.

This would prevent a party from incurring disproportionate expenses for the purposes of penalizing the loser. Limiting the application of the “loser pays” rule to federal diversity cases provides an option for those litigants desiring that each party pay its own attorney fees to pursue their cases in the state courts. Thus, this recommendation will not impact federal statutory rights such as civil rights and environmental protection statutes.

Action Required: Propose legislation to amend Title 28 United States Code.

17. Strengthen Sanctions Against False Court Filings: Rule 11 Reform

Recommendations: *The present attorney sanctions provision, Rule 11, should be retained. Courts should have the power to penalize those responsible for making unfounded assertions in filings with the court, not merely the attorney who signs the document. All parties and their counsel should be required to correct any unfounded assertion immediately upon learning of the inaccuracy. Courts should apply sanctions in a uniform manner. (37-40)*

Rule 11 is an important reminder to litigants to avoid filings with insufficient legal or factual support. The rule provides an important deterrent to frivolous conduct and should be retained and strengthened.

Some courts currently construe Rule 11 to apply only to knowledge at the time the document was filed, while other courts require parties to correct filings when they learn of error. Whenever an error or falsehood is discov-

ered, the parties should be obligated to supply correct information. Further, Rule 11 should apply not only to the lawyer who signs the pleading, but also to any other lawyers responsible for the falsehood.

Action Required: Propose amendments to Federal Rule of Civil Procedure 11.

18. Towards More Efficient Attorney’s Fees Statutes

Moratorium on One-Party Pay Statutes

Recommendation: *Impose a moratorium on statutes that award attorney fees only to the party who initiated the lawsuit and subsequently prevails. Pending a review of the current statutes, subsequent statutes with attorney fees provisions should be advanced only with substantial policy justification, including cost-benefit analysis. (41)*

Over 150 different federal statutes provide attorney's fees and costs if the party bringing the suit prevails, yet fail to compensate the party who has to defend itself from nonmeritorious allegations. The potential award of fees may well increase the likelihood of frivolous litigation. No additional “one-way” statutes should be enacted without a thorough examination of the benefits and burdens they may cause.

Action Required: Executive Branch imposes recommendation on all federal agencies; encourage Congressional restraint.

Reduce Time Spent Litigating Attorney's Fees

Recommendations: Amend the Equal Access to Justice Act (EAJA) to provide clear standards for the award of attorney's fees caused by vague and conflicting statutory guidance. The statute should specify that a uniform fee rate be applied absent exceptional circumstances. The uniform rate should be indexed to the rate of inflation. (42-43)

The Equal Access to Justice Act (EAJA) allows the award of attorney's fees to those who prevail in litigation against the government. Because the statute does not provide clear guidance, additional court hearings are required to set the proper amount of fees. This needless satellite litigation could be eliminated by amending EAJA to replace its vague and conflicting standards. The rate of attorney compensation should be consistent, clearly set forth in the statute, and altered only in limited instances for good cause. Adjusting the uniform fee awardable in relation to a national index would eliminate the need for annual revision.

Action Required: Propose legislation amending the Equal Access to Justice Act, Title 28, United States Code, Section 2412.

REDUCING UNNECESSARY BURDENS ON FEDERAL COURTS

19. Reforming Diversity Jurisdiction

Recommendations: The amount in controversy required to invoke the

diversity jurisdiction of the federal courts should be based on the amount of economic damages alleged. This jurisdictional amount should be indexed to the rate of inflation. (44-45)

The jurisdiction of federal courts extends to cases involving state law only when the parties are citizens of different states. The statute establishing jurisdiction based on diversity of citizenship now requires that at least \$50,000 be in dispute to ensure that only the more significant cases are heard in federal court.

Resort to the federal court should be based on the possibility of demonstrable economic harm rather than speculative wrongs. In addition, indexing the monetary threshold to the rate of inflation would eliminate the need for repeated congressional action to revise the jurisdictional amount.

Action Required: Propose legislation to amend Title 28 United States Code, Section 1332.

20. Restore Full Judicial Immunity to State Court Judges for Judging Cases

Recommendation: Enact legislation to restore judicial immunity to state court judges for the fees and costs they incur in defending their official actions. (46)

The Supreme Court has held that state court judges may be held liable for attorney's fees and costs under the Civil Rights Attorney Fees Awards Act of 1976. The threat of this liability places an enormous and needless burden on state judges who fear personal liability for decision they make in their official capacity as judges.

Action Required: Propose legislation to amend Title 42 of the United States Code, Section 1983.

21. Reduce Frivolous and Unnecessary Prisoner Litigation

Recommendations: *States should be encouraged to use administrative procedures to resolve inmate grievances. Abusive prisoner litigation should be limited by restricting the number of habeas corpus petitions an inmate may file and by waiving court filing fees only when the petitioner demonstrates a substantial chance of prevailing. (47-49)*

In 1988 over 10 percent of the federal civil docket were prisoner civil rights cases. Many prisoners use the federal courts to harass prison officials or to delay their sentencing.

The vast majority of these cases challenge conditions of confinement in state institutions and can be resolved without resort to the federal court. States should be encouraged to adopt grievance dispute measures that adequately substitute for judicial hearings. The Civil Rights of Institutionalized Persons Act ("CRIPA") should be amended to remove unnecessary barriers to effective grievance procedures.

Inmates also abuse the writ of habeas corpus (which allows federal courts to review state court convictions) by repeatedly filing almost identical actions. Reasonable standards, requiring the consolidation of all issues, are needed. As another method to discourage abusive filings by inmates, courts should also examine closely requests to waive filing fees.

Action Required: Propose legislation to amend Title 42 of the United States Code, section 1997e; Title 28 of the United States Code, Sections 1915, 2244, 2254, and 2255.

ELIMINATE LITIGATION OVER POORLY DRAFTED LEGISLATION

22. Reduce Poor Draftsmanship in Legislation

Recommendations: *All proposed laws should undergo a "litigation hazards" review to insure that poor drafting of legislation does not create unnecessary litigation. (50)*

Each year thousands of laws are proposed. Too frequently, poor drafting leaves routine areas e.g., statute of limitations or standards of proof, unaddressed. These ambiguities and omissions result in uncertainty and court challenges.

The federal government should develop a list of errors to be avoided in legislation and should apply the checklist to all proposed laws. Where appropriate, the government should make more consistent use of bright-line tests to reduce ambiguities which may lead to litigation. These steps will help promote certainty and will reduce the work of the courts.

Action Required: Executive Branch imposes recommendation on federal agencies and adds screening to current legislative review efforts; encourage Congressional restraint.

The Federal Civil Justice Reform Working Group

Chairman

Kenneth W. Starr

Solicitor General, Department of Justice

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Alden Abbott	Department of Commerce
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President's Council on Competitiveness Staff

The Council is staffed by the Office of the Vice President with support from members. Allan B. Hubbard serves as Executive Director.

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February 13, 1992

THE PRESIDENT'S COUNCIL ON COMPETITIVENESS

"AGENDA FOR CIVIL JUSTICE REFORM IN AMERICA"

FACT SHEET

CIVIL JUSTICE REFORM MODEL STATE AMENDMENTS

As part of the Administration's efforts to reform the civil justice system, Vice President Dan Quayle today presented the Civil Justice Reform Model State Amendments. The Amendments, which include both model legislation and model rules of procedure and evidence, would implement the recommendations proposed by the President's Council on Competitiveness Report, "Agenda for Civil Justice Reform in America."

Over the past 30 years, our legal system has become burdened with excessive costs and long delays. Many features of the current legal system no longer serve to expedite justice or to ensure fair results. Instead, overuse and abuse of the legal system impose tremendous costs upon American society. Higher costs mean higher prices for American consumers for everything from household goods to medical treatment. Higher costs also reduce America's ability to compete in the global marketplace.

To address these problems, the Council established a working group, chaired by Solicitor General Kenneth W. Starr. The resulting recommendations provide concrete steps that can be taken to restore our civil justice system as an institution that is fair to all and serves the ends of justice. The Administration's proposals seek to restore fairness to our judicial system and to eliminate the economic burden placed on American society by excessive litigation. None of the reforms impairs any substantive legal rights. Instead, they will help ensure that deserving victims actually receive their compensation earlier and with less expense.

The Problem: An Overburdened System

States reported the filing of 17,321,125 civil cases in 1989. Excessive and expensive civil litigation has overburdened our court system and imposed higher costs on small businesses, professionals, industry, and Government at all levels in the form of excessive legal fees, court costs, and wasted individual time and effort. Every year, our legal system costs Americans, directly and indirectly, an estimated \$300 billion.

While every State has its unique legal system, each can benefit by applying the principles of fair, efficient, and early resolution of disputes.

In order to reduce litigation costs, promote swifter justice, protect individual rights, and restore the integrity of our legal system, among the provisions of the "Access to Justice Act of 1992" are the following reforms:

Multi-Door Courthouse - To give consumers the opportunity to elect an effective alternative to court adjudication, courts would be required to foster alternative dispute resolution (ADR) procedures rather than trials to settle disputes. The parties would be free to select from different ADR procedures such as early neutral evaluation, traditional mediation, outcome determinative mediation, mini-trials, summary jury trials, and arbitration.

Core Disclosure and Discovery - Discovery consumes 80 percent of the time and money in litigation; it should be reformed to enable the parties to proceed to the central issues without extraneous, costly, and unproductive practices. The Model proposals will require automatic disclosure of basic or "core information" and mandate that the parties confer at discovery planning conferences. Discovery would also be partially governed by market incentives.

Expert Evidence Reform - Unlike ordinary witnesses who may offer only factual testimony, expert witnesses are allowed to testify as to their opinions. Therefore, it is necessary that the expert's opinion testimony be based on "widely accepted" theories instead of "junk science." The Model proposals will require courts to determine that proposed witnesses are legitimate experts in their field. The Model also bans contingency fees for experts.

The Fairness Rule - The United States is one of the few countries which does not allow the winning party to recover the costs of litigation. Instead, winners and losers alike pay their own legal fees. The "loser pays" rule would help those who have legitimate claims, particularly those who effectively barred from the courts because the costs of pursuing the claim would have exceeded the expected recovery. The legislation would limit the amount the loser must pay and specifies that courts should not require the loser to pay if circumstances make payment "unjust."

The Civil Justice Reform Model State Amendments also include other provisions to encourage settlement and reduce costs. This package of state legislation and rules changes, in conjunction with the Administration's proposed "Access to Justice Act of 1992" will greatly reduce the burdens of excessive, needless litigation while protecting and enhancing every American's ability to vindicate legal rights through our legal system.

Legal-Liability Awards Are Frightening Smaller CPA Firms Away From Audits

By LEE BERTON

Staff Reporter of THE WALL STREET JOURNAL

NEW YORK—Bad news for thousands of companies: A flood of legal-liability awards against accountants is frightening smaller CPA firms into turning down audits and cutting back on client services.

As the number of accounting firms doing audits shrinks, those left see a chance to raise fees.

Many businesses may find it tougher and more expensive to hire auditors needed to certify their financial statements. Small companies may be hit especially hard because larger accounting firms feel that small-cost audits aren't worth their while without the added consulting and tax work a big company can give them.

"As smaller companies find it harder to get their audits done, audit fees could rise 20% to 30%," says Dan Goldwasser, an attorney who does liability consulting for the 33,000-member New York State Society of Certified Public Accountants. "Fewer accounting firms are willing to risk the liability exposure."

Frustration is already evident. "It's been difficult finding an auditor for the small public medical-supplies company for which I do internal accounting work," says Leonard Simon. (Under Securities and Exchange Commission independence rules, his own small accounting firm can't audit companies for which it does inside bookkeeping.)

Mr. Simon first offered the \$125,000 audit to Schreiber & Sontag, another small, three-partner accounting firm here; of its 40 clients, the biggest pays \$40,000 for an annual audit. But Barry Schreiber, the firm's managing partner turned down the offer.

"The size of recent court awards in auditing negligence cases scares the dickens out of us," says Mr. Schreiber. He turned the audit over to Richard Eisner & Co., a much larger accounting firm that currently audits 40 public companies. "We de-

Limiting the Risk

Steps accounting firms are taking to reduce liability exposure, as expressed in a survey of 500 CPAs in firms of 50 or more accountants:

- 100%** Doing internal professional reviews of audits
- 98%** Developing new risk-management procedures by spelling out scope of CPA's job in letters to clients
- 98%** Upgrading internal standards
- 87%** Including disclaimers specifying appropriate use of their work
- 79%** Limiting services offered
- 56%** Limiting industries served

In the same survey, accountants said they believe the limits of their responsibilities are:

- 92%** Accuracy
- 77%** Independent evaluation of a company's financial situation
- 3%** Guaranteeing a company's financial stability

Source: Johnson & Higgins Financial Group

cided to limit our liability exposure and hold down our insurance costs, which could be 40% to 50% higher if we did audits of public companies," Mr. Schreiber adds.

Smaller accounting firms have good reason to shy away from audits, which have cost CPA firms of all sizes large sums in negligence cases. Last month, one such award set a record. A Texas jury hit Coopers & Lybrand with a \$200 million punitive-damage award for its allegedly faulty audit of now-defunct MiniScribe Corp. While the case was settled out-of-court for an undisclosed sum—presumably less than \$200 million—the plaintiffs' attorney says the payment was still a "large sum of money."

Last year, Ernst & Young paid \$43.5 million to settle a negligence case involving a predecessor firm's audit of collapsed

Lincoln Savings & Loan. KPMG Peat Marwick in England anted up \$67.9 million for an allegedly faulty audit of a former Peat client. And Cherry, Bekaert & Holland, a small Charlotte, N.C., accounting firm, paid \$2.5 million to federal regulators as a result of a 1983 audit of a Florida bank that later collapsed.

Such awards are causing some accounting firms to limit the services they offer new audit clients. "We've become a lot more careful about the services we perform for an audit client," says Robert Israeloff, executive partner of Israeloff, Trattner & Co., a Valley Stream, N.Y., firm with 700 clients.

Mr. Israeloff says that in the past his firm has often shown audit clients how to improve financial and billing systems by

Please Turn to Page B5, Column 1

Legal-Liability Awards Frighten CPA Firms Away From Auditing

Continued From Page B1

using multiform purchase orders. "Now we think twice before offering such advice," he adds. "If the company goes out of business, shareholders and creditors could sue us as 'the deep pocket,' saying our business advice was the reason for the collapse."

Companies seeking outside auditors to certify financial reports when they go public find the search is getting tougher. Some accounting firms are shying away from such audits, which generate many malpractice suits against accountants by disgruntled investors when the company has problems that aren't revealed in audited financial statements.

Midwest Franchiser

Aware of these legal pitfalls, Parker, Wittus & Co., a Southfield, Mich., accounting firm, is taking its time in weighing whether it wants to do the audit of a Midwest franchiser of recreational products planning to go public. The franchiser approached Parker Wittus two months ago to help prepare financial statements, but the accounting firm still hasn't decided whether to take the job.

"At one time, we would have been much more aggressive in taking such an audit, but now we want to look at all the company's past financial records and franchise agreements before making a decision" to see whether there's any liability exposure, says Arnold Krieger, Parker Wittus's managing partner.

Afraid of being sued, some small accounting firms are shying away from audits of *any* companies. In New York, recently formed Condon, O'Meara, McGinty & Donnelly is specializing in nonprofit private clubs and won't take on any new audits of for-profit enterprises.

Investors, creditors and suppliers filing "court suits are a lot tougher on small, entrepreneurial companies and their auditors if the companies fail to make money, whereas a nonprofit [organization] doesn't have public stock and can break even or even run a deficit without stirring up a storm in court," says Thomas Donnelly, a Condon O'Meara partner.

Tough Time

A recent survey by the California Society of Certified Public Accountants confirms one reason why small businesses are likely to have a tough time finding an auditor: Of more than 1,500 small CPA firms in the state that mainly specialize in small business, the portion doing audit work declined to 53% in 1990 from 61% in 1988.

"While only 6% of the annual revenues

of these small accounting firms came from auditing, it accounted for 31% of their litigation costs," says Michael Ueltzen, a Sacramento accountant who headed the survey. "This race away from auditing will accelerate and boost audit fees for small business," Mr. Ueltzen observes.

Jay Nisberg, a Ridgefield, Conn., planning consultant to more than 100 accounting firms, says that as the ranks of accounting firms shrink, small companies shopping for auditors "may be forced by banks and regulators to select auditors they wouldn't otherwise pick." He adds: "It's not a happy prospect for small companies seeking to go public, borrow money or buy property or equipment on credit where an audit is required."

Accountants say fear of liability exposure is making it tougher for certain high-risk businesses to find auditors at all. Goldstein Golub Kessler, a medium-sized accounting firm in New York with more than 1,500 clients, says it's turning down audit work for banks, insurance companies and credit unions. "Such audits could lead to malpractice suits," says Gerald Golub, the firm's managing partner. "The financial services industry is rife with problems, and the risks of doing an audit there aren't worth the fees."

In Buffalo, N.Y., Freed, Maxick, Sachs & Murphy, another medium-sized accounting firm, with 700 clients, has turned down audits of three public companies over the past two years because "we fear the litigation that could result," says Leonard Freed, the firm's managing partner. Over the past two years, there has been a rise of 20% in the number of negligence suits against 30 other firms that share such information with Freed Maxick, says Mr. Freed. "A half-dozen of them are going bare—without liability insurance—and one big court judgment could put them out of business and wipe out their partners' net worth."

Howard Stone, managing partner of Altschuler, Melvoin & Glasser, with offices in Chicago and Los Angeles, says that since the firm lost its two public-company clients two years ago, it has avoided audits of public companies. "The litigious climate is just too hot for us," says Mr. Stone.

Instead, Altschuler Melvoin is helping the litigators; it has created a department of 28 accountants and two attorneys who testify for plaintiffs in malpractice suits. Mr. Stone notes that the unit now contributes 12% of the firm's \$45 million of annual revenue, compared with 2% of \$36 million two years ago.

Richard Porter

FyI -

File -
Civil
Justice

Ramona for John Howard

Document Originally
Attached to
Following Page



THE VICE PRESIDENT
WASHINGTON

March 2, 1992

Mr. John F. Wolfe
Publisher
The Columbus Dispatch
34 South Third Street
Columbus, Ohio 43215

Dear Mr. Wolfe:

Keith McNamara was kind enough to send me a copy of your editorial "Justice for All."

It is heartening to know that in spite of the organized "disinformation" directed at the Administration's efforts to reform the civil justice system, you are helping to get the true message across. I appreciate your support in helping take this case to the people.

We will continue our efforts and have drafted Model State Civil Justice Reform legislation. I would welcome the opportunity to work with you to pass these reforms in Ohio.

Sincerely,

*We're beginning
to make some
progress -
Thanks*

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—
KEITH McNAMARA
OF COUNSEL

February 13, 1992

By Telecopier - 202/456-7044

John Howard, Esq.
Counsel to the Vice President
Office of the Vice President
White House
Washington, D.C. 20500

Dear John:

Enclosed is an editorial from today's Columbus Dispatch. You will recall that John F. Wolfe, the publisher, attended the meeting with the Vice President in Columbus. You might want to suggest that the Vice President send a note to Mr. Wolfe.

I hope you and the Vice President will be to meet with the Board of Directors of the State Justice Institute in March.

Best personal wishes.

Respectfully,

Keith McNamara

KM/njr
Enclosure

The Columbus Dispatch

An Independent Newspaper Serving Ohio Since July 1, 1871.

JOHN F. WOLFE, Publisher, President and CEO
ROBERT B. SMITH, Editor

EDITORIALS

Justice for all Proposed act would improve legal system

The American people should send a strong message to their representatives in Washington that they agree with President Bush's call last week to stop this nation's "love affair with the lawsuit." The proposed Access to Justice Act, presented Feb. 4 by Vice President Dan Quayle, includes many of the worthwhile ideas for needed reforms of the civil justice system that he had laid on the table in August at a convention of the American Bar Association.

At that time, the vice president drew fire from those lawyers who often are quick to defend the aspects of the status quo that have fueled the litigation explosion. The truth is many attorneys, particularly on the defense side of the aisle, recognize that the nation's traditional methods of resolving disputes aren't working very well. But that truth can hurt.

A number of members of the ABA, the Association of Trial Lawyers of America and similar groups have profited handsomely from the shortcomings in U.S. justice. They have become wealthy at the expense of virtually everyone else in this country. Costly settlements out of court and exorbitant awards by juries are reflected in the prices of goods and services and insurance premiums.

Excessive litigation and the threat of litigation puts a damper on the economy, driving some companies out of business, forcing the withdrawal of merchandise from the marketplace and discouraging the development of new products.

In the medical field, the fear of malpractice suits spurs the practice of defensive medicine, the expensive duplication of diagnostic techniques and tests. These often unneeded procedures drive up the costs of

enough, that campaign has begun. The ABA and certain groups that claim to represent consumers immediately began attacking the loser-pays concept as being pro-business and anti-people.

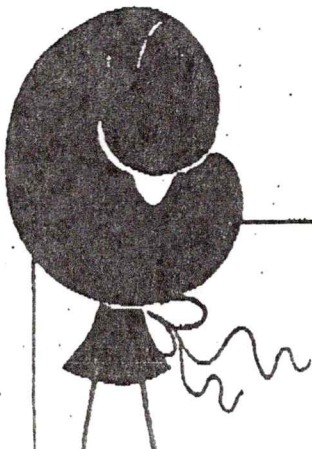
In fact, the loser already pays the winner — and sometimes pays outrageous sums completely out of line with any "wrong" committed — when the loser is the defendant in a civil suit. But when someone falsely has been accused of something by a plaintiff, has been forced to spend huge amounts defending himself and finally is vindicated in a jury trial, the loser pays the winner nothing. Common sense says this just isn't fair.

Some people would say, "Oh, but the defendant probably has insurance to cover those costs." In cases commonly taken to trial, that may be true. But, even so, the high-cost defense of companies and individuals wrongly accused by plaintiffs simply is passed along in higher prices for goods, services and insurance. The loser: the consumer.

Those attorneys who protest the loser-pays rule try to drown out the voices of attorneys who point out its pro-consumer benefits. Under the current system, lawyers are reluctant to take on cases in which the amount in dispute is so small that it would cost more in legal fees than the likely recovery. A homeowner whose roof isn't repaired properly, a motorist whose car is

painted the wrong color and similar examples of buyer-vs.-business cases too small to be of interest to most attorneys come to mind.

In contrast, in cases where the chance of a multi-million-dollar settlement seems possible, Quayle noted, "There are all sorts of lawyers. As a matter of fact, the lawyers will call you. You don't have to



health care in this country.

These are among the reasons the President's Council on Competitiveness came up with a 50-point plan for civil justice reforms, which council Chairman Quayle then presented to the ABA.

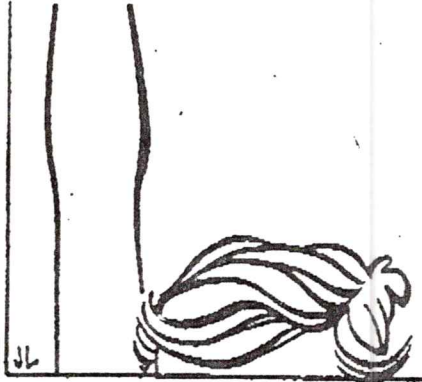
Blasting Quayle hasn't helped lawyers, who find themselves among professionals the public loves to hate. But the ABA on Feb. 3 did issue its own report recommending changes, many of which support the council's proposals. The organization rightly has backed increased use of alternatives to court trials, limits on pretrial "discovery" proceedings, and even caps on punitive-damage awards, although the lawyers and Quayle disagree on what those maximums should be.

The proposed Access to Justice Act, however, because it deals only with civil suits filed in federal courts, doesn't address punitive damages. These, the council says, should be limited via state legislative action. Those states that haven't already begun working on this area ought to take up the challenge.

And the Democratic-dominated Congress should turn its attention to passing the access act by setting aside election-year politics. This legislation is a correct approach to needed, and long overdue, reform. It ought not to become bogged down in petty political wrangling.

Realistically, of course, Congress, with nearly half of its members lawyers, may have some difficulty swallowing a key provision that already choked the ABA. That's the imposition on most federal civil suits of the so-called English Rule, under which the loser pays the legal fees of the winner.

Quayle warned of "disinformation" that would be directed at these reforms and, sure



call them."

As he pointed out, under the proposed legislation there would be "a lot fewer nuisance suits filed, and ... the little guy who has a legitimate complaint is going to have access to our legal system."

The loser-pays rule would force lawyers to evaluate

cases more carefully and would discourage them from filing frivolous suits and claims without merit. The provision also would encourage quicker, out-of-court settlements while deterring lengthy discovery proceedings and other costly delays.

Quayle's council cites a *Forbes* magazine article that pins a figure of \$80 billion annually on the price of litigation and related insurance premiums in this country and \$300 billion in indirect costs linked to litigation and the avoidance of it. Not coincidentally, the 750,000 U.S. lawyers represent 70 percent of the world's supply of these professionals.

The "lawsuit madness," as Bush has called the obsession with saying, "I'll see you in court," taxes the economy. Lawyers and some of their clients prosper, while the companies that pay find it increasingly difficult to compete in the world's marketplace.

A U.S. Department of Commerce study in 1984 found product-liability insurance costs for U.S. companies often were 20 to 50 times higher than for foreign competitors.

The nation's method of delivering justice, somewhat like the manner in which it provides health care, has become too expensive and too unwieldy. Reforms detailed in the administration's Access to Justice Act are in order, and the loser-pays rule is a critical element of those changes.

In addition, the states should adopt similar reforms in their court systems.

2/6



OFFICE OF THE VICE PRESIDENT
WASHINGTON

February 6, 1992

NOTE TO: John Howard
Richard Porter
Dave Beckwith

FROM: Jeff Nesbit

FYI.

File -
Civil Justice
Reform

TO: J. N. EBBITT
FROM TED GEST

Galanter
Talk to NCBP

(These are only the sections relating to lawyers

in the course of all human history; Americans sue at the drop of a hat; the courts are brimming over with frivolous lawsuits; resort to courts is a first rather than a last resort; runaway juries make capricious awards to undeserving claimants; immense punitive damage awards are routine; litigation is undermining our ability to compete economically. Each of these is false, but in a complicated way; so let me take up a few of the more specific assertions of those who propound the jaundiced view.

The Seventy Percent Solution: My first example, trivial in itself but revealing about the quality of the indictment of our system of civil justice, is the assertion that the United States is home to seventy percent of the world's lawyers. Dropped casually by Vice President Quayle in his speech last August and parroted by President Bush, Cabinet members, and media experts, this is certainly an alarming figure. It suggests a monstrous deviation from the rest of the world and portrays lawyers as a kind of cancerous excrescence on American society. As someone who has studied lawyers comparatively, I wondered how this percentage was calculated. I could find no sign of anything that could be called a calculation. The seventy percent figure seems to be a retread of an item that surfaced a decade ago, having no apparent terrestrial origin, that the United States had two-thirds of the world's lawyers.

Counting lawyers comparatively is a daunting undertaking, plagued by poor data and a bushel of apples and oranges problems. However these are resolved, it is clear that the seventy percent figure is very far from the mark. An informed guess would be something less than half of that. Counting conservatively, American lawyers probably make up somewhere between twenty-five and thirty-five percent of all the world's lawyers, using that term to refer to all those in jobs that American lawyers do

Galanter
Talk to NCBP

of
(including judges, government lawyers and in-house corporate lawyers).

Is that too many? It is roughly the United States proportion of the world's GNP and far less than our percentage of the world's expenditures on science and R&D. America is a highly legalized society that relies on law and courts to do many things that other industrial democracies do differently. But it is worth recalling that one realm in which the United States has remained the leading exporter is what we may call the technology of doing law-- constitutionalism, judicial enforcement of rights, the organization of law firms, alternative dispute resolution, public interest law. For all their admitted flaws, American institutions provide influential (and sometimes inspiring) models for the processing of disputes and the protection of citizens.

What is striking about the Seventy Percent figure is not that the estimate was so overblown, but that those who made it had reason to know that it was a tall tale; and that neither the Vice President nor anyone else who thought it was a relevant fact deemed it important to have an informed rather than a wild guess.

The Three Hundred Billion Dollar Bubble: Another funny number: the Vice President and those who beat the anti-lawyer drums tell us that "the legal system now costs Americans an estimated \$300 billion a year."³ Three hundred billion? Where does that come from? The Vice President has it from the Council on Competitiveness, whose Agenda for Civil Justice Reform borrows

³. Remarks by Vice President Quayle to the American Business Conference, Oct. 1, 1991 (Federal News Service). The history of this figure is detailed in Attachment 2.

Galanter
Attachment 1

January 29, 1992

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Attachment 1: "Seventy Percent of the World's Lawyers"

The origins of this figure are mysterious. The notion that the United States had "two thirds of the world's lawyers" surfaced a decade ago, but seems to have no ascertainable origin in research--scholarly, journalistic or otherwise.¹ This item was retailed by Chief Justice Burger as part of his indictment of litigious America.² It was subsequently used by Justice O'Connor and others,³ and became part of the stock speech of Governor Lamm of Colorado about America's descent to doom. Since the number was rounded up to seventy percent in 1991, the two thirds figure has dropped out of

¹ Among the earliest sightings were a newsmagazine report that "The U.S. has 610,000 lawyers, two thirds of the world's total.... About 70 percent are in private practice." Special Section: the ABCs of Justice, U.S. News and World Report, Nov. 1, 1982, p. 55. [Could this be the origin of the 70% figure?] A few months earlier, James Spensley, a lecturer at the University of Denver Law School, was quoted as saying "The US has become the world's most litigious society, employing over two thirds of the world's lawyers." David F. Salisbury, "Colorado's quality of life fades in a changing West," Christian Science Monitor, July 30, 1982, p. 4.

² Annual Message on the Administration of Justice from Warren E. Burger, Chief Justice of the United States, at the Midyear Meeting of the American Bar Association, February 12, 1984, p. 2. ("It has been reported that about two-thirds of all the lawyers in the world are in the United States and of those, one-third have come into practice in the past five years.") A very similar item appeared a few months earlier in a contribution to Legal Times by New York lawyer Peter Megargee Brown ("Two-thirds of all lawyers in the world are in the United States. One-third of the lawyers in this country have been in practice less than five years.") "Profession Endangered by Rush to Business Ethic," Legal Times, Sep. 23, 1983, p. 10.

³ Milly McLean, United Press International, Regional News, Dateline: Hanover, NH, April 9, 1984. Cf. a law school dean's op-ed in the Wall Street Journal that "Two-thirds of the world's lawyers now practice in this country, and one-third of these were graduated during the past five years." Ernest Gellhorn, "Too Much Law, Too Many Lawyers, Not Enough Justice," Wall Street Journal, June 7, 1984, p. ____.

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use.⁴

The Council on Competitiveness did not include the seventy-percent figure in its Agenda, but apparently there had been some consideration of it in the preparation of the Vice President's August 13 speech, for a week earlier "a Quayle spokesman" was reported as having "noted that the United States has 70 percent of the world's lawyers, and that the rising tide of litigation 'is a burden on our economy.'"⁵ The drafters of the Council's Agenda had reason to be aware that seventy percent was a falsehood.⁶

The following table summarizes the number of lawyers in various countries. To maximize temporal comparability, I have used data for 1985 or a year as close as possible to 1985. Obviously, these enumerations are of varying quality, where more than one estimate was available, I have selected the one that seems most comprehensive and reliable.

⁴ A first sign of further growth, combined with a daring cosmological speculation, appeared in a letter to the editor from Mark Gorney to the Wall Street Journal, Jan. 22, 1992, p. A-15. ("This country is home to 75% of all the lawyers in the universe. There are more of them in one building in Seattle than in all of Japan.")

⁵ Sandra Terry, "BCCI Scandal a Windfall for Attorneys Unlike Any Other," Washington Post, Aug. 12, 1991, p. F5.

⁶ On page 1 of the Agenda, there is an approving reference to, but not citation for, "a recent report by a Professor of Finance at the University of Texas...[that] estimated that the average lawyer takes \$1 million a year from the country's output of goods and services." The report referred to is chapter 8 of Stephen P. Magee, William A. Brock and Leslie Young, Black hole tariffs and endogenous policy theory New York: Cambridge University Press, 1989. That source contains a seriously inadequate listing of the number of lawyers in some 34 countries as of 1983. American lawyers were some 45% of the total number enumerated on that list. One can conclude that the Council staff either did not examine the source they approvingly cite or that they were aware that there was good reason to believe the seventy percent figure was spurious.

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January 29, 1992

Country	Number of Lawyers [brackets indicate estimate]	Date	Source
Algeria	800	1983	A
Argentina	50,000	1983	A
Australia	22,000 (private practice)	1985	B
Austria	2,400	1987	C
Bangladesh	15,000+	1984	D
Belgium	21,104 (incl. gov't lawyers)	1985	E
Brazil	85,716	1981	E
Canada	42,710 (lawyers and notaries)	1986	F
Chile	12,300	1983	A

TO J NESBITT
FROM T. GEST (CONT.)

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China	30,000	1985-88	G
Costa Rica	1,959	1983	A
Denmark	3,000	1983	A
Egypt (members of Egyptian Bar Association)	30,000	1983	H
England & Wales (solicitors and barristers)	45,500	1985	E
Finland (incl. private practice and gov't)	9,314	1983	B
France (private practice)	27,700	1990	E
Germany (East) (Private practice and judges)	2,035	1990	I
Germany (West) (all professions)	115,900	1985	J

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Hong Kong	1,800	1989	K
India	247,373	1983	L
(Advocates who are members of the Bar Council of India)			
Ireland	2,500	1983	A
Israel	7,500	1983	A
Italy	46,401	1985	E
(private practice)			
Japan	124,000	1987	M
(registered legal professionals, incl. scriveners and tax attorneys)			
Jordan	700	1983	A
Kenya	[1,000]	1991	N
Malaysia	2,600	1988	O
Nepal	1,000	1983	A
Netherlands	5,124	1986	B

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January 29, 1992

New Zealand	4,189	1985	E
(incl. law teachers)			
Nigeria	2,000	1983	A
Norway	4,412	1970	E
(incl. private practice and gov't)			
Pakistan	[70,000]	1982	P
Panama	900	1983	A
Scotland	6,350	1985	E
(incl. solicitors, advocates in private practice, and gov't)			
Singapore	990	1983	A
South Africa	5,700	1986	Q
(appellate only)			
Spain	32,540	1985	B
(incl. private practice and gov't)			

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Sweden	2,064	1964	B
(incl. private practice and gov't)			
Switzerland	3,300	1983	A
Turkey	22,395	1987	R
(private practice)			
United States	618,800	1985	S
(incl. gov't, private practice, and law teachers)			
U.S.S.R.	207,000	1986	T
(mostly government)			
Uruguay	300	1983	A
Venezuela	31,500	1990	U
(lawyers in all professions)			
Total	1,969,876		
Percent of total in U.S.	31.41		

Note: Many countries are omitted, including much of Latin America, Eastern Europe, the Middle East, Southeast Asia, and Africa.

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January 29, 1992

Counting the number of lawyers in the world is a difficult task for several reasons. Figures regarding the number of lawyers are not readily available for many countries. Lawyers are defined differently from country to country. Some, for example, consider government legal officers, judges, prosecutors, law teachers, and corporate law officers to be "lawyers," while others do not. Lawyers play different roles in different societies. Totals from bar associations are often not up to date, and often exclude practicing lawyers who are not members of such organizations. Finally, it is difficult to classify retired attorneys or those with the requisite educational credentials who are not working in recognized "lawyers" jobs.

Sources: A. Stephen P. Magee and William A. Brock, Black Hole Tariffs and Endogeneous Policy Theory: Political Economy in Equilibrium (1989) Table 8.1. For this information, the authors rely on the International Bar Directory, which may not reflect the actual number of practising lawyers. See note above.

B. Richard L. Abel and Philip S. C. Lewis, Lawyers in Society: The Civil Law World (1988) Table 1.1

C. Judy Dempsey, Legal Profession 2, EC Opportunities Appeal, Financial Times, Oct. 15, 1987 at II.

D. Bangladesh Lawyers Boycott Courts in Protest, Reuters N. European Service, Apr. 15, 1984.

E. Richard L. Abel and Philip S. C. Lewis, Lawyers in Society: Comparative Theories (1989) Table 3.2.

F. David A.A. Stager, Lawyers in Canada (1990) Table 6.2.

G. WSU-College-Law: Announces Pioneering Trade-Law Exchange Program With China University at Beijing, Business Wire, July 5, 1985; Julian Baum, In China, Meese Offers Counsel, Christian Science Monitor, Aug. 20, 1987 at 7; China To Establish New System For Lawyers, Xinhua General Overseas News Service, Aug. 1, 1988.

H. James Dorsey, Mubarak Cracks Down On Outspoken and Powerful Cairo Lawyer Group, Christian Science Monitor, Mar. 29, 1983 at 6.

I. David S. Clark, The Organization and Status of Lawyers, 278. in General Reports, IXth World Conference of Procedural Law: Role and Organization of Judges and Lawyers in Contemporary Societies, International Association for Procedural Law. Coimbra and Libson, 1991.

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January 29, 1992

J. David S. Clark, The Organization and Status of Lawyers, Table 2. in General Reports, IXth World Conference of Procedural Law: Role and Organization of Judges and Lawyers in Contemporary Societies, International Association for Procedural Law.

K. Joan M. Cheever, The Legal Community Withdraws Its Welcome in Hong Kong, Nat. Law J., Jan. 9, 1989 at 22.

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M. Damon Darlin, Foreign Lawyers in Japan Chafe Under Restrictions, Wall Street J., Feb 7, 1989 at ---. The several legal occupations in Japan are described by Robert Brown, "A Lawyer by any Other Name: Legal Advisors in Japan," in Legal Aspects of Doing Business in Japan, 1983 New York: Practising Law Institute (1983), pp. 201-502.

N. Aryeh Neier, Watching Rights, Human Rights in Kenya, The Nation, Apr. 1, 1991 at 405.

O. Kyodo News Service, Lawyers Want King to Revoke Suspension of Five Judges, July 9, 1988.

P. Ahmad Asrar, Showdown Between Lawyers and Military in Pakistan, UPI, Oct. 25, 1982.

Q. L.J. Pendebury, Georgetown Program Aids Black South African Lawyers, Legal Times, Aug. 11, 1986 at 3.

R. David S. Clark, The Organization and Status of Lawyers, 292. in General Reports, IXth World Conference of Procedural Law: Role and Organization of Judges and Lawyers in Contemporary Societies, International Association for Procedural Law, Coimbra and Libson, 1991.

S. Number offered by ABA President Eugene Thomas, MacNeil/Lehrer NewsHour (PBS Television Broadcast, Aug. 12, 1986). The number of lawyers in 1990 was estimated at 100,000. John F. Burns, Soviet Lawyers, in Feisty Session, Form Bar Group, N.Y. Times, Feb. 26, 1989 at A12.

T. David S. Clark, The Organization and Status of Lawyers, Table 1. in General Reports, IXth World Conference of Procedural Law: Role and Organization of Judges and Lawyers in Contemporary Societies, International Association for Procedural Law, Coimbra and Libson, 1991.

U. David S. Clark, The Organization and Status of Lawyers, 292.

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in General Reports, IXth World Conference of Procedural Law: Role and Organization of Judges and Lawyers in Contemporary Societies, International Association for Procedural Law, Coimbra and Lisbon, 1991.

attach1.dal

OFFICE OF THE VICE PRESIDENT
WASHINGTON

TO: Richard Porter

FROM: John L. Howard
Counsel to the Vice President

☒ FYI

☐ Comment

☐ Action

Copies of Presidential
speeches re: Civil Justice Reform.
(to-date)

JL

Weekly Compilation of
**Presidential
Documents**



Monday, February 10, 1992
Volume 28—Number 6
Pages 191-230

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Pres Documents

3

These should
all be filed
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At the end of December 1991 Ambassador Ledsky prepared for his new consultation mission to the Eastern Mediterranean. His mission began on January 7, 1992, and will be the initial item in my next bimonthly report.

Like U.N. Secretary General Perez de Cuellar, I am disappointed that circumstances did not allow the Cyprus issue to be resolved in 1991. I would like to take this opportunity to add my personal thanks to Secretary General Perez de Cuellar for his tireless efforts over many years and share with him the sentiment he expressed in the final line of his final report on Cyprus: "... the long overdue solution can be reached and the two communities can live together in Cyprus in harmony, security, and prosperity."

Sincerely,

George Bush

Note: Identical letters were sent to Thomas S. Foley, Speaker of the House of Representatives, and Claiborne Pell, chairman of the Senate Committee on Foreign Relations.

**Letter to Congressional Leaders
Transmitting a Report on
International Agreements**
February 25, 1992

Dear Mr. Speaker: (Dear Mr. Chairman:)

Pursuant to subsection (b) of the Case-Zablocki Act (1 U.S.C. section 112(b)), I transmit herewith a report prepared by the Department of State concerning international agreements.

Sincerely,

George Bush

Note: Identical letters were sent to Thomas S. Foley, Speaker of the House of Representatives, and Claiborne Pell, chairman of the Senate Committee on Foreign Relations.

**Message to the Congress
Transmitting the Annual Report on
Alaska's Mineral Resources**
February 25, 1992

To the Congress of the United States:

I transmit herewith the 1991 Annual Report on Alaska's Mineral Resources, pursuant to section 1011 of the Alaska National Interest Lands Conservation Act (Public Law 96-487; 16 U.S.C. 3151). This report, containing pertinent public information relating to minerals in Alaska, as gathered by the U.S. Geological Survey, the Bureau of Mines, and other Federal agencies. This report is significant because of the importance of the mineral and energy resources of Alaska to the future well-being of the Nation.

George Bush

The White House,
February 25, 1992.

**Remarks at a Bush-Quayle
Fundraising Dinner in Los Angeles,
California**
February 25, 1992

Thank you all very, very much. And what a pleasure it is to be here with Pete Wilson, to be introduced by this man who is doing so much for the State. And thank you for heading our campaign and being at our side today. It is a pleasure to see you and Gayle. May I thank our master of ceremonies, Johnny Grant; say to the next team, Rabbi Greenbaum and Cheryl Ladd, who did a great job on the pledge without missing a beat; and Bobby Britt who did the national anthem. And thanks to everyone who has organized this extraordinary gathering. What did you do? Tell these folks that they had moved the Academy Awards to tonight, I think, when we look around back here. And I'm very grateful.

And let me just say it's also a great pleasure to see Don Bren, who is one of our national cochairmen, and Lod Cook, another one. And thanks to both of you for making this a highly successful event. Greetings also to Bobby Holt, who is our national finance

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1991 Annual Resources, pursuant to a National Inter- (Public Law 96- report, containing a relating to min- by the U.S. Geo- of Mines, and s report is signifi- of the min- of Alaska to the ion.

George Bush

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much. And what with Pete Wilson, man who is doing id thank you for being at our side e you and Gayle. ceremonies, John- um, Rabbi Green- io did a great job ssing a beat; and national anthem. ho has organized g. What did you ey had moved the it, I think, when e. And I'm very

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chairman; former Secretary Bob Mosbacher, who did a superb job as our Secretary of Commerce, who is the chairman of our campaign; and all the other Bush-Quayle vice chairmen here tonight.

What an amazing crowd and what enthusiasm. And you all make me feel so young, especially Bob Hope. [Laughter] You know, Bob told you only half the story. That story he told was true about Desert Storm. He went over there, but what he forgot to tell you because of his modesty is I got more reports back from Norm Schwarzkopf and from Powell and from all of them about the lift that gave to those kids, many of whom had been months sitting out in the desert. And we're very, very grateful to him.

And I'm touched, to paraphrase John Kennedy, I'm touched by your warm response, but not half as touched as all of you have been. This has been a big success.

Let me start tonight by sharing my concern for all the many southern Californians who have been ravaged by the record floods here. And I'm pleased to say that today, on Air Force One, I signed a declaration to provide much-needed disaster relief to flood victims. You're hurting, and we'll get you help. And the Governor promptly moved on that for the State.

I want to talk tonight about some of the challenges that we face, about the decisions that will make this election year, that really are going to chart this country's history for the next 5 years. And let me say it straight: What Government can do and what it can't do, and what I will do as President, and then where I'll need your help.

Let's start with the number one issue on everyone's mind, and that is the economy. One month ago, as Pete said, in that State of the Union, I laid out a two-part economic action plan: for the short term, a plan to get this economy moving as early as this spring, and then a longer term plan to keep America competitive in the next century. And I asked the Democrats who control the Congress to act for the good of the country, to lay politics aside. And I gave Congress those 52 days to pass my plan.

And since then, some Democrats have been wrestling with their consciences. It's still too early to predict who will win. But

instead of working on my plan, the House Democrats surfaced their own. And true to form, it is a temporary tax cut in exchange for a permanent tax hike. And that tax cut works out to 25 cents per person. Sounds big in a package for the consumption in the political arena, but that's what it makes, 25 cents per person. And to make it permanent the Democrats would have to jack up the income tax rate for every American making more than \$35,000 a year, \$35,000. For a plan that is supposed to help the middle class, that's going to come as real news to a lot of factory workers and schoolteachers and everyday Americans struggling to make ends meet.

So let's face it, the Democrats are going to tax the middle class for the same reason that Willie Sutton robbed banks, because that's where the money is. They say they're going to hit the rich, and they end up hitting the small guy.

Now, my economic plan is built on seven specific proposals to stimulate this tired economy. And if you want to give American companies a reason to expand, then give them—and this can be done in the remaining days—my investment tax allowance. Speed up depreciation. And if you really want to do something about boosting the sagging housing market and if you want to give American families a shot at the American dream, then give those first-time homebuyers what my plan does, a \$5,000 tax credit toward that first home. Give those young families a chance.

And finally, let me say this to the Congress: If you are serious about competitiveness and if you are serious about creating the jobs, then cut the tax on capital gains and stimulate investment.

That's not the only fight I've got with the Capitol Hill crowd. Take a look at national defense. And it is important to remind ourselves that 365 days ago to this very minute we were starting that flanking movement around the Iraqi army in the sands. And a few months before that, nobody dreamed we'd be faced with that kind of aggression. For decades, we faced a dangerous enemy abroad. And we fought those at home who would have stripped this Nation of the

strength that it needed to defend itself, those that always wanted to cut defense.

Republicans fought hard on both fronts. And winning the defense battle on Capitol Hill helped us win the cold war. And no one understood that better than my predecessor, Ronald Reagan. He stood for a strong defense and stood up for our principles. And now, with the collapse of the Soviet Union, imperial communism as we know it gone, we can reduce defense spending substantially.

I sat down with the Joint Chiefs and Chairman Powell and the Secretary of Defense, and we worked out a sensible defense build-down. We're talking about \$50 billion more cut. One that will recognize post-cold-war realities, but still leave this country with the muscle that we need to meet whatever danger comes our way.

I know that's a concern here in southern California, with its proud tradition of pushing the frontier in aerospace and producing weapon systems that redefined state-of-the-art. We have a number of Federal programs aimed now, as we cut down on defense spending, at helping those workers, those good workers, those defense industry workers as they seek new careers. And we're taking steps to ease the transition that many firms will face as they shift from defense-related work to the commercial economy. And that's what my technology transfer initiative is all about, getting research done in Government labs out into the private economy. And in May we're going to bring that message to Cal Tech through our national technology initiative. Our approach is the sensible way to go, the right way to keep the economy sound and at the same time keep our Nation strong and safe.

But there are Democrats with a very different plan in mind. And they want to use the end of the cold war to open a bidding war to see who can gut defense the fastest. And one scheme would cut defense by an additional \$200 billion. And nationwide, cuts on that scale would wipe out hundreds of thousands of jobs, to say nothing about rendering us incapable of responding to aggression overseas.

Right now, \$1 out of every \$5 spent on defense is spent right here in California. And think of the shockwaves that reckless defense

cuts would touch off in the construction and in the electronics and aerospace industries and the aftershock for the real estate markets. Think of the workers, the welders to the engineers, thrown out of work and onto welfare. For the sake of national security and for the sake of just plain economic common sense and for the sake of this State and the country, I ask you to draw the line and say no to those who want to recklessly gut the national defense of this country.

We can turn this economy around provided we deal in economic reality. And it all comes down to this: To succeed economically at home, we've got to lead economically abroad. And there's no better case in point than California. This State accounts for \$1 in every \$7 of American exports. In 1990 alone, two-way trade reached nearly \$166 billion. Statewide, that means 725,000 jobs, close to three-quarters of a million jobs tied to trade.

And it's more true than ever before today that America's future lies in opening markets. But our opponents aren't about to let fact intrude on fantasy. Their prescription for the nineties is to sound an economic retreat and raise the trade barriers and build new barricades to keep imports out and take this country back to the dangerous pre-World War II isolationism. I am not going to let that happen as long as I am President of the United States. We are going to stay engaged and lead the world.

That is not the American way. And we don't cut and run; we compete. And I'll put my faith in the American worker. So clear away the trade barriers, go head-to-head, and the American worker will outthink and outperform and outproduce anybody, anyplace, anytime.

People here want to know that increased trade doesn't mean a tradeoff when it comes to concerns about our environment. And earlier this afternoon we had a wonderful meeting. I announced the new initiative to ensure that the promise of free trade includes protection for the environment. And we're working with the Government of Mexico. And we will commit well over \$1 billion in new resources over the next 3 years to protect drinking water, pay for cleanups, and enforce haz-

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And I can say to the people of this great State: Here's proof that we can sustain a strong economy and a sound environment. Whether it's the environment, the economy, or any other issue, there's a new reality now in the way people live and work and look at Government. People don't really buy the old, big Government rhetoric. They've seen enough social engineering. And they know America's greatness doesn't spring from Government. Our strengths are in our people, in our families, in our communities. And Government can't raise your kids to know right from wrong. It can't legislate happy endings. Government isn't why people work hard, raise a family, save for retirement.

Year after year, the folks who control the Congress have pushed spending higher and higher. In 1993, the Federal Government will spend \$1.5 trillion of taxpayers' money. And people are entitled to ask, "Am I getting my \$1.5 trillion's worth?" We need to get back to the basics. Government is too big, and it spends too much. So give me the line-item veto, and let the executive branch try to cut some of the fat out of the budget. Forty-three Governors have it, and 43 Governors do a good job utilizing it. We need for Government to do less but do better and to focus on what people want and deserve, safe streets, good schools, a strong economy, and a strong country.

And today we see the return of responsibility, an old idea that never really went out of style. People have had it with the no-fault lifestyle. And in their private lives they know actions have consequences. And what they want is a Government whose policies and programs recognize that people are responsible for their actions and that Government is responsible to the people. And if you think about it, that's nothing more than a working definition of freedom.

Because we believe in responsibility, we believe in education reform. And we've laid out a strategy called America 2000. It literally revolutionizes our schools. Doing it the old way isn't good enough anymore. And we need to hold our kids and our teachers to a higher standard. And here's a radical notion, as our national education plan calls for:

Let's test our kids to see where we're doing well and where we need more work. And our schools need a dose of competition with each other. Right now in public schools in Los Angeles and across the country, kids are a captive audience. Now, give parents a chance to choose their children's schools, and you'll see our schools start doing their homework. School choice is right, and it is working in many States. School choice will work across this Nation.

And because we believe in responsibility we back legal reform. Sorry to say this in "L.A. Law" country, but here's the plain fact. America has become the land of the lawsuit. And we put forward a plan to cut down the number of frivolous suits. They sap our economy, and they strain our patience. And when a father can't coach Little League because he's worried about getting sued, something's wrong. And when your neighbor becomes a plaintiff, something's wrong. Our country would be a lot better off if we spent as much time helping each other as we do suing each other. And so I will challenge the Congress again and again to do something about the reforms that we have pending up there on Capitol Hill right now.

Because we believe in responsibility, we take a hard line on crime and drugs. Tomorrow Barbara and I fly down to San Antonio, and there I'll meet with five Presidents of Latin American countries, Latin American leaders, work with them to sharpen our strategy to beat this scourge. And yes, we're waging a war to cut the supply lines that funnel drugs into the crack houses that plague good neighborhoods across L.A. County. Interception of drugs coming in is way, way up.

But we're battling, also, on the demand side. And we set a goal to drive down current adolescent cocaine use by 30 percent. And we've seen a dramatic 60-percent decrease. Now, that's good news. But we all know we can't claim victory yet. We must show that here, too, actions have consequences. And that's why we need stiffer sentences for drug dealers. We need courts that punish criminals, not honest cops, out there trying to do their jobs. We need laws that make life tougher on the criminals than on the victims of crime. And we need to get that House

of Representatives to pass my crime bill and pass it now.

Because we believe in responsibility, we believe in welfare reform. And people are willing to support benefits. Look, we care. We're Americans. We care about the other guy. But Americans want to see some connection between welfare and work. They want to see governments at every level work together to track down the deadbeat fathers, those who can't be bothered to pay child support. And they want to see us break the cycle of dependency that destroys dignity and passes down poverty from one generation to the next. That's wrong to do that, and we're going to do something to change it.

Right here in California, your able Governor Pete Wilson's got a plan that will encourage people on welfare to take work when they can find it; for pregnant teens or parents to stay in school, get the education they'll need to make a better future, a future where they won't need that next welfare check. And we support him. You say, what can we do to help California? Simple, we can start by getting Washington out of the way. And I'll tell you, we will do all that we can to remove the burdensome Federal regulations, to help you cut through the web of redtape to real reform.

The reforms I've spoken about tonight can spark a revolution to bring this country home to the bedrock beliefs that have made us great. Faith and family, responsibility and respect, community and country. Simple words, certain truths that hold a world of meaning for every American.

And I might say parenthetically, if I could be prideful in my comment, I am very, very proud of what Barbara does to demonstrate strength of family and the caring that we all feel in our hearts.

But here's what I know about this country's future. No matter how tough times are right now, no matter what trials we face, America's best day always lies ahead. And I believed that when I was a little boy. I believe it now. I believe it every day I live because that is the great glory of the United States of America.

Thank you all, and may God bless our great country.

Note: The President spoke at 8:58 p.m. at the Century Plaza Hotel. A tape was not available for verification of the content of these remarks.

Exchange With Reporters Prior to a Meeting With President Alberto Kenyo Fujimori of Peru in San Antonio, Texas

February 26, 1992

Drug Summit

Q. Mr. President, what do you hope to accomplish at the drug summit, sir?

President Bush. Well, I think we've already—we're going to build on the first meeting, the Cartagena meeting, and we're going to get maximum cooperation. We're going to redouble our efforts on the demand side and on the supply side. So, it's the big picture with very able leaders from south of our border that continue to address themselves to this problem. And there's been marvelous cooperation between the countries.

Q. The Ecuadorean President said today that his country needs more U.S. dollars. What's your response to him, sir?

President Bush. Well, I'll be discussing it with him when I see him.

Q. President Fujimori, will cutbacks in U.S. aid hamper your drug-fighting efforts?

President Fujimori. From the supply side, we can, we think we can do a lot on this side, but also we need the better comprehension and coordination.

President Bush. And that's all the things we'll be talking about.

Q. Do you need more U.S. money?

President Fujimori. Also. [Laughter]

President Bush. Everybody does, including us.

President Fujimori. That's the answer they want? [Laughter]

Q. President Bush, do you believe this summit is going to be of any value?

President Bush. I think there's a lot of value. I think the first one was—President Fujimori was not at it—but I believe that it set the ground rules, it set some objectives. I think this one will do the same thing. We

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Q. Pretty confident?

The President. Yes, I am.

Southern Primaries

Q. Patrick Buchanan—fire Bush immediately. Do you think he's getting a little personal in his attacks and his charges?

The President. I haven't seen that, John [John Cochran, NBC News]. I wouldn't worry too much about that.

Q. Those FBI—

The President. Yes. I think we're going to do all right down South. I feel good about it. We've got good people working, and I think the people down there understand my message. And I think as people compare the two candidates, why, we'll be fine.

Q. Will you be mentioning Buchanan by name? Last week you said you were going to take the gloves off. Do you intend to do so, sir?

The President. Well, I'm still sorting all that out. You heard me last night. I'd rather define it on the issues. There are plenty of surrogates that are willing to make it more specific. I think that's a good way to leave it.

Q.—ads starting up in Georgia against Buchanan?

The President. I think that there will be ads that define the differences in position, yes. And I expect that people will understand that, after the ads from the Democrats in New Hampshire against me and from him against me. But I'll try to keep it on a high plane—together and go on and win.

Q. You seem kind of subdued today, Mr. President. Are you feeling okay?

The President. Yes, I feel good, Rita [Rita Beamish, Associated Press].

Q. How come you're so subdued? It's early.

The President. Do you remember Lesley Stahl [CBS News] asking when the Berlin Wall came down why I wasn't jumping with joy? I said, "We're taking care of this." It's a little early. We're going on a long trip, and it's kind of a calm but determined approach.

Q. Have you added any additional stops on this trip? We heard you might add some on the end, Saturday or Sunday, additional stops.

The President. I haven't heard it yet, but I might be the last to know. [Laughter]

Q. We probably would.

The President. Have a nice trip to California, everybody.

Q. See you there.

Q. Thank you.

Note: The exchange began prior to the President's departure from Andrews Air Force Base in Camp Springs, MD, for San Francisco, CA. A tape was not available for verification of the content of this exchange.

Remarks at a Bush-Quayle Fundraising Luncheon in San Francisco, California

February 25, 1992

Thank you so much for that welcome back. Pete mentioned this was my 15th visit. But you have a wonderful way of making people feel at home in this State. Thank you very much. And may I just say from halfway across the world, or at least in the east coast, watching with wonder, what a superb job, fighting difficult conditions, your Governor is doing. It's an inspiration to all of us in politics, I'll tell you. And Gayle, our greetings to you.

May I thank the Skyline College Musicians over there and pay my respects to Eric Stratman, who got up and gave us that wonderful rendition of the Star-Spangled Banner; no pitch pipe, no nothing; just the beautiful music. And we were all so moved by that. And though he didn't confess to this—your bishop or our bishop, my bishop, put it that way, and Barbara's—he used to be our pastor in Washington, DC, before he was elevated to being bishop here in San Francisco. And Bill, thank you, sir, for being with us today and for those inspiring words.

And of course, let me single out the master of ceremonies. I've seen him in all kinds of roles in terms of dealing with world leaders. I've never seen him, I don't believe, as master of ceremonies. But George Shultz is one of the truly great public servants. And I'm delighted to see he and Obie again.

And I want to salute our former Cabinet member Bob Mosbacher; and Bobby Holt

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Yes.

here is our national campaign finance chairman; Jim Dignan, the California State chair; Katie Boyd and Howard Leach, who have done a superb job on this overflow luncheon. And also, Gretchen is out here who graciously met us at the airport. Thank you for all the work on the luncheon. And to all the other national vice chairs—Alex Spanos and Don Bren and Craig Berkman and Flo Crichton of the finance team. And a special thanks to Mr. Yong Kim over here, and to my old friend, Johnny Tsu over there, who have done a great job on this. Thank you all.

To paraphrase John Kennedy, I'm touched by that warm response, but not half as touched as all of you have been.

Before I begin, let me just share and express my concern for all the Californians who, after seemingly endless years of drought, have been ravaged by record floods. I am pleased to announce that today, as I came out on Air Force One, I signed a declaration to provide that much-needed disaster relief to these flood victims. They're hurting, and the Federal Government ought to do its part.

I want to talk to you today about some of the challenges that we face, Pete mentioned some of them, about the decisions we're going to make in this election year that are going to really chart the course of this country's future for the next 5 years. And let me lay it out straight, what Government can do and what it can't do, and what I will do as President, and where I will need your help.

Start, if you will, with the number one issue on everybody's mind, and that is the economy, the Nation's economy. One month ago, as the Governor said, in my State of the Union I laid out a two-part economic plan: for the short term, a plan to get the economy moving as early as this spring, seven points to stimulate investment; and a longer-term plan to keep America competitive in the new century ahead. I asked the Democrats who control all the committees in the Congress, both Houses of the Congress, to act for the good of the country. And I gave Congress 52 days to pass the plan.

Since then, some Democrats have been wrestling with their consciences. It is too

early to predict who will win. But instead of working on my plan, the House Democrats surfaced their own, a tiny tax cut across the board, written in invisible ink, in exchange for a huge tax increase chiseled into stone. Ask the people out there, your neighbors, is it really worth borrowing from our children to give families an extra 25 cents a day? That two-bit tax cut would make even the tooth fairy blush. It is not good legislation.

When the cameras are on, the Democrats say all the right things, especially in a political year, talk about a blueprint for an economic recovery. But then the doors close and the backroom brokering begins. And in the end, it is the same old Democratic deal, another "jobs bill," but this one for the tax collectors.

Now, if the Senate Democrats want to make their temporary tax cut permanent, and this is a fact, they would have to jack up the income tax rate for every American making more than \$35,000. You heard that right, \$35,000, for a plan that's supposed to help the middle class. And that's going to come as real news to a lot of factory workers and school teachers and everyday Americans that are just struggling to make ends meet. So they are going to tax the middle class for the same reason that Willie Sutton robbed the banks, because that's where the money is.

If you want to give American companies reason to expand, then give them what we are calling for, an investment tax allowance. Speed up the rates of depreciation. If you want to boost the sagging housing market and if you want to give American families a real shot at the American dream, then don't look to the liberal leadership in the Congress. Give first-time homebuyers what our plan does, a \$5,000 tax credit toward that first home.

Finally, let me just say to the Congress here: If you're serious about competitiveness, if you're serious about creating jobs, then cut the tax on capital gains.

These points I've listed, and four more, will stimulate the economy right away. Now, let's switch over to the defense side of the equation. I'm sure you're reading a great deal about defense cuts. For decades we faced a very dangerous enemy abroad, and we fought the Democrats, those liberal ones at home, who would have stripped this Nation

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of the strength that it needed to defend itself and to defend freedom. Republicans fought hard on both fronts—Pete Wilson was a leader in this fight when he was a United States Senator—and winning the defense battle on Capitol Hill, as George Shultz will tell you, helped us win the cold war. No one understood that better than my predecessor, Ronald Reagan. He understood it from day one and fought for a strong defense.

Now, given the changes in the world—and they're dramatic and they are wonderful in terms of the future of our kids—given the collapse of the Soviet Union, we know now we can reduce defense spending substantially. So I went to the Joint Chiefs and to Dick Cheney and based on the recommendation of the Joint Chiefs and the Secretary of Defense, I've proposed a substantial but a sensible defense build-down, one that will recognize post-cold-war realities, but still leave this country with the muscle that we need to meet whatever danger comes our way or help defend those whose freedom are at stake.

And we have a number of Federal programs aimed at helping defense industry workers as they seek new careers now because of our defense cuts. We're taking steps to ease the transition that many firms will face as they shift from defense-related work to the commercial economy. That's what this technology transfer initiative is all about that I've proposed, getting research done in government labs out into the private economy. And in May we're going to bring that message to Cal-Tech through our national technology initiative. And that's good news for the high-tech firms right here in the Silicon Valley, and all across this State. Our approach is the sensible way to go, the right way to keep the economy sound, and our Nation safe.

But there are political problems. There are Democrats with a different plan in mind in the United States Congress. They want to use the end of the cold war to open a bidding war to see who can gut the Defense Department the fastest. One plan would cut defense by an additional \$200 billion over 5 years. Nationwide, cuts on that scale would wipe out hundreds of thousands of jobs, say noth-

ing about rendering us incapable of responding to aggression overseas.

You might think about that. Right now, \$1 out of every \$5 spent on defense is spent right here in California. Think of the shock waves that would touch off in the construction and electronics and aerospace industries and the aftershock for the real estate markets. Think of the workers and the welders to the engineers thrown out of work and onto welfare. You can call it a double play, a Democratic double play, cripple our defenses and the same for the economy, all at the same time.

For the sake of national security—and I still view that as my most fundamental responsibility, the national security of this country. I think that is the prime responsibility of the President—for the sake of just plain economic common sense as well, and for the sake of California and the country, I ask you to draw the line and say no to those Democrats who want to recklessly cut the muscle out of the national defense of this country.

We can turn this economy around, provided we deal in economic reality. It all comes down to this: To succeed economically at home, we've got to lead economically abroad.

There is no better case in point than this wonderful State of California. None. This State accounts for one in every seven dollars of American exports. In 1990 alone, two-way trade reached nearly \$166 billion. For the past 5 years that's an average annual increase of 20 percent, and statewide, I think Pete would agree, it means something like three-quarters of a million, I believe the figure is 725,000 jobs, close to three-quarters of a million tied into trade. It is more true than ever before: America's future lies in open markets. It does not lie in this negative view of protection.

But the people we are battling in the Congress today aren't about to let the fact intrude on the fantasy. Their prescription for the nineties is to sound—really to pull back, not all of them but some of them—to pull back and sound an economic retreat, and then to raise up trade barriers—all in the name of fair trade—but to raise up trade barriers, build new barricades to keep imports out, and take this country back to a dangerous

pre-World War II isolationism. As long as I am President that will not happen to the United States of America.

That's not the American way, certainly not the California way. We don't cut and run. We compete. And we work hard. And I've got a lot of faith in the American worker because our workers have a lot of faith in themselves. If we can do better and make more progress in clearing away the trade barriers and go head to head, the American worker will outthink and outperform and outproduce anybody, anyplace, anytime. It's that direction that we've got to take this country.

There's a new reality now in the way people live and work and look at Government. People really don't buy that old "big Government" rhetoric. The American people have seen enough of what we call social engineering. They know the limits of Government. They know that our greatness doesn't spring from Government: America's strengths are in her people, in our families, in our communities. Government can't raise your kids to know right from wrong. It can't legislate happy endings. Government isn't why people work hard, raise a family, save for retirement. And people know, as Government tries to do more and more, it delivers less and less.

And year after year, the main opposition on the Hill, the liberal Democrats who control the Congress, have pushed spending higher and higher. In 1993, the Federal Government will spend \$1.5 trillion of taxpayers' money. People are entitled to ask, "Am I getting my 1.5 trillion's worth?"

We need to get back to the basics that Government is too big, and it spends too much. And that leads me to ask you to urge your Congress to give me the line-item veto. Forty-three Governors have it, and give the President, the executive branch, a chance. We need for Government to do less but do better. To focus on what people want and deserve, safe streets, good schools, strong economy and, certainly, a strong country.

Today we see the return of responsibility, an old idea that never really went out of style. People have had it with the no-fault lifestyle. In their private lives, they know actions have consequences. What they want is a Government whose policies and programs recognize that people are responsible for their actions

and that Government is responsible to the people. Now, if you think about it, that's nothing more than a working definition of freedom.

Because we believe in responsibility, we believe in education reform, fundamental reform. We've laid out a strategy called America 2000, to literally revolutionize our schools. It's not Democrat. It's not Republican. It's not liberal. It's not conservative. It is American, supported by the 50 Governors to meet our six education goals.

We need to hold our kids and our teachers to a higher standard; that's part of it. And here's a radical notion: Let's test these kids at the 4th and the 8th and the 12th grade, see what we're doing, where we're doing it well, and where we need to do more work. Our schools need a good dose of competition, with each other. Right now, kids are a captive audience. You give the parents a chance to choose their children's schools, and you'll see our schools start doing their homework. And the bad schools will be picked up by the competition. School choice is working where it's in effect, and it will work nationwide.

Because we believe in responsibility, we back legal reform. Here's the fact: America's become the land of the lawsuit. We've put forward a plan, it's up on the Hill, to cut down a number of frivolous lawsuits. They sap our economy. They strain our patience. When a father can't coach Little League because he's worried about getting sued, something's wrong. When your neighbor becomes a plaintiff, something's wrong. Our country would be a lot better off if we spent as much time helping each other as we do suing each other.

Because we believe in responsibility, we take a hard line on drugs and crime. Tomorrow I go to San Antonio, Barbara and I go down there, and will meet with five or six Latin American Presidents, working with them to sharpen our strategy to beat the scourge. Yes, we're waging a war to cut the supply lines that bring drugs into this country. Interdictions are at an all-time high. But we're battling on the demand side as well. We set a goal to drive down the current adolescent cocaine use by 30 percent. That was our national goal. And we've seen a dramatic 60 percent decrease. Now, that's good news.

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That's good news for families across this country.

But we all know that we can't begin to claim total victory yet. We must show that here, too, actions have consequences. And that's why we need stiffer sentences for these drug dealers, courts that punish criminals, not honest cops trying to do their job out there, and laws that make life tougher on the criminals than on the victims of crime.

Because we believe in responsibility, I believe as Pete does, we believe as your Governor does in welfare reform. People are willing to support benefits. They've always been willing to give a hand up. Americans care. But they want to see some connection between welfare and work. They want to see governments at every level work together to track down the dead-beat fathers, the ones who can't be bothered to pay child support. And I think most of all they want to see us break this cycle of dependency, a cycle of dependency that destroys dignity, and says to a little guy when he's just starting up, you really don't have much of a chance. Passes down poverty from one generation to another. That's wrong. We're going to do something to change it.

Right here in California, Governor Wilson's got a plan that will encourage people on welfare to take work when they can find it; for pregnant teens or parents to stay in school, get the education they'll need to make a better future, a future where they won't need that next welfare check.

What can we do to help California? What can we in Washington do? Simple: We can start by getting our bureaucracy out of the way. And we'll do all we can, Pete, to remove those Federal regulations, to help you cut through that web of redtape to real reform.

These reforms—changes we make now to boost the economy and to transform our schools and our legal and our welfare systems—can really spark a revolution. A revolution to bring this country home to the bedrock beliefs that have made us great. And they are fundamental: family and faith, responsibility and respect, community and country. Simple words, certain truths that

hold a world of meaning, I still believe, for every single American.

Here's what I know about this country's future: No matter how tough times are now, no matter what trials we face, America's best day always lies ahead. I believed that when I was a little kid. I believe it now. I am totally confident about the recovery of this country. And I'll believe it every day I live because that, in essence, is the great glory of our wondrous country.

Thank you all, and may God bless the United States of America.

Note: The President spoke at 1:13 p.m. at the Westin St. Francis Hotel. In his remarks, he referred to Governor Pete Wilson and his wife Gayle; George P. Shultz, former Secretary of the Treasury, and his wife Obie; Katie Boyd, cochairman of the dinner and vice chairman of the California Bush-Quayle campaign; Howard Leach, dinner cochairman and regional vice chairman of the Bush-Quayle campaign, and his wife Gretchen; and Yong Kim and Johnny Tsu, national vice chairmen of the Bush-Quayle campaign.

Statement by Press Secretary Fitzwater on General Motors Plant Closings February 25, 1992

The White House made no attempt whatsoever to influence General Motors' decision over which plants to close and which plants to keep open. The White House considers such matters to be internal corporate decisions.

The President is very much aware of the human costs associated with these tough economic times. This recent plant closing announcement underscores the critical importance of the Congress acting promptly on the President's economic growth package before the March 20 deadline set down in the President's State of the Union Address.

will be a leader in the administration's drive to create jobs, increase economic growth, and prepare America for a bright future.

I am sure that Transportation Secretary Card will insure that America continues to travel safely home and abroad and that the Nation's transportation systems are ready to move into the 21st century.

Remarks to the Southern Republican Leadership Conference in Charleston, South Carolina

February 21, 1992

The President. Thank you, thank you. It is great to be here in Charleston, I'll tell you. I'm delighted to be back in the South. And may I say to our Governor, my dear friend Carroll Campbell, we're grateful for your hospitality and, even more, for your leadership as one of the finest Governors in the entire country, a real leader, Carroll Campbell. And I might say how pleased I am that Governor Campbell will serve as our national cochairman of the campaign and once again as southern regional chairman. I couldn't be in better hands, and thank you very much.

May I thank the Citadel Bulldog Band over there for some fine music. I appreciate it very much. And this is a real star-studded event. And I want to salute the Governors here today, past and present. I know Governor Jim Martin's here from North Carolina. And Members of the United States Congress, I think four or five Congressmen with us here today, a couple of them with us right here: Congressman Ravenel, hometown boy, and others. And other distinguished guests. And may I say that an early supporter and friend of mine is running for the Senate here, Tommy Hartnett. And I want to see him elected to the United States Senate—former member of Congress. And I also want to acknowledge key members of our political team: Rich Bond is with us, our new chairman and Jeanie Austin, doing a superb job. And of course, the conference chairman Martha Edens' superb work here. Keep up the good work and thank you very much, Martha.

And it's great to be here in South Carolina, host for the first time, but I'm sure not the last time of this prestigious Southern Republican Leadership Conference. Four years ago, the South led our party to a great victory across the entire country. And this year, the South will lead us to victory in November 1992.

And just to be perfectly clear about it, I am confident of winning the Presidency for 4 more years. I come here fired up and confident. But I'll need your support. We have much to do these next few months because we have much to do these next few years. Together, we can finish what we've started and move this country forward.

Let me open with a true story from my own past about the old days, Midland, Texas, 1956, trying to organize—I hear Ernie Angelo over there—[laughter]—trying to organize a Republican Party. And this is the gospel truth. I was a precinct judge, a poll judge, polling judge at primary election time. The first time the Republican Party had ever held a primary in Midland County. And Barbara and I were there alternating at the polls, poll watchers. She and I voted Republican, and we represented two-thirds of the Republican vote that year, gospel truth. The only other guy that voted was a slightly inebriated Democrat. He thought he was voting in the—[laughter]—and you can go back and look up the records.

But some of you all are old enough to remember those days. And sometimes if you tried to register Republican, they'd tell you not to bother because there was no Republicans to vote for in the primary. Or times, out and out, there was intimidation, sometimes violence. And we went through a lot back then. And in fact, I'm sure many of you can share similar experiences. And you say, "Well, why did we do it? Why did we build a Republican Party in the South when some said it was impossible?" We did it because we wanted change, and we did it because we believed in some fundamental values: faith and family, responsibility and respect, community and of course country, the United States of America. And we did it because we saw the Government getting too big and getting into our pockets and to every corner of our lives. And we did it because we wor-

George Bush, 1992

South Carolina, I'm sure not the Southern Republic. Four years ago a great victory and this year, the 11th in November

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story from my Midland, Texas, hear Ernie Ham- trying to orga- and this is the gos- dge, a poll judge, ection time. The arty had ever held nty. And Barbara g at the polls, poll Republican, and of the Republican n. The only other nebricated Dem- s voting in the— go back and look

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ried about our families and our schools and our neighborhoods. And we did it because our taxes always seem to go up at the same time America's problems got worse. And each of us in our own small way finally said, "Enough is enough."

And we were upstarts and mavericks. And we challenged the status quo. We challenged the old, what was known as the "courthouse crowd," the closed-door, one-party rule of the Democrats. And we did it because we knew Republican principles were right. And they fought us every step of the way. But we fought hard, and we fought fair. And we took our message, smaller Government, better Government, to the people of the Carolinas and Virginia and Mississippi and Florida and the rest of this great region of America.

And we started winning, at first a House seat here and a Senate race there. But our momentum grew. Momentum grew, and it grew. And we owe a great debt of gratitude to our standard bearer in those early days, those that were out front: Howard Baker, the late John Tower, the Bo Calloways and Bill Brocks, Drake Edens and Clark Reeds and Bill Dickinson and John Paul Hamerschmidt and of course, the phenomenal favorite son of South Carolina, right behind me, Strom Thurmond. When I think back to one year ago almost to this very day, the tough decision that had to be made about committing your sons and daughters into a war, Strom Thurmond was of more support to me than any single Senator in the United States Senate. And we should be grateful for him.

Well, these leaders paved the way, and they inspired a generation of talent that transformed the Nation's political landscape. And I'm thinking now of another South Carolinian, a good man and a good friend, Lee Atwater. We miss him. We miss him still. And it was great to have Sally Atwater flying down with us this afternoon on Air Force One. Sally, we're so pleased to be with you.

Well, today the Republican Party is the force for positive change in the New South, and I'm proud to have played a modest role in that success. Our message then and our message now is simple. Carroll said a lot of it. We believe Government is too big and spends too much. We believe in good schools

and safe streets and a Government worthy of the people's respect. And so, we believe in less Government, low taxes. Surely we believe in a strong defense. And we believe that we put America first when we put America's families first.

And so, we believe that parents, not the Government, should make the big decisions. Parents, not Government, should choose their children's schools. Parents, not the Government, should decide the family's health care. And parents should choose who cares for their children, not some bureaucrat in Washington, DC, telling us how to do it. And yes, we believe it ought to be okay to have a voluntary prayer for children in the classroom, and I'm not going to change my view on that ever.

Those are our beliefs. And those are why we built a party in the South and why we continue, with your help, to build it today. Those beliefs don't change from one election to the next. They still guide each and every one of us each and every day.

And now we're at the beginning of a new era in the history of our country. The cold war is over, and America won. The Soviet Union, as we remember it, has collapsed, gone. Imperial communism is finished for good. American leadership is finished for good. American leadership will change the world. Republican leadership will change America.

I know we've got tough times, but I am totally confident about our future. But we've got a lot of work ahead of us. There are some things that are simply on the wrong track in our country. Take our courts, for example. When fathers stop coaching Little League because they're afraid of liability lawsuits, something is wrong. And when doctors stop delivering babies because they fear a malpractice lawsuit, something's wrong. Or when people stop volunteering to help each other because they fear ambulance-chasing lawyers, something is terribly wrong. These days a sharp lawyer would tell the Good Samaritan, "Keep on walking."

We've proposed reforms to our court system. They've got them sitting up there in the United States Senate now to address the questions of frivolous lawsuits, and that's a good step. But the real answer for solving

problems is to be more concerned with helping each other than suing each other.

And then I think about our Nation's health care system. Our health care system provides—and let's not forget this—the highest quality care anywhere in the world. But it's not perfect. We all know that. And too many people do not have access to health insurance. Too many people worry that they're going to lose their coverage if they change jobs or, worse still, if they lose their job. And anybody who's had even minor surgery knows that health care costs are going through the roof.

The answer is not to go down the road of socialized medicine with its long lines and faceless, impersonal service. If that's what we wanted, we'd put our doctors and nurses to work for the department of motor vehicles. Our plan, my approach, written out in detail, is to reform our health system, make insurance available to all, keep the quality high, the bureaucracy low, and preserve choice. And that is vital. And the last thing we want is the Government standing between you and your doctor.

And then there's the sorry welfare system. It's pretty obvious that the system now too often perpetuates dependency when it should promote independence, promote initiative. We need to encourage individual success through personal responsibility, the dignity of a job. And so, I've asked the departments and agencies to make it easier—and this is upon the advice of Jim Martin and Carroll Campbell and others—to make it easier for State and local government to reform the system, reform policies that promote broken families. We need to get people to work, go after the deadbeat fathers who run out on those little kids, or as they do in Wisconsin, to make recipients work or study and to keep families together.

But we all know what the number one issue on the minds of Americans is, and it is the economy. And it's people worried about their jobs, providing for their families, meeting the everyday challenges of paying the bills and providing a home and teaching the kids and putting aside for our retirement.

The American people, your neighbors, want this economy fired up again. And so do I. And in my State of the Union Address,

I put forward a two-part plan. And the first part gets business growing again right now, instantly upgrading plant and equipment again, hiring workers again. It uses incentives like an investment tax allowance.

And yes, it is clearly time for the Congress to wake up and cut that tax on capital gains. And to get housing back on its feet, I put forth several commonsense proposals—they're sitting right there in House now—to get people buying and building homes. And perhaps the most easily understood proposal is a \$5,000 tax credit for first-time homebuyers. With our plan, young people almost able to buy that first home could do it with the extra \$5,000 in their pocket. And the plan we're fighting against in the Congress this very day gives them absolutely nothing, nothing to that first-time homebuyer.

You're worried about the Democrat's current plan. I don't want to say too much about it. It's a nice evening here, and I don't want to ruin it. Current plan, I say current because it seems to change just about every hour as they change it to garner in some votes from the special interests, to buy votes. And that's why it's really not a plan. It is simply a bad deal. It smacks of, and you've heard it before, class warfare. And listen to the tradeoff in their deal: 25 cents a day in temporary tax relief for 2 years, paid for, true to form for the Democrats, by a large permanent tax increase.

Now, some Democrats in the Senate have other ideas. They want to get a bidding war going. But to pay for that they'd have to hike tax rates for the middle class, people making \$35,000, you know, people like teachers and factory workers and everyday Americans. And they won't tell you that about their sorry plan. But that's the estimate I've been given by our experts. Any economist will tell you, the last thing our economy needs now is a tax increase by that Democratic Congress. And their plan adds almost \$30 billion to this deficit. And the jobs it creates are more likely to be for more tax collectors.

I believe the American people have about had it with this tax-and-spend thinking. And we drew a line in the sand in the Persian Gulf and kept our word, and I'll draw another line in the sand right here today. If the

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Democrats send me this nonsense they're talking about now, I will send it right back. I will veto it the minute it hits my desk.

I sent them a plan, a good one. And that's what they ought to work on, not some phony partisan maneuver that they know won't fly. And I'll say it again to the Congress: Here's the deadline: March 20th. And if we act by then we can see some results this spring. No more games, no more empty gestures, just pass this plan and get the economy going again, and then we can have all the political fights we want. But let's set it aside now and do something for the American people that are hurting out there.

I said the plan had two parts; you may remember that from the State of the Union. The second part is a long-term plan to keep this country competitive, keep us vigorous. And it's a road map for competing and leading America in this fast-changing world of the 21st century.

Our plan revolutionizes America's educational system. Our plan gets the billions of dollars' worth of cutting-edge Government research and development into the hands of our private-sector businesses and the workers faster than ever before. And that helps us get a real return on your tax dollars, investment helping to create new jobs and products.

Our plan provides tax relief to strengthen the family. We raised the tax deduction for children by \$500. Make no mistake, I want this plan passed in this session of Congress. Keep the heat on the Congress, and we can get that done.

But a central idea behind our approach is that to succeed economically at home we have to lead economically abroad. Carroll touched on this very eloquently. What he means and what I mean is jobs right here in America by opening markets for our exports all over the world. And I'm going to fight hard in every foreign market to do just exactly that. We've made headway. We have made dramatic headway with this increase in exports, but we are going to do even better.

Some people wish the rest of the world would just go away. That is naive, and that is defeatist. They're saying that a level playing field isn't level enough, that American inge-

nuity, American know-how, and the American can-do spirit are simply a bunch of hackneyed phrases. I don't believe it. I don't believe that for one minute, and neither do you. America is not going to cut and run ever. We're going to stay involved, and we are going to continue to lead the entire world.

Before I finish now, I have something to say about this primary campaign. Of course, this campaign is important, not just to me but to you and to our country. And for the sake of our country we must not turn over the Nation's leadership to the Democrats. Republican leadership must continue.

For 8 years, Ronald Reagan, I was at his side, led this country. For the last 3 years I've stood on our principles and against a Democratic Congress that would undermine them. And with the help of our Republican leadership on Capitol Hill, 25 times our principles were upheld, vetoes of bad legislation sustained.

And the next 5 years of American history are just too important to entrust to the inexperienced. I believe the American people want to hear about how we're going to address our country's challenges, how we can unite our people, create more opportunity and hope for all Americans. And I believe the American people want to hear solutions, not just a lot of name-calling and running this country down.

And frankly, I also believe that sometimes somebody's got to stand up and say what's right about the United States of America. And you can't hear it from this campaign going on out there. We are number one, and make no mistake about it, and we're going to stay that way.

And another thing, maybe this is just my personal prejudice talking, let's not listen to the gloom and doom from all those intense talking heads who are happy only when they say something negative. We are the United States of America, and we don't have to put up with all that.

Audience members. Four more years! Four more years! Four more years!

The President. Let me just say, you and I believe in America, and we are optimistic about its future. And we believe in our party. And I am tremendously fortunate to serve

as your President at this most exciting time in our Nation's history.

Barbara and I count our blessings every day for the good fortune that we have to live in that majestic White House and to do our level-best to serve the people of this great country.

These next primaries are critical. I need your help. I need your help to keep our party strong and united so that we can win this fall. And yes, we have much to do. But I guarantee you, we will get the job done. And yes, we have many challenges before us. A I guarantee you, we will meet them, each and every one of them. And yes, there's an election in November. And I guarantee you this: We will win it. I want to be your President for another 4 years.

Thank you very much. Thank you very, very much. Now let's go out and beat the Democrats in the fall. And may God bless the United States of America. Thank you.

Note: The President spoke at 4:40 p.m. at the Omni Hotel. In his remarks, he referred to Richard N. Brown, chairman, and Jeanie Austin, cochairman of the Republican National Committee; Ernie Angelo, national committeeman from Tennessee; and Martha Edens, chairman of the Southern Republican Leadership Conference.

Points of Light Recognition Program

The President named the following individuals and institutions as exemplars of his commitment to making community service central to the life and work of every American.

February 15

Bea Gaddy, of Baltimore, MD

February 17

Volunteers of Specialink, of Covington, KY

February 18

Fred Stavinoha, of Rosenberg, TX

February 19

Nicole Bagley, of Alma, GA

February 20

Volunteers of the Fort Smith Community Dental Clinic, of Fort Smith, AR

February 21

Volunteers of the Lend-A-Hand program, of Boulder City, NV

Digest of Other White House Announcements

The following list includes the President's public schedule and other items of general interest announced by the Office of the Press Secretary and not included elsewhere in this issue.

February 15

In the morning, the President and Mrs. Bush traveled to Nashua, NH, where they visited Nashua Mall.

In the afternoon, the President and Mrs. Bush traveled to Manchester, NH, where they met with Bishop Leo O'Neil of the archdiocese of Manchester and toured a fishing and outdoor show at the National Guard Armory.

In the evening, the President and Mrs. Bush visited Temple Adath Yeshurun.

February 16

In the morning, the President and Mrs. Bush attended services at First Congregational Church. Following the service, they greeted Sunday school students and parents.

In the afternoon, the President and Mrs. Bush returned to Washington, DC.

February 17

In the morning, the President gave interviews to New Hampshire radio stations.

In the evening, the President gave an interview to New England television stations.

February 18

The President met at the White House with:

—the Vice President; Samuel K. Skinner, Chief of Staff to the President; Brent Scowcroft, Assistant to the President for

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passed S. 2166, the
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marks a substantial milestone in implementing the President's national energy strategy issued one year ago today. This legislation will lead to the creation of hundreds of thousands of jobs and keep billions of dollars from flowing overseas for the purchase of foreign oil between now and the year 2010. The bill includes increased conservation, promotes the use of alternative fuels for motor vehicles, and permits greater use of natural gas. We are extremely pleased that the Senate passed the President's legislation, and we urge the House to also act soon on this vital administration program.

Remarks to the American Legislative Exchange Council
February 21, 1992

Thank you for the welcome. May I thank Fred Noye and Sam Brunelli and all the others assembled here. This has become an annual ritual, one that I look forward to very, very much. I don't know whether Jack Kemp is here—he was going to be—been here. And Sam spoke. I have great confidence in both of them. But I really want to just come over and say a few words, express my greetings to all of you.

Thinking of ALEC, I wanted to talk here about how you get things done, the key to good government. And Americans, I think, sensible ones, know that the Federal Government simply cannot do everything and shouldn't even try. It could get the job done and then let everybody else do his or her job. At ALEC, you get things done. And I want to help you do what you do best, and that is to lead and to innovate.

So, we want to take \$14.7 billion, maybe Sam talked to you about this, in Federal program funds and turn them over to the States as a block grant. And that way people who run the programs can do what works rather than following some distant bureaucrat's notion of what works. We tried it last year; didn't get it. We're trying it again this year. I hope we can make some headway, even though it is an election year.

Another one, welfare reform. Our system too often promotes dependency and not

independence. And so we've asked the departments to go back and the agencies to go back and make it easier to obtain the waivers that are necessary to institute welfare reform. Work Fair's a good example. Learn Fair, like they're doing in Wisconsin, is a good example. And the States are innovating. It is their responsibility, and we are trying to give them the support through waivers. So, I would suggest where you see hangups on it, let us know because we are trying to see that there is not bureaucratic opposition to moving forward with these flexible approaches that require waivers.

These reforms create, actually, the most important ingredients for success, and that is personal power and personal responsibility. We're getting more money to States for the important things, programs that work. We've increased spending on education, on Head Start, conservation fund grants, and I'm sure Sam mentioned this, transportation. And don't think for a minute that we measure progress simply in terms of dollars; we do not. We measure it by results, and we fund these programs because they work. Head Start helps us achieve our six educational goals. Kids starting school ready to learn—this year we funded it so that every 4-year-old will have that opportunity.

So, we're moving forward on what we feel works. Jack's program, that I'm supporting him on and have been trying to get through Congress, the HOPE program, H-O-P-E, enabling low-income families to own homes. And I like HOPE for a simple reason: It is a sensible program, and it makes good sense. And when you own a home, I think we all understand, you own a piece of the community. And you have a dignity and a self-respect that simply cannot be equaled in any other way. You all look at the world differently. You have an interest in improving your assets and you have an interest in safer, cleaner, better communities. And let me simply say, HOPE works.

And this pork-barrel spending—there was an amazing article on that in the paper today—doesn't, and we've asked Congress to eliminate, totally eliminate 246 programs. All of them have noble titles. All of them have wonderful titles, and all of them have sponsors in Congress. But they are not needed.

And we are in tough financial times, and so we're trying to get rid of 246 of them and put the money where it gets results.

And at the same time, we've asked Congress to take a few steps to bolster confidence in Government and to strengthen the economy. We need real tools to cut spending. And I want that line-item veto. We're going to keep on pressing for it. We have, in signing statements, I have said that we'll refute, we just are not going to accept some of the language, and so far that's gone on through in the bills that I have signed.

But we want a line-item veto, and again, I'm going to take the case to the people for this in the fall. I want a balanced budget amendment. We couldn't do it overnight, obviously. But if we got it, it would discipline not just the executive branch, but it would discipline the United States Congress which appropriates every dime and tells us how to spend every single dime. We've got to cut the deficit without raising taxes, and if that takes an amendment, let's get the amendment and get the job done.

Secondly, I want Congress to stop passing these unfunded mandates. If there is one thing we hear the most about from States, from Governors or State reps or State senators, it is unfunded mandates. And a Federal mandate is a promise that's made up there on Capitol Hill and then paid for back on Main Street. But the subcommittee chairmen up there have not changed their thinking at all. One program after another is mandated, and thus a big burden placed on the States. And so we say to Congress: Stop passing the buck back. And if you pass a mandate, pay for it, and don't go and raise taxes.

Third, I want to put a lid on nuisance lawsuits. You know, the law should foster progress, not hinder it. And when fathers stop coaching Little League because they fear lawsuits, there's something wrong. And we've gone way too far. When doctors stop delivering babies because they fear lawsuits, something's wrong. And when people stop volunteering to help other people because they fear ambulance-chasing lawyers, something is wrong. And the madness must stop.

And we have legislation up there in the Congress sitting dormant. And here's one where we can take the case to the American

people in the fall. It transcends party lines. It transcends ideology—liberal, conservative. It just does not make sense to have so many of these lawsuits settled in such an outrageous fashion. So, we are going to take that case clearly and loudly to the American people this fall. The madness has got to stop.

We've drafted a model act to help people engage in voluntary service without fear of unfair suits. And I hope your States will use this model to draft your own tort reform laws. Alabama, as Perry was telling me and reminding me because I've known it, put together such a statute, got it passed in less than 4 months. Perry Hooper—where is he, he was here right a minute ago—right over here, sponsored the legislation, and we're very proud of what he's done. It's a model for other States, and it makes me redouble our efforts here to get something done on the Federal level.

I've asked Congress to act upon our "Access to Justice Act" which encourages people to seek alternatives to court. And it used to be a joke; you'd get upset and someone would say, "Don't make a Federal case out of it." Now the joke's on us, and we've got to turn that around. People still turn small squabbles into lawsuits, and they sit in courtrooms listening to lawyers bicker about problems that should have been solved some way, over a cup of coffee at home maybe.

The "Access to Justice Act," and I urge you to take a look at it, provides alternatives and puts an end to this madness. And I'd like to challenge you to pass your own "access to justice" reforms. Lead the way. And then I think that will send a powerful message to the United States Congress.

The Council on Competitiveness here, under the able leadership of Vice President Dan Quayle, has prepared two model State statutes which are outlined for you in the packets that I am told you were given today. Take it home, and think it over, and craft your own antilitigation laws. And wouldn't it be nice to create a law that results in fewer lawsuits.

And I don't like to have this many influential people gathered here without soliciting your support, for you to ask Congress to do its part to help the economy. We've got a good plan. It is good. There's a lot of special

interests don't like parts of it, but it is a good, sound, stimulative plan. It will protect today's jobs, and it will create new jobs for tomorrow.

Congressional leadership also has a plan. And it will protect today's congressional seats, and it'll promise action tomorrow. So, we are locked in a real fight up there. We're short on numbers, but we've got the facts and we've got the merits on our side.

So I've given Congress a long-term plan, longer—I'd like to see it pass this year—to build the foundations for the next American century. An America that is healthy and well-educated and confident and free and better in research and technology, all of these things.

The health care plan, incidentally, that I came out with fits perfectly with yours. It improves our health care system, which provides the highest quality care on Earth. We've got health care problems, but one of them is not the quality of American health care. It is the best in the entire world.

And so, our program doesn't knock that aside to pass some mandated nationalized program. It gives everybody access to health insurance. And it lets people choose where to get treatment, which doctors they like. And when people make these choices, they feel more comfortable; they get treatments sooner, much sooner than under these nationalized programs. And our plan provides something better than socialized medicine's false promises: health care itself. So I urge you to take a look at this one. I think philosophically it will be right in tune with what we all believe.

My administration also understands that we've got to meet the challenges that lie over the horizon, the challenges of the 21st century. And our America 2000 education strategy encourages revolution, a new generation, literally, a new generation of American schools. It stresses excellence. It stresses accountability. It stresses involvement. It stresses choice. And choice closes the gap between the kitchen table and the teacher's desk. It gets families involved in education. And it gives parents power over their children's schooling. And I urge you to take a look at that program again. A lot of it does not have to be enacted in Federal legislation.

A lot of it can be done simply through innovation at the State and certainly at the local level.

The family really, when you look at the problems, is the key to our future. The mayors of cities in the National League of Cities, their executive board came in to see me. I mentioned this in the State of the Union. And all of them—Mayor Bradley of Los Angeles, a great, big city; the Republican mayor of a small town in North Carolina of about 2,000; and in between, mayor of Plano, Texas, and cities of that size—all came together, and they said, "The biggest worry we've got that clearly works against these problems in the cities is the decline of the American family."

And family is a key to our future. And it's been said that the best Department of Health and Human Services is the family. And it is. And it's also been said that what happens in your house—this was a quote by the famous Silver Fox that lives with me over in the White House, Barbara Bush—it's also been said that what happens in your house—and this is the way she put it, and I think it's very relevant—is more important than what happens in the White House.

And it's true. It is very, very true. And so I've asked this Commission that these mayors suggest we set up, this Commission on Urban Families, to find family policies that work, to ferret out Federal legislation that works against the family, to suggest Federal legislation that might bring the family together and might make an errant parent more responsible.

And our laws shouldn't encourage a single-parent household or fail to punish men who abandon their children and the mothers. They should promote whole and healthy families. And that's what the purpose of that Commission is. And then when we get its suggestions, I really want to share them with ALEC and other groups because I believe you'll find some real merit in what this Commission will come up with. I'm confident I know the direction they're going to take.

So, these are in the longer term proposal. But I've also submitted a short-term economic plan. And that provides two essentials for families in our Nation, jobs and security. And this plan—I've challenged the Congress

to move on it by March 20—stimulates investment. It energizes the real estate industry, and it cuts taxes that inhibit growth. And I've asked Congress, as I say, to pass it by March 20th, 4 weeks from today.

Now, very candidly, we're caught up in a political season here. And I have not been happy with what's come out of the Ways and Means Committee so far. The Democratic leaders have come up with a sorry plan. They want higher taxes, and they want higher spending. And they hope to buy off the people with a tiny, temporary tax cut. If you belong to an average family of four, their scheme will give you about a quarter a day. And even the tooth fairy pays more than that in there. *[Laughter.]*

And we Americans, we want a large and expanding economy that offers new options and challenges and that holds the promise of job security and employment opportunity. And frankly, I think the country has a reason to join me in being tired of the games being played. For 3 straight years we've tried to get a capital gains tax reduction. It would stimulate jobs. And all the people that control Congress do is say, "Well, it's a tax sop for the rich. This is a break for the rich." It isn't. When the Steiger amendment was passed in '78, new businesses were created; new jobs were created. And it would have the same effect now.

And we're competing in this world. And Japan has a capital gains tax, an effective tax of about one percent; Germany, I think it's zero. And we're asked to compete then with two hands tied behind our back in this important world competitive market which we cannot turn our back on.

And so, we're going to keep fighting for these things that stimulate this economy and get it moving. It is my conviction that if our first-time homebuyer credit is passed, and if our incentive through rapid depreciation is passed, and if our capital gains cut is passed—these are three of our seven points in this short-term program—it would send a signal of confidence to this economy. You don't have to see the effect of it when tax time rolls around. It will give us stimulation of confidence to the small business guy that might just say, "I'm going to take a chance. I'm going to open a business here."

And so, we really need help now trying to encourage the Congress to pass this program by March 20th. And out of the budget agreement of 1990, which had things in there I didn't like, there was one good thing in it. There were a couple of things that were pretty good. But there was one good thing in it: For the first time in history, we put caps, meaningful caps, on discretionary Federal spending. The critics forget that. Those caps are in place. They can work. Federal spending's up because you have S&L's, you've had bank problems, enormous problems outside of this. You've had the entitlements going up; they're outside of the caps. But the caps are the only protection the taxpayer has against the growth of discretionary Federal spending.

And now, as the election approaches, you hear a lot of talk by the Democrats, "We want to change it. We want to change the caps, knock down the walls." Please help me keep those caps in place. I will veto any attempt to change it, but we're going to need help to keep those caps in place to protect the taxpayer as best we can until we can get some Members of Congress on both sides of the aisle to share the values that you certainly epitomize and advocate.

So we're in a fight here. And I am going to take this one all the way. After March 20th they say, "Well, what are you going to do?" I say, "Well, I don't know," because I'm not going to give up until March 20th on trying to get this sensible, short-term, stimulative program through the Congress. But I guarantee you, if we fail, the message is going to be loud and clear. And we'll put it in very clear focus so the voters next fall are going to be able to make their determination as to what should have been done and those who stood against it.

So again, I would solicit your help in the time that remains between now and March 20. Help us on the short-term program. Advocate the things you agree with us on on the longer term program, all the things I've mentioned on education and research and family credits. These things are very, very helpful for the future.

So, thank you for what you're doing. I'm glad you came by. I wish we had a little more

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Thank you all very much.

Note: The President spoke at 11:42 a.m. in Room 450 of the Old Executive Office Building. In his remarks, he referred to Fred Noye, chairman, and Sam Brunelli, executive director of the council, and Perry Hooper, a council member from Alabama.

Nomination of Sigmund A. Rogich To Be United States Ambassador to Iceland

February 21, 1992

The President today announced his intention to nominate Sigmund A. Rogich, of Nevada, to be Ambassador to the Republic of Iceland. He would succeed Charles E. Cobb, Jr.

Currently Mr. Rogich serves as an Assistant to the President for Public Events and Initiatives at the White House in Washington, DC. Prior to this, he founded and served as the president of R&R Advertising in Las Vegas and Reno, NV, and Salt Lake City, UT, 1973-89.

Mr. Rogich graduated from the University of Nevada-Reno (B.A., 1967). He was born May 17, 1944, in Iceland. Mr. Rogich has two children and resides in Washington, DC.

Letter Accepting the Resignation of John E. Frohnmayer as Chairperson of the National Endowment for the Arts

February 21, 1992

Dear John:

I received your letter of resignation today and, with sincere thanks and appreciation for your service, I accept your resignation effective May 1.

I recall your coming to talk to me about this on October 24. At that time you told me you wanted to step aside. I told you then that I certainly understood your reasons for desiring to return to private life.

Your job is one of the most difficult in government. You have worked hard for freedom of expression; and yet, at times, as you have ruled against certain grants that you felt were beyond the bounds of common decency, you have been criticized.

I thank you for the integrity and commitment that you have brought to the National Endowment for the Arts.

No two people can agree in every instance on every grant or indeed on what is good art; in fact some of the art funded by the NEA does not have my enthusiastic approval. I expect some did not have yours, but this should not obscure the overall work of the NEA nor your contribution to it.

I thank you and wish you and your family well for a very bright future.

Sincerely,

George Bush

Mr. President:

Last October I told you of my desire to return to private life. Accordingly, I submit my resignation effective May 1, 1992.

I have appreciated the opportunity to serve you and the arts; you know how much your personal support has meant to me during these difficult times. You and your administration have accomplished a great deal and I'm sure the best is yet to come.

Sincerely,

John E. Frohnmayer

Note: These letters were made available by the Office of the Press Secretary on February 21 but were not issued as White House press releases.

Statement by Press Secretary Fitzwater on the Confirmation of Andrew H. Card, Jr. As Secretary of Transportation

February 21, 1992

The President is delighted that the United States Senate unanimously voted to confirm Andrew Card to be Transportation Secretary. As Transportation Secretary, Andrew Card

George Bush, 1992

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Metzger has worked on Capitol Hill for then-freshman Congressman Patrick L. Swindall. In addition, she was the Atlanta office manager for the Georgia Reagan-Bush '84 campaign.

Ms. Metzger is a graduate of Samford University in Birmingham, AL, receiving a bachelor of arts degree in 1984. She was born in Decatur, GA, and currently resides in Alexandria, VA.

Remarks to the Small Business Legislative Council February 5, 1992

Thank you all very much. And Phil, thank you for the welcome, the kind introduction. Bob Banister, congratulations on being named chairman-elect of the SBLC. John Satagaj, thanks for your hard work in putting this wonderfully successful meeting together. And greetings, also, to Ted Olsen and John Kemp, who has done wonderful work in helping small business implement the ADA, the Americans With Disabilities Act. It was great a minute ago—I don't see him this second—to see my friend, Josh Smith, the Chairman, sitting over here, of the President's Council on Minority Business, a successful businessman himself.

Today, what I wanted to do is to follow up on some of the things that I discussed in the State of the Union Address. I really do enjoy going up to the Hill to deliver the State of the Union. It's the only time all year that you can get so many politicians so polite and understanding for so long. [Laughter] It's a wonderful feeling.

As you know, we've had a hectic week, from the State of the Union Address to releasing the budget to meeting with Boris Yeltsin. During this Presidency, I think it's fair to point out that the cold war has drawn to an end. We led the coalition that shoved Saddam Hussein out of Kuwait. Peace talks between ancient enemies have begun in the Middle East. The Soviet Union has collapsed, and we've begun working with its successor States. The whole world has changed. And still, some people say, "Hey, is that all? What have you done for us lately?" [Laugh-

ter] I'd say, no, but it's a good start, and we recognize that we've got many other things to be working on, as I've been trying to do.

And now that we can look past the burdens of the cold war, we can do what we do best: create, innovate, build, produce, and lead. This afternoon, I'm going to be signing the Economic Report to the President. And it will not only describe and explain the causes of our current economic difficulties, it will also explain why virtually all economic analysts expect this economy to improve. More importantly, it will explain why if Congress enacts my progrowth policies, the improvement in the economy will be quicker, stronger, and much more certain.

In the State of the Union, I presented a comprehensive action plan for our economy. Today I want to discuss what that means for you. Think of this as my "small business State of the Union." My plans starts with what I can do as President without any congressional action required. We've taken a whole series of actions—I won't mention them all—but a series of actions to stimulate investment and get the economy moving. These, as I say, don't need congressional approval.

A couple of initiatives have earned kudos from this crowd. First, I have ordered major Departments and Agencies to put a 90-day hold on implementing new regulations. Regulations ought to foster economic growth, not crush it. And we're going to make sure that the days of overregulation are over once and for all. So, we're going to take a fresh look at the rules and regulations Washington hurls your way. We'll get rid of those that do nothing more than destroy jobs and weigh down businesses. And in this, we will pick some that will speed up and foster growth and support jobs. We're going to emphasize those regulations.

But that's not all. We also declared war on nuisance lawsuits. Yesterday I announced the "Access to Justice Act of 1992." That bill will give Americans less expensive and easier alternatives to trial. Let them solve problems out of court. And we've got to stop America's long liaison with the lawsuit. If we were as good at rewarding success as we are at suing each other, this country would be a lot better off. And that goes for health care, too. With those outrageous, sky-high malpractice

awards, we've got to get those under control, and we are going to try hard.

And now the American people know better than to think that anyone, including a President, can wave a magic wand and revive something as complicated as our economy. Congress needs to do its job. And that means—and we were talking with your leaders about this earlier—that they should pass the short-term compact economic growth package that I put before the Congress and pass it by March 20th.

You know, we're all realistic that we're going into a political year. And I'm fairly realistic that we're going into a political year—[laughter]—but I would simply point out that we have time now. There's a period of time that we can lower that political controversy and get something done, a rifleshot approach to stimulate this economy. And that's where I'm going to need your help. So here we go. The plan starts with the basics. It stimulates investment by improving the alternative minimum tax and creating a new 15-percent investment tax allowance.

L.W. Locke of North Carolina—and I'm told he's in the audience today—understands. He appreciates these changes. He's delayed building a convenience store/gasoline station because he just can't do it under our present system. The investment tax allowance would let him buy fixtures and gas pumps and fuel storage tanks, a \$1 million commitment. So don't tell me—here's a practical example—don't tell me, or don't listen to the voices that say this plan is a gimmick, and don't try to tell that to L.W., either, because he's right out there trying to move forward with investment.

I also want to fire up the engine that traditionally pulls us out of tough times. And that's the real estate industry. My plan helps builders. Ask Jay Buchert, a Cincinnati homebuilder, also here with us today. He's thrown his support behind this plan. The National Association of Home Builders predicts that my bill will create at least 415,000 construction industry jobs and set off \$20 billion in economic activity associated with homebuilding. Now, that's no gimmick. That is no gimmick. That means jobs, good, solid American jobs.

And I also want to reward everyone who believes in the American dream, trying to make it work. I want Congress to cut the long-term tax on capital gains. And I want it cut to a maximum rate of 15.4 percent. The world's fastest growing economies and our major competitors, including Germany and Japan, have one thing in common: They tax capital gains at much lower rates than we do. And in many cases, capital gains isn't taxed at all.

It's ironic. Many politicians who oppose the capital gains tax cut also complain that we're not competitive. Well, they can't have it both ways. And if they really want us to be competitive then they'll slash the capital gains rate and do it now in this comprehensive short-term package. The capital gains rate cut will help families who own homes, help people who own farms, help business owners, and will help everyone who invests in our future by purchasing stock.

Now, you've heard some people claim that a capital gains cut serves only the rich. Well, maybe those people should get out of Washington and talk to people around our country. Retirees say they can't sell their homes because capital gains rates punish them too much. Business owners say they can't expand their businesses; capital gains rates punish their success. A man from Florida, a retiree who built his own business, invested, saved, put it perfectly: He worked hard for years, and now he can't afford to cash in on his success. He said, "We are being penalized for having foresight." Well, I'm tired of people getting slammed because they risked their money and effort and succeeded. And it's about time the Congress realizes we should reward these people, not turn them into targets of envy. And that, of course, creates jobs. More people that take risks and start businesses, that means jobs.

So, let's get to the heart of this thing. The people in this room, small businessmen, investors from the National Venture Capital Association, you understand the gritty fundamentals of business. And you are the real experts. Well, America really needs your help now. So, don't accept no for an answer anymore. I'll take the heat on whether it's a tax cut for the rich or not, but you make the case as to what it can do to stimulate jobs

ward everyone who can dream, trying to Congress to cut the capital gains. And I want rate of 15.4 percent. Growing economies and, including Germany, are in common: They have much lower rates than us, capital gains aren't

politicians who oppose it also complain that. Well, they can't have it. They really want us to slash the capital gains now in this package. The capital gains families who own the farms, help them help everyone who is purchasing stock.

Some people claim that it's only the rich. Well, you could get out of Washington around our country. You sell their homes better punish them too. They say they can't expand capital gains rates punish them from Florida, a retiree in business, invested, saved, worked hard for years, and now he's cashing in on his savings. He's being penalized. Well, I'm tired of people who because they risked it and succeeded. And Congress realizes we're not turning them out that, of course, create the risks and create jobs.

Heart of this thing. The small businessmen, international Venture Capital understand the gritty fun. And you are the real ones who really need your help. No for an answer any time on whether it's a tax cut, but you make the decision to stimulate jobs

and new businesses in this country and demand that the Congress cut the capital gains rate now.

And I might remind you when you do this work, remember that there were majorities in both Houses of Congress for what I'm proposing right now not so many months ago. The field is there for fertile reaping. And I tell you, I really hope that you can get up and help us do this job.

I'd also like to ask you that you demand action on my short-term plan without delay. You know, when I hear someone complain that this short-term plan won't do much, I wonder myself: Hadn't any of these guys ever run a business? Do they appreciate the difficulties of getting a loan, finding an investor, purchasing what you need, filling out all that Government paperwork? It's about time somebody understands that you need just a few minutes to concentrate on the customer. That's what some of this is going to do.

You may have detected this, but I'm tired of the term "fairness" being corrupted by political demagogues. You want fairness? Here's something fair: My plan will work for all Americans, and it will create jobs. How's that for fairness?

Congress has the legislation. It has a March deadline, March 20th deadline. And I ask you to circle the date on the calendar. Much beyond that, politics takes over. We've got a chance now to get something done. So while you're in Washington, visit those congressional delegations. Let them know that you want this package passed. You are at the center of this plan, and you create, small business, you create the vast majority of jobs in this country. And I am determined to support you to create more jobs.

I believe it is in your power to help lift this country and help get it moving again. I really am confident that you will do just that. Since Members of Congress will be home on break next week, drop by their offices, let them know how you feel. Send this message: No more delays, no excuses, no substitutes. And don't delay. Decision day is 6 weeks from Friday. I didn't mention all the ingredients, but that's the rifle shot, short-term, incentive-building, job-creating part of this package. Now, for the longer term, I've

also proposed an ambitious long-term agenda to ensure that our economy will continue leading the world for decades to come.

And let me discuss a critical issue in that plan, health care. I know health care has become a problem for many of you and your employees. And tomorrow I'm going to be announcing in detail my comprehensive health care plan. And I know you'll like it. I believe you'll like it a lot. People today worry about health care, yes. It costs too much, great concern. It's tough to find good comprehensive coverage. And you can't make choices like you used to. And you can't count on coverage if you move and change jobs or fall victim to a debilitating condition or disease.

I believe our plan solves these problems. And my plan ensures that people can find health care, choose health care, afford health care, and keep health care. I know that everyone with a plan promises the same thing, and that's why you have to use your common sense in evaluating the various proposals. And when you get right down to it, there are two fundamental health care choices. We can adopt a system that's been a proven failure all over the world, nationalized health care. Or we can reform our present system, which has its faults, certainly, but which also provides the highest quality care on Earth. People come from all over the world to participate in our health care. And if you want the freedom to choose your own doctor, to hold the line on costs, and to improve access to health insurance coverage, push for my plan. Look it over carefully. We're going to need your support. And it gives everyone, and I emphasize everyone, access to the world's best health care. And it doesn't exclude anybody. So, take a look at this and support us if you can.

And finally, I'd like your help on one other item. The Federal Government is too big, and it spends too much. And it's just that simple. Now, my budget holds the line on new spending. It does not violate the only protection the taxpayer has, that's the spending caps that are now in the law. These caps are the only protection the taxpayer has against more spending by Congress. And it pulls the trapdoor on a host of federally fund-

ed programs, all with noble titles—246 programs to be exact—that we simply do not need. And you shouldn't have to pay for them. And it's that simple. Each one has a protector, but I think the time has come, and the times demand that we take action on these.

And also, get Congress to give me an important weapon to control spending. This one may be a little difficult, but get them to give me that line-item veto and give me a shot at it. Forty-three Governors have it; give the President a shot. *[Laughter]*

We must stop imposing mandates on others without paying for those mandates. Too often mandates, these mandated benefits dictated out of some subcommittee, mean mandated deficits. And that just isn't right. It's not fair to the States; it's not fair to the localities and the communities. And it's got to stop.

The bottom line is we've got a lot of work to do. And we can't let anyone stall us this time. Americans can't wait to get this economy moving. We want to throw off cynicism and fear. We want to shake away the gloom and the doubt. And I am, frankly, very tired of the professional pessimists who don't have any fresh ideas for the future and who literally feast on bad times and hard feelings and who talk as if our best days have passed by. They just don't understand.

Wouldn't you hate to go through life thinking the only way I can get a step up the ladder is if somebody else is hurting? They just ought to get out of the way, these gloom-sayers and these pessimists. We can start a new economic revolution in America, one that builds on our innate optimism, our ambition, our determination, our willing to take risks, and our pride. And we're going to do just that. And that revolution will start a lot sooner if 535 people in Washington meet by the March 20th deadline that I've proposed up there.

So let them know in no uncertain terms: Business as usual won't get this job done; election-year politics as usual won't do. And tell them, we need action by March 20th. And with your help, I believe we can get it.

Thank you all very, very much. And may God bless the United States.

Note: The President spoke at 10:38 a.m. at the J.W. Marriott Hotel. In his remarks, he referred to L.W. Locke of Eastern Petroleum Corp., in Enfield, NC; Robert Buchert, of American Heritage Construction and Development Corp., in Cincinnati, OH; John Kemp, executive vice president of the United Cerebral Palsy Association; and the following officers of the SBLC: Phil Chisholm, chairman, John Satagaj, president, and Ted Olsen, treasurer.

Proclamation 6402—To Amend the Generalized System of Preferences **February 5, 1992**

*By the President of the United States
of America*

A Proclamation

1. Pursuant to sections 501 and 502 of the Trade Act of 1974, as amended (the 1974 Act) (19 U.S.C. 2461 and 2462), and having due regard for the eligibility criteria set forth therein, I have determined that it is appropriate to designate Estonia, Latvia, and Lithuania as beneficiary developing countries for purposes of the Generalized System of Preferences (GSP).

2. Section 604 of the 1974 Act (19 U.S.C. 2483) authorizes the President to embody in the Harmonized Tariff Schedule of the United States (HTS) the substance of the provisions of that Act, and of other acts affecting import treatment, and actions thereunder.

Now, Therefore, I, George Bush, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to title V and section 604 of the 1974 Act, do proclaim that:

(1) General note 3(c)(ii)(A) to the HTS, listing those countries whose products are eligible for benefits of the GSP, is modified by inserting "Estonia", "Latvia", and "Lithuania" in alphabetical order in the enumeration of independent countries.

(2) Any provisions of previous proclamations and Executive orders inconsistent with the provisions of this proclamation are here-

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Statement by Press Secretary Fitzwater on the President's Meeting With President Ronald Venetiaan of Suriname

February 3, 1992

The President met today with President Ronald Venetiaan of the Republic of Suriname.

The President expressed his satisfaction at the success of Suriname's elections and orderly transition to democratic civilian government following the military coup in December of 1990. He stressed the United States deep commitment to fostering democratic civilian rule throughout the hemisphere and emphasized that President Venetiaan enjoys our full support for his efforts to strengthen democratic institutions, undertake economic reform, and curb narcotics trafficking.

The two Presidents discussed the Surinamese Government's plans for economic reform and adjustment. The President pointed out that effective action in this area will enhance Suriname's ability to stimulate private investment and trade, which are the key to long-term growth.

The two Presidents also discussed the threat to Suriname of increased narcotics trafficking, and the President pledged our support for Suriname's counternarcotics efforts.

President Venetiaan is making his first visit to the United States since his inauguration in September 1991. He entered office as a result of elections held in May 1991 with the participation of observers from the Organization of American States.

Message to the Congress Transmitting a Report on United States Government Activities in the United Nations

February 3, 1992

To the Congress of the United States:

I am pleased to transmit herewith a report of the activities of the United States Government in the United Nations and its affiliated agencies during the calendar year 1990, the second year of my Administration. The re-

port is required by the United Nations Participation Act (Public Law 264, 79th Congress; 22 U.S.C. 287b).

George Bush

The White House,
February 3, 1992.

Message to the Congress Transmitting the Annual Report of the Federal Labor Relations Authority

February 3, 1992

To the Congress of the United States:

In accordance with section 701 of the Civil Service Reform Act of 1978 (Public Law 95-454; 5 U.S.C. 7104(e)), I have the pleasure of transmitting to you the Twelfth Annual Report of the Federal Labor Relations Authority for Fiscal Year 1990.

The report includes information on the cases heard and decisions rendered by the Federal Labor Relations Authority, the General Counsel of the Authority, and the Federal Service Impasses Panel.

George Bush

The White House,
February 3, 1992.

Remarks to the National Grocers Association in Orlando, Florida

February 4, 1992

Thank you for that warm welcome, and please be seated. And Tom, thank you for that wonderful introduction. Thanks also to Bill Confer, your chairman. And before we get started, I don't know where they are, but I'd like to recognize two outstanding Congressmen from this area, Bill McCollum and Cliff Stearns. And also a former Congressman who is actively involved with me, Bill Grant, of Florida. You have three of the best right here with you today.

And it's a great pleasure, and I really mean that, to be here with this enthusiastic group. I originally had planned to be at your dinner

last night. But then I found out it was called the Asparagus Club Banquet. [Laughter] Thought I'd better not take a chance. And you know why, dangerously close. [Laughter] Okay, Barbara won the broccoli war. I said what I thought, and she got out and received all these broccoli growers. And sales shot up about 500 percent. [Laughter]

You all know, I think, of my love for sports. And this being an election year, my competitive juices are flowing more than ever. And so, today I'm making an announcement that many of you have been expecting for a long time. I'm officially declaring my entry into your best bagger contest. Just one question: Paper or plastic? [Laughter]

I'll always remember—and Tom referred to it—but from a personal standpoint, I'll always remember that warm reception that you all, the NGA, gave me when I addressed that 1985 convention. It was in New Orleans. You gave me a good education about your industry then, and I remember it still. A typical NGA member is a family-run business. Many of you carry on legacies built through the vision and sacrifice of a grandmother or a grandfather. Just met one of your directors. She was a third-generation in the grocery business, perhaps an immigrant to this country, some were. You work on the thinnest of profit margins. You challenge one another with bracing competition that clearly benefits our consumers like no others in the world. And today, as always, your success as community grocers depends not just on the bottom line but on the old-fashioned virtues of being a good neighbor.

Since I last met you all in 1985, the world has changed. We've got a lot to be grateful for. We won the cold war. We led a coalition in the Gulf to crush Saddam Hussein's aggression in Kuwait. We've created a world with the prospects of unprecedented prosperity and peace. But we've also run into some hard times here. Our economy has slowed down. We must get it fired up again.

The professional pessimists tell us America has become weak and disabled, that our economy has fallen, and it can't get up. Well, that's just plain bunk. It's not true. And I'm going to tell you what we can do about it. Day by day and step by step, we're going to get ourselves moving, and we'll do it as

Americans always have. We'll combine our common sense, our work ethic, and our determination with progrowth policies. With these, we'll carry the entire world into the next American century. You can bet on it.

You don't have to be some rocket scientist to understand how. You stick with the basics. And I proposed a commonsense comprehensive action plan last week in my State of the Union Address. It gets investment going, because you can't build new businesses and create new jobs without new investment. It strengthens the industries that historically have led us into recoveries, especially real estate and housing. It hacks away obstacles to growth. It cuts the Federal deficit by holding back spending. Government is far too big, and it spends too much. And I am going to keep it within its limits of this budget agreement that is in place right now.

Ask yourselves the question: How free are we, really, when the Government gobbles up 25 percent of our GNP? I'm demanding, I need your support, that Congress get serious about this. One thing, I've listed 246 programs that I want cut out this year, 246. Each one has a protector; each one has a noble title. None of them is essential to the well-being of the United States of America. And I want something else. I want that line-item veto so I can enforce real spending disciplines. Forty-three Governors have it.

We've got to get Washington back to common sense. To do that, I really mean this, I need your help. I know you can deliver. You know your neighbors; they know you. The grocery business grows when your neighborhood grows, when the Nation's economy grows. I've asked Congress to enact some laws that will create jobs by getting our economy growing again. And I've set a deadline, March 20th. I ask you to circle that Friday on your calendar. Remember this deadline. Congress needs to take a few simple steps to create good American jobs, now.

The Capitol Hill hearings on my program begin today. But I must say, too often when I send progrowth proposals to Congress, all the public hears is sloganeering about fairness. This twists a good concept into a weapon of envy and divisiveness, desire to divide America along class lines. I don't look at it that way. Here's what fairness means to me:

We'll combine our ethic, and our growth policies. With the world into the You can bet on it. Some rocket scientist pick with the basics. Commonsense commit week in my State It gets investment to build new businesses without new in the industries that to recoveries, especially. It hacks away at the Federal deficit. Government adds too much. And within its limits of this in place right now. Question: How free are government gobbles up? I'm demanding, I Congress get serious I've listed 246 priorities this year, 246. Each of which one has a noble essential to the well-being of America. And want that line-item real spending disbursements have it. Bring it back to common sense. I really mean this, now you can deliver. For; they know you. It grows when your when the Nation's and Congress to enact the jobs by getting our And I've set a deadline to circle that. Remember this deadline take a few simple American jobs, now. Savings on my program say, too often when savings to Congress, all sneering about fairness concept into a weapon. Desires to divide. I don't look at it. Fairness means to me:

It means if you want to work, you can get a job. It means if you have a good idea, you'll get a chance to test it, or if you build a business, you don't lose your earnings to excessive taxes or overregulation. That's what fairness means to me. Above all, the most important test of fairness for my plan is that it will work for all Americans. It will create jobs.

And now, here's what I want by March 20th. And I set that date because I do believe we have a window in which we get something done, even though this is going to be a very controversial and difficult national election year. Here's what I want: First, incentives to make productive investments. These involve a 15-percent investment tax allowance and needed changes to the alternative minimum tax. Now, these will encourage business to invest in equipment and become more productive. I just took a tour through the exhibits here, amazed by some of the technology. These proposals will stimulate that kind of investment and will help individuals invest in high technology or whatever machinery is needed.

Second, we need incentives to build and to buy real estate, a change in the passive-loss rules for active real estate developers. We need penalty-free withdrawals from IRA's for first-time homebuyers and a \$5,000 tax credit for the first purchase of a home. Housing economists predict that my plan will mean an extra 200,000 homes built and 415,000 new construction jobs to build them. Real estate and housing, with this stimulus, we'll lead our way into active recovery.

And third, incentives to succeed: Cut the capital gains tax. This tax hurts anyone who has made a sensible investment in a home, a business, or a farm. None of our key competitors taxes gains at high rates, world global competitors. Let's stop penalizing savings and investment. Let's stop punishing excellence. And yes, let's talk about fairness. Lower capital gains mean more investment, and more investment means more jobs. So, let's get that capital gains tax cut, now.

Three measures, three pieces of common sense, three things Congress should do by March 20th. I know that Congress will listen to you, you come right from the grassroots. And I'm counting on your help. In the meantime, I've initiated some reforms that will get

the economy moving without having to wait for Congress to act. I've imposed a 90-day freeze on Federal regulations that could hinder economic growth. And during that period, all Departments and Agencies will review regulations, old and new, and when possible, stop the ones that will hurt growth and speed up those that will help growth.

I see from your convention schedule that you have a workshop entitled "The Regulators Are Back." No wonder. You can't get through a day without having to worry about what some regulator is going to do to you through some thoughtless regulation. Regulations may have stated aims as wholesome as Mom and the apple pie. But you know better than anyone that when regulators carry that regulation too far, there won't be any apple pie for Mom to buy.

I ran a council on deregulation for 8 years as Vice President. And I'm here to assure you, we've not lost the spirit of deregulation. I want you to be able to spend your time working on what you can do for your customers rather than fretting about what some regulator might do to you.

And I'm also fighting hard against this epidemic of lawsuits. The costs and the delays in our legal system are a hidden tax on every single American consumer, on every business transaction in America. And that's why I'm sending to Congress today a reform bill, the Access to Justice Act of 1992. And my reform proposal will give Americans cheaper and easier alternatives to trial. And my plan will halt needless lawsuits by making changes in the way some attorney's fees are awarded. And let's stop America's love affair with the lawsuit. If we're as good at rewarding success as we are at suing each other, we'd be way ahead of the rest of the world. I might say parenthetically, health care costs would be an awful lot lower if we didn't have a lot of frivolous lawsuits going after these doctors for malpractice.

One of the great lessons of our times is this: Freedom and cooperation work, big Government doesn't. And after 70 years, the new leaders in Moscow recognize that total Government regulation produces only one thing: total failure. And now, the Russians—I had a fascinating visit with Boris Yeltsin up at Camp David on Saturday—the Rus-

sians want to try something different, like grocery stores with groceries on the shelves. [Laughter] This man's put into some tough reforms there. Got to stay with him. Got to help him make them work.

Isn't it ironic, at the exact moment the world is turning to our values of more economic freedom and competition, some in the United States Congress want to go just the opposite way. And here's an example of the trouble brewing in Congress: That's the so-called FDA enforcement bill. I'm sure those of you who sell your own private-label groceries aren't exactly thrilled by the prospect of more legal and accounting and paperwork burdens. But that's just what some in the Congress want to do. Well, let me tell you in no uncertain terms: the time for overregulation is over. And if they send me any more legislation with excessive regulation in it, I'm going to veto it and send it back. It's going right back up there.

Again, the Congress can help get the economy moving if it will just do the right thing. Last week one Member of Congress, a Democrat, said it might be smart politics for the Democrats to meet the deadline and pass my plan intact. I can't say what their motives may be, but I know one thing, my plan will help the American people. So let me take the heat. I know that my program will get the economy moving again. And again, urge the Congress to pass it intact by March 20th.

March 20 isn't a moment too soon to enact this short-term program. But we also must take a longer look, look to longer horizons. And I proposed a long-term plan in my State of the Union Address. Let me just give you a couple of the highlights here, some of the highlights.

First, let's create more American jobs by opening up and expanding markets all over the world. A new GATT agreement, we're working hard to get one, will make the world trading system come to grips with the damaging tariffs and export subsidies in agriculture. And by tearing down economic barriers with Mexico and Canada, a new North American free trade agreement can lift us to new heights of prosperity. And make no mistake about this: A sound, free trade agreement will mean more American jobs, not less, more American jobs.

Second, let free choice and free markets reform this health care system of ours. This week I'm going to ask for a new credit to help those without health insurance, employed or not, to buy such coverage. My plan will assure that both American workers and the unemployed will have access to basic health insurance even if they change jobs or develop serious health problems. We can't improve health care by threatening the health of job-intensive businesses. The last thing we want is for companies to cut costs by cutting workers. And I am wholeheartedly opposed, as I believe you are, to schemes that cost jobs by mandating benefits that an employer must pay.

And thirdly, let's strengthen the family, the cornerstone of the American dream. Let's ease the burden of child-rearing. The personal tax exemption has not kept up with inflation. I'm asking Congress, immediately, to increase the exemption for each child by \$500. It's a significant move in the right direction, and for our kids' sake, we must do no less.

Look at my economic proposals and you will find straightforward, plain solutions to our problems. Some may complain that they lack the flash of an expensive new program or that they don't have quite the right political ring for this political year. But I'm not seeking spending for spending's sake. I don't want a fancy title on a bill that will shoot interest rates right up through the roof. I want results. My plan is sound, and it will work.

If you hear people in Congress gripe that they can't get the job done by March 20th, remind them, we won the Gulf war in 44 days. Surely Congress can pass my urgent domestic program in 52 days. Remember, Congress can act with lightning speed when it wants to. So, accept no excuses. Accept no delays. And accept no substitutes.

Please don't leave this message behind when you leave this convention hall. Take it home to your families, to your customers, to your neighbors. From February 8th till February 17th, your Congressmen will be home for the President's Day recess. That's a great time for you to go to their hometown offices and tell them to meet the deadline and to pass this plan. With an effort like this,

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I know we'll get their attention, and we'll get America moving again.

Thank you very, very much for this reception. And may God bless the United States of America. Thank you.

Note: The President spoke at 11:35 a.m. at the Orange County Convention/Civic Center. In his remarks, he referred to Tom Zaucha, president of the National Grocers Association.

Message to the Congress Transmitting Proposed Legislation on Access to Justice February 4, 1992

To the Congress of the United States:

I am pleased to transmit today for your immediate consideration and enactment the "Access to Justice Act of 1992". The purpose of this proposal is to reduce the tremendous growth in civil litigation that has burdened the American court system and imposed high costs on our citizens, small businesses, industries, professionals, and government at all levels.

A thorough study of the current civil justice system has been conducted by a special working group, chaired by the Solicitor General, Kenneth W. Starr. The working group's recommendations, which were unanimously accepted by my Council on Competitiveness, are reflected in the bill. The legislation seeks to reduce wasteful and counterproductive litigation practices by encouraging voluntary dispute resolution, the improved use of litigation resources, and, where appropriate, modified, market-based fee arrangements. Additional reforms would permit the judicial system to operate more effectively.

The Access to Justice Act would accomplish reforms in significant areas of litigation:

- a prerequisite for Federal jurisdiction over certain types of lawsuits (the amount in controversy requirement) would be redefined to exclude vague, subjective claims;
- prevailing parties could be entitled to award of attorney's fees in certain lawsuits brought in Federal court;

- the Equal Access to Justice Act would be amended to clarify and limit litigation over the amount of attorney's fees;
- innovative "multi-door courthouses" would be established to encourage utilization of alternative dispute resolution mechanisms;
- award of reasonable attorney's fees in disputes involving the United States would be permitted in appropriate instances;
- prior notice would be required, subject to reasonable limits, as a prerequisite to bringing suit in any United States District Court;
- flexible assignment of district court judges would be authorized;
- immunity of State judicial officers would be clarified and protected;
- the Civil Rights of Institutionalized Persons Act would be amended to encourage resolution of claims administratively; and
- improvements in case management in Federal courts would be effected.

I believe this proposed legislation would greatly reduce the burden of excessive, needless litigation while protecting and enhancing every American's ability to vindicate legal rights through our legal system. I recommend prompt and favorable consideration of the enclosed bill.

George Bush

The White House,
February 4, 1992.

Memorandum on Emergency Funding for the Organization of American States Mission to Haiti February 4, 1992

Presidential Determination No. 92-13

Memorandum for the Secretary of State

*Subject: Emergency Funding for OAS
Mission to Haiti*

Pursuant to the authority vested in me by section 614(a)(1) of the Foreign Assistance Act of 1961, as amended, I hereby determine that it is important to the security interests

George Bush, 1992

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on all the challenges we confront. And let
us pray that we will strengthen the values
that this great land was founded on, that we
will reverse any threat of moral decline, and
that we will dedicate ourselves to the ethic
of service, being what I call a Point of Light
to someone else, someone in need.

And in this work, we are not without inspi-
ration. We need look no further than the
handful of men who became heroes by their
courage, their strength, and above all their
faith—last of whom returned in December.
I'm talking about our hostages. And in brutal-
izing conditions, as we've heard this morning,
they prayed together daily in what they called
the "church of the locked door." They
unwove floor mats in order to make rosaries.
These men, who every day lived the story of
Job, treasured their first book, the Bible.
When Terry Anderson was released, one of
the first things he did was to thank strangers
across the world who had prayed that he be
set free. "Your prayers made a big dif-
ference," said this man who, imprisoned, had
rediscovered the faith that sets and keeps
men free.

There's another story from last year's news
that tells of the transformation of faith. While
it's a story familiar to all of you, it's intensely
personal to Barbara and me and to others
in this room. We lost a dear friend last
March, Lee Atwater, a restless, fiercely driv-
en, fun-loving good ol' boy from South Caro-
lina who rode life as hard and fast as he
could. But he also lived a kind of miracle
because his illness reintroduced him to
something he'd put aside, his own faith. And
in his last months, he worked intensely to
come to grips with his faith. And through
reading the Bible and through prayer, he
learned that, as he put it, "What was missing
in society was what was missing in me, a little
heart and a lot of brotherhood."

He was so right. Prayer has a place not
only in the life of every American but also
in the life of our Nation, for we are truly
one Nation under God.

May God bless this very special gathering.
For those of you who have come from over-
seas, for those of you from across our land,
for those of you right here in the Nation's
Capital, thank you for participating in this
celebration of faith.

Thank you very much.

*Note: The President spoke at 9:10 a.m. at
the Washington Hilton Hotel. In his remarks,
he referred to Senator Ted Stevens; evangelist
Billy Graham; Prime Minister Kamisese
Mara of Fiji; and National Symphony Or-
chestra director Mstislav Rostropovich.*

Remarks to the Greater Philadelphia Chamber of Commerce January 30, 1992

Thank you all very, very much for that wel-
come back. Please be seated, and thank you.
Please be seated. I don't want to keep Boris
Yeltsin waiting later on. [Laughter] Thank
you, Joe. Senator Specter and Joan, laboring
in the vineyards of the city council here,
we're delighted to be with you. And coming
up with us from Washington were two of our
great Congressmen from this area, Larry
Coughlin and Kurt Weldon, over here.

And may I, too, salute the mayor. I asked
Joe earlier on how was it going, realizing that,
as in Washington, things have been tough,
and across the country in many ways. But
I said, knowing a little bit about history in
Philadelphia, I asked this question, "How's
the mayor doing?" And Joe and everybody
else I've spoken to has said he's really hit
the ground in a wonderful way, going for-
ward, bringing out the best in this city. So,
I want to salute Ed Rendell and his wife,
Midge.

Joe Paquette, who introduced me, is the
chairman of the Greater Philadelphia Cham-
ber. That was a very enthusiastic presentation
he made about how things were going, so
much so that maybe he can make a little loan
to those of us in Washington, DC, who can-
not have quite that optimistic a report.
[Laughter] But I like that can-do spirit of
this chamber, and I'm grateful to Charlie, to
Charlie Pizzi, and to Joe and all the rest of
you that have put together this opportunity
for me, all of you at the chamber.

And so, thank you very much. I am happy
to be here in Philadelphia. As you can imag-
ine, these last few weeks in Washington have
been pretty high pressure, high pressure time

for me, what with all the experts and the instant analysis and the columnists giving unsolicited advice. Thank goodness the Super Bowl is over. *[Laughter]*

I am very pleased to be here, particularly pleased to be here today because American businesses, as represented by this group gathered here, have a unique perspective on the tough times we've been going through recently. And as businessmen and businesswomen, you can separate the sensational from the sensible, the sweet-sounding quick fixes from real solutions. When it comes to America's economy, we can't accept empty symbols and slogans. We need to work together—that's what I like, what Joe was saying about the way the mayor and you all are approaching it in this city—we've got to work together nationally and turn this economy around.

Tuesday night, I came before the American people to outline a program for doing just that. And we all know this is an election year. The air back in Washington has been thick with feel-good gimmicks that have nothing to do with true prosperity and everything to do with politics. We need to get down to business, literally. In the critical weeks ahead, common sense must replace partisanship. And I came here to ask for your help.

The plan that I put before Congress and the American people contained several action steps. And one of the most critical was this, to free up American businesses by clearing away the obstacles to growth: High taxes, overregulation, and Government deficits. And I've offered the only comprehensive plan that doesn't raise taxes, doesn't throw away the spending discipline now in place on the Congress, these spending caps, and doesn't cut defense beyond what's necessary for this country's security. But let me tell you the three words that really separate my plan from what I think of the rest of them: "It will work." Those three, "it will work."

Each of us has a role to play, so I am moving forward with steps I can take right now. You may remember I divided that State of the Union Message into steps I can take, short-term areas where we need legislation and then a longer-term program. Right now, I have instructed every Cabinet department

to speed up progrowth expenditures. And we estimate that will be as much as \$10 billion worth in the next 6 months. We don't have to go to Congress to get them to do that; we just accelerate the spending plans to try to give this economy an extra kick.

I directed the Secretary of the Treasury to change the Federal tax tables so that millions of Americans can choose to have the Government withhold less from their paychecks. Now, that's a large number. That could pump as much as \$25 billion into the economy this year alone. That is money in the pockets of working men and women to help pay for clothing or to help save for college or to help buy a new car. And after all, it is their money. And there has been this schedule where really there has been overwithholding. And this I think will give, for those who elect to do it—if everyone elected to do it, it would be \$25 billion, and I think that will give the economy a jolt.

I have asked Cabinet departments and Federal agencies to institute a 90-day moratorium on new Federal regulations that could hinder growth. We'll undertake a top-to-bottom review in the fields of energy, the environment, transportation, exports, financial services, and communications, among others. Here's the test: We will accelerate any regulations that encourage growth and the creation of jobs. And whenever possible, we will scrap those that tie the hands of business and impede growth. I know that I have regulatory responsibilities affecting safety in the workplace, for example, health, environmental protection. And I will not neglect those responsibilities.

But you know as well as anyone how Government, sometimes with the best of intentions, can hobble innovation and risk-taking, the lifeblood of a successful business. Government naturally tends to expand ever outward, its redtape oblivious to anything standing in its path. It touches everyone. Every regulation that reduces efficiency slaps a hidden tax on the consumer as well. From the tab on a bag of groceries at the checkout line to the sticker price on the showroom floor, every American takes a hit when the Government overregulates.

American businessmen and women need this freedom to experiment, to compete with-

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tion most of all. Yet these businesses drive
America forward. They create most of our
new jobs. They reinvigorate our commu-
nities. They embody the power of the Amer-
ican dream. I make this pledge: We will set
America's dreamers and doers free and put
an end to this regulatory overkill.

In some of this area I will need the help
of the Congress, and I promise I will take
the message as strongly as I can to the Con-
gress in this regard. Even now, an untold
number of hard-working, responsible men
and women go without needed bank loans
for starting up a new business or for investing
more in an existing one. We've got to ease
the credit crunch and give these people a
chance. That's why we've given the bank reg-
ulators more than 30 policy changes and
clarifications to restore common sense and
balance to the regulatory system.

I've mentioned this before, but in regula-
tion, again, we have a responsibility. We
don't want to go back to what is known as
forbearance, where we neglect the soundness
that is required. But there is regulatory over-
kill. The people are afraid, I think, in some
instances in the financial community because
of the excesses of regulation. And we're going
to try very hard to achieve a better balance.

Now, I've mentioned some of the things
that I can do, and there's a few more. But
Tuesday night I told Congress, directly chal-
lenged it, told it directly what it must do.
And I started with the obvious: No invest-
ment, no new jobs. Congress must reward
investment and stop punishing success.

For 3 years now, I have asked the Con-
gress to lower the capital gains tax. And for
3 years, that essential growth measure has
been pilloried and parodied as a windfall for
the rich. Now, you and I know that claim
for what it is: it's nonsense. Sixty percent,
sixty percent of the people who benefit from
lower capital gains have incomes under
\$50,000. A windfall for the rich? By freeing
up investment, a cut in the capital gains tax
creates new jobs for those looking for work
and better jobs for those who want to move
up. A lower capital gains tax helps anyone
who owns a small business or a farm, anyone

who owns a home, anyone who has a single
investment. We're talking about helping
every working man and woman and every re-
tired person in this country.

We don't have time now for any more of
this demagoguery on this question. Let me
remind you, in Japan the effective capital
gains tax rate comes to about one percent;
Germany doesn't tax long-term capital gains
at all. To create jobs, to restore a vibrant
economy for all Americans, Congress must
lower the capital gains tax. And it must lower
the capital gains tax now, 15.4 percent.

With a few simple steps, taken right now,
Congress can help get the housing industry—
builders, investors, buyers, and sellers—back
on its feet. To those young families who want
to buy their first home but can't quite afford
it, I say this: We can help put your dream
within reach, and we will. I have offered a
plan to allow first-time homebuyers to with-
draw savings from IRA's without penalty and
to provide a \$5,000 tax credit for the first
purchase of a home.

I might say parenthetically that Senator
Specter, your Senator, has been in the fore-
front of fighting for the change on how IRA's
are treated. He understands what this can
mean in terms of stimulating the economy
and helping the homeowner.

And I have asked Congress to mark the
calendar. They must put this recovery plan
in place by March 20. Yesterday, right
after—the State of the Union was the night
before, and yesterday morning, I went up to
the Congress. And I met with the leaders
of both the House and the Senate up on Cap-
itol Hill, and I urged them to meet this time-
table. I set the deadline because of a simple
fact: The American people want action. They
deserve action. Our States are working over-
time; so are thousands of communities across
the country. They're tightening their belts,
aggressively facing the future. And every day,
individual Americans are working hard to get
this economy back on its feet, and it's time
for Congress to do the same thing. It can
be done in that timeframe.

What troubles me is if we let it drag on,
it's going to get really caught up in the rough
and tumble of 1992 national politics. People
are crying out for help now, and the Congress
can move. We've seen them do it on a wide

array of legislative initiatives, and they can do it on these stimulative tax changes. So, I ask every Member of Congress—and please tell them the same thing—to set aside now partisanship for just 51 days and give this plan a chance. Get the plan, put it to work.

Immediate growth, as I mentioned at the outset, is just one part of the picture, one part of our program. We've got to look even further ahead to ensure that when the American economy regains its strength, and inevitably it will, it stays strong.

We start by opening markets to American goods. In our trade negotiations, we will continue to push for open trade, pulling down the barriers that stand in the way of international competition.

To guarantee that American goods and services are the world's finest, we must guarantee America's preeminence in another field, in the field of education. Our America 2000 strategy will revolutionize education in this country, will create new American schools, places where our kids will learn the lessons they need for a new century. And it will allow parents to choose their children's schools. Choice means competition, and you understand as well as anyone what comes from competition. Competition inspires innovation and creativity. It inspires excellence. And that's why we are going to push for our program, we're going to push for school choice.

As I look at education and the fact that we are not where we should be in world standing, it isn't a question of a change here and there. It isn't a question of adding to programs that have failed, programs mandated in Washington. It is a question, literally, of revolutionizing. And that's what we tried to do when we set the education goals, working with Republican and Democrat Governors. That's what we're trying to do with Lamar Alexander in the lead for us, our Secretary of Education, as we take this America 2000 program all across the country. We need your help. It is the best possible investment for the future of this country.

Now, we need a healthy America, and that means reforming health care. I think everyone would agree we cannot afford our present system. But we've reached a fork in the road. We can either go the way of greater

Government mandates, leading inevitably to a state system of nationalized care, with the long lines and indifferent service that such a system creates. Or we can reform our private system, preserving the greatest possible patient choice, maintaining the quality of care which, for all its faults, is still the best in the entire world. That's the approach I outlined in a rather broad detail Tuesday night, and that's the approach that I will take when we announce the full detail of our plan next week.

We've proposed another reform, one that is crucial to creating jobs. America has become the most litigious society on Earth. Frivolous lawsuits are exhausting our ability to compete. If we were as good at rewarding success as we are at suing each other, we would be a century ahead of the rest of the world. Lawsuit madness gums everything up. Needed new products never reach the marketplace because of concerns over liability. In many areas, businesses are forced either to drive prices into the stratosphere or literally close shop.

My Competitiveness Council that's chaired by the Vice President, Vice President Quayle, has offered 50 concrete recommendations to restore sanity to our civil justice system. I've enacted some of these recommendations by Executive order. Others, however, require Congress to act. And with all respect, there are 62 lawyers in the United States Senate, a lot of lawyers up there on Capitol Hill. I realize that might present a problem, but it also presents an opportunity. And I'd like to see them move forward now with these changes to cap some of these outrageous areas of unlimited liability. It's driving our small businesses right flat into the ground and costing American workers jobs.

And finally, I can use Congress' help in another all-important area. We must get the Federal deficit under control. Now, let's face the facts: The Government in Washington is too big, and it spends too much. I have proposed a freeze on all domestic discretionary budget authority as well as a freeze on Federal domestic Government employment. And I have asked Congress to get rid of 246 federally funded programs. Now, some of them have very noble titles. But in these times,

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none of them is indispensable. And I'm going to call on Congress to get rid of them. I think we're talking about something like \$4 billion in this regard.

For too long, Congress has been violating an important principle of good government: Do no harm. It's been imposing its own habits on State and local governments, and the taxpayer ends up, as you may all know, by footing the bill. These unfinanced Federal Government mandates, as they're called, require the cities, require the States to provide new services or institute new programs, but the Congress doesn't provide the money to pay for them. That means the local governments must pass along Congress' wish list to the taxpayer in the form of higher taxes at the local level.

Now, the National Governors' Association, made up, obviously, of Republicans and Democrats, continually urge the Congress to stop these mandates which are killing innovation, killing savings at the State and local level. From now on, if Congress passes a mandate, it shouldn't pass the buck. Congress must pay for the mandates it imposes without heaping on new taxes.

I've spared you some of the detail. But taken together, these and other steps that I've outlined will, in my view, reinvigorate our economy, give it the boost that it needs now, and ensure that it continues to provide opportunity and create jobs for all who want to partake. That is the promise America makes to her citizens. They have a right to expect no less.

Almost two centuries ago, Philadelphia's merchants gathered together at the city tavern to form this Chamber of Commerce. They looked out on a Nation almost limitless in possibility. A special kind of faith brought them here, that if they worked hard and worked together, their young country would allow them to fulfill their dreams.

America has changed dramatically in those 200 years. And yet, the essentials remain. The pessimists are wrong; the pessimists are wrong. We are going to pull out of these tough times. Inflation is down; inventories are down. The market has been expressing optimism in the future. Interest rates are down. This is no time for gloom and doom. It is time for action in Washington to restore

confidence and get this economy moving again.

And here's where you come in. We need your help. You can affect the way Congress approaches this program that I have outlined in some detail. We need your help. And with your help, we'll get that action, and we will reaffirm our country's rightful place as the world's leader for this decade and for the next century.

Thank you all very, very much for this opportunity. Thank you.

Note: The President spoke at 12:11 p.m. at the Wyndham Franklin Plaza Hotel in Philadelphia, PA. In his remarks, he referred to Joan Specter, Philadelphia city councilwoman, and Charles P. Pizzi, president of the Greater Philadelphia Chamber of Commerce.

Meeting With Japanese Prime Minister Miyazawa in New York City January 30, 1992

The President. This gives me a chance, with our friends in the press here, to tell you how much I appreciate your hospitality.

The Prime Minister. Let me tell, Mr. President, to all the audience that we will deliver all we promised to you.

The President. I never doubted—

The Prime Minister. I make it very, very clear to the audience.

The President. I never doubted it.

The Prime Minister. There will be no misunderstanding about—

The President. Let me make clear that that was never a doubt in my mind. And secondly, I'm very grateful for the many manifestations of friendship and hospitality. And you, yourself, just went out of your way on a very personal basis.

The Prime Minister. Oh, yes.

The President. So, it's most appropriate that we see you when you first get off this airplane. But I don't want to take too much time.

The Prime Minister. You are very kind, very kind.

The President. They'll be leaving us very soon now and—[laughter]—and we can talk.

"Free men do not know the value of things." The implication was and still is that we — you and I — don't know the worth of freedom.

Somerset Maugham was more direct when he wrote, "If a nation values anything more than freedom, it will lose its freedom; and the irony of it is, that if it is comfort or money that it values more, it will lose that, too."

Richard Porti
We are a freedom-loving people who want peace — we are also a peace-loving people who cherish our freedom. We must move forward with *both* liberty and peace as our goal — so that those who guaranteed our birth right will not have died in vain, and so that generations of our children will enjoy these blessings.

God bless you all.

In Order To

COMPROMISE AND COMPETENCY

By L.A. IACOCCA, Chairman of the Board, Chrysler Corporation

Delivered at the American Bar Association Annual Convention, San Francisco, California, August 10, 1987

THANK YOU, very much. And good morning to all of you. Mr. Thomas . . . Sister Mary Bridget . . . Mr. Chief Justice . . . and I think I'll stop right there, because with a distinguished group like this I could go on all day.

I hear last night they paid \$1,000 for a single ticket to see the Bolshoi Ballet perform — right here on this stage. This morning I hear you got in here for nothing — absolutely free. So, you, too will get what you paid for!

Let me just say that it's an honor to be asked to be here. And a little bit of a surprise, to tell you the truth. When I got the letter from Mr. Thomas last December, it said "It is my privilege to invite you . . ." and ended by wishing me "happy new year."

Most of the letters I usually get from lawyers start out "You are hereby summoned," and wind up with "Ignore at your peril."

So this is a treat. And I'm glad to be here.

I'm also a little curious because I've often wondered just what lawyers do when they have a convention. I know what *car dealers* do!

I noticed, for example, that as soon as I sit down you're scheduled to get into something called "The Statement of the Assembly Resolutions Committee."

Now, that sounds like *serious business*: Last year at our convention, my speech was the warm-up act for *Willie Nelson*!

Now, I have a feeling that you probably get more accomplished at your conventions than we do. You share ideas . . . learn something . . . and get deep into the major issues of the day.

But I gotta tell you, I have a feeling that we have a helluva lot more *fun*!

So I've got an idea. Maybe we ought to switch agendas some year. It would probably do us *all good*. You could go to Las Vegas, loosen up, and listen to Willie Nelson . . .

. . . and we'd get together somewhere and read up on the *odometer law*!

. . . Come to think of it, we should have done that *last year*!

By the way, since you people sometimes take things too seriously, I'd better say for the record, Mr. Meese — that's a *joke* — not an *admission*. (And it also makes my Chief Counsel in the audience feel better!)

And, speaking of conventions, just two weeks ago I talked to all the Governors, and I found out what *they* do at their conventions — they run for president. I looked it up — 16 state governors have gone on to become president. That's a

pretty good average, they're batting about 400.

So, I told the governors they make good presidents — and they loved it!

Then, when I was coming out here, I got curious, so I hit the books again and guess what — I found that 26 presidents (of our 40) have been — you guessed it — *lawyers*! You're batting well over 600!

So, if any of you in the audience have any lofty political ambitions, at least the odds are with you! I guess I'm forced to say lawyers make good presidents.

(I don't really want to encourage you that much, by the way.)

And, that's another reason I like car conventions — *Nobody's* running!

Well, as I said, it's an honor to be here with you to kick off your convention. This is a very *special* one, of course, because this is the bicentennial of the Constitution.

Everybody is *talking* about the Constitution these days, and I'm privileged to be here with a couple of thousand people who actually *read* it from time to time.

But, when you stop and think about it, the Constitution is like the Bible: You really don't have to read it every day to know what's in it. You don't have to memorize every word to know what it stands for. So I hope you don't mind if a layman like me has a few thoughts about the Constitution this morning.

You know, we've been doing a lot of celebrating and remembering in this country lately. Last year it was the Statue of Liberty, and this year the Constitution.

But it's not quite the same, is it?

Last year, we put a new dress on Lady Liberty. We brought in the tall ships. We bathed her in fireworks. We invited the whole world to come and watch us show our devotion to all that this country stands for, and our gratitude for all that it has given us.

It's a little quieter this year, isn't it? Not quite as much emotion. Maybe a little more reflection.

The Statue, of course, is really just a *symbol*. Whether you first saw it from the deck of a steamer, as my parents did . . . or sailing off to war . . . or as a school kid learning about what made this country great, it captures and holds all your feelings about America — whatever they are.

But the Constitution is *not* a symbol. It doesn't stand in the middle of the harbor with a lighted torch; in fact it sits in a glass case at the top of the stairs in a dark building in Washington.

It's not a *symbol*: instead it's a *tool*, and a *blueprint*, and a *process*, that we have to use every day to preserve all that the Statue of Liberty stands for.

The words of Emma Lazarus at the base of the statue — "Give me your tired, your poor, your huddled masses yearning to breathe free" — those words bring tears to your eyes. And that's good, because we need to have tears in our eyes once in a while.

But the words of the Constitution don't do that. By contrast, they seem pretty hard, and cold, and distant. There's not much poetry and not much of a ring to them. They're mostly (and please forgive me) lawyers' words. And they were hammered out by a group of men who understood that democracy doesn't happen because of bare-knuckled idealism, but because of tedious and exacting negotiation and compromise.

Their compromise wasn't perfect — we all know that. They gave us a basic law that contained both high ideals, and also some low expediency that had to be cleaned up later. But they gave us the *tool*, the *blueprint*, and the *process* to fix whatever flaws they left in it.

The centerpiece for the celebration this year has been the first three words of the document — "We the People." President Reagan said in his State of the Union Address this year that the whole story is told in just those three words — "We the People."

Well, today, I'd like to focus on the very *next* phrase of that preamble, and three words that I think are even *more important* than those first three — "*in order to*."

They're pretty basic words, aren't they? They'll never sing to you from a poster, and you won't find them chiseled on a monument in the park. They're *functional* words, because the Constitution is a *functional* document.

It was written "*in order to*" form a more perfect union . . . "*in order to*" establish justice . . . "*in order to*" insure domestic tranquility . . . and all the rest.

And for 200 years, it has done those things. It hasn't always done them *perfectly*, perhaps. But it has done them — and better and better the older it got.

Let's face it, we don't hang onto the Constitution as a symbol of anything. We keep it around for one simple reason: because it still *works*! And, of course, that's because for 200 years men and women have *made* it work.

We have to give a lot of credit to the founding fathers, but when you get right down to it, the Constitution today is a much better document than they ever conceived. And that's because of the sacrifice, and the wisdom, and I think the basic *decency* of the American people, for the past 200 years.

That's really what we're celebrating, isn't it?

The real genius of the Constitution, it seems to me, is that it has held firm to a few fundamental values that we just can't afford to mess around with, and at the same time given us the freedom to deal with problems that those 55 men in Philadelphia never dreamed of.

They were smart enough not to try and tell us — 200 years later — how to solve our problems. They just gave us the freedom we need to find our own solutions.

You can read the Constitution all day long and you won't find an answer to most of the big problems we face today. There's nothing in it to tell us how to handle terrorism, or nuclear proliferation, or acid rain. Nothing on Third World debt, or even air bags.

And nothing in it to tell us how to *compete* in the world. That's my bag, of course — *competing*. And I want to talk about that for a few minutes this morning. My only problem is, how do I tie it to the Constitution?

And I found the answer — a very simple answer — *you*.

You see, as lawyers, you're a little more equal than the rest of us. You're trained to *use* the freedoms granted by the Constitution. We all *have* them, of course, but you know better than the rest of us how to *use* them. That's your job. And I'm here this morning to ask you to use them to help us *compete*.

"Competitiveness" is the big new buzzword all over the country these days because we've suddenly realized that America is *not* competing — at least not very effectively. We've run up a cumulative trade deficit since 1980 of almost \$700 billion, and we went from being the world's largest creditor to the world's largest debtor in just a couple of years.

There's plenty of blame to go around for that, of course. American industries — including my own — got a little lazy and careless for awhile. Then, we've more than doubled our federal debt just in the 80's to well over \$2 trillion, and it's awfully tough to compete when you're carrying a piano like that on your back. (Geez — the payments for interest alone are over \$15 billion per month.) And our archaic trade policies have been so far out of sync with the rest of the world that we've been set up as patsies.

Everybody gets part of the blame, and everybody had better pick up part of the solution. That's the message I try to take to everybody I talk to — politicians, businessmen, the unions — *everybody*. And that includes you in this room.

Maybe *one* reason we aren't hooking and jabbing with the guys overseas is that we're spending so much time, and energy and money fighting *each other* in this country.

And we're pushing every single *one* of the rights guaranteed by the Constitution *so far*, that we may be tying ourselves up in tight little knots. Sometimes I think we're losing hold of the art of compromise.

We're the most litigious society on Earth. We sue each other at the drop of a hat. They tell me that 90 percent of all the civil actions tried before juries in the whole world are tried right here in the United States, and that we're spending about \$30 billion a year just suing each other.

Our courts are jammed, and it's *no* wonder because so many people are looking to the courts these days not just to distribute *justice* anymore, but also to *re-distribute* the *wealth*.

And I don't think that's what the framers of the Constitution had in mind, did they?

I know this is the famous "Casino Society" we're living in, but do we really want to let our court system become part of this giant crap shoot?

Last year we had the biggest civil award ever in this country — \$10.3 billion! Now, I'm sure some of *you* might take a scholarly look at the merits of that case, but do you know what kind of a signal it sends to everybody else? A very simple one:

"Hey how can I get a piece of *that* action?"

And there are enough wacky things going on to make it worthwhile to roll the dice. The burglar falling through the skylight and collecting damages, for example. Anything is possible when you go to court these days.

A big drug company lost a case and \$3 million for failing to post a warning label that the FDA has specifically *forbidden* them to post. It's Catch-22 time out there!

Well, don't worry, I'm not going to waste your time and mine going through the standard list of horror stories. Probably some of them are flukes, anyhow. (I hope!)

I'm more concerned about *trends*. Trends like:

—A thousand percent increase in product liability cases in federal courts between 1975 and 1985;

—An 835 percent increase in medical malpractice awards;

—A 401 percent increase in liability awards in roughly that same period.

Those are trends that you can put numbers to. But the worst trend of all is the one that's hardest to quantify: The drop in America's *competitiveness* that's tied to all these numbers.

You see, the first thing you have to be able to do in order to compete is take a risk. If you can't afford to take a risk, then you can't afford to compete. And what we're doing to ourselves in this country right now is making it more and more difficult to take even a small risk.

If you're a drug company, for example, you don't want to mess around with *vaccines*. Too risky. A simple vaccine for diphtheria and whooping cough that cost 12 cents a shot in 1980 costs \$12 today, and almost all of that cost increase goes into a liability fund.

We've had some awful new diseases showing up lately that seem to be begging for a vaccine, but I guess if you were in that business you'd be tempted to spend your R&D budget on something safer, like maybe growing hair. (But, even then, watch out for the *side effects*! You'd have a helluva case for mental anguish if the hair grew on your feet!)

Every business and every product has risks. You can't get around it. My industry sure does. Automobiles are involved in *half* the tort cases in the country, and account for *half* of all compensation paid. Cars get safer every day, and yet the number of lawsuits goes up and up.

(This is a true story.) For years, there was a tree in the middle of the Sahara Desert. It was a freak of nature — the only tree within hundreds of miles in any direction. During World War II an Englishman ran into it — in a *tank*! If it were *today* — in *this* country — he'd *sue*! I don't know *who*, but he'd sue.

Somehow (and I don't think you can find it in the Constitution) we've adopted the curious notion in the United States that whenever something *bad* happens to us, somebody is at fault, and somebody has to pay.

The National Cancer Institute says that more cancer deaths come from exposure to the sun than from all the man-made products known to cause cancer. A couple of months ago, everybody laughed at the Secretary of the Interior, Mr. Hodel (I did once, too!), for saying that we should all wear hats and sun glasses. Remember that flap? Well, he's not so dumb. If you get sick from the sun, who are you going to sue?

I always tell the young people — "Don't be afraid to take some risks, but don't take the life or death risks. Don't take the risks that can kill you."

Well, for American business today, I'm not sure there are any *small* risks. (That \$10.3 billion judgment last year qualifies in my book as *capital punishment*. Somebody got the *chair*!)

If you happen to be a small company right now, you may not even have to wait to get sued. Just the *risk* of getting sued can be too risky.

A small company in Virginia that made driving aids for handicapped people went out of business because it couldn't afford the liability insurance. Too risky.

There used to be 18 companies making football helmets in

this country, but the liability crisis has pared them down too just two. Nobody makes gymnastics equipment or hockey equipment anymore. Too risky.

We've virtually stopped making light aircraft in this country. The biggest production cost is the liability insurance. Too risky.

One of these days we're going to wake up and say "the hell with it — *competing* is just too risky!"

Other countries don't spend their time looking for Mr. Deep Pockets. (They're too busy beating our brains out in the market place.) The biggest damage award *ever* in the history of Great Britain was a little over a million bucks. That's practically a nuisance suit here!

The Japanese — our biggest competitors these days — don't waste their time in court. They've got about as many lawyers in Japan as we've got sumo wrestlers in America.

But — great news for American competitiveness, maybe. As of last April 1 — April Fool's Day — American lawyers can now practice in Japan! This could be the opportunity of a lifetime for some of you, and I hope you've got your visas ready.

It's also a chance to serve your country. You see, our government can't seem to slow down the Japanese through trade negotiations, but you could really throw them for a loop. I'll tell you how: just get them to buy the idea of *punitive damages*. That would slow the hell out of them!

They don't know about them over there. In fact, punitive damages are almost unknown anywhere outside this country, but they're wreaking havoc here.

I'm no lawyer, but I *think* they're supposed to punish gross negligence or reckless disregard for safety. And I can't really argue with that. If somebody is totally irresponsible, he should pay for it.

But I'm afraid that we're beginning to punish more than just gross negligence in this country; I'm afraid that we're beginning to punish some of the normal risks that simply can't be avoided when you produce almost any kind of product.

And when we do that — when we punish *normal* risk — then we're also punishing *competitiveness*, and we're punishing *progress*.

We don't live in a risk-free world, and never will. If we're not willing to accept some of the risks that other countries are, then even if the Constitution lives to 300 years, I'm not sure there'll be much to celebrate.

I don't want to get into the nuclear power debate, for example, but it seems to me that if a perfectly safe plant is ever going to be designed and built, it probably won't be here because other countries have their *engineers* working on the problem, while we seem to have turned it over to our *lawyers*.

Now don't get me wrong: I'm really not trying to break your rice bowl. Some of these issues need to be debated. And we need strong advocates on both sides in order to find the answers. But if the debate never ends — if compromises are never reached short of the courthouse — then we go nowhere.

Advocacy is your profession, of course. And it's an honorable one. The Constitution might tell us that our rights are sacred, but sometimes they aren't worth a dime unless people like you, skilled in the law, are able to push them and protect them for us.

When we get into trouble, we all want a bulldog sitting next to us, not a *potted plant*!

Advocacy is fine; it's *unbridled* advocacy that's the problem today. And it's getting out of hand. Advocacy may be necessary to settle our legitimate differences, but *unbridled* advo-

cacy seems to be *creating* differences that we didn't know we had, and differences that we probably can't *afford*.

It's sort of like unbridled capitalism. We don't have that in this country anymore. We came close to it around the turn of the century, but then we suddenly discovered that a couple of guys owned all the steel, and a couple more owned all the oil, and a few others had all the railroads. We learned that if you have absolutely unrestrained competition in the marketplace, pretty soon you wind up with no competition at all.

And I think we all may be getting a little carried away again like we did in the Robber Baron days. Nobody wants to give up the rights that the Constitution gave us, but if every one of us pushes every one of those rights as far as we can, then one of these days *none* of us will have any rights.

Maybe that's why 16 states and the federal government are all looking at tort reform proposals, right now. And I for one am glad they are. We've been going a little crazy, and we've got to stop it.

It's time to change some of the rules, even if we may have to compromise some of our rights to do it, because America today just can't afford all this unbridled advocacy.

And, that's nothing new; it's been our willingness for 200 years to find sensible compromises that has kept the Constitution alive. It was *born* in compromise; it has *survived* because of compromise; and as soon as we forget how to compromise, I think it's doomed.

So, in closing, let me say that this is the *right place* and the *right time* to put the Constitution on a high pedestal and celebrate everything that it stands for. And you are the *right people* to lead the rest of us in that celebration.

As lawyers, you've got a greater opportunity than the rest of us to see that the Constitution continues to work as well in the future as it has in the past.

In my book, by the way, that special *opportunity* is also one *helluva responsibility!*

But keep this in mind, too: In our democracy, the final judges will always be laymen like me, and all the millions like me, who don't read that Constitution regularly . . . who don't study all the interpretations of it . . . and who may not even understand everything it says.

We'll be the judges of the *effectiveness* of the Constitution . . . and the *wisdom* of the laws written under it . . . and the *integrity* of your profession.

Furthermore, we'll make our judgments against some very simple standards. We'll always ask ourselves simple questions, like:

—"Does this make *sense* and is this *fair*?"

—"Is the Constitution, which was written to *protect* my rights, being used to keep me from *exercising* my rights?"

—"Does a law written to prohibit something *bad* keep me from doing something that's *good*?"

—"Is that lawyer really trying to *get justice* for his client, or is he trying to do an *injustice* to me?"

Those are the simple questions that will always be asked because, in the end, it all comes down to those *other* three basic words — "*in order to*."

This isn't the year for tall ships and fireworks. What we're doing this year is too serious for that. As I said, Americans aren't going to get too misty-eyed about the Constitution: They just damn well *expect it to work!*

And you people have the best *opportunity* of all to engineer the compromises that will keep it *working* . . . and keep America working, too!

Well, thanks again for inviting me. Have a great week here in beautiful San Francisco. Next week I go back to Las Vegas for another car convention — I'll say hello to Willie Nelson for you.

Good luck to all of you. And thanks again for having me.

The Expansion of Democracy

THE MIDDLE CLASSES

By SEYMOUR MARTIN LIPSET, *Senior Fellow, Hoover Institute*

Delivered to the Commonwealth Club of California, Los Angeles, California, July 24, 1987

WILL democracy, that is the ability of citizens to choose their government through free elections which are contests among parties operating in an atmosphere of guaranteed freedom of speech and press, expand beyond its present boundaries. I hope strongly and believe moderately that the answer is yes.

As a background to this general discussion, I would like to note briefly that the topic, of course, is a very old one, one that goes back to the ancient Greeks at least. Aristotle distinguished among different political forms — democracy, oligarchy and tyranny. He suggested the first, democracy, is likely to occur where the middle classes are large. Oligarchy and tyranny are more likely to be found where the population is overwhelmingly poor and the middle strata are small. Machiavelli also wrote in a similar vein on the relationship between stratification and political systems.

Aristotle's distinctions between oligarchy and tyranny have a modern flavor. Oligarchy is the rule of the few based on

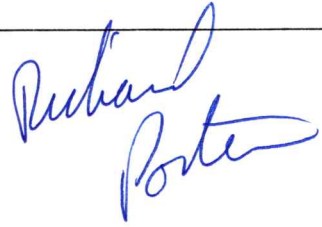
custom and historical legitimacy as in monarchical regimes, such as in some Arab countries — Morocco would be an example. Tyranny in Aristotle's terms may be translated in modern parlance as dictatorships which appeal to the masses, e.g., facism and communism.

Discussion about the conditions for democracy has been a common theme since the 17th century. The American founding fathers were well acquainted with the writings of Hobbes, Locke, as well as of the French encyclopedists who analyzed the conditions for a Republic if not — which were different, of course — for democracy. Through examining past experiences they sought to explain earlier failures of democracy or republican rule. They, of course, came up with an emphasis on the need for the separation of powers, one which was first advanced in theoretical terms before the founding of the American republic.

The founding fathers assumed the need to restrain power of the state, since unlimited power would always be abused. Madison noted all power holders ought to be distrusted. He was

Manhattan Institute

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New York, NY 10017
Tel.: 212-599-7000
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March 6, 1992

Dear Friend:

Last December, the Manhattan Institute released the documentary "*Liability: Injustice For All*" as part of the Judicial Studies Program's outreach. This thirty-minute video provides a concise presentation of tort reform issues and is a perfect complement to the Institute's much-heralded books: Walter Olson's The Litigation Explosion: What Happened When America Unleashed the Lawsuit and Peter Huber's Galileo's Revenge: Junk Science in the Courtroom.

Narrated by Walter Cronkite, "*Liability*" argues the pressing need for fundamental legal reform. It looks at the growing litigiousness of our legal system and the havoc it causes in all areas of American society. "*Liability*" presents selected examples and the testimony of many — including C. Everett Koop, M.D., Former Surgeon General of the United States; Milton Friedman, Nobel Prize winning economist; Maynard Jackson, Mayor of Atlanta; Thomas G. Garth, National Director, Boys and Girls Clubs of America — whose experiences demonstrate America's need for civil justice reform.

I hope you will find the enclosed materials on "*Liability: Injustice For All*" of interest. Should you want any further information on the video or on the Judicial Studies Program's other projects, please do not hesitate to contact me. I would welcome the opportunity to speak with you.

Sincerely,



Lucy G. Clark
Director
Judicial Studies Program

Enclosures

LiabilityWeek

PO Box 6654 McLean, Virginia 22106

Editor and Publisher John V. Reistrup

Volume 6, Number 47

December 16, 1991

BACKERS OF CHANGE ENLIST WALTER CRONKITE FOR TORT WARS

Backers of changing the U.S. liability system to redress a perceived tilt in favor of plaintiffs have enlisted a formidable ally -- Walter Cronkite, who when he retired from the CBS News was television's most watched and most respected anchorman.

Cronkite narrates a new 30-minute videotape produced by Frank Powers for the Manhattan Institute for Policy Research, a conservative New York think tank.

The impressive production contains not only sound bites from the usual array of backers of tort reform but also footage showing expectant mothers affected by lack of prenatal care and a factory hard hit by product liability costs.

Most of all, it has Cronkite as narrator.

At one point, for example, he says:

"If we were to ask the question, 'Does this country provide free nationwide insurance coverage for accidents and injuries?' most Americans probably would answer, 'No.'"

"According to most legal experts, however, we do. It's called the tort liability system, 'tort' meaning the law of personal injury," Cronkite continues.

"Rather than one unified national code of law, it is a hodgepodge of federal and state laws...No other country in the world has ever had anything like it."

Cronkite then says the tort liability system "has grown to enormous proportions," constituting an "explosion of tort lawsuits. For many Americans -- across the entire spectrum of our society -- liability has become another word for injustice."

Despite that widespread impact on U.S. society, Cronkite goes on, "liability has remained something of a mystery to the average American.

"For observers of the legal system, however, the process is one of dramatic and continuing revolution."

At that point, Cronkite introduces the Manhattan Institute's Peter Huber, author of *Liability: The Revolution and Its Consequences* and more recently *Galileo's Revenge: Junk Science in the Courtroom*.

Other experts quoted in the video include:

- * Kevin McCarthy of the RAND Corporation's Institute of Civil Justice, talking about transaction costs of the system.

- * Former Surgeon General C. Everett Koop, talking about detrimental effects of medical malpractice insurance costs on health care.

- * Walter Olson, author of *The Litigation Explosion*, describing how an arson fire in San Juan's Dupont Plaza Hotel has led to suits against even the makers of dice in the casino.

* Chief Justice Richard Neely of the West Virginia Supreme Court, saying product liability has become a means of redistributing money from out-of-state defendants to in-state plaintiffs.

* Atlanta Mayor Maynard Jackson, who said allegations of negligence by the cities are increasing and "we stand to lose tens of millions of dollars. No city in this country can afford that. And so I think there is a real need for balance."

The video winds up with Cronkite saying the ideals of encouraging safer practices and compensating victims "have created enormous injustices. Injustices for which we are all at risk...

"Must these lofty goals be pursued through an adversary legal system that is running roughshod over so many of our most productive citizens and institutions?

"Unfortunately as a nation we have failed to implement any meaningful reforms. There always is hope that by confronting these problems, with open and free debate, we can begin to create a system with justice for all."

Producer Powers said he had been persuaded to undertake the project by Huber's writings. Having worked with Cronkite before, Powers said, he got in touch through Cronkite's agent and sent a script and supporting documentation.

Cronkite retained the right to approve the script, Powers said, but made very few changes.

Copies of the video are available from the Manhattan Institute, which is encouraging its presentation to groups and on community cable systems.

"Liability" Injustice for all

"Liability" is a 30 min. film documentary, presented by

the Manhattan Institute for Policy Research, featuring Walter Cronkite as host & narrator.

About the Program

The film presents public personalities including C. Everett Koop, M.D., Former Surgeon General of the United States; Milton Friedman, Nobel Prize Winning economist; Thomas G. Garth, National Director, Boys & Girls Clubs of America; Maynard Jackson, Mayor of Atlanta; along with experts on tort reform and ordinary Americans whose experiences demonstrate why the civil justice system in America needs reform.

"Liability" has four goals

1. To build public awareness of stresses on our nation's system of civil justice that have resulted in high costs, long delays, and inequitable distribution of benefits;
2. To provide examples of how tort reform can be accomplished without sacrificing our basic right to sue;
3. To advocate a common sense approach to the subject of litigation; and
4. To encourage discussion about ways to improve the fairness and effectiveness of the system for everyone.

"Liability" leads to discussion

- The film shows how the civil justice system has changed our lives. When viewers realize the high price we pay has not improved the lot of most victims, the inevitable question will be, "why haven't we changed the system?"

- Answers will encourage lively discussion!

"Liability" will be of special interest to:

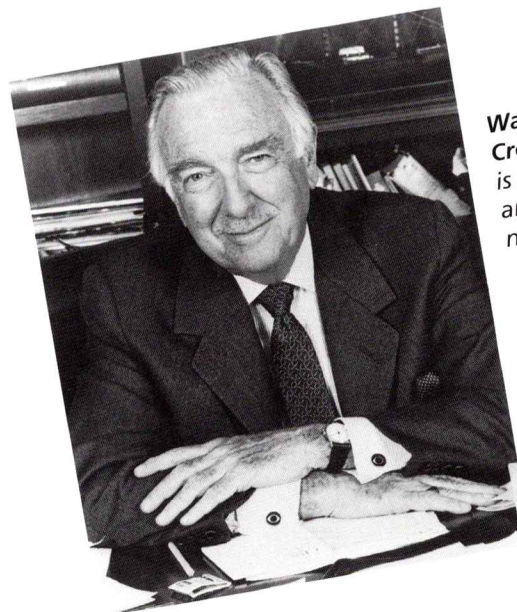
- Young adults and their teachers.
- Parents-to-be concerned about the quality and availability of obstetrical care.
- Senior citizens – who have a vital interest in cost and availability of medical care.
- Parents – concerned about the curtailment of municipal and school sports programs.
- Volunteers – trying to serve their communities through nonprofit agencies.
- Employees – who will see how products and services made in America carry the extra costs of lawsuit abuse as we struggle to compete in the world markets.
- Legislators and Legal Professionals – who will learn that the breadth of the problem in the liability system is vast.

- Civic and Community Groups – which will benefit from learning about what has gone wrong with our present civil justice system, and why.
- Local Cable and Community access television – offer this film free for local programming. Please let us know if you are successful getting the film aired.

"Liability" concludes

- At a time when the United States is suffering from a huge trade deficit, the costs of American products and the development of new technology are burdened by a tort system that can be grossly wasteful and inefficient in compensating victims of accidents.

- That's why changes are needed now!



Walter Cronkite is host and narrator

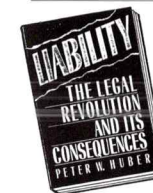
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— Free kits with 4-color posters, pamphlets, bumper stickers. Very suitable for hand-outs and displays. Kits are free and quantity orders are possible. (Courtesy of the American Tort Reform Association, Washington D.C.)

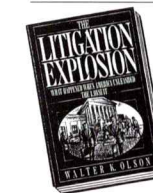
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Arthur M. Haverner, Ph.D.

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Author:
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Philip Lussier

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Walter K. Olson

Author:
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"Liability" Injustice for all

An informative film documentary
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Manhattan Institute for Policy Research

produced by
Film Counselors Associates, Inc.
hosted and narrated by
Walter Cronkite

Richard Porter



OFFICE OF THE VICE PRESIDENT
WASHINGTON

March 16, 1992

Mr. Marc H. Rosenberg
Vice President-Federal Affairs
Insurance Information Institute, Inc.
1101 17th Street, N.W.
Suite 408
Washington, DC 20036

Dear Marc:

Thank you for providing me a copy of the monograph on periodic payment of judgments. I look forward to reading it, and you can be certain I'll pass it on to the other policy people here at the White House.

Sincerely,

A handwritten signature in dark ink, appearing to be "JLH", written over a horizontal line.

John L. Howard
Counsel to the Vice President



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Marc H. Rosenberg
Vice President-Federal Affairs



National Structured
Settlements
Trade Association

HOGAN & HARTSON

Randy Dyer
Executive Vice President

M E M O R A N D

1420 16th Street, NW
Washington, DC 20036

(202) 797-5108
(202) 332-2301 FAX

TO: National Structured Settlements
 Trade Association

FROM: Clifford Stromberg
 Jonathan Constine
 Hogan & Hartson

DATE: April 19, 1991

RE: Authority of Federal Judges to Order Periodic Payment
 of Judgments

Structures using periodic payments already are commonly used in the settlement of lawsuits. If the Uniform Periodic Payment of Judgments Act is enacted in many states, structures will also be more widely used in judgments in state court actions. You asked us to consider what would be required to expand the use of structures and periodic payments into a third principal arena of legal dispositions: judgments in federal court actions. This Memorandum (1) analyzes the current federal law obstacles to the use of period payment judgments, (2) describes the kind of legislation that would be required to encourage the use of such structures by federal judges, and (3) describes what such a legislative effort would require.

1. THE CURRENT STATE OF FEDERAL LAW

For decades, the federal courts have ruled that, without specific Congressional authorization, they lack the power to enter judgments involving periodic payments rather than lump sum

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payments. A typical statement of this view was made in United States v. Bauman, 56 F. Supp. 109, 117 (D. Ore. 1943):

There can be no judgment for an indefinite amount, or a judgment payable by installments. The principle is followed that a judgment must be certain in amount and unconditional in effect. (Citations omitted.)

The United States Supreme Court has confirmed this rule of law. In Slater v. Mexican National R.R., 194 U.S. 120 (1904), the Supreme Court considered whether a federal trial court had the authority to impose a lump-sum judgment in a personal injury action which arose in Mexico, despite the fact that Mexican law would have required a periodic payment award. The Supreme Court ruled that a federal court could not grant the same periodic payment relief which could be obtained in a Mexican court. Justice Oliver Wendell Holmes explained:

It is sufficiently obvious from what has been quoted that the decree contemplated by the Mexican law is a decree analogous to a decree for alimony in divorce proceedings -- a decree which contemplates periodical payments and which is subject to modification from time to time as the circumstances change. . . . The present action is a suit at common law and the court has no power to make a decree of this kind contemplated by the Mexican statutes. Id. at 128. (Emphasis supplied.)

While the analogy to alimony awards which are "subject to modification from time to time" really does not fit the modern annuity contract, the attitude opposed to "periodical payments" has prevailed in federal courts for decades.

The most recent Supreme Court discussion of this issue, while confirming the traditional judicial opposition to periodic payment judgments, seems to acknowledge the possibility that federal legislation could authorize such awards to be made. In Jones & Laughlin Steel Corp. v. Pfeifer, 462 U.S. 523 (1983), a case involving calculation of damages under the Longshoreman's and Harbor Workers' Compensation Act, the Supreme Court began its discussion of the damages issue by noting:

An award for impaired earning capacity is intended to compensate the worker for the diminution in that stream of income. The award could in theory take the form of periodic payments, but in this country it has traditionally taken the form of a lump sum, paid at the conclusion of the litigation. Id. at 533. (Emphasis supplied; footnotes omitted.)

This statement was accompanied by a footnote, in which the Court cited not only the Uniform Periodic Payment of Judgments Act, but three law journal articles discussing the practice of periodic payment awards.¹ 462 U.S. at 533 n.9.

The Supreme Court's pronouncement that periodic payment awards are possible "in theory," while potentially helpful to NSSTA in further efforts on this issue, is of limited value. As one court acidly noted, "[m]any things are possible 'in theory' -- e.g., moving faster than a speeding bullet, leaping tall buildings at a

¹The articles are Elligett, The Periodic Payment of Judgments, 46 Ins. Counsel J. 130 (1979); Kolbach, Variable Periodic Payments of Damages: An Alternative to Lump Sum Awards, 64 Iowa L. Rev. 138 (1978); and Rea, Lump-Sum Versus Periodic Damage Awards, 10 J. Leg. Studies 131 (1981).

single bound -- but to transform theoretical possibility into actuality, without the faintest shred of precedential support, is a feat more suited to disciples of Blackstone on Magic than to students of [legal treatises such as] Blackstone's Commentaries." Reilly v. United States, 863 F.2d 149, 169 (1st Cir. 1988).

Apparently, what is needed to transform the "theory" of periodic payments into "actuality" is federal legislation. That properly drafted federal legislation would accomplish that goal is clear from a review of federal court decisions in two areas: personal injury suits against the United States government, and personal injury suits against private defendants.

A. The Volume of Personal Injury Litigation in Federal Courts

Before we discuss the legal doctrines that are applied to payment of judgments in federal court personal injury suits, we should point out that the volume of such litigation is substantial. The primary categories of personal injury cases that are heard in federal courts are (1) suits against the United States, (2) suits based on federal statutes ("federal question jurisdiction"), and (3) suits which may be brought in federal court because plaintiffs and defendants are from different states ("diversity jurisdiction"). The following chart shows the number of personal injury cases in various categories that were filed in federal trial courts between June 30, 1989 and June 30, 1990:

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	TOTAL*	UNITED STATES AS DEFENDANT	PRIVATE DEFENDANT	
			FEDERAL QUESTION	DIVERSITY
Personal Injury Cases (Total)	40,593	2,686	7,433	30,204
Products Liability	18,679	65	1,050	17,559
Other Personal Injury (Total)	21,914	2,621	6,383	12,645
Airplane	834	76	192	565
Marine	2,961	85	2,430	423
Motor Vehicle	6,157	782	209	5,094
Assault, Libel and Slander	644	75	143	419
FELA	2,741	130	2,611	--
Medical malpractice	1,375	501	81	793
Other	7,202	972	717	5,351

* Totals include a small number of personal injury cases in which the United States is a plaintiff, or where a federal court has "local jurisdiction." Source: Administrative Office of the United States Courts, 1990 Annual Report of the Director, Appendix I, Table C-2.

As the chart dramatically shows, the overwhelming majority of personal injury actions in federal courts are suits against private parties based on diversity jurisdiction, and to a lesser extent, federal statutes.

We are not aware of any easily available data that would indicate how many federal personal injury cases result in judgments for the plaintiff; or how many of these judgments are for damages at levels that would warrant a structure.

B. Suits Against the United States

The principal basis for asserting personal injury claims against the United States is the Federal Tort Claims Act, 28 U.S.C. § 2671 et seq.² The statute waives the traditional immunity of the United States from suit by providing that "[t]he United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances." 28 U.S.C. §2674. The Act is silent, however, on the question of whether the United States' liability in personal injury cases can take the form of periodic payments.

That issue was first addressed in Frankel v. Heym, 466 F.2d 1226 (3d Cir. 1972). In that case, the trial court had rejected the government's request that the court create a trust fund to pay the plaintiff's health care costs on a periodic basis, rather than make a lump-sum award. The trial court's refusal to permit periodic payments was affirmed by the appellate court, which stated:

We agree with the district court that in administering the legislation in question a district court should not make other than lump-sum money judgments unless and until Congress shall authorize a different type of award. The relaxation of sovereign immunity is peculiarly a matter of legislative concern, responsibility and policy. If novel types of awards are to be permitted against the

²The other principal statutes authorizing personal injury lawsuits against the United States are the Public Vessels Act, 46 U.S.C. §781, et seq., and the Suits in Admiralty Act, 46 U.S.C. §741 et seq.

government, Congress should affirmatively authorize them. Id. at 1228-1229. (Emphasis supplied.)

Thus, the Frankel case indicates that while periodic payment judgments are still regarded as "novel" and not currently possible under the Federal Tort Claims Act, such awards would become possible if Congress "affirmatively authorize[s] them." No other legal impediment -- based on constitutional doctrines such as due process, federal statutes or federal court rules³ -- is identified. The trial court decision in Frankel went even further by expressly inviting Congress to authorize such payments:

In Federal Tort Claims Act actions the ability of the Government to pay is never in question. An amendment to the Federal Tort Claims Act to provide for periodic payments when future, long-range damages are significant seems desirable. If such an amendment were passed, the Government would pay more in some cases and less in others, than it would under a single recovery. In all cases, justice through compensation, no more-no less, would be achieved.

Frankel v. United States, 321 F. Supp. 1331, 1334 (E.D. Pa. 1970), aff'd, 466 F.2d 1226 (3d Cir. 1972) (emphasis added).

In Federal Tort Claims Act cases subsequent to Frankel, the federal courts have agreed that the Act as it currently stands does not authorize periodic payment awards.⁴ Yet those decisions also

³Federal Rule of Civil Procedure 58 on "Entry of Judgment" does not address the lump sum versus periodic payment issue at all.

⁴See Reilly v. United States, 863 F.2d 149, 169 and n.16 (1st Cir. 1988), aff'g, 665 F. Supp. 976 (D.R.I. 1987); Andrulonis v. United States, 724 F. Supp. 1421, 1519 n.616 (N.D.N.Y. 1989), aff'd

confirm that Congressional authorization of periodic payment judgments could solve this problem. The Appellate Court in Reilly expressly stated that periodic payment damage awards "can be made . . . if a controlling statute permits." 863 F.2d at 169 n.16 (emphasis added).

This view has also been expressed in a case involving the Public Vessels Act, 46 U.S.C. § 781 et seq., a statute which permits a party who is injured by a public vessel to sue the United States for damages. In Gretchen v. United States, 618 F.2d 177 (2d Cir. 1980), the court noted that a suit against the United States "would appear to present the ideal situation for compensation cast partially in the form of an annuity, perhaps variable in response to changing circumstances, in place of the usual lump sum." Id. at 181 n.5. The court noted, however, that it had no power to order such a remedy under the Public Vessels Act "absent specific legislative authorization." Id.

These judicial decisions lead to two conclusions: (1) unless the Supreme Court takes a dramatic further step toward authorizing payments (and we do not know of any case currently before the Court that raises this issue), legislative action must be taken if periodic payment awards are to be made against the United States; (2) relatively simple federal legislation authorizing periodic payment of judgments in suits against the United States would be

in part, rev'd in part on other grounds, 924 F.2d 1210 (2d Cir. 1991); Elliott v. United States, 329 F. Supp. 621, 628 and n.5 (D. Me. 1971).

sufficient to accomplish this goal, since there do not appear to be other legal obstacles.

C. Suits Against Private Parties

As noted above, the preponderance of federal court personal injury actions are brought against private parties. Private parties can be sued in federal court for personal injuries in two circumstances: (1) where federal law provides a cause of action against the private party ("federal question" cases); and (2) where all plaintiffs and all defendants are from different states ("diversity jurisdiction" cases).

1. Federal Question Cases

Federal laws providing federal question jurisdiction over personal injury actions include the Federal Employers' Liability Act ("FELA"), 45 U.S.C. § 51 et seq., permitting suits by railroad employees against their employers; the Jones Act, 46 U.S.C. § 688, providing remedies to seamen against their employers; the Longshoremen's and Harbor Workers' Compensation Act ("LHWCA"), 33 U.S.C. § 901 et seq.; the Death on the High Seas Act, 46 U.S.C. § 761 et seq., providing wrongful death remedies against a seaman's employer; and the common law maritime jurisdiction possessed by federal courts.

The Supreme Court briefly mentioned the issue of periodic payments under the LHWCA in the Jones & Laughlin case cited above, when the Court stated that periodic damages were possible "in theory." 462 U.S. at 533. Only one other federal court decision has discussed periodic payments against a private party in a suit

based upon a federal statute. In Diede v. Burlington Northern R.R., 772 F.2d 593 (9th Cir. 1985), the court examined whether, in a case under the FELA, "the jury was limited to a lump sum award or whether it could have required the railroad to pay periodic damages." Id. at 596. Interestingly, the Diede court referred to the rule stated in Frankel that periodic damages were not available against the United States under the Federal Tort Claims Act, but concluded that it was not bound to apply the same rule in a suit involving a private party. The court explained:

[T]he Frankel court's logic is inapplicable to the FELA. The [Frankel court] reasoned that because Congress had waived sovereign immunity in the Federal Tort Claims Act, it was up to Congress to authorize novel types of damage awards. In the instant case, the relevant provision of the FELA permits suits against private interstate carriers. Because no waiver of sovereign immunity is involved in this case, there is no particular need to look to Congress for direction as to damages. Id. (Citations omitted.)

The Diede court ultimately skirted the issue of periodic damages and decided the case on other grounds. Nevertheless, its statement suggests that federal trial courts and juries may already possess the inherent power to make periodic damages awards in suits against private parties. However, given that this issue has not been widely litigated, and another court might rule otherwise, and given that FTCA claims still could not be structured, relying on the development of this doctrine merely through court decisions would be both slow and uncertain. Overall, legislation would be far more effective.

2. The Problem in "Diversity" Cases

Federal courts have "diversity" jurisdiction over lawsuits between citizens of different states involving in excess of \$50,000. 28 U.S.C. § 1332. In diversity cases, a federal court must apply the state law of the state where it is sitting to "substantive" issues (that is, issues which are determinative of the rights of parties), but must apply federal law to issues which are merely "procedural." Hanna v. Plumer, 380 U.S. 460, 471 (1965). However, where a properly enacted federal rule or statute directly governs an issue, that rule will be applied. See Burlington Northern R.R. v. Woods, 480 U.S. 1, 4-5 (1987).

Only one federal case has addressed the issue of periodic payment of judgments in the context of a diversity action. In Alisandrelli v. Kenwood, 724 F. Supp. 235 (S.D.N.Y. 1989), the plaintiff argued that the court should not apply New York's statute authorizing periodic payment of damages to his damage award because such a statute is procedural, rather than substantive, and thus the court should apply the federal law and practice of awarding lump-sum damages. Id. at 236.

But this argument was rejected by the court. The court explained that "failure to apply the state [periodic damages] statute would substantially affect the enforcement of a state right, invite forum shopping [i.e., choosing in which state to sue] and the inequitable administration of the law, and undercut the strong state interest in moderating insurance premiums while assuring fair and adequate compensation to injured persons." Id.

at 242. The court also noted that "[t]here is no Federal Rule of Civil Procedure requiring the entry of a lump-sum judgment." Id. at 236 n.2. Accordingly, the court ruled, in essence, that a state law requiring periodic payment is "substantive," and therefore that any damage award would be structured according to the provisions of the state statute.

The Alisandrelli case suggests several conclusions. It suggests that there are no inherent barriers to a federal court or jury awarding a judgment in the form of periodic payments, when such an award is properly authorized by statute. It also suggests that in the numerous states which already have adopted or will in the future adopt some form of periodic payment legislation, the federal trial court is not only empowered, but is required, to apply those statutes as "substantive" rules in diversity cases.

Thus, if Alisandrelli is followed by other courts, and if the Uniform Periodic Payment of Judgments Act is enacted in many states, then federal legislation would be less necessary to bring about structured judgments in diversity cases, because the federal courts would follow state periodic payment laws anyway. However, the two "ifs" in this premise are significant.

We must also consider how federal legislation would change this situation. If federal legislation authorizing periodic payments in both federal question and diversity actions were enacted, federal courts would be faced with the converse question: should the federal periodic payments statute be applied in a

diversity action where a particular state's law favors lump-sum judgments?

The Supreme Court has stated that where a federal statute conflicts with a state law, the federal statute must be followed "if it represents a valid exercise of Congress' rulemaking authority, which originates in the Constitution." Burlington Northern R.R. v. Woods, 480 U.S. at 5. Thus, a federal periodic payments statute would have to be followed by a federal court in a diversity case, if Congress has the authority to make such a rule applicable to diversity cases. If a federal statute is "indisputably procedural," it is constitutional for federal courts to apply it in diversity cases. Id. Likewise, if the statute involves "matters which, though falling within the uncertain area between substance and procedure, are rationally capable of classification as either," the statute is also constitutional and must be applied in diversity cases. Id. Only if the statute is clearly "substantive" would it be improper for federal courts to impose it on diversity cases (unless federal law is held to "pre-empt" state law, which is unlikely to be so in the area of personal injury diversity cases). Thus, the question is whether a federal periodic payment of judgments law would be deemed "rationally capable of classification" as a procedural statute, and therefore be made widely applicable to diversity cases -- regardless of the variations among state laws.

A persuasive argument can be made that it would be procedural. A law is procedural if it prescribes a method for enforcing rights,

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rather than creating or defining the right itself. Richardson v. Honda Motor Co., 686 F. Supp. 303, 304 (M.D. Fla. 1988). A periodic payment law does not affect a party's right to recover some judgment for wrongful acts. Nor, in theory, does it delimit the kind of harm for which the person can be compensated. It only affects the form or timing by which a given quantum of harm or damages is received.

Nonetheless, it could be argued that by requiring payment of the judgment in a structured form, a federal periodic payment statute "substantively" limits the plaintiff's right to relief under a state law cause of action. The Alisandrelli court seemed to view such legislation as affecting substantive rights. It is impossible to predict, however, whether other courts would take the same view of future federal legislation authorizing periodic payments.

The outcome of this argument might be affected by the legislative history of whatever federal legislation established the right. If the legislative history suggests that a purpose of federal periodic payment legislation is to improve the efficiency of the federal court system, and decrease the costs of administering federal court judgments, a better argument might be made that the statute would be "procedural." If, on the other hand, the legislation were viewed by Congress as creating new protections for federal court litigants, it would more likely be seen as substantive. This is a matter for the future.

2. A LEGISLATIVE OPTION

Given the scope of this assignment, we have not conducted a full-blown analysis of what would be the best legislative vehicle and strategy if NSSTA were to decide to seek federal legislation overtly authorizing federal judges to grant judgments in the form of periodic payments. However, we can offer the following observations:

A. Legislation probably should be limited to authorizing periodic judgments in personal injury actions, since this would track the tax provisions in I.R.C. §104 and §130. If the proposed legislation tried to cover additional types of cases, it might be challenged as a back-door effort to pave the way toward expanding the tax provisions in the future. On the other hand, given that the proposed legislation would pass through the Judiciary Committees, not the Senate Finance or House Ways & Means Committees, this logical connection might not occur. This is a delicate tactical judgment to consider further.

B. In certain specialized areas, Congress has been willing to enact legislation mandating periodic payments. For example, the National Childhood Vaccine Injury Act routinely provides for awards under the National Vaccine Injury Compensation Program to be made in four equal annual installments. See 42 U.S.C. §300aa-15(f)(4). The Federal Employees' Compensation Act provides injured federal employees with a right to periodic (monthly) disability payments as determined by the Secretary of Labor. See 5 U.S.C. §8108 et seq. Because these statutes do not

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involve personal injury damage awards in federal courts, they do not provide a direct precedent for the type of legislation we would propose. Nonetheless, they do suggest that Congress has recognized the virtues of periodic payment remedies in some circumstances.

C. As noted, legislation we might propose would have to work its way through the Senate Judiciary Committee (Chair: Biden (D.-Del.), and its Subcommittee on Courts and Administrative Practices (Chair: Heflin (D.-Ala.), and the House Committee on the Judiciary (Chair: Brooks (D.-Tex.), and its Subcommittee on Intellectual Property and Judicial Administration (Chair: Hughes (D.-N.J.)).

In the 101st Congress, 58 public bills were referred to the Senate Subcommittee. Only one -- the Drunk Driving Victims Protection Act -- became law. One hundred six public bills were referred to the House Subcommittee, and 16 became law. None of those bills directly affected the jurisdiction or procedures of the federal courts.

Some of the measures considered by the Senate Subcommittee but not enacted included bills providing for judicial immunity, juror selection reform, joint and several tort liability, private rights of action for terrorism, and medical malpractice rights against the Army. The House Subcommittee considered a bill providing for special federal jurisdiction of cases arising from multi-party accidents.

In the coming term, the multi-party jurisdiction bill will be reconsidered, along with reform of the civil RICO laws. No

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substantial proposals for changes in federal court jurisdiction or procedure are anticipated. In this context, it is difficult to predict how legislation calling for periodic payment of judgments would be treated. But one must assume that a bill could survive the Committee process only if it were viewed as relatively (though not entirely) noncontroversial.

D. The legislation should probably seek to authorize periodic payments in both federal question cases (against private or public defendants) and diversity cases.

E. Although we would have to do substantially more investigation and touch base with Congressional staff to craft the best legislative proposal, the legislative language might be crafted something like the following:

"A new Section X is added to Title 28, United States Code, to provide as follows:

In any action in which the jurisdiction of the district court is based upon 28 U.S.C. §1331, or §1332, or upon 45 U.S.C. §51, 46 U.S.C. §688, 33 U.S.C. §901 et seq., 46 U.S.C. §701 et seq., or any other federal statute providing a right to action for personal injury, the district court may in its discretion order that the award be paid, in whole or in part, by structured or periodic payments, on such terms as the court deems just and equitable."

In the language above, we propose that even in jury trials, the judge, rather than the jury, determines whether the award is made in the form of a lump sum or periodic payment. Although this is worth discussing in more detail, we think that most legislators and lawyers would conclude that having separate proceedings before

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the jury to decide this issue would be time consuming and difficult, since juries would find it difficult to understand the economic analysis involved in various funding options.

There may be some other legislative complexities. For example, the language proposed above would establish a federal rule permitting periodic payment of judgments. However, the Federal Tort Claims Act bases the right to recovery on state law and refers to "substantive law of the place the [tortious] act or omission occurred." 28 U.S.C. §1346(b). "This statutory directive has consistently been interpreted to require that damages in an FTCA suit -- with a few exceptions not germane at this point -- must be assessed in conformity with state law." Reilly v. United States, 863 F.2d 149, 161 (1st Cir. 1988), citing Flannery v. United States, 718 F.2d 108, 110 (4th Cir. 1983); Smith v. Pena, 621 F.2d 873, 880 (7th Cir. 1980). Thus, our proposed legislation might be deemed to amend the FTCA to require a federal method of paying damages rather than a state remedy. Alternatively, our proposed legislation might simply be seen as superseding specific statutes (such as the FTCA) with a general statute. Perceptions concerning the effect of the statute might activate constituencies other than those within the usual ambit of the Judiciary Committees.

F. The procedural problems of implementing periodic payment judgments as proposed are significant. Careful thought would have to be given to how trials would be bifurcated for this purpose; whether all damages or only some (e.g. economic damages) would be structured; whether this would prolong federal trials by

adding another phase (the "lump sum versus various proposed periodic payment proposals" hearing) to every personal injury action, and so forth.⁵

G. On a substantive level, the existence of the legal precedents cited above which invite legislation to permit periodic payments could be helpful in the legislative debate.

H. It is not immediately obvious who would oppose the legislation, other than the American Trial Lawyers Association (ATLA). We have talked briefly with the Director of Governmental Affairs of the American Bar Association (who is their chief lobbyist), and other staff who we know well. In 1986, the ABA passed a resolution including a provision that "The use of structured settlements should be encouraged." Thus, the ABA might possibly be some counterweight to ATLA.

I. It is very difficult to predict the cost of a legislative effort. For a fairly modest cost, it could certainly be possible to (1) consult with Congressional staff, (2) touch base with potential allies (such as the American Bar Association, representatives of injured persons, etc.), (3) draft the proposed legislation, (4) prepare legislative briefing materials, and (5) make a modest effort to meet with Members of Congress to see if momentum can be achieved in favor of the legislation. If there

⁵It might also be necessary to disabuse legislators of certain misconceptions. As an example, in Frankel v. Heym, 460 F.2d 1226, 1229 (3d Cir. 1972), the court offered the observation -- which would not be true of today's structures -- that the court should be wary of the "continuing burden of judicial supervision that would attend a judgment creating a life trust. This too is a consideration against the government's proposal."

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were opposition, and if a prolonged legislative effort were required, costs could be significant, and NSSTA could then make a decision as to whether, and how, to support that effort.

CONCLUSION

Federal legislation to authorize periodic payment judgments in federal court seems sensible and feasible. It would be a natural complement to the effort NSSTA is making to ensure enactment of the Uniform Periodic Payment of Judgments Act at the state level. The potential market is not huge, but is significant. While success certainly is not assured, a reasonable attempt might be made at a relatively modest cost.
