

# FOIA Marker

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Records Management, White House Office of

Subject Files - FG006-27 (Office of Senior Advisor - Karl Rove)

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W	11	4	3	1	9711	22574	10793	10735

Folder Title:

536037

# Withdrawn/Redacted Material

## The George W. Bush Library

DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
001	Email	FYI... - To: Barbara Goergen - From: Kasey Pipes	1	06/18/2003	P5;
002	Draft	Leadership Magazine Op-Ed	2	N.D.	P5;
003	Letter	Alternative DVA Health Care Concept... - To: Karl Rove - From: Charles Winn	1	06/15/2002	P6/b6;
004	Letter	[Letter] - To: Association of the United States Army - From: Charles Winn	1	05/02/2002	P6/b6;
005	Report	Veterans Health Care Enhancement	1	05/05/2002	P6/b6;
006	Report	A Veteran's Health Care Proposal [page 1]	1	05/05/2002	P6/b6;
007	Letter	[Letter] - To: [Karl] Rove - From: Annette Angermaier	1	06/18/2002	P4/b4;

**COLLECTION TITLE:**

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9711

**RESTRICTION CODES**

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
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PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

**Deed of Gift Restrictions**

- A. Closed by Executive Order 13526 governing access to national security information.
- B. Closed by statute or by the agency which originated the document.
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Freedom of Information Act - [5 U.S.C. 552(b)]

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008	Email	RE: Thoughts - To: James Wilkinson, et al. - From: Margaret Tutwiler	2	02/21/2003	P5;
009	Letter	[Letter with attachment] - To: Karl Rove	2	06/18/2002	PRM;
010	Memorandum	Members of Congress Mentioned in... [with attachments] - To: Peter Wehner - From: Neil Zimmerman	36	06/18/2003	P5; P6/b6;
011	Letter	[Letter with attachment] - To: [Dina] Powell	4	06/16/2003	P2; P6/b6;
012	Email	FW: Message from Dr. Carl Herbster of KC - To: Susan Ralston - From: Karl Rove	1	05/27/2003	P2; P6/b6;
013	Email	Bulgaria [page 1] - To: Karl Rove - From: Mark Bloomfield	1	06/23/2003	P6/b6;

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015	Email	FW: Donaldson, etc. on Stock Options - To: Susan Ralston - From: Floyd Kvamme	2	06/05/2003	P5;
016	Invitation	[Invitation]	1	07/01/2003	PRM;
017	Email	Further Comments on the Travelocity - Drug Purchasing System - Newt - To: Ronald Bachman, et al. - From: Newt [Gingrich]	2	06/15/2003	P5; P6/b6;

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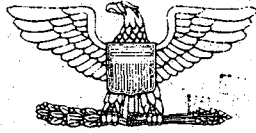
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June 15, 2002

RE: Alternative DVA Health Care Concept Submitted May 10, 2002

Mr. Karl Rove  
Senior Advisor to the President

Dear Mr. Rove:

This is to update you on developments since your letter of May 21, 2002. I realize that the inefficient and wasteful DVA system can only be reformed with a long-term strategy. Hopefully, this first step will be feasible as a GOP campaign issue in 2004.

You undoubtedly remember how the entitlement-demanding professional veterans (mostly with brief periods of non-combat service) turned their backs on former President Bush in 1992. They have a major share of blame for the recent 8 years of bad foreign and defense policies. Although the National staffs of the VFW and TROA have tried to dismiss this concept out of hand, it was unanimously endorsed by both my local VFW Post (8194, Stuart, FL) and TROA (FL Treasure Coast) chapter.

On June 12th, my fellow Martin Co. GOP Executive Committee members voted 63% (27 to 17) in favor of it, just missing the 2/3 needed to pass. A few veteran members who didn't closely read the copy that was mailed to them and confused several people in the audience into believing they would have to wait until 60 to get VA treatment and that I was advocating depriving peace time vets. Considering that was my second meeting as a member, I'm very encouraged. Enclosed is the non-partisan version I'm currently working through AUSA.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles W. ...".

(b)(6)



**Association of the United States Army  
Resolutions Committee  
Government Affairs Directorate**

**Gentlemen:**

**Enclosed is a proposed resolution for reforming and enhancing the U.S. Department of Veterans Affairs (DVA) health care system.**

**Few leaders in government, the media and key segments of our society have any military service. Unfortunately, this has made it easy for liberals and their allies in Congress to degrade the prestige of an Honorable Discharge. The DVA also is no longer dominated by veterans who understand veteran-unique problems as it was from the post-war era through the 1980s. Consequently, an unfair DVA priority system currently reflects post-Viet Nam victimization and liberal guilt trends within our culture. It simply is wrong for our gallant warriors from World War II and the Korean Conflict to compete on waiting lists for treatment with able bodied younger peace time veterans, especially those with substandard service records.**

**I have also enclosed a supporting editorial and would appreciate your forwarding copies to the editorial staff of Army magazine and the AUSA news. Your server appears to be having problems. Once it is repaired please contact me and I will E-mail you electronic copies.**

**Sincerely,**

*Signed*  
**Charles J. Winn  
Colonel, AUS (Retired)  
AUSA Member No. 112483**

(b)(6)



5 May 2002

**PROPOSED RESOLUTION FOR THE ASSOCIATION OF THE UNITED STATES ARMY**

**SUBJECT: VETERANS HEALTH CARE ENHANCEMENT**

SUBMITTED BY: Colonel Chuck Winn, AUS (Ret)  
AUSA Member No 112483

(b)(6)

All veterans separated under honorable conditions are entitled to some form of quality medical treatment. The recent opening of the Department of Veterans Affairs (DVA) medical treatment facilities to all veterans however, regardless of status, created second-order adverse impacts on our most deserving veterans. These include our World War II and Korean War veteran populations who are in most need of medical care. Other honorably discharged veterans who served in combat theaters, deployed on contingency operations, or in support assignments during periods of hostilities have made the most contributions and greatest sacrifices. Like our greatest generation of veterans they too deserve local, no-hassle quality health care.

A fairer and more cost-effective method of providing health care can be achieved, without building and staffing new or expanded DVA medical facilities and infrastructure. This can be accomplished through a DVA-funded enrollment card used for payment of any board-certified hospital, clinic or health care provider in the private sector.

**WE THEREFORE RESOLVE to urge the Administration and Congress to:**

- Establish a premium veterans' health care plan for our veterans who have gone above and beyond, modeled on the Department of Defense (DoD) TRICARE system.
- Determine eligibility on a point system assigning weighted criteria on such variables as service in combat, length of service on active duty, the numbers of deployments for contingencies, degree(s) of service-connected disability; type of military occupational specialty; and age.
- Make all honorably discharged veterans who completed a full term of active or reserve service eligible upon reaching age 60.
- Continue funding and operating existing DVA hospitals and medical facilities at current levels for treatment of veterans until they criteria for the premium plan.
- Redefine treatment priorities at all DVA medical facilities with highest categories based on character and length of service, medical condition and economic need.
- Establish an absolute disqualification for such premium plan to any veteran with less than an honorable discharge or a record of substandard service.

May 5, 2002

## A Veterans' Health Care Proposal

By Colonel Chuck Winn, AUS (Ret)  
AUSA Member No. 112483

(b)(6)

Veterans who have gone the extra mile for their country deserve local, no-hassle quality health care. Ex-servicemen and women from all regions of the country, must also receive their fair share of the Department of Veterans' Affairs (DVA) resources for this purpose. A fair and cost-effective method of achieving this is possible without building and staffing new or expanded DVA medical facilities and infrastructure.

Unfortunately, the recent opening of the doors of DVA medical treatment facilities to all veterans, regardless of status, created second, and third-order adverse impacts on our most deserving veterans, who have made the greatest sacrifices and are in most need of care. Honorably discharged veterans who served in combat theaters, deployed on contingency operations, or in support assignments during periods of hostilities contributed more than others. For years, politically untouchable "sacred cows" have been the large number of veterans who draw various degrees of disability payments for conditions contracted during relatively short periods of peacetime service. Not to denigrate supporting duties or peacetime service, but considering all military service relatively equal is absurd. Why, for example, should an ailing World War II or Korean War combat veteran have to compete on waiting lists on the same footing with a peacetime veteran with a general discharge for drug or alcohol abuse? A less extreme example is a combat veteran having a lower priority than an honorably discharged peacetime veteran with a service-connected disability contracted from an off duty sports injury.

A premium veterans' health care plan must be established for our veterans who have gone above and beyond. Such a plan could be modeled on either the Department of Defense (DoD) TRICARE system or possibly MEDICARE. Eligibility could be determined on a point system assigning weighted criteria on such variables as service in combat, length of service on active duty, the numbers of deployments for contingencies, degree(s) of service-connected disability; and type of military occupational specialty. Age should also be a factor. Perhaps any honorably discharged veteran who completed a full term of service could become entitled to the premium treatment plan upon reaching age 60. General guidelines might be:

- All honorably discharged vets would become eligible for the premium plan at age 60. This would include those with one full enlistment or term of service and honorably discharged reservists who completed their full service obligations.
- At age 50, all honorably discharged after a full term who deployed OCONUS to an active warfighting theater resulting in a campaign or expeditionary medal; reservists activated for contingencies or war time service, or gray area reservists with 20 years qualifying service for retirement, would become eligible.
- Any veteran with a VA disability exceeding 70 percent, or any combat wounded veteran would be eligible regardless of age.

- All honorably discharged vets should be eligible for a TRICARE-style pharmacy system regardless of age.
- All other veterans should be required to use VA facilities until reaching the minimum age for the premium plan. Highest priority Should be based on character and length of service and economic need. i.e. all honorably discharged vets get a higher priority over general discharge types regardless of how dire their economic circumstances.

Our older veterans should not have to travel for quality care, or compete on waiting lists with the maladjusted and able-bodied who were separated for sub-standard performance or misconduct. Premium DVA enrollees could be issued a credit card-style enrollment card that could be accepted by any board-certified hospital, clinic or health care provider.

All veterans separated under honorable conditions are entitled to some form of quality medical treatment. This mass base of veterans can provide the patient load to keep DVA hospitals properly funded and operating at existing levels. A premium service must also be established however, for our greatest generation and veterans from other eras who have gone above and beyond. Under no circumstances however, should a veteran with less than an honorable discharge be eligible. Unquestionably, this proposal requires additional definition, but it is a sound and compassionate alternative to expanded and less efficient bigger government programs.

536037  
19 June 2003

VIA FACSIMILE

Alberto R. Gonzales  
White House Counsel  
The White House

**RE: National Journal article about Bush White House and Hatch Act requirements**

Dear Judge Gonzales:

I believe you are aware through the White House Press Office that *National Journal* will publish an article in its issue of June 27 regarding the responsibilities and challenges posed to White House employees and others in the government during the re-election season, as they juggle governing responsibilities and campaign enthusiasm.

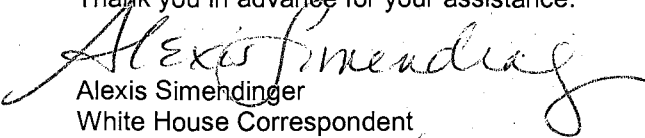
As with previous White House counsels, you recently distributed a memo to staff providing explanatory information related to the Hatch Act and its 1993 reform amendments.

**I would like to interview you, for the record**, about the advisory you and Brett Kavanaugh shared with staff, and the general procedures President Bush expects his staff, the Vice President's staff, and others in the Bush administration to follow to avoid any question of wrongdoing or abuse of Treasury resources for partisan political purposes. I am familiar with former Counsel Abner Mikva's April 27, 1995, memo and would like you to describe how President Bush would compare his interpretations of the Hatch Act and his own provisos to those of the previous administration, which obviously ran into difficulties on this score.

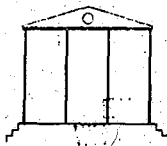
I am, of course, interested in the president's application of appropriate procedures to Senior Adviser Karl Rove and his staff, the Office of Political Affairs, the Office of Public Liaison, Cabinet Affairs, and others who hold dual responsibilities for helping the President as he governs while also tending to campaign considerations. I have made a separate such request to David Addington in the Vice President's office through Mr. Cheney's press office.

**My deadline is no later than midday June 25, and preferably earlier.**

Thank you in advance for your assistance.

  
Alexis Simendinger  
White House Correspondent,  
National Journal  
202-739-8490  
202-833-8069 Fax

cc: Dan Bartlett, Communications Director  
Ari Fleischer & Ashley Snee, Press Office  
Karl Rove, Office of Strategic Initiatives  
David Addington, Office of the Vice President



**LE COVP**  
**FRISEVR**

München - Hamburg - Berlin

LE COVP Coiffeur et Beauté GmbH  
Verwaltung: Pienzenauerstr. 18 81679 München  
White House  
**Mr. Carl Rove**  
Senior adviser  
to the President

Washington DC  
USA

18 th June 2002

***Invoice***

Dear Mr. Rove,


Le Coup Coiffeur et Beauté GmbH is located near the reception hall in the Hotel Adlon in Berlin. The safety-measures taken during the visit of President Bush in May caused the closure of our business-rooms.

The business rooms remained closed on 22<sup>nd</sup> and 23<sup>rd</sup> of May 2002.  
This costs a loss of two full days amounting to the sum of **€ 2.400,00**.

Please settle the bill within 4 weeks to our account

**HypoVereinsbank Munich**  
Account number   
National bank code

Yours sincerely

  
Annette Angermaier  
**LE COVP**

LE COVP Coiffeur et Beauté GmbH  
Im Hotel Adlon, Unter den Linden 77, 10117 Berlin  
Verwaltung: Pienzenauerstr. 18 81679 München  
Telefon 089-2714088 Fax 089-2714089

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# CENTER FOR COMMUNITY CHANGE BACKGROUND

## *Company Profile*

- “For almost 30 years, CCC has been nationally recognized for its work helping people build organizations and create better communities and policies. The Center’s 84 person staff includes many of the nation’s leading experts on community development, community organizing, leadership training, coalition-building, housing, welfare reform, jobs, economic development, banking and reinvestment, and Native American issues.” (CCC’s Website, [www.communitychange.org](http://www.communitychange.org), Accessed 6/11/2003)
- “The Center for Community Change is committed to reducing poverty and rebuilding low income communities. To do this, we help people to develop the skills and resources they need to improve their communities as well as change policies and institutions that adversely affect their lives. We believe that poor people themselves – through organizations they control – need to lead efforts to eliminate poverty.” (CCC’s Website, [www.communitychange.org](http://www.communitychange.org), Accessed 6/11/2003)
- CCC Focuses on low-income communities, especially those of color. Additionally, they look for groups whose aim is to create progressive social change to benefit their constituents as well as a community that has serious social problems, such as poverty or high unemployment. (CCC’s Website, [www.communitychange.org](http://www.communitychange.org), Accessed 6/11/2003)
- “The National Campaign for Jobs and Income Support (NCJIS), a project of the Center for Community Change (CCC), is a coalition of more than 1000 grassroots anti-poverty groups that have been organizing since 2000 to transform TANF into a meaningful anti-poverty program. Under the banner Make TANF Work! ([www.maketanfwork.org](http://www.maketanfwork.org)), the National Campaign is spearheading a national effort to fashion a progressive policy and political strategy on welfare reform reauthorization.” (“New Poverty Data Should Turn Welfare Debate On Its Head,” *US Newswire*, 9/24/02)

## *Employees*

**Deepak Bhargava:** Executive Director

**Richard Stolz:** Deputy Director For Public Policy

**Stephanie Robinson:** Director Of Public Policy; Former General Counsel To Sen. Edward M. Kennedy (D-Mass.)

**Rachel Gragg:** Senior Policy Analyst; Former Policy Adviser For The Late Sen. Paul Wellstone, D- Minn. (1991-2002).

**Benson Roberts:** Board Member, CCC; Working On President Bush's "Renewing The Dream" Tax Credit To Benefit Low-Income Homebuyers.

### ***Anti-Bush Child Tax Credit Ad***

**On June 5, 2003, Center For Community Change Launched An Ad Claiming Bush Chose The Fortunate Over The Needy.** "In another effort to build pressure, a coalition of liberal groups today begins airing TV ads in Washington blasting Bush for leaving the working poor out of the child credit benefit increase. The Center for Community Change is buying a relatively modest amount of airtime, but it is encouraging hundreds of like-minded groups to air the same ad in other cities. The ad shows two children: one too poor to qualify for the increased credit and another, whose parents make more money, who receives it. 'President Bush chose the most fortunate to get the most,' an announcer says." (William M. Welch, "Study: Military Kids Slighted On Tax Credit," USA Today, 6/5/03)

**The Ad, Run On Cable News Television, Is Set To Run For Two Weeks, But May Be Extended.** "Center for Community Change spokeswoman Germonique Jones said the spot began running last Thursday [6/5/03] in Washington on CNN, CNBC, MSNBC and Fox News Channel. The spot is scheduled to air for two weeks, but Jones said the group could change the buy depending on congressional action on the issue. Squier Knapp Dunn Communications produced the spot." (Mark H. Rodeffer, "Group Bashes Bush On Child Tax Credit," *National Journal*, 6/10/2003)

### ***Anti-Bush Statements And Policy Positions***

**"The Sheep's Clothing Has Long Come Off 'Compassionate Conservatism' And President Bush's True Colors Are In Full View. This Administration Is Engineering The Most Comprehensive Assault On Poor Americans Since The Reagan Years."** (CCC Press Release, "CCC Nominates Bush Administration For Oscar," 2/13/03)

**Center For Community Change Opposes President Bush's Work Initiatives.** "For all the fanfare in the 1990s about how we were going to reward work, what's happening now is the reverse - we're punishing work,' says Deepak Bhargava, executive director of the Center for Community Change, a Washington-based advocacy group." (Holly Yeager, "State Fiscal Crises And Law Changes Hit Nation's Working Poor," *Financial Times* [London], 1/25/03)

**In January 2003, The ED of CCC Vocally Opposed Bush's Work Initiatives, Calling The Bill "Bankrupt".** "Advocates for the poor criticized Bush for pushing the same plan that couldn't muster enough support last year in the Senate. Welfare measures stalled in the then Democratic-controlled Senate. 'Bush is proposing the same bankrupt bill that failed last year,' said Deepak Bhargava, executive director of the Center for Community Change, an advocacy group. 'Bush has been bashed for a week for giving away the store to the rich and [now] they want to show that they care about the poor. But this is the wrong way to do it.'" (Deborah Barfield Berry, "Bush Touts Welfare Changes," *Newsday*, 1/15/03)

**The Group Is Pressuring The Bush Administration To Establish A National Housing Trust Fund.** "A coalition of advocates for construction of affordable housing



today called on the Bush Administration to establish a national housing trust fund that would help state and local governments 'address the acute housing shortage for America's low wage earners and low income elderly and disabled people.' The groups -- The Center For Community Change, ACORN and the Low Income Housing Coalition -- joined by members of Congress, released a report at a Capitol Hill news conference this morning, which found 'that 65,000 affordable homes are being built every year by local and state funds.'" ("Coalition Of Affordable Housing Advocates Urge Bush Administration To Back National Housing Trust," White House Bulletin, 7/23/02)

### **The Center For Community Change Opposed President Bush's 2001 Tax Cut.**

President Bush's proposed tax cut plan would overwhelmingly benefit the nation's wealthiest one percent. . . . The plan has been widely criticized because upper-income earners have enjoyed most of the gains in recent years, faced a lower share of the tax burden in the last 25 years, and yet would still receive most of the benefits under the president's tax plan. (Center For Community Change Policy Alert #218, CCC Website, [www.communitychange.org](http://www.communitychange.org), Accessed 6/11/2003)

### **CCC Opposed Bush's Child Tax Credit In 2001, Claiming It Was Not "Refundable."**

"A refundable child credit of \$1,000 per child would be the single most effective measure that policymakers could take to achieve greater fairness in any tax cut and to reduce child and family poverty. President Bush's proposal to double the existing child credit will not accomplish these goals as presently drafted. It provides little or no benefit to the families that need it most. Millions of poor and moderate-income children would receive no benefit whatsoever from the Administration's proposal simply because it is not refundable. . . . [N]o children would be lifted from poverty under a nonrefundable child credit." (Press Release, ACORN, Center for Community Change, Children's Defense Fund, Food Research and Action Center, National Campaign for Jobs and Income Support and National Council of La Raza, "Joint Statement: Make The Bush Child Tax Credit Refundable," 2/8/01)

24  
June 2003

**COALITION PROVISIONAL AUTHORITY** 536037  
**CPA DAILY**

**Key Quote**

In my brief time in Iraq, I have been repeatedly impressed with the extraordinary technical capabilities of Iraqis working in government and industry. They just need the opportunity to put these skills to productive work. We will give them that chance. To take full advantage of these assets, Iraq's resources cannot be restricted to a lucky or powerful few. Iraq's natural resources should be shared by all Iraqis, and every Iraqi should have the opportunity to participate fully in the country's economic life.

One way to share Iraq's blessings among its people would be with a special program funded with oil revenues. Some profits from oil sales could be distributed to Iraq's citizens as "dividends," along the lines of the system used by the State of Alaska. Alternatively, oil revenues could be deposited in a national "trust fund" used to finance public pensions or other elements of a social safety net needed to ease the transition from a state-dominated to a private sector economy.

In either case, every individual Iraqi would come to understand his or her stake in the country's economic success. I believe this type of proposal could be profitably debated when an interim Iraqi authority is convened in the months ahead.

**Amb Bremer**, address to the World Economic Forum, 22 June

**Key Messages**

- Coalition Forces continue to robustly patrol Iraq to eliminate crimes against people and property, rid populated areas of weapons, ammunition and explosives, and stop the black market trade in fuel and other commodities.
- Coalition Forces continue to conduct joint security patrols with Iraqi police in their efforts to increase the professionalism of the police force and prepare them for their role in a self-governed Iraq.
- Our task now is to help the Iraqis rebuild their economy.
- Economic team are working hard on a number of initiatives which will help get the economy going, and provide some much-needed jobs.
- After decades of manipulation and mismanagement, the road to a free and flourishing economy will not be an easy one. But we've already taken one big step: which was the ending of sanctions.

**Diary**

- 13.00 Irrigation Ministry meeting w/Iraqi Survey Team and USAID to discuss the restoration of the country's marshlands, interviews available to the press following,
- 1400 - Background Brief - Spokesman and CJTF7 - International media inc Slocombe
- 1500 - De Mello Press Conference re Donor's conference

**Facts - Military Reform**

Walter Slocombe, Ambassador Bremer's Senior Advisor for Security and Defense yesterday announced that the New Iraqi Army (NIA) will be formed and that we will start recruiting for that force from next week. He also said that former Iraqi career soldiers will receive a monthly interim stipend.

He highlighted our plans for the NIA for the first time. They include:

- To have a full division equivalent of 12,000 soldiers, who would be trained and operational in 1 year. By two years to have three divisions of 40,000 soldiers.
- To deploy battalions as they are trained, under the command of Iraqi officers.
- The military missions of the units will include protecting the nation's borders, provide military level security for certain routes and installations, help clear mines and UXO.

The NIA will not be the whole of the future Iraqi armed forces, but it is an important start towards the national armed forces of the new Iraq. The final decisions on the shape of the Iraqi armed forces, the national defense policy, and the structure of a new MOD will be for the Iraqi people and not the CPA.

Mr Slocombe, said:

"I am pleased to announce this first step in creating an armed force that will be professional, non-political, militarily effective and truly representative of the country.

"To underline the importance of this, I am delighted to tell you that the US is sending MG Paul Eaton, who will command the training of the NIA. He is one of our most experienced and respected officers. He was until last week Commanding General of the United States Infantry School."

KansasCity.com

536037

Posted on Mon, Jun. 23, 2003

## Ex-geek enjoys 'meteoric' rise to White House

By DAVID GOLDSTEIN  
The Kansas City Star

**WASHINGTON** - By his own admission, the new White House political director was once a bit of a geek.

Growing up in Wichita, Matt Schlapp spent a lot of time in front of the television, glued to C-Span.

Washington's political wars fascinated him. He watched confirmation hearings and congressional investigations the way other kids watched MTV. He followed debates on the Senate and House floors as if he had a front-row seat in the gallery. He felt in the know.

Now the one-time C-Span devotee has become one of the off-camera Washington insiders that always so intrigued him.

Schlapp is the new White House political director. He advises the president. His boss is Karl Rove, the West Wing's resident political guru. Republican leaders and party chairmen from 50 states take his calls. He has a large corner office in the ornate Eisenhower Executive Office Building.

"I guess I always thought it'd be great to do politics," Schlapp said, relaxing in his office one recent afternoon. "But I can't imagine as a kid in Wichita, Kansas, that I thought seriously I'd do something like this in the White House."

Republican Rep. Todd Tiahrt of Kansas, his former boss who brought him to Washington eight years ago, called Schlapp's rise "meteoric." He summed up his friend's status in a way that the political world can instantly grasp.

"He has Karl Rove's ear," Tiahrt said.

Rove praises Schlapp's judgment and political instincts.

"He doesn't flinch when bullets are whizzing by," said Bush's chief strategist. "He keeps focused on the goal."

Schlapp, 35, still has a "pinch me, I must be dreaming" quality about him. Walking down the long, black-and-white checkerboard marble corridors of the Eisenhower building, he said he often thinks of the people who once worked there, including Eisenhower and Teddy Roosevelt.

"When you first walk into this environment and imagine working in this place, you have a real reverence for it," he said. "You think, 'What an accomplishment. What a privilege.'"

Schlapp was born in Ohio. His family moved to Wichita when he was 12. His mother, Wichita City Councilwoman Sue Schlapp, said her son always watched the news and read presidential biographies. But she added, as any mother would: "I don't know that he was geeky."

A tennis instructor, she passed on her skills and love for the game, while her son, who idolized Ronald Reagan, eventually persuaded the New York-born, Irish, Catholic, dyed-in-the-wool Democrat to switch parties.

"She finally woke up one day and said, 'Why am I always voting for Republicans for president?' " he said.

Schlapp played tennis for Wichita's Kapaun-Mount Carmel High School and still tries to squeeze in a game when he can. He calls the game a release valve from the pressure of his 12- to 14-hour days. He occasionally plays in charity tournaments in the capital, partnering with people such as Fox News anchor Brit Hume.

He joined Tiahrt as a volunteer when the former Boeing engineer ran his giant-killer campaign against nine-term Democrat Dan Glickman in 1994. His political resume was pretty thin, apart from being a student co-chairman of the first President Bush's 1988 re-election campaign at Notre Dame University.

Schlapp became Tiahrt's chief of staff, but returned to Wichita every two years to manage the congressman's re-election.

In 2000, he joined then-Texas Gov. George Bush's presidential campaign as a regional campaign manager over seven Midwestern states. Several, such as Missouri, became key battlegrounds.

"I really felt sorry for the guy," said Tony Feather, a Missouri-based Republican strategist who was the Bush campaign's political director in 2000. "We gave him what we thought was a manageable set of targets (states) and layered in three or four more targets on top. He got it done. He did a fabulous job."

Schlapp served in the Florida trenches during the post-election re-count, as did many campaign aides who went on to the White House. He was part of the supposedly spontaneous Thanksgiving eve demonstration at the Miami-Dade County Hall, where protesters pounded on the windows and disrupted the first re-count of the ballots. One participant dubbed it the "Brooks Brothers protest" because of the buttoned-down appearance of the demonstrators.

Asked what he did in Florida during the re-count, Schlapp said: "Just different things."

After Bush was declared the winner, Schlapp became deputy political director.

"Your short-term elation is quickly replaced with a real desire to get to the work and do it seriously," he said. But he conceded: "It's really exciting to be able to tell people what you do and who you work for."

When his immediate boss, White House political director Ken Mehlman, left a few weeks ago to manage Bush's 2004 re-election campaign, Schlapp moved up. Not long after that, he became a father for the first time.

Schlapp's office is where the politics and policy of the administration meet. His main responsibility is to ensure that Bush's program has support around the country and to look for the best venues for the president to make his case.

He is in close touch with Republican Party leaders across the country, constantly taking the political temperature and -- particularly with 2004 looming -- gauging the president's strengths and weaknesses.

With so much political drama on so many fronts -- the aftermath of the war in Iraq, the fate of the president's agenda in Congress, the roiling field of potential challengers in the Democratic Party -- Schlapp

has little time to kick back and enjoy his sudden ascendance.

But he knew that would be the case: He recalled that when Bush took office more than two years ago, the president told his staff: Don't mark time. The first term will go by very quickly.

"That resonated with me," Schlapp said. "I think he wanted us to quickly get over the wide-eyed 'Wow! Isn't this a fantastic experience' and turn immediately to the task at hand. The last 21/2 years are like a blink of an eye."

To reach David Goldstein, Washington correspondent, call **(202) 383-6105** or send e-mail to [dgoldstein@krwashington.com](mailto:dgoldstein@krwashington.com).

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# Withdrawal Marker

## The George W. Bush Library

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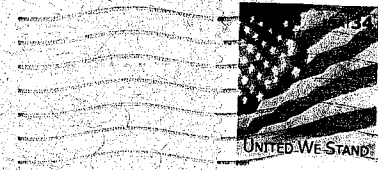
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June 10, 2003

DaimlerChrysler Corporation  
Robert G. Liberatore  
Senior Vice President  
External Affairs and Public Policy

536037

The Honorable Karl Rove  
Senior Adviser to the President  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, DC 20500

Dear Mr. Rove: *Karl*

As the world's largest transatlantic company, DaimlerChrysler takes a keen interest in healthy relations between the United States and Europe. As a global corporate citizen, DaimlerChrysler also takes seriously its obligation to act in a socially responsible manner wherever it operates.

These two interests recently converged with approval of President Bush's initiative on AIDS. DaimlerChrysler CEO Juergen Schrempp chairs the Global Business Coalition on HIV/AIDS, and authored the attached article from the German newspaper Frankfurter Allgemeine calling on European leaders to join President Bush in the fight against AIDS. The article appeared as the leaders of the G-8 countries gathered in Evian, France.

DaimlerChrysler is proud of its own efforts to combat HIV/AIDS, which include providing our South African employees with treatment and prevention services. We have also supported a number of initiatives to keep open channels of communication and dialogue between European and American officials during recent times of tension.

If you would like more information on DaimlerChrysler's efforts to combat HIV/AIDS, or if you have any questions, please do not hesitate to contact us.

Sincerely,



RGL/aw  
Attach.

DaimlerChrysler Corporation  
1401 H Street, NW, Suite 700  
Washington DC, USA 20005-2110  
Phone 202.414.6747  
Fax 202.414.6716  
e-mail: rg1@dcx.com



Article translated from German.

Published on June 1, 2003 in "Frankfurter Allgemeine Sonntags Zeitung" in Germany

## **Don't give AIDS a chance**

By Juergen Schrempf

Today the leaders of the G-8 nations at Evian will have an opportunity to overcome American-European tensions and find new common goals. Together they can help to restrain a disease, which already has already killed 25 million people.

President George Bush has already set a sterling example. He won approval from Congress to spend \$15 billion over the next five years to combat AIDS. Of that total, \$14 billion would go primarily to countries in Africa.

More than 42 million people worldwide are infected with the HIV virus. By 2010 the death total is expected to rise to 80 million. 30 million of those suffering from AIDS are in Africa, where some countries may lose up to a quarter of their populations by the end of the decade. In some African countries, almost 40 percent of the adult population is infected with the virus.

As President Bush has said, "this is a terrible disease, but not a hopeless disease."

We know what to do. AIDS can be prevented. Infection rates in Uganda have been brought down dramatically. AIDS can be treated. Anti-retroviral drugs are becoming more affordable, extending many lives.

Unchecked, the disease will overwhelm the economies and national structures of developing countries. Demographic experts warn that the crisis could spread to Eurasia and destabilize even Russia, India and China.

The leaders of the G-8 countries can pledge additional funding. This is necessary. Beyond this they should do whatever they can to enlist the civil institutions of their countries in the fight against AIDS.

During the five minutes it has taken to read this article, 30 people have died from AIDS and 55 have been infected with the virus. The leaders of the G-8 countries have an historic opportunity to give millions of people hope.

## GASTBEITRAG

# Gebt Aids keine Chance

VON JÜRGEN SCHREMPF

Die Führer der G-8-Staaten werden heute in Evian Gelegenheit haben, die amerikanisch-europäischen Spannungen zu überwinden, und neue Gemeinsamkeit zu finden. Sie können gemeinsam eine Krankheit bändigen helfen, die 25 Millionen Menschen das Leben gekostet hat.

Präsident George W. Bush ist mit gutem Beispiel vorangegangen. Er bekam 15 Milliarden Dollar für die Bekämpfung von Aids über die nächsten fünf Jahre vom Kongreß bewilligt. Von dieser Summe werden 14 Milliarden vor allem afrikanischen Ländern zugute kommen.

Weltweit sind mehr als 42 Millionen Menschen mit dem HIV-Virus infiziert. Bis 2010 wird von 80 Millionen Todesfällen ausgegangen. 30 Millionen der an Aids erkrankten Menschen leben in Afrika, wo einige Staaten bis zum Ende des Jahrzehnts ein Viertel ihrer Einwohner verlieren könnten. In manchen afrikanischen Ländern sind fast 40 Prozent der Erwachsenen mit dem Erreger infiziert.

Präsident Bush hat es auf den Punkt gebracht: „Dies ist eine furchtbare, aber keine hoffnungslose Krankheit.“ Denn wir wissen, was wir zu tun haben: Aids kann verhindert werden. In Uganda konnte die Infektionsrate dramatisch reduziert werden. Aids kann auch behandelt werden. Medika-

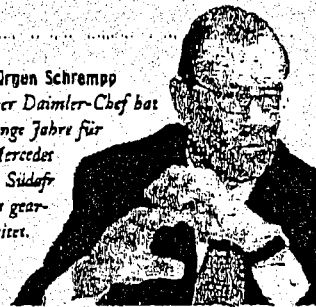
mente zur Bekämpfung von Retroviren werden erschwinglich und verlängern das Leben vieler Infizierter.

Unkontrolliert wird die Krankheit die Volkswirtschaften und staatlichen Strukturen in den Entwicklungsländern überfordern. Demographen warnen, daß sich die Krise auf den eurasischen Kontinent ausdehnen und sogar Rußland, Indien und China destabilisieren könnte.

Die Führer der G-8-Staaten können weitere finanzielle Mittel zur Verfügung stellen. Dies ist notwendig. Darüber hinaus sollten sie alles unternehmen, um die zivilen Institutionen ihrer Länder in den Kampf gegen Aids einzubinden.

In den letzten fünf Minuten, die zum Lesen dieses Artikels benötigt wurden, starben 30 Menschen an Aids, 55 weitere infizierten sich. Die Führer der G-8-Staaten haben die historische Chance, Millionen Menschen Hoffnung zu geben.

Jürgen Schrempp  
Der Daimler-Chef hat  
lange Jahre für  
Mercedes  
in Südafrika gear-  
beitet.



THE WHITE HOUSE  
WASHINGTON

F: Jean  
Becker

536037

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FACSIMILE TRANSMITTAL SHEET

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TO:  
Ms. Jean Becker

FROM:  
Karl Rove

COMPANY:

DATE:  
6/30/2003

FAX NUMBER:  
207-967-0255

TOTAL NO. OF PAGES INCLUDING COVER:  
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Kentucky Governor's Race

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NOTES/COMMENTS:

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## 26 KENTUCKY GOVERNOR: According To Ben

AG **Ben Chandler** was in DC 6/26 and held an interview with reporters at DGA headquarters. Chandler said GOPers will have trouble "nationalizing" the election in KY, and suggested that if Pres.

**Bush** comes to the state, he should be asked "if he brought any jobs with him." He said that KY voters have questions about the war on terrorism and WMD and said he has been amazed at "how well Bush has been able to string out 9/11."

Chandler noted that Dems have a "sizeable registration advantage" over GOPers in KY, said he is better known, and noted that his grandfather, **Happy Chandler**, also served as gov. Chandler maintained that he is an independent Dem, pointing to his 100% rating from the NRA and his willingness to take on scandal-plagued Dem Gov. **Paul Patton**. Chandler, who has called on Patton to resign, says he doesn't think he'll see any fallout from Patton's problems because he's been taking on Patton from day one. Chandler said he is also looking for Dem chairs who aren't "connected to the current regime" in Frankfurt. More Chandler: "I'm more anti-Patton than the Republicans."

Chandler downplayed the influence of Sen. **Mitch McConnell** (R), who he said hand-picked Rep. **Ernie Fletcher** (R-06) to run for gov. Chandler: "I'm not sure how popular he is." He noted that McConnell brings in "funding and strategy," but said that KY voters had an independent streak and don't necessarily vote party line.

When asked about the final days of the Dem primary which saw businessman **Bruce Lunsford** drop out and endorse House Speaker **Jody Richards**, Chandler said his campaign didn't have enough time to respond to what was going on." Since then, Chandler has tapped Richards' campaign manager to run his own and has tried to unite the party.

As for fundraising, Chandler predicts he will be behind at the end of this quarter, but plans to have a big July and August. He noted that he raised \$3M in the primary, besting Fletcher's primary total by \$1M. He said he's not sure if he'll tap into the fortune of his running mate, **Charlie Owen**. Chandler: "It may or may not happen." He said he plans to raise substantial amounts of money, regardless of whether own helps.

As for other KY issues, Chandler said that he believes Sen. **Jim Bunning** (R) is vulnerable and that there are several Dems mulling bids against the sen. Asked if he made his Owen, his running mate and someone often mentioned as a possible Senate candidate, pledge to serve a full four-year term as LG, Chandler said he did not (*Hotline*, 6/27).

### A Good Gimmick?

A Louisville *Courier-Journal* editorial says that Fletcher "is right: Ben Chandler's proposal for the two of them to get on a bus for three weeks and make joint campaign appearances all over the state is a 'gimmick.'" But Fletcher "is wrong to imply that gimmicks are bad, and to be so dismissive of this particular one. ... Yes, a bus tour would be a gimmick. But exploitive TV ads are gimmicks, too, and a tour might be just the kind of new gimmick voters need" (6/26).

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### Campaign Tip Sheet

Primary/Filing Dates, Latest Polls, Latest Ads...

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207-967-0288

MS. Jean Becker

F: Declined  
invitations

# The Atlantic Monthly

536037

TO: The scheduler of Mr. Karl Rove  
FAX: (202) 456-2369  
FROM: Amanda Whipkey  
DATE: June 20, 2003  
NO. OF PAGES  
TO FOLLOW: 2  
REGARDING: *Atlantic Monthly*/Microsoft "Salon Dinner"

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- need to  
check schedule  
- check w/ Dan

Please see the attached invitation to the *Atlantic Monthly*/Microsoft "Salon Dinner" on July 15th.

- BJ. Goergen  
called to decline  
on 6/30/03 at  
4:42 pm.



## THE ATLANTIC MONTHLY

(Est. 1857)

June 20, 2003

Mr. Karl Rove  
Senior Advisor to the President  
The White House  
Washington, DC 20510

Dear Mr. Rove:

Before Washington closes down for the summer recess, I hope that you'll join us for an *Atlantic Monthly*/Microsoft "salon dinner." Please mark your calendar for Tuesday, July 15, at the Metropolitan Club, with a cocktail reception at 6:30pm, moving to dinner and discussion at 7:15pm.

Our first two dinner conversations focused on Iraq and the economy. For this, our third, we will turn to politics and the ongoing campaign, and will give some special attention to the upcoming presidential race, including the media's role, key constituencies, the power of incumbency, and the growing impact of technology. Beyond the political focus, the conversation will be as broad or narrow as the group dictates, reflecting the topics of the day and preoccupations of our guests—a cross-section of leaders from the political, media and business worlds in Washington.

Joining us as a special guest will be Jeff Raikes, Group Vice President of Microsoft. Jim Fallows, National Correspondent for *The Atlantic* and recent National Magazine Award winner ("Iraq: The Fifty-First State?" November, 2002) will launch our dinner conversation on the 15<sup>th</sup>. Also joining us will be Cullen Murphy, Managing Editor of *The Atlantic*, and David Brooks, *Atlantic* Correspondent.

I do hope that you'll attend and would ask that you RSVP to Amanda Whipkey at [awhipkey@theatlantic.com](mailto:awhipkey@theatlantic.com) or on 202-266-6003. Of course, feel free to contact me with any questions or thoughts at 202-266-7201.

All the best,

John Fox Sullivan  
President and Group Publisher

## *Atlantic Monthly*/Microsoft Salon Dinner

Tuesday, July 15, 2003



The Metropolitan Club  
1700 H Street, NW  
Washington, DC

### Schedule for the Evening

- 6:30pm            Cocktail Reception
- 7:15pm            Dinner and Group Conversation  
*Anderson Room*  
*2<sup>nd</sup> floor*
- 9:30pm (approx) Conclusion

### RSVP Information

Please respond to Amanda Whipkey at 202-266-6003 or at [awhipkey@theatlantic.com](mailto:awhipkey@theatlantic.com), including any special dietary or other needs

### Special Notes Regarding the Metropolitan Club

- Complimentary valet parking available.
- Please observe the dress code – coat and tie for gentlemen and commensurate attire for ladies.
- No cell phones or personal communication devices are permitted to be used in the Clubhouse.
- The Metropolitan Club is made available through the courtesy of Mr. Jack Krumholtz, Director of Federal Affairs of Microsoft's Washington office



Document Originally  
Attached to  
Following Page

for [redacted]  
[redacted] call.  
I talked to  
Tom Coburn  
already.

# Withdrawal Marker

## The George W. Bush Library

FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Memorandum	Members of Congress Mentioned in... [with attachments] - To: Peter Wehner - From: Neil Zimmerman	36	06/18/2003	P5; P6/b6;

**This marker identifies the original location of the withdrawn item listed above.  
For a complete list of items withdrawn from this folder, see the  
Withdrawal/Redaction Sheet at the front of the folder.**

**COLLECTION:**

Records Management, White House Office of

**SERIES:**

Subject Files - FG006-27 (Office of Senior Advisor - Karl Rove)

**FOLDER TITLE:**

536037

**FRC ID:**

9711

**OA Num.:**

10735

**NARA Num.:**

10793

**FOIA IDs and Segments:**

2018-0011-P

**RESTRICTION CODES**

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
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PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

**Deed of Gift Restrictions**

- A. Closed by Executive Order 13526 governing access to national security information.
- B. Closed by statute or by the agency which originated the document.
- C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]

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- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

**Records Not Subject to FOIA**

Court Sealed - The document is withheld under a court seal and is not subject to the Freedom of Information Act.



536037  
EXEC. OFC. PRESIDENT  
WH STRATEGIC INITIATIVES  
2002 JUN 23 PM 3:26

March 8, 2002

The Honorable Karl Rove  
1600 Pennsylvania Avenue, NW  
Washington, DC 20500

Dear Karl:

BOARD OF TRUSTEES

FREDERICK J. RYAN, JR.  
*Chairman*

WALTER F. BERAN  
*Treasurer*

JOE L. ALLBRITTON

GORDON M. BINDER

STEVE FORBES

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JIM PATTISON

A. JERROLD PERENCHIO

NANCY REAGAN

MARY JANE WICK

ROBERT TUTTLE

PETE WILSON

LIFETIME TRUSTEES

WALTER H. ANNENBERG

LODWICK M. COOK

RONALD REAGAN

GEORGE P. SHULTZ

LEW R. WASSERMAN

*Executive Director*

MARK BURSON

As you know, on Thursday, May 16, 2002 the Congressional Gold Medal will be awarded to President and Mrs. Reagan. The ceremony will take place in the Rotunda of the United States Capitol and Nancy Reagan will receive the awards on behalf of herself and the former President.

In celebration of the presentation of the Congressional Gold Medals, a special tribute to President and Mrs. Reagan will take place on the evening of Wednesday, May 15<sup>th</sup> at the Ronald Reagan Building in Washington, DC. As a special tribute to President and Mrs. Reagan, Mstislav Rostropovich has rearranged an international concert tour to perform for the dinner.

The Board of Trustees of the Ronald Reagan Presidential Library Foundation would like to invite you to serve as a member of the Honorary Host Committee, which includes attending the reception and dinner. We certainly hope Mrs. Rove will be able to join you.

All proceeds from the event will benefit the Ronald Reagan Presidential Library Foundation. This will be the first time Nancy Reagan has been in Washington, DC for several years and there are no other plans for her to return in the foreseeable future. We certainly hope you will be able to attend. To RSVP please have your office contact Erica Jolles or Holly Bauer at the Ronald Reagan Presidential Library Foundation at 805-522-2977.

We hope you will be able to join us for what promises to be a very special evening.

Sincerely,

*Fred.*

FREDERICK J. RYAN, JR.  
*Chairman*

Washington Address: 808 Seventeenth Street, N.W., Suite 300

Washington, D.C. 20006

Tel: (202) 789-2130 Fax: (202) 530-0324

40 PRESIDENTIAL DRIVE, SIMI VALLEY, CALIFORNIA 93065

Phone (805) 522-2977 Fax (805) 520-9702

[www.reaganfoundation.org](http://www.reaganfoundation.org)

# Withdrawal Marker

## The George W. Bush Library

FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Letter	[Letter with attachment] - To: [Dina] Powell	4	06/16/2003	P2; P6/b6;

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**Records Not Subject to FOIA**

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THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS  
THE QUORUM OF THE TWELVE APOSTLES  
47 EAST SOUTH TEMPLE STREET, SALT LAKE CITY, UTAH 84150-1200

NKN  
536037

January 9, 2002

EXEC. OFF. PRESIDENT  
WH STRATEGIC INITIATIVES  
2003 JUL 16 AM 7:23

Mr Karl Rove  
Senior Advisor to the President  
The White House  
1600 Pennsylvania Ave NW  
Washington DC 20500

Dear Friend:

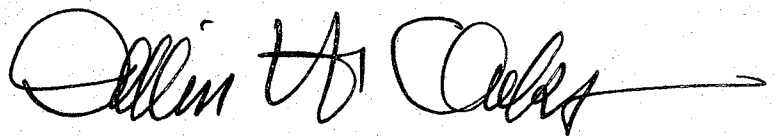
Our visit in your office last week was the highlight of my trip to Washington. Thank you for seeing us, and for your extraordinary warmth and candor.

It was a special privilege to get to know one whose work I have admired and appreciated, and who is, in the midst of all of this, a native son of Salt Lake City!

I am very grateful for the presidential cuff links you gave me, which will be a treasured possession always.

You and your associates (and especially President George W. Bush) are in our thoughts and prayers always.

Sincerely,



Dallin H. Oaks

DHO/mm

F: Karl Briefings  
536037

KARL ROVE

**MAGAZINE PUBLISHERS OF AMERICA**

Tuesday, July 15, 2003  
2:10 p.m. – 2:20 p.m.  
Room 474 “Indian Treaty Room”  
Eisenhower Executive Office Building

I. PURPOSE

To highlight the President’s economic and legislative priorities.

II. BACKGROUND

The Magazine Publishers of America is the premier trade association for the consumer magazine industry. Founded in 1919, the MPA represents more than 240 domestic publishing members, more than 80 international publishing members, and more than 100 service-providers to the industry. MPA works to promote the interests and ensure the economic health of magazines publishers.

On April 23<sup>rd</sup> the President signed into law the Postal Civil Service Retirement System Funding Reform ACT of 2003. The Administration and MPA worked together to help pass this reform which will help save them \$300 million per year in postal costs and guaranteeing stable postal rates until at least 2006.

MPA has also filed comments and presented oral testimony with the President’s Commission on the Postal Service, recommending several ways to better the nation’s postal system, emphasizing cost control, supporting universal service, advocating increased public-private partnerships, improving the collective bargaining process, and restraining rate increases. The Commission is scheduled to submit its report to the President by July 31, 2003.

III. PARTICIPANTS

MPA President & CEO, Nina Link, and 53 MPA members

IV. PRESS PLAN

Closed

V. SEQUENCE OF EVENTS

**NOTE:** You will provide brief remarks after Lezlee Westine.

2:05 p.m. You arrive in Room 450, and will be met by Nina Link and Mike Meece.

2:09 p.m. Nina Link introduces you.

2:10 p.m. You begin remarks.

2:20 p.m. You conclude remarks and depart.

*Other Administration officials attending the event include Lezlee Westine, Steve Friedman, Margaret Spellings, and Dan Bartlett.*

VI. REMARKS

Suggested talking points attached

VII. ATTACHMENTS

- Talking points
- List of participants
- MPA Washington Schedule

TALKING POINTS

- ACKNOWLEDGEMENTS
  - I want to thank Nina Link, President & CEO, Magazine Publishers of America for her introduction, and welcome everyone to the White House.
  
- CURRENT EVENTS UPDATE
  - Discuss issues the President is focused on at the moment.



**Magazine Publishers of America  
List of Attendees**

Ed An, Director of Domestic Policy, AOL Time Warner  
Terrence Adamson, Senior Vice President Law, Business & Government Affairs, National Geographic Society  
Cathie Black, President, Hearst Magazines  
Cynthia Braddon, Vice President of Washington Affairs, McGraw-Hill Companies  
Dan Brewster, President & CEO, Gruner & Jahr USA Publishing  
Debra Brown, Magazine Publishers of America  
Marie Clapper, President & CEO, Clapper Communications  
Cathryn Cranston, Publisher, Harvard Business Review  
Jim Cregan, Executive Vice President, Government Affairs, Magazine Publishers of America  
Rita Cohen, Magazine Publishers of America  
Cecilia Daly, Magazine Publishers of America  
Paul DeGiusti, Director of Government Affairs, McGraw-Hill  
Mary Dong, Director of Production & Distribution, The Economist  
Wayne Eadie, Magazine Publishers of America  
Ronni Faust, Magazine Publishers of America  
Catherine Frerichs, Magazine Publishers of America  
George Green, President & CEO, Hearst Magazines International  
John Griffin, President of Magazine Group, National Geographic Society  
Jerry Hadenfeldt, Director of Government Relations, Meredith Corporation  
Christie Hefner, Chairman & CEO, Playboy Enterprises, Inc.  
John Hughes, Senior Vice President, American Media, Inc.  
Mark Isakowitz, Fierce & Isakowitz  
Marlene Kahan, Magazine Publishers of America  
Jerry Kaplan, President of Magazine Group, Meredith Corporation  
Bill Kerr, Chairman & CEO, Meredith Corporation  
Jack Kliger, President & CEO, Hachette Filipacchi Magazines  
Mike Klingensmith, Executive Vice President, Time Inc.  
Mike Levy, Publisher, Texas Monthly  
Ed Lewis, Chairman & CEO, Essence Communications Partners  
Nina Link, President & CEO, Magazine Publishers of America  
John Lively, President & CEO, The Taunton Press  
John Loughlin, President, TV Guide Publishing Group  
Eric Massant, Director of Government & Industry Affairs, Reed Elsevier Inc.  
Mark Miller, Executive Vice President & General Manager, Hearst Magazines  
Bob Miller, President & CEO, Miller Publishing Group  
Ann Moore, Chairman & CEO, Time Inc.  
Garry Myers, CEO, Highlights for Children, Inc.  
Martha Nelson, Managing Editor, People Weekly (ASME)  
Chris Nolan, Magazine Publishers of America  
Ellen Oppenheim, Magazine Publishers of America  
Richard O'Rorke, Magazine Publishers of America  
Beth O'Rorke, COO, The Economist  
Michael Pashby, Magazine Publishers of America  
Glenn Rosenbloom, Senior Vice President & Group Publisher, Disney Publishing Worldwide

Rick Smith, Editor-in-Chief/Chairman, Newsweek  
Lauren Stanich, President/Publishing, Martha Stewart Living Omnimedia, Inc.  
Cyndi Stivers, President/Editor-in-Chief, Time Out New York  
John Fox Sullivan, President/Publisher, National Journal, Inc.  
Susan Ungaro, Editor-in-Chief, Family Circle

**Magazine Publishers of America  
Washington Events Schedule**

**Monday, July 14, 2003**

4:00 p.m. – 6:00 p.m.

Discussions with Sen. Bill Frist (R-TN), Sen. Hillary Clinton (D-NY), Rep. Roy Blunt (MO-7), Rep. John Dingell (MI-16), Rep. Steny Hoyer (MD-5),

*Phoenix Park Hotel, Washington, D.C.*

7:00 p.m. – 9:00 p.m.

Dinner with Senator Susan Collins (R-ME) and Senator Tom Carper (D-DE)

*Phoenix Park Hotel, Washington, D.C.*

**Tuesday, July 15, 2003**

8:30 a.m. – 12:00 p.m.

Magazine Publishers of America Board Meeting  
*National Geographic Society Headquarters*

12:00 p.m. – 1:30 p.m.

Discussion with Rep. Henry Waxman (CA-29) and Rep. John McHugh (NY-24)

*National Geographic Society Headquarters*

2:00 p.m. – 4:00 p.m.

White House Briefing with Senior Staff

*Room 474, Eisenhower Executive Office Building*

**Goergen, Barbara J.**

---

**From:** Ingols, Adam B.  
**Sent:** Monday, July 14, 2003 11:43 AM  
**To:** Bennett, Melissa S.; Mallea, Jose; Campbell, Anne E.; Goergen, Barbara J.; Cooper, Jean; Allgood, Lauren K.; Ritacco, Krista L.; Pfeifer, Sarah; Ingwell, Carmen M.; Smith, Marty P.; McQuade, Vickie A.; Kratovil, Lindley ; Mayfield, Jennifer H.  
**Cc:** Douglas, Penny G.; West, Christal R.  
**Subject:** Medicare Meeting

Attached is the list of invites for tomorrow's Medicare meeting with Members of Congress. The meeting is scheduled for 4:20pm -5:05pm in the Cabinet Room. Please let me know if anyone is unable to attend. Thanks

Sarah and Carmen, please let me know if you have any trouble with Secretary Thompson and Tom Scully attending the meeting. Thanks

**PARTICIPANT LIST**Vice President

Tommy Thompson, Secretary of the Department of Health and Human Services

House Members

Congressman Dennis Hastert (R, IL-14), Speaker of the House

Congressman Tom DeLay (R, TX-22), House Majority Leader

Congressman Bill Thomas (R, CA-22), Chairman, House Ways and Means Committee

Congressman Billy Tauzin (R, LA-03), Chairman, House Energy and Commerce Committee

Congressman Collin Peterson (D, MN-07)

Congressman Rodney Alexander (D, LA-05)

Senate Members

Senator Bill Frist (R, TN), Senate Majority Leader

Senator Charles Grassley (R, IA), Chairman, Senate Finance Committee

Senator Max Baucus (D, MT), Ranking Member, Senate Finance Committee

Senator John Kyl (R, AZ), Chairman, Senate Finance Subcommittee on Health Care

Senator John Breaux (D, LA), Ranking Member, Senate Finance Subcommittee on Social Security and Family Policy

White House Staff

Andrew Card, Chief of Staff

Harriet Miers, Deputy Chief of Staff for Policy

Karl Rove, Senior Advisor

David Hobbs, Assistant to the President for Legislative Affairs

Stephen Friedman, Assistant to the President for Economic Policy

Dan Bartlett, Director, Communications

Lewis Libby, Chief of Staff to the Vice President

Scott McClellan, Press Secretary

Candida Wolff, Assistant to the Vice President for Legislative Affairs

Ziad Ojakli, Principal Deputy Assistant to the President for Legislative Affairs

Eric Pelletier, Deputy Assistant to the President for Legislative Affairs

Daniel Keniry, Deputy Assistant to the President for Legislative Affairs  
Keith Hennessey, Deputy Assistant to the President for Economic Policy

Amy Jensen, Special Assistant to the President for Legislative Affairs  
Matthew Kirk, Special Assistant to the President for Legislative Affairs  
Doug Badger, Special Assistant to the President for Economic Policy

Agency Staff

Tom Scully, Administrator, Centers for Medicare and Medicaid Services

*no min. Yes  
7/15  
H. Adams*

**Ralston, Susan B.**

**From:** Howerton, Glenda [ghowerton@tri-city.org]  
**Sent:** Wednesday, May 21, 2003 6:31 PM  
**To:** Ralston, Susan B.  
**Subject:** RE: Message from Dr. Carl Herbster of Kansas City

I will be in Washington, D.C. again on Tuesday, July 15 and Wed. morning July 16. I could be available Monday, July 14 as well. My preference would be Tuesday, July 15.

Carl of KC

-----Original Message-----

**From:** Ralston, Susan B. [mailto:Susan\_B.\_Ralston@who.eop.gov]  
**Sent:** Monday, May 19, 2003 12:46 PM  
**To:** Howerton, Glenda  
**Subject:** FW: Message from Dr. Carl Herbster of Kansas City

When he's next in town, let me know at early as possible.

-----Original Message-----

**From:** Howerton, Glenda [mailto:ghowerton@tri-city.org]  
**Sent:** Monday, May 19, 2003 11:56 AM  
**To:** Rove, Karl C.  
**Subject:** Message from Dr. Carl Herbster of Kansas City

Dear Karl,

Just want to drop you a note and let you know how much I appreciate you and the President's staff at the White House. I am especially thankful for Tim Goeglein and all he does to keep us and the conservative movement informed and activitated. You are very fortunate to have him on your team. I enjoy talking with him on the conference call weekly and meeting with him periodically when I am in Washington, D.C. He is a great guy and a wonderful help to me and many others.

Next time I am in Washington, I would like to meet with you again. I know your schedule is hectic and I do not want to waste your time. However, I do have an idea to bounce off you concerning a conservative movement. I would also like to talk with you personally about some commitments I am making to the conservative cause and to the President. Let me know when you might be available and I will arrange my schedule to meet yours.

Thanks again for all you are doing on behalf of the President and the people of the United States. We pray for you often.

With great appreciation,  
 Carl of KC

# Withdrawal Marker

## The George W. Bush Library

FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Email	FW: Message from Dr. Carl Herbster of KC - To: Susan Ralston - From: Karl Rove	1	05/27/2003	P2; P6/b6;

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536037

Date: 7/1/03

To: Richard Russell

From: Strategic Initiatives Susan Kalston

     FYI x 62323

     Appropriate Action

X Direct Response

     Prepare Response For My Signature

     Per Our Conversation

     Let's Discuss

     Per Your Request

     Please Return

     Deadline

     Other

Comments: Can you please call  
Bill Timmons per Karl? let me  
know.



Susan-

Find out if DPC  
or NEC is handling  
FCC ~~and~~ ownership  
COP - think that it's  
NEC. *know*

**FAX**  
**TIMMONS AND COMPANY**  
**SUITE 400**  
**1875 EYE STREET, NW**  
**WASHINGTON, DC 20006**

PHONE: 202/331-1760

FAX: 202/822-9376

Number of pages (including cover page): *2*

Richard Russell  
in NEC

DATE: *26 JUNE 2003*

*base of  
the contact.*

TO: *KARL ROVE*

FROM: William E. Timmons

*SR*

*Karl, this is a mega issue of  
great importance. Who can I  
talk to about significance to  
the president?*

*Bill Timmons*

*Susan -  
TALK TO RICHARD  
RUSSELL & ASK IF HE'S  
WILLING TO MEET W/  
BILL - WHO IS VOCIFEROUS  
OPPOSITION OF FCC  
RULING.*

*W*

WILLIAM SAFIRE

# Big Media's Silence

NY TIMES  
6-26-03

WASHINGTON

Over the protests of 750,000 viewers and readers, three appointees to the Federal Communications Commission last month voted to permit the takeover of America's local press, television and radio by a handful of mega-corporations.

If allowed to stand, this surrender to media giantism would concentrate the power to decide what we read and see — in both entertainment and news — in the hands of an ever-shrinking establishment elite.

To the F.C.C.'s amazement, the Senate Commerce Committee said no. A bill put forward by Ted Stevens, Republican of Alaska, president pro tem of the Senate and defender of local control, would reinstate the limit of 35 percent of market penetration by any one company. A Democratic amendment reasserted the limitation on "cross-ownership" by stations and newspapers. The rollback bill, with bipartisan support, is likely to pass the full Senate this summer.

This first step toward stopping the takeover of both content and distribution of information was taken because enough of the audience got sore and made it an issue. I'm proud of the part played by The New York Times, which not only ran my diatribes but front-paged the illuminating coverage by Stephen Labaton, including his note that the Times Company was lobbying for cross-ownership.

No thanks go to the biggest media, where CBS's "60 Minutes," NBC's "Dateline" and ABC's "20/20" found the rip-off of the public interest by their parent companies too hot to handle. Most network newscasts dutifully covered the scandalous story as briefly and coolly as possible, failing to disclose how much it meant to their parent companies, which were lobbying furiously for gobble-up rights.

Unencumbered by such a conflict of interest, public television's liberal Bill Moyers inveighed for months against the power grab, and Consumers Union is on the job. The conservative Joe Scarborough blew the whistle on media giantism on cable's MSNBC, which included an interview with the New York Daily News publisher (and mini-mogul) Mort Zuckerman, outspoken foe of the conglomeration crowd.

Much of the credit for the public reaction goes to such right-wing outfits as the National Rifle Association, concerned about getting its voice squelched by homogenized media; by the Family Research Council; and by the Parents Television Council, whose Brent Bozell slammed the F.C.C. for "blatantly pandering to a few rich TV moguls" and "opening a Pandora's box of indecency and violence on the airwaves." (Rightie Grover Norquist is too close to Rupert Murdoch, but Phyllis Schlafly and Beverly LaHaye — where are you?)

The F.C.C. chairman, Michael Powell, mocked his opponents' efforts yesterday by saying they had used a wide variety of media "to get out their message that media consolidation doesn't allow them to get out their message." But our message is getting through to Congress only because his media consolidation has not yet taken effect to muffle debate.

Media moguls profess not to worry about the Senate's threatened rollback because they think they own Billy Tauzin, chairman of the relevant committee in the House. But Richard Burr, Republican of North Carolina,

---

## But the audience speaks.

---

has introduced a rollback bill similar to Stevens's in the Senate, and already has a majority of co-sponsors on Tauzin's committee.

An old G.O.P. hand tells me Tauzin has "no interest" in stopping media mergers anywhere, but "always leaves himself wiggle room if there's heat from home." No heat is coming from the White House, where Karl Rove has not awakened to this "sleepier issue."

Burr should be of considerable interest to the G.O.P., however. He will be the challenger to Senator John Edwards next year unless Edwards resigns to run for president. National exposure as the congressman who stopped the power grab would help Burr pick up a Senate seat for the G.O.P., central to Bush hopes for a successful second term.

That prospect should get White House attention. In the House, co-sponsorship by half the members gets Tom DeLay's attention, and the bill already has 146 of the 218, one-third Republican.

"There has to be a clear perception of public outrage," says Burr. And to move Bush and DeLay, that expression of snail mail and e-mail outrage must come from the right — from believers in strong local say about the means and content of communication, acting while there is still time. □



# United States Commission for the 536037 Preservation of America's Heritage Abroad

888 17<sup>th</sup> Street, N.W., Suite 1160  
Washington, DC 20006  
(202) 254-3824 phone (202) 254-3934 fax  
e-mail: [uscommission@heritageabroad.gov](mailto:uscommission@heritageabroad.gov)

~~F: Declined  
Events  
3/2/03~~

# Fax

<b>To:</b> Hon. Karl Rove	<b>From:</b> Sheila Leslie
<b>Fax:</b> 202-456-0191	<b>Pages:</b> 2 (including cover sheet)
<b>Phone:</b> 202-456-2369	<b>Date:</b> July 1, 2003
<b>Re:</b> Reception honor of Chairman Miller, at the <b>CC:</b> Polish Embassy, Tuesday, July 8 <sup>th</sup>	

Urgent     For Review     Please Comment     Please Reply

Please RSVP to the Commission office at 254-3824.

Thank you

*BB called to decline on 7/1/03 conflict w/ schedule*



*Washington, June 18, 2003*

*The Ambassador of the Republic of Poland*

*Mr. Przemyslaw Grudzinski*

*kindly requests the pleasure of your company  
to attend a reception in recognition of  
the NATO Parliamentary Assembly.*

*During the event*

*the Honorable Longin Pastusiak,*

*President of the Senate of the Republic of Poland*

*will present*

*Mr. Warren Miller,*

*Chairman of the United States Commission for the Preservation of  
America's Heritage Abroad*

*with the Commander Cross of the Order of Merit  
of the Republic of Poland*

*The reception will take place on Tuesday, July 8, 2003, at 7 p.m.*

*at the Embassy of the Republic of Poland,*

*2640 16<sup>th</sup> Street, NW Washington, DC*

*Business Attache*

*R.G.V.P.*

*202 - 2343800, ext. 2101*

*2111*

536007

Date: 7/2/03

To: Matt Schlapp & Brad Hester

From: Strategic Initiatives Susan

- FYI
- Appropriate Action
- Direct Response
- Prepare Response For My Signature
- Per Our Conversation
- Let's Discuss
- Per Your Request
- Please Return
- Deadline
- Other

Comments: What can we say to  
Blomfield?

## Rove, Karl C.

---

**From:** Mark Bloomfield [MBloomfield@ACCF.org]  
**Sent:** Monday, June 23, 2003 3:29 PM  
**To:** Rove, Karl C.  
**Subject:** Bulgaria



You're Human



Comrades.PDF (1 MB)

Karl,

Just got back from a great time in South Africa. (see attached WPost article). Contrary to most press reports, America is popular even in Zula land. I ran in American flag shorts and endured 11 hours of "Go, go U.S.A. chants" from the crowd.

Hope I haven't become a real pest on my U.S.-Bulgaria thing. I'm reminded to follow up with you after I got a call from the Bulgarian Finance Minister (from his cell phone to my cellphone) a few minutes ago. He is the youngest (37 years old) Finance Minister in the World, studied at MIT, and ran investment banking for Merrill Lynch before assuming his current position. I will be seeing him tonight and maybe tomorrow as well.

Since you've got zillions of things on your mind, see background below in earlier emails on my Bulgarian initiative. Would it be inappropriate to ask you to "stir things up" (esp. since I 'm not going to be bumping against any other American delegation going to Bulgaria as I mention in the email below) with the people you mentioned are looking at my proposal?

Thanks, my dear friend.

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**Subject:** Bulgaria

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Sorry to bug you again but hopefully this info is helpful.

As always, with great appreciation, respect and friendship,

Warm regards,

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> To: Amb James Pardew (E-mail)

> Subject: New ACCF Annual Report and catching up

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Do you Yahoo!?  
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sync to Outlook(TM).



**Goergen, Barbara J.**

---

**From:** Rove, Karl C.  
**Sent:** Monday, June 23, 2003 6:27 PM  
**To:** Goergen, Barbara J.  
**Subject:** FW: Bulgaria



You're Human Comrades.PDF (1 MB)

Bundle this email and all attachment and earlier stuff Susan received up and give to Susan to discuss. -----Original Message-----

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sync to Outlook(TM).

# The Washington Post

TUESDAY, JUNE 17, 2003



Comrades is the largest ultramarathon in the world, with almost 13,000 runners this year. Some years they run uphill, some years they run downhill, but you always have 12 hours to finish.

## 54 Miles in 12 Hours

### South Africa's Comrades Marathon Is Test of Endurance, Mutual Support

By DINA KRAFT  
Special to The Washington Post

**A** DURBAN, South Africa, June 16  
t the end, some of the runners were taken away on stretchers while others skipped, sang and kissed the ground. Some had hobbled or crawled toward the finish line, others leaned on fellow runners for support.

Fat beads of perspiration rolled down the face of Mohamed Vorajee, a 42-year-old mechanic from Ladysmith. His dark green tank top and shorts were soaked. He had finished a few seconds too late to receive a medal, but he could not stop smiling.

"I feel great," he said. "I've never been this far in my life."

Almost 13,000 competitors wound their way through 54 miles of steep hill country to cross the finish line today in South Africa's Comrades Marathon, the biggest ultramarathon and one of the most unusual sporting events in the world.

A South African institution, the race is run on alternate years uphill from the lush east coast city of Durban to the British colonial-style town of Pietermaritzburg. This



BY RAJESH JANTILAL FOR THE WASHINGTON POST

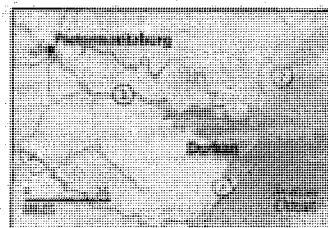
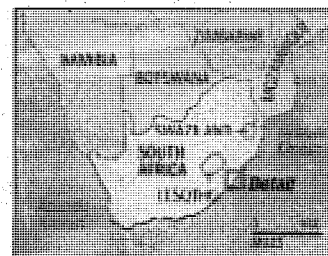
**Mark Bloomfield, 53, of Adams Morgan, one of the more than 320 foreign entrants, embraces wife Maxine after finishing race.**

year was a downhill run, beginning before the day's first light from the brick city hall of Pietermaritzburg. The sounds of "Shosholozza," a Zulu worker song translated as "Go Forward," launched the runners on their way.

See COMRADES, D2, Col. 3

### Long and Crowded Road

South Africa's Comrades Marathon is about 54 miles long, between Pietermaritzburg and Durban. More than 12,000 runners enter annually and about 9,000 finish in the allotted 12 hours.



BY GENE THORP—THE WASHINGTON POST

# Going a Long Way With Comrades

COMRADES, From D1

Thousands thronged the sidewalks and hilltops to cheer the runners on, especially in their final push toward the finish. The grueling race must be completed in 12 hours to get a finisher's medal—no excuses, no exceptions. Still, many runners return year after year. Those who have run 10 or more are awarded a special green number. For a handful, this year marked their 30th Comrades. One man ran his 42nd.

Thunderous peals of "Go! Go!" ushered the last man—who also was the oldest man competing—across the finish line. Zeb Luhabe, the 76-year-old retired policeman who had taken 10 races to finish before the cut-off, said he was "on top of the world." Right behind him a 24-year-old collapsed after missing it by one second.

South Africa has become known for "ultra" racing, a term for distances longer than the standard marathon, 26.2 miles. In addition to Comrades, which is in its 78th year, the country is host to the world's second-largest ultramarathon, a 35-mile run along the shoreline of Cape Town called Two Oceans, and long-distance canoeing, swimming and cycling events.

"The nation is psychologically drawn to extremes," said Bob Aldridge, editor of *Superunner*, one of South Africa's largest running magazines. "Anything harder and tougher, we like to do. It's part of still being part of a wild, tough continent."

The popularity of distance events can also be traced to the 1970s and 1980s, when South Africa, at the height of its political isolation under the apartheid government's policy of enforced racial separation, looked within for athletic inspiration.

The spirit of camaraderie for which the race was named helps keep people coming back. Everyone has a favorite story: the woman who misses the finish line by a few yards to help an injured friend; the blind runner whose guide drops out but who keeps running with the help of another runner; couples who marry minutes before the starting gun's blast.

Blanche Moila, one of South Africa's top long distance runners, says the race typifies *ubuntu*, the Zulu word for humanity. "You think of the other person's well-being . . . it's putting others' needs before yours."

Today's race began at 5:30 a.m., so in some of the early stretches the runners raced by moonlight. A pink sliver of sun eventually rose, exposing ribbons of mist curled into valleys dotted with thatch-roofed farm houses and acacia trees. As they ran, they passed the history of the country, hills soaked in the blood of battles fought alternately between the Zulu, the British and the Dutch settlers known as Boers.

More recently the fighting that took place led to a near civil war. Death squads of the Zulu nationalist Inkatha Freedom Party backed by the apartheid government attacked their rivals, members of the African National Congress, which is not the ruling party. Counterattacks followed. As the runners made their way through an area called the Land of 1,000 Hills, some remembered that in the early 1990s it was dubbed the Land of 1,000 Kills.

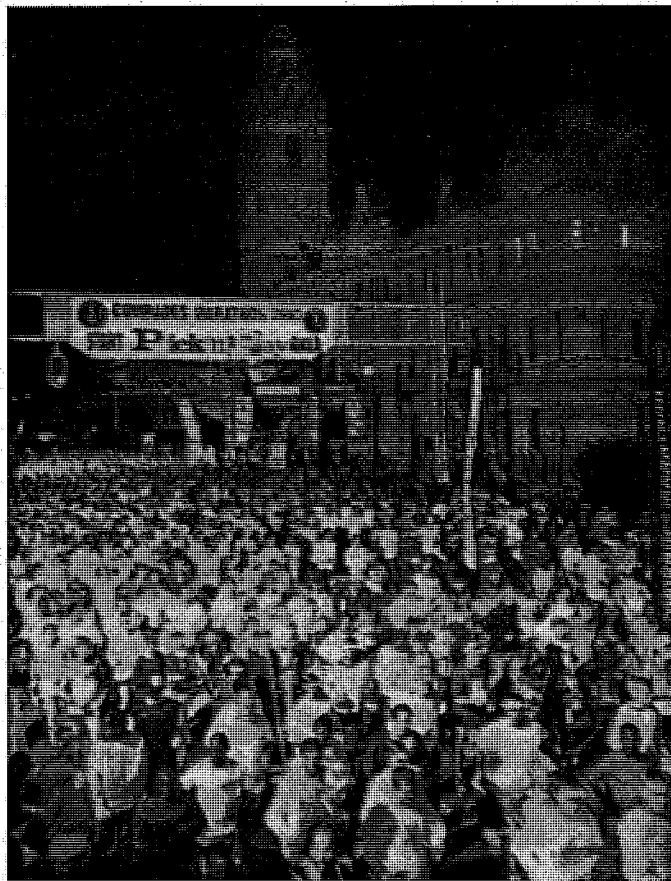
Running in a pair of American flag-patterned shorts was Mark Bloomfield, a 53-year-old business lobbyist from Adams Morgan. International participation in Comrades has grown since South Africa's first all-races election in 1994. This year's race had more than 320 runners from abroad, among them several from the Washington area.

"Running is sort of my freedom . . . there are no outside pressures on me," he said. "My world in Washington is the White House, Congress, journalists and my business sponsors. The running is a balance to that."

Bloomfield, tired but exhilarated as he crossed the finish line in 11:02:00, said he was buoyed by the crowd and his fellow runners.

Struggling up one of the hills he suddenly felt a hand clasped with his and a push forward. It was the runner next to him.

Running not far from Bloomfield was Paul Newton, 34, of Bethesda. Originally from South Africa, he said Comrades was always a challenge he



BY RAJESH JANTRAL FOR THE WASHINGTON POST

The sun isn't even up when the flood of runners crosses the starting line in Pietermaritzburg. They'll go through the hill country and end up in Durban.

wanted to meet. He trained through the snowy winter, running routes from Georgetown through Rock Creek Park. His friends were baffled.

"They all think I'm nuts," Newton said. Crazy or not, his training paid off, and he finished in 10:53:23.

The country's most celebrated sporting event has a long history.

It began in 1921, the brainchild of World War I veteran Vic Clapham. He had fought with the British in the savannah of East Africa and wanted to find the most fitting way to honor his fallen comrades. He sought an event that would recall not only the intense heat, thirst and physical demands endured in the war's long treks and fighting, but the friend-

ships and connections forged in battle.

His answer: a very long run.

Clapham was said to have been inspired by tales of a Zulu running between Pietermaritzburg and Durban each week delivering newspapers and mail in the mid-1800s. Word had it the Zulu prided himself on running the hills in 12 hours flat.

The first Comrades was run on dirt roads. Runners had to open and shut farm gates behind them and even cross a stream. There was none of today's refreshment stands with high energy drinks and peeled bananas. Runners stopped at farmhouses along the way for chunks of bread and jugs of water. A young



farmer won with a time of 8:59, the slowest winning time in the competition's history, but still a respectable result by today's standards.

Comrades' popularity soared during the time of political isolation. South Africa's athletes were banned from international competition and the country needed local sports heroes.

They found a hero in Bruce Fordyce, a handsome archaeology student who won nine consecutive times. In 1981 Fordyce, a mop of blond hair flowing behind him, won his first Comrades. His youth and can-do charisma captured the imagination of a nation, and television—relatively new to South Africa at the time—helped put both him and the race on the map.

Fordyce's politics also caused a stir. In the 1981 race he wore a black armband to protest the aligning of the race with Republic Day, the 20th anniversary of the apartheid government. Some spectators threw tomatoes, others booed and spat.

"We had unbelievable flak," he said.

An intelligence officer friend cautioned him to accept drinks along the route only from people he knew, warning of government plans to poison him.

Fordyce said he began running seriously in 1976, the same year of the bloody uprising by black students in the Soweto township, a turning point in the anti-apartheid struggle. He said he was depressed and "looking for something to do."

At 47, Fordyce says he now runs for the fun of it, even though that means walking some of the last hills on the course.

He also credits the spirit of camaraderie among the runners and the supporters who chant, wave and shout encouragement along the entire route. Farm workers cluster on the edges of sugar cane fields to wave. Children in wheelchairs line up along the roadside to cheer.

"Everybody helps each other," Fordyce said. "The spectators urge you on. It's a wonderful vibe."



Russia's Elena Nurgalevia wins women's race in 6 hours 7 minutes 46 seconds. Fusi Nhlapo was first man, in 5:28:52.

To qualify for this race, runners must have completed a race of marathon length or longer in a prescribed time. (For example, you have to run a marathon in less than five hours.) But nothing can prepare a runner for this. As miles are run, but dozens lie ahead, willpower kicks in.

"It's incredible how the mind takes you through ... it's much worse to stop than to carry on," Fordyce said.

Helen Lucre, who immigrated to South Africa from New Zealand, won the women's race from 1985 to 1987. She said she did not realize when she began training that the distance run in Comrades was unusual.

"Everybody ran Comrades. You did not know 90 kilometers [about 54 miles] was not normal. I did not know otherwise," she said, laughing. "Ignorance is bliss."

The legacy of Comrades was also a powerful pull.

"It was almost mythical before you run it. [People] would tell you about this race in the hills. There is so much history, so many legends," she said.

In a 1921 letter to the editor of a Pietermaritzburg newspaper urging people to support the race, founder Clapham noted the race was open to "Europeans of any sex or age"—no blacks, and later women were



Comrades contestants pass the halfway point in the ultramarathon. They have already run farther than they would in a regular, 26.2-mile marathon.

banned as well. It was not until 1975 that the race opened to all, becoming one of the first multiracial sporting events in South Africa.

Lucre recalled scenes of whites and blacks helping each other across the finish line, collapsing into each other's arms in exhaustion and exhilaration at a time when the two races rarely interacted.

"Sport has been an incredible bridge to show that regardless of race we could mix," Lucre said. "Running was one of the few outlets where race did not have to matter."

The diminutive cross-country runner Moila, 46, ran her third Comrades race. She was the first black woman in South Africa to receive national colors for a sporting event in 1983.

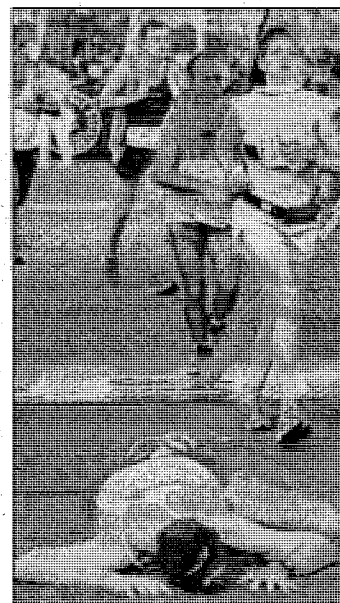
Bringing black women into the fold of running has not been easy here, she said.

"[Running] was frowned upon in my community," said Moila, who trains twice a day between shifts as a psychiatric nurse. "Sports was too much of a male thing to do and the main fear was that it would interfere with the reproductive system and you would not be able to have children."

Black men are now taking a leading role in the race, which was long the domain of white South Africans. Today's winner was 31-year-old Fusi

Nhlapo, recently laid off from his job at an iron and steel company, who finished in 5:28:52.

"If you want something you have to work hard for it," Nhlapo said. "You must have a dream."



A competitor collapses after crossing the finish line. The 78-year-old event has a history of runners helping each other.

## A Long-Running Obsession

While ultramarathoning is still outside the mainstream in most countries and statistics are often sketchy, it is universally agreed that Comrades is by far the world's largest ultramarathon, followed by Two Oceans, another South African race.

### World's Largest Ultramarathons in 2002 (according to USA Track & Field)

Race (City or Country)	Distance	2002 finishers
Comrades Marathon (Durban, South Africa)	about 54 miles	9,099
Two Oceans (Cape Town, South Africa)	34.8 miles	6,460
City to City (Johannesburg)	31 miles	1,625 in 2001*
IAU World Championships (site varies)	62.1 miles	1,331 in 2001*
Millau (Paris)	57.1 miles	1,316
River Schimanto (Japan)	52.1 miles	921 in 2001*
Del Passatore (Florence)	52.1 miles	914

\*Statistics for these races were not available for 2002.

South Africa is so ultra-obsessed that Comrades is the second-largest road race in the country. (A women's 10K is first.) In contrast, the largest U.S. ultra is more than 50 times smaller than the biggest U.S. race, and it doesn't crack the top 100 in field size.

### Largest U.S. Road Races in 2002

Top Five Races	Distance	Finishers
Peachtree Road Race (Atlanta)	6.2 miles	50,000 (estimate)
National Race for the Cure (D.C.)	3.1 miles	46,953
Lilac Bloomsday Run (Spokane, Wash.)	7.46 miles	45,795
Bolder Boulder (Boulder, Colo.)	6.2 miles	42,501
Race for the Cure (Denver)	3.1 miles	39,400 (estimate)

Largest U.S. ultra: JFK 50 (Boonsboro, Md.) 50 miles 862  
Sources: Ryan Llampa, USA Track & Field; Association of International Marathons and Road Races

April 16, 2003

TO: Karl Rove

FROM: Mark Bloomfield

RE: Special Representative of the President for 100<sup>th</sup> U.S.-Bulgarian Anniversary

I would appreciate your guidance and support for a special personal request. It is on a subject far from the issues we normally talk about –the President’s dividend proposal, which we strongly support; capital gains tax cuts, which you’ve tormented me about for years; and the death tax, which ultimately must be repealed.

I strongly recommend the appointment of a “Special Representative of President Bush for the 100<sup>th</sup> U.S.-Bulgarian Anniversary” to be celebrated in Sofia on September 19. In addition to representing the President at the September 19 event, the “Special Representative” could also be of assistance to Commerce Secretary Evans in promoting U.S. business investment in Bulgaria and in other endeavors. I respectfully would like to be considered for that position and believe I can make a unique contribution. (Believe it or not, I have been involved with Bulgaria professionally and personally for going on four decades)

Although we have a very able American Ambassador in Sofia with whom I have a good ongoing personal and professional relationship, the appointment of a “special representative of the President,” selected from the business community for this ceremonial event on September 19, could have long-term significant symbolic impact. Bulgaria was early on board for the “Coalition of the Willing.” The country could play an important role for the U.S. in the Balkans, NATO, EU and other global strategic concerns. Your folks at NEC, State and Commerce all know this. I believe I can make a unique contribution because of (1) my involvement in Bulgaria, and (2) the desire, especially now of both the U.S. and Bulgarian governments, for more attention to Bulgaria, especially from the American business community. My leadership at the ACCF, which has a very prominent profile in the Bulgarian business community, could be very helpful.

Bulgaria has been a passion of mine for a long time, stemming from when my father was an American diplomat in Sofia in the 1960s. (I have no pecuniary interests now or pending with the country) Last December at the request of several prominent Bulgarian business leaders, I helped start the Bulgarian Council for Capital Formation, of which I am now, on a pro bono basis, co-chairman. (All the other leadership is Bulgarian). The purpose of the BCCF, modeled after the American Council for Capital Formation, is to establish a business advocacy/think tank to support the macroeconomic changes needed for a mature Bulgarian free market economy. This effort has the support of the Bulgarian Prime Minister and Finance Minister, both of whom I have briefed, as well as the encouragement of the Ambassador there.

After the demise of Communism in November 1989 in Bulgaria, I was asked to handle the tax policy work for the well-known “Rahn Economic Transition Project” for

Bulgaria, which worked with the incumbent Bulgarian Prime Minister and the political opposition. I was an original founder and am now vice-chairman of the non-profit Bulgarian –American Society in Washington D.C. which is an umbrella group for interest in all aspects of Bulgaria life. I have served as Washington editor of SEGA, the “Time Magazine “ of Bulgaria; and at one time was chairman of Novecon Bulgaria, an American company exploring business opportunities there. I even ran the Bulgarian marathon to encourage better Bulgarian-American relations. When in Bulgaria, I am regularly interviewed on television, radio and in the media on American-Bulgarian relations and the development of the free market economy in the country. Since I returned to Bulgaria, now more than a decade ago, I have known all the Prime Ministers, Presidents, other political leaders, prominent businessmen, other opinion leaders and all U.S. ambassadors to Bulgaria and Bulgarian ambassadors to the U.S. Recently, a U.S. Under-Secretary of State joked that she has always considered me an “honorary Bulgarian.”

My personal involvement with Bulgaria began when my father served as an American diplomat at the U.S. Legation in Sofia, 1962-64. One of my mementos as a young boy is a “certificate of appreciation” from the U.S. Department of Commerce in connection with the first American exhibit in the then-Communist country. Brochures about America were to be distributed, but the Bulgarian KGB stole them. I found out where they had been taken and informed the U.S. Minister, who successfully insisted they be returned. Those brochures were glimpses of American life that were treasures for many Bulgarians under the totalitarian regime, which strictly curtailed any contact with the West.

Karl, you know all about me and more importantly about the ACCF. We have enthusiastically supported the Administration economic policy initiatives, particularly in tax policy and the approach to the Kyoto Protocol and, hopefully have helped. The ACCF and our affiliated public policy think tank are influential and credible players in the U.S. business community and in Washington D.C. economic policy circles. (See [www.accf.org](http://www.accf.org)). We recently incorporated the International Council for Capital Formation in Brussels to take the “capital formation story” to the EU (see [www.iccfglobal.org](http://www.iccfglobal.org)).

Thank you very much for your consideration, Karl. I have not discussed this idea of my interest with anyone at the White House, Commerce, or State (including our Ambassador)

Please find enclosed a current bio.



## MARK A. BLOOMFIELD

Mark A. Bloomfield is president of the American Council for Capital Formation and its economic policy think tank and a founding director of the recently incorporated International Council for Capital Formation based in Brussels. He also serves as co-chair of the Bulgarian Council for Capital Formation. These organizations are dedicated to encouraging economic growth through sound tax, environmental, and trade policies.

The influential *National Journal* picked the ACCF as one of only nine groups that count in the tax policy arena. "ABC World News" called Mark "a well-connected spokesman for American business in Washington. The BBC describes him as, "a clear, knowledgeable analyst of the economic scenery and global situation." *The Economist* magazine recognized him as a "lobbyist for lower taxes on capital." The *Wall Street Journal* twice profiled Mark in a front-page story—in 2001 on his "25-year quest" for lower taxes on saving and investment, and again in 1997 as "Mr. Capital Gains." Robert Novak, the nationally syndicated columnist and television commentator, observed:

*Mark Bloomfield is president of one of Washington's most influential economic policy think tanks. Well-schooled in the arts of both economics and politics, Bloomfield is one of the most influential figures operating behind the scenes in the Congress.*

Mark lectures, writes, and comments on politics and economics. He has appeared before committees of the U.S. Congress, corporate boards, and civic groups; been interviewed on all the major networks, including public affairs programs such as "NewsHour with Jim Lehrer" and "Larry King Live," and been quoted widely in the press. Mark is a periodic commentator on American politics and economics for BBC World Service. He is a co-editor or contributor to six books on tax and economic policy including: *The U.S. Savings Challenge: Policy Options for Productivity and Growth* and *The Consumption Tax: A Better Alternative*.

Mark is well known in the nation's capital for hosting monthly "Economic Policy Evenings" with a small group of members of Congress, prominent journalists, business leaders, and ambassadors to discuss timely economic policy issues. Senator Joe Lieberman calls these sessions "Washington's last salon."

Mark has run ultra marathons and marathons around the world: the "Two Ocean Ultra Marathon" from the Atlantic to Indian Oceans in South Africa, and the JFK 50 Miler ("America's Ultra Marathon"), including the "original marathon" in Athens and 15 marathons in Boston, New York, Chicago, Paris, London, Prague, Toronto, and the "Botswana Elephant Run." He is now preparing for the legendary "Comrades Ultra Marathon" in South Africa in June 2003.

Mark received a Juris Doctor from the University of Pennsylvania Law School, earned a Masters in Business Administration from the Wharton School, and graduated Phi Beta Kappa from Swarthmore College.

April 2003

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## The George W. Bush Library

FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Email	FW: Donaldson, etc. on Stock Options - To: Susan Ralston - From: Floyd Kvamme	2	06/05/2003	P5;

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**SERIES:**

Subject Files - FG006-27 (Office of Senior Advisor - Karl Rove)

**FOLDER TITLE:**

536037

**FRC ID:**

9711

**FOIA IDs and Segments:**

2018-0011-P

**OA Num.:**

10735

**NARA Num.:**

10793

**RESTRICTION CODES****Presidential Records Act - [44 U.S.C. 2204(a)]**

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- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
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PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

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**Records Not Subject to FOIA**

Court Sealed - The document is withheld under a court seal and is not subject to the Freedom of Information Act.

June 4, 2003

## **Stock Option Accounting – Ownership or Employee Compensation**

E. Floyd Kvamme

FASB, in its study of how to treat Employee Stock Options, has taken the position that these options **are** an expense. SEC Chairman Donaldson last weekend in a two-hour meeting in Silicon Valley is quoted as saying, "We've crossed the Rubicon, options are worth something and should be treated as an expense."

Subsequently, Mr. Donaldson and his Chief of Enforcement were not particularly open to talking about the ownership position but rather wanted to have input on "how to expense". This position mirrors that of FASB in that only valuation method is on the table for discussion. Donaldson did say that the method the accounting industry proposed for use in footnotes over the last several years, the Black-Scholes formula, is "off the table". This admission of the fallacy of using Black-Scholes for options accounting may be viewed by some as good news; I'm inclined to view it as an example of a rush-to-judgment that has misled readers of footnotes for almost ten years and an example of what could happen again if expensing is mandated.

### **Ownership**

The practice of using broad based option plans in Silicon Valley was driven by the desire of employees to be owners. Existing companies saw that if they didn't grant ownership opportunities to their employees, they would start their own company. From the start up phase, venture capitalists used ownership opportunity as a lure to build the team at the new company. VCs diluted their own holdings at every round of financing to ensure that there were enough shares in a pool to attract new talent into a company. As companies moved into the public market, shareholders continued to be asked to approve requests for share pools to be used to attract and maintain employees.

No one supporting the Ownership argument is suggesting that Options have no value. They have value just as the people to whom they are granted have value. But, the value of the person – the key asset in most technology companies – is not "accounted" for either, or placed on the balance sheet because we definitely haven't figured out how to do that. (More on this point later.) The value of the option to the shareholder is that an important asset (person) has been added to the company and that addition will, hopefully, increase the value of the company and, correspondingly, the share value for all shareholders.

For reporting purposes in the private stage, an investor's ownership percentage always assumed that the option pool was fully utilized. The accounting was simple; the option shares were simply added to the share count. Once public, shareholders were regularly asked to approve additional pools of shares to continue to attract and maintain employees. Fixed price options were granted at

the market price on the day of grant on the theory that the market was aware of the share count including approved option programs, thus dilution was in the market number. The owners were saying, "If you will join our company and make it more valuable, we will allow you to share in our investment's success."

Analogies to this sharing motivation exist in most of business – the "promise" of being made partner if you work hard and prove yourself or the "promise" of some profit sharing if you stay with the firm for a certain time and it achieves certain results.

At the time of exercise of an option, the accounting simply made an entry on the Cash line and the Paid In Capital line – just as happens when a new round of capital is raised except that in the case of Options, the share count already included the shares being exercised so the only real change is an increase in cash – the exercise price of the option.

### **Expensing**

If expensing is required, the P/L takes a charge. I'll not get into the issue of how to determine what the charge will be – as mentioned above that's the focus of FASB and the SEC. The other side of the entry is to add to Paid In Capital in the Equity section of the Balance Sheet. At the end of a year, Earnings are moved into Retained Earnings, also in the Equity section. The net result of Expensing is that the Equity section sees a shift from Earnings to Paid In Capital. The cash flow from operations is not changed. Scores of examples could be used; I'll only mention one company on whose board I sit to show how little sense this all makes. Power Integrations (POWI) last year had sales of about \$100M and showed good profits; further, they generated over \$15M in cash; the required Black-Scholes footnote showed them losing millions of dollars on these results. While many (now including Mr. Donaldson) are saying that Black-Scholes is not an appropriate tool, this reporting has been going on for years as required by FASB and is clearly misleading. If Power Integrations had chosen – as FASB suggested in 1993 – to use what is now their footnote reporting as their standard reporting, they would have accumulated massive deficits with their GAAP reporting while being handsomely cash flow positive.

Clearly, with many examples like POWI, anyone supporting expensing must call for an alternate valuation method so that the results are not as ridiculous as Black-Scholes results. The problem is that *any number* will simply add expense, increase Paid In Capital without having any impact on operations or the cash flow resulting from operations.

Further, in accounting for equity transactions, for example when a new round of financing or an IPO or secondary are raised, the entire transaction is required to be kept off the P/L – that's the rule and it's a good one. Paid In Capital means the total of the hard dollars that have been paid into a company – whether through the sale of securities or options and always has the cost of those transactions netted out so that hard numbers are used. These equity

transactions have never gone through the P/L; the net result of an option grant is either that nothing happens (the option is not exercised) or shares are sold. Thus, these are equity transactions.

Lastly, if expensing is mandated by an argument that says it is a true compensation expense, it is hard to see how that expense stays off the tax books. As a result, a company will be tempted to use an exaggerated valuation for its options so as to gain the tax benefit of so doing; I'm personally convinced that several of the companies that have opted to expense are doing so to gain this favorable tax advantage. If Black-Scholes had been used over the last ten years as suggested in 1993, corporate taxes from tech companies would have been multiple billions of dollars less even as cash flows were strong. The public would not approve of this treatment.

### **What to do**

Here are several suggestions on what steps I recommend:

1. Accept that traditional accounting using a P/L, balance sheet and cash flow statements has many issues when applied to tech companies. Our assets are our people, our intellectual property and know-how and our customer relationships – none of which are on the balance sheet or accounted for. Calculating a “book value” in a tech company is a joke; it is meaningless. Rather than putting another patch on the system by expensing ownership opportunities for our key assets but not valuing that asset (person), support legislation that says this whole area needs study and review – Dreier-Eshoo and Ensign-Boxer are a step in this direction.
2. Establish a study panel to recommend strong rules on shareholder involvement in approving stock option plans. At a minimum, in my view, all plans should be shareholder approved annually, no automatic green-up plans should be accepted, and plans should have a minimum vesting period and a maximum exercise period. Further, plans should be designed to encourage long-term holdings. This study should also seek to advise on the many types of option plans that are in use and seek to rationalize the treatment of the many forms of plans.
3. In the interim, give shareholders the best data possible on how to value their shares and remove the requirement for Black-Scholes treatment in footnotes. At a minimum, this means that if a person becomes a shareholder when a stock is selling at \$20, they should be presented information at each quarterly report as to how many shares will be used in calculating EPS (earnings per share) for the full range of outstanding options. This data will yield what most individual investors are relying on – the best measure of what the earnings must be for the share price to reach the target price of the investor. Dreier-Eshoo calls for such data presentations.

### **Why this is important**

Some may argue that the tech industry is making a "mountain out of this molehill". I fear that such talk is utterly uninformed.

Expense advocates must recognize that all valuation methods proposed to date are built on calculations of past stock performance. Using the past to predict the future is antithetical to the tech industry; we have always sought to change the future – sometimes with success, sometimes not; the past is not and never will be a good yardstick – thus, making impossible the search for the "holy grail" of an appropriate expense value.

Today, Asian competitors are attracting hundreds of Americans – American citizens – into their high tech startups by offering options at par value in an economy that has no capital gains tax – they are treating the options as equity, not a business expense. Suggestions that America should follow the IASB and rationalize its accounting to "world standards" is really proposing "European" standards. Our competitor is not in Europe; s/he is in Asia.

Lastly, over the years, I have had the pleasure of entertaining delegations from virtually every corner of the globe studying the "Silicon Valley Miracle". That miracle is tied to Ownership. Owning a "piece of the rock" is Silicon Valley; book entries that confuse the investor as to the operating results of a company and lower the attraction of tech investing will deflate the risk level people are willing to take to our great expense.

536037

THE WHITE HOUSE  
WASHINGTON

Date: 7/1/03

To: *Teri Troy*

From: Strategic Initiatives

*Karl Rove*

FYI

Appropriate Action

Direct Response

Prepare Response For My Signature

Per Our Conversation

Let's Discuss

Per Your Request

Please Return

Deadline

Other

Comments: \_\_\_\_\_

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Barri

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June 4, 2003, Wednesday

~~re: Teni Troy~~

**SECTION:** OPINION; Pg. 7

**LENGTH:** 1158 words

**HEADLINE:** Rise up, Republicans

**BYLINE:** Michael Freund

**HIGHLIGHT:**

Avocacy of the **road map** will undermine support necessary for Bush's reelection. The writer served as deputy-director of Communications & Policy Planning under prime minister Binyamin Netanyahu.

**BODY:**

Nearly 20 years ago, while some of my teenage friends were out doing the kinds of things our grandparents' generation would have thought morally reprehensible, I was busy doing something they might have considered even worse - handing out flyers on behalf of a Republican presidential candidate.

I still remember the sneers, and the occasional smiles, that my nascent political activity evoked as I stood there in New York's Grand Central Station, a kippa perched on my head, trying to persuade rush-hour commuters to cast their ballots for Ronald Reagan.

At the time, the very idea of a "young Jewish Republican" was still something of an oddity, as most Jews continued to lean leftwards, carrying on what for many was the equivalent of an inviolable family tradition, namely to vote Democratic come thick or thin.

In the intervening years, of course, that has started to change, as increasing numbers of American Jews have begun to find a comfortable ideological home in the GOP, a place where they can park their political identities while still remaining true to their belief in the need for a safe and secure Israel. But whatever gains the Republican have made among American Jews in recent years are now in danger of being erased, and the person to blame for this may be none other than George W. Bush himself.

Though Bush received just 19 percent of the Jewish vote in 2000, the aftermath of 9/11 and the president's tough stand against Yasser Arafat enthralled numerous American Jews, leading to what many perceived to be a potentially galvanizing shift among the Children of Abraham away from the Democrats and towards the party of Lincoln.

Indeed, a May 8 Boston Globe article noted that "after a year and a half of strong statements from President Bush about fighting terrorism, along with his equally strong backing of Prime Minister Ariel Sharon of Israel, some prominent analysts in both parties say they detect a shift in the Jewish community" toward the Republicans.



But that shift is now at risk as Bush heads to Aqaba today for a summit meeting with Prime Minister Ariel Sharon and Palestinian leader Abu Mazen, where he will press for implementation of the road map leading to the establishment of a Palestinian state.

By compelling Israel to make concessions inimical to its security, Bush is gambling not only with the future of the Land of Israel but also with that of the Republican party itself. His pursuit of the road map, and his insistence that Israel turn over territory to its enemies, has rightly evoked a growing sense of anger and frustration among many pro-Israel American Jews and Christians.

After all, how can Bush possibly justify coercing Israel to appease Arab terror at the same time that America is using force against it? And why should the Palestinian regime be rewarded with statehood when the Taliban and Saddam Hussein were punished with removal from power? With next year's presidential election campaign just around the corner, Bush is playing with political fire, making it virtually impossible for American Jews who support Israel to fully embrace him and his party.

Consider, for example, the letter sent to the White House last week by the official Israeli branch of Republicans Abroad, in which the group warned the president that pressing ahead with the road map "will only serve to alienate American Jews and the Christian Right."

In the letter, the group's leaders noted that "We are aware of increasing numbers of American citizens, both here in Israel and in the United States, who are now considering abandoning the Republican party as a result of your Administration's pursuit of the 'Road Map.'"

AND IF you think the Jewish vote doesn't matter anymore in American politics, then think again.

According to a 2001 study by the Jerusalem Center for Public Affairs, 55% to 60% of American Jews consistently vote Democratic, 10% are loyal Republicans, while 30% to 35% "can be lured by any party depending on its position." Sprinkled among key battleground states in the campaign, that large group in the middle "adds up to a swing vote representing up to 2% of the electorate in states like Florida and Pennsylvania," says the study.

In either case, "a shift of that amount would have changed the result in that state and, in all probability, singlehandedly crowned the American president. Put another way, the Jewish swing vote, mobilized behind a particular candidate, would have given him the 2000 election."

Thus the Jewish vote remains key and is sure to play an important role in next year's presidential election campaign.

But the political risk to Bush may be even greater than just the loss of Jewish votes, for his strong-arm tactics against Israel have also started to arouse the ire of a key component of his core constituency, the Christian Right.

Just last Thursday, Bush received a political warning shot across his bow from Christian televangelist Pat Robertson, the founder of the Christian Coalition and a former Republican presidential candidate.

Speaking on the Christian Broadcasting Network, Robertson declared, "The president of the United States is imperiling the nation of Israel. Not only is he going against the clear mandate of the Bible, which is very important, but he's also setting up a situation where Israel will no longer have secure borders."

He even suggested that Bush's insistence on establishing a Palestinian state "will be the beginning of the end of the state of Israel as we know it." Those are pretty strong words, the kind of words that could cost Bush and his fellow Republicans a lot of votes next year if they aren't careful.

Sure, Bush's approval ratings may still be riding high after the recent war in Iraq, but as the memory of the victory fades and a lethargic economic recovery sets in, if at all, those numbers will begin to slide, and the president knows it.

Hence, as unlikely as it may seem right now, the outcome of next year's presidential race is far from being a foregone conclusion.

It is therefore imperative that Republicans - Christian and Jew alike - speak up now, loudly and unequivocally, against the road map.

Not just because it endangers the future of Israel, although that should be reason enough, but also because it threatens to undermine the principled stand which the party has taken in the global war on terror, in the process needlessly driving away countless numbers of sympathetic Jewish and Christian voters alike.

There is simply no good moral, political, or ideological reason for Bush to be twisting Israel's arm, and he needs to understand that he will pay a price at the ballot box if he does.

Republicans who care about Israel, then, need to rise up and send the president a clear and unambiguous message: If you choose Palestine, then come November 2004, we will not hesitate to choose someone else in your stead.

**GRAPHIC:** Photo: President Bush saying hello at Sharm el-Sheik. Is he also saying good-bye to Jewish and Christian support? (Credit: Ap)

**LOAD-DATE:** June 4, 2003

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Subject Files - FG006-27 (Office of Senior Advisor - Karl Rove)

**FOLDER TITLE:**

536037

**FRC ID:**

9711

**OA Num.:**

10735

**NARA Num.:**

10793

**FOIA IDs and Segments:**

2018-0011-P

**RESTRICTION CODES**

Presidential Records Act - [44 U.S.C. 2204(a)]

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**Records Not Subject to FOIA**

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Date: 7/1/03

To: Keith Hennessey

From: **Strategic Initiatives**

Karl Rove

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Appropriate Action

Direct Response

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Email	Further Comments on the Travelocity - Drug Purchasing System - Newt - To: Ronald Bachman, et al. - From: Newt [Gingrich]	2	06/15/2003	P5; P6/b6;

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- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Records Not Subject to FOIA

Court Sealed - The document is withheld under a court seal and is not subject to the Freedom of Information Act.

To Keith -  
Assume you saw  
this.

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**Cover Story: House and Senate Make Progress on Medicare Drug Bills**

Congress made more progress this week toward enactment of a Medicare drug benefit bill. Legislation won the approval of the two House committees with jurisdiction over the government health insurance program for the elderly. The Senate, meantime, began debating its version of Medicare drug benefit legislation.

The full House and Senate will debate and likely approve their versions of the \$400-billion, 10-year legislation by the end of next week and then begin trying to reconcile the differences between the two bills when they return from their Fourth of July recess.

The House legislation goes further than key Democrats such as Sen. Edward Kennedy (D-Mass.) would like in relying on private insurers to provide the drug benefit. That could still be a potential obstacle to passage. However, we think the odds favor compromise and enactment before Congress adjourns this fall.

As the legislation stands now, we believe enactment would be positive for generic drug makers and rural hospitals, potentially positive in the short-term for brand-name drug makers, health plans and pharmacy benefit managers and probably negative for

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pharmacies, home respiratory care companies and other providers or manufacturers of durable medical equipment.

Here's our side-by-side comparison of the House and Senate bills, and our thoughts on how providers of health care services and products would be affected.

Issue	Senate Version	House Version	WRG Analysis
<b>Medicare Advantage Structure</b>	Beginning in 2006, would create a new "Medicare Advantage" program that would include regional preferred provider organizations (PPOs) and Medicare HMOs. The Medicare Advantage plans would provide a benefit package that would include medical care and prescription drugs. PPO plans would bid on a national or regional basis. CMS would choose three PPOs in each region. Offers disease management services, chronic care and quality improvement programs. Plans would share risk with the federal government.	Structure similar to the Senate. Private insurers would offer a drug benefit that is essentially the same whether a senior enrolls in a managed care plan or remains in traditional fee-for-service.  Seniors would have the same options available in the House plan: traditional fee-for-service with a private drug insurance add-on, Medicare HMOs and PPOs.	There is consensus among Republicans on the structure and the White House has dropped its insistence that seniors be given a better drug benefit if they join a managed care plan. The decision to choose only 3 PPOs per region increases the pressure to bid lower.
<b>Traditional Fee for Service Structure</b>	Private plans would compete to offer a drug-only insurance product that would be an add-on to traditional Medicare. The value of the plan would be equal to the drug component of the new Medicare Advantage plans. Seniors could receive additional prescription coverage from employers and state programs.	Nearly identical to the Senate plan.	The question remains who will offer the drug-only insurance plans. Lawmakers envision pharmacy benefit managers (PBMs), we believe a PBM/insurer hybrid is more likely. This is a risky product and there may not be many willing to play in the space.

Issue	Senate Version	House Version	WRG Analysis
<b>Fall Back</b>	If no private plans are available in a region, Medicare would offer its own plan that would be administered by a private insurer, but all risk would fall to Medicare.	The Health and Human Services (HHS) Department would be allowed to pick-up as much as 99% of the risk in order to get plans to move into rural areas. Legislation also would increase the minimum size of a region a plan can bid on to minimize the areas potentially uncovered by a private plan.	This is still an area of contention. Democrats would like a stronger Medicare presence in the fall-back. Too much of a move towards Medicare would likely bring opposition from the Pharmaceutical Research and Manufacturers of America (PhRMA) and Republicans.
<b>Benefit and Income Testing</b>	\$35 a month premium. \$275 deductible. 50% co-pay from \$276 to \$4,500 in total spending. Senior pays all cost between \$4,500 and \$5,800 in total spending. Government pays 90% of costs above \$5,800. Deductible and size of the "benefit hole" may still change on the Senate floor. The bill does not include any means testing.	Similar structure, though amounts vary. \$35 a month premium, \$250 deductible. Medicare would pay 80% of the costs up to \$2,000. After that, a senior would pay all the costs up to \$3,500 in out-of-pocket costs after which Medicare would pay 100% of the cost. The catastrophic benefit would be income tested, meaning seniors with higher incomes, \$60,000 for an individual or \$120,000 for a couple, would have a higher catastrophic limit. The most a senior would pay before catastrophic coverage starts would be \$12,000 for individuals with incomes of \$200,000 or more.	Senate has voted for income testing before but this could be an issue on which AARP takes a stand. Still likely to survive in final bill. Means testing catastrophic benefit probably has little impact on Rx sales since higher income seniors are unlikely to go without drugs.  House bill is more generous for the average senior. According to the Confessional Budget Office (CBO), the average senior has about \$2,500 in drug costs per year. Under the Senate plan, that senior would pay 72% of the cost for the first \$2,500 while under the House plan the senior would pay about 60% of the cost.



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Issue	Senate Version	House Version	WRG Analysis
<b>Low Income Seniors</b>	Provides assistance on a sliding scale up to 160% of the federal poverty level (FPL).	Subsidies up to 150% of FPL. Beneficiaries would pay a \$2 co-pay for a generic drug and \$5 for a brand name drug.	This is the cohort that is likely to see the greatest increase in utilization. According to a March/April 2000 <i>Health Affairs</i> study, there are more than 4 million seniors with incomes below 150% of the FPL who do not have any insurance, including Medicaid. According to CBO, Medicare beneficiaries without drug coverage have seven, or 22%, fewer prescriptions filled on average than elderly people with medicine benefits. Beneficiaries with drug benefits filled an average of 32 prescriptions in 1999 (the latest year for which figures are available), compared to 25 filled for senior citizens without insurance.
<b>Drug Card</b>	Interim step for the first two years. Cards would be offered by PBMs or insurers. Medicare would provide a \$600 yearly subsidy for low-income seniors.	Similar.	The drug card is a likely an interim step. PBMs support the measure because it would allow them to increase utilization of mail order pharmacies. Conversely, retail pharmacies oppose the measure for the same reason.
<b>Dual Eligibles</b>	Leaves responsibility to the state Medicaid programs.	Federal government would pick up the bill for drugs for the dual eligible population.	House plan likely to be included in final measure due to pressure from governors.
<b>Employer Subsidies</b>	Employers would be subsidized to continue retiree drug coverage. Payments would be 64.3% of the average premiums.	Employers would be subsidized 28% of drug spending over the \$250 deductible for beneficiaries that remain in employer-sponsored plans. The employer subsidies would end after \$5,000 in total beneficiary spending.	Final version likely to include some employer subsidies. According to CBO about 37% of seniors currently enrolled in an employer-sponsored plan would have their employer plan terminated under the Senate plan.

Issue	Senate Version	House Version	WRG Analysis
<b>Managed Care Plans</b>	Plans would bid and Medicare would pay plans according to a "benchmark" that is based on 100% of fee-for-service spending. Unlike the current system, plan risk would be limited for drugs and Medicare would reinsure plans for drug risk. <b>No increase in Medicare + Choice payments for the 2004-2005 interim period.</b> Medicare PPOs would have risk corridors for drug spending for 2006 and 2007. Medicare would pay 50% of the cost of drugs between 105% and 110% of the premium and 10% of the cost above 110%.	House plan could be more positive for managed care plans. The benchmark rate is likely to be higher because it may include spending such as medical education not included in the Senate plan. Annual increases would also be higher under the House plan. Bill calls for an increase in payments for 2004 and 2005. Rate increase in 2004 for most counties under the plan would be 3.7% (compared to 2% in current law). Increase in 2005 unknown but also likely to be higher than 2%.	The House plan is likely to survive conference. It has support from the White House and is likely to be scored at a minimal cost.
<b>Formularies and Cost Containment Measures</b>	Plans would be allowed to use formularies, tiered co-pays and other private sector cost containment measures.	Same.	

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Issue	Senate Version	House Version	WRG Analysis
<b>Drug Payments to Providers</b>	Freezes average wholesale prices (AWP) at April 1, 2003 level and reduces payments from 95% of AWP to 85% of AWP. Instructs Medicare to look for "widely available market price" for drugs and substitute for AWP. If resulting decrease is greater than 15% then AWP would be reduced by 15% a year until the new price is reached. Physician fees would be increased to offset some of the reduction in AWP. Adds an administrative fee for home infusion drugs.	Uses "stock replacement" model beginning in 2005 for oncology drugs (and 2006 for other drugs). Specialty pharmacies would bid by HCPCs code to deliver a drug to a physician or outpatient facility. Medicare would choose a reference price and certify specialty pharmacies as Medicare eligible, meaning they can deliver the drug for the reference price. Exempts hemophilia, radiopharmaceuticals and drugs used in conjunction with end-stage renal disease from the stock replacement changes. For 2004 the plan instructs Medicare to lower prices as they see fit but exempts only radiopharmaceuticals from the interim changes.	Stock replacement model takes away the physicians' financial incentive completely and makes the specialty pharmacy the Medicare contractor. Bidding by HCPCs code gives incentive to use generics. Stock replacement model likely to be in the final bill over objections of oncologists. Even with increased fees to doctors and new administrative fees for other services this measure could still save as much as \$8 billion over 10 years. Interim step is likely to reduce drug prices at a variable rate, meaning the cuts will be greatest where the mark-ups are the highest. That would be negative for <b>Lincare, Apria and U.S. Oncology.</b>
<b>Rural Hospitals</b>	Lowers wage index, increases DSH payments and equalizes the standardized amounts. Total increase is probably between \$15 billion and \$20 billion over 10 years. Amendment in the Senate Finance committee moved the start date for the increases to FY2005.	Many of the same rural provisions. Most start in FY2004.	Rural provisions are likely to be in the final version of the bill. Start date remains uncertain due to funding constraints. If equalization of standardized amount is moved to FY2005 rural hospitals may actually see a decline in Medicare rates beginning Oct. 1. That's because under a temporary provision passed last year, rural hospital standardized rates are equalized from April 1, 2003 through Sept. 30, 2003 then are scheduled to revert back to their original rural rate, a 1.6% decrease. Rural hospital companies include <b>Health Management Associates, Lifepoint, Province Healthcare and Community Health Systems.</b>

Issue	Senate Version	House Version	WRG Analysis
<b>Puerto Rico Hospitals</b>	Medicare inpatient payments to hospitals in Puerto Rico would increase for five years starting in the fiscal year that begins in October 2004. Medicare would pay Puerto Rico hospitals at 100 percent of the national standardized rate, instead of the current blend of 50 percent of the local rates and 50 percent of the national standardized amount.	Increases the blend from 50/50 federal/local to 75/25 federal local over a three year phase in.	Some version of the pay increase is likely to survive. Would be positive for <b>Universal Health Services</b> , which owns three hospitals in Puerto Rico. UHS owns and operates more than 30 acute-care hospitals.
<b>Orthotics and Prosthetics</b>	Seven year freeze on durable medical equipment (DME). Custom orthotics and prosthetics would be exempt from the freeze.	Competitive bidding for DME including oxygen. Custom orthotics and prosthetics would be exempt from the freeze.	Exempting custom orthotics and prosthetics means the impact on <b>Hanger Orthopedic Group</b> could be minimal.
<b>Dialysis</b>	Increases payments temporarily by 1.6% for 2005 and 2006. Moves to a bundled composite rate. Leaves Epogen out of the bundle and paid at the current rate. New composite rate would be increased at 5 basis points a year beginning in 2005.	Increases the current composite rate by 1.6% in 2004. Rumored increase in the Medicare secondary payer timeframe from 30 months to 36 months was not included in the bill.	The separately billable drugs, excluding EPO would be moved into the composite rate at current AWP rates so that the change is budget neutral. A payment increase is likely but start date is an open question. Pay increase would be positive for <b>Davita, Fresenius Medical, Renal Care Group</b> and <b>Gambro AB</b> .
<b>Acute Care Hospitals</b>	No provisions.	Annual increase equal to market basket less 40 basis points for 2004-2006.	House provision is worst-case scenario and likely outcome. Nevertheless, 40 basis points is a historically low decrease in the annual update and should be viewed as positive for hospital companies.

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Issue	Senate Version	House Version	WRG Analysis
<b>Skilled Nursing Facilities (SNFs)</b>	No provisions.	No reduction in the annual payment increase.	House decision not to seek a reduction in the rate of growth is a surprise and good news for nursing home companies including <b>Beverly Enterprises, ManorCare, Kindred, Genesis Health Ventures</b> and the REIT <b>Ventas</b> , which now appear likely to get a more than 6% increase in Medicare rates beginning October 1.
<b>Ambulatory Surgery Centers (ASCs)</b>	No provisions.	Would set annual increase at CPI less 2 percentage points.	Neither bill includes a provision to reduce ASC payments down to the HOPD rates as recommended by the Medicare Payment Advisory Commission (MedPAC). That provision may still appear as an amendment, however.
<b>Specialty Hospitals</b>	An amendment by Sen. John Breaux (D-La.) would close the "whole hospital" exception to the physician self-referral law meaning physicians would no longer be able to refer patients to specialty hospitals in which they have an ownership interest. Provision is likely to be clarified to grandfather in all current specialty hospitals and those under construction, though the exact rules are unclear.	Calls for a report on specialty hospitals.	Inclusion of grandfathering clause would be a significant victory for specialty hospitals. There is opposition to the Breaux amendment in the House and the final outcome is unclear. Overall, the likely outcome should be viewed as more positive for specialty cardiac hospital operator <b>MedCath</b> than the scenario envisioned a few weeks ago.
<b>Functional Equivalency</b>	Prohibits CMS from implementing functional equivalency in the future but does not appear to reverse the CMS ruling that found <b>Amgen's Aranesp</b> to be functionally equivalent to <b>Johnson &amp; Johnson's Procrit</b> .	Allows CMS to use functional equivalence in the future but only through a detailed rulemaking process. Does not reverse the Aranesp/Procrit decision.	Amgen appears to stand little chance of getting Congress to overturn CMS's decision. Amgen continues to lobby CMS to change the dosing crosswalk between the two drugs and may have some success.

Issue	Senate Version	House Version	WRG Analysis
<b>Therapy Caps</b>	No provision.	Would delay implementation of the therapy caps until 2004.	Delay of implementation would be positive for SNFs and rehab companies.
<b>Long-Term Acute Care Hospitals (LTCHs)</b>	No provision.	No provision.	Both bills would be neutral for <b>Select Medical</b> and <b>Kindred</b> , which avoid feared Medicare payment reductions.
<b>Hospice</b>	No provision.	No provision.	Both bills would be neutral for <b>VistaCare</b> and <b>Odyssey Healthcare</b> which avoid feared Medicare payment reductions.
<b>Disease Management</b>	Includes a demonstration project to promote disease management.	Requires PPOs to offer disease management services.	Increased use of disease management potentially positive for disease management firms including <b>American Healthways</b> .

Source: Senate Finance Committee. House Medicare documents.

\* \* \*

– by *Eric Weissenstein/Paul Heldman/Brenda Mallory*  
 WRG Health Care Team

**Economy:**

**The Debate Within the Fed**

*Greg Valliere, June 20*

Oh, to be a fly on the wall at the June 24-25 Fed meeting! With the economy apparently at a turning point, with deflation fears continuing, with "non-traditional" options clearly on the table, what will the central bankers do?

They'll probably cut rates by a quarter point, issue an upbeat statement about the future of the economy and hope that they have finished their work for this cycle. Former Fed Gov. Lyle Gramley thinks Chairman Alan Greenspan isn't comfortable with a 50 basis point move, in part because of the potential impact on the money market business.

Greenspan undoubtedly realizes that the Fed's last move in a cycle often appears -- in retrospect -- to be unnecessary. But he and his colleagues have hinted so broadly that another rate cut is coming that failure to move could disappoint the markets, which is the last thing they want.

So the Fed appears poised to move one last time, but we believe the larger story is that the central bankers may leave rates unchanged until 2004 -- perhaps well into 2004 -- while making an important upward adjustment in their implicit inflation target.

**Electricity: FERC Schedules Action on Contracts, Refunds**

*Christine Tezak, June 20 Bulletin Summary*

The Federal Energy Regulatory Commission (FERC) continues to move forward on the long-term contract review and on the modifications to the global refund proceedings in California (covering the Oct. 2, 2000-June 30, 2001 period) for the open meeting on June 25, 2003.

On the bilateral contracts, which have been protested by buyers (**Puget Sound Energy**, the PacifiCorp subsidiary of **Scottish Power**, **Sierra Pacific** and the California Department of Water Resources), the FERC suggested at its open meeting on March 26 that the preferences of the three seated commissioners would lead to orders that would set the Puget Sound docket for settlement before an administrative law judge orders to uphold the contracts in the other three proceedings.

Oral arguments have been held before the commission on all four of the dockets listed above. We do not believe that those proceedings changed the inclinations indicated by the three commissioners — Chairman Pat Wood III and Commissioner Nora Mead Brownell to uphold, Commissioner William Massey to modify — **and that we are likely to see a 2-1 split vote to uphold the contracts.**

If we get a decision at the meeting next week, this is better than our expectation that these proceedings could lag through the summer.

We do anticipate that if the contracts are upheld by the commission, the buyers will petition for rehearing, be denied and then seek recourse in the federal appellate courts. However, we believe that there is a high likelihood that the appellate courts could side with FERC and eventually uphold its decision, whether it is in favor of the sellers or buyers.

On the refund proceedings, the FERC has indicated it plans to issue an order next week. On March 26, the FERC decided that it would modify the gas prices used in calculating the refunds for the period Oct. 2, 2000 to June 30, 2001. This entailed filings and a technical conference where sellers had the opportunity to submit natural gas cost data in order to make sure that natural gas costs were properly covered.

California has complained that it doesn't like the cost numbers for natural gas submitted by the power sellers. According to participants in the technical conference, we believe that there may be a good chance that the recalculated refund numbers may result in refunds lower than the \$3.3 billion "back of the envelope" calculation suggested by the FERC external affairs office in March. An order next week may be a denial of California's protests and a direction to the California Independent System Operator to

run the refund simulation based on the cost numbers provided since the open meeting on March 26, 2003.

FERC indicated that it plans to have the new refund numbers available by late summer. Movement forward on this docket now would make achieving that timeline more likely.

**Energy/  
Electricity:**

**Senate's Energy Bill Slides Further Into Summer**

*Christine Tezak, June 16 Bulletin Summary*

With a unanimous consent vote to end discussion on the energy bill until after the July 4 recess, the Senate ended its efforts to move energy legislation forward last week. While Energy and Natural Resources Committee Chairman Sen. Pete Dominici (R-N.M.) remained upbeat and talked of getting another week of dedicated floor time when Congress returns that he expects would be enough to get a bill passed, **we do believe that getting this bill into conference with the House measure (that passed in April) is unlikely before September.** While we do not think that this delay dooms the bill, we do believe that the odds of it ultimately failing to emerge from the legislative process increase the longer it is subject to debate in the Senate.

This bulletin also updates status of Section 29 and Section 45 credits. Bottom line: we expect these to be in a bill, should one get to the president.

**Energy/  
Electricity:**

**White House Sends Democrat Nominee for FERC to Congress**

*Christine Tezak, June 18 Bulletin Summary*

The White House finally sent a nominee for the Democratic slot at the Federal Energy Regulatory Commission (FERC) to Congress yesterday. The Bush Administration named Suedeen Kelly to the balance of former Chairman Curt Hébert's term expiring in June 2004. The nominations of Kelly and Joe Kelliher, still at the Department of Energy after being initially nominated almost two years ago, have been "linked" by Democratic senators seeking to keep the five-member FERC from getting a three-to-one majority with a vacant seat. That goal, however, may not be realized if current Commissioner Bill Massey is not renominated during recess (his term expires this June 30), and Kelly and Kelliher are, subject to Senate confirmation at a later date. In any event, the whole issue should be resolved in the next few weeks.



**Agribusiness: Beef Exporters Facing a July 1 Deadline over Japanese Market**

*Mark McMinimy, June 19 Bulletin Summary*

Officials in Japan, the largest foreign market for U.S. beef, are demanding that as of July 1 all U.S. exports of beef be certified as having originated from cattle that were born and bred in the United States. Industry sources say U.S. exporters probably cannot meet this deadline and are hoping Japan will be flexible.

Unless a compromise solution is found, U.S. beef processors and exporters, such as **Tyson Foods** and **Smithfield Foods** could lose – at least temporarily – a market valued at \$900 million last year. And it is conceivable that other significant foreign markets, like South Korea, might follow Japan's lead.

**Pharmaceuticals: Generic Drug Legislation Likely to Become Law**

*Paul Heldman, June 20 Bulletin Summary*

We now think that the odds favor enactment of generic drug legislation as part of the final Medicare drug benefit package after the Senate voted 94-1 yesterday to attach it to the Medicare bill. This is modestly positive for generic drugmakers **Barr Laboratories Inc.**, **Teva**, **Andrx**, **Ivax**, **Mylan**, **Watson** and **Dr. Reddy's**.

With the strong Senate vote, House Republicans and Democrats are negotiating a possible generic drug amendment to the House Medicare bill. While the House could still be an obstacle to passage, we believe House Republican lawmakers will have a hard time opposing generic drug legislation after yesterday's Senate vote, signs of acceptance of the legislation from some brand-name drugmakers and efforts by the bill's drafters to satisfy Bush Administration concerns about the proposal.

We still think the Medicare drug benefit will have a far greater impact in generating new business for generic drugmakers than the generic drug legislation. The generic drug legislation, sponsored by Senate Health Committee Chairman Judd Gregg (R-N.H.) and Democratic Sen. Charles Schumer (D-N.Y.), builds on a final regulation introduced by the Bush Administration last week to reduce legal barriers to bringing generic drugs to market.

**Pharmaceuticals: Pixantrone Potential Appears Paltry**

*Greg Frykman, M.D., June 18 Bulletin Summary*

With **Cell Therapeutics'** merger with **Novuspharma** announced June 17, we believe there are several facets of Novuspharma's new anthracycline, pixantrone, that investors should be aware of in evaluating its prospects both at the FDA and commercially.

**Our view is that pixantrone will face a small market in its desired indication (high-grade non-Hodgkin's lymphoma), will not see much off-label use in what is a crowded field of similar compounds, and may have difficulty demonstrating the one safety advantage it could have - lower cardiac toxicity.**

Considering the many members of the anthracycline drug class in which it resides, pixantrone is unlikely to gain much traction in an already competitive space whether the setting is for palliative care, such as in prostate cancer, or one in which a survival advantage has been demonstrated, as in breast cancer.

Additionally, a number of similar drugs have gone off patent and their generic use is being increasingly incentivized by payors including the Medicare and Medicaid programs. **We remain concerned that pixantrone, as a new member of an existing class comprised of many other similar drugs, would have a difficult time establishing much market share.**

### **Broadcast/Cable: FCC Ownership Rules Should Survive Legislative Challenge**

*Paul Glenchur, June 20 Bulletin Summary*

Yesterday, a Senate Committee backed legislation to undo recent deregulatory changes in the FCC broadcast ownership rules. The Committee vote was bipartisan with all but one Democrat on the Committee backing the proposal and about half of the Committee Republicans going along for the ride. Despite the Committee vote, however, actual passage and enactment of the legislation remains unlikely. Stiff opposition in the House and uncertain prospects in the full Senate suggest major obstacles remain. Also, the administration supports the FCC's deregulatory action and we question whether Republican leaders would push the legislation against White House resistance. The FCC appropriations bill, however, could be another legislative vehicle worth monitoring in the ongoing battle over media ownership.

### **Telecom: FCC Focuses on Public Safety Spectrum Improvements**

*Paul Glenchur, June 17 Bulletin Summary*

The Federal Communications Commission (FCC) is hard at work on a plan to address public safety interference in the 800 MHz spectrum band. Concerns about disrupted communications among first responders in the case of disasters or terrorist attacks have made resolving this issue a priority. The Commission is weighing the details of a **Nextel** plan that would realign the 800 MHz band and provide 10 MHz of contiguous spectrum in the 1.9 GHz range as compensation for lower range spectrum allocated to public safety users. The plan is facing stiff opposition, however, and we expect the debate over Nextel's plan and possible alternatives to heat up in the months ahead. At this point, we think Nextel stands a good chance of getting a contiguous block of spectrum in the 800 MHz range, a positive development for the company as it could improve operations and

allow cost-effective shifts in the company's transmission technology. The effort to obtain 1.9 GHz spectrum as part of the plan appears much less likely to prevail.

**Financial  
Services:**

**Assessing the Potential for OFHEO's Move to Treasury**

*Katherine Scheeler, June 17 Bulletin Summary*

After a week of tumult, investors seem to have found some breathing room on **Freddie Mac** and **Fannie Mae**. We believe that, absent unexpected findings of criminal activity on the part of Freddie Mac, the worst may be over, and the time to sort out the regulatory fallout has begun.

According to sources, the government sponsored housing enterprises (GSEs) intend to begin negotiations to move their safety and soundness regulator - the embattled Office of Federal Housing Enterprise Oversight (OFHEO) - from the Department of Housing and Urban Development (HUD) to the Treasury Department.

While there could be risk for the GSEs in amending their charter through the legislative process, which a move to Treasury would necessitate, we believe the GSEs would require guarantees from the administration to minimize that risk. The most likely scenario is a series of conversations between Treasury and the GSEs led by Fannie Mae with some buy-in by essential Senators (e.g.; Sens. Richard Shelby (R - Ala. ), Paul Sarbanes (D - Md. ), Kit Bond (R - Mo. )) and Congressmen (e.g.; Reps. Michael Oxley (R - Ohio), Barney Frank (D - Mass.), David Dreier (R - Calif.), and Tom Delay (R - Texas)). We believe that the legislators would prefer to attach the negotiated provisions as a rider to the VA-HUD appropriations legislation, since using regular legislative order would be an unwieldy process with much opportunity for mischief by GSE detractors. The VA-HUD bill is expected to be completed soon after the July 4<sup>th</sup> recess.

We continue to believe that a regulatory move to Treasury could resolve the perennial questions about regulator credibility and lift the cloud of regulatory uncertainty that has remained stalled over the GSEs and their stock prices. In particular, we feel that a move to Treasury would strengthen the GSEs by reaffirming by statute the relationship of the GSEs to the government and by providing regulatory "running room" for the foreseeable future. Tangibly, it may also provide comfort regarding derivatives use as Treasury has more experience in this area and is likely to quell critics' complaints about inadequate oversight. We believe that an agreement to move to Treasury would take off the table any changes in the capital standards, registration of debt or mortgage backed securities as well as pre-approval for new products but could involve a quid pro quo exchange of the Treasury line of credit for access to the Federal Reserve's discount window.

**Homeland  
Defense:**

**The Myth of Homeland Security Spending – A FY04 Analysis**

*Erik Olbeter, June 16 Bulletin Summary*

In FY03 to date, federal homeland security funds have been spent largely on personnel - not technology products. Although personnel is likely to be the largest component of FY04 spending on detection systems, select technology vendors are likely to see more monies. President Bush's budget proposal may call for less than a one percent increase in federal homeland security spending, but within the budget, two areas are likely to see significant funding growth: *explosive detection systems* from companies like **L-3 Communications, OSI Systems and Smith Group**; and *biometrics credentialing* from firms such as **ActivCard and Maximus**. Firms such as **Drexler Technology and Identix** are also in the running, although we believe they face more challenges than the others. It's also important to note that once again the budget directs a significant portion of overall spending to state and local governments. Our analysis shows that only a small portion of the total is likely to be spent on technology vendor wares and that it is difficult to determine a common investment theme.

**Asbestos:**

**Day One of Asbestos Markup Produces Little Movement**

*Katherine Scheeler, June 20 Bulletin Summary*

The Senate Judiciary Committee's asbestos legislation markup made little progress yesterday. Approximately 65 amendments have been circulated by six Democrats and two Republicans, of which 25 are amendments sponsored by Judiciary Committee Chairman Sen. Orrin Hatch (R-Utah) and Sen. Patrick Leahy (D-Vt.) covering issues like collateral sources and a ban on asbestos. We believe it is very likely that the committee will face continued difficulties with maintaining a quorum necessary to proceed with votes on amendments, given the tightness of senators' schedules, which may dog Hatch's efforts to make progress on the bill in markup.

According to Judiciary Committee staff, Hatch does not have the votes to pass the current version of the legislation out of committee, since Sen. Charles Grassley (R-Iowa) reportedly objects to the provisions creating an Asbestos Court and Sen. Arlen Specter (R-Pa.) has expressed skepticism about the medical criteria. The committee is set to resume consideration of the bill Tuesday, June 24, though it is possible that progress may be made over the weekend. Although difficulty in reaching consensus over such controversial legislation is to be expected, we are somewhat surprised by Hatch's strategy. Still, we continue to believe that enactment is possible, given the intensity of effort so far by interested parties.

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## Regulation Analyst Certification

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## White House Study Reveals Tort System's Harm To America's Workers And Consumers

Contact: John Schachter  
(202) 872-1260

Release Date: 04/29/2002

### *Individuals bear brunt of \$180 billion cost through higher prices, lower wages, report finds*

Washington, DC - At a Business Roundtable (BRT) meeting today, the Chairman of the President's Council of Economic Advisors released a study that sheds new light on who pays the cost of excessive litigation in the United States. According to the study, up to \$136 billion in annual tort costs are "economically excessive," and American workers, consumers and investors bear the burden of an expensive and inefficient liability system through higher prices, lower wages, and decreased returns to investment, as well as lower levels of innovation.

"This important study adds credence to calls for wide-ranging changes to America's civil justice system," said BRT President John J. Castellani. "The extent of the tort tax illustrates why a substantial majority of Americans believe the current liability system needs major reform."

The study, released by Dr. Glenn Hubbard, predicts that the total cost of the tort system in the future will likely be greater than the \$180 billion estimated in 2000. "The trends are ominous," Castellani added. "Litigation costs are rising along every dimension. In some states, class action lawsuits have increased 1,000 percent over the past 10 years." The BRT is currently urging Congress to pass class action reform legislation that closes the legal loopholes that have made state court systems choice locations of frivolous suits.

Other noteworthy findings of the study, entitled "*Who Pays for Tort Liability Claims? An Economic Analysis of the U.S. Tort Liability System*," include:

- The U.S. civil liability system is the most expensive in the world, more than double the average cost of other industrialized nations.
- Studies are likely to substantially underestimate the economic cost of the U.S. tort system by as much as \$50 billion due to distortions in production and consumption decisions.
- The \$136 billion excessive cost of the U.S. tort system would be equivalent to a 2 percent tax on consumption, a 3 percent tax on wages, or a 5 percent tax on capital income.
- Only 20 percent of direct tort costs actually go to claimants for economic damages, such as lost wages or medical expenses.
- 58 percent of the total annual cost of tort is due to administrative expenses and legal fees.

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*The Business Roundtable is an association of chief executive officers of leading corporations with a combined workforce of more than 10 million employees in the United States and \$3.5 trillion in revenues. The chief executives are committed to advocating public policies that foster vigorous economic growth and a dynamic global economy.*

# **Who Pays for Tort Liability Claims? An Economic Analysis of the U.S. Tort Liability System**

Council of Economic Advisers  
April 2002

## **Executive Summary**

With conservatively estimated annual direct costs of \$180 billion, or 1.8 percent of GDP, the United States tort system is the most expensive in the world, more than double the average cost of other industrialized nations. Whereas an efficient tort system has a potentially important role to play in ensuring that firms have proper incentives to produce safe products, poorly designed policies can mistakenly impose excessive costs on society through forgone production of public and private goods and services. To the extent that tort claims are economically excessive, they act like a tax on individuals and firms. This paper pursues this analogy between inefficient tort litigation and taxes, and examines the question of "who pays" for excessive tort costs. It finds that the cost of excessive tort may be quite substantial, with intermediate estimates equivalent to a 2 percent tax on consumption, a 3 percent tax on wages, or a 5 percent tax on capital income. As with any tax, the economic burden of the "tort tax" is ultimately borne by individuals through higher prices, reduced wages, or decreased investment returns.



## Introduction

With estimated annual direct costs of nearly \$180 billion,<sup>1</sup> or 1.8 percent of GDP, the U.S. tort liability system is the most expensive in the world, more than double the average cost of other industrialized nations that have been studied.<sup>2</sup> This cost has grown steadily over time, up from only 1.3 percent of GDP in 1970, and only 0.6 percent in 1950. The current cost amounts to nearly \$650 for every citizen of the United States, and is one reason that many commentators have called for reform of the tort liability system. The cost is especially troubling because only 20 percent of these dollars actually go to claimants for economic damages, such as lost wages or medical expenses.

Defenders of the status quo argue that the existing system protects consumers by making firms responsible for damages caused by their products and services.<sup>3</sup> Indeed, the underlying notion that firms are induced to recognize the full social cost of their products is one economic rationale for an *efficient* tort system.<sup>4</sup> That is, just as firms must pay compensation to employees and suppliers as part of the cost of producing output, ideally tort liability forces the firm to consider the potential for damage that the firm's products may cause. In this sense, it is analogous to "making polluters pay."

However, poorly designed policies can mistakenly make polluters pay too much and impose excessive costs on society through forgone production of public and private

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<sup>1</sup> Direct costs include awards for economic and non-economic damages, administration, claimants' attorney fees and the costs of defense.

<sup>2</sup> Tillinghast-Towers Perrin, "U.S. Tort Costs: 2000, Trends and Findings on the Costs of the U.S. Tort System," February 2002.

<sup>3</sup> Throughout this paper, we use the term "firm" to refer to any producer of goods and services.

<sup>4</sup> Another economic argument sometimes used to support tort liability is that the right to sue provides consumers with "insurance" in the event of an accident. For a discussion of the limitations of this view, see Paul Rubin, *Tort Reform by Contract*, Washington, D.C.: The AEI Press, 1993. For purposes of this paper, it should be noted that regardless of the rationale for the system, the cost is still borne by individual consumers, workers, or investors.

goods and services. Tort law alters firm behavior in a socially desirable manner if tort liability claims are optimal. If claims are excessive and fail to provide proper incentives, then these claims are a drain on resources that can deter the production of desired goods and services and reduce economic output. The United States bears the burden of an expensive and inefficient liability system through higher prices, lower wages, and decreased returns to investment, as well as lower levels of innovation.

The similarity between inefficient tort litigation and taxes suggests that the economic costs of the tort liability system may be better understood by pursuing the analogy between the expected costs arising from the tort system and taxes on firms. As with a tax, it is possible to examine the question of who bears the incidence of – that is, who pays for – excessive tort costs. An important lesson in the economics of taxation is that *people* pay taxes; firms are legal entities that can bear no real burden. Put differently, the burden of any tax depends not on who writes the check (the legal liability), which may be the firm, but rather on the market outcomes that shift the cost to workers, consumers or owners of capital.

### **What Are the Role and Limits of Liability Laws in a Market Economy?**

The production and sale of nearly every economic good or service entails a degree of risk, however small, that the product may cause unintended harm. Children can be injured playing with toys, patients may have adverse reactions to medications or medical procedures, and workers may fall off ladders or be injured by machinery. Because consumers often have less than perfect information about these risks and are generally unable to insure against them, the government plays a potentially important role in promoting health and safety.

Many policy tools are available to address such risks, including a reliance on market forces, contracts, direct regulation, social insurance, and the legal liability system. Each approach has its relative strengths and weaknesses, and reliance on any

single one may not be desirable.<sup>5</sup> In the United States, the tort system of legal liability is sometimes viewed as contributing to overall social objectives by ensuring that firms consider more fully the health and safety aspects of their products.

A guiding insight is that competition in private markets for goods and services pushes firms to produce the kinds of goods that consumers prefer using the most efficient combination of labor, capital and other inputs. If consumers and firms are already faced with incentives to weigh the social costs and benefits of their respective consumption and production decisions, the burden of government policy is to preserve economic efficiency by avoiding intervention.

For some transactions, however, it may be infeasible to account fully for all of the relevant benefits and costs. A consumer purchasing a new car, for example, may have neither the technical expertise nor the information necessary to fully evaluate the risk of injury posed by a particular design feature. It could also be costly to obtain complete information on every key aspect. Alternatively, a patient purchasing a medical procedure, for example, may be unlikely to fully understand the complex risks, costs and benefits of that procedure relative to others. Such a patient must turn to a physician who serves as a "learned intermediary," though there remains the problem that the patient may also not be able to judge the skill of the physician from whom the procedure is "purchased." In such a case, the ability of the individual to pursue a liability lawsuit in the event of an improper treatment, for example, provides an additional incentive for the physician to follow good medical practice. Indeed, from a broad social perspective, this may be the least costly way to proceed – less costly than trying to educate every consumer fully. In a textbook example, recognition of the expected costs from the liability system causes the provider to undertake the extra effort or care that

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<sup>5</sup> For broader discussion of the role of each of these approaches, see W. Kip Viscusi, "Toward a Diminished Role for Tort Liability: Social Insurance, Government Regulation, and Contemporary Risks to Health and Safety," *Yale Journal on Regulation*, Winter 1989.

matches the customer's desire to avoid the risk of harm. This process is what economists refer to as "internalizing externalities." In other words, the liability system makes persons who injure others aware of their actions, and provides incentives for them to act appropriately.

Central to this view, however, is the notion that the exposure of firms to potential tort liability costs provides proper incentives. In the specific context of punitive damages, Professor W. Kip Viscusi of Harvard University makes the point that "the linchpin of any law and economics argument in favor of punitive damages is that these awards alter incentives."<sup>6</sup> In his research on corporate decisions regarding environmental and safety torts, Viscusi evaluates the effect of punitive damages "by examining the risk performance in the four states that do not permit punitive damages as compared with other states that do." He finds that "this detailed effort to detect a deterrent effect yielded no evidence of any safety incentive role. This lack of evidence is consistent with the proposition that punitive damages are random." If punitive damages are essentially random, then they will not provide proper incentives for risk mitigation. Instead, they will operate purely as a "tax" on firms -- a cost with no corresponding benefit.

Some scholars disagree with Viscusi's conclusion. For example, Professor David Luban of Georgetown University argues that one should consider the "retributive aims of punishment" as well as the deterrent aims.<sup>7</sup> However, tort liability only achieves a goal of retribution if the economic burden of the punishment is borne by the responsible party, which may not be the case if the costs are ultimately passed through to investors, workers or consumers, or if punitive damages are essentially random, as Viscusi argues. Professor Theodore Eisenberg of Cornell Law School and several co-authors take an alternate view, claiming that tort liability is largely predictable and is

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<sup>6</sup> W. Kip Viscusi, "Why There is No Defense of Punitive Damages," *Georgetown Law Journal*, November 1998.

<sup>7</sup> David Luban, "A Flawed Case Against Punitive Damages," *Georgetown Law Journal*, November 1998.

therefore capable of providing proper incentives to firms.<sup>8</sup> However, while both authors question Viscusi's findings, neither provides direct empirical evidence to indicate that punitive damages actually have a deterrent effect. In fact, the empirical evidence that Eisenberg and co-authors do offer is consistent with the possibility that punitive damages are awarded on a random basis, as noted by Professor A. Mitchell Polinsky of Stanford University.<sup>9</sup>

Other research has examined the effect of expected tort liability costs on innovation and investments in safety. At lower levels of expected liability costs, Viscusi and Professor Michael Moore of Duke University<sup>10</sup> find that firms have incentives to invest in product safety research in an effort to reduce liability costs while still bringing a particular product to market. At higher levels of expected liability costs, however, firms will choose to forgo innovation or to withhold a product from the market, resulting in a net negative effect of expected liability costs on innovation. Based on their estimates, Viscusi and Moore identify many industry groups for which high liability costs exert a net negative effect on innovation.

Industry-specific studies by other authors have generally supported the results of Viscusi and Moore, documenting negative effects of liability on innovation in many areas, such as general aviation, chemicals, pharmaceuticals, and medical practice. The evidence of direct linkages between liability and safety in industry-specific analyses has been weak. Other factors, such as regulation and the fear of bad publicity, may provide stronger incentives to improve safety features than does legal liability, though liability

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<sup>8</sup> Theodore Eisenberg, John Goerdt, Brian Ostrom, David Rottman, and Martin Wells, "The Predictability of Punitive Damages," *The Journal of Legal Studies*, June 1997.

<sup>9</sup> A. Mitchell Polinsky, "Are Punitive Damages Really Insignificant, Predictable, and Rational? A Comment on Eisenberg, et al.," *The Journal of Legal Studies*, June 1997.

<sup>10</sup> W. Kip Viscusi and Michael Moore, "Product Liability, Research and Development, and Innovation," *Journal of Political Economy*, 1993.

may play an indirect role by encouraging the spread of safety-related information and by bringing potential hazards to the attention of regulators<sup>11</sup>.

Reconciling these alternative views is beyond the scope of this paper. Instead, recognizing the controversy that exists about the incentive effects of tort liability in general, and punitive damages in particular, this paper will consider several scenarios. For our most cautious estimates of the size of the "litigation tax," we make the very strong assumption that both economic (e.g., loss of wages, medical expenses) and non-economic (e.g., pain and suffering, loss of consortium, punitive) damages are currently set at an optimal level. We then consider an intermediate case that treats non-economic damages as essentially random and therefore part of the litigation tax. Finally, we consider the case in which all of the costs of the U.S. tort system are treated as economically excessive, which would result if both economic and non-economic damages were largely random and failed to provide proper incentives.

### **What Are the Direct Costs of the U.S. Tort Liability System?**

In the year 2000, according to a study by Tillinghast-Towers Perrin, the U.S. tort system cost \$179 billion. This includes \$128 billion of "insured" costs derived from financial data for the U.S. insurance industry. These data "are considered highly reliable in that they are subject to audit and reviewed by state regulatory agencies."<sup>12</sup> The costs include benefits paid to third parties or their attorneys, claim handling, legal defense costs and insurance company administrative costs. Tillinghast estimates that \$30 billion in costs is paid by firms that insure themselves. Finally, they estimate that an additional \$21 billion is due to medical malpractice. We will make use of these Tillinghast estimates for illustrative purposes in this paper, although the main conceptual

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<sup>11</sup> Peter Huber and Robert Litan, eds., *The Liability Maze: The Impact of Liability Law on Safety and Innovation*, Washington, D.C.: The Brookings Institution, 1991.

<sup>12</sup> Tillinghast-Towers Perrin, "U.S. Tort Costs: 2000, Trends and Findings on the Costs of the U.S. Tort System," February 2002, page 8.

contribution of this paper – that excessive tort claims act as a tax paid by individuals – would hold with equal force with any alternative measure of direct costs.

The estimate of nearly \$180 billion in direct costs of the U.S. tort system is likely to understate substantially the actual costs of the tort system for several reasons. First, the \$180 billion estimate pre-dates September 11. The terrorist attacks have increased the uncertainty surrounding legal liability claims. Insurance companies, uncertain how to assess new liability risks, are raising premiums and capping or denying coverage. As such, the cost of the tort system in the future will likely be even greater than the year 2000 estimates employed herein. Second, this estimate ignores the many economic distortions that arise as a result of individuals and firms trying to avoid lawsuits. These costs, which will be discussed in more detail below, can include distortions to labor markets (e.g., doctors deciding not to practice certain specialties or in particular communities for fear of being sued), the practice of “defensive medicine,” or the decision by manufacturers to keep products off the market.<sup>13</sup> Third, this estimate also ignores the potential deleterious effect of excessive tort claims on innovation. In product areas where litigation is frequent and costly, the prospect of high liability claims may be enough to ward off any potential new entrants.

Lacking a more comprehensive estimate of total costs, however, we will use the \$180 billion as an initial conservative estimate of total tort costs. An even more difficult issue is deciding how much of this \$180 billion is economically “excessive.” There is no easy or widely accepted empirical answer to this question. To the extent that awards are largely “random” and fail to provide incentives to firms, most, or even all, of the tort expenses are excessive. Alternatively, to the extent that damages awarded to claimants are a good proxy for the actual damages caused, the fraction of tort costs that

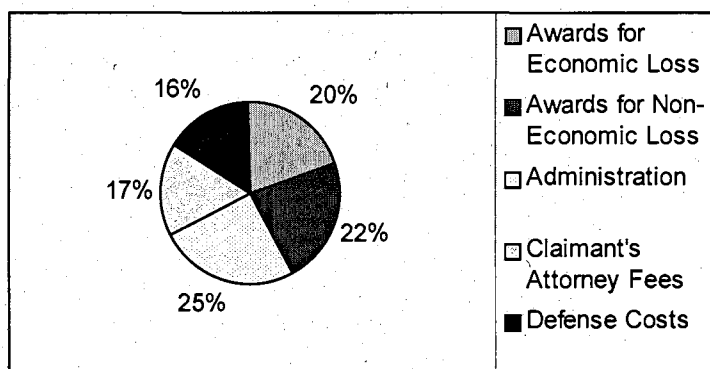
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<sup>13</sup> Some anecdotal evidence of these costs can be found in Michael Freedman’s “The Tort Mess,” *Forbes.com*, May 13, 2002.

go to claimants to compensate for damages, plus reasonable “transactions costs,” could be loosely viewed as the “right” level, and costs above this amount as being excessive.

To pursue this line of reasoning, recall that more than half of the total annual cost of tort is due to administrative expenses and legal fees. As observed, “viewed as a mechanism for compensating victims for their economic losses, the tort system is extremely inefficient, returning only 20 cents of the tort cost dollar for that purpose.”<sup>14</sup> This share of total tort costs that go to direct compensation for victims is lower than in the past. In the late 1980s and early 1990s, economic damages accounted for 22-25 percent of total tort system costs.<sup>15</sup>

**Figure 1: Distribution of Liability Costs**



Source: Tillinghast-Towers Perrin, February 2002.

As indicated in Figure 1, an additional 22 cents goes to claimants for non-economic damages, such as pain and suffering, loss of consortium and punitive damages. The remaining 58 percent of tort costs go to pay for administration, claimants’ attorney fees, and defense costs. However, one should not necessarily view the entire 58 percent as “excessive,” because some level of “transactions costs” is required in order to administer any system. As a guide for what is a reasonable level of costs, we use the experience of the Workers’ Compensation system in the United

<sup>14</sup> *Ibid.*, page 12.

<sup>15</sup> According to previous studies by Tillinghast-Towers Perrin published in 1995, 1992 and 1989.



States, which is designed to deliver compensation efficiently to workers who are injured on the job. Workers' compensation is a no-fault system, and thus litigation costs will be lower. According to the National Academy of Social Insurance, for every dollar paid to workers' compensation claimants, approximately 23 cents is paid in administrative costs.<sup>16</sup> Using this assumption that "fair" administrative costs should be roughly equal to 23 percent of damages paid to claimants, one can begin to estimate the "excessive" costs inherent in the U.S. tort system.

Even if we start with the extremely cautious assumption that both economic (\$36 billion) and non-economic damages (\$40 billion) are set at an economically efficient level, and that an additional 23 percent should be spent on administration, an efficient tort system would result in transfers of only \$93 billion per year.<sup>17</sup> By this cautious calculation, the current U.S. tort system includes "excessive" tort costs of \$87 billion per year.<sup>18</sup> Were one to adapt the assumption that non-economic damages are random, the "litigation tax" would rise to \$136 billion per year, even after accounting for reasonable administrative expenses.<sup>19</sup> To the extent that the economic damages awarded by the tort system are not well targeted and therefore fail to provide proper incentives to firms, the entire \$180 billion in direct costs is economically excessive.

Another useful perspective is provided by comparing the cost of tort liability in the United States to that of other developed countries. While it is difficult to make cross-national comparisons because of data limitations, estimates by Tillinghast-Towers Perrin suggest that the U.S. tort system is substantially more costly than that of other countries. As shown in figure 2, U.S. tort costs in 1998 were 1.9 percent of GDP, approximately double the average cost of the other nations studied. Only Italy, with

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<sup>16</sup> National Academy of Social Insurance, "Workers' Compensation: Benefits, Coverage and Costs, 1999 New Estimates and 1996-1998 Revisions," May 2001.

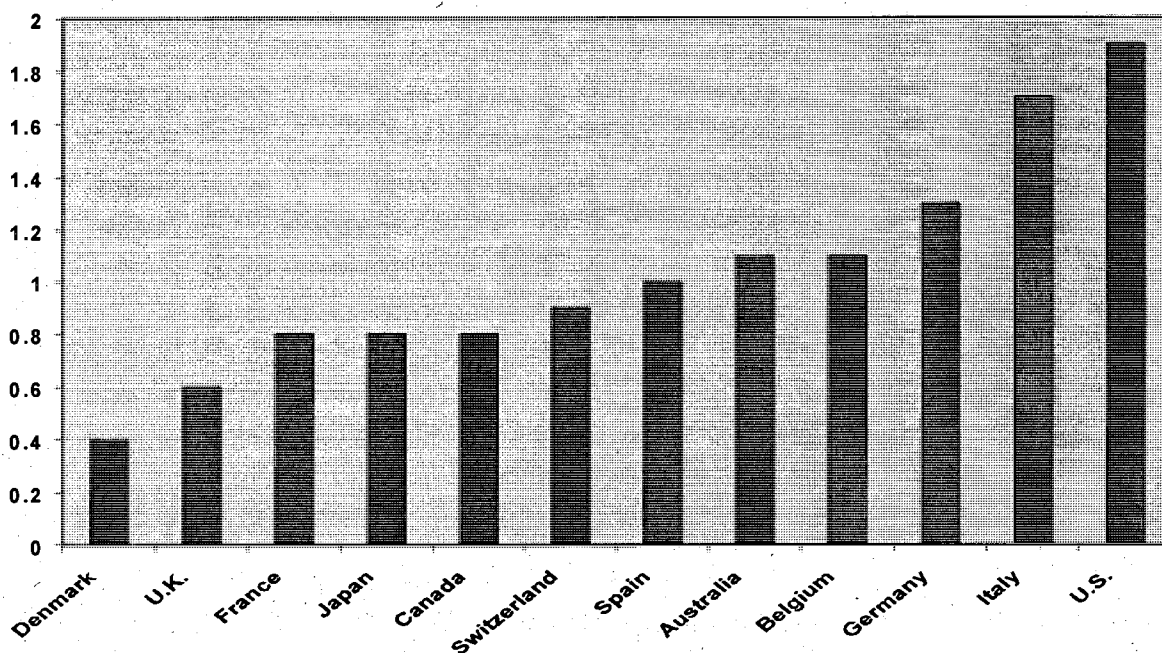
<sup>17</sup> (Economic damages (\$36 b.) + Non-Economic damages (\$40 b.)) \* Administrative cost factor (1.23) = Non-excessive tort costs (\$93 b.)

<sup>18</sup> Total tort costs (\$180 b.) - Non-excessive tort costs (\$93 b.) = Excessive tort costs (\$87 b.)

<sup>19</sup> Total (\$180 b.) - (Economic(\$36 b.) \* Admin cost factor(1.23)) = Excessive tort costs (\$136 b.)

costs of 1.7 percent of GDP, rivaled the U.S. in total direct costs. Tort costs in Denmark, the United Kingdom, France, Japan, Canada and Switzerland are all estimated to be less than 1 percent of GDP.

**Figure 2**  
**International Tort Costs as a Percentage of GDP, 1998**



Source: Tillinghast-Towers Perrin, "U.S. Tort Costs: 2000"

### **How Large is the Burden of the Litigation Tax?**

Regardless of which estimate of the direct cost presented above is closest to the truth, it is likely to substantially *underestimate* the total economic cost of the U.S. tort system. In the analysis of taxation, economists recognize that the total burden of a tax exceeds the revenue it collects. The excess burden or "deadweight loss" of taxation arises because taxes distort production and consumption decisions. In the current setting, an example of this phenomenon is that physicians may prescribe unnecessary precautionary treatments, often referred to as "defensive medicine," in order to avoid

non-financial litigation penalties such as harm to their reputations and the time and stress associated with a malpractice suit.<sup>20</sup> Some socially desirable products and services are likely never produced due to excessive tort liability claims.

Anecdotal evidence suggests that some products that may have a net benefit to society as a whole are withheld from the marketplace due to excessive concerns of liability from the tort system. For example, concerns over liability have resulted in withdrawals of certain medicines, and halted the production of vaccines such as smallpox and DPT. In trying to gauge the size of these costs, the appropriate measure of loss is the difference between the value of the good that is not produced and the value of the next best alternative. Because only one of these goods is produced in the market, it is difficult to assess this loss. The net economic cost of these types of actions is difficult to quantify, and is not included in the \$180 billion estimate.

Despite these difficulties, one can approximate the magnitude of the deadweight loss through the literature on taxation. Recent research by Professor Dale Jorgenson of Harvard University estimates that the marginal deadweight loss per dollar of revenue raised by the corporate income tax in the United States is 27.9 cents.<sup>21</sup> If all tort claims have a comparable deleterious effect on the economy, the deadweight loss resulting from the \$180 billion in direct costs would be an *additional* \$50 billion. Even using the most cautious estimate that excessive direct costs total \$87 billion, an additional 27.9 percent deadweight loss would bring the total cost of the litigation tax to \$111 billion. In the intermediate case with direct costs of \$136 billion, the total economic burden would be \$174 billion annually.

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<sup>20</sup> Daniel Kessler and Mark McClellan, "Do Doctors Practice Defensive Medicine?" *The Quarterly Journal of Economics*, May 1996.

<sup>21</sup> Dale Jorgenson and Kun-Young Yun, Investment, Volume 3, *Lifting the Burden: Tax Reform, the Cost of Capital, and U.S. Economic Growth*, 2001, Table 7.10, page 287.

## Who Pays for Excessive Liability Claims?

Who pays the litigation tax? While a tax may be collected from a firm, its burden must ultimately be borne by individuals through job loss or a reduction in wages (workers), an increase in consumer prices (consumers), a decline in property values (landowners), or a reduction in profits and thus share prices (owners of capital). Of course, these categories are not mutually exclusive. The same person could suffer from lower wages, face higher prices for products, and have lower returns on his pension assets.

Determining the true economic burden, or economic incidence, of a tax is a complex undertaking, as it requires that one consider how wages and prices have adjusted throughout the economy as a result of the tax. If wages fall as the result of a tax, economists say that the tax has been *shifted backward* onto labor. If prices rise, economists say that the tax has been *shifted forward* to consumers.<sup>22</sup> Alternatively, firm profitability could be reduced, in which case the tax burden is borne by participants in private pension plans and owners of stocks and mutual funds.

For example, in the United States, the Social Security system collects 12.4 percent of a worker's wages<sup>23</sup> to support retirement and disability benefit payments. Half of this, or 6.2 percent, is levied on the worker. The remaining 6.2 percent is levied on the employer. However, most of the employer-paid portion of the social security tax is shifted backward so that the employer portion of the payroll tax has the same effect on a worker as does the portion levied directly on the worker. Thus, even though employees *legally* bear only half of the payroll tax, they bear the full – or almost full – economic burden of the tax through lower wages.<sup>24</sup>

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<sup>22</sup> Joseph E. Stiglitz, *Economics of the Public Sector*, Third Edition, New York: W. W. Norton, 2000, page 483.

<sup>23</sup> Up to a maximum taxable amount of \$84,900 in 2002.

<sup>24</sup> Joseph E. Stiglitz, *Economics of the Public Sector*, Third Edition, New York: W. W. Norton, 2000, page 483.

The *legal* incidence of the costs of the U.S. tort system falls on firms engaged in the production and sale of goods and services. Moreover, to the extent that the distribution of tort costs is largely random, tort costs only increase a firm's costs and decrease profits in a manner similar to the corporate income tax. Thus, to a first approximation, one can view the economic incidence of excessive tort costs as being similar to the corporate income tax in the United States.

The incidence of the corporate income tax is the subject of considerable debate among tax economists. Most economists believe that a substantial portion of the corporate tax is shifted to consumers through higher prices, or to workers if wages decline due to a decreased demand for the taxed good. The remainder falls on investors. Importantly, to the extent that it falls on capital, it is on owners of *all* capital, not just those firms most likely to fall subject to tort litigation. To see this, suppose that some industries or sectors are more likely to be subject to liability losses. If the high cost of liability makes investing in these sectors less attractive, capital will move out of the higher cost sector, driving down the rate of return to capital in other sectors. The lower return reflects the cost of the litigation tax. Thus part of the burden of these tort claims can be borne by all owners of capital not just those in the sector with higher tort claims.

Traditionally, three governmental agencies have engaged in the distributional analysis of tax policy: the Joint Committee on Taxation (JCT), the Office of Tax Analysis (OTA) at the Department of Treasury, and the Congressional Budget Office (CBO). During the 1980s and early 1990s, "JCT did not distribute corporate income tax changes at all, on the ground that the incidence of the tax was too uncertain."<sup>25</sup> Beginning in 1992, JCT allocated the corporate income tax to owners of capital generally, and for the past several years, the JCT has not conducted distributional

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<sup>25</sup>Michael J. Graetz, "Distributional Tables, Tax Legislation, and the Illusion of Precision," in David F. Bradford, Ed., *Distributional Analysis of Tax Policy*, 1995, page 47.

analysis at all. OTA makes the assumption that the tax is borne by owners of capital. Traditionally, the CBO has used three different variations: 100 percent by capital, 100 percent by labor, and half by each. The inconsistent set of assumptions and methodologies across agencies highlights the uncertainty about the economic incidence of the corporate income tax. In fact, a recent survey of economists who specialize in public finance found that virtually all of these economists believe that the burden of the corporate income tax is shared by both capital and labor generally, but "there is significant disagreement about the precise division."<sup>26</sup>

To the extent that capital markets are globally linked, allowing capital to flow freely across borders, the after-tax rate of return to capital must be equated across countries. One implication is that if tort liability raises the cost of capital in the United States, mobile capital will seek the relatively higher return available elsewhere, until rates of return are again equalized. The result is that the capital stock in the United States may be smaller with high tort costs than with low tort costs. A smaller capital stock means there is less capital per worker, thus lowering productivity and wages. In this way, the costs of tort may fall on the less mobile factors of production, namely labor. If global capital markets were fully integrated and capital freely mobile, then the entire burden of the costs of excessive tort in the United States could be shifted to labor through reduced real wages and consumers through higher prices.

The relative magnitude of the burden of excessive tort costs in the U.S. is quite substantial. For perspective, in the year 2000, total wage and salary disbursements to private industries (i.e., excluding government workers) totaled just over \$4 trillion.<sup>27</sup> Taking the extremely conservative excessive cost estimate of \$87 billion – an estimate that treats the current level of economic and non-economic damages as appropriate,

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<sup>26</sup> Victor R. Fuchs, Alan B. Krueger, and James M. Poterba, "Why Do Economists Disagree about Policy? The Roles of Beliefs about Parameters and Values," National Bureau of Economic Research Working Paper No. 6151, August 1997, page 12.

<sup>27</sup> *Economic Report of the President*, February 2002, Table B-29.

allows for a reasonable administrative charge of 23 percent of the award, and ignores the deadweight burden – the litigation tax is equivalent to a 2.1 percent wage and salary tax shifted onto private sector workers. Alternatively, if this \$87 billion were shifted forward to consumers through higher prices, this would be equivalent to a 1.3 percent tax on personal consumption.<sup>28</sup> If the excess burden were not passed through to labor or consumers, and instead was borne entirely by capital, then it would be equivalent to a tax on capital income of 3.1 percent.<sup>29</sup> It should be noted that nearly 80 million Americans own corporate stock, either individually or through their pension funds.<sup>30</sup> In fact, over 20 percent of corporate stock in the U.S. is held by public and private pension funds – suggesting that if this litigation tax is not passed through to workers via wage reductions or price increases, workers are still harmed through reduced returns on their retirement saving.

Table 1 below illustrates the “tax equivalence” of tort litigation costs under various assumptions about the incidence of the tax, and the size of the excessive tort costs. As a lower bound on the size of the litigation tax, we treat all economic and non-economic damages as economically appropriate, allow for 23 percent administrative costs, and ignore the deadweight burden. This translates to a litigation tax of approximately \$87 billion per year. For an intermediate estimate, we include non-economic damages in the excess cost of tort, following the work of Viscusi. This implies a litigation tax of \$136 billion per year, ignoring the deadweight loss. For an upper-bound estimate, we treat *all* tort costs as economically excessive, and also include an estimated \$50 billion in deadweight loss.

As illustrated in Table 1, under the assumption that the tax is fully shifted forward through prices, the annual excessive tort costs are equivalent to a tax on consumption

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<sup>28</sup> *Economic Report of the President*, February 2002, Table B-1.

<sup>29</sup> According to unpublished data from the Productivity and Technology Division of the Bureau of Labor Statistics, the capital (non-labor) share of nonfarm business output was \$2,762 billion in 2001.

<sup>30</sup> Investment Company Institute, *Equity Ownership in America*, 1999.

ranging from 1.3 percent to 3.4 percent. Alternatively, if shifted backwards onto labor, the "litigation tax" is equivalent to a tax on wages from 2.1 percent to as high as 5.7 percent. If the incidence of the tax falls on investors, it is equivalent to a tax on capital ranging from 3.1 percent to 8.2 percent. The final row of Table 1 illustrates the case in which the burden of the litigation tax is shared by consumers, workers and investors.<sup>31</sup>

Whether it falls entirely on labor, or whether some portion of it also falls on capital owners in the U.S., the cost to the U.S. economy is substantial. For example, in the year 2000, the intermediate cost estimate of \$136 billion is more than the Federal government spent on all of the following programs *combined*: Education, training, and employment; general science; space and technology; conservation and land management; pollution control and abatement; disaster relief and insurance; community development; Federal law enforcement and administration of justice; and unemployment compensation.<sup>32</sup> Alternatively, \$136 billion is two-thirds the amount of revenue collected from the corporate income tax<sup>33</sup> or nearly half (46 percent) of the amount spent on national defense.<sup>34</sup> Viewed differently, at more than 3 percent of wages per year, the cost of the litigation tax is also far more than enough money to solve Social Security's long-term financing crisis. To a family of average income, three percent of wages is also the cost of more than three months of groceries, six months of utility payments, or eight months of health care costs<sup>35</sup>. That is, \$136 billion represents a large drain on the productive resources of the United States.

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<sup>31</sup> The assumed division is 25 percent through prices, 25 percent through wages, and 50 percent through reduced investment returns. This incidence assumption is based on one of the corporate tax incidence scenarios used by Joseph A. Pechman in Who Paid the Taxes, 1966-85, Washington, D.C., The Brookings Institution, 1985, p.35.

<sup>32</sup> *Budget of the United States Government*, Fiscal Year 2003, Historical Tables, Table 3.2, pages 54-69.

<sup>33</sup> *Ibid*, Table 2.1 page 30.

<sup>34</sup> *Ibid*, Table 3.1, page 51.

<sup>35</sup> Bureau of Labor Statistics, "Consumer Expenditures in 1999," May 2001.



**Table 1**  
**Size of the Tort Litigation Tax**

Incidence Assumption	Equivalent Tax Base	Annual "Excessive" Tort Costs		
		\$87 billion	\$136 billion	\$230 billion
Fully shifted forward Through prices	Consumption Tax	1.3%	2.0%	3.4%
Fully shifted backward Onto workers	Wage Tax	2.1%	3.3%	5.7%
Fully borne by Investors	Capital Tax	3.1%	4.9%	8.2%
25% shifted through prices, 25% shifted through wages, 50% borne by investors	Consumption	0.3%	0.5%	0.8%
	Wage	0.5%	0.8%	1.4%
	Capital	1.6%	2.4%	4.1%

Source: CEA calculations. The taxes are calculated by dividing the annual excessive tort costs by the appropriate base. The consumption base is total personal consumption expenditures which totaled \$6,728 billion in the year 2000. The wage base is total wage and salary disbursements to private industries, which totaled \$4,069 billion. The capital base is non-labor payments in national income, which totaled \$2,789 in the year 2000.

## Summary

The cost of the U.S. legal liability system has increased substantially over the past several decades. While economic theory suggests a potentially useful role for a tort system in providing proper incentives, excessive tort costs are akin to a tax on firms. Like any tax, this "litigation tax" imposes deadweight losses on the economy in the form of products and services that are never produced as a result of the fear of litigation. Both the direct and indirect costs of excessive tort must ultimately be borne by individuals in the economy through some combination of higher prices, lower wages, and reduced returns to investments.