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Record Group/Collection:	George H.W. Bush Presidential Records
Collection/Office of Origin:	Chief of Staff, White House Office of
Series:	Sununu, John, Files
Subseries:	Issues Files

OA/ID Number:	29150
Folder ID Number:	29150-007

Folder Title:
Competitiveness (1989)

Stack:	Row:	Section:	Shelf:	Position:
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Withdrawal/Redaction Sheet
(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
01. Paper	Options paper on Tort Reform Initiatives (6 pp.)	n.d.	P5	

Collection:

Record Group: Bush Presidential Records
Office: Chief of Staff, White House Office of
Series: Sununu, John, Files
Subseries: Issues Files
WHORM Cat.:
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Date Closed:	12/2/2004	**OA/ID Number:**	29150-007
FOIA/SYS Case #:	1998-0004-F[1]	**Appeal Case #:**	
Re-review Case #:	2005-0426-S	**Appeal Disposition:**	
P-2/P-5 Review Case #:		**Disposition Date:**	
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RESTRICTION CODES

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

P-1 National Security Classified Information [(a)(1) of the PRA]
P-2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P-3 Release would violate a Federal statute [(a)(3) of the PRA]
P-4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P-5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
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(b)(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
(b)(3) Release would violate a Federal statute [(b)(3) of the FOIA]
(b)(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
(b)(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
(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

Competitiveness file

OPTIONS

The Working Group considered many approaches to alleviate the chilling effect on volunteerism caused by excessive exposure to the threat of tort liability. Any tort reform initiative would need to address the issues of insurance coverage of volunteer organizations, as well as scope and extent of liability for volunteers and volunteer organizations. Furthermore, any initiative which includes a proposal for federal legislation would need to take federalism concerns into account. The range of potential options includes:

I. Establishment of a National Center to assist non-profits;
II. Promulgation of a model state statute;
III. Review of the federal Risk Retention Act; and
IV. Placing limits on the tort liability of individual volunteers and volunteer organizations having a federal nexus.

The Working Group believes that Options I, II and III offer the most useful responses to the problem. For the sake of completeness, we included Option IV, for which some support existed among the Working Group. Other options such as federal preemption of state tort law through grants of immunity to volunteers and limits on liability, federal regulation of the insurance industry, and federally subsidized insurance for volunteers were considered but received no support from any of the agencies represented on the Working Group. As a result, these options have been excluded from the Options list.

OPTION I: ESTABLISH A NATIONAL CENTER TO ASSIST NONPROFITS WITH LIABILITY CONCERNS

Explanation: This would entail establishment of a broad-based National Center to address the concerns of volunteer organizations. The Center's functions could include insurance cost containment, risk management and quality assurance services and a range of training and technical assistance related to the liability and insurance needs of volunteer activities. The Working Group recommends establishing the Center with private funds.

PURPOSES

(1) To act as a national clearing house for liability-related information.

(2) To analyze and propose means of addressing insurance needs.

(3) To assist nonprofits in reducing their exposure to legal liability.

(4) To promote and develop risk management programs for nonprofits.

(5) To increase the quality, quantity and availability of centralized information on nonprofits' claims and insurance data.

(6) To act as an advocate for nonprofits, e.g., in negotiating with the insurance industry and lobbying state legislature and Congress for reforms.

(7) To establish insurance programs and risk retention or purchasing groups to reduce costs and increase insurance availability.

FUNDING

The National Center could be funded through a number of private sources including (a) foundation grants, (b) corporate contributions, (c) membership dues, and (d) income generated from the sale of its publications and fees for training programs.

Federal "seed" funds could be sought to help initial establishment although this approach might over federalize the concept and would have budgetary consequences.

A. PROS AND CONS FOR ESTABLISHING A NATIONAL CENTER

<u>Pros</u>:

- The action would be highly visible.
- This proposal is flexible and could focus on the main problem areas specific to volunteer liability, including incorporation of other suggestions discussed below without substantial governmental involvement.
- A National Center may increase the availability of insurance coverage through pooling agreements and risk management for all volunteer organizations but particularly for new, small or other hard-to-insure organizations.

- Dending on its structure, a National Center could be viewed as a complement to the Thousand Points of Light Foundation.

<u>Cons</u>:

- The National Center, depending on the structure chosen, may appear inconsistent with the President's volunteer principles since it may be viewed as a federal rather than a volunteer initiated effort.
- Across-the-board tort reformers would see this option as a very narrowly tailored proposal and would prefer more direct, preemptive federal action.
- Funding questions have not been clarified. The attractiveness of this option may depend on whether any federal funding is available and if so, how much. No funds are identified for this on the fiscal year 1991 budget. If the DPC decides to recommend federal funding, the initiative would have to be postponed until fiscal year 1992 and a funding source would have to be identified.
- Some may view a separate National Center as competing against the interest and attention given to the Thousand Points of Light Foundation.

B. POSSIBLE OPTIONS AS TO STRUCTURE OF A NATIONAL CENTER

The question of an appropriate structure depends heavily upon the functions the DPC recommends for the Center. Several structure options are outlined below:

<u>Structure 1</u>: A Coalition of Nonprofits (Encouraged By The President: No Legislation)

Several organizations, such as United Way, have expressed an interest in participating in an umbrella coalition. This coalition would be completely private in structure as well as funding. An expression of executive support could act as a catalyst. Such an expression of support would strengthen the nonprofits' efforts to seek private funding.

<u>Pros</u>:

- This approach is likely to be tailored to the organizations' own perceived needs.

- Federal involvement would be minimized.

- The coalition would fit well with the Thousand Points of Light Foundation.

<u>Cons</u>:

- This approach may appear not to represent a sufficiently strong Administration commitment to aiding volunteer organizations.

- The umbrella organization may become a captive of larger groups to the detriment of smaller organizations.

- Without legislation, the coalition may be less effective.

<u>Structure 2</u>: **A Federally Chartered Organization**

This model would require federal legislation establishing a federal charter. Although the Center would be established by a federal charter, it would remain completely private in nature. While such legislation affords a symbolic acknowledgement of the worthiness of an organization's activities, it alone confers no legal benefits.

<u>Pros</u>:

- This initiative would create a degree of public visibility and would result in concrete action.

- The organization could be tailored to serve only those purposes deemed to be worthwhile.

- The new entity would be able to chart its own course within broad limits.

<u>Cons</u>:

- Failure of the entity could embarrass the Administration.

- Any insurance functions proposed would compete with insurers who do not have the advantage of a federal charter.

- Once chartered the organization would not be subject to federal controls even though it would benefit from the aura of federal approval.

- Under present rules, a federal charter would require a waiver of the ten year state charter requirement.

Structure 3: **An Adjunct To An Existing Federal Agency**

The entity's operations could be folded into the operations of another agency, under existing statutory authorities and using currently available funds. This proposal would not require new legislation. For example, if the entity functioned only as an information clearing house, it could be folded into the operations of the Commerce Department or the Small Business Administration. Folding it into the operations of ACTION might also be a possibility.

Pros:

- The new entity could benefit from the agency's established methods of implementing programs.
- The entity could be established without new legislation.
- The entity would have a secure base within the existing structure of government.
- The entity's operations could readily be monitored and controlled.

Cons:

- This could over-federalize the assistance of volunteerism.
- This would be a drain on the agency's budget and divert funds from other equally worthwhile activities.
- Coordination of private and governmental roles within the entity would be difficult.
- It is not clear that an existing agency would have the funds or the authority to accomplish these goals.

Structure 4: **An Adjunct To The Thousand Points of Light Foundation.**

Depending on the functions assigned to it, the Center could serve as a useful complement to the activities of the Thousand Points of Light Foundation.

Pros:

- The Foundation and the Center concept could be drafted to supplement each other, at least insofar as the dissemination of information is conceived.
- This structure would avoid promulgation of two separate related initiatives in the same

general issue area and thus could reduce the potential for possible confusion.

- The entity could benefit from the groundwork that has been done to establish the Foundation.

<u>Cons</u>:

- The purposes of the Foundation and the National Center fill different needs and do not fit well together within a single organization.
- Of the purposes suggested for the National Center, only purpose (1) would be compatible with the Foundation's goals.
- Some of the functions that the proposed National Center could carry out, such as developing a working relationship with the insurance sector, may not be appropriate for a Foundation in which the President is substantially involved.

File - Competitiveness

THE CHIEF of STAFF

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June 19, 1989

MEMORANDUM FOR MEMBERS OF THE COUNCIL ON COMPETITIVENESS

FROM: Diane Weinstein
Counsel to the Council on Competitiveness

SUBJECT: First Meeting of the Council on Competitiveness

On Tuesday, June 20, 1989, the Vice President will host a meeting of the Council on Competitiveness, at 9:15 a.m., in Room 272 of the Old Executive Office Building.

Attached is an agenda for that meeting. Please call me at 456-2816, if you have any questions.

Note: This Agenda replaces the version distributed earlier today.

OFFICE OF THE VICE PRESIDENT

WASHINGTON

AGENDA
THE COUNCIL ON COMPETITIVENESS
JUNE 20, 1989

I. The President's Mandate.

In establishing the Council on Competitiveness, President Bush charged it with developing Administration policies to maintain and improve the United States' international competitiveness through:

- o full development of our human resource potential;
- o promotion of scientific and technological progress;
- o removal of barriers to innovation;
- o careful assessment of governmentally imposed burdens on the free enterprise system; and
- o removal of domestic barriers to the flow of goods and services.

II. Regulatory Review Functions.

The Council will continue the functions of the Task Force on Regulatory Relief in reviewing regulations and regulatory policy that have a competitiveness impact.

III. Announcement of Theme -- "US--92." (Tab US--92)

The Council's theme will be improving U.S. competitiveness in light of changes in the world economy, such as the emerging single European market. The upcoming creation of a single, unified European Community (EC) market in 1992 provides an appropriate occasion for the United States to seek methods to improve its competitive position in, and with, the new European market.

More fundamentally, it also provides an impetus to subject U.S. policies affecting competitiveness to the same kind of critical review European policies are undergoing in preparation for 1992. EC-92 thus provides both a mirror and a timeframe -- coinciding with the first term of the Bush Administration -- for this undertaking.

IV. Particular Topics for Council Consideration:

A. Coordination of Domestic Policy for Trade-Related Issues. (Tab A)

B. Preserving the United States' Competitive Edge in Biotechnology (Tab B)

V. Additional Suggestions for Council Activities.

Council Staff:

- -- Jay Plager, Executive Director (Office of Information and Regulatory Affairs) 395-4852.
- -- Joseph Perkins, Assistant to the Vice President for Competitiveness, 456-2172.
- -- Diane Weinstein, Counsel to the Council on Competitiveness, 456-2816.

THE VICE PRESIDENT'S OFFICE

Office of the Press Secretary

FOR IMMEDIATE RELEASE April 12, 1989

FACT SHEET ON THE COUNCIL ON COMPETITIVENESS

On March 31, 1989 the President established a Council on Competitveness, chaired by the Vice President.

PURPOSE OF THE COUNCIL

The continued economic progress of the United States demands that we maintain and improve our international competitiveness. Our ability to do that depends on: the full development of our human resource potential; the promotion of scientific and technological progress; removal of barriers to innovation; careful assessment of any governmentally-imposed burdens on the free enterprise system; and removal of domestic barriers to the flow of goods and services.

JURISDICTION OF THE COUNCIL

The Council will review regulatory issues, and such other issues as may be referred by the President, bearing on competitiveness.

STRUCTURE OF THE COUNCIL

In order to accomplish these purposes, the President has established a Council on Competitiveness, with the same authorities over the matters it reviews that were given to the Presidential Task Force on Regulatory Relief over regulatory issues in Executive Order No. 12291 (February 17, 1981) and No. 12498 (January 4, 1985). The Council on Competitiveness would include:

The Vice President (Chairman);
The Attorney General (Chairman Pro Tempore of the Domestic Policy Council);
The Secretary of the Treasury (Chairman Pro Tempore of the Economic Policy Council);
The Director of the Office of Management and Budget;
The Chairman of the Council of Economic Advisors;
The Secretary of Commerce;
The Chief of Staff of the President (ex officio).

The Chief of Staff to the Vice President shall be responsible for coordination of Council activities, with the Administrator of OIRA serving as Executive Director.

The Council will ensure that its activities are fully coordinated with the National Security Council, Economic Policy Council, and Domestic Policy Council.

# # #

Coordination of U.S. Domestic Policy Relating to EC-92 Developments

Current Administration Effort Relating to EC-92

Agencies throughout the Federal government have mobilized to handle trade issues raised by the EC-92 proposals. The Department of Commerce (DOC) has undertaken an extensive program in conjunction with U.S. industry to review EC Directives, particularly those dealing with technical manufacturing specifications that could be barriers to trade. The Department of State gathers information and represents the United States through the Office of the US/EC Ambassador in Brussels. The United States Trade Representative (USTR) chairs an interagency task force on the EC internal market that has established a number of working groups to coordinate Federal efforts to respond to various trade issues. The USTR working groups also coordinate negotiation of Memoranda of Understanding (MOU's) between United States regulatory agencies and their EC counterparts.

Often, as the United States reacts to various EC proposals, domestic policy issues arise outside the trade-negotiations area that must be addressed by the Administration. For example, access for American financial institutions to European markets may depend upon the nature of any reciprocal regulation by the U.S. of European institutions. Other examples arise with respect to health and safety regulations, where United States regulations may be inconsistent with European approaches. In many instances, the United States policy will be to leave our regulations in place and the USTR will negotiate trade agreements accordingly. In other instances, the Administration may wish to review current U.S. law and make appropriate changes in U.S. policy to address the problem or inconsistency. In these cases, the Competitiveness Council can serve as a forum for coordinating the development of the U.S. policy.

Preserving the United States' Competitive Edge in Biotechnology

Background

The United States leads the world in the research and development of biotechnology -- the use of living organisms to make or modify products. Since 1980, when the Supreme Court held that patents could be obtained for bio-engineered life forms, over 500 private companies have undertaken biotechnology research. Biotechnology can have an enormous impact on a wide range of businesses, such as medicine, agriculture, and chemical manufacture, and is projected to become a $100 billion industry by the year 2000. Thus far, Europe and Japan lag behind the United States, in part because their legal systems and regulatory requirements do not encourage private sector competition to the same extent as the United States. For example, European patents can be obtained for micro-organisms, but not for other biotechnology products.

United States Regulation of Biotechnology

Federal regulation of biotechnology research and development dramatically affects the industry's growth. Numerous agencies have regulatory responsibilities for biotechnology: USDA (plant pests and animal pathogens), HHS (pathogens and infectious agents), FDA (foods and additives, human and animal drugs), EPA (pesticides and field tests of micro-organisms using recombinant DNA), NIH within HHS (recombinant DNA experiments), and OSHA within the Department of Labor (employee health and safety).

Due to the overwhelming significance of Federal regulation on the research and development of biotechnology products, and in order to counter Congressional pressure to legislate in this area -- perhaps by creating another agency charged solely with biotechnology coordination -- the Reagan Administration developed in 1986 a Coordinated Framework for Regulation of Biotechnology (51 CFR 23302). The Coordinated Framework seeks to establish common definitions and coordinate agencies with regulatory responsibility for different areas of biotechnology. The Coordinated Framework is based on the principle that the type and level of regulation of biotechnology should be commensurate with the level of risk to human health and safety. The White House Office of Science and Technology (OSTP) currently implements the Coordinated Framework through several coordinating committees under the auspices of the Federal Coordinating Council for Science, Engineering and Technology (FCCSET).

Although some progress has been made under this process, there are still discrepancies about its application. FDA has chosen to retain its existing regulations. EPA has drafted new regulations that were not consistent with the basic principles of the Coordinated Framework and after initial review by the Coordinating Committee, EPA withdrew them from the OMB review process. USDA is currently working on new regulations. Further review of these regulations is needed to ensure that they target significant risks and do not prevent safe biotechnology products from reaching the market.

Incentives for Private Sector Investment

The bulk of the industrial research in biotechnology is financed by private investment. Many factors affect the industry's ability to raise capital, including the ability to secure property rights in manufacturing process and products, to efficiently bring new products to market, and to secure tax incentives. Although the potential market for biotechnology products could be $100 billion by the end of this decade, companies recently have experienced difficulty raising additional capital in the U.S. As a result, many companies are considering joint ventures with Japan, which is actively seeking to invest in U.S. biotechnology.

Two tax policy issues are particularly important to the industry. First, the loss of the capital gains deduction has decreased incentives to invest in risky ventures. Most biotechnology companies that obtain financing on the basis of future products rely upon potential capital gains to attract investors. In addition, start-up companies can no longer effectively use stock incentives to attract and keep key employees when they have little or no cash flow. Capital gains treatment affects the ability of these companies to use stock as compensation.

A second tax issue is whether the R&D tax credits of 25% will be eliminated. In 1988, they were extended for two years, but they remain a source of uncertainty for investors in an industry in which a mid-sized company spends an average of 40% of total expenditures on R&D.

Biotechnology: Uncertain Property Rights Impede Development

Currently, there are over 7,000 biotechnology patent applications awaiting approval by the Patent Office -- a backlog that could take five to six years to process. Because the biotechnology industry is largely capitalized on the basis of expected profits from as yet undeveloped products, this delay severely restricts the industry's ability to raise capital.

In addition, the Patent Office faces the problem of determining what rights are protected. Does the patent holder have exclusive rights on the process used to develop a new organism, or does it extend to the organism itself? In some cases, one company holds a patent on the process while another holds a patent on the product itself. Unless a uniform rule is applied, marketing of new products is impeded by overlapping patents. Development of new, perhaps more efficient, processes will be impeded if the patent is overly broad. Conversely, a narrow patent may insufficiently protect and compensate the innovation and thus inhibit future such innovation. One thing is clear: the competitiveness of American industry can be enhanced by creating greater certainty through a well-defined protection of intellectual property for biotechnology.

Educating the Public About Biotechnology

One of the most significant factors behind efforts to restrict biotechnology is public fear of the unknown. Often the idea of altering cellular matter conjures up images of science fiction horrors. These fears become pronounced as companies move to the final stages of development and seek to test products in field settings. For example, when a California company sought to test a new bacteria that prevented frost from forming on fruit plants, public demonstrations led local government to ban further testing. Although the product finally was tested successfully -- under EPA supervision -- the original company sold out because it could not afford the delay. Other companies have had to mount extensive public relations efforts to convince the public that their projects were not dangerous and benefited the local economy.

Many in the scientific community believe that it is possible to identify biotechnology processes and products which present little potential danger to people and the environment. Greater public familiarity with the process of bio-engineering and the potential benefits of its products is needed to ease public anxiety and to generate essential support for the industry.

Proposed European Community Regulations

In March, 1988 the EC published draft Directives on the Contained Use and Deliberate Release of Genetically Modified Organisms that would severely limit the development of biotechnology products in Europe. A proposed Amendment to the Directives, for example, would have created a five year moratorium on field tests. While field tests in the United States would not be directly affected, there is some concern that such a moratorium would lead to barriers on marketing American-tested biotechnology products in Europe. Although the moratorium was not adopted, concern over future developments related to biotechnology in the EC process remain. The U.S. government has yet to officially comment of the EC Biotechnology Directives, which would reaffirm U.S. commitment to the principles of the Coordinated Framework.

The FCCSET Committee on Life Sciences, consisting of senior policy officials of agencies involved in oversight of biotechnology, reviewed the proposed EC Directives last year before the moratorium on field testing was proposed. Their preliminary analysis found the Directives, even without the moratorium, to be highly burdensome. The USTR also has a working group that focuses on technology issues, including biotechnology, which monitors the EC Directives in this area.

To ensure effective coordination of biotechnology policy, consideration should be given to reaffirming the principles of the Coordinated Framework as Bush Administration policy. A mechanism should be established for ensuring such principles are applied by agencies regulating biotechnology development and products. In addition, the Council on Competitiveness can serve a valuable role coordinating the functions of agencies responsible for domestic regulation of biotechnology with the USTR and other agencies working on trade issues affecting the research, development, and marketing of biotechnology products.

THE WHITE HOUSE

WASHINGTON

THE CHIEF of STAFF
has seen

February 21, 1989

~~3/14~~ 3pm 3/16 11:30

MEMORANDUM FOR GOVERNOR JOHN S. SUNUNU

FROM: C. BOYDEN GRAY CBG

SUBJECT: Creation and structure of Presidential Council on Competitiveness

Attached is a draft decision memorandum, which would create the captioned Council. The draft has been approved by the Office of the Vice President, but the Vice President's Chief of Staff (Mr. Guttman) would like to meet with you or Andy Card before the draft memorandum is staffed out here in the White House. The purpose of the meeting would be to discuss (1) whether a separate Trade Policy Council will be created, as may be required by the trade statute that was enacted last year; and (2) whether the Council on Competitiveness will be able to convene a private sector advisory group to aid it in its work.

Set up mtg

I believe that it would be useful for a member of my staff to attend the proposed meeting with Mr. Guttman.

THE WHITE HOUSE

WASHINGTON

February 21, 1989

MEMORANDUM FOR THE PRESIDENT

FROM: GOVERNOR SUNUNU

SUBJECT: Presidential Council on Competitiveness

Issue

This memorandum recommends that you establish a Presidential Council on Competitiveness, chaired by the Vice President.

Purpose

The continued economic progress of the United States demands that we maintain and improve our international competitiveness. Our ability to do that depends on: the full development of our human resource potential; the promotion of scientific and technological progress; removal of barriers to innovation; careful assessment of any governmentally-imposed burdens on the free enterprise system; and removal of artificial barriers to the flow of trade.

Council structure

In order to accomplish these purposes, I recommend that you establish a Presidential Council on Competitiveness, with the same authorities over the matters set out above that were given to the Presidential Task Force on Regulatory Relief over regulatory issues in Executive Order No. 12291 (Febuary 17, 1981) and No. 12498 (January 4, 1985). The Presidential Council on Competitiveness would be chaired by the Vice President and would include: the Attorney General (Chairman Pro Tempore of the Domestic Policy Council), the Secretary of the Treasury (Chairman Pro Tempore of the Economic Policy Council), the Director of OMB, the Chairman of the Council of Economic Advisers, and the Secretary of Commerce.

Also attending the meetings would be C. Boyden Gray, Counsel to the President, and Roger Porter, Assistant to the President for Economic and Domestic Policy. The Chief of Staff to the Vice President shall serve as Secretary to the Council, and shall be responsible for coordination of Council activities. The Administrator of OIRA shall serve as Executive Director.

___ Approve

___ Disapprove

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THE WHITE HOUSE

WASHINGTON

February 21, 1989

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___ Approve

___ Disapprove

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