

NLWJC- Kagan

Counsel - Box 007 - Folder 007

Shutdown [7]

Los Angeles Times first-edition Page 1 for  
Monday, September 18, 1995:

Top of page:

Col 1: Reform at local high school.

Cols 2: In a classic urban nightmare, gang members surround a car that took a wrong turn onto a graffiti-marred dead-end street in the dark of the early morning, block the vehicle as the driver tried frantically to back up, then open fire on the passengers, killing a 3-year-old girl and wounding her 2-year-old brother and the driver. (GANGKILLERS, moved.)

Col 3-5: Voters in Hong Kong get their first chance to elect an entire legislature some of the seats were previously government-appointed in the last election before Britain hands the territory back to China. (HONGKONG, upcoming.) (With art.)

Col 6: Bosnian Serbs win a second 72-hour reprieve from NATO bombing by withdrawing a "significant" number of tanks, howitzers and mortars from the hills surrounding this capital, U.N. officials said. (BALKANS-TIMES, moved.)

Above fold:

Cols 2-3: The high-spirited Service Employees International Union, known for its confrontational tactics and success in recruiting low-paid minority and immigrant workers, is often praised for being on the leading edge of the American labor movement. (UNION, upcoming.)

Col 5: The Federal Aviation Administration is developing a revolutionary new system of air traffic control that would replace aging radar, radio and computer equipment that has been breaking down with increasing frequency, sometimes leaving pilots groping for guidance. (AIRTRAFFIC, moved.)

Below fold:

Col 4: The Clinton administration is on the verge of approving a plan by Exxon Oil Co. to explore for oil off the coast of Santa Barbara, Calif., using underwater seismic air guns loud enough to harm whales' hearing. (OILSEARCH, moved.)

Bottom of page:

Cols 1-2: If there is a window on the soul of Los Angeles' police union, it might be the newspaper called the "Thin Blue Line"; on the pages of the Los Angeles Police Protective League's monthly publication, cops are the righteous and beleaguered few. (POLICE-LA, moving Monday.)

Cols 5-6: The biggest threat to Saddam Hussein's brutal reign may be his own highly dysfunctional family the very prop that has kept him in power for almost a generation; Uday Hussein, son of Saddam, has become the symbol of the nation's troublesome first family. (IRAQ-UDAY, moved.)

Republicans, Clinton in Standoff Over Cuts, Debt Ceiling By Doyle McManus= (c) 1995, Los Angeles Times=

WASHINGTON It's the federal budget equivalent of a nuclear standoff.

Republican budget hawks are vowing that, if President Clinton doesn't agree to their deep spending cuts, they will block a scheduled increase in the federal debt ceiling a move that could theoretically force the government into default.

In response, the Clinton administration is warning Congress that even talking about such a move risks a fiscal "disaster," including panic in world financial markets and soaring interest rates at home. And the administration promises to fix the blame for any such debacle squarely on the Republicans.

"Even the appearance of a risk of default can start to have unsettling effects on the markets," Treasury Secretary Robert E. Rubin warned last week.

At least one Republican leader agreed: "It's going to really get dicey if we can't pay our bills," said Senate Majority Leader Bob Dole, R-Kan.

But House Speaker Newt Gingrich, R-Ga., and his budget-slashing followers were less impressed. "There's no immediate risk of a default," Gingrich spokesman Tony Blankley said coolly. "There are gnomes in the basement of the Treasury who are paid to find ways to avoid that."

In fact, both sides are partly right. The bond markets are already worried about a fiscal "train wreck" if Congress refuses to increase the debt ceiling before Nov. 15, the approximate date when Rubin says the Treasury will run out of money. But there is little chance that the federal government will actually default on its debts; there is a long list of emergency actions the Treasury can take to scrape up cash to pay the bills.

Instead, the escalating fight over the federal debt ceiling is an exercise in budgetary brinkmanship, a game of political chicken with billions of dollars at stake.

"This is like the nuclear bomb," said Robert D. Reischauer, former chief of the Congressional Budget Office. "The difference is, you drop this bomb on yourself."

Just as in the nuclear face-offs of the Cold War, most of the Republicans who are threatening to touch off a debt-ceiling crisis don't really want to drop the bomb; they merely want to use the threat as leverage in their overall budget battle with Clinton.

Already, their leaders are looking for ways to avoid looking like what Reischauer called "budgetary terrorists." Last week, both Gingrich and House Budget Committee Chairman John R. Kasich, R-Ohio, said they would consider a temporary increase in the debt ceiling if it would help them get to their goal of a balanced federal budget in seven years.

Even so, the nation's financial markets are beginning to worry if not about an actual federal default, about the increased risk to investors in Treasury bonds if the process of federal borrowing is thrown into turmoil.

"There's not panic, but there's real concern," said Stanley Collender, director for federal budget policy at Price Waterhouse LLP, the accounting firm. "The markets are starting to focus on this for the first time and realize that this is maybe a month and a half away."

(Optional add end)

Behind the crisis is a simple coincidence: By chance, the Treasury is running out of borrowing authority just as this year's epic budget battle is coming to a head.

The federal government borrows money by issuing Treasury bills and other securities both to finance the annual budget deficit, now running at about \$160 billion a year, and to cover its own short-term cash flow needs.

Congress sets a ceiling on how much the Treasury is allowed to borrow in other words, the total public debt. Since

# Bank program is better

**OPPOSING VIEW** As usual, a government-run program costs more than a private one. Give budget a break.

By Buck McKeon

President Clinton's direct-lending program should be eliminated to help balance the budget and save benefits to students.

Under a proposal soon to be voted on in the Economic and Educational Opportunities Committee, taxpayers will save \$1.5 billion in seven years by eliminating direct federal lending, returning this function to the private sector. With these savings, in-school interest subsidies for undergraduate and graduate students will be preserved, student loans will not be cut, and eligibility and access will not be affected.

The president's direct-lending program has been criticized by Democrats as well as Republicans. The idea of turning the Department of Education into a huge bank with no incentive to lower default rates is ludicrous. And it is truly unfortunate that Americans have been misled by the president's scare tactics into believing that student loans will be cut if direct lending is eliminated. This simply is not true.

Impetus for eliminating this program comes from the Congressional Budget Office's fair and equitable scoring of student-loan programs. Federal costs of administering both the direct-loan and loan-guarantee programs are now included in CBO's estimate of the programs. (Previously, direct student loans were made to look less expensive than they were because administrative costs weren't counted over the life of

the loan.) What CBO revealed about direct student lending was that, once again, a government-run program is more costly than utilizing the private sector.

Sen. Ted Kennedy and other supporters of direct student loans have mistakenly claimed that the biggest federal administrative costs of guaranteed student-loan programs — administrative allowances paid to guarantee agencies — are excluded from CBO estimates. Nothing could be further from the truth. CBO *did* specifically include this item.

Additionally, it is important to keep in mind why Congress is implementing these changes — to balance the budget for the future of our children and grandchildren. A child born this year is responsible for \$187,000 just in debt interest. Is that fair?

By balancing the budget, we can lower interest rates 2%, according to Federal Reserve Chairman Alan Greenspan, resulting in lower student-loan payments, lower car payments, lower mortgage payments and lower credit-card payments.

In recent weeks there has been a lot of rhetoric about student loans. The truth is that eliminating the direct-lending program will save taxpayers \$1.5 billion. Couple this with \$4.9 billion in other savings borne by the private sector and the result is necessary steps taken to balance the federal budget as well as to protect benefits for students. Federal guaranteed loans will still be available and not one student who was previously eligible will be made ineligible.

*Rep. Buck McKeon, R-Calif., chairs the Economic and Educational Opportunities Committee's Subcommittee on Postsecondary Education, Training and Life-Long Learning.*

1993, that debt ceiling has been \$4.9 trillion.

This fall, the Treasury is bumping up against that ceiling. Officials predict that the "drop-dead date" will be Nov. 15, when \$25 billion worth of three-year and 10-year Treasury securities come due for payment.

At that point, Rubin will face a series of unpalatable options. Theoretically, he could declare that the government is unable to pay off the notes, thus throwing the value of all U.S. official debts into question and touching off a financial panic. Or, more likely, he could raid the civil service retirement fund, a "trust fund" that consists of loans to the government and use it to sell securities on the open market.

"It may be illegal, but he can say: So sue me," said a knowledgeable U.S. official, one of the gnomes Blankley spoke of. "There's about \$375 million in that fund, which could get us through a couple of years at least."

Of course, the administration doesn't want to reach that point. For one thing, it would be like "running out of money and borrowing from your family," noted Collender; the trust funds would need to be replenished some day. For another, an administration official noted, "We don't want to suggest to the Republicans that you can paper over the problem indefinitely this way."

Indeed, the administration publicly insists that no such solution is possible for fear of losing what leverage it has.

Leverage is the key issue underlying the entire standoff, both Democrats and Republicans agree. Conservative Republicans seized on the debt ceiling as a weapon for forcing Clinton to sign a budget package to their liking; 162 House members signed a letter earlier this year pledging to vote against an extension of the debt ceiling until they have the budget they want.

Among those who signed the letter were dozens of the firebrand conservatives who entered the House as freshmen after the election of 1994. Among those who did not sign was Gingrich, who warned Rubin and Clinton at a White House meeting last week that he could not control many of the freshmen's votes.

"It's brinkmanship," said Reischauer. "But the thing that distinguishes this from past episodes of brinkmanship is that when we come down to D-Day, the generals may not be able to control their troops."

The prospect of being blamed for a financial crisis or even just nervousness in the financial markets has already prompted Gingrich and Kasich to talk about a temporary extension of the debt ceiling (for two weeks, Kasich proposed) while budget negotiations continue.

That would allow the Republicans to continue wielding their nuclear threat while seeking a compromise.

But it might not reassure the financial markets for long. "It's the Cinderella option," said Collender.

"When the clock strikes twelve, the government still turns into a pumpkin."

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### **Veto Looms if Congress Denies Welfare to Unwed Teen Moms By David Willman= (c) 1995, Los Angeles Times=**

WASHINGTON With final congressional action approaching on the nation's welfare system, White House Chief of Staff Leon E. Panetta indicated Sunday that President Clinton will veto the legislation if Republicans insist on denying cash benefits to unmarried teen-age mothers.

The Senate last week rejected such a provision, but a welfare bill passed in March by the more conservative-leaning House contains it. It will be up to a conference of lawmakers from both houses to decide now whether the provision will be included in the final blueprint sent to Clinton.

"If, in the conference, this bill moves in any way toward

the original House position, that's trouble for this (welfare-overhaul) bill," Panetta said on CBS-TV's "Face the Nation."

Also on Sunday, representatives of both parties remained at odds over proposals to change the nation's major health care programs, Medicare and Medicaid. Panetta and Alice Rivlin, director of the Office of Management and Budget, said Republican plans to cut spending increases in the programs would create a "second-class" health care system.

House Budget Committee Chairman John R. Kasich, R-Ohio,

disagreed and said bipartisan cooperation will be needed to pass health care legislation and to avert broader economic problems.

"If we're going to get this job done, we've got to check our egos at the door," said Kasich, who along with Rivlin appeared on NBC-TV's "Meet the Press."

On welfare policy, the Senate Democrats' leading voice on the issue, Sen. Daniel Patrick Moynihan of New York, said he will urge senators who participate in the conference deliberations to implement the more strident House bill. Moynihan, who has criticized Clinton's welfare policy as an abandonment of dependent children, said he wants to force the president to veto the overall legislation.

"I will be in the conference, and I will be encouraging the worst," that is, the House-passed provisions, including the cutoff of cash benefits to unwed mothers, Moynihan said on ABC-TV's "This Week With David Brinkley."

A final Senate vote on its welfare legislation is expected in the next few days. Speaking on the ABC program, Senate Majority Leader Bob Dole, R-Kan., said he hopes to move the legislation from the conference committee to the president within two weeks.

Public opinion polls and the rhetoric of politicians from both parties indicate that welfare policy remains a hot button with many voters. Clinton campaigned in 1992 on a general pledge to change the system to encourage and enable welfare recipients to gain employment. In 1994, the House Republicans' "Contract with America" called for denying benefits to unwed mothers.

Now one of the contenders for the Republican presidential nomination, Sen. Phil Gramm of Texas, has failed to win Senate support for the provision.

Speaking on the NBC program, Gramm said he remains hopeful that the conference will use the tougher House-backed restrictions. Gramm is seeking to highlight his differences with Dole, the party's presumed front-runner, on welfare and other social-policy issues that are considered to be important to conservative GOP primary voters.

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### **U.S. Poised to OK Exxon Plan Harmful to Whales By Richard C. Paddock= (c) 1995, Los Angeles Times=**

SAN FRANCISCO The Clinton administration is on the verge of approving a plan by Exxon Oil Co. to explore for oil off the coast of Santa Barbara, Calif., using underwater seismic air guns loud enough to harm whales' hearing.

The seismic air guns, used to locate oil deposits beneath the ocean, can fire compressed air blasts every several seconds that routinely reach 240 decibels one of the loudest sounds humans create short of massive explosions.

The National Marine Fisheries Service, the federal agency responsible for protecting marine mammals, estimates as many as 81 whales belonging to nine different species could be "disturbed" by Exxon's 45-day survey in waters as close as four miles from shore.

Nevertheless, the agency is expected next week to authorize the 117-square-mile project, provided Exxon agrees to take certain steps to minimize injury to whales.

The proposal has alarmed environmentalists who say it could cause serious harm to whales and possibly overlap with the winter migration of gray whales, affecting far more animals than the federal government estimates.

"That's a tremendously loud noise," protested Sara Wan, vice chair of the League for Coastal Protection. "Part of it will take place during the migration of gray whales."

But Exxon spokesman Bruce Tackett said protections required by the government would keep whales from harm. "We believe this activity is safe," he said by telephone from Houston.

Exxon's proposal to conduct seismic testing in the ecologically sensitive Santa Barbara Channel comes as environmentalists are increasingly criticizing noise pollution of the ocean by oil operations, commercial shipping, weapons testing and scientific experiment.

Last year, a proposal by Scripps Institution of Oceanography to test global warming by repeatedly transmitting 195-decibel sounds through the Pacific Ocean came under harsh criticism and was ultimately scaled back.

Given that the decibel scale is logarithmic, Exxon's proposed 240-decibel blasts fired in quick pulses would be 32,000 times louder than the broadcasts planned under the global warming experiment. The noise, however, would not be audible to humans unless they were in the water in the vicinity of the survey.

Government officials and backers of Exxon's project said the seismic survey is a standard operation using long-standing methods. The same region was surveyed as recently as 1991, said Lisle Reed, director of the federal Minerals Management Service, which also has jurisdiction over the project.

"We're not doing anything that hasn't been done before," Reed said from his office in Camarillo, Calif. "This is not any activity that is outside the norm of activities that have been going on for 30 years on this part of the coast."

The survey has become an issue this time, in part, because of new federal procedures that require the National Marine Fisheries Service to grant written approval for the "harassment" of protected species. If approved, Exxon's survey would be the first to take place off California under the new rules. Before it can proceed, Exxon also needs the OK of the Minerals Management Service.

The oil company proposes to survey the area by making 55 passes on an east-west course over the 45 days. The operation would continue 24 hours a day, but the air guns usually would be shut off when the boat is turning and lining up for its next run.

Exxon wants to undertake the study so it can locate remaining oil deposits in the offshore lease 4 to 12 miles off the Santa Barbara coast where it has three drilling platforms. The company has authorization to erect one more platform in the area, but may be able to extract the oil more efficiently using long-range directional drilling from its existing platforms.

(Optional add end)

Backers of the survey argue it has environmental benefits because it would reduce the number of wells drilled in the area and thereby reduce the accompanying disturbance of the ocean bottom that drilling can cause.

"The seismic data collected from this type of survey is designed to allow Exxon to drill the least number of wells," Tackett said. "In that sense, clearly there is both an environmental and a business benefit to it."

But the California Coastal Commission has joined environmentalists in questioning whether safeguards to be imposed on Exxon by the federal government would be adequate to protect marine life. A telephone conference call among representatives of various agencies is scheduled

for Monday to try to work out a compromise.

Whale lovers, in particular, express concern the survey could cause substantial auditory damage to the marine mammals, which are highly dependent on their sense of hearing.

Among the species that could be affected, according to the fisheries service, are blue, fin, humpback, sperm, pygmy sperm, sei, minke, gray, and Bryde's whales.

Of these, all but the gray whale are listed as endangered, and the gray, which was taken off the endangered species list because of its dramatic recovery in recent years, still is afforded considerable protection under laws that protect marine mammals.

Fisheries officials say that smaller marine mammals, such as dolphins and seals, would not be affected by the air gun blasts because the sound is in a lower frequency than the range in which they communicate.

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### **FAA Developing Revolutionary System of Air Traffic Control By Eric Malnic= (c) 1995, Los Angeles Times=**

WASHINGTON The Federal Aviation Administration is developing a revolutionary new system of air traffic control that would replace aging radar, radio and computer equipment that has been breaking down with increasing frequency, sometimes leaving pilots groping for guidance.

The new system would employ satellites 11,000 miles above the Earth, sophisticated collision-avoidance gear in planes and data-link communications on the ground to keep aircraft safely apart in flight, allowing the FAA to scrap cumbersome, expensive and occasionally unreliable electronic gear that in some cases dates back to the 1950s.

But the most audacious part of the new concept would change who is responsible for keeping jetliners, private planes and military aircraft from bumping into one another as they hurtle through America's increasingly crowded skies.

The FAA, which employs 17,146 civilian air traffic control personnel at more than 650 facilities throughout the nation, wants to strip the controllers of the primary aircraft-separation responsibility during long-distance flights, giving that chore to the pilots.

"It's a revolution in the way we handle air traffic control," said George Donohue, an FAA associate administrator responsible for the development of new technologies. "The pilots are better judges of what's safe than the controllers, because if a pilot fouls up, he's dead." But there are a couple of problems the pilots say they don't want primary responsibility for aircraft separation, and the controllers say they want to keep it.

Not only that, the Air Line Pilots Association, which represents about 43,000 commercial airline pilots, and the National Air Traffic Controllers Association, representing 70 percent of the controllers, say switching the air traffic responsibilities to the pilots already burdened with the demanding tasks of flying complex jetliners may not work.

Some federal officials privately agree.

"If they ever try it, it's just going to be one hell of a mess out there," said a senior federal air safety official, speaking under a guarantee of anonymity. "With all those pilots up there, there has to be a referee to keep them apart. And that referee has to be the air traffic controller on the ground."

Despite the controversy, pilots, controllers, FAA bosses and air safety officials are in agreement on one thing the current air traffic control system is in serious need of a major overhaul.

During the past year, long-range radar equipment used to guide jetliners cruising at high altitudes over the United States has faltered or failed completely a dozen times, including a failure last week in Illinois, often

## GOP in tough spot on federal debt ceiling

By William M. Welch  
USA TODAY

During all their years in the minority, Republicans in the House routinely voted against authorizing the government to borrow more money and thus keep paying its bills.

It was an easy "no" vote, a way to go on record opposing deficit spending while leaving it to Democrats to authorize more debt and keep the government solvent.

But now that they are in the majority, Republicans find the burden is on them to make sure the government can continue to operate. And that has touched off new tensions within the GOP as conservatives pressure their own leaders to resist another increase in the debt ceiling.

Washington's battle over the budget is focused on the Oct. 1 deadline for passing spending bills and the threat of shutting down government if no agreement is reached.

Beyond that, however, looms an even more threatening budget deadline.

Sometime in October or November the government will reach the \$4.9 trillion limit on federal debt. The White House warns, and GOP leaders acknowledge, that the nation risks an unprecedented default without more borrowing authority.

House Speaker Newt Gingrich and other GOP leaders hope to use the deadline to pressure President Clinton to compromise on GOP demands for tax cuts and spending reductions.

Even as they do, however, Gingrich is coming under pressure from his own conservative troops to be tougher and to consider not raising the ceiling at all, unless Clinton gives in.

"There are only a few Republicans in the House who ever voted to increase the debt limit," says Rep. Nick Smith, R-Mich. "If I'm going to vote for raising it... I'm going to get something for it."

Smith has enlisted commitments from more than half the House Republicans, at least 154, to oppose increasing the debt ceiling "until bills are passed ensuring the government is on a true glide

path" to a balanced budget.

Says Rep. Cass Ballenger, R-N.C., "We want to give Newt a gun."

Raising the debt ceiling almost has become routine. Congress has voted 19 times in the past decade to increase the government's authority to borrow.

Treasury Department officials say that without lifting the ceiling the government could keep going by juggling accounts for a few weeks. But they say a big interest payment on Treasury notes due Nov. 15 means the government will have to borrow more by then or risk defaulting, a step that could shake global financial markets.

House Budget Chairman John Kasich, R-Ohio, says Congress won't go along with more than a short-term extension of the debt ceiling until Clinton agrees to budget demands.

Republicans want to wrap a long-term debt extension into the big "reconciliation" bill they hope to send Clin-

ton, including cuts in taxes and savings in Medicare and Medicaid.

"We are not going to give a permanent extension, long-term extension of the debt ceiling... until we can show that there's light at the end of the tunnel," Kasich said Sunday on NBC's *Meet the Press*.

In an interview last week, however, Kasich said he has reviewed the idea of not increasing borrowing and instead putting the government on a cash-flow operating basis.

"Under this theory, he said, the government would meet its interest-payment obligations but pay other bills, including salaries on an as-available basis.

"We're going to be very careful on this subject," Kasich said. "It's a real possibility, but it's really one we're deeply concerned about.

"It would be very difficult, but it's doable," he said.

That is an unlikely scenario, and one even the Republicans' own seven-year balanced budget plan does not envision.

Under the GOP budget resolution passed earlier this year, federal borrowing would rise to nearly \$6.7 trillion by 2002.



AP  
GINGRICH: Under pressure on ceiling

## State Dept. lobbies amid threat of cuts

By Marilyn Greene  
USA TODAY

International diplomacy is taking a back seat to Capitol Hill politics this week, as diplomats lobby hard to save the State Department from wounded budget cuts.

Secretary of State Warren Christopher and many of his deputies and assistants are knocking on congressional doors, calling reporters and universities, and offering interviews and school speeches.

The message:

Proposed cuts in the nation's international affairs budget would compromise the United States' national security, damage its role as the world's greatest superpower and cost U.S. jobs.

"This has been one of the secretary's highest priorities, so he is leaving no stone unturned," says Wendy Sherman, assistant secretary of State for legislative affairs.

A bill now in the Senate would cut \$258 million from the administration's \$2.17 billion request for State Department and embassy operations.

Additional cuts are proposed in funding for international organizations (\$373 million cut from a \$923 million request) and U.N. peacekeeping operations (\$195 million cut from a \$445 million request).

If funding is not restored when the bill lands on President Clinton's desk, Christopher says he will "recommend that the president veto" it.

Christopher, who had already planned to close 19 overseas posts, says further cuts would force him to shut down 50 more embassies.

"Without these efforts, the

eyes and ears of the United States abroad would be shut and our ability to analyze and influence world events would be harmed," he says in a letter to Sen. Mark Hatfield, R-Ore., chairman of the Senate Appropriations Committee.

But Sen. Phil Gramm, R-Texas, scoffs at such drastic portrayals. He says he drafted the bill redirecting funds from the State and Commerce departments to expanding the U.S. Border Patrol because "I thought the American people

were more interested in law enforcement and fighting drugs than in building marble palaces and renting long coats and high hats."

Sherman says that in her three years as an assistant secretary, "I haven't noted any marble palaces. I've noted instead plumbing that does

not work and computers that are 25 years old."

Sen. Jesse Helms, R-N.C., chairman of the Senate Foreign Relations Committee, wants to dismantle three organizations — the Agency for International Development, the Arms Control and Disarmament Agency and the United States Information Agency — and merge them with the State Department. He also proposes slashing foreign aid, which he calls "a monumental waste of taxpayers' money."

AID administrator Brian Atwood took up the cause in a speech at Johns Hopkins University Thursday.

"The developing world is a simmering cauldron producing more complex disasters than the world has ever seen. If some people on the Hill succeed in killing us, we'll have to be reinvented in the future."



Agence France-Presse  
CHRISTOPHER: Fighting for funding

*oh/ace memo*

# NATIONLINE

## Poll: 3 of 4 favor 'official' English

English should be the official language of the United States, 73% of Americans say in a *U.S. News & World Report* poll out Sunday; 23% are opposed. The strongest opposition, 56%, is among Hispanics; 38% are in favor. Strongest support: 83% among white Republicans. The poll of 1,000 registered voters Sept. 11-13 also found that 50% favor barring foreign languages from such official acts as election ballots and swearing-in ceremonies; 43% oppose such a ban.



AP  
**DAHMER:** Killer's body is cremated

**DAHMER'S BRAIN:** Jeffrey Dahmer's parents agreed to preserve his brain for research, but his body was cremated Sunday. The ashes go to his mother, Joyce Flint of Fresno, Calif., officials said. Dahmer, of Milwaukee, killed 16 boys and men — dismembering and cannibalizing some — and was sentenced in 1992 to life in prison. He was clubbed to death Nov. 28 by a fellow inmate. Dahmer's body has been kept in a freezer in the custody of the medical examiner.

**MANY TWISTERS:** A strong jet stream combined with warm, moist, unstable tropical air to produce a near-record 1,011 tornadoes through August. The National Weather Service says there are 686 in an average year. The record is 1,067 in 1991. The most active areas this year were the Texas panhandle and southern Oklahoma, which have had 104 twisters. The areas average 35 tornadoes a year. Most tornadoes sweep the USA between March and July, but October twisters are not unusual. Tornado records have been compiled every year since 1953.

**ELDERLY SLAYING:** Alfred Pohlmeier, 90, was jailed in Ventura, Calif., pending trial on charges he murdered his wife of 60 years because he feared no one would care for her if he died first. He faces 25 years to life if convicted of strangling his wife, Lidwina, 86. He was arrested Wednesday after dialing 911 to report that his wife was choking. She died Friday. Neither Alfred nor Lidwina Pohlmeier was senile or seriously ill, prosecutor Don Glynn said: "This is a cold-blooded murder. It's not a mercy killing."

**SCHOOL DESEGREGATION:** Chicago school officials say they will remain committed to school integration even if they succeed in getting a 15-year-old court order dissolved. Officials say the order is futile because school racial make-ups can't be balanced when only 11% of students are white. Teacher hiring is difficult because of racial quotas, officials said. Two-thirds of schools have been unable to comply.

**MONSTER HOLE:** Local and federal officials are trying to decide what to do about a 2,700-foot-deep hole created by a collapsed mine shaft in Virginia City, Nev. The hole, deep enough to house the World Trade Center stacked on top of the Empire State Building, opened Aug. 11. A solution will be difficult for engineers because "it's just too damn deep," says Dean Haymore, Storey County planning administrator.

**MURDER RETRIAL:** A Pensacola, Fla., jury Saturday convicted John "Billy Joe" Crumitie, 18, of the 1993 gunshot murder of British tourist Gary Colley, 34, during a robbery attempt at a highway rest stop near Monticello. Crumitie said he was home asleep at the time. Two earlier trials ended with hung juries. Two co-defendants pleaded guilty. Colley's slaying was the ninth of a foreign tourist in Florida in a year and prompted posting of 24-hour guards at rest stops.



AP  
**CRUMITIE:** Guilty in Fla. tourist slaying

**BEAR ATTACK:** A Kalispell, Mont., man was treated for puncture wounds from a grizzly bear sow that attacked him Saturday on a Glacier National Park trail. David Reich, 41, was released after treatment. A companion had driven the bear off with pepper spray. It was the park's second grizzly mauling of the week. Ranger say bears are feeding heavily in preparation for hibernation.

**POLICE KILLER RULING:** Mumia Abu-Jamal, 41, is appealing a judge's ruling that denied him a new trial in the 1981 murder of police officer Daniel Faulkner. The judge last month stayed Abu-Jamal's Aug. 17 execution but on Friday rejected claims that police and prosecutors suppressed evidence and coerced witnesses. Saturday, Philadelphia Mayor Ed Rendell joined 1,000 police officers at a rally calling for the execution of Abu-Jamal, who has attracted a network of global supporters, including Hollywood celebrities.

**RUBY RIDGE HEARING:** White separatist Randy Weaver accidentally killed his own son in a firefight with U.S. marshals, two of the lawmen told a Senate hearing Friday. Deputy U.S. Marshal Larry Cooper said he never fired at Samuel Weaver, 14, and believes the boy was accidentally hit by a bullet fired by his father. Arthur Roderick, another deputy marshal at the scene, agreed. Weaver says he never fired during the 1992 incident and believes Cooper killed Samuel.

## ALSO ...

► **NEVADA FIRES:** Undermanned fire crews are battling 84 Nevada wildfires, most of them out of control in the Elko and Winnemucca areas. The biggest: an 18,000-acre blaze. No structural damage or injuries were reported.

► **GATORS CAUGHT:** Two 300-pound alligators are back on the road after a brief taste of freedom. Douglas Berg was hauling the gators to an Oregon farm Friday when one jumped onto I-5 near Redding, Calif. It was recaptured as it sauntered down a median. The second gator escaped 40 miles down the road and was recaptured Saturday.

## Reporter guilty in slaying attempt



AP  
**FRAZIER:** To be sentenced on Nov. 2

Newspaper reporter Michael Frazier, 33, was convicted Saturday in Knoxville, Tenn., of attempted manslaughter for trying to kill his reputed lover's husband. Jurors rejected charges of attempted first- or second-degree murder. Frazier is free on bond pending his Nov. 2 sentencing, when he faces two to four years in prison. The victim, John Whedbee, had denied defense claims that he beat his wife, Lisa, who is accused of giving Frazier a knife and leading him to the bedroom where her husband was sleeping. Her trial is pending. Frazier had fallen in love with Lisa Whedbee, 32, whom he wrote about in a 1993 Mother's Day article about her struggle to raise a daughter with Down syndrome.

Frazier had fallen in love with Lisa Whedbee, 32, whom he wrote about in a 1993 Mother's Day article about her struggle to raise a daughter with Down syndrome.

Written by Paul Leavitt. Contributing: Patricia Rivera, Carrie Dowling and Masud Khan

# Awaiting the Train Wreck

By Mike Causey

Washington Post Staff Writer

**M**ost folks following the hype over the possible government "train wreck" Oct. 1 don't know whether to laugh or cry.

The millions of federal employees, unwilling passengers on the speeding Gridlock Express, haven't panicked yet, but they are checking their safety belts.

Congress says it doesn't want a government-wide shutdown. But it went on vacation for the month of August without approving most of the federal government budgets needed to avoid a shutdown (it did manage to clear its own). Congressional leaders say there won't be a train wreck if President Clinton stops playing politics.

The White House says it feels everybody's pain and deplôres shutdown talk. But it made first use of the term "train wreck" and told U.S. agencies to prepare for a possible 60-day lockout. The president has threatened to veto nearly half the appropriation bills unless Congress removes certain spending and tax cuts. The president says there won't be a train wreck if congressional Republicans stop playing politics.

While both sides read from the same "ain't-gridlock-awful" script, the dreaded train wreck is due at Union Station at midnight Sept. 30. If it happens, all nonessential government services (these have yet to be defined) will stop because agencies won't have any authority to spend money. It would mean furloughs and unemployment benefits for 1.5 million or more federal workers.

Social Security and civil service pension checks would continue to go out in the mail. They are considered essential operations. Federal workers would get paid for services performed through the end of September. But furloughed employees wouldn't get paid—whether the shutdown lasts a day or two months—unless Congress votes a special appropriation for that purpose. Essential employees who would get paid, but not during the furlough period and not until budgets are settled.

The president would get paid after the furlough is over, but

Congress would be paid while it is going on. That would be as if folks on the factory floor were toiling in 110-degree heat while the board of directors squabbled and got paid in air-conditioned comfort. Air Force One would still fly, and House and Senate leaders would keep limo service.

The House is expected to hold hearings on the effect of a furlough. If government specialists are allowed to tell it like it is and spell out the effect of a shutdown, Congress and the White House might be overcome by an attack of common sense. They could allow agencies to continue operating at current levels while the budget process is worked out. But if Congress fails to approve budgets or the president vetoes them, then welcome to the train wreck.

Here's the status on the budgets as Congress returns from its August recess:

- Passed by the House: budgets for the departments of Agriculture, Commerce, State, Justice and the judiciary, Labor, Health and Human Services, Education, Veterans Affairs and Housing and Urban Development, as well as foreign operations and independent agencies.

- Passed by the House and Senate: Energy and water development, Interior, legislative branch, military construction, Transportation, Treasury-Postal Service.

- Signed by the president: supplemental defense funds for fiscal year 1995; rescissions and disaster aid.

- Facing possible presidential veto: Agriculture, Interior, Labor-HHS, legislative branch, Treasury-Postal, VA, HUD and independent agencies budgets.

In the meantime, political scientists, journalists and pollsters continue their efforts to figure out why so many Americans say their favorite choice in the next election is "none of the above!"

Sunday, Sept. 3, 1995

## FOR MORE INFORMATION

To post questions or comments for Mike Causey, see *Digital Ink*, The Post's on-line service. To learn about *Digital Ink*, call 1-800-510-5104, ext. 9000.

# Shutting Down the Shop

By Mike Causey

Washington Post Staff Writer

**I**f you want to develop a beautiful head of white hair, or go bald overnight, join one of the federal agency teams drafting contingency plans for a government-wide shutdown. They must plan for something that may or may not happen on Oct. 1 and that could last anywhere from 24 hours (best-case scenario) to 60 days (worst-case scenario).

They must answer questions and anticipate consequences—legal, financial, emotional—that could hurt some of their colleagues, and could keep the government tied up in legal knots well into the second term of potential presidents H. Ross Perot, Newt Gingrich or John F. Kennedy Jr.

Shutdown teams must decide which functions halt—and which colleagues don't get paid—if the nation's biggest company locks out 2 million of its workers. They must maintain critical operations related to health, safety, law enforcement and defense. They must answer questions such as: What happens to people who are sick or on vacation during a furlough? Should monthly parking fees be prorated to exclude furlough time? And how about transit subsidies for workers on days they are not allowed to work? Will papers for people retiring at the end of this month be processed during a furlough? Will that delay benefits for new retirees?

Feds can work at other jobs during a furlough—if they can find a boss willing to take them immediately, train them, then release them immediately if the furlough lasts only a couple of days. Furloughed feds may qualify for unemployment benefits. But what happens if they draw benefits and then Congress votes to give them retroactive pay for the time they were on furlough? Talk about a can of worms!

Sometimes the answer to one question raises two more questions. Some questions don't have answers: Will there be a furlough? Will I be one of the essential employees not furloughed? How long will the furlough last?

Feds have been told that their health and life insurance benefits will continue during any furlough, although nonessential workers won't be paid unless Congress votes special funds after the budgets have been approved. While it is wonderful to have insurance coverage (you can pay premiums later on), how about things like paying the mortgage and buying your daily bread?

Next week, we'll try to provide answers to various furlough-related questions and we'll recycle some of the questions and answers you may have missed either because you were on vacation or in denial.

## Money

Many federal workers—facing the chaos of possible layoffs, early-retirement offers, buyouts and furloughs—are trying to get their financial affairs in order. At 9 a.m. tomorrow on WUST radio (1120 AM), financial planner Dennis Gurtz will talk about long- and short-range retirement planning, investment strategies and furlough preparation.

At 10 a.m. Bob Leins, a CPA and tax specialist, and Tammy Flannigan, a federal benefits consultant, will look at financial options and benefits available to civil servants and retirees.

## Moving On

Calvin L. Plumley will retire this month after 44 years with the Army, including 20 years in uniform and 24 as a civilian employee.

## AIDSWALK

Many federal workers plan to join in the Sept. 23 event designed to raise money for the Whitman-Walker Clinic and other AIDS service organizations. The Office of Personnel Management, in a departure from regular fund-raising policies, gave AIDSWALK coordinators permission to solicit pledges last month on government property. For details, call Diane Herz at 202-606-7188, ext. 271.

Friday, Sept. 1, 1995

## FOR MORE INFORMATION

To post questions or comments for Mike Causey, see *Digital Ink*, The Post's on-line service. To learn about *Digital Ink*, call 1-800-510-5104, ext. 9000.

THE FEDERAL DIARY

# Unemployment Guidelines

By Mike Causey  
Washington Post Staff Writer

**F**urlough nightmare number one: If Congress and the White House trigger a government-wide shutdown by failing to approve agency budgets by Oct. 1, the number of Americans on the unemployment rolls could nearly double overnight.

There are 2.6 million Americans collecting unemployment benefits, including about 30,000 former federal workers. But if agencies are forced to lock out nonessential employees, many, if not most, of the 2.7 million federal employees would become eligible for unemployment. Although the program is administered by the states, the money to pay the benefits comes from Uncle Sam. He gets it from the taxpayers.

If there is a shutdown, many, if not most, of the 360,000 civilian federal workers here would be eligible for unemployment from the District, Maryland or Virginia. Massive claims from furloughed workers could swamp offices in New York, Los Angeles, Philadelphia, Norfolk, Baltimore, Dayton, Denver, Chicago, Seattle, Dallas-Fort Worth, Boston, Kansas City, St. Louis, San Francisco and San Diego, which together have more than 1 million residents who are federal workers.

Congress has 25 days to approve 1996 budgets. If it fails to do so, or if the president, as threatened, vetoes some or all of them, it would be shutdown time for all but essential operations.

We will continue our series of furlough contingency plan updates. Meantime, clip and save this information on unemployment, just in case.

■ DO NOT call, write or visit the unemployment office now. You must be unemployed before you can apply for benefits. You cannot anticipate unemployment, such as a government-wide furlough. If ineligible workers swamp unemployment offices, that could slow or stop operations for people who

actually are unemployed and need immediate help.

■ Federal agencies and local unemployment offices are working on streamlining procedures to handle large numbers of federal workers, in case the shutdown comes. Workers will be notified of the special application procedures well in advance of any shutdown. Again, do not apply now!

■ Benefits are based on salary and state benefit levels, as well as the applicant's workplace, or duty station. Example: A worker might live in Maryland and work in Virginia for a department with headquarters in the District. But benefits would be based on Virginia unemployment rules. Benefits are based on where you work, not where you live.

■ Unemployment benefits begin immediately upon approval in the District and Virginia. There is a one-week delay in Maryland, which means that people who work in Maryland don't get any benefit for the first week that they are unemployed.

■ The maximum unemployment benefit in the District is \$347 a week; in Maryland, \$250 a week; and in Virginia, \$208 a week. Higher-income employees could get the maximum. Lower-paid workers would get smaller benefits.

■ Weekly benefit checks would be mailed to unemployed individuals. Normally, it takes about two weeks for the first check to be issued, but in the case of a massive influx of applicants, that could be delayed. Backlogs also would result if large numbers of people call unemployment offices asking for information.

It is much too early to panic. Nobody knows if there will be a shutdown, or how long one might last. But federal workers should be braced, just in case. Stay tuned!

Tuesday, Sept. 5, 1995

## FOR MORE INFORMATION

To post questions or comments for Mike Causey, see Digital Ink, The Post's on-line service. To learn about Digital Ink, call 1-800-510-5104, ext. 9000.

# Split on Ethnic Lines Now Likely in Bosnia

## NATO Raids May Make Division Inevitable

By John Pomfret  
Washington Post Foreign Service

PALE, Bosnia, Sept. 4—In launching large-scale airstrikes and demanding an end to the Serb siege of Sarajevo, NATO governments have taken a page from the book written by combatants in the 3½-year-old Bosnian war. Only force will stop the fighting, the page reads, and diplomacy means little if it is not backed up with a gun.

But by focusing their bombs and missiles on Serb positions around Sarajevo, NATO warplanes are not promoting the ideals of multiculturalism and tolerance favored by the West. Instead, their raids have improved chances of a division of Bosnia along ethnic lines that might never have been achieved without action directly threatening the siege of Bosnia's capital.

For months now, Western and Bosnian officials have said that only if all of Sarajevo becomes Muslim will peace be at hand. A new Berlin Wall through the heart of the city, with Muslims on one side and Serbs on the other, will not be accepted by the West, these officials say, nor will the mostly Muslim government agree to such a split.

The NATO strikes—seeking an end to the Serb siege, withdrawal of heavy Serb guns 12½ miles from the capital's center and reopening of Sarajevo's airport—will go a long way to tilting the military balance around the Bosnian capital toward the Muslims for the first time since war erupted in April 1992. Once that happens, these officials say, Serb claims on a part of the city in any peace deal will weaken, increasing the likelihood that the capital will be a Muslim-run city.

But in exchange for the upper hand around Sarajevo, Muslims will be forced to reconsider their refusal to surrender the isolated Muslim "safe area" of Gorazde to the Serbs. Floating in an enemy sea in eastern Bosnia close to the border with Yugoslavia, the zone of 60,000 Muslims is cut off from Bosnian-held land by 20 miles of heavily fortified Serb territory. Its future as a part of the Muslim-Croat federation is untenable, U.N. officials have said.

The Bosnian Serbs have demanded Gorazde because it lies on a key road connecting Serb-controlled territory in eastern Bosnia to the coal-rich region of eastern Herzegovina. Yugoslavia, which now comprises only Serbia and Montenegro, wants Gorazde transferred to the Bosnian Serbs because it sits near Yugoslavia's Sandzak region, also home to many Muslims. Fearing calls for autonomy and independence from its own Muslim minority, Yugoslavia naturally wants contact between the two sides limited.

U.N. troops withdrew from Gorazde last month, leaving two unarmed military observers and a political officer behind. While NATO is still committed to protecting the "safe zone," the withdrawal, like NATO air action over Sarajevo, has put the warring factions on notice that the fate of Gorazde, like that of Sarajevo, should be discussed.

Sarajevo and Gorazde are the keys to the peace process in Bosnia because the hardest part of concluding a deal here will be the struggle for the map. While the parties generally have agreed to splitting Bosnia equally, the actual breakdown is far from clear.

"The war was fought over land, people died for the land, so land—who gets it—is the critical issue here," said Assistant Secretary of State Richard C. Holbrooke, who is leading a peace mission to the region.

Holbrooke and others have said constitutional arrangements, while complex, actually are less troublesome. The two sides in the conflict would be united under a weak central government, and each side would be able to enter into some type of political relationship with its main backer—Croatia to the west for the Muslims and their Bosnian Croat allies and Serbia to the east for the Bosnian Serbs.

To understand how NATO's attacks fit into the peace process, it is useful to regard them not as distinct military actions by the world's most powerful alliance but as part of a series of recent military activities on the battlefields of the former Yugoslavia. The Western raids and artillery barrages fit into a new phase of the war in which almost every new engagement seems to inch the region closer to peace.

This has not always been the case.

In 1991, rebel Serbs, backed by the Yugoslav army, seized one-third of Croatia. A year later, they grabbed 70 percent of Bosnia. Then a stalemate set in. For years, combat involved little more than scooting into a farmer's backyard, grabbing a portable mortar out of the trunk of a Yugo, popping off a few rounds and then fleeing, leaving the poor farmer to bear the brunt of any response.

Then on May 1, Croatia's army emerged from four years of training and weapons-buying and roared through Western Slavonia, a rebel Serb-held section of Croatia. The defeat, the Serbs' worst in the war, transferred 200 square miles from Serb to Croatian hands in less than 48 hours.

The Bosnian Serbs spoke next. Heavily armed Serb troops seized the U.N.-designated "safe area" of Srebrenica on July 11, expelling 40,000 Muslims from their homes in eastern Bosnia. Two weeks later, the neighboring "safe area" of Zepa

fell to a similar Serb assault.

Three weeks later, the Croatian army roared again. A military juggernaut of 100,000 men, backed by tanks, warplanes, artillery and helicopters, blitzed into Croatia's rebel-held Krajina region, capturing it in less than a week. More than 150,000 Croatian Serbs fled the assault.

These attacks "cleaned up" the map of former Yugoslavia by emptying hated minorities from enemy-held territory. More than 160,000 Serbs were booted from Croatia, and more than 55,000 Muslims were rousted from Serb-held areas of Bosnia. In addition, the attacks signaled the victory of the concept of an ethnically homogeneous state in the former Yugoslavia despite years of Western pleas for tolerance and brotherly love.

After Krajina, Western Slavonia and the two "safe areas" fell, the only troublesome pieces of the Balkans map were Sarajevo, Gorazde and Eastern Slavonia, the last Serb-held strip of Croatia that runs along the border with Yugoslavia. By challenging Serb dominance over Sarajevo, NATO's attacks could lead to "cleaning up" the fate of that city and thus remove it from the list. Western officials say there is hope an agreement to keep Sarajevo under Muslim control while ceding Gorazde to the Serbs can be reached.

The Bosnian Serbs are aware of the significance the NATO attacks have for Sarajevo. The Bosnian Serb command today issued a list of conditions imposed by its commander, Ratko Mladic, for withdrawing his big guns from the hills surrounding the city as NATO has demanded. Prominent among them was a caveat that "the withdrawal will not give advantage to any side, nor disrupt the balance of power."

### FOR MORE INFORMATION

To keep updated throughout the day on the latest developments in the Balkans, see *Digital Ink*, The Post's on-line service. To learn about *Digital Ink*, call 1-800-510-5104, ext. 9000.

# Furlough threat hangs over federal employees

By Carol J. Castaneda  
USA TODAY

Sharon Richardson, a civilian worker at Charleston Air Force Base in South Carolina, planned to replace her 7-year-old car with a new one this fall.

Instead, Richardson, like hundreds of thousands of other federal workers, is putting off any big purchase and hoarding her savings until she learns if the battle over the federal budget will close her office.

"I'm half the income," she says, ticking off \$3,000-a-month list of bills for house, car and child care. "We don't need this."

Across the country, federal employees are bracing financially and psychologically, for a possible government shutdown that will temporarily stop their paychecks around Oct. 1.

The last such shutdown was in 1990. Only one workday was involved.

But this time, the issues between Congress and the White House seem so complex and divisive, federal workers have been warned they could face a shutdown that lasts a week or maybe even months.

Today, federal agencies must tell the Office of Management and Budget how they will comply with the law that says only employees who protect public safety and property can work. They include air traffic controllers and federal prison guards.

But even those deemed essential worry. If a shutdown drags on, they could be forced to work without being paid on time.

Out of 2 million federal workers, at least 500,000 people could be affected by the shutdown, says Magda Seymour of the American Federation of Government Employees.

"They call it a furlough," Seymour says. "They usually use that term in a military leave, like servicemen who are given a weekend furlough. We are telling our members this is no vacation."

Doris Blue, who has worked at the Birmingham, Ala., VA Hospital for 23 years as a registered nurse, is angry she might be asked to wait for a paycheck.

"I have two kids in college," says Blue, 49. "If I don't have money to pay my house note, my car note, and my credit cards, I'm in trouble."

Hardest hit by a shutdown would be the Washington, D.C., area, where there are nearly 400,000 federal employees. Some local stores and auto dealerships say they've already seen signs that workers fear a shutdown.

"It hurts my business," says Jon Thompson, a sales manager at Capitol Ford Inc. Recently, he says he could

## Operations likely not to be affected

Only services necessary for protection of safety or property against imminent threat, will continue operations in the event of a furlough. Exactly which operations will continue and how many people will be needed is being decided by each federal agency and the Office of Management and Budget. For instance, national parks, museums and monuments might close but security personnel will still be needed. However, federal functions that are likely to continue in the event of a government shutdown include the following:

- Postal Service
- Air traffic control
- Military operations
- Prison staffing
- Bank, financial market regulation
- Social Security, Medicare benefits
- Food safety inspections
- Veterans Affairs hospital care
- Staffing at federal prisons

have sold cars to two couples with excellent credit ratings, but both wanted to wait until they knew the length of the federal shutdown.

Some two-federal-paycheck families, like Judith and Charles Anderson, of Wheaton, Md., will be hard hit. Both work for the Office of Personnel Management. He is a research psychologist. She is a program analyst.

The Andersons have cut back on dining out and started saving everything they can. Judith Anderson says she is angry over the uncertainty and stress federal employees have been placed under.

"What this says is a blow to our belief and commitment to public service," she says. "There is a sense of cynicism on the part of Congress and the administration. They're willing to play political games, and federal employees are the pawns."

Michelle Borden, of Waldorf, Md., a 21-year-federal employee, says she postponed her family's summer vacation to Disney World until November, because of shutdown fears. If it happens, "I may have to cancel again."

Borden has already saved up two, \$719-a-month mortgage payments, just in case. And she's told her 20-year-old son that he can't attend community college until next semester.

"I told him he was going to have to wait until January when I know my finances are going to be more stable," Borden says.

# Registering race: Census battle brewing

## Family pushes for new category on school forms

By Deborah Sharp  
USA TODAY

MIAMI — Melissa Meyer, who is white, and her husband Thallieus Massey, who is of African American and American Indian extraction, want their 7-year-old son Jordan to know and reflect all of his heritage.

So, what should the second-grader mark on his school registration form where it asks race or ethnicity?

The school district wanted him to choose one from among the traditional options: white, black, Asian, Native American or Hispanic.

But his parents refused.

"They won't even let us call our son who he is," says Meyer. "That's insulting to us and to him."

The battle led to a partial victory last month. Florida agreed to add "multiracial" to its school forms, eliminating the need for children to choose just one race.

Massey and Meyer were behind a similar victory when they lived in North Carolina. The state added a multiracial category to its forms after they insisted upon it shortly before Jordan entered first grade.

Similar laws have passed or are pending in 11 other states.

The couple's fight over racial categories presages a larger war brewing over the upcoming U.S. Census. Officials



By Tom Salyer

**A QUESTION OF HERITAGE:** Melissa Meyer and Thallieus Massey of Miami want their 7-year-old son, Jordan, to be able to acknowledge his mixed-race heritage on school registration forms.

are pondering how to change the federal government's 20-year-old method of sorting residents into racial categories.

Largely because of lobbying by mixed-race activists, the Census will test a new "multiracial" category in a mini-survey next year in preparation for the national count in 2000.

"Politically, it's a nightmare," says James Trussel, head of the Office of Population Research at Princeton University.

Roderick Harrison, head of racial statistics for the U.S. Census says: "The people who rely on Census statistics have been very concerned to know before this is done how the changes will affect the quality

of the data."

Some civil rights groups oppose the test, fearing the new category could dilute the statistical strength of blacks.

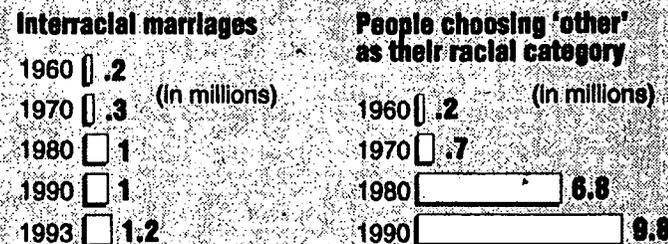
After all, Census data on race is the basis for redistricting, for enforcement of the Voting Rights Act and for some anti-discrimination laws.

"We believe every individual should have the right to assert their ethnic identity," says Wade Henderson, the NAACP's Washington director. "The question I raise is whether the Census is the appropriate place to make a change that has legal and political implications."

Atlanta-based Susan Graham, mother of two biracial

## Race definitions changing

The number of interracial marriages in the USA grew from .3% of all couples in 1960 to 2.2% in 1993. Likewise, the number of people who fit into the 'other' category for race on Census Bureau surveys grew from .1% of the population in 1960 to about 4% in 1990.



Source: U.S. Census

By Nick Galliflanks, USA TODAY

children and founder of Project RACE — Re-Classify All Children Equally — disagrees.

"What's of utmost importance is self-identification. The fact that the government is acting as the racial police, telling people what they can and cannot be, is the problem."

Graham started her group, which she says now has members in 37 states, because of her own anger and frustration after the 1990 Census.

She says she was given the runaround when she called to ask how to categorize her children. She's white. Her husband of 15 years is black.

Finally, she says, a Census worker told her in a conspiratorial tone: "We usually go by the race of the mother in cases like this."

When Graham asked why, the worker said because they always know at least who the mother is.

"I was incensed," says Graham, whose group plans to file a federal suit this month to

force the category changes.

Unlike Graham's group, Massey and Meyer see the multiracial category as an unsatisfactory compromise.

They're fighting to allow Jordan to indicate all three races, black, white and Native American, that fit his background.

But that raises a tough question: Since nearly 10 million residents in the 1990 Census chose "other" to explain their racial background, how detailed a reckoning is practical?

Some question how many categories it would take, for example, to cover the difference between a Hispanic of European background from Argentina, vs. another born in Guatemala, whose ancestors are Mayan Indians.

Says Harrison: "It's a challenge to the federal statistical system, but it's one that simply can't be ignored. You can't just say, 'Well, this is too complicated. Let's just not do it.'"

## Study links job deaths to OSHA failure

By Earle Eldridge  
USA TODAY

Seventy-five percent of sites where workers suffered serious accidents in 1994 and early 1995 had not had a federal safety inspection since 1990, says an extensive analysis by the Associated Press.

Thousands of workers were injured and 1,835 died in those accidents, says the report by AP writers Bob Port and John Solomon. They reviewed records of 778,000 inspections conducted by the Occupational Safety and Health Administration from January '89 to May '95.

They then focused on 6,411 sites where fatal or serious accidents occurred in 1994 through May 1995. AP says 4,830 of those sites — 75% — had not been inspected in the five previous years.

"Two key reasons OSHA did not make advance visits to these lethal work sites are a shortage of inspectors and its mandate to follow up all worker complaints, no matter how routine," the AP report says.

They cited a Philadelphia case this year where a worker laying subway tracks was cut in half by heavy equipment. His company, Comtrak, had not been inspected in eight years.

OSHA has 2,000 inspectors for about 6 million work sites. OSHA says it wants to trim unfounded complaints by fax or telephone, have more inspections and work with industry.

Wt Bulletin (on computer)

Two approaches to keep part going (the Congress)

1. CR w/ lowest of House, Senate, or FY 95 levels of spending
2. CR reflecting GOP views of essential

Approach could vary acc. to approp. bill in q.

One option -

Allow CRs to run thru OCT, then concurrent with w/ a reconciliation bill + debt ceiling deadline at same time.

Need around Nov 1

prospect that expiration of CR, debt ceiling + reconciliation could all be bundled.

Justice Dept opinions

Civiletti opinion 1981

Walter's "

OPM - updated guidance on furloughing procedure

} emp. practice related decisions

→ lots of advice; OCC looking a bit

OMB - centralizer of contingency plans.

some real urgency in figuring out how to handle  
questions coming thru

legal std - OCC / Waris room has lots of policy calls  
need to establish regular procedure -

joint com / advice

Wide variance among internal Justice Dept  
as to level of staffing, who consults emerg pers.

Hard to police some disputes



## U. S. Department of Justice

## Office of Legal Counsel

Office of the  
Assistant Attorney General

Washington, D.C. 20530

August 16, 1995

**MEMORANDUM FOR ALICE RIVLIN  
DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET**

From: Walter Dellinger *WED/uc*  
Assistant Attorney General

Re: Government Operations in the Event of a Lapse in Appropriations

This memorandum responds to your request to the Attorney General for advice regarding the permissible scope of government operations during a lapse in appropriations.<sup>1</sup>

The Constitution provides that "no money shall be drawn from the treasury, but in consequence of appropriations made by law." U.S. Const. art. I, § 9, cl. 7. The treasury is further protected through the Antideficiency Act, which among other things prohibits all officers and employees of the federal government from entering into obligations in advance of appropriations and prohibits employing federal personnel except in emergencies, unless otherwise authorized by law. See 31 U.S.C. § 1341 *et seq.*<sup>2</sup>

In the early 1980s, Attorney General Civiletti issued two opinions with respect to the implications of the Antideficiency Act. See "Applicability of the Antideficiency Act Upon A Lapse in an Agency's Appropriations," 4A Op. O.L.C. 16 (1980); "Authority for the Continuance of Government Functions During a Temporary Lapse in Appropriations," 5 Op. O.L.C. 1 (1981) (1981 Opinion). The 1981 Opinion has frequently been cited in the ensuing years. Since that opinion was written, the Antideficiency Act has been amended in one

<sup>1</sup> We do not in this memorandum address the different set of issues that arise when the limit on the public debt has been reached and Congress has failed to raise the debt ceiling.

<sup>2</sup> For the purposes of this inquiry, there are two relevant provisions of the Antideficiency Act. The first provides that "[a]n officer or employee of the United States Government or the District of Columbia government may not . . . involve either government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law." 31 U.S.C. § 1341(a)(1)(B). The second provides that "[a]n officer or employee of the United States Government . . . may not accept voluntary services . . . or employ personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property." 31 U.S.C. § 1342.

respect, and we analyze the effect of that amendment below. The amendment amplified on the emergencies exception for employing federal personnel by providing that "[a]s used in this section, the term 'emergencies involving the safety of human life or the protection of property' does not include ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property." 31 U.S.C. § 1342.

With respect to the effects of this amendment, we continue to adhere to the view expressed to General Counsel Robert Damus of the Office of Management and Budget that "the 1990 amendment to 31 U.S.C. § 1342 does not detract from the Attorney General's earlier analyses; if anything, the amendment clarified that the Antideficiency Act's exception for emergencies is narrow and must be applied only when a threat to life or property is imminent." Letter from Walter Dellinger to Robert G. Damus, October 19, 1993. In order to ensure that the clarification of the 1990 amendment is not overlooked, we believe that one aspect of the 1981 Opinion's description of emergency governmental functions should be modified. Otherwise, the 1981 Opinion continues to be a sound analysis of the legal authorities respecting government operations when Congress has failed to enact regular appropriations bills or a continuing resolution to cover a hiatus between regular appropriations.

## I.

Since the issuance of the extensive 1981 Opinion, the prospect of a general appropriations lapse has arisen frequently. In 1981, 1982, 1983, 1984, 1986, 1987 and 1990, lapses of funding ranging from several hours to three days actually did occur. While several of these occurred entirely over weekends, others required the implementation of plans to bring government operations into compliance with the requirements of the Antideficiency Act. These prior responses to the threat of or actual lapsed appropriations have been so commonly referred to as cases of "shutting down the government" that this has become a nearly universal shorthand to describe the effect of a lapse in appropriations. It will assist in understanding the true extent of the Act's requirements to realize that this is an entirely inaccurate description. Were the federal government actually to shut down, air traffic controllers would not staff FAA air control facilities, with the consequence that the nation's airports would be closed and commercial air travel and transport would be brought to a standstill. Were the federal government to shut down, the FBI, DEA, ATF and Customs Service would stop interdicting and investigating criminal activities of great varieties, including drug smuggling, fraud, machine gun and explosives sales, and kidnapping. The country's borders would not be patrolled by the border patrol, with an extraordinary increase in illegal immigration as a predictable result. In the absence of government supervision, the stock markets, commodities and futures exchanges would be unable to operate. Meat and poultry would go uninspected by federal meat inspectors, and therefore could not be marketed. Were the federal government to shut down, medicare payments for vital operations and medical services would cease. VA hospitals would abandon patients and close

their doors. These are simply a few of the significant impacts of a federal government shut down. Cumulatively, these actions and the others required as part of a true shut down of the federal government would impose significant health and safety risks on millions of Americans, some of which would undoubtedly result in the loss of human life, and they would immediately result in massive dislocations of and losses to the private economy, as well as disruptions of many aspects of society and of private activity generally, producing incalculable amounts of suffering and loss.

The Antideficiency Act imposes substantial restrictions on obligating funds or contracting for services in advance of appropriations or beyond appropriated levels, restrictions that will cause significant hardship should any lapse in appropriations extend much beyond those we have historically experienced. To be sure, even the short lapses that have occurred have caused serious dislocations in the provision of services, generated wasteful expenditures as agencies have closed down certain operations and then restarted them, and disrupted federal activities. Nevertheless, for any short-term lapse in appropriations, at least, the federal government will not be truly "shut down" to the degree just described, simply because Congress has itself provided that some activities of government should continue even when annual appropriations have not yet been enacted to fund current activities.

The most significant provisions of the Antideficiency Act codify three basic restrictions on the operation of government activities. First, the Act implements the constitutional requirement that "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." U.S. Const. art. I, § 9, cl. 7. Second, when no current appropriations measure has been passed to fund contracts or obligations, it restricts entering into contracts or incurring obligations (except as to situations authorized by other law). Third, it restricts employing the services of employees to perform government functions beyond authorized levels to emergency situations, where the failure to perform those functions would result in an imminent threat to the safety of human life or the protection of property.<sup>3</sup> The 1981 Opinion elaborated on the various exceptions in the Antideficiency Act that permit some continuing government functions, and we will only summarize the major categories here:

- Multi-year appropriations and indefinite appropriations.

Not all government functions are funded with annual appropriations. Some operate under multi-year appropriations and others operate under indefinite appropriations provisions that do not require passage of annual appropriations legislation. Social security is a prominent example of a program that operates under an indefinite appropriation. In such

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<sup>3</sup> These restrictions are enforced by criminal penalties. An officer or employee of the United States who knowingly and willfully violates the restrictions shall be fined not more than \$5,000, imprisoned for not more than 2 years, or both. 31 U.S.C. §1350.

cases, benefit checks continue to be honored by the treasury, because there is no lapse in the relevant appropriation.

- Express authorizations: contracting authority and borrowing authority.

Congress provides express authority for agencies to enter into contracts or to borrow funds to accomplish some of their functions. An example is the "food and forage" authority given to the Department of Defense, which authorizes contracting for necessary clothing, subsistence, forage, supplies, etc. without an appropriation. In such cases, obligating funds or contracting can continue, because the Antideficiency Act does not bar such activities when they are authorized by law. As the 1981 Opinion emphasized, the simple authorization or even direction to perform a certain action that standardly can be found in agencies' enabling or organic legislation is insufficient to support a finding of express authorization or necessary implication (the exception addressed next in the text), standing alone. There must be some additional indication of an evident intention to have the activity continue despite an appropriations lapse.

- Necessary implications: authority to obligate that is necessarily implied by statute.

The 1981 Opinion concluded that the Antideficiency Act contemplates that a limited number of government functions funded through annual appropriations must otherwise continue despite a lapse in their appropriations because the lawful continuation of other activities necessarily implies that these functions will continue as well. Examples include the check writing and distributing functions necessary to disburse the social security benefits that operate under indefinite appropriations. Further examples include contracting for the materials essential to the performance of the emergency services that continue under that separate exception. In addition, in a 1980 opinion, Attorney General Civiletti opined that agencies are by necessary implication authorized "to incur those minimal obligations necessary to closing [the] agency." The 1981 opinion reiterated this conclusion and consistent practice since that time has provided for the orderly termination of those functions that may not continue during a period of lapsed appropriations.

- Obligations necessary to the discharge of the President's constitutional duties and powers.

Efforts should be made to interpret a general statute such as the Antideficiency Act to avoid the significant constitutional questions that would arise were the Act read to critically impair the exercise of constitutional functions assigned to the executive. In this regard, the 1981 Opinion noted that when dealing with functions instrumental in the discharge of the President's constitutional powers, the "President's obligational authority . . . will be further buttressed in connection with any initiative that is consistent with statutes -- and thus with the exercise of legislative power in an area of concurrent authority -- that are more narrowly drawn than the Antideficiency Act and that would otherwise authorize the President to carry

out his constitutionally assigned tasks in the manner he contemplates." 1981 Opinion, at 6-7.<sup>4</sup>

- Personal or voluntary services "for emergencies involving the safety of human life or the protection of property."

The Antideficiency Act prohibits contracting or obligating in advance of appropriations generally, except for circumstances just summarized above. The Act also contains a separate exception applicable to personal or voluntary services that deal with emergencies. 31 U.S.C. § 1342. This section was amended in 1990. We will analyze the effects of that amendment in Part II of this memorandum.

Finally, one issue not explicitly addressed by the 1981 Opinion seems to us to have been settled by consistent administrative practice. That issue concerns whether the emergency status of government functions should be determined on the assumption that the private economy will continue operating during a lapse in appropriations, or whether the proper assumption is that the private economy will be interrupted. As an example of the difference this might make, consider that air traffic controllers perform emergency functions if aircraft continue to take off and land, but would not do so if aircraft were grounded. The correct assumption in the context of an anticipated long period of lapsed appropriations, where it might be possible to phase in some alternatives to the government activity in question, and thus over time to suspend the government function without thereby imminently threatening human life or property, is not entirely clear. However, with respect to any short lapse in appropriations, the practice of past administrations has been to assume the continued operation of the private economy, and so air traffic controllers, meat inspectors, and other similarly situated personnel have been considered to be within the emergency exception of § 1342.

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<sup>4</sup> The Attorneys General and this office have declined to catalog what actions might be undertaken this heading. In 1981, for example, Attorney General Civiletti quoted Attorney General (later Justice) Frank Murphy. "These constitutional powers have never been specifically defined, and in fact cannot be, since their extent and limitations are largely dependent upon conditions and circumstances. . . . The right to take specific action might not exist under one state of facts, while under another it might be the absolute duty of the Executive to take such action." 5 Op. O.L.C. at 7 n.9 (quoting 39 Op. Att'y Gen. 343, 347-48 (1939)). This power should be called upon cautiously, as the courts have received such executive branch assertions skeptically. See, e.g., Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952); George v. Ishimaru, 849 F. Supp. 68 (D.D.C.), vacated as moot, No. 94-5111, 1994 WL 517746 (D.C. Cir., Aug. 25, 1994). But see Haig v. Agee, 453 U.S. 280 (1981); In re Neagle, 135 U.S. 1 (1890).

## II.

The text of 31 U.S.C. §1342, as amended in 1990, now reads:

An officer or employee of the United States Government or of the District of Columbia government may not accept voluntary services for either government or employ personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property. This section does not apply to a corporation getting amounts to make loans (except paid in capital amounts) without legal liability of the United States Government. As used in this section, the term "emergencies involving the safety of human life or the protection of property" does not include ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property.

31 U.S.C. § 1342. Because of the § 1342 bar on employing personal services, officers and employees may employ personal services in excess of other authorizations by law only in emergency situations.<sup>5</sup> This section does not by itself authorize paying employees in emergency situations, but it does authorize entering into obligations to pay for such labor.

The central interpretive task under § 1342 is and has always been to construe the scope of the emergencies exception of that section. When the 1981 Opinion undertook this task, the predecessor to § 1342 did not contain the final sentence of the current statute, which was added in 1990. Examining that earlier version, the Attorney General concluded that the general language of the provision and the sparse legislative history of it did not reveal its precise meaning. However, the opinion was able to glean some additional understanding of the statute from that legislative history.

The Attorney General noted that as originally enacted in 1884, the provision forbade unauthorized employment "except in cases of sudden emergency involving the loss of human life or the destruction of property." 23 Stat. 17. He then observed that in 1950, Congress

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<sup>5</sup> The 1981 Opinion concluded that:

[d]espite the use of the term 'voluntary service,' the evident concern underlying this provision is not government agencies' acceptance of the benefit of services rendered without compensation. Rather, the original version of § [1342] was enacted as part of an urgent deficiency appropriation act in 1884, Act of May 1, 1884, ch. 37, 23 Stat. 15, 17, in order to avoid claims for compensation arising from the unauthorized provision of services to the government by non-employees, and claims for additional compensation asserted by government employees performing extra services after hours. This is, under [§ 1342], government officers and employees may not involve government in contract for employment, i.e., for compensated labor, except in emergency situations. 30 Op. Att'y Gen. 129, 131 (1913).

enacted the modern version of the Antideficiency Act and accepted revised language for § 1342 that originally had been suggested by the Director of the Bureau of the Budget and the Comptroller General in 1947. In analyzing these different formulations, the Attorney General stated that

[w]ithout elaboration, these officials proposed that 'cases of sudden emergency' be amended to 'cases of emergency,' 'loss of human life' to 'safety of human life,' and 'destruction of property' to 'protection of property. These changes were not qualified or explained by the report accompanying the 1947 recommendation or by any aspect of the legislative history of the general appropriations act for fiscal year 1951, which included the modern §[1341]. Act of September 6, 1950, Pub. L. No. 81-759, §1211, 64 Stat. 765. Consequently, we infer from the plain import of the language of their amendments that the drafters intended to broaden the authority for emergency employment.

5 Op. O.L.C. at 9.

The 1981 Opinion also sought guidance from the consistent administrative practice of the Office of Management and Budget in applying identical "emergencies" language found in another provision. That other provision prohibits OMB from apportioning appropriated funds in a manner that would indicate the need for a deficiency or supplemental appropriation, except in cases of "emergencies involving the safety of human life, [or] the protection of property" -- phrasology identical to the pre-1990 version of § 1342.<sup>6</sup> Combining these two sources with the statutory text, the Attorney General articulated two

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<sup>6</sup> 31 U.S.C. § 1515 (recodified from § 665(e) at the time of the Civiletti opinion). Analyzing past administrative practice under this statute, Attorney General Civiletti found that:

Directors of the Bureau of the Budget and of the Office of Management and Budget have granted dozens of deficiency reapportionments under this subsection in the last 30 years, and have apparently imposed no test more stringent than the articulation of a reasonable relationship between the funded activity and the safety of human life or the protection of property. Activities for which deficiency apportionments have been granted on this basis include [FBI] criminal investigations, legal services rendered by the Department of Agriculture in connection with state meat inspection programs and enforcement of the Wholesome Meat Act of 1967, 21 U.S.C. §§ 601-695, the protection and management of commodity inventories by the Commodity Credit Corporation, and the investigation of aircraft accidents by the National Transportation Safety Board. These few illustrations demonstrate the common sense approach that has guided the interpretation of § 665(e). Most important, under § 665(e)(2), each apportionment or reapportionment indicating the need for a deficiency or supplemental appropriation has been reported contemporaneously to both Houses of Congress, and, in the face of these reports, Congress has not acted in any way to alter the relevant 1950 wording of § 665(e)(1)(B), which is, in this respect, identical to § 665(b).

rules for identifying functions for which government officers may enter into obligations to pay for personal services in excess of legal authority other than § 1342 itself:

First, there must be some reasonable and articulable connection between the function to be performed and the safety of human life or the protection of property. Second, there must be some reasonable likelihood that the safety of human life or the protection of property would be compromised, in some degree, by delay in the performance of the function in question.

While we continue to believe that the 1981 articulation is a fair reading of the Antideficiency Act even after the 1990 amendment, see Letter from Walter Dellinger to Robert G. Damus, October 19, 1993, we are aware of the possibility the second of these two rules might be read more expansively than was intended, and thus might be applied to functions that are not emergencies within the meaning of the statute. To forestall possible misinterpretations, the second criteria's use of the phrase "in some degree" should be replaced with the phrase, "in some significant degree."

The reasons for this change rest on our understanding of the function of the 1990 amendment, which comes from considering the content of the amendment, its structure and its sparse legislative history. That history consists of a solitary reference in the conference report to the Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, 104 Stat. 1388:

The conference report also makes conforming changes to title 31 of the United States Code to make clear that . . . ongoing, regular operations of the Government cannot be sustained in the absence of appropriations, except in limited circumstances. These changes guard against what the conferees believe might be an overly broad interpretation of an opinion of the Attorney General issued on January 16, 1981, regarding the authority for the continuance of Government functions during the temporary lapse of appropriations, and affirm that the constitutional power of the purse resides with Congress.

H.R. Rep. No. 964, 101st Cong., 2d Sess. 1170 (1990). While hardly articulating the intended scope of the exception, the conference report does tend to support what would otherwise be the most natural reading of the amendment standing alone: because it is phrased as identifying the functions that should be excluded from the scope of the term "emergency," it seems intended to limit the coverage of that term, narrowing the circumstances that might otherwise be taken to constitute an emergency within the meaning of the statute.

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Beyond this, however, we do not believe that the amendment adds any significant new substantive meaning to the pre-existing portion of § 1342, simply because the most prominent feature of the addition -- its emphasis on there being a threat that is imminent, or "ready to take place, near at hand," see Webster's Third New International Dictionary 1130 (1986) -- is an idea that is already present in the term "emergency" itself, which means "an unforeseen

combination of circumstances or the resulting state that calls for immediate action" to respond to the occurrence or situation. *Id.* at 741.<sup>7</sup> The addition of the concept of "imminent" to the pre-existing concept of "emergency" is thus largely redundant. This redundancy does, however, serve to emphasize and reinforce the requirement that there be a threat to human life or property of such a nature that immediate action is a necessary response to the situation. The structure of the amendment offers further support for this approach. Congress did not alter the operative language of the statute; instead, Congress chose to enact an interpretive provision that simply prohibits overly expansive interpretations of the "emergency" exception.

Under the formulation of the 1981 Opinion, government functions satisfy § 1342 if, *inter alia*, the safety of human life or the protection of property would be "compromised, in some degree." It is conceivable that some would interpret this phrase to be satisfied even if the threat were *de minimis*, in the sense that the increased risk to life or property were insignificant, so long as it were possible to say that safety of life or protection of property bore a reasonable likelihood of being compromised at all. This would be too expansive an application of the emergency provision. The brief delay of routine maintenance on government vehicles ought not to constitute an "emergency," for example, and yet it is quite possible to conclude that the failure to maintain vehicles properly may "compromise, to some degree" the safety of the human life of the occupants or the protection of the vehicles, which are government property. We believe that the revised articulation clarifies that the emergencies exception applies only to cases of threat to human life or property where the threat can be reasonably said to be near at hand and demanding of immediate response.

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<sup>7</sup> See also Random House Dictionary of the English Language Unabridged 636 (2d ed. 1987) ("emergency" means "a sudden, urgent, usually unexpected occurrence or occasion requiring immediate action"); Webster's II New Riverside University Dictionary 427 (1988) ("an unexpected, serious occurrence or situation urgently requiring prompt action").

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U. S. Department of Justice

Office of Legal Counsel

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Office of the  
Assistant Attorney General

Washington, D.C. 20530

August 11, 1995

**DRAFT MEMORANDUM FOR JANET RENO  
ATTORNEY GENERAL**

From: Walter Dellinger

Re: Government Operations in the Event of a Lapse in Appropriations

The Constitution provides that "no money shall be drawn from the treasury, but in consequence of appropriations made by law." U.S. Const. art. I, § 9, cl. 7. The treasury is further protected through the Antideficiency Act, which among other things prohibits all officers and employees of the federal government from entering into obligations in advance of appropriations and prohibits employing federal personnel except in emergencies, unless otherwise authorized by law.<sup>1</sup>

In the early 1980's, Attorney General Civiletti issued two opinions with respect to the implications of the Antideficiency Act that have been frequently cited in the ensuing years. See "Applicability of the Antideficiency Act Upon A Lapse in an Agency's Appropriations," 4A Op. O.L.C. 16 (1980); "Authority for the Continuance of Government Functions During a Temporary Lapse in Appropriations," 5 Op. O.L.C. 1 (1981) (1981 Opinion). You have asked us for a thorough analysis of the effect of a 1990 amendment to the Antideficiency Act on these two opinions. That amendment added a single sentence to the end of 31 U.S.C. § 1342, providing: "As used in this section, the term 'emergencies involving the safety of human life or the protection of property' does not include ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property."

<sup>1</sup> For the purpose of this inquiry, there are two relevant provisions of the Antideficiency Act. The first provides that "[a]n officer or employee of the United States Government or the District of Columbia government may not... involve either government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law." 31 U.S.C. § 1341(a)(1)(B). The second provides that "[a]n officer or employee of the United States Government... may not accept voluntary services ... or employ personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property." 31 U.S.C. § 1342.

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We have completed the review you requested, and continue to adhere to the opinion expressed to General Counsel Robert Damus of the Office of Management and Budget that "the 1990 amendment to 31 U.S.C. § 1342 does not detract from the Attorney General's earlier analyses; if anything, the amendment clarified that the Antideficiency Act's exception for emergencies is narrow and must be applied only when a threat to life or property is imminent." Letter from Walter Dellinger to Robert G. Damus, October 19, 1993.

## I.

Since the issuance of the extensive 1981 Opinion, the prospect of a general appropriations lapse has arisen more frequently than was the case as of the time of that opinion. What is more, in 1981, 1984, 1986 and 1990, lapses of funding ranging from several hours to three days actually did occur, requiring implementation of plans to bring government operations into compliance with the requirements of the Antideficiency Act. These prior responses to the threat of or actual lapsed appropriations have been so commonly referred to as cases of "shutting down the government" that this has become a nearly universal shorthand to describe the effect of a lapse in appropriations. It will assist in understanding the true extent of the Act's requirements to realize that this is an entirely inaccurate description. Were the federal government actually to shutdown, air traffic controllers would not staff FAA air control facilities, with the consequence that the nation's airports would be closed and commercial air travel and transport would be brought to a standstill. Were the federal government to shutdown, the FBI, DEA, ATF, Customs Service and border patrol would stop interdicting and investigating criminal activities of great varieties, including drug smuggling, fraud, machine gun and explosives sales, and kidnapping. The country's borders would not be patrolled by the border patrol, with a extraordinary increase in illegal immigration as a predictable result. In the absence of government supervision, the stock markets, commodities and futures exchanges would be unable to operate. Meat and poultry would go uninspected by federal meat inspectors, and therefore could not be marketed. Were the federal government to shutdown, medicare payments for vital operations and medical services would cease, as would the federal portion of payments under medicaid. VA hospitals would abandon patients and close their doors. These are simply a few of the significant impacts of a federal government shutdown. Cumulatively, these actions and the others required as part of a true shutdown of the federal government would impose significant health and safety risks on millions of Americans, some of which would undoubtedly result in the loss of human life, and they would immediately result in massive dislocations of and losses to the private economy, as well as disruptions of many aspects of society and of private activity generally, producing incalculable amounts of suffering and loss.

The Antideficiency Act imposes substantial restrictions on obligating funds or contracting for services in advance of appropriations or beyond appropriated levels, restrictions that will cause significant hardship should any lapse in appropriations extend much beyond those we have historically experienced. To be sure, even the short lapses that have occurred have caused serious dislocations in the provision of services, generated

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wasteful expenditures as agencies have closed down certain operations and then restarted them, and disrupted federal activities. Nevertheless, for any short term lapse in appropriations, at least, the federal government will not be truly "shutdown" to the degree just described, simply because Congress has itself provided that some activities of government should continue even when annual appropriations have not yet been enacted to fund current activities.

The most significant provisions of the Antideficiency Act codify three basic restrictions on the operation of government activities. First, the Act implements the constitutional requirement that "no money shall be drawn from the treasury, but in consequence of appropriations made by law," Art. I, § 9, cl. 7. Second, when no current appropriations measure has been passed to fund contracts or obligations, it restricts entering into contracts or incurring obligations (except as to situations authorized by other law). Third, it restricts employing the services of employees to perform government functions beyond authorized levels to emergency situations, where the failure to perform those functions would result in an imminent threat to the safety of human life or the protection of property.<sup>2</sup> The 1981 Opinion elaborated on the various exceptions in the Antideficiency Act that permit some continuing government functions, and we will only summarize the major categories here:

- Multi-year appropriations and indefinite appropriations.

Not all government functions are funded with annual appropriations. Some operate under multi-year appropriations and others operate under indefinite appropriations provisions that do not require passage of annual appropriations legislation. Social security is a prominent example of a program that operates under an indefinite appropriation. In such cases, benefit checks continue to be honored by the treasury, because there is no lapse in the relevant appropriation.

- Express authorizations: contracting authority and borrowing authority.

Congress provides express authority for agencies to enter into contracts or to borrow funds to accomplish some of their functions. An example is the "forage and fodder" authority given to the Department of Defense, which authorizes contracting for necessary clothing, subsistence, forage, supplies, etc. without an appropriation. In such cases,

<sup>2</sup> These restrictions are enforced by criminal penalties. An officer or employee of the United States who knowingly and willfully violates the restrictions shall be fined not more than \$5,000, imprisoned for not more than 2 years, or both. 31 U.S.C. §1350.

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obligating funds or contracting can continue, because the Antideficiency Act does not bar such activities when they are authorized by law.<sup>3</sup>

- Necessary implications: authority to obligate that is necessarily implied by statute.

The 1981 Opinion concluded that the Antideficiency Act contemplates that a limited number of government functions funded through annual appropriations must otherwise continue despite a lapse in their appropriations because the lawful continuation of other activities necessarily implies that these functions will continue as well. Examples include the check writing and distributing functions necessary to disburse the social security benefits that operate under indefinite appropriations. Further examples include contracting for the materials essential to the performance of the emergency services that continue under that separate exception.

- Obligations necessary to the discharge of the President's constitutional duties and powers.

Efforts should be made to interpret a general statute such as the Antideficiency Act to avoid the significant constitutional questions that would arise were the Act read to critically impair the exercise of constitutional functions assigned to the executive. In this regard, the 1981 Opinion noted that when dealing with functions instrumental in the discharge of the President's constitutional powers, the "President's obligational authority may be strengthened ... [and] will be further buttressed in connection with any initiative that is consistent with statutes -- and thus with the exercise of legislative power in an area of concurrent authority -- that are more narrowly drawn than the Antideficiency Act and that would otherwise authorize the President to carry out his constitutionally assigned tasks in the manner he contemplates." 1981 Opinion, at 6-7.<sup>4</sup>

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<sup>3</sup> As the 1981 Opinion emphasized, the simple authorization or even direction to perform a certain action that standardly can be found in agencies' enabling or organic legislation is insufficient to support a finding of express authorization or necessary implication (the exception addressed next in the text), standing alone. There must be some additional indication of an evident intention to have the activity continue despite an appropriations lapse.

<sup>4</sup> The Attorneys General and this office have declined to attempt to offer a catalog of what actions might be undertaken this heading. In 1981, for example, Attorney General Civiletti quoted Attorney General (later Justice) Frank Murphy. "These constitutional powers have never been defined, and in fact cannot be, since their extent and limitations are largely dependent upon conditions and circumstances. . . . The right to take specific action might not exist under one state of facts, while under another it might be the absolute duty of the Executive to take such action." 5 Op. O.L.C. at 7 a.9 (quoting 39 Op. Att'y Gen. 343, 347-48 (1939)). This power should be called upon cautiously, as the courts have received such executive branch assertions skeptically. See, e.g., Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952); George v. Iahimaru, 849 F. Supp. 68 (D.D.C.), vacated as moot, No. 94-5111 (D.C. Cir. Aug. 25, 1994). But see Haig v. Agee, 453 U.S. 280 (1981); In re Neagle, 135 U.S. 1(1935).

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- Personal or voluntary services "for emergencies involving the safety of human life or the protection of property."

The Antideficiency Act prohibits contracting or obligating in advance of appropriations generally, except for circumstances just summarized above. The Act also contains a separate exception applicable to personal or voluntary services that deal with emergencies. 31 U.S.C. § 1342. This section that was amended in 1990, and we turn to it in the next section.

## II.

The complete text of 31 U.S.C. §1342 reads:

An officer or employee of the United States Government or of the District of Columbia government may not accept voluntary services for either government or employ personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property. This section does not apply to a corporation getting amounts to make loans (except paid in capital amounts) without legal liability of the United States Government. As used in this section, the term "emergencies involving the safety of human life or the protection of property" does not include ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property. 31 U.S.C. § 1342.

Because of the §1342 bar on employing personal services, officers and employees may employ compensated labor in excess of other authorizations by law only in emergency situations.<sup>5</sup> This section does not by itself authorize paying employees in emergency situations, but it does authorize entering into obligations to pay for such labor.

The central interpretive task under § 1342 is and has always been to construe the scope of the emergencies exception of that section. When the 1981 Opinion undertook this task, the predecessor to § 1342 did not contain the final sentence of the current statute, which was added in 1990. Examining that earlier version, the Attorney General concluded

<sup>5</sup> The Civiletti opinion concluded that:  
 "[d]espite the use of the term 'voluntary service,' the evident concern underlying this provision is not government agencies' acceptance of the benefit of services rendered without compensation. Rather, the original version of § [1342] was enacted as part of an urgent deficiency appropriation act in 1884, Act of May 1, 1894, ch. 37, 23 Stat. 15, 17, in order to avoid claims for compensation arising from the unauthorized provision of services to the government by non-employees, and claims for additional compensation asserted by government employees performing extra services after hours. This is, under [§ 1342], government officers and employees may not involve government in contract for employment, i.e., for compensated labor, except in emergency situations. 30 Op. Att'y Gen. 129, 131 (1913).

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that the general language of the provision and the sparse legislative history of it did not reveal its precise meaning. However, the opinion was able to glean some additional understanding of the statute from that legislative history.

The Attorney General noted that as originally enacted in 1884, the provision forbade unauthorized employment "except in cases of sudden emergency involving the loss of human life or the destruction of property," 23 Stat. 17. He then observed that in 1950, Congress enacted the modern version of the Antideficiency Act and accepted revised language for §1342 that originally had been suggested by the Director the Bureau of the Budget and the Comptroller General in 1947. In analyzing these different formulations, the Attorney General stated that

[w]ithout elaboration, these officials proposed that 'cases of sudden emergency' be amended to 'cases of emergency,' 'loss of human life' to 'safety of human life,' and 'destruction of property' to 'protection of property.' These changes were not qualified or explained by the report accompanying the 1947 recommendation or by any aspect of the legislative history of the general appropriations act for fiscal year 1951, which included the modern §[1341]. Act of September 6, 1950, Pub. L. 81-759, §1211, 64 Stat. 765. Consequently, we infer from the plain import of the language of their amendments that the drafters intended to broaden the authority for emergency employment.  
[citation]

The 1981 Opinion also sought guidance from the consistent administrative practice of the Office of Management and Budget in applying identical "emergencies" language found in another provision. That other provision prohibits OMB from apportioning appropriated funds in a manner that would indicate the need for a deficiency or supplemental appropriation, except in cases of "emergencies involving the safety of human life, [or] the protection of property" -- phraseology identical to the pre-1990 version of § 1342.<sup>6</sup>

<sup>6</sup> 31 U.S.C. § 1515 (recodified from § 665(e) at the time of the Civiletti opinion). Analyzing past administrative practices under this statute, Attorney General Civiletti found that Directors of the Bureau of the Budget and of the Office of Management and Budget have granted dozens of deficiency reappropriations under this subsection in the last 30 years, and have apparently imposed no test more stringent than the articulation of a reasonable relationship between the funded activity and the safety of human life or the protection of property. Activities for which deficiency appropriations have been granted on this basis include FBI criminal investigations, legal services rendered by the Department of Agriculture in connection with state meat inspection programs and enforcement of the Wholesome Meat Act of 1967, 21 U.S.C. §§ 601 et seq., the protection and management of commodity inventories by the Community Credit Corporation, and the investigation of aircraft accidents by the National Transportation Safety Board. These few illustrations demonstrate the common sense approach that has guided the interpretation of § 665(e). Most important, under § 665(e)(2), each appropriation or reappropriation indicating the need for a deficiency or supplemental appropriation has been reported contemporaneously to both Houses of Congress, and, in the face of these reports, Congress has not acted in any way to alter the relevant 1950 wording of § 665(e)(1)(B), which is.

# DRAFT

Combining these two sources with the statutory text, the Attorney General articulated two rules for identifying functions for which government officers may employ personal services for compensation in excess of legal authority other than § 1342 itself:

First, there must be some reasonable and articulable connection between the function to be performed and the safety of human life or the protection of property. Second, there must be some reasonable likelihood that the safety of human life or the protection of property would be compromised, in some degree, by delay in the performance of the function in question.

significant

While we continue to believe that the 1981 articulation is a fair reading of the Antideficiency Act even after the 1990 amendment, see Letter from Walter Dellinger to Robert G. Damus, October 19, 1993, we are aware of the possibility the second of these two rules might be read more expansively than was intended, and thus might be applied to functions that are not emergencies within the meaning of the statute. To forestall possible misinterpretations, the second criteria's reference use of the phrase "in some degree" should be replaced with the phrase, "in some significant degree."

The reasons for this change rest on our understanding of the function of the 1990 amendment, which comes from considering the content of the amendment, its structure and its sparse legislative history. That history consists of a solitary reference in the conference report to the 1990 Omnibus Budget Reconciliation Act, P.L. 101-508:

"The conference report also makes conforming changes to title 31 of the United States Code to make clear that ... ongoing, regular operations of the Government cannot be sustained in the absence of appropriations, except in limited circumstances. These changes guard against what the conferees believe might be an overly broad interpretation of an opinion of the Attorney General issued on January 16, 1981, regarding the authority for the continuance of Government functions during the temporary lapse of appropriations, and affirm that the constitutional power of the purse resides with Congress."  
[citation]

Why? The new language does not support a substantiality requirement!

(It may suggest an imminence requirement, but that's a separate thing.) This by itself is insufficient to support such an interpretive change.

While hardly articulating the intended scope of the exception, the conference report does tend to support what would otherwise be the most natural reading of the amendment standing alone: because it is phrased as identifying the functions that should be excluded from the scope of the term "emergency," it seems intended to limit the coverage of that term, narrowing the circumstances that might otherwise be taken to constitute an emergency within the meaning of the statute.

Does not necessarily narrow. Just need further, more clearly defines. And again - if it narrows, it does so

in this respect, identical to § 665(b).

The Attorney General opinion referred to in the second sentence quoted is a reference to the 1981 Opinion.

along anti-imminence criteria, not against a substantiality criteria

reasonable likelihood of signif. imminent harm to health/prop?

# DRAFT

Beyond this, however, we do not believe that the amendment adds any significant new substantive meaning to the pre-existing portion of §1342, simply because the most prominent feature of the addition - its emphasis on there being a threat that is imminent, or "ready to take place, near at hand," (see Webster's Third New International Dictionary, p. 1130) -- is an idea that is already present in the term "emergency" itself, which means "an unforeseen combination of circumstances or the resulting state that calls for immediate action" to respond to the occurrence or situation. Id., at 741.<sup>8</sup> The addition of the concept of "imminent" to the pre-existing concept of "emergency" is thus largely redundant. This redundancy does, however, serve to emphasize and reinforce the requirement that there be a threat to human life or property of such a nature that immediate action is a necessary response to the situation.

But it was this that the 1981 report didn't sufficiently acknowledge - thus supporting the amendment

Under the formulation of the 1981 Opinion, government functions satisfy §1342 if, inter alia, human life or property would be "compromised, in some degree." It is conceivable that some would interpret this phrase to be satisfied even if the threat were de minimis, in the sense that the increased risk to life or property were insignificant, so long as it were possible to say that safety of life or protection of property bore a reasonable likelihood of being compromised at all. This would be too expansive an application of the emergency provision. The brief delay of routine maintenance on government vehicles ought not to constitute an "emergency," for example, and yet it is quite possible to conclude that the failure to maintain vehicles properly may "compromise, to some degree" the safety of the human life of the occupants or the protection of the vehicles, which are government property. We believe that the revised articulation clarifies that the emergencies exception applies only to cases of threat to human life or property where the threat can be reasonably said to be near at hand and demanding of immediate response.

same objection

That's mine - imminency, not substantially

There's no imminence here - That's the problem.

In all other respects, the views expressed in the 1981 Opinion continue to be the views of this office.<sup>9</sup>

<sup>8</sup> See also, Random House's 2d Unabridged Edition: "emergency" means "a sudden, urgent, usually unexpected occurrence or occasion requiring immediate action;" Webster's II New Riverside University Dictionary, "an unexpected, serious occurrence or situation urgently requiring prompt action."

<sup>9</sup> One issue not explicitly addressed by the 1981 Opinion seems to us to have been settled by consistent administrative practice. That issue concerns whether the emergency status of government functions should be determined on the assumption that the private economy will continue operating during a lapse in appropriations, or whether the proper assumption is that the private economy will be interrupted. As an example of the difference this might make, consider that air traffic controllers perform emergency functions if aircraft continue to take off and land, but would not do so if aircraft were grounded. The correct assumption in the context of an anticipated long period of lapsed appropriations, where it might be possible to phase in some alternatives to the government activity in question, and thus over time to suspend the government function without thereby imminently threatening human life or property is not entirely clear from doubt. However, with respect to any short lapse in appropriations, the settled practice of past administrations has been to assume the continued operation of the private economy, and so air traffic controllers, meat inspectors, and other similarly situated personnel have been considered to be within the emergency exception of §1342.

Does this mean - near likelihood of significant harm  
to libel/prop?

If not, how not?

If so, is there a concern that - p. won't read this as magni-  
tude req?  
- will be at imminence req?

Also, near likelihood -

should this shift w/ magnitude of harm?

likelihood of <sup>significantly</sup> increased

Does delay 'signif'  
refer to the magnitude  
of harm that is -

near likelihood that - delay would cause signif harm?

or refer to the  
probability of harm  
that is - or  
near likelihood that - delay would significantly increase  
the risk of harm

near likelihood that - delay would significantly increase  
the risk of signif harm

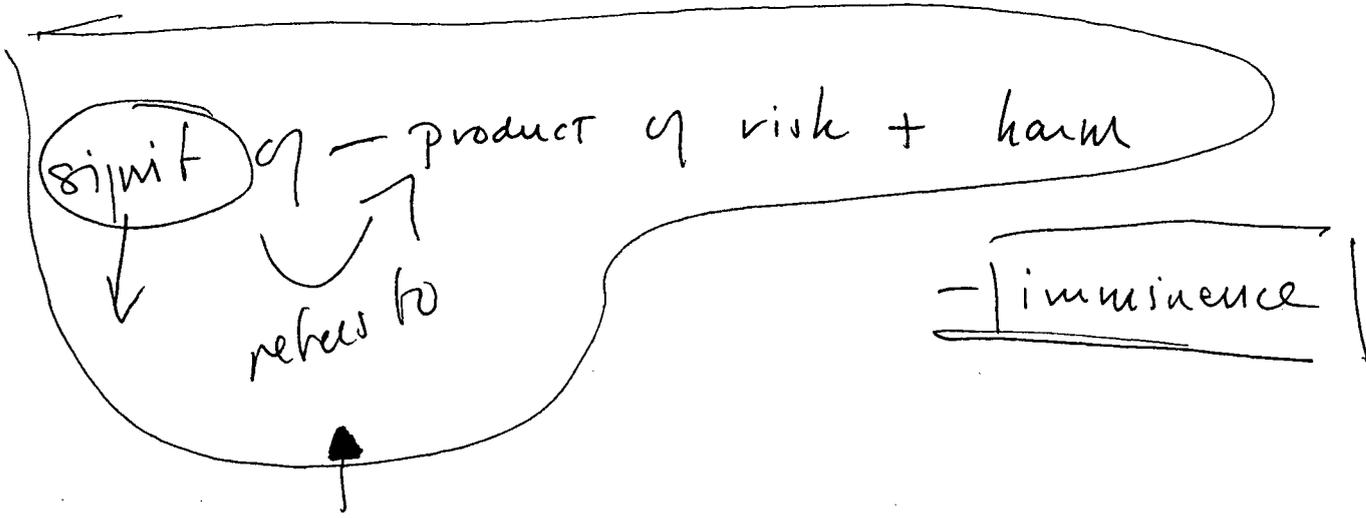
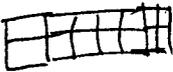
substantiality (magnitude)

probability

imminence

→ of increased risk  
or harm

But what would it mean  
for TD risk to be imminent??



Next 6 wks - as time to review

contingency plan revisions?

new capping plans?

Detailed sustains re  $\phi$  - what to do?

Right mechanism for answering  
those questions.

OMB at table?

~~blackboard~~ ~~prob~~  
~~insurance~~  
~~harder~~ ~~unpublished~~

Note to AJM: Just to you know.  
w/ J's approval, I have  
declared myself the with  
General expert on bus - both  
about down & left ceiling.

~~Call Ronlee~~  
~~301-688-6705~~

~~Call Legal Times~~  
~~457-0680~~

~~Legal Times~~  
~~457-0680~~

E-mail to APC colleagues  
re militia

~~1-17 gate~~  
~~10-9/16~~

Emily 215 242 6082  
625 0551

AJM 617 496 4451  
876 0796

Ask T.  
what about shutdown?  
how down - what should  
I do?  
what is time table for  
commenting on that draft?  
when is it? who has it  
gone to?

1. Lack of clarity  
magnitude  
probability of harm  
imminence

ambiguity of 3 + language that does not resolve concerns.  
As result, will be tough to apply  
Need to set std

e.g. near likelihood of imminent harm to  
life or prop

2. How strict or loose  
partly a policy matter  
want to be hands on / hands broad  
room-pick, chosen-discretion  
I go w/ latter.

And I do think the proper insertion  
of imminence is all that really  
needs to be done.

But to make clear you are doing  
that - insisting on that

Currently - suffers from a lack of clarity  
which will make application difficult  
+ which makes it impossible to say whether  
it's too stringent, too lax, or just about  
right.

THE FEDERAL DIARY

# Shutdown Questions

By Mike Causey  
Washington Post Staff Writer

In a big outfit like the U.S. government, deciding to do nothing is a lot of work. For weeks now—since politicians began threatening an Oct. 1 shutdown—some of the best government minds have been deciding what happens if Uncle Sam ceases all but essential services. It raises Zen-like questions such as:

- Do people get holiday pay if the furlough runs past Columbus Day? No.
- Will political appointees get paid while their employees are on furlough? Maybe.
- Will members of Congress get paid if the government shuts down? Maybe not.
- Can furloughed feds volunteer to work free? In most cases, no.

President Clinton says he won't sign any budgets with spending cuts he doesn't like. Congress says it won't raise the debt ceiling unless he gets with the GOP program to cut costs. The White House has told agencies to brace for a 60-day shutdown. Previous shutdowns rarely lasted more than a day. In those instances, furloughed workers did get paid—mainly to spare the government the time and expense of being hit with several million grievances and arbitrations. If past is prologue, it is likely that workers will be paid, eventually, no matter how long the furlough lasts. The problem is that the pay could be delayed days or even weeks—if worst comes to worst.

Although it is clear that most federal workers—everybody declared nonessential—would not be paid while furloughed, officials are unsure about the paychecks of the folks in Congress and the White House who are engineering the so-called train wreck.

The Office of Personnel Management says that most individuals appointed by the president "are not subject to furlough. The salary of such a presidential appointee is an obligation incurred by the year, without consideration of hours of duty required. Thus, the presidential appointee cannot be placed in a nonduty, nonpay status." The same is believed to

be true for the salary of the president. But since the president's salary is paid out of the Treasury Department appropriation—which hasn't been signed—congressional sources doubt he would be paid if there is no money or authorization for it. Members of the House and Senate also may go without pay, since the legislative branch appropriation hasn't been approved, and won't be if the deadlock continues.

Many workers have asked about taking vacation (annual leave) the first couple of weeks in October. They hope to get paid even if there is a shutdown. But OPM's guidelines say that even long-approved leave won't entitle employees to be paid if that leave time coincides with furlough days. "Furlough days are nonworkdays," the guidance says. "Annual, sick, court leave and leave for bone marrow donation cannot be granted on a nonworkday. However, military leave must be charged on a nonworkday when the nonworkday occurs wholly within the period of military leave for military duty. Employees who serve as witnesses or jurors on furlough days will retain all monies received from the court."

When the macho shutdown talk started, the White House said that some functions might have to be run by volunteers. Not so, according to OPM. Its guidance to agencies says that "unless otherwise authorized by law, an agency may not accept the voluntary services of an individual."

Given the way feds have been jerked around this year, that might be a moot point. Chances are there are very few people in government today—except those directly involved in national security, health or public safety—who would volunteer to save politicians from the heat that any long-term shutdown will generate.

Tuesday, Aug. 22, 1995

**FOR MORE INFORMATION**   
To post questions or comments for Mike Causey, see Digital Ink, The Post's on-line service. To learn about Digital Ink, call 1-800-510-5104, ext. 9000.

ington University later this month, students will be asked to monitor energy use in campus buildings, dormitories will plan a trash-recycling competition and some course packets will be distributed on computer disk instead of on paper.

It all stems from a voluntary agreement the school signed last year with the Environmental Protection Agency in which it pledged to become a model "green university" by incorporating environmentalism into virtually every aspect of campus life.

Leaders of the effort say their goal is to set a standard for environmental awareness that the entire GWU community, as well as other schools, will follow.

"My hope and my wish is that we don't just implement programs, but more so raise the consciousness on campus—almost ingrain this environmentalism within other people," said Jeff Caltabiano, a GWU junior in American studies and one of several students involved in deciding

administrators and outside experts.

At this point the program's most visible signs include extra recycling bins installed around campus, the electrically powered carts used to transport office supplies and the well drilled at GWU's Loudoun County campus to cut down on public water consumption.

Eventually the program will spread to the curriculum. Faculty members will be encouraged to incorporate environmental information and ethics into various courses, and students will be required to take a certain number of such classes.

"I think the change [in classes] really is one of focus and emphasis rather than fundamental change," said Hermann Helgert, a GWU professor of engineering and a member of the green-university steering committee. "I will still teach the same engineering principles but focus on environmental principles as they might apply."

See GREEN, B2, Col. 4

For example, Helgert said, he might ask a group of students in a mechanical engineering class to calculate how much energy is used transporting water through a pipe over a certain distance. The students would then be asked to determine a more efficient way to transport the water.

The university saved \$300,000 in electricity and maintenance costs during the last fiscal year through various efficiency practices.

In the contest to see which dormitory can recycle the largest percentage of its trash and use the least amount of energy and water, the university is considering using the money it saves as a prize—perhaps giving it back to the winning dormi-

reinvest in an environmental program.

By 1997, the university will finish building a dormitory in which all garbage will go down a chute to the basement, where a machine will sort and compress it.

GWU administrators and professors also have taken steps to cut down on paper use. Helgert, for example, will offer a class this fall in which all the reading will be provided on computer disk.

This summer, four students have been working at GWU as paid interns on various aspects of the green-university program.

Polly Berman, 23, of Columbia, who received a graduate degree from the school this spring, has been planning the environmental orienta-

students soon will receive.

Claudia Vaga, a 21-year-old senior at Drew University in Madison, N.J., helped set up an agreement under which GWU will advise a group of Bolivian lawyers, bankers and engineers who are seeking tougher environmental regulations in their country.

"We can't claim leadership in any of the specific areas that we are looking at," said Mark Starik, an assistant GWU professor in strategic management and public policy. "But what we can say is that we believe we are one of the first [universities] to look at all the areas and find the links between them. Everything on campus is being looked at through an environmental lens."

THE WASHINGTON POST  
TUESDAY, AUGUST 22, 1995

THE FEDERAL DIARY

## More Shutdown Questions

By Mike Causey  
Washington Post Staff Writer

**M**ost of the engineers of the potential Oct. 1 train wreck are out of town. The president is golfing in Jackson Hole, Wyo. Various Republican Senate leaders are in Iowa and elsewhere running for president. The speaker of the House is signing copies of his new book. Lesser-known House and Senate members either are vacationing and working at home or are on overseas junkets until after Labor Day.

Left behind to steam are nearly 3 million federal workers, including about 360,000 in the Washington area. They are tied to the railroad track, listening for the engine whistle and eager for any changes in the timetable.

While politicians threaten a shutdown because of political and philosophical differences over budgets and debt ceilings, federal workers caught in the middle must consider more basic issues: how to make mortgage, car, medical and day-care payments—while eating—if their political bosses shut down the plant.

The potential shutdown—the White House warns of a 60-day furlough of nonessential feds—raises lots of questions.

Here's more in our series of efforts to answer some of them: ■ Steve H., of Arlington, asks: "If the shutdown goes beyond two weeks, won't that constitute a layoff, forcing the government to give employees severance pay? Also, what about quasi-government operations like the Pension Benefit Guarantee Corp., Resolution Trust Corp. and others who have their own funding, or whose budgets have been approved?"

Since any shutdown would be considered a furlough, rather than a layoff, the government won't be required to give anybody severance pay. Quasi-government operations could continue if they have their own funding.

■ Chris Zimmerman has two co-workers who, like herself, work for the government and also are married to government employees. That's six paychecks—their total income—from one source. She asks: "If agencies can't spend

any money after the Oct. 1 fiscal year, what about workers whose regular payday is Oct. 5? Will they get a full paycheck, or any paycheck?"

Officials at the Office of Personnel Management say that employees will get paid for work performed in September, because those funds have been allocated.

■ Helene Jackson says: "You have talked about October checks for civil service retirees. How about Social Security, which goes to a lot more people?"

Same answer: The October checks for federal, military and Social Security retirees are prepared at the end of the month and mailed—or transferred to banks—for delivery on the first of the month. That means people will get their October checks. There could be a problem, however, if a shutdown extended through October. Although there are funds to pay civil service and Social Security benefits for the foreseeable future, they might not go out, or might be delayed, unless people who process the payments are exempt from the furlough.

Lots of callers have asked whether the president, and Congress, will get paid if there is a government-wide shutdown. The answer is unclear. There are legal problems with cutting the pay of a president, members of Congress and federal judges. The president's salary comes out of the Treasury-Postal Service appropriation, and House and Senate members are paid out of the legislative appropriation. Neither has been signed into law.

### Color Me Essential

If there is a government-wide shutdown, most federal workers will be told to stay home until further notice. But agencies can decide which workers are essential and which would be called in to work. For a list of those occupations, check this space tomorrow.

Wednesday, Aug. 23, 1995

### FOR MORE INFORMATION

To post questions or comments for Mike Causey, see Digital Ink, The Post's on-line service. To learn about Digital Ink, call 1-800-510-5104, ext. 9000.

# China Details Stand On Women's Meeting

## First Lady's Visit, Wu Case Should Not Be Linked

By Keith B. Richburg  
Washington Post Foreign Service

BEIJING, Aug. 22—A Chinese government spokesman said today it is up to the United States to decide whether first lady Hillary Rodham Clinton attends next month's United Nations Fourth World Conference on Women, but he said the decision must not be linked to China's continued detention of Chinese-American human rights activist Harry Wu.

"Those two issues have nothing to do with each other at all," Chen Jian, the Foreign Ministry spokesman, told reporters in his weekly press briefing. He said the case of Wu, who has been accused of the capital crime of espionage, was being handled through "normal judicial procedures."

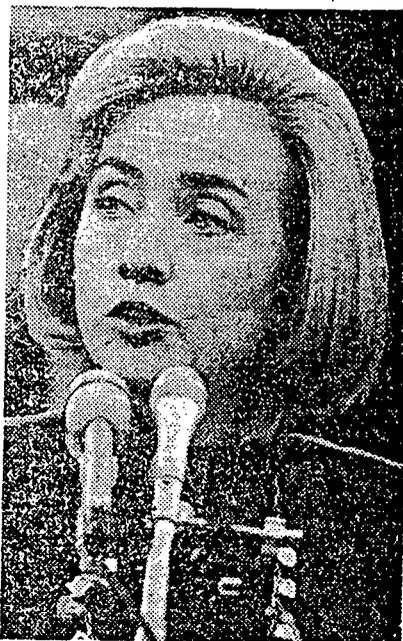
In his news conference, Chen also spelled out for the first time the two "categories" of people he said would not be admitted to China to attend the women's conference, which begins Sept. 4, or a meeting of nongovernmental groups that begins Aug. 30. Chen said groups not approved by the United Nations will be barred, as well as anyone "whose activities actually threaten the safety of the conference."

Chen denied that China is trying to block thousands of women from attending the conference by delaying visa processing or rejecting some delegates outright. He said groups or individuals that might fall into those two excluded categories was "very, very small in number."

"The vast majority of applicants will get their visa at the appropriate time," he said. "To say a lot of people have been denied visas is false."

Several organizations, particularly those advocating Tibetan independence, have complained that they already have been denied visas, while many other women have said that delays and bureaucratic obstacles—such as requiring attendees to obtain a confirmed hotel room in advance—would prevent many women from coming. Many of those affected are from developing countries.

Another issue to arise recently was concern that some countries,



HILLARY RODHAM CLINTON  
... attendance undecided

such as Niger, which recognize Taiwan, were being denied access or finding it too difficult to obtain visas. Beijing considers Taiwan to be a breakaway province of China.

Chen today said the main reason for the delays in visa processing "is that there are too many applicants." But he said Chinese officials are "working around the clock to solve this problem."

He also said women from countries without diplomatic relations with China could apply from neighboring countries and they would not be excluded.

But in his remarks today, Chen made clear that it was China as the host country, and not the United Nations, that has the final say on who will be allowed to attend and who will be barred. His comments today seemed to contradict an agreement between the Beijing government and the United Nations that all those groups approved by the world body would be allowed into the country for the conference.

"As the host nation of this conference, China is responsible for guaranteeing the smooth and safe operation

See CHINA, A28, Col. 4

of this conference, and the safety of the delegates," Chen said.

But China's definition of conference security seems to extend to barring groups that disagree with China's policies on Tibet. On Monday, a senior party official involved with Tibetan affairs told journalists in a briefing that China had the right to bar any groups or individuals advocating Tibet's independence.

"This is not only the policy of the Chinese government but the government of any country," said the official, who under the rules of the briefing cannot be identified. He said China would bar entry to any individuals or groups that want to "split the motherland."

China had wanted to host a prestigious international event as a way to boost its global prestige, particularly after losing out on its bid to host the Summer Olympics in 2000. But many women's groups, and some China analysts, believe the leadership here became unnerved at the prospect of tens of thousands of women converging on the capital—many advocating political causes running the gamut from Tibetan and Hawaiian independence to equal rights for lesbians and prostitutes.

In what has been interpreted widely as an effort to control the conference and prevent possible political demonstrations in this edgy capital, Beijing abruptly moved the nongovernmental forum to the provincial town of Huairou, more than a 1½-hour's drive from Beijing. The government here also has issued a series of warnings, telling the women, for example, that political demonstrations will not be allowed, and politically sensitive material and publications will be confiscated.

With China's current politically repressive atmosphere, and the recent downward spiral of Sino-U.S. relations, some prominent Republicans and others have been encouraging the United States to boycott the event, or at least not have the first lady go as the honorary chairperson of the U.S. delegation.

Senate Majority Leader Robert J. Dole (R-Kan.) said on a Sunday CBS interview program that he thought "it would be a mistake for the first lady to go."

"I don't see any useful purpose," Dole said, "as long as they are retaining an American prisoner there, Harry Wu, and as long as there [are] other human rights abuses."

Harry Wu's wife, Ching Lee Wu, also urged the first lady to boycott the conference. Her husband—who spent 19 years in a Chinese prison and has returned to China repeatedly since 1985 to document conditions in its prison camps—was detained trying to enter the far west of China from Kazakhstan.

Undersecretary of State Peter Tarnoff is due in China later this week to continue high-level discussions that began Aug. 1 in Brunei between Secretary of State Warren Christopher and his Chinese counterpart, Qian Qichen. The high-level talks are aimed at trying to get the troubled relationship between the two nations back on track after disputes over China's human rights record, its missile sales, the Harry Wu arrest and the fallout from Taiwanese President Lee Teng-hui's visit to the United States in June.

### FOR MORE INFORMATION

For past Post articles on how the Wu case has bedeviled U.S.-China relations, see Digital Ink, The Post's on-line service. To learn about Digital Ink, call 1-800-510-5104, ext. 9000.

# U.S. Agencies Plan Shutdown In Event of Budget Deadlock

By MICHAEL WINES **A1**

WASHINGTON, Aug. 23 — Raising a warning flag about a possible budget deadlock when Congress returns next month, the White House said today that Federal agencies were preparing plans to shut down most operations in October should President Clinton and Republicans deadlock over a budget for the next fiscal year.

The order to prepare for closings came in a memorandum issued today by Mr. Clinton's budget director, Alice M. Rivlin, who said Administration officials "very much don't want it to happen" and were willing to negotiate with Republicans to avoid it.

But in fact, the order starts what will probably be a pitched public relations battle between two branches of Government over which would be blamed in the event of a string of closings that many say are inevitable and that Administration officials said could last days or even weeks.

Some Republicans, especially in the more conservative House, favor just such a showdown. They reason that Mr. Clinton will be seen as a big spender who is willing to close the Government down rather than let Republicans pare it back.

Most Democrats would prefer to strike a deal, hoping to be viewed as the force that moderates a Republican majority run amok. But Ms. Rivlin's order underscored the White House's determination, already made clear in a round of veto threats, to be seen as a defender of essential Federal services against Congressional attack.

"Congress can get these decisions made without shutting down the Government," Ms. Rivlin said. "We very much hope there's a full, frank and honest discussion of these issues before the deadline passes."

Republicans scoffed at the memorandum, calling it an attempt to frighten the public. Only days ago,

Continued on Page B15, Column 1

Continued From Page A1

they noted, the White House issued another directive ordering the same agencies to draft plans to shrink themselves should the Republican spending bills become law.

"It's the President who forces a shutdown of the Government anyway if he vetoes legislation we send up," said the staff director of the House Budget Committee, Richard E. May.

As a legal opinion that accompanied Ms. Rivlin's order noted, a shutdown of the entire Government is not in the cards, no matter how much Mr. Clinton and the Congress are at loggerheads. Even in the worst case, most Federal agencies would continue to provide essential services, and many benefit checks would continue to flow to retirees and, probably, the poor.

But unlike the seven previous times in which budget standoffs have shuttered some Federal agencies — all in the 1980's and 1990's, and all for a few hours or days at most — the fight brewing over Federal spending this fall is potentially much more serious, long-lasting and disruptive.

Ms. Rivlin's short memorandum, which directed agencies to complete

## The White House and Republicans start staking out positions.

plans by Sept. 5 for a shutdown, cited only "a possible appropriations hiatus." The longest Federal shutdown to date lasted but three days, in 1990, and even that closing affected only a weekend and a Columbus Day holiday.

But today, Administration officials made it clear in interviews that they are girding for a budget fight that could close parts of the Government for days or weeks, affecting not just Federal services but perhaps the economy as well.

At stake are the fates of 13 spending bills, covering next year's budgets for most of the bureaucracy and a number of benefit programs, that Republicans intend to send to the President next month. Most propose to freeze or reduce the budgets of many Federal agencies and programs, and some would abolish programs and agencies outright.

Mr. Clinton has already pledged to veto more than half the bills in their present form, including those covering farm programs, Medicaid and other services to the poor, national parks and Federal lands, and the State, Commerce, Veterans and Treasury Departments. But a veto carries consequences: any agency without a legal budget on Oct. 1, the start of the new fiscal year, must end all but essential operations until Congress and the White House agree to give it money.

The two sides could decide to finance those agencies temporarily until they can work out their differences. But those differences are so vast, and the politics of the budget fight are so explosive, that the chances of a quick resolution are remote.

The Justice Department opinion attached to Ms. Rivlin's order stated that any agency without a budget would be barred from spending money, entering new contracts or performing any duties beyond those that needed to protect human lives and property "in some significant degree."

As a practical matter, officials said, even a brief shutdown would require agencies to furlough most office workers without pay and to curtail virtually all duties except policing, national defense, medical care and safety-related work like air-traffic control.

But both Administration officials and the Justice Department opinion suggested that a lengthier standoff could have more drastic consequences.

Ms. Rivlin said, for example, that a prolonged fight over social spending could force the Government to suspend its share of payments for state-run Medicaid services to the poor, and perhaps other social services as well.

"States would not get their grants," she said, "and they wouldn't get their matching money. And they would be up to states to figure out how long they could go on making payments if the Federal Government wasn't going to help."

In meetings earlier this week, White House and Cabinet officials suggested that social agencies would be barred from enrolling new recipients and perhaps from sending welfare checks to existing beneficiaries. A battle over Interior Department spending would shut the national parks; a fight over the State Department budget could shut embassies and visa offices.

Some officials said the Administration had discussed whether a lengthy dispute would force an end to services that are vital to the economy, like air-traffic control. The Justice Department opinion stated that such a function was obviously essential to the safety of human lives in the short run. But whether air traffic control is a vital service that must be supported over a longer period may be in more doubt because aircraft could be grounded, eliminating the danger of crashes.

"There's nothing written in statute here," Stanley Collender, an budget expert with the accounting firm of Price-Waterhouse, said of the possibilities of a shutdown. "This is an art, not a science, and it could easily be left open for interpretation."

Republicans said today that they anticipated such a gesture and that they might send legislation to the President that specifically appropriates money for such vital and politically important services. That would place the onus on Mr. Clinton to sign the appropriation or take the full responsibility for any Federal cutbacks that result.

That is the sort of chess game, Mr. Collender said today, that will probably persist throughout the autumn budget debate. "The question is who's going to get blamed," he said. "The tradition is that the President gets blamed in these situations, but remember, since November, the Republicans have been saying they're in charge. Or we could have a situation that's like the baseball strike, where the public gets mad at both the owners and the players — and nobody wins."

NEW YORK TIMES, THURSDAY, AUGUST 24, 1995

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## Senator Threatens Cut in Budget To Intervene in a Pollution Case

By JANE FRITSCH **A1**

WASHINGTON, Aug. 23 — The voice-mail message from Senator Frank H. Murkowski's aide was polite but firm. The Senator wanted some answers from the Environmental Protection Agency about its case against the Alaska Pulp Corporation, a case the Alaska Republican thought was baseless.

"We would prefer not to have to do anything with an appropriations rider on this," said the aide, Maureen Koetz.

It was Washington jargon, but to officials at the agency's office in Seattle, the meaning was both clear and infuriating: They would have to drop their plans to put Alaska Pulp's Sitka plant on the Superfund list, the Federal program of cleaning up toxic waste sites, or face untold consequences at budget time.

"They're trying to intimidate us," said John R. Meyer, a Superfund manager in Seattle. "They're saying that if we don't weaken our position or back down on the investigation, 'We will attach a rider, and do what we can to stop you.'"

For the environmental agency and most other Federal agencies, inquiries from Congressional offices about specific matters are hardly unusual.

Indeed, Congressional offices have staff members who work full time on problems their constituents encounter with the Federal bureaucracy.

But the Alaska Pulp incident represents a more direct and unabashed level of interference with the executive branch by some in Congress. Emboldened by what they regard as a mandate from voters last November, some Republicans are using their legislative power to limit actions by Federal agencies, particularly regulatory ones.

Riders to appropriations bills are a simple, direct and increasingly popular way to tie the hands of the agencies. The riders either eliminate money for a particular activity or ban the activity outright. One recent rider, for example, cut out financing for the Occupational Safety and Health Administration to develop standards to deal with worker injuries from repetitive motions or lifting. The rider was sought by industries and trade groups whose workers lift heavy loads or are subjected to repetitive stress injuries.

For now, the environmental agency is proceeding with its plans to go

Continued on Page B12, Column 1

Continued From Page A1

after Alaska Pulp, a Japanese-owned company that had dumped at least a million pounds of dioxin-contaminated waste into Silver Bay near Sitka before the agency ordered it to stop in 1990. The company said the waste contained only minute amounts of dioxin.

The bay is heavily used by commercial fishermen, who catch as much as 800,000 pounds of salmon there each year. If the site is placed on the Superfund list, Alaska Pulp would be made liable for damage to the bay and would be forced to pay for studies to determine whether the fish are too contaminated for human consumption.

Rollo Pool, a consultant for Alaska Pulp, said today that the company is trying to cooperate with the environmental agency, but believes that the Superfund designation is unwarranted. He said the listing would make it virtually impossible to attract investors to redevelop the site, one of the few suitable industrial sites in southeastern Alaska.

Dioxin and its chemical cousins are a potent cause of cancer in animals and a possible cause of cancer and other diseases in humans, according to a study released by the environmental agency last year. The chemicals are byproducts of a number of industrial processes, like the chlorine bleaching of pulp done by Alaska Pulp in Sitka.

Alaska Pulp closed the plant in 1993 and announced plans to convert it to produce fiberboard, a process that causes less pollution and could be more profitable. The company has since abandoned those plans, Mr. Pool said.

Senator Murkowski was on vacation and could not be reached this week, but his aides said that he had become involved in the Alaska Pulp matter at the request of constituents and because he is concerned about unemployment in southeastern Alaska. Being listed as a Superfund site would be like a "scarlet letter" for Alaska Pulp that would scare off potential purchasers and investors, said David Fish, a spokesman for the Senate Natural Resources Committee, which Mr. Murkowski heads.

And the Superfund designation would mean years of litigation that could keep the plant from reopening, Mr. Fish said. He added that there was strong support for Mr. Murkowski's position among local officials in southeastern Alaska.

But there is also opposition. Don Muller, who owns a bookstore in Sitka and has been active in the campaign against Alaska Pulp, says there has been a remarkable reversal in public opinion about the mill since it closed two years ago. Hazy skies and water that was virtually always brown are now "crystal clear," he said, adding, "People are seeing Sitka for the first time."

Mr. Muller says most of the people in Sitka no longer want the mill or Alaska Pulp Corporation to return. "The clearing of the water and the air in Sitka has opened a lot of people's eyes," he said.

For the environmental agency, the voice-mail message from Ms. Koetz

two weeks ago was the unwelcome culmination of a series of letters questioning the agency's pursuit of Alaska Pulp. Two other Alaska Republicans — Don Young, the state's only Representative, and Ted Stevens, its other Senator — co-signed the letters with Mr. Murkowski.

In recent years, officials of Alaska Pulp have donated to Mr. Young's campaigns and to Republican Party committees that give money to House and Senate candidates.

In his most recent letter, dated Aug. 4, Mr. Murkowski said that he was "not satisfied" that the Alaska Pulp site met the criteria for inclusion on the Superfund list and asked the E.P.A. to provide him with the studies that measured levels of contaminants, as well as estimates of the health risks if nothing is done.

Mr. Meyer, of the agency's Seattle office, said in an interview this week that Mr. Murkowski was asking for the impossible. The agency wants to put Alaska Pulp on the Superfund list so that the company can be made

to pay for the research that will answer those questions, he said, adding, "If we can't do the research, we can't get to that endpoint."

The agency has already met the criteria to justify a Superfund listing, he said, by proving that there was a significant release of a hazardous substance into the bay and that public health could be threatened.

"What you have here is one of the most blatant and obvious examples of discharge of a hazardous substance into a bay that is a commercial fishery," Mr. Meyer said. "There's people who eat that stuff, and we can't tell them whether there's a problem or not."

"What the American public is owed in a situation like this is a fair and objective study of the bay to determine whether the seafood there is contaminated or not," he said.

Ms. Koetz, the counsel to the Senate Natural Resources Committee who left the voice-mail message, said the committee is considering

what actions it might take if it remains dissatisfied with the agency's handling of the Alaska Pulp issue. Further, she said, Republicans are doing a broad re-evaluation of assumptions about the risks of chemicals, and are concerned about the what they see as the overuse of the Superfund law.

Once a Superfund site is named, regulators try to satisfy courts by going after it with tests that are "too detailed and too expensive," she said, adding, "It's like the overdiagnosis that doctors do now."

The intervention of senators in agency business is completely appropriate, she said, "if agencies have gone beyond what Congress intended for those agencies to do."

# Plan Issued For Federal Shutdown

## White House Memo Outlines Priority Jobs

By Stephen Barr  
Washington Post Staff Writer

A1

The Clinton administration took another step yesterday toward preparing the government for a shutdown, telling Cabinet departments and agencies who should go to work if the White House and Congress cannot agree on spending priorities for next year.

The nation's air-traffic controllers, meat and poultry inspectors and border patrol agents would report for duty. Social Security checks would go out on schedule. Federal oversight of Wall Street would continue.

The administration's memo, prepared by Assistant Attorney General Walter Dellinger and distributed by Office of Management and Budget (OMB) Director Alice M. Rivlin, indicates that thousands of federal employees charged with protecting public safety and property will be on the job in the event of an October fiscal impasse. As a result, most Americans would not feel an immediate loss of federal services.

But the substantial budget and policy differences between President Clinton and the Republican-controlled Congress over pending appropriations bills have raised the prospect of a protracted shutdown in October—one that probably would be longer than the last, a three-day hiatus over the 1990 Columbus Day weekend.

The everyday consequences of a shutdown would mean thousands of "nonessential" federal workers in this area would be sent home without pay. The political consequences of a shutdown likely would carry over into next year's presidential campaign, a symbol

See CUTS, A22, Col. 1

### CUTS, From A1

of a larger budget battle, which both sides will use to remind voters where they stand on the role and size of government.

Rivlin said yesterday she was only "doing my job" by asking agencies to draw up plans to shut down the government. "We continue to believe a shutdown is unnecessary and an irresponsible thing to do," she said, "but we need to plan for it."

Clinton and congressional Republicans disagree over the numbers and methods in almost all of the appropriations bills under consideration in Congress, particularly provisions written by the House. The subjects include education, job training, science and technology, Medicare and Medicaid. The administration objects to virtually all of the deep cuts that have been proposed in programs designed to help low-income Americans. The White House also opposes proposals to convert some programs into block grants.

"The president has made it very clear that he doesn't want to have the American people blackmailed and that he would accept a shutdown rather than sign on to some of the things that a GOP budget would do," Rivlin said.

She added, "We've never had a situation like this. The differences are big."

In the event the government shuts down and budget negotiations cannot get it quickly reopened, Rivlin said federal employees should expect to go without pay and perhaps lose income. Even employees authorized to work may have to wait for a catch-up salary payment later after a budget compromise is reached, she said.

"If you miss a pay period, you may not have a mortgage payment, and that would be a considerable hardship," Rivlin said.

Employees placed on unpaid furloughs would not receive pay for lost workdays unless Congress approved a special appropriation, she said, adding there was "no guarantee" that Congress would approve retroactive pay.

The administration expects to negotiate with Republicans on how to shape next year's budget once funding for the current fiscal year expires Sept. 30. If a shutdown is avoided, Republicans still can flex their political muscle in October when the administration seeks Congress's approval to raise legal limits on the amount the government can borrow. Without that approval, the government would run short of cash for daily operations.

In his memo, Dellinger said the 19th-century Antideficiency Act, which controls government spending, places three basic restrictions on the federal purse. In accordance with the Constitution, the government cannot spend money without a congressional appropriation, enter into contracts or other obligations, and must limit government employment "to emergency situations, where the failure to perform those functions would result in an imminent threat to the safety of human life or the protection of property."

But not all government programs are financed through annual appropriations, Dellinger said. Some programs, such as Social Security, operate under "indefinite appropriations provisions." Congress also allows some agencies to borrow money to accomplish their mission, such as the "food and forage" authority given to the Defense Department.

In general, Dellinger said, when previous administrations faced a lapse in appropriations, the practice "has been to assume the continued operation of the private economy, and so air traffic controllers, meat inspectors and other similarly situated personnel have been considered to be within the emergency exception."

That standard would maintain law enforcement activities at the FBI, medical care at veterans' hospitals and guards at federal prisons. National security operations would continue, including the conduct of foreign relations.

But the policy analysts who fill many offices in Washington headquarters would be out of work, as would researchers at the National Institutes of Health in Bethesda. The employees who care for research animals, however, would stay on the job.

Administration officials said agencies would determine what jobs met Dellinger's criteria by month's end and would submit reports to the OMB by early September.

The OMB has not prepared a cost estimate for a government shutdown, Rivlin said. The most recent data was compiled by the GAO in 1991, when it surveyed agencies about the Oct. 6 to Oct. 8, 1990 shutdown. The GAO calculated then that the cost of a three-day workweek shutdown could range from about \$244 million to \$607 million, depending on the assumptions used. In such a hypothetical shutdown, federal workers would lose about \$189 million in salaries, the GAO said.

### FOR MORE INFORMATION

For answers to the most common questions about the possible impact of a government shutdown, see *Digital Ink*, The Post's on-line service. To learn about *Digital Ink*, call 1-800-510-5104, ext. 9000.

THE WASHINGTON POST  
THURSDAY, AUGUST 24, 1995

# Dilemma in Israel: To Obey Army or Rabbi?

By Barton Gellman  
Washington Post Foreign Service

A1

BAHAD ECHAD, Israel—Some of the would-be officers wore the skullcaps of observant Jews. Most did not. They sat elbow-to-elbow in the briefing room, but their efforts at polite disagreement did not quite succeed.

The subject, put bluntly, was divided loyalty—a condition no army tolerates well and Israel's feels it has special reason to abhor. Most of the secular cadets thought the answers were simple. Most of their Orthodox counterparts begged to disagree.

If forced to choose, said 2nd Lt. Amnon Dokov, God's commandments are paramount. If you cannot follow lawful orders, shot back instructor Yehuda Fuchs, "don't just leave the army. Leave the country."

At this Negev Desert academy, where nearly every male Israeli officer starts his career, such debates are erupting often now. The reason is a July 12 ruling by a group of influential rabbis that the Torah, the body of Jewish religious literature, forbids Jews to withdraw from any part of the biblical land of Israel. Soldiers who receive orders to tear down Jewish settlements or military bases in the Israeli-occupied West Bank, the rabbis ruled, must disobey.

The army is moving in, gingerly, to quash the seeds of mutiny. With settlers confronting the army on a new hilltop each week and negotiators nearing a deal to bring Palestinian rule to much of the West Bank, the question looks less hypothetical every day.

For many commentators, the stakes exceed the army's alone. Some smell the odor, however distant yet, of civil war. Others see a basic threat to the 90-year alliance between the 10 to 15 percent minor-

See SOLDIERS, A32, Col. 1

## SOLDIERS, From A1

ity of "modern Orthodox" Jews and what writer Dan Margolit calls "the secular Zionist majority" that built the state.

"I think to call a soldier to refuse orders, that crossed the line of Israeli democracy," said Col. Elazar Stern, the decorated paratrooper who commands this school and wears the knitted skullcap of a religious Zionist. "If everyone can follow only the orders he approves, we'd have to create not only two armies but many more. . . . We will go back to the *galut* [the 2,000-year exile] and we will destroy our country, our only country."

Many field units try to deflect conflicts of conscience in a practice dating at least to the 1982 invasion of Lebanon, which left-wing dissidents regarded as Israel's first unnecessary—and therefore immoral—war. Better to send a soldier to kitchen duty, some commanders say, than to issue an order you know he will not obey.

But other commanders disagree. Last week the army held its first court-martial for a soldier who refused to evict settlers from an illegal encampment near Hebron. Sgt. Nimrod Lahavi, 20, was sentenced to 28 days in jail. He has not been available for interviews, and the nature of his objections is not known.

Here in training at Bahad Echad, the Hebrew acronym for "Training Base 1," Stern encourages free de-

bate—but tells future officers that there is only one right answer in the end: "If on the last day of the course [a cadet] will tell me, 'I will obey the rabbi,'" Stern said, "he will not be an officer."

Lt. Effi Barak, 23, from Beersheba, 45 miles to the north, has no patience for those of his peers who think otherwise. Secular like most Israelis, he listened to 20 minutes of round-table debate in a classroom here and then asked to be heard.

"You have to ask what is the most important thing, the nation or the land," Barak said. "I think all the people who serve as officers must think the nation is more important. If my opinion is going to change, I'm going to leave the army."

2nd Lt. Dayman Shustman, agreeing heartily, added: "What we're seeing now in the West Bank are illegal acts by the settlers, and they are treated as such by the Israel Defense Forces."

But Dokov, the Orthodox lieutenant, said his secular comrades in arms were missing the point.

"Here it all seems very clear because we're in a training environment," he said. "Out in the field you encounter hundreds of soldiers, and it's not as simple as, 'Everybody is going to follow orders.' They might meet large groups of soldiers who will refuse for ideological reasons to carry out orders."

In an interview afterward, he tried to explain.

"For me as a religious man, the Halakha [religious law] is the first thing," he said. If an order violates Halakha, an observant Jew "can't do this thing. He can't. So I think we have to show more sensitivity to soldiers who don't want to follow these orders."

Unthinkable, perhaps, in many armies. But Dokov represents an important constituency: the modern Orthodox religious movement that has sought to fuse religious culture with the secular obligations of the Jewish state. He comes from one of 20 religious schools that combine 3½ years of Torah study with 1½ years of army service.

Graduates of these programs, many of whom serve together in special units, are regarded as some of the army's most highly motivated soldiers. Equally significant, their army service makes them full participants in the one crucial obligation of Israeli Jewish citizenship.

The black-coated ultra-Orthodox Jews, by contrast, do not recognize state authority and have been exempted from the draft since Israel's founding.

Dokov, like most modern Orthodox Jews, never contemplated a serious threat to his army service. But then the head of his Or Etzion yeshiva, Rabbi Haim Druckman, emerged as a leading force behind the July 12 religious edict.

"This may become a dilemma for me," Dokov said.

According to journalist Yossi Klein Halevi, writing in the Jerusalem Report, the army debate reflects the way religious Zionists "have increasingly mortgaged their political agenda to the single issue of West Bank settlement." For them,

the biblical lands of Judea and Samaria, where Abraham is buried and Saul ruled his kingdom, are overwhelmingly more important than the nightclubs and lobster houses of Tel Aviv, Israel's major population center but a largely secular city founded in the 20th century.

That the Labor Party government of Prime Minister Yitzhak Rabin should contemplate giving up Judea and Samaria, is, to some religious Zionists, tantamount to a declaration of war.

"The civil war has begun. This is the moment before the first fatality," Geula Cohen, a right-wing militant, wrote, sounding almost gleeful, in the Maariv newspaper. "It does not

matter who is the first victim, a soldier or a settler. Nor does it matter who fires first, a settler or a soldier."

What matters, she wrote, is that the fault will be Rabin's.

For the mainstream opposition, the rabbis' rebellion is trickier.

Likud Party leader Binyamin Netanyahu, though he affirms in passing that "there is no place for disobeying orders and violating the law," devotes far more rhetorical energy to arguing that the threat is Rabin's fault.

"I think the crucial issue now is that Rabin realize that his policy is causing a rift in the people, which is only just beginning," he said.

Here at the officer training course, Stern and his subordinates are struggling mightily to bridge that rift before it does serious harm.

Stern, who was a cadet here in 1976, said religious and secular soldiers alike must swallow their differences for the greater good. Just as religious soldiers must guard Eilat's "most 'interesting' beach," a well-known nighttime meeting point for lovers, on the Jewish Sabbath, and just as secular soldiers eat kosher army food whether they want to or not, he said, religious officers will have to do the government's bidding on the West Bank if asked.

Capt. Eitan Hoenig, a skullcap-wearing instructor here who grew up in Alon Shvut, a Jewish settlement in the West Bank, represents what Stern hopes will become the consensus.

"A sensitive commander will not ask me to confront my parents," he said. "If I get an order to evacuate the settlement my parents live in, it will be very hard, very difficult. But I tell you as a soldier, I will do it."

THE WASHINGTON POST  
THURSDAY, AUGUST 24, 1995

THE FEDERAL DIARY

# What's Rated Essential

By Mike Causey  
Washington Post Staff Writer

Some of Washington's best legal and technical minds have spent recent weeks working on the rules of engagement in the event of a government shutdown. That would occur if President Clinton and Congress fail to reach a federal budget agreement before Oct. 1—the beginning of the next fiscal year. Yesterday, the Justice Department issued an updated set of guidelines for the Office of Management and Budget. If there is a shutdown, this is how it looks for the area's 360,000 federal workers:

- Some employees would continue to work. But many, if not most, could be furloughed without pay.
- Those who worked would be known as "excepted" or "essential" employees. They wouldn't be paid during the furlough period for lack of funds (or more technically, for lack of legal authority to spend federal money). But they should be paid after a budget agreement is hammered out.
- Feds who didn't work wouldn't be paid. That is a change from the past. During other brief shutdowns (none lasted more than three days), furloughed workers got paid. This new policy could, of course, be overruled by Congress.
- It is a very, very good bet that Clinton would be declared "essential." But one of the ironies of the situation is that he probably wouldn't be paid during a shutdown, but reimbursed later. It is unconstitutional to cut the salary of a president.
- House Speaker Newt Gingrich (R-Ga.), Senate Majority Leader Robert J. Dole (R-Kan.) and other members of Congress would have to keep working during a shutdown. Officials speculate that they and other members of Congress probably would get paid during the furlough period. If that happened, it would give added meaning to the saying "Life isn't fair!"

Congress has passed about half the 13 appropriations bills. It

won't return to take up the remaining bills until after Labor Day. Clinton has threatened to veto at least seven appropriations packages because of spending cuts and the GOP tax-cut plan. Congressional Republicans counter that they may not vote to raise the federal debt ceiling. Either action could trigger a shutdown. Then it would be up to agencies to decide who works and who walks based on the Justice guidelines.

Furloughed feds could take other jobs. But can you imagine 360,000 people here looking for temporary situations? Feds would be eligible for unemployment benefits, depending on state rules. Furloughed feds who don't get paid could—and would—file enough grievances to swamp and sink the Merit Systems Protection Board.

Workers in the following areas could expect to work during a shutdown:

- Banking and the stock and futures markets, as well as the collection of customs and corporate and personal income taxes.
- Air traffic control, the Coast Guard and other agencies involved in transportation safety.
- Law enforcement, prison and Immigration and Naturalization Service activities concerned with protection and surveillance.
- Disaster and emergency services and necessary maintenance operations.
- Medical care (such as Public Health Service activities, Veterans Affairs hospitals) and related health services.
- Food safety and other health-safety-related operations.
- The distribution and production of power (such as the Tennessee Valley Authority and General Services Administration operations that provide power to essential operations).

Thursday, Aug. 24, 1995

**FOR MORE INFORMATION**   
To post questions or comments for Mike Causey, see Digital Ink, The Post's on-line service. To learn about Digital Ink, call 1-800-510-5104, ext. 9000.

**TRENDLINES***Debt and a Difficult Balancing Act*

# The Economy's Deficit-Cutting May Have Run Its Course

By John M. Berry

Washington Post Staff Writer

Rummaging through the Congressional Budget Office's midsummer update of its estimates for the federal budget provides some interesting perspectives on the struggle to balance the budget early in the next century.

The deficit has dropped from a record \$290 billion in fiscal 1992 to \$161 billion for the year ending next month. More than anything else, that rapid decline is the result of a strong economic expansion that sharply raised individual and business incomes and federal tax receipts. A healthier economy also has meant lower spending for some programs, such as unemployment benefits.

At the same time, spending increases over the past several

years have been unusually restrained. For example, since 1991 spending has gone up an average of only 3.5 percent a year, and the CBO expects a 3.9 percent increase for the current year.

But with the economy operating now at what many economists regard as roughly full employment, such large gains for the economy and large reductions in the deficit have run their course. In other words, the size of the government's budget "problem" is in the neighborhood of \$161 billion.

As the chart at the right shows, the deficit this year will be equal to 2.3 percent of the nation's gross domestic product, the lowest it has been since 1979.

Relative to the size of the economy, the worst deficit year since World War II was 1983, when

See **TRENDLINES, B10, Col. 1**

**TRENDLINES, From B9**

it reached 6.3 percent of GDP. The red ink soared that year as a result of the severe 1981-82 recession, large tax cuts proposed by President Ronald Reagan and rapid increases in defense spending.

But even as the economy recovered from that slump, continued large spending increases both for defense and other programs kept the deficit at or above 5 percent of GDP for the following three years.

In a sense, today's budget problem is related significantly to the decisions of the 1980s, when the government chose not to try to bring down the deficit as the economy recovered. One consequence of that choice was the swift increase in the national debt and a mounting bill for interest on it. For example, in 1985 alone, net interest payments jumped more than 16 percent, according to past budget figures from the Office of Management and Budget.

By 1989, net interest payments

were up to \$169 billion, about \$16 billion more than the deficit. In other words, if it weren't for the outstanding debt, the budget would have been in surplus that year rather than running a deficit of 2.9 percent of GDP, as shown on the chart.

Of course, the improvement in the deficit stalled at that point, largely as a result of the 1990-91 recession. An effort by President George Bush and congressional Democrats to bring down future deficits was later denounced by Bush because it included higher taxes.

The CBO update shows that net interest payments and the deficit were just about equal last year at \$203 billion. This year, net interest payments will be about \$233 billion while the deficit drops to \$161 billion.

Interestingly, had deficits been held down in the 1980s and early 1990s so that the debt held by the public remained equal to about 27 percent of current-dollar GDP rather than soaring to almost 52 percent, today's budget outlook would be vastly different. There still would have been deficits and the debt would have continued to grow, but it would be only about one-third of its actual \$3.6 trillion size.

A debt one-third that size would mean interest payments one-third as large. Instead of \$233 billion, the Treasury would be paying out a net of about \$77 billion. The difference in those two figures—\$156 billion—is almost equal to CBO's estimate for this year's deficit.

In other words, this year's budget would just about be balanced, and the \$161 billion the Treasury will borrow to finance the deficit would be available for private investment. Furthermore, the nation would not be in the position of importing nearly that much foreign capital to help finance U.S. investment, and U.S. trade with the rest of the world likely would be close to balanced instead of deeply in deficit.

Of course, such assertions assume that the Federal Reserve could have successfully offset the

restraining effect of lower federal spending over the past 15 years so that the economy would have grown roughly as much as it has since 1980. But many members of Congress pushing now to balance the budget argue—and many economists back them up—that reducing the deficit gradually over the next seven years will not harm the economy even in the short run. In fact, some claim such an action will generate more growth than would otherwise occur.

Even if the budget history of the past 15 years had been so different, there still would be plenty of pressure to spend more money in the future. Medical care costs likely would still be going up much faster than inflation, for example.

However, if the budget were close to balanced now, then CBO would not be projecting that the net interest bill would be passing the \$300 billion mark five years from now, so that there would be less upward pressure on spending.

# OMB plans for 'appropriations hiatus'

## Essential workers to be identified

By Ruth Larson  
THE WASHINGTON TIMES

No doubt most federal workers like to think of their jobs as important — even essential — to running the government.

But in case of an "appropriations hiatus," the Office of Management and Budget's term for a governmental shutdown, workers may find out just which jobs are considered indispensable.

"We hope there's no shutdown. We hope it can be avoided with responsible behavior — on Capitol Hill," Budget Director Alice Rivlin said, taking care to emphasize which side she thinks should back down.

"But I'm doing my job as a prudent manager to prepare for a shutdown, just in case," she said in a telephone interview yesterday.

On Tuesday, Mrs. Rivlin directed the heads of all departments and agencies to review contingency plans for shutting down operations, in light of recent Justice Department guidance on what constitutes an "emergency" function.

Agencies have until Sept. 5 to

decide which employees would need to continue running essential operations in case of a shutdown.

"My advice to agencies is to update their plans and make clear to employees exactly what they're going to do," Mrs. Rivlin said. "We want to decrease the uncertainty. People don't like to operate with uncertainty."

She said the most important change in the nine-page ruling by Assistant Attorney General Walter Dellinger is a slight tightening of the definition of "emergency" as it applies to government shutdowns.

Under the Antideficiency Act, enacted in 1884, federal agencies cannot obligate funds for employees in advance of congressional appropriations, except in emergencies. Just what qualifies as an emergency has been open to interpretation over the years.

A 1990 amendment stipulated that an emergency "does not include ongoing regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property."

Mr. Dellinger acknowledged that shutting down the government overlooks the need for continuing some essential government services.

"Were the federal government actually to shut down, air traffic

controllers would not staff ... air control facilities, with the consequence that the nation's airports would be closed and commercial air travel and transport would be brought to a standstill," he wrote.

Halting operations by the FBI, Customs Service, Border Patrol and others "would undoubtedly result in the loss of human life, and ... would immediately result in massive dislocations of and losses to the private economy."

To help agencies decide which functions are critical enough to be maintained during a funding lapse, Mr. Dellinger cited two criteria from a 1981 attorney general's ruling:

- "First, there must be some reasonable ... connection between the function to be performed and the safety of human life or the protection of property."

- "Second, there must be some reasonable likelihood that the safety of human life or the protection of property would be compromised, in some degree, by delay in the performance of the function in question."

But Mr. Dellinger recommended that the phrase "in some degree" be replaced with "in some significant degree," to discourage agencies from applying the rules to non-emergencies.

For example, Mr. Dellinger

wrote: "The brief delay of routine maintenance on government vehicles ought not to constitute an 'emergency,' " despite the fact that maintenance delays eventually could endanger the vehicles or their occupants.

"We believe that ... the emergencies exception applies only to cases of threat to human life or property where the threat can be reasonably said to [be] near at hand and demanding of immediate response," he wrote.

Other emergency functions include air traffic control, law enforcement and criminal investigations, veterans hospitals, drug enforcement activities, and agricultural meat inspections.

Non-emergency workers would be furloughed without pay until Congress and the president reach a budget agreement.

"There is a large difference in positions between the president and the Congress," Mrs. Rivlin said. "We both want to get to a balanced budget, but in different ways."

She declined to predict whether a shutdown would occur: "I'm not a betting woman, [but] if it comes to that, the president is determined not to blink. We shouldn't have to, to get decisions made. It's not necessary to shut down the government."

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# A river runs through trip for the first family's fly girls

THE WASHINGTON TIMES

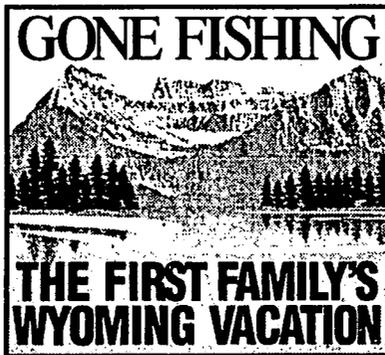
First lady Hillary Rodham Clinton and daughter Chelsea have gone native here in one of the nation's top fishing spots.

While President Clinton appears unable to leave the golf greens behind, Mrs. Clinton, Chelsea, and her friend Rebecca Kolsky, 16, have taken up fly fishing.

Thanks to the able instruction of Jackson Hole native Buck Buchenroth, the first lady has learned how to cast a five-weight floating fly line while staying at the stately Rockefeller ranch inside Grand Teton National Park.

Mr. Buchenroth taught the three fly fisherwomen the art of the back-and-forward cast and how to lightly land a dry fly on the water.

Success came immediately. Mrs. Clinton caught four native



By Paul Bedard

cutthroat trout, toothy fish known for the deep orange-red slash on their throats.

Chelsea and Rebecca, meanwhile, caught two "cuts" each.

All the fish were returned to the stream, a common practice by fly fishermen promoted by Trout Un-

limited under the "catch and release" program.

Aides said that Mrs. Clinton is a practiced fisherwoman and has cast a few flies before but wanted a lesson to brush up on the sport.

Mr. Clinton hasn't wet a line since arriving here, despite the availability of several fabulous, fish-rich streams and the roaring Snake River, which the first family rafted down this week.

Like golfing, fishing is a traditional presidential pastime. Former first ladies Barbara Bush and Rosalynn Carter occasionally fished with their husbands — Mrs. Bush for saltwater bluefish, Mrs. Carter for Georgia mountain trout.

## First shopper

For the first time in more than a week, President Clinton motor-

caded into downtown Jackson Hole for a little shopping late Tuesday.

His first stop in the trendy town where Indian jewelry and cowboy stores are being squeezed out by Beverly Hills landmarks was the Ralph Lauren factory outlet, but he quickly left.

After a short stroll, he hit pay dirt in a place called the Ranch Shops. Once inside, he announced: "I want a denim shirt."

After finding a couple that struck his fancy, he asked the salesclerk, "Can I try these on?" She, of course, said yes.

The president checked himself both head-on and sideways in a long mirror and declared he was pleased with the shirts. Mr. Clinton also checked out the Western-style bolo ties and bought two, giving one to White House photographer Ralph Alswang, who just cele-

brated a birthday.

Mr. Clinton paid with a gold Visa card.

After shopping, he motorcaded to the Jackson Hole Pub & Brewery to toast the birthday of another staffer, Mrs. Clinton's aide Kelly Craighead. He was overheard saying: "Today was the first day I felt relaxed."

## China trip changes

The delay in deciding whether Mrs. Clinton will travel to China next month to attend the U.N. women's conference has nixed plans to add at least three other countries to her itinerary.

Aides said there isn't enough time to make preparations for Mrs. Clinton to visit Cambodia, Mongolia and Thailand.

Mrs. Clinton had planned to travel to those and other countries

after her stop in China.

## Spotlight on Jackson

"Dateline Jackson? Dateline Jackson Hole? It doesn't really matter," says the Jackson Hole Guide newspaper. The reason: Any stories about Jackson Hole are good for business.

The Jackson Hole Visitors Council is eating up the free coverage because Teton County voters in November killed a 2 percent room tax that had generated \$1.5 million a year. About 90 percent of the tax was used for promotion expenses.

"Every night on CNN and the three major networks, to see reporters with the Tetons in the background ... and that Jackson Hole dateline, that can't hurt," said Steve Meadows, chairman of the Visitors Council.

THE FEDERAL DIARY

# Furlough Far From Home

By Mike Causey  
Washington Post Staff Writer

At any given time, thousands of federal workers are on official travel. Many are visiting Washington on business even as feds from here are checking up on field offices, attending conferences or conducting business somewhere else.

Here's a tip for anyone who expects to be sent out of town on or about Oct. 1, the start of the new fiscal year and the time when nonessential operations may be shut down for lack of a federal budget agreement.

To avoid being sleepless in Seattle, down-and-out in Ottawa or buffaloed in Buffalo, check to see if you are an "excepted" employee before you get on an airplane.

In the event of a shutdown, federal workers will be designated one of two things: excepted or nonexcepted.

Excepted types would keep working—because of the essential nature of their jobs—and would be paid once their agency budgets are approved. Agencies have until Sept. 6 to decide which functions are essential and which employees get the excepted designation.

Such jobs would include those related to federal hospitals, prisons, processing of civil service retirement and Social Security checks, law enforcement, air traffic control, health, safety and national security functions. Such jobs also would include getting paychecks to members of Congress, who, even though they may cause the shutdown, would continue to get paid!

Nonexcepted employees wouldn't work (and couldn't legally volunteer their services) during any furlough and could not be paid unless Congress specifically authorized back pay when the budgets are approved. Future columns will deal with issues such as collecting unemployment benefits during a furlough, etc.

But for feds who travel, the furlough could be especially tricky because it could mean being broke and starving in a strange town rather than being broke and starving at home.

Workers on official travel who are excepted would continue with their duties and would be entitled to per diem pay (to cover the cost of meals and hotels). Like other excepted employees, they also would continue to earn their salary, although they could not be paid until the budgets are approved.

Nonexcepted feds on official travel during a furlough would go into a sort of bureaucratic purgatory. Their agencies would have to determine whether it is cost-effective to bring them home or keep them on location—and pay their per diem—even though they could not work or be paid.

The per diem varies from city to city. For federal visitors to Washington, it is \$152 a day. New York City is \$180, and Jackson Hole, Wyo., where the president has been vacationing, is \$124 during the high season, June 1 to Oct. 14.

Being furloughed on travel could have its rewards: Imagine being stuck in Maui or Venice and told to stay put, collect your per diem but don't do any work! But for most people, being furloughed away from home could be even more stressful than being furloughed in Washington.

## Retiring Federal Workers

The Federal Communications Commission's Anthony M. Gates will retire next month after 48 years with Uncle Sam, including three years in the Navy.

Bill Povish is retiring from Agriculture's National Plant Germ Plasm Quarantine Lab in Glenn Dale. Colleagues say that during his 36 years in government he helped introduce several varieties of pears and apples that now are consumer favorites.

Donald Cahill, of the Customs Service, will retire next month after almost 48 years in government. Most of his time has been with Customs's office of regulations and rulings.

Tuesday, Aug. 29, 1995

## FOR MORE INFORMATION

To post questions or comments for Mike Causey, see Digital Ink, The Post's on-line service. To learn about Digital Ink, call 1-800-510-5104, ext. 9000.

# Grocers Mobilize as Commissaries Call Up the Reserves

By John Mintz  
Washington Post Staff Writer

The nation's grocers are gearing up for a fierce congressional battle next month to try to protect their turf from a longtime foe: The network of military commissaries that sell \$5.5 billion annually in heavily discounted groceries to Defense Department personnel.

Commissaries are open to 5 million active-duty military personnel, their dependents and retirees over age 60, and the Pentagon wants to extend year-round commissary privileges to 2.8 million reservists and family members, saying it's fair recompense for increasingly dangerous duty.

Supermarkets nationwide, along with those in the

Washington area, fear a threat to already razor-thin profits from the 216 commissaries across the country—including area stores at Bolling and Andrews Air Force bases, Fort McNair, Fort Meade, Fort Detrick, Fort Belvoir, Fort Myer and Aberdeen Proving Ground. The 14 local military commissaries have sales of about \$300 million.

"I don't think the federal government should compete with the private sector, especially when the government, as in this case, is running such a deficit," said Barry Scher, spokesman for Giant Food Inc., the Washington area's largest supermarket chain.

Giant, based in Landover, can't estimate how much in sales is at stake in the proposal to extend commissary rights, which already

See BIZ, D3, Col. 3

BIZ, From D1

has passed the Senate as part of its defense budget bill.

The Pentagon spends \$1.1 billion a year subsidizing the nation's commissaries, plus 111 overseas. Commissaries offer discounts of about 23 percent on grocery and related items—everything from avocados to floor wax to pork chops. The grocers estimate that extending commissary privileges could cost taxpayers hundreds of millions of dollars more—an assertion the Pentagon disputes.

The grocery industry says the Pentagon is seeking to find new commissary customers, at taxpayer expense, to prop up the commissary system because it has lost patrons as military forces have shrunk.

But promoters of the Senate plan to expand commissary access say the action is necessary to compensate reservists, who are increasingly reporting for dangerous overseas duty, such as in the Persian Gulf.

"Commissary privileges are designed to help recruit and retain a professional military force," said a Pentagon spokesman. "This move helps remove a stigma that reservists are second-class citizens."

"They're not weekend warriors, but on-call," said

Sydney Hickey, a spokeswoman for the National Military Family Association, which promotes the interests of military families. "It's time we brought them into the force, since we expect them to mobilize at the drop of a bucket."

The Pentagon disputes the industry's assertion that giving reservists commissary access would cost taxpayers money—more patrons mean more efficiency, it says, and lower operating costs.

Currently, reservists and their families are welcome at commissaries in the two weeks a

year they're on active duty, plus 12 more times a year. The Senate measure would let them, as well as military retirees under age 60 and their dependents, visit whenever they please.

Grocery firms are lobbying the House of Representatives, which didn't pass the extension of commissary privileges, in hopes it will block the Senate measure when the military budget bill heads into conference.

"At a time when the nation is looking to reduce unneeded subsidies, this proposal flies in the opposite direction," said the

*"At a time when the nation is looking to reduce unneeded subsidies, this proposal flies in the opposite direction."*

— the Food Marketing Institute

Food Marketing Institute, a grocery industry association, in a recent memo to Congress.

"Reservists enjoy the benefits of civilian jobs and higher civilian pay. Taxpayers should not subsidize their grocery bill."

TWO WEEKS AGO, on the day that General Dynamics Corp. of Falls Church bought the Bath Iron Works shipyard for \$300 million, a company spokesman was asked whether more purchases were planned. The reply: "Stay tuned."

The latest word is that General Dynamics has been considering a buyout of a Michigan company that is one of

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TUESDAY, AUGUST 29, 1995

its few competitors in the military armored vehicle field.

**Teledyne Vehicle Systems**—which has 400 employees at its plant in Muskegon, Mich.—has been on the block for months. It is owned by Teledyne Inc., the defense and consumer products conglomerate based in Los Angeles.

Representatives of the two firms would not comment, as is their practice when asked about potential mergers.

Only a handful of U.S. companies still make Army armored equipment. Each occupies a niche, and competes only on occasion with the others. General Dynamics builds heavy battle tanks, for example, and Teledyne builds chassis for artillery, as well as other mobile equipment such as rescue vehicles for downed Air Force pilots.

One rationale for a General Dynamics-Teledyne deal is that it could save money on an Army program on which the two companies work together. A few years ago the Army, in an innovative move, approached the two firms, as well as Arlington-based United Defense LP and Martin Marietta Corp.—now Lockheed Martin Corp.—and persuaded them to jointly produce the high-tech, multibillion-dollar Crusader artillery system.

The program has hit snags, though. Lockheed Martin is encountering problems in designing its 21st-century gun, which uses liquid propellant as an explosive rather than dynamite.

And critics claim the rare arrangement has caused costs to rise, as each firm adds its own management fees atop the fees charged by the other partners.

A merger could lower costs on that and other deals, and advance General Dynamics' claim that its central obsession is addressing the concerns of its Pentagon customers about "affordability."