

NLWJC - Kagan

Counsel - Box 033 - Folder 001

Militias [7]

To: Dick Morris, Bill Curry, Tom Freedman
 Fr: Eliot Spitzer
 Re: Militias: Rico Prosecutions/Amendments: some initial thoughts
 Date: August 17, 1995

The Administration has not yet articulated a sufficiently aggressive response to the militias. In part, the inability to define an appropriate response has resulted from an effort to define the militias and then say that "they" -- whatever they are defined to be -- are illegal. This approach poses all sorts of problems -- from constitutional to practical.

An alternative approach is to mirror the path followed in the rather successful attack on organized crime in the major cities: use Rico prosecutions founded on particular illegal acts as a way to eliminate the structure and seize the assets of an organization. That an organization, in much of what it does, stays within the bounds of the law is no defense once the necessary "pattern of racketeering" has been established. Although much judicial ink has been spilled in an effort to define the term "pattern of racketeering," a couple of predicate acts, some structure, and some continuity are pretty much all that are necessary to catch an organization in the web of the Rico statute. The trick is determining which of the many predicate acts listed in the statute may be applicable. This suggests a two-pronged approach. One prong can be initiated solely through executive action; the second requires legislative support.

One: create within DOJ a unit of prosecutors -- just as there is an organized crime unit -- to investigate the militias. Perhaps acting in concert with the various US Attorney's offices in the respective states, this unit would determine whether any federal laws are currently being violated by the militias. I imagine that a creative prosecutor, if the press accounts of these militias are half accurate, could find the necessary predicate acts and structure a good Rico. Chief among the predicates that I would focus on: obstruction of justice, obstruction of criminal investigations, obstruction of State or Local law enforcement [based on alleged threats being made routinely to local and federal law enforcement officers as well as local and federal government officials of all stripes.] I would bet heavily that Rico prosecutions could be based upon what is already known.

Two: Remarkably, the area where the militias may well be most vulnerable, weapons-related crime, is outside the scope of Rico. Because the legislators who crafted the statute did not want to arouse well-organized opposition, provisions that would incite groups such as the NRA were left out. Consequently, there are no weapons crimes as predicates for Rico. Yet it is my suspicion that a good investigation would uncover a welter of gun-related crimes inside these militias. The answer is to amend the Rico statute to include weapons offenses as predicate acts. The amendment with the greatest reach would probably import as a predicate act any state crime relating to guns that is punishable by imprisonment by more than one year. See USCA 1961(1)(A) for an analogous predicate definition relating to controlled substances. Of course, all sorts of higher thresholds could be defined. [The likelihood of success is, of course, minimal. The rhetorical value of the proposal, however, might be significant.]

A Rico case pairing weapons predicates with the obstruction of justice related predicates

would really capture, I think, what offends us about the militias.

The possibility of amending 18 USC 1956 to include the necessary weapons predicates within the definition of "specified unlawful activity" for the purposes of money laundering could also have a significant impact. This would provide another route to attack the ill-gotten gains that the militias derive from trafficking in arms. This is probably less important for the militias, but is a good amendment nonetheless.

This is all very preliminary thinking.

Two unrelated issues:

A recent article in the NYT [attached] suggests that funding limits -- at both the federal and local level -- are impinging on the use of DNA testing in sex crimes cases. This evidence is often dispositive in these cases. Is there some executive funding action possible to insure access to DNA testing in all sex related crimes? [I hasten to add I have no projection on cost here.]

I have heard that the CDC is cutting back or even eliminating its funding of HIV testing of newborns. If this is true: a) can funds be shuffled to permit continued/expanded funding of these tests and b) can policies be changed to require that the results of these tests be made available to the mother and doctor.

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JL

M E M O R A N D U M

To: HON. ABNER MIKVA
Counsel To the President

From: SETH P. WAXMAN
Associate Deputy Attorney General

Re: Domestic Terrorism

Date: May 29, 1995

We have been asked to comment on the following proposed statement regarding domestic terrorism that might be included in the current draft of the President's speech to be given in Colorado on May 31, 1995. That statement reads:

"I have ordered Attorney General Janet Reno to draft an Executive Order requiring the FBI to report on the true nature of terrorist groups in our Nation. Americans should have access to information on the purpose and tactics of such groups before they give money or get involved."

As explained more fully below, we strongly recommend that the foregoing statement not be given.

Discussion

- I. If the President Makes the Statement As Indicated, Legal and Constitutional Constraints Would Likely Make Any Report Issued So General As to Be of Little Use to the Public.
 - A. The proposed statement contemplates that the Department would provide a report that gives "Americans access to information on the purpose and tactics of such groups before they give money or get involved."
 - B. It would be improper under the Attorney General's Guidelines for Domestic Terrorism Investigations for the FBI to initiate domestic security investigations of groups or individuals absent circumstances indicating the possibility of activity in violation of federal criminal law.
 1. Those Guidelines limit FBI investigations to circumstances in which there is a possibility or reasonable indication of criminal activity.

2. The Attorney General's Guidelines were first promulgated in 1976 by Attorney General Levi as a response to the excesses of internal security investigations such as the FBI's COINTELPRO. By requiring that investigations be premised on indications of criminal activity -- including the advocacy of violence -- the Guidelines were intended to end investigations based merely on speech that advocated unpopular opinions or ideologies.
 3. Any publication of information about the subjects of investigations would be completely inconsistent with the Department's statutory law-enforcement mission. Publication might also violate Rule 6(e) of the Federal Rules of Criminal Procedure and other statutory provisions.
 4. The collection or dissemination of information about groups not under investigation by the FBI would contravene the Guidelines.
- C. Similarly, the Privacy Act would limit the compilation and release of any such report. Since 1983, the Department has taken the position that the FBI cannot gather publicly-available information regarding an individual's or group's exercise of First Amendment rights, except in the context of a preliminary inquiry or an investigation into possible criminal activity.
- D. Finally, the First Amendment, and perhaps the Fifth Amendment, would constrain any publication of a list of "suspect" groups unrelated to ongoing criminal investigations.
1. The creation of a list designed to "chill" membership in particular groups that have not been accused of crimes would create obvious First Amendment issues.
 2. Publication of such a list may also implicate due process concerns if organizations named did not have an opportunity to contest their designation as "terrorist" entities.
 3. Any public list of "suspected" terrorist groups would also give rise to charges that the Administration is in essence reinstating the discredited Attorney General's List of Subversive Organizations, which was abolished in 1974 by President Nixon.

II. Similarly, Any Report Pursuant to the Proposed Statement Would Be Constrained by the Need To Protect Against the Public Release of Sensitive or Classified Law Enforcement Information.

- A. The Department's proposed revised statement leaves open the question whether any portion of the domestic terrorism assessment might be made public in the future. This provides appropriate protection to sensitive law-enforcement information.
- B. Indeed, in addition to the limitations imposed by the Guidelines, the Privacy Act, and the First Amendment, any release of information in this context would be constrained by the need to protect such information.
- C. The FBI has expressed its strong opposition to any suggestion that information regarding terrorism investigations be released publicly. To do so, they argue would do grave damage to ongoing investigations.
- D. This is particularly so in the foreign intelligence field, which apparently also would be covered by the original proposed statement. In this area, public disclosure of FISA and other classified information is prohibited by statute.
- E. In sum, this consideration also would require that any report would have to be so generalized as to be of little use to the public in assessing particular groups.

III. The Department of Justice Is Investigating Terrorist Activity Pursuant to the Attorney General's Guidelines for Domestic Terrorism Investigations.

- A. These investigations are being conducted pursuant to the Attorney General's Guidelines, discussed above.
- B. If the President were to direct publicly that a comprehensive assessment and report go forward, targeted organizations would be alerted, perhaps making the assessment more difficult. The announcement would also likely engender criticism by groups suspicious of a return to COINTELPRO, and it would also likely fuel the type of paranoid fear of the federal government that has been manifested in recent years.
- C. If the President wishes to make an announcement in this area, he could state that he has directed the Attorney General to pursue all appropriate steps, consistent

with the law and the Attorney General's Guidelines, to investigate fully all illegal activities by groups in this country espousing or practicing violence designed to achieve a social or political goal.

1. This announcement takes into account the department's proposal that Congress regulate the militia groups.
 - a. To the extent the underlying goal is that militias be regulated, such a task must be performed in the first instance by Congress (see the memorandum provided on Sunday by Walter Dellinger).
 - b. The revised statement proposed by the Department thus properly places the President's direction to the Attorney General within the traditional bounds of law enforcement activity, while leaving to Congress regulation of militias.

MEMORANDUM FOR THE PRESIDENT

DRAFT

THROUGH: HAROLD ICKES

FROM: ABNER MIKVA

SUBJECT: LANGUAGE CONCERNING ANTI-TERRORISM IN AIR FORCE SPEECH

I. Proposed FBI Report

I understand that a draft of your speech to the Air Force Academy contains the following language about further action against domestic terrorism:

"I have ordered Attorney General Janet Reno to draft an Executive Order requiring the FBI to report on the true nature of terrorist groups in our nation. Americans should have access to information on the purpose and tactics of such groups before they give money or get involved."

The proposed actions described in this paragraph raise a number of constitutional, statutory and law enforcement concerns, which I briefly discuss below. Because of those concerns, it seems likely that any FBI report that would be produced pursuant to this directive would necessarily be cast in such general terms as to negate much of its utility. Moreover, because of the same constitutional and policy concerns, it is the strong view of the White House Counsel's Office and relevant officials at the Department of Justice that this language should not be included in your speech. (This memo does not address separate concerns that we have, but which we have addressed in another memo, about the political wisdom of proposing further regulation of militias.)

The problems that arise from the creation of the type of FBI report described above include these:

1. First Amendment concerns: To the extent that the proposed FBI report is aimed at discouraging citizens from joining organizations that they may lawfully join, the report may be attacked as having a "chilling effect" on citizens' exercise of their associational rights under the First Amendment. Making a list of "suspected" terrorist organizations comes uncomfortably close to the discredited Attorney General's List of Subversive Organizations, which President Nixon abolished in 1974.
2. Fifth Amendment concerns: Publication of a list of terrorist or suspected terrorist organizations would raise due process concerns to the extent that organizations to be so designated were not given an opportunity to contest their designation.
3. FBI Authority to Create Report: As currently drafted, the Attorney General's Guidelines for Domestic Terrorism Investigations do not permit the FBI to initiate

domestic security investigations of groups or individuals absent circumstances indicating the possibility of activity in violation of criminal law. Thus, without a change in the Guidelines, the FBI would not be able to undertake the broad review of organizations that would be *considered* for inclusion in the proposed report. As you know from the recent public controversy over the anti-terrorism legislation, amending the Guidelines in order to facilitate an FBI report on "suspect" organizations would be highly controversial. The current Guidelines were devised in 1976 by then Attorney General Levi as a response to the excesses of the FBI's COINTELPRO.

4. Privacy Act: The Privacy Act would limit the compilation and release of any report on terrorist activity. Since 1983, the Department of Justice has interpreted the Privacy Act as prohibiting the FBI from gathering and publishing publicly available information regarding an individual's or group's exercise of First Amendment rights, absent an investigation of possible criminal behavior.

5. Law Enforcement Concerns: Any FBI report on "suspected" terrorist organizations that is intended for public distribution would have to omit sensitive law enforcement intelligence about such groups. Indeed, to the extent that such information involves foreign intelligence and other classified information its disclosure is prohibited by law.

II. Alternative Actions To Counter Terrorism

In lieu of announcing your request for the type of FBI report described above, you could include a more general announcement in your Air Force Academy speech, along these lines:

"I am ordering the Attorney General, consistent with the law and the Attorney General's Guidelines, to investigate fully all illegal activities by groups in this country espousing or practicing violence designed to achieve a social or political goal."

This would confine any DOJ or FBI activity to its traditional law enforcement role and leave any new regulation of militias to the legislative arena.

In addition or alternatively, you could announce several substantive initiatives in this area, including the following:

- a. Direct the Attorney General to modify DOJ's interpretation of the Guidelines to permit the FBI to initiate terrorism investigations at an earlier stage. As you know, such a reinterpretation is currently being developed;
- b. Direct Secretary Rubin to meet with CEOs of the explosives manufacturing industry, in an effort to get agreement on tagging explosives without waiting for congressional action--a proposal that has considerable promise;
- c. Appoint a bi-partisan task force, headed by some independent or Republican with real stature, to conduct hearings around the country and report on extent

of the domestic terrorist threat. While this approach may help to focus attention on the real problem (while others are trying to distract the public with hearings on Waco), a task force may have difficulty knowing what to look at;

d. Direct enforcement agencies to cooperate in establishing a counterterrorism center which, among other things, could assist local law enforcement agencies; funding for such a center is apparently already included in the rescissions bill.

Talk about Executive Order
Guidelines = need to be clarified

Summary of
FBI Report
on Waco

5/30/95 10 a.m. DRAFT DRAFT DRAFT DRAFT DRAFT DRAFT DRAFT DRAFT

Examples of differences
in guidelines after
clarification

Waco =
Free

PRESIDENT WILLIAM JEFFERSON CLINTON
AIR FORCE ACADEMY COMMENCEMENT
COLORADO SPRINGS, COLORADO
MAY 31, 1995

[Acknowledgments:] Secretary Widnall; General Fogleman; General Stein; faculty and staff; proud parents, families and friends; members of the Cadet Wing: here, at the foot of the magnificent Rampart Range, we gather to celebrate the graduation of this Air Force Academy class -- the "Pride of '95." Gentleman and Gentle ladies of the First Class: this is your day and you are only one short speech away from being Second Lieutenants. I'll try to keep my remarks just like the food service at Mitchell Hall: "fast, neat, average, friendly, good, good."

I'm honored to share the stage with some exceptionally accomplished alumni of the Academy: General Fogleman, the first USAFA [U-SAH-FAH] graduate to serve as Air Force Chief of Staff...General Hopper, the first African-American USAFA graduate to be Commandant of Cadets...and Robert Bell, a member of my staff and the first USAFA graduate to be Senior Director for Defense Policy and Arms Control at the National Security Council. As I look out at all of you, I'm sure it won't be long before our nation benefits from another first: an Air Force Academy graduate in the Oval Office. But I hope we can put that off until well into the 21st Century.

By then, if recent tradition holds, the Air Force will have extended its lock on the Commander-in-Chief's trophy for another six years. This year's winning squad -- which I was pleased to receive

at the White House a few weeks ago -- had a powerful defense and made life miserable for the opposition with its devastating air attack. That's only fitting for the world's finest Air Force.

Now, let me do my part in another long-standing tradition. By the power vested in me as Commander-in-Chief, I hereby grant amnesty to Cadets who are marching tours or serving restrictions or confinements for minor misconduct. General Stein, I leave it to you to decide just which offenses are minor.

Members of the Class of 1995, you are about to become commissioned officers in the United States Air Force. You should be proud of all that you have accomplished during your years at the Academy. You have earned our admiration. But you should also be sobered by the important responsibilities you are about to assume. From this day forward, every day, you must defend our nation and protect the lives of the men and women under your command.

You are entering active service in a moment of tremendous hope. For the first time since the dawn of the nuclear age, no Russian missiles are aimed at our cities or citizens... from the Middle East to South Africa to Ireland, former adversaries are turning from conflict to cooperation...on every continent, technology and trade are creating opportunity for people who have never known it... all around the world, democracy is on the march. And just today [TK TK], we saw another striking example of the trend toward integration with Russia's decision to actively participate in the Partnership for Peace. By forging closer ties, Russia and NATO are laying the groundwork for a secure, stable and unified European continent for the next century.

But these powerful forces that are pulling us together have a dark underside -- they carry within them the seeds of disintegration. The technological revolution that is bringing our world closer also brings more and more problems to our shores. The end of communism has lifted the lid on age-old conflicts and opened the door to the spread of weapons of mass destruction. The free and rapid movement of people and information make us more vulnerable in new ways to the forces of terror, organized crime and drug trafficking.

Nowhere are the forces of disintegration more obvious than in Bosnia. [TK TK: Add Graf].

In this new era of hope and danger, there are those who would have America turn away from the world. Some believe that, with the end of the Cold War, we can now safely retrench behind our borders. Others trumpet the need for American leadership -- but then deny us the resources and flexibility we need to lead. Both are wrong.

The plain truth is that, if we are to seize the opportunities and meet the obligations of our time, we must continue to reach out, not retreat. The rising tide of freedom -- and the opportunities it brings -- is neither inevitable nor irreversible. It needs our support. It requires our resources. It demands our leadership. And the new challenges we face have no respect for borders. We must confront them now -- or pay the price for our indifference later.

As President, my first and foremost responsibility is to work for the security and well-being of every American -- not just this generation, but for the generations of remarkable Americans yet to come. It is a responsibility that you -- the new leaders of our armed forces -- have chosen to

share. Today, I want to talk to you about the steps we must take together to build a safer America in a safer world.

First, we must combat those who would destroy democratic societies -- the terrorists, organized criminals and drug traffickers -- with all the tools, techniques and technology at our disposal.

Second, we must reduce the threat of weapons of mass destruction and take advantage of the historic opportunity that has been entrusted to us. And third, we must provide our military with the forces and flexibility it needs to keep the peace and protect our interests around the world.

Taken together, these three policy priorities will help set the foundation for security into the next century.

The struggle against the forces of terror, crime and drug trafficking is our most immediate concern. The World Trade Center bombing... the nerve gas attack in Tokyo... the slaughter of innocent civilians in the Middle East... the organized crime plaguing the former Soviet Union... the drug cartels in Latin America and Asia: each of these threats is aimed at the foundation of open societies. These forces of destruction know no boundaries or single nationality. As we have seen in Oklahoma City, they can emerge from within and strike at the very heart of our nation. We must not and we will not let them prevail.

This struggle demands a new approach and new tools. That's why we're working closely with foreign governments -- sharing intelligence, providing military support and initiating anti-corruption and money laundering programs -- to stop drug trafficking at its source. That's why

we've opened an FBI office in Russia and a training center in Hungary to help combat international organized crime. [TK TK: Add more].

And that's why, over the past two years, we have waged a tough counter-terrorism campaign that has strengthened our laws, increased funding, manpower and training for the CIA and the FBI, and imposed sanctions on states that sponsor terrorism. As a result, we were able to quickly arrest and convict those responsible for the World Trade Center bombing... stop another terrible attack in New York and a plan to blow up American civilian airliners over the Pacific... and arrest and bring to justice terrorists around the world.

Nothing we do will make us invulnerable. The liberties and openness we so cherish also benefit the terrible work of the organized forces of destruction. What we can do -- what we must do -- is remain vigilant, reduce our vulnerabilities, and constantly renew our efforts to defeat terrorism.

In the aftermath of Oklahoma City, I proposed legislation that would provide the personnel and tools we need to better protect our people. It would help prevent terrorists from striking. And it prosecute to the fullest extent of the law those who would advance their cause through violence, destruction and death.

Alternative Versions Follow in Brackets

[**Version A**: Congress promised to put an anti-terrorism bill on my desk by Memorial Day -- a commitment I applauded. Memorial Day has come and gone, and we are still waiting for the bill.

Today, I say to Congress: make good on your vow to act quickly. Join me in protecting the American people. Let us do our duty.

This is no time to abandon the strong tradition of bipartisan engagement in national security. A tradition that brought Democrats and Republicans together to defeat fascism in World War II. A tradition that kept them together to create NATO, the Marshall Plan and the other post-war initiatives that produced half a century of peace and prosperity for America and, ultimately, victory in the Cold War. A tradition that proved that when our nation's security and prosperity are on the line, we can -- and we must -- rise above partisan politics and take on the burdens of leadership.

Version B: Congress promised to put an anti-terrorism bill on my desk by Memorial Day -- a commitment I applauded. Memorial Day has come and gone, and we're still waiting for the bill.

Some Congressional leaders indicated a desire to go slow on the terrorism package. But we cannot be assured that the terrorists will go slow. We cannot be assured they're going slow in planning their next bombing or shooting or killing because we don't have the 1000 new law enforcement personnel I've asked Congress to provide on the case to stop them. We cannot be assured they're not building more bombs at this very moment because the tracing technology my plan calls for is not yet the law of the land. We cannot be assured they're not meeting in some hotel room laying out their next attack because Congress hasn't given us the power to monitor motel records. We cannot be assured they're going slow in planning their horrible deeds on the

phone because Congress is going slow in giving me the ability to intercept these communications.

We cannot be assured the terrorists are going as slow as Congress.

Today, I say to Congress: make good on your vow to act quickly. Join me in protecting the American people. Let us do our duty.

[Proposed addition # 2: Policy Decision TBD].

Our obligation to fight the forces that would destroy us from within is matched by a unique opportunity to reduce the most lethal security threat from beyond our borders: the threat of nuclear weapons. With the end of the Cold War, we have a chance to lift the dark cloud of fear and anxiety that has hung over our heads for nearly half a century. But we also have a duty to stop the spread of nuclear materials. As horrible as Oklahoma City and the World Trade Center attacks were, imagine the death and devastation that would have resulted had that bomb been wrapped in radioactive materials. We must seize this moment.

The United States will retain, as long as necessary, a broad arsenal of nuclear forces to deter any future hostile regime with nuclear weapons. But I will also continue to pursue the most ambitious agenda to dismantle and fight the proliferation of weapons of mass destruction since the dawn of the nuclear age.

Consider what we've already accomplished:

No Russian nuclear missiles are pointed at America and, because we put the START I treaty into force, Russia is joining us in dismantling thousands of strategic weapons. Our patient, determined diplomacy convinced Belarus, Kazakhstan and Ukraine to give up the weapons left on their land when the Soviet Union fell apart. We are cooperating closely with these nations and others to safeguard nuclear materials and stop their spread. And just last month, we succeeded in our crucial effort to win the indefinite, unconditional extension of the Non-Proliferation Treaty.

The NPT extension will benefit not only us, but future generations, by preventing scores of nations from acquiring nuclear weapons. And it makes possible even more far reaching arms control and non-proliferation goals: ratifying START II and the Chemical Weapons Convention... completing negotiations on a Comprehensive Test Ban Treaty... fully implementing the agreement we reached with North Korea first to freeze, then to dismantle its nuclear program... and strengthening the Biological Weapons Convention. This is a full and ambitious agenda -- an agenda worthy of the moment we are living. We must make every effort to complete it.

Finally, let me turn to a third policy priority for building a safer America -- adapting our military to meet the new challenges of the 21st century.

The force of our ideals, the skill of our diplomats, and the resources America brings to bear are all important parts of what President Franklin Roosevelt called "the arsenal of democracy." But as FDR knew -- and every President knows -- it is the men and women of our armed forces who put the power of persuasion into American diplomacy. And when all means short of force have been tried and failed, it is you who get the job done.

We saw your strength on display in Haiti. There, the brutal military regime agreed to step down peacefully only when it learned that more than 60 C-130s and C-141s loaded with paratroopers were on their way. Now, the Haitian people have a second chance to rebuild their nation. We saw your speed in the Persian Gulf, when Iraq massed its troops on the Kuwaiti border and threatened regional stability. I ordered our planes, ships and troops into the Gulf. You got there in a hurry. And Iraq got out of the way in a hurry. We saw your compassion in Rwanda, where you flew tons of supplies, medicine and food into a nation ravaged by violence and saved countless lives.

All over the world, you have met your responsibilities with skill and professionalism -- keeping the peace, making the peace, saving lives and protecting our national interests. In turn, America, and your leaders, have a responsibility to make sure you have the resources, the flexibility and the tools you need to get the job done.

From our first day in office, my Administration has sought to make good on that obligation by crafting a defense strategy for our times. One of the principal architects of that strategy was former Defense Secretary Les Aspin. At the Pentagon, during his many years in Congress, during his every waking hour, he devoted himself to our nation's defense -- we will miss him terribly. But the legacy he left -- a blueprint for reshaping our military to the demands of the new century - - will help ensure our security for years to come.

That blueprint calls for us to make sure the force reductions we began at the end of the Cold War do not jeopardize our strength. And it provides you with the resources you will need to meet the challenges of a world plagued by ancient conflicts and new instability.

After World War II, a major drawdown left us at a major disadvantage when war broke out in Korea. And just five years after the post-Vietnam drawdown, in 197_ [TK TK], the Army Chief of Staff declared that we had a "hollow Army" -- a view shared by most experts.

From the outset of my Administration, we have been determined not to repeat those mistakes. We calculated that, even as we drew down the troops, we had to be prepared to engage -- and prevail -- in two nearly simultaneous major regional conflicts. Some argued that this scenario was unrealistic and excessively demanding. Recent events proved them wrong -- and our strategy right.

Last summer, just before the North Koreans finally agreed to dismantle their nuclear weapons program, we were poised to send substantial air, naval, and ground reinforcements to defend South Korea. Then, just a few months later, we deployed tens of thousands of troops to the Persian Gulf and placed thousands more on high alert. And in between these crises, I gave the go ahead to the 25,000 troops engaged in Operation Uphold Democracy in Haiti. Our planning has paid off -- we have the right strategy, and the right force levels, for our times.

Any good strategy must adapt to new demands and new challenges. In Haiti, the four services worked together, drawing on each others' special capabilities. As a result, for the first time, we

were ready to launch Army infantry in an air assault from a Navy aircraft carrier. And when we decided to send our troops in peacefully, we were able to do it in matter of hours, instead of days. This kind of innovation must lie at the heart of our defense policy in the years ahead.

I have also been determined to maintain our military as the best trained, best prepared and best equipped fighting force in the world. Two years ago, I added \$11 billion to our future defense spending plans to ensure that our troops would be ready to fight. Last year, I concluded that we needed an additional \$25 billion to sustain readiness, modernize our forces, and improve the quality of life of our fighting men and women and their families. And both this year and last, when unanticipated crises strained our budget, I asked Congress for emergency funds to cover these costs. The American people ask a lot of our armed forces. In turn, you have a right to ask - indeed, to insist -- that we give you the resources and support you need to defend our interests. And as long as I'm President, you will get them.

This, then, is our mission: to take on terrorism, organized crime and drug trafficking... to take advantage of the extraordinary opportunities to reduce the nuclear threat... to keep our military flexible and strong. These are the cornerstones of our program to build a safer America in a safer world for the 21st century. These are the priorities we have set to defeat the forces of disintegration and turn the promise of this moment into a lasting era of security, peace and prosperity.

Let me say to the Class of '95: I know that the rewards of serving on the frontlines of our foreign policy may seem distant and even uncertain at times. As President Kennedy noted thirty-four years ago, "When there is a visible enemy to fight, the tide of patriotism runs high. But when there is a long, slow struggle, with no immediate, visible foe...your choice will seem hard indeed."

Your choice -- to take on the problems and possibilities of our time...to engage with the world, not to run from it -- is the right choice. As you have learned on these Academy grounds, it demands sacrifice. In the years ahead, you will be asked to travel far from home...to be away from your loved ones for long stretches of time... and to face dangers we do not yet know. These are the burdens you bear to make America safer. These are the obligations you assume to help all of us seize the opportunities of this era.

Go forth knowing that the American people support you. They admire your dedication. They are grateful for your service. And they are counting on you -- the Class of '95 -- to help lead us into the 21st Century -- a century in which your most sacred task will be to keep this country and its people safe and secure. On behalf of all Americans, I wish you Godspeed.

May 26, 1995

MEMORANDUM FOR THE CHIEF OF STAFF

FROM: Bruce Reed
Rahm Emanuel

SUBJECT: Executive Actions on Antiterrorism

We have identified a series of unilateral actions the President could take in the coming weeks while we wait for Congress to pass our antiterrorism bill. These executive actions would keep pressure on Congress and keep the focus on terrorism:

1. Clarification of the Domestic Security Guidelines: The Justice Department will be ready to announce clarifications in the Attorney General's guidelines in mid- to late June -- but not until Jamie Gorelick and Louis Freeh feel that they have done sufficient Congressional consultation. The changes they have in mind are minor, but will attract considerable press attention. When Justice is ready, the Administration can announce them to underscore that we're taking action while Congress is taking its time. This announcement is not without risk, however. There will be a reflexive editorial backlash, grief from the right and the left, criticism that we're changing the guidelines after saying we wouldn't, and some speculation over whether Oklahoma City could have been prevented if we had changed the guidelines earlier. That is why Gorelick and Freeh want to move very carefully to shore up Congressional support first.

2. Jawbone Explosives Industry: The President could direct Treasury Secretary Rubin to meet with CEOs of the explosives manufacturing industry, to press them to take action on tagging explosives without waiting for Congress. We should continue to demand legislation that would make taggants mandatory and enable ATF to study additional measures, such as rendering fertilizer inert. But in the meantime, we could lean on the industry to take steps on its own. ATF believes the industry will be eager to come to the table (although still resistant to any new regulatory burdens). Justice makes a very good argument against doing this in a high-profile way, however, because we should try to keep the focus on the NRA rather than look for new villains.

3. Bipartisan Commission on Domestic Terrorism: The President could appoint a bipartisan group to examine the extent to which militia and other organized groups seek to use force or violence for political and social objectives, and to look at other aspects of the

domestic terrorist threat. The task force -- headed by someone from outside Washington, preferably a Republican or independent -- could conduct hearings around the country on the militia, anti-government organizations, etc., and issue a report by the end of the year. A commission could be a powerful tool to keep the focus on domestic terrorism while Congress looks into Waco. Many at Justice don't like the idea because it suggests that we don't know what to do and need a commission to tell us. They also point out that until we know more about what's behind the Oklahoma City bombing, we can't tell a commission where to look. As an alternative, we could endorse the NRA's call for Congressional hearings on the militia.

4. Establish Domestic Counterterrorism Center: The rescission bill includes funds for a domestic counterterrorism center; headed by the FBI. But we could begin to set up the center even before we have the money in hand. The President could direct all federal law enforcement agencies to cooperate in setting up the center, and to provide resources as necessary. If we pushed the agencies, we could get them to work out key details, such as a location for the center, which agencies will contribute what, etc. For example, we could establish a domestic terrorism hotline for local law enforcement agencies to call at any time.

Other areas for possible action:

* **Security Review:** The Attorney General is supposed to complete her 60-day security review of federal facilities by mid-June. That report may include some recommendations for action -- although it may not be something we wish to publicize.

* **Regulating the Militia:** The Justice Department is looking into state laws on regulating the militia. We could ask them to make recommendations on federal regulation of the militia; once we have a better idea what options we have.

* **Gun Shows:** ATF is in the preliminary stages of discussions with gun dealers on developing a code of ethics for gun shows, which have come under additional scrutiny because of the McVeigh case. Gun shows are an important part of the militia culture, and harbor an unknown amount of illegal gun trafficking. They are virtually impossible to regulate, but self-policing by gun dealers could make a difference.



U. S. Department of Justice
Office of the Attorney General

Associate Deputy Attorney General

Washington, D.C. 20530

DATE: May 26, 1995

TO: James Castello

Telephone No. () 456 - 6611 Fax No. () 456 - 6279

FROM: Seth P. Waxman
Associate Deputy Attorney General

Telephone No. (202) 514 - 4560 Fax No. (202) 514 - 9368

TRANSMISSION CONTAINS 5 SHEETS INCLUDING THIS COVERSHEET

SPECIAL NOTE(S) Urgent! Please review ASAP.

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U.S. Department of Justice

Telephone: (202) 514-5089

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MAY 25 1995

SOLICITOR GENERAL'S OFFICE

Washington, D.C. 20530

MAY 25 1995

MEMORANDUM FOR THE SOLICITOR GENERAL

Re: City of New York v. Dep't of Commerce,
No. 93-6183 (2d Cir.)

You have asked us to examine the government's options if this case were remanded to the district court for proceedings consistent with the decision of the court of appeals. The following memorandum explores available strategies and their probable outcomes.

1. To be clear as to our options on remand, it is necessary to summarize briefly the proceedings to date.

At trial, the primary issue was whether the adjusted census figures were more accurate than the census headcount. The government argued (and the district court agreed) that the relevant measure of accuracy was "distributive" accuracy-- i.e., which figures provided a better account of the way the population is distributed among the States and their subdivisions. The court concluded that improvements to the absolute population total had little relevance to the purposes for which the census is used-- distributing congressional seats and federal funds among states and localities based on their relative populations. However, all parties agreed that the adjusted figures were likely more accurate in terms of absolute numbers at the national level.

In making its case, the government did not attempt to show that the unadjusted figures were more accurate than the adjusted. Instead, the evidence showed that an adjustment's impact on distributive accuracy was largely unknowable.

The district court concluded that the decision not to adjust satisfied the "arbitrary or capricious" standard of the Administrative Procedure Act, although it concluded that it might have reached a different result if it had reviewed the issue de novo.

The court of appeals reversed, holding that use of this standard was error. The court adopted a burden-shifting analysis borrowed from intra-state redistricting cases. In those cases, plaintiffs can shift the burden by showing that a state failed to make a good-faith effort to achieve equality of district-size. Once the burden shifts, the State must demonstrate that its action was necessary to achieve a legitimate objective.

The court of appeals concluded that the district court's findings showed that plaintiffs had satisfied their burden of showing a lack of a good-faith effort to adopt the most accurate census numbers available. The court's conclusion rested primarily on the fact that the adjusted figures concededly achieved more accurate population totals at the national level. The court also noted additional factors in support of its conclusion. In particular, the court noted that the Secretary "gave other factors priority over achievement of greater accuracy" by "valu[ing] 'distributive accuracy' over numerical accuracy." City of New York v. United States Dep't of Commerce, 34 F.3d 1114, 1131 (2d Cir. 1994). The court also took issue with the Secretary's declaration that an adjustment should not be made unless it would result in greater distributive accuracy. The court found that this presumption supported an inference that the Secretary did not make the requisite good-faith effort in light of the improved count of the total national population and the improved absolute count of minorities. *Ibid.* Finally, the court denigrated the Secretary's concern that use of adjusted numbers would raise fears of political manipulation in light of the improved accuracy in total population counts achieved by the adjusted census figures.

In accordance with its burden-shifting framework, the court concluded that adoption of the adjusted figures would be constitutionally required unless the Secretary could demonstrate on remand that use of the unadjusted figures was necessary to achieve a legitimate governmental objective.

2. The court of appeals rejected every rationale offered in support of the adjustment decision. As a technical matter, however, its decision only establishes a new standard of review. In theory, therefore, the government on remand may make the same arguments it has already presented. However, it would now argue that these same rationales demonstrate that the decision not to adjust was necessary to achieve a legitimate objective.

The government would necessarily argue that focusing on distributive accuracy -- rather than on absolute numbers -- is necessary to achieve a legitimate government interest. This is so because distributive accuracy is the only relevant yardstick of accuracy for purposes of apportioning seats in the House of Representatives. Further, absent evidence that adjustment would improve distributive accuracy, it is legitimate to adhere to use of the headcount in accordance with two hundred years of tradition. And, absent evidence that an adjustment would improve accuracy, the government has a legitimate interest in avoiding the fears of political manipulation introduced by use of adjusted figures.

These arguments are plausibly available under the terms of the remand. Presentation of the government's case would entail no significant expenditure of resources. The district court would

almost certainly rely on the existing record, and the government has no further evidence to present.

3. It must be recognized, however, that there may be a number of significant problems with this course.

a. First, as the discussion above indicates, the court of appeals has made plain that it considers accuracy in absolute numbers to be of great, if not paramount, importance. It is difficult to reconcile this view with the government's position that the absolute counts are irrelevant for constitutional purposes. By the same token, the court of appeals has characterized the Secretary's reliance on distributive accuracy -- which is crucial to the government's view of the case -- in disparaging terms.

Equally important, to the extent that the court of appeals allowed distributive accuracy to be relevant, it criticized the Secretary for refusing to adjust absent evidence that an adjustment would be more accurate. This was the linchpin of the Secretary's decision and the government's proof at trial. Just as plaintiffs cannot demonstrate that the adjusted figures are more accurate, the government cannot conclusively prove that they are less accurate. The problem, all along, has been uncertainty. The government cannot make a case in district court that the unadjusted accounts are affirmatively more accurate than the adjusted numbers.

Finally, the court of appeals has made it difficult to place much reliance on the desire to adhere to tradition or the desire to avoid fear of political manipulation. The court clearly viewed these as insubstantial makeweights relative to the achievement of accuracy in absolute population totals.

Of course, the district court, in applying the court of appeals' legal standard, may not feel itself bound by the court of appeals' characterizations of our arguments. It also is true that the court of appeals passed upon our arguments in the context of establishing the applicable legal test and not in the context of determining whether we had demonstrated a sufficient interest to satisfy that test. Moreover, the district court's ruling, although rendered under a less stringent standard, evidenced a greater understanding of (and a greater sympathy toward) our arguments.

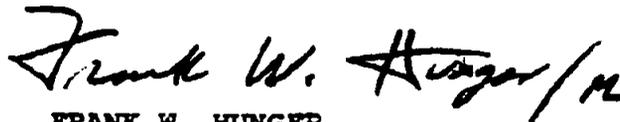
Nonetheless, there are substantial reasons to doubt that the district court would conclude on remand that the Secretary's failure to adjust was necessary to achieve an important governmental interest. The court of appeals has indicated that it does not find the government's arguments convincing, and the district court itself suggested that it might have invalidated the adjustment decision under a less deferential standard of review. Moreover, the inquiry on remand would be bound by the court of appeals' conclusion that the Secretary knowingly chose less

accurate figures in making his adjustment determination. Accepting this holding, as we would be bound to do on remand, it is far from clear that the government itself would think that the adjustment decision could be justified by other considerations such as adherence to tradition and the avoidance of political manipulation.

b. This strategy is also at odds with the Commerce Department's misgivings regarding the adjustment decision. Our position to this point is in many respects in accord with the Commerce Department's concerns. We have not argued that the adjustment decision was constitutionally mandated; only that it was constitutionally permissible under the broad terms of the Census Clause and the Census Act. A decision to use adjusted figures, now advocated by the Commerce Department, would have been equally permissible.

To proceed under the terms of the remand, we would have escalate our defense in a manner precisely contrary to Commerce's present views. We would now have to argue that the adjustment decision was not merely permissible, but necessary to achieve a legitimate government interest. In other words, we would now be making greater claims in support of Secretary Mosbacher's decision than at any previous time.

This new defense might have an immediate impact on the Census Bureau's plans to adjust its annual population estimates which are used in the distribution of federal funds. If the Bureau's new decision is challenged in court, our arguments that Secretary Mosbacher's action was "necessary" could be quoted against us in a challenge to the Bureau's action. We recognize that the considerations relevant to justifying an intercensal determination for funding purposes and a decennial determination for apportionment purposes are arguably somewhat different. And the Census Bureau has phrased its notice of proposed adjustment in terms that do not directly contradict the decision not to adjust the 1990 census. Accordingly, there may be some room to defend both the intercensal adjustment (if the Census Bureau ultimately decides to make it), and the Secretary's decision not to adjust the 1990 census as necessary to serve an important governmental interest. In the end, however, there is likely to be some tension between those positions; the higher the standard that the Secretary's decision has to satisfy, the more difficult it will be to justify the different approach that the Census Bureau might take with respect to the intercensal estimates.



FRANK W. HUNGER
Assistant Attorney General
Civil Division

PRIVILEGED AND CONFIDENTIAL

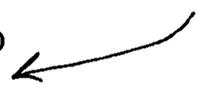
DRAFT

Leon Panetta
MEMORANDUM TO ~~THE PRESIDENT'S CHIEF OF STAFF~~

cc: HAROLD ICKES
RAHM EMMANUEL

FROM: ABNER MIKVA
JAMES CASTELLO
CHRIS CERF

To



SUBJECT: Regulation of Militias or Terrorist Groups

In recent weeks, both the White House Counsel and the Department of Justice have been asked to advise the President on the constitutionality of proposals to regulate militias or "groups that support terrorism." In each instance, we or DOJ have given provisional answers, based on research under tight deadlines. We have concluded that some of the proposals--such as to require militias to publish membership lists--are almost surely unconstitutional, while others--such as to require militias to register with the federal government--raise less serious constitutional issues, which probably can be surmounted.

Most recently, however, DOJ has been asked to provide definitive judgments about the constitutionality of each proposal. This cannot be done quickly, since many of the questions are ones of first impression and will require surveying a number of relevant but not dispositive constitutional cases and then determining their likely application to the proposals now before us. Given the time and effort this will require, we thought it would be advisable at the outset to share our policy views about the proposals under review.

All of the lawyers analyzing these proposals (in this office and at DOJ) strongly believe it is a serious mistake--as a policy *but especially* as a political matter--to impose militia controls of the type now being discussed, even if they would be constitutional.

- As a *policy* matter, such controls are of doubtful necessity, given that 41 states already have laws that ban either the creation of private military organizations or private paramilitary training that threatens civil disorder. Nor does it seem likely that the proposed federal controls would enhance federal law enforcement, given DOJ's reinterpretation of the terrorism investigation guidelines and Congress' expected passage of an anti-terrorism bill. Rather, the most likely effect of the proposed controls would be to greatly increase fears about government encroachment on individual freedom and thus, paradoxically, to fuel public sympathy for militia organizations. A recent Gallup poll found that 39% of Americans already believe the federal government "has become so large and powerful it poses an immediate threat to the rights and freedoms of ordinary citizens."
- It follows, in our judgment, that as a *political* matter the proposed controls would be extremely ill-advised. The President's anti-terrorism legislation has already brought

about an unprecedented alliance on legal issues between groups like the ACLU and the NRA, who have issued joint public statements and advertisements in opposition to the Administration's policies. If the President were now to call for registration of militias, for publication of their membership lists, or for reporting of their activities, he would surely prompt these and other groups on the left and right to join together in even stronger opposition, with renewed calls for investigation of Waco and so on. A recent Los Angeles Times poll found that, among those who owned guns or who described themselves as "conservative" or "white fundamentalist Christians," substantially more people were "concerned that government would excessively restrict the average person's civil liberties" than were worried that government "would fail to enact strong new anti-terrorism legislation." Only respondents describing themselves as "liberals" disagreed.

Thus far, we believe the President's statements and actions in the wake of the Oklahoma City tragedy have placed him just where he should be: a) with a clear record of responding to a new threat with sensible new policies, and b) with an equally clear record of sensitivity to the rights of individuals. We worry that further proposals of the type now being discussed could be depicted in very menacing terms to average citizens and could tip the political balance against the President.

This concern is compounded by a severe problem of definition. What are the entities that would be regulated? Terrorist organizations? Paramilitary groups? Would it extend to certain "survivalist" groups, Operation Rescue, or some divisions of the KKK?

■ COVER STORIES

UNREST IN THE

Welcome to Nevada's Nye County, whose angry residents are spearheading the reg

By ERIK LARSON TONOPAH

SITTING ON A BALE OF BARLEY destined for his cattle, Dick Carver gets just a little misty eyed as he recalls the moment that propelled him to leadership of a rebellion now sweeping the West. Usually mild mannered and affable, the Nevada rancher and Nye County commissioner reached a point last year when he had had enough. To him, federal intrusion into the daily life of his county had simply grown too great, so on July 4, 1994—Independence Day—he took the law into his own hands. His weapon of choice: a rusting, yellow D-7 Caterpillar bulldozer.

Carver sat astride the 22-ton machine, his dust-caked face streaked with the paths of recent tears. He remembers being frightened and tense as he guided the Cat toward an armed U.S. Forest Service agent holding a hand-lettered sign ordering Carver to stop. The agent stumbled and wound up briefly crawling on hands and knees. But Carver kept coming. He pulled out a pocket-size copy of the U.S. Constitution, which he keeps with him always, and waved it defiantly at the agent as a crowd of about 200 people, a quarter of them armed, cheered him forward. "I was damn scared," says Carver. He was afraid someone—maybe the agent, maybe an overzealous spectator—would draw a gun and trigger a cascade of violence. "I told myself, 'Dick, you've got to keep going. Because if you stop, the people are going to do something, and someone's going to get hurt.'"

Carver had climbed aboard the Caterpillar to bulldoze open a weather-damaged road across a national forest. The hitch was, he wanted to do so without federal permission. Although plainly illegal in Carver's mind it was an act of civil disobedience—a frontier Boston Tea Party—warranted by the tyranny he and his fellow citizens in Nye had long endured. But in this case, the

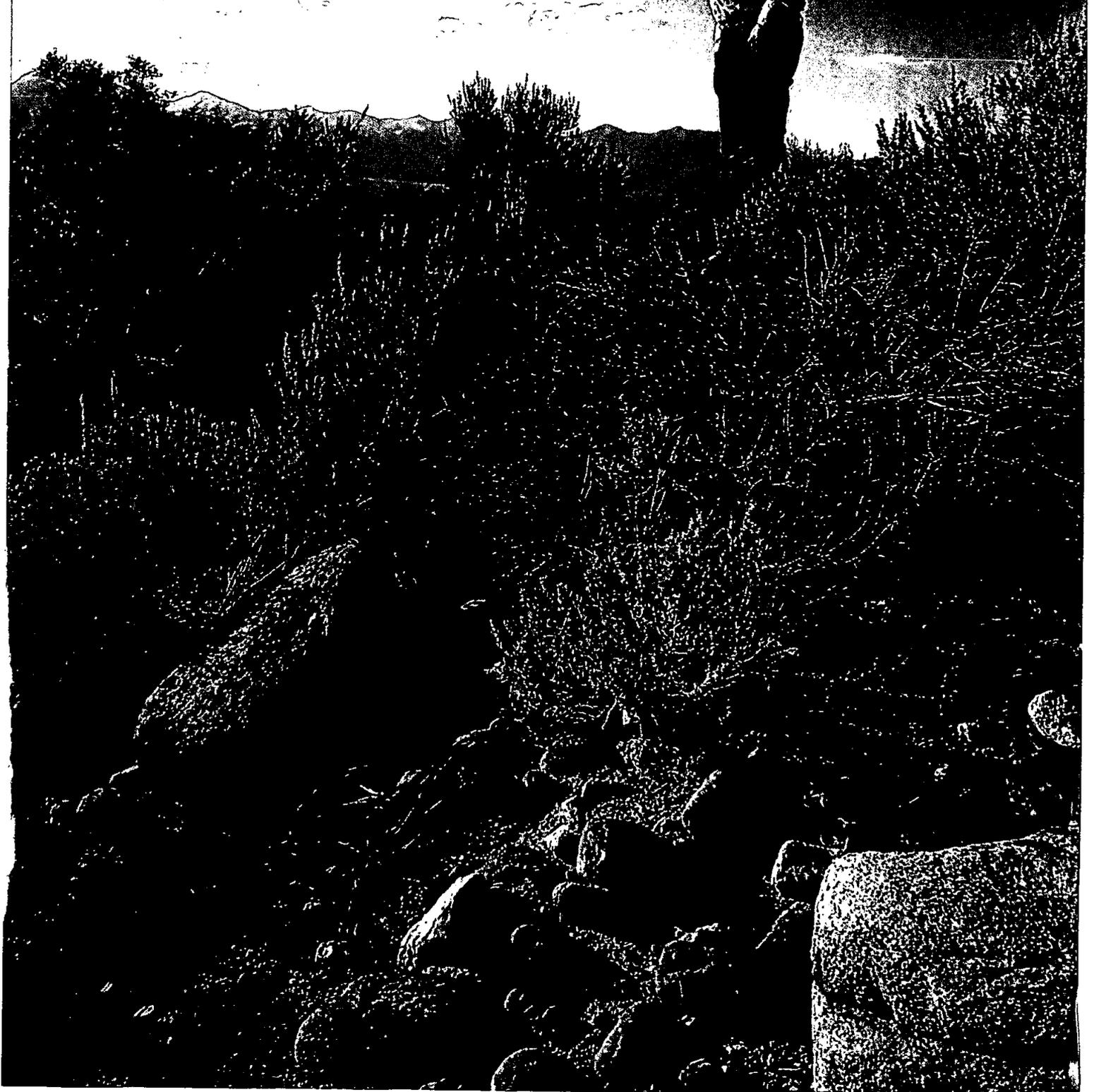
DICK CARVER

A rancher and commissioner, he wanted a fight—and knew exactly where to look



WEST

ion's charge against Washington





purported tyrant was the U.S. government.

The incident immediately made Carver a leading voice in the so-called county-supremacy movement now gaining momentum throughout the West. It also triggered a major federal lawsuit seeking to assert once and for all the government's ownership of federal lands in Nye County and, by legal inference, its possession of public lands that cover one-third of the nation's ground. The Justice Department estimates that at least 35 counties, primarily in Arizona, New Mexico, Nevada and California, have declared authority over federal lands within their boundaries. Other estimates put the number far higher. The National Federal Lands Conference, a Utah organization devoted to fostering resistance, believes more than 300 counties have claimed some degree of sovereignty

WAYNE HAGE

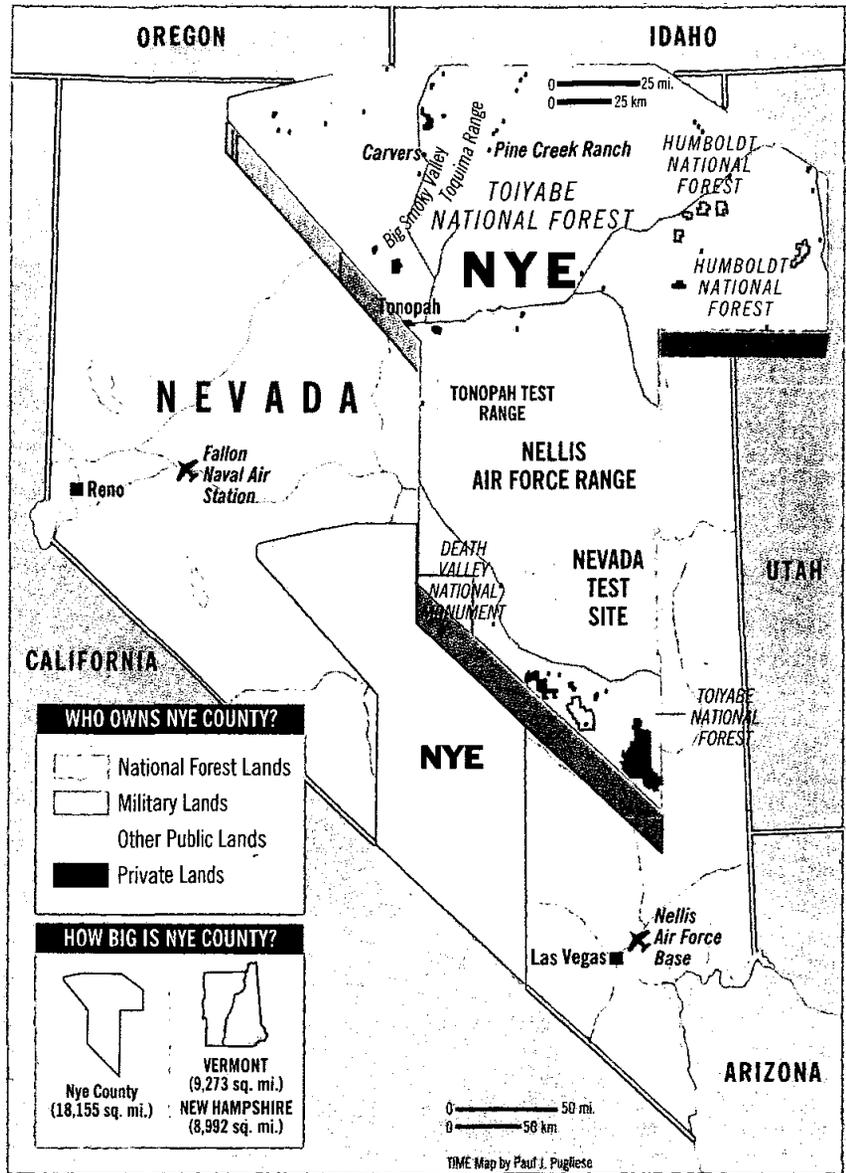
When the Forest Service seized 104 of his cattle, he helped inspire the revolt

over federal lands, and many more have considered the idea, including counties in states as far east as Maine and Florida.

The new rebelliousness has created a breeding ground for violence, especially in the austere rural settlements that bracket the Continental Divide. Pipe bombs have been found in the Gila Wilderness in New Mexico. An unknown assailant fired shots at a Forest Service biologist in California. Federal agents recently arrested a man after he tried to buy explosives that he allegedly planned to use in blowing up an IRS office in Austin, Texas. And in Carson City, Nevada, last August, a bomb destroyed the family van of a forest ranger while it was

parked in his driveway. The explosion was the second this year in which ranger Guy Pence, who once supervised Forest Service lands in Nye County, was the apparent target. Now no one can park in the visitors' spaces next to the agency's office in Sparks. Soon after the bombing, Senator Harry Reid, a Nevada Democrat whose support is centered in Las Vegas and Reno, decried the spreading ethos of defiance: "It is as if a sickness has swept our country." Whatever the diagnosis may be, nowhere are the symptoms more profound than in Nye.

Some of Dick Carver's critics have tried to link him to militias and white supremacists, but it is a mistake to dismiss him as a just another extremist crackpot. The forces powering the Nye County rebellion are those resculpting the political and social landscape of America at large.



They just happened to have converged with their greatest intensity in the West, where private and public interests clash directly and daily, typically over such visceral issues as land and water. The angry rebels range from ranchers fed up with bureaucrats telling them when and where to graze their cattle to developers denied crucial water rights. "We're talking about things that go right down to the heart," says Nebraska Governor Ben Nelson, a Democrat and chairman of the Western Governors' Association. Although a moderate, he confesses that he too gets fed up with federally mandated burdens like those imposed by the Safe Drinking Water Act of 1974, which requires even struggling communities to spend heavily to upgrade their water systems. "When you're a Governor," he says, "and you see what this does to your

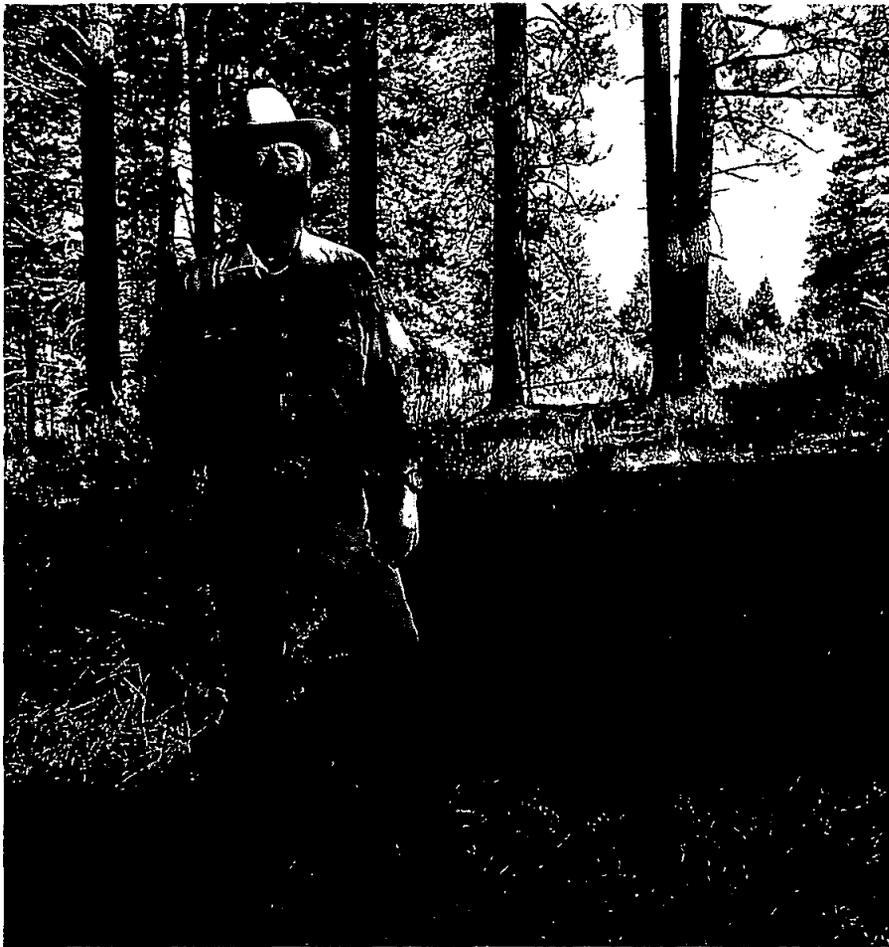
communities, you really do want to strike your desk and say, 'No more!'"

THE NEW MOVEMENT IS NO MERE rekindling of the '70s Sagebrush Rebellion, although it does share the same goal of increasing local control over federal lands. Carver, who carries his Constitution in his shirt pocket even while baling hay, is a product of the same antifederalist ferment that produced such widely divergent events as the Oklahoma City bombing and Ross Perot's recent proposal to launch a new political party. Nye's particular brand of rebellion is driven too by an intense feeling that the combined forces of federal law, environmental activism and urban growth may have doomed a mythic frontier life-style. Says Karl Hess Jr., a senior

fellow of the Cato Institute, a conservative think tank: "What they really want is to build walls against the future."

The Justice Department's lawsuit, filed last March in Las Vegas federal court, could be decided next month, but any decision is certain to be appealed all the way to the Supreme Court. Roger Marzulla, a former Assistant U.S. Attorney General who is now defending Nye County, calls it one of the most important cases of the century in shaping the role of the Federal Government, and likens the bulldozer incident to "Rosa Parks' saying, 'I'm going to sit in the front of the bus.'" Carver, even less modest, calls it "the shot heard round the world, but fired with a bulldozer, not a gun."

NYE COUNTY'S LEGAL ARGUMENTS MAY BE open to challenge, but its disaffection is



JIM NELSON

As supervisor of Nye's forest lands, he wields immense power over ranchers' lives

real and deep. The third largest county in America, Nye is an immense wedge covering more than 18,000 sq. mi., about the size of Vermont and New Hampshire combined, but is occupied by only 20,000 people. Plenty of elbow room—except for the fact that the Federal Government owns 93% of the land. The Bureau of Land Management (BLM) controls most of the valleys, the U.S. Forest Service most of the uplands. The Defense Department too claims huge chunks of the county, including the Nevada Test Site, where it detonated hundreds of nuclear devices, and the Tonopah Test Range, the darling of paranormal buffs, who know it by the nickname Dreamland and suspect that all manner of spooky events have occurred there. Even the airspace over Nye is largely restricted to military aircraft. Jet fighters scream up Carver's Big Smoky Valley, occasionally roaring past cars at sagetop altitude. A bank of nuclear-radiation sensors, still religiously monitored, stands outside the county's old courthouse in Tonopah, the county seat. The ultimate metaphor for federal intrusion is the En-

ergy Department's hotly controversial proposal to use Yucca Mountain, in Nye, for the nation's first high-level radioactive-waste dump.

"It really is like being in a colony," says Trish Rippie, a Tonopah real estate agent. What makes this presence particularly stifling, she says, is that it runs directly counter to the independent character of the region and of the people who moved here for the low taxes, the lack of rules—Nye has no zoning laws—and the overall sense of freedom. "I think just about everybody here would like to see a revolution and have the Federal Government washed away," she says. "But nobody really wants a shooting war. We'd be annihilated."

Hostility toward the Federal Government suffuses Nye County to a degree that an Easterner might find hard to believe. Even though most of the county is under federal control, residents still have more breathing space than most Americans—only one person per square mile, in contrast to 3,000 per square mile in California's Orange County. And despite federal regulations, Nye Countians can still graze the government-owned meadows, fish the lakes and hunt the forests. But these days the climate is such that every incident, however minor, seems to reinforce the

case for rebellion. Jim Merlino, director of the Tonopah Convention Center, says he used to be able to get a BLM permit to cut a Christmas tree anywhere. Last year he learned he could cut his trees only from specific areas. "That's just a really little thing," he says. "But what are they going to do next time—tell me this is the one tree I can cut?"

In conversation with a visitor, Nye County administrator William Offutt at first tries to minimize the county's rebelliousness. "I'd say there's maybe a dozen people who are really charged up on this issue," he says. But as the conversation evolves, his own hostility becomes clear, as does that of three other county officials present in his office. They spin out stories of federal snubs and restrictions, including the BLM's refusal to allow the county to run a phone wire through a roadside ditch to the county landfill without first having an archaeological appraisal.

As Offutt cites his litany of federal offenses, his anger builds. He believes federal land managers are engaged in a deliberate campaign to stifle development in the county as revenge for its passage in 1993 of two resolutions declaring its authority to manage federal lands. Offutt stands angrily smoking a cigarette. "There's no rationale for doing an archaeological study there. None at all. It's just a way of sticking an ice pick in the county."

Federal employees feel caught between empathy and the law. Ted Angle, an associate district manager of the BLM who once supervised its Nye lands, says the National Historic Preservation Act tied his hands. The law requires an archaeological review for any construction project on federal lands; the BLM's recommendations must in turn be reviewed by a state historic-preservation office, which must then report back to the BLM. "It's just not a negotiable thing for us," he says.

THE PHONE-LINE CASE TILTED toward absurdity, however, when the initial BLM report got lost—and nobody knew it until weeks later. The BLM resubmitted the report and got an expedited review, but in the meantime, Angle says, the county chose a newly available cellular service and blamed the BLM for taking too long. "You've got to understand local politics," says Angle, a self-described conservative Republican. "Dick Carver would love to embarrass the BLM as much as he can."

Offutt and his staff are still smarting from what they see as the latest vengeful snub by the government. Jim Nelson, supervisor of the Toiyabe and Humboldt national forests, was scheduled to meet with Nye's commissioners one day this summer



LISA J. TOLDA—RENO GAZETTE-JOURNAL

to try to ease the mounting hostility. That morning one of Nelson's employees delivered a letter to the gathered commissioners stating that Nelson would not be coming after all; he says now he couldn't attend because of the pending Justice lawsuit. The commissioners weren't terribly surprised, says Rachel Nicholson, a county attorney also present in Offutt's office. Says she: "They expect to be kicked in the teeth every time, so they're used to it."

At one point the county offered an olive branch. Shocked by news of the bombing of Guy Pence's family van, the county called an emergency meeting and voted to offer a \$100,000 reward to help find the culprit. But Nelson and Pence belittled the reward and blamed the county for helping conjure the lawless climate that led to the bombing. Stung, the county met again and unanimously withdrew the reward. "We didn't really expect gratitude," says Cameron McRae, chairman of the commission. "But we surely didn't expect to get it thrown in our faces."

Coloring the hostility is a large dose of the paranoia that has seeped into American political discourse over the past year, especially since the Oklahoma City bombing. These days it seems no conversation in Nye County can conclude without some reference to Waco and Ruby Ridge. "What

THE FIRST BOMB

In March an explosion ripped through ranger Guy Pence's Carson City office

these have done," says Carver, "is show how the oppressive bureaucrats think they can run over the tops of the American people. He thinks both incidents contributed to the presence of guns among the spectators the day he bulldozed the road. He is convinced federal agents are monitoring his travels. During a speech last month to 100 people in Park Rapids, Minnesota, part of a week-long speaking tour, Carver asked his audience, "Is there anyone from the Justice Department monitoring me? I know you are; don't be afraid to stand up."

So far, Carver has taken his message to audiences in 23 states. "Isn't it a shame that our people fear the government?" he asked the Park Rapids audience. He wore a white Western shirt and new Wrangler jeans that arced below a belly well accustomed to butter, eggs and beef. His head bore the usual stigmata of a ranching life: pale baby-smooth forehead over a raw, wind-scrubbed face. He eyed the crowd a moment, then answered his rhetorical question: "That's tyranny."

Carver's time on the podium was bracketed by apostles of the extreme. The

speaker who preceded him announced that federal environmental laws and the international biodiversity treaty would force mass relocations in the Midwest—80% of Wisconsin's population would have to move. The speaker after Carver proudly disclosed that he was the cartoonist whose leaflet, stacked at the auditorium entrance, reprised a conspiracy theory about the Rockefellers' and Rothschilds' controlling the world. Carver left the room to avoid hearing his remarks.

Carver takes offense when critics try to link him to extremists, particularly white supremacists, and cites the fact that one branch of the Carver family helped rear George Washington Carver. "So black people are special to us," he says. He disavows fringe rhetoric but feels that as an elected official, he cannot discriminate against any audience just because its views are more extreme than his. Carver's policy: "If they pay for travel, if they give me a place to sleep, a hot dog to eat, I'll come. But I do not ally myself with any of them."

CARVER LIKES TO NOTE THAT HE WAS BORN on Friday the 13th, in October 1944, six years after his parents settled in the Big Smoky Valley. The family homestead became a small town, Carver Station—known

locally as Carvers—but otherwise the valley looks the way it did a half-century ago. He now raises 100 head of cattle on about 860 acres of his own land—making him possibly the only rancher in the county movement without a direct financial stake in how federal land gets managed.

PROUD OF HIS SELF-SUFFICIENCY, Carver wastes nothing. He and his wife live in a low, raw-wood house surrounded by stacks of wood, dour sheds and fragments of ancient vehicles—a crane, a road grader and balloon-fendered pickups.

His father raised trout for the state, but only one of the seven trout ponds remains, mirror-still against a shoreline of mechanical debris. Carver cobbles a living from ranching, welding, serving the county and driving his three bulldozers for paying customers. On the night before a midmorning interview, he was up until 4 a.m., harvesting barley with a 1956 John Deere tractor he maintains himself. "Out here," he says, "you can't just run down to the corner to have your car repaired."

He credits another rancher with setting him on the road to rebellion. Soon after his election as county commissioner in 1988 (he got drunk one night at an Elks dance and committed himself to running), Carver paid a call on Wayne Hage, owner of the Pine Creek Ranch in Monitor Valley, a vast paradise of amber grass and cornflower blue water just over the Toquima Range from Carver's ranch. Hage had battled the Forest Service for more than a decade, charging its officials with so closely managing his access to public land that the agency eventually drove him out of business. The Forest Service counters that Hage abused his land and repeatedly broke agency rules. The dispute, now legend in Nye and embellished with wild tales of forest rangers armed with AK-47s holding Hage at gunpoint, resulted in the confiscation of 104 head of his cattle. He later filed a still pending \$28 million claim against the government for driving him out of business. Hage recalls telling Carver, "If the county commissioners don't take action now, there isn't going to be an economy a few years down the road."

Until the mid-1970s, relations between ranchers and the agencies had been cordial. If a rancher wanted a grazing permit

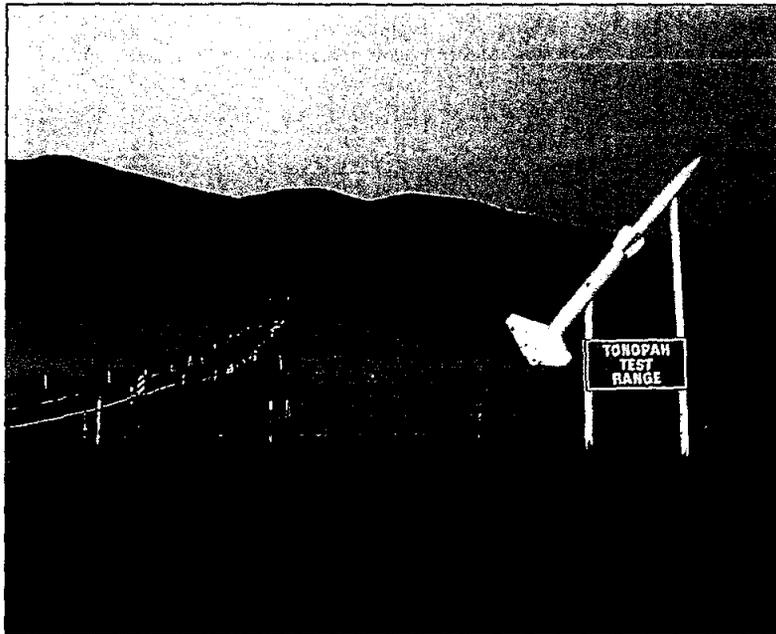
federal approval was virtually automatic. According to federal policy at the time, the best use of federal rangelands was to graze livestock, and only ranchers could acquire permits, which were offered at bargain prices. Grazing is still a bargain. Last year the BLM and the Forest Service set their grazing fee at \$1.61 per adult cow per month, a fraction of the fees charged by private landowners—less, too, says Johanna Wald of the Natural Resources Defense Council, than the monthly cost of feeding a cat. Ranchers themselves often leased their federal allotments to other ranchers for several times the original fee.

As the environmental movement be-

assign a grazing permit is likely to draw comment from hunting groups, environmentalists and off-road drivers, when 10 years ago only ranchers would have bothered, says Bob Neary, who until his retirement from the BLM last month was acting area manager of 6 million acres in Nye and neighboring Esmeralda County. In August a new set of federal rules took effect, known as Rangeland Reform '94 (named for the year the regulations were first published). Heavily promoted by Interior Secretary Bruce Babbitt, the package gives environmentalists and other nonranchers far more say in decisions about grazing allotments. It galvanized opposition to the Clin-

ton Administration and turned Babbitt into a king-size political liability. "It got all the sleeping dogs awake," says the BLM's Angle. Babbitt, through a spokesperson, declined comment, citing the pending litigation.

Ranchers take particular offense at the fact that now the BLM and the Forest Service are offering other animals a seat in the great rangeland diner. The Forest Service has cut back the number of cattle allowed on some allotments in order to support new herds of elk introduced onto the range. And for the first time the BLM has reserved land for wild horses, the kind Carver's father once captured and



DREAMLAND

The Air Force perfected the Stealth fighter at Nye's supersecret Tonopah Test Range

gaining political clout in the late 1970s, however, the cushy relationship between ranchers and rangers began to erode. By the late 1980s, partly because of new legislation and partly under pressure from federal courts, federal land managers began acting like environmentalists, aggressively regulating how and when ranchers could use their allotments.

This new federal activism coincided with growing interest in desert lands from hikers, hunters and recreational-vehicle buffs, especially those who had fled expensive and overbuilt locales like San Francisco and Los Angeles in favor of Las Vegas and Reno, turning both into boomtowns. "The public wants access," says Cato's Hess. "They want to see wild country that looks wild; they want to see wildlife—and a lot of it; they want to see clear water, not muddy; and they don't want to see cow turds everywhere."

These days any effort by the BLM to re-

killed and ground into feed for his trout.

On a day-to-day basis, federal land managers wield immense power over the lives and fortunes of all ranchers who depend on public land. Contrary to popular perception nurtured by such TV series as *Bonanza* and *Dallas*, many ranches in the West and Southwest are small, barely solvent operations whose owners, like Carver, often make ends meet by moonlighting at some other occupation. Their fiscal equilibrium is easily upset by orders from federal land managers to reduce the number of cattle on their allotments or to shift them to other lands. "Some of those operations are so marginal," says Neary, "if they have to leave the range or go somewhere else, they'll be out of business."

It is the bureaucratic ease with which such make-or-break decisions get made that most rankles the citizens of Nye. "I've told the Forest Service and the BLM, 'Don't be coming to me to render assistance if you take people's property without due process,'" says Sheriff Wade Lieseke Jr., who has run the county's 117-person

force since 1990. "A forest ranger can take your cattle just by signing a piece of paper? A forest ranger? Give me a break."

Carver's political epiphany occurred at 3 a.m. one day in October 1993, well after he became a commissioner. He was writing a letter protesting Rangeland Reform '94, then newly proposed. "It was like someone turned on a switch," Carver says. At Wayne Hage's urging, he had already studied how Catron County, New Mexico, which pioneered the county rebellion in the early 1990s, had asserted its authority over federal lands within its borders. Carver recalls asking himself, "Why am I responding to Bruce Babbitt on Rangeland Reform when in fact the state of Nevada owns the land?" He successfully lobbied his fellow commissioners to pass Nye's own version of the so-called Catron Ordinances. But Carver wanted more. Other counties had passed such resolutions but had not tried to enforce them, thus leaving them with no more punch than a letter to the editor. He wanted a fight. "We knew we had to take some action," he says.

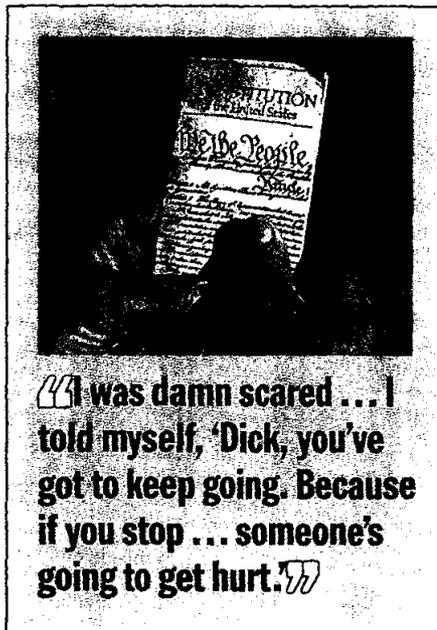
HE FOUND HIS BATTLEFIELD. The county had petitioned the Forest Service to reopen a former stagecoach trail, known as the Jefferson Canyon Road, that linked Carver's Big Smoky Valley with Hage's Monitor Valley. The Forest Service said an archaeological survey would first need to be done. But Carver wanted to open the road right away, without the agency's approval—his way of firing a shot across the government's bow. With the blessings of his fellow commissioners, he set the event for Independence Day.

DAWN BROKE ON THE D-7 CATERPILLAR draped in an American flag. Carver had asked the county's public-works director to choose the most expendable of the county's earthmovers in case the Forest Service impounded it. Carver fired it up and began shaving the land along the existing right-of-way, then stopped for a brief ceremony. A large crowd had gathered in the canyon, no mean feat considering its inaccessibility. Carver's son-in-law sang the national anthem. People showed up whom Carver had known in grade school but had not seen since. "I got so emotional," he says, "there were tears running down my face."

Two forest officials arrived, David Young, a law-enforcement agent, and David Grider, then the district ranger. When the crowd saw that Young was armed, some 50 people—by Carver's count—strapped on their own handguns. Carver saw Grider talking into his radio and wondered if other agents had massed below. "I thought this was going to be a mini-Waco," he says.

A sheriff's deputy climbed aboard the Cat to address the crowd and urged everyone to be civil. But a local rancher also climbed aboard and declared that peaceful solutions were no longer enough.

Carver began driving again. Young did not interfere until Carver began plowing a roadbed outside the existing right-of-way. He stepped suddenly in front of the bulldozer and unfurled a sign stating STOP—DISTURBANCE NOT AUTHORIZED. But Carver kept going, at one point brandishing his Constitution. "At no time was [Young] ever in danger," Carver insists. "He stumbled once, but I wasn't going to run him over."



The event ended without violence. Word of the Jefferson Canyon Road affair spread quickly through the West and immediately drew the ire of the Justice Department. The government filed its lawsuit against the county in March. Says defense attorney Marzulla: "I think they thought it was a bunch of crackpots and they would squash them to the ground. What they did not plan on is that they would get a massive, substantial and competent defense of this case."

"That's nonsense," says Peter Coppelman, the Justice Department's Deputy Assistant Attorney General for environment and natural resources, who argued the case in July before an overflowing courtroom. "We picked Nye for one reason only: Nye was actively defying federal authority and creating potentially violent situations, sending letters threatening to arrest federal employees who were simply doing their jobs. We didn't pick Nye. Nye picked us."

HISTORY RUNS THROUGH THE CASE LIKE A strand of barbed wire. Briefs for both sides

cite the 1848 Treaty of Guadalupe Hidalgo, through which the U.S. acquired much of the West from Mexico, as if it were signed yesterday. Distilled to its bare essence, Nye County's argument is this: Under the "equal footing" doctrine, new states admitted to the Union were to enter with all the dignity and sovereignty of the original 13. By retaining so much of Nevada's land, the government gave it second-class status, in violation of the equal-footing doctrine. Says Marzulla: "The Constitution simply does not allow the Federal Government to hold in perpetuity one-third of the land-mass of the U.S."

The government counters that the equal-footing doctrine was meant only to ensure that each state would have equal political standing in Washington; it argues, further, that Nevada, as a condition of its entry into the Union in 1864, explicitly gave up all rights to the lands within its proposed boundaries. "Legally, the county-supremacy arguments are completely bogus, but politically, they're very potent," says Justice attorney Coppelman. "What Dick Carver basically does is carry a copy of the Constitution in his pocket, and he just whips it out and waves it around when you ask what's the authority for the county-supremacy ordinances. He just says, 'Here it is.' And until we get a court to specifically reject those arguments, we're going to have people believing they have some legal validity."

And that, he says, has meant danger for federal officials throughout the West. "Whenever you have an enforcement officer confronted by a citizen who refuses to comply with legal requirements, you have the potential for violence. So this is definitely a very volatile situation."

Other counties that have passed rebel ordinances are watching the Nye case closely. A decision favoring Nye, although subject to immediate appeal, could cause a dramatic increase in the rebellion's popularity. But a decision against the county, considered far more likely, might deepen the rebels' already profound alienation.

What matters most is the unrest that prompted the lawsuit in the first place. The message carried by Carver embodies a warning that every presidential hopeful would do well to heed. Something has come unfastened in the West, and everybody has guns. "By circling the wagons, they see it's just them against the world," says the Cato Institute's Hess. He fears, he says, that the owner of some marginal ranch pushed to the brink by changing rules may turn desperate. "Someone's going to carry a gun, someone's going to shoot, someone's going to bomb a Forest Service office," he says. "And God knows what's going to happen then." ■

A WORKING FIRST LADY

By Jack W. Germond and Jules Witcover

WASHINGTON -- Perhaps inadvertently, there's some smart politics in Elizabeth Dole, the president of the American Red Cross who also happens to be the wife of Republican presidential candidate Bob Dole, saying she will stay on that job if she becomes the next first lady.

The prospect that the White House may have its first presidential wife working outside for pay undoubtedly unnerves the traditionalists who still believe the first lady should also be first homemaker. But the old pattern of Bess Truman, Mamie Eisenhower, Nancy Reagan and Barbara Bush -- the more-or-less silent partner focused on charitable works and good causes -- simply is not in keeping with the '90s.

At the same time, the unhappy experience of Hillary Clinton in taking on a powerful substantive role in her husband's administration, as field general of his failed health care reform drive last year, demonstrated public disapproval of a first lady who gets too involved in official affairs.

You will recall how candidate Bill Clinton in 1992 advertised the talents of his wife by telling voters that if they voted for him they would be getting "two for the price of one." That line was abandoned when Hillary, defending her role as a practicing lawyer, ad-libbed at a Chicago coffee shop that as the activist wife of the Arkansas governor "I suppose I could have stayed home, baked cookies and had teas."

To a substantial number of voters, that was pretty much what a first lady ought to do. After his election, however, Clinton quickly indicated that he intended to make significant use of his wife in his administration. He was true to his word, to his -- and her -- eventual chagrin. Liddy Dole, in saying that if her husband is elected president she will go back to her regular paying job, is making clear she has no intention of being another Hillary Clinton.

Yet ironically she is doing no more than the current first lady did as wife of the Arkansas governor. The less-quoted part of Hillary Clinton's notorious "baked cookies" remark was: "What I decided was to fulfill my profession, which I entered before my husband was in public life."

If the negative reaction to Hillary's aggressively hands-on role in the health care reform debacle (among men, anyway) reflected a widespread public distaste toward a first lady as assistant president or even chief presidential adviser, Liddy Dole is deftly sidestepping it in advance.

This is not to say that she cannot perform constructive works in the manner of previous presidential wives and the current one as well. The job she is setting aside for a year is clearly in that mold, except that she would be getting paid handsomely for it -- \$200,000 a year. Only the likes of super-anti-feminist Phyllis Schlafly, who says she fears a conflict of interest, are likely to find fault.

One who certainly would applaud the presence of a working wife in the White House is the late Eleanor Roosevelt, who remains the most accomplished of all American first ladies. As noted in Doris Kearns Goodwin's Pulitzer Prize-winning history of the Roosevelt White House years, "No Ordinary Time," Franklin D. Roosevelt's wife achieved her unique place in history by playing two roles -- devoting herself diligently to good works and causes while endlessly pressuring her husband on policy, and acting when he wouldn't.

She traveled far and wide visiting American servicemen and at the same time labored tirelessly to advance the rights of minorities and women, to the point of wearying her husband with her insistent demands that he address himself to the causes she placed before him.

In late 1941, Eleanor Roosevelt became the first first lady to take an actual job in her husband's administration, serving as unpaid assistant director of the Office of Civilian Defense. But congressional criticism persuaded her to step aside after a few months.

So Liddy Dole is not charting entirely new ground for herself in planning to keep her day job if her husband is elected president. Phyllis Schlafly may not like it, but millions of other women undoubtedly will.

Senate Judiciary holds hearing on how ATF can avoid Waco-type mistakes By David Jackson Dallas Morning News

WASHINGTON Another congressional committee conducted hearings Tuesday on the deadly 1993 Branch Davidian siege near Waco, Texas, but spent more time discussing how federal law enforcement hopes to prevent future tragedies.

"This hearing is not an effort to place blame on any individual or on the administration," said Sen. Orrin G. Hatch, R-Utah, chairman of the Senate Judiciary Committee.

Tuesday's hearing was a marked contrast to summer hearings in the House, where Republicans questioned the motives behind a raid of the Branch Davidians and Democrats charged the GOP with seeking to score political points.

Instead, Hatch said a Senate investigation "has not uncovered any evidence of political corruption or influence ... There was no conspiracy to kill Branch Davidians."

Branch Davidian supporters who attended the hearings were not convinced. One handed out copies of a new book, "The Davidian Massacre," published in part by the Gun Owners Foundation.

"None of them (Judiciary Committee members) have investigated this thoroughly," said author Carol Moore.

The committee spent the first of its two days of hearings on the federal Bureau of Alcohol, Tobacco and Firearms.

A part of the Treasury Department, the ATF launched a raid of the Branch Davidian compound Feb. 28, 1993, seeking to execute a search warrant based on illegal weapons charges. The raid left four ATF agents and five Davidians dead.

The committee will turn its attention Wednesday to the FBI, which supervised the ensuing 51-day siege, as well as the tank-and-tear-gas raid that ended with the burning of the Davidian compound.

ATF officials said faulty intelligence contributed to the disaster. For example, some agents believed Davidian leader David Koresh never left the compound, though in fact he did.

John Magaw, appointed ATF director after Waco, told the senators that the problem wasn't false information as much as an inability to separate the good from the bad.

"The information was there, but we had nobody centralizing it," Magaw said. "We've made huge progress there."

Another problem was that the ATF planned the operation pretty much on its own. Ronald K. Noble, undersecretary of the treasury for law enforcement, said ATF is now required to discuss its major plans with other federal law enforcement agencies.

While no one can guarantee error-free law enforcement, Noble said, "I am confident that we will reduce the likelihood of such tragedies in the future."

Despite the mistakes, Magaw, Noble and three agents involved in the raid told the committee that Koresh was responsible for the bloodshed.

"David Koresh orchestrated a cowardly and deadly ambush," ATF special agent Roger J. Guthrie testified.

Both Magaw and Noble objected to proposals to disband the ATF and move its functions to other government agencies. They said Waco should not overshadow ATF's overall performance.

The Waco incident, combined with a 1992 shootout at Ruby Ridge, Idaho, has inflamed anti-government elements across the country. Revenge for these incidents is believed to be a motive in the bombing of the federal building in Oklahoma City.

Sen. Charles Grassley, R-Iowa, said that although federal law enforcement had made improvements since Waco, it also needed to change what he called a military-style culture.

"Some law enforcement outfits have to come to resemble kind of 'Keystone Ninjas,'" he said.

Two professors suggested other improvements.

James Fyfe, professor of criminal justice at Temple University in Philadelphia, suggested some form of citizens' review board to review allegations of misconduct by federal agents.

And Nancy Ammerman, professor of sociology of religion at Hartford Seminary in Connecticut, said agents need to rely more on outside experts when dealing with nonmainstream groups, particularly religious ones.

Right-wing leaders issued thinly veiled threats of violence Tuesday. Others said the Mandela government was "playing with fire" for bringing the charges.

Wednesday's vote will draw only a fraction of the turnout for the 1994 poll that overturned apartheid and brought Mandela to power.

Critics say that after so much political bickering, voters may finally be tuning out. Others say too many of the local candidates are dull and unqualified.

But despite voter apathy, a lot is at stake.

Many whites are beginning to worry about the effect of black rule on local government. Some fear white taxpayers will be asked to foot the bill to upgrade black townships.

(EDITORS: STORY CAN TRIM HERE)

"Everybody understands that we must now do our bit to lift those who are less well off," Jacqui Babich, a Sandton resident, said, "but we can't shoulder all the burden."

The history of Sandton and Alexandra is the history of South Africa in general.

During apartheid, Sandton was exclusively white. Blacks could go there to work but not to live.

Neighboring Alexandra's 400,000 residents are crammed into less than 1 square mile of space, making it one of the most densely populated places in the country. It is a community of tin shacks and open sewers, a place so ravaged by crime that even the police think twice before going there.

The ANC was looking forward to Wednesday's election when it appointed Ngidi temporary mayor of the two communities.

Standing one day in his spacious office, which is larger by far than his home, Ngidi walked to a plate-glass window overlooking a pedestrian square and peered down at the swank shops and outdoor cafes of the Sandton mall. Immediately below him were the well-stocked shelves of the new Sandton Library.

Ngidi chuckled.

"So, I'm the mayor of all this," he said. "A man poor as a pauper leading affluent people. Do you think they are proud to be led by a person like me?"

At home, Ngidi, 41, lives like all the other Alexandra residents. He has an outdoor toilet that sits beside the street. His family must share it with more than 20 neighbors.

His two-room house consists of a kitchen and a living room, both of which double as sleeping quarters.

Anticipating that he will at least be voted into the Sandton local council, if not eventually elected mayor by his fellow council members, Ngidi and his wife are building a much larger home in Sandton.

Like most black leaders in South Africa, Ngidi earned his political stripes the hard way. He was trained as a guerrilla in the ANC's military arm, Umkhonto we Sizwe, specializing in sabotage and explosives. It was a career that earned him a five-year stint on the infamous Robben Island, where Mandela was also jailed.

Ngidi said the challenges of being Sandton's first black elected mayor would be monumental.

"How do you raise the hopes of the people in Alexandra without impinging on the lifestyles of the people in Sandton?" he asked rhetorically.

Others wonder about that, too.

Sandton resident Rose Johnson says if South Africa's new local governments are going to work, all sides must strive to see the other's point of view and be willing to compromise.

"Those of us who live on this side of the tracks and have had it so good for so long should accept that part of our rates and taxes are going to go to upgrading that area," she said.

Johnson has approached Ngidi about organizing a bus

trip for Sandton residents to tour Alex. Most South African whites have never seen a black township, though many of the black communities are just a stone's throw away.

"For almost 50 years we have been separated and we don't know how the other half lives," Johnson said.

Then, stopping to correct herself, she added: "Oh, they know how we live, because they work in our homes. But we don't know how they live and their conditions."

Clinton aids Jewish Democrats' fund-raiser vs. GOP religious right

By Ralph Z. Hallow
THE WASHINGTON TIMES

President Clinton tonight will join eight Jewish Democratic senators at a fund-raiser to counter the "surge of the radical right" and the growing strength of the Christian Coalition within the Republican Party.

"The radical right, partially through the Christian Coalition, wants to lead this country in a direction fundamentally opposite to what the vast majority of the American Jewish community wants," said Liz Schroyer, executive director of the National Jewish Democratic Council, which is sponsoring the \$150-a-plate gala.

Ms. Schroyer said she shuddered when she heard Christian Coalition founder Pat Robertson at his group's Washington meeting recently "talking about controlling 31 of the Republican state apparatuses."

"It was obvious that the Republican Party is giving permission for that to happen, since I didn't see any [GOP leaders] fighting against it," she said, adding that when Jews "take a look at the Republican Party, I think they will reject that kind of GOP."

"We got a frightening wake-up call in the November 1994 elections."

— Liz Schroyer

Mr. Clinton, the featured speaker at the council's gala, plans to focus on the progress being made at the Middle East peace talks, a White House spokesman said.

As to why the president was invited to help at the fund-raiser, Ms. Schroyer said: "He has stood for and accomplished legislation and policy on a range of issues that are at the highest priority of the American Jewish community, the most dramatic of which is his leadership and support for Israel."

Little known until now, Ms. Schroyer's council was formed five years ago and has operated mostly as a grass-roots organizer of Jewish activists within the Democratic Party. It has sought to gain more visibility after last year's devastating setback for Democrats.

"We got a frightening wake-up call in the November 1994 elections," Ms. Schroyer said. "It was the election of men and women who in many districts and Senate seats are not people with whom we share beliefs."

The most "dramatic difference" is over the separation of church and state, she said, recalling that right after the November elections House Speaker Newt Gingrich, Georgia Republican, "said he wanted to pass a constitutional amendment for school prayer."

The American Jewish community prides itself in having played a major role in electing Demo-

crats, said gala chairman D. Jeffrey Hirschberg. "This is the Jewish political event of the year," he said.

Ms. Schroyer noted that 78 percent of Jewish voters supported Democratic candidates for the House last year.

She said her organization and the more than 1,000 activists expected to attend tonight's gala at the National Museum of Women in the Arts are "dedicated to promoting Jewish values within the Democratic Party and protecting our future against the radical right."

The council will unveil its plans for targeting seven states — New York, California, Illinois, Michigan, New Jersey, Ohio and Pennsylvania — that Clinton strategists regard as critical for a successful second-term bid. Each of the states has a large Jewish population.

Thirteen other states that have active council chapters will be the focus of efforts by Jewish Democrats to help Mr. Clinton keep the Oval Office and help the Democratic Party retake the House, Mrs. Schroyer said. Those states are Colorado, Connecticut, Iowa, Florida, Georgia, Louisiana, Maryland, Massachusetts, Minnesota, Texas, Virginia, Washington and Wisconsin.

Sen. Christopher J. Dodd of Connecticut, chairman of the Democratic National Committee, will join Minnesota Attorney General Hubert H. Humphrey III in presenting the council's Hubert H. Humphrey Humanitarian Award to the eight Jewish senators.

They are: Barbara Boxer and Dianne Feinstein of California, Russell D. Feingold of Wisconsin, Herb Kohl of Wisconsin, Frank R. Lautenberg of New Jersey, Carl Levin of Michigan, Joseph I. Lieberman of Connecticut and Paul Wellstone of Minnesota.

GOP leaders want agencies to adopt new attack rules

By Laurie Kellman
THE WASHINGTON TIMES

Republican leaders say they will recommend that federal law enforcement agencies adopt stiff guidelines on the use of military-style tactics and create a database on fringe groups.

Changing the practices of Cabinet agencies is a delicate business, but the chairmen of the House and Senate Judiciary committees say they won't be shy about their recommendations.

"I don't see anything that's beyond our jurisdiction," said House Judiciary Committee Chairman Henry J. Hyde of Illinois.

"Not all of the problems... have been solved," Senate Judiciary Committee Chairman Orrin G. Hatch of Utah said yesterday as he closed his panel's hearings into the 1993 siege of the Branch Davidian compound near Waco, Texas.

The 51-day standoff that left four federal agents and more than 80 Davidians dead has become a rallying point for some who believe the government persecutes people with unorthodox beliefs. Waco took on added significance this year after someone bombed the Alfred P. Murrah Federal Building in Oklahoma City, killing 168 persons.

Federal authorities say the No. 1 suspect in the case, Timothy

McVeigh, blew up the building to avenge the Davidians' deaths.

Members of Congress' GOP majority vowed to get to the bottom of the Waco debacle, which many GOP lawmakers attributed to law enforcement overstepping its constitutional bounds.

In July, the House convened raucous hearings that recounted the Waco siege and its bureaucratic aftermath. Mr. Hatch's panel yesterday completed two days of hearings into policy changes aimed at preventing a recurrence of the disaster.

Law enforcement officials — from Attorney General Janet Reno to special agents on the scene — told lawmakers of both chambers that they have made massive changes in response to public outrage and distrust of federal law enforcement.

The FBI, Bureau of Alcohol, Tobacco and Firearms (ATF), and the Cabinet agencies that oversee them have overhauled their top staff, communications systems, network of religious experts and rules by which agents may engage in hostage situations, the officials have told the panels.

Several officials have said they remain unsure whether the changes would have made a difference had they been in effect during the Branch Davidian siege.

Sen. Joseph R. Biden Jr. of Dela-

ware, the ranking Democrat on the Judiciary Committee, said this week there was "no need" for more Waco hearings.

But Mr. Hatch and Mr. Hyde yesterday said the agencies' changes are insufficient.

Senate sources said Mr. Hatch likely will include in his recommendations a proposal that the agencies adopt strict guidelines on when special units can use military-style force to end standoffs.

Those options, Mr. Hatch and experts said, should be reserved as a last resort and every agent should be made acutely aware of the guidelines.

Federal agents need to know more about the belief systems of their subjects, the lawmakers said. ATF Director John Magaw on

Tuesday told The Washington Times he is considering hiring one or two psychologists to help the agency deal with fringe groups.

Some critics have raised constitutional objections about law enforcement agencies collecting data on certain groups before they have violated the law, but both chairmen said the agencies should start now, not during a siege, to learn about fringe groups.

To that end, Mr. Hatch is expected to recommend that a database containing contact numbers for experts on fringe groups should be set up and made available to field agents, the sources said. The committee leaders also are considering including profiles of fringe groups in the database.

Whitewater panel will quiz advisers to first lady today

By Jerry Seper
THE WASHINGTON TIMES

Two of first lady Hillary Rodham Clinton's closest advisers will be questioned today by the special Senate Whitewater committee on calls they made and received after White House Deputy Counsel Vincent W. Foster Jr.'s 1993 death and before an aborted search of his office.

The committee, chaired by Sen. Alfonse M. D'Amato, wants to know if Margaret A. Williams, Mrs. Clinton's chief of staff, and New York lawyer Susan Thomases, a longtime confidant, were part of a White House conspiracy to shield Whitewater documents in the Foster office from law-enforcement authorities.

It will be the second appearance before the committee for both women. Mr. D'Amato, New York Republican, has suggested their previous testimony about the calls was not truthful.

Mrs. Williams and Mrs. Thomases were involved in several questionable calls, some with Mrs. Clinton, beginning shortly after Mr. Foster's July 20, 1993, death and before a search of his office two days later by White House Counsel Bernard J. Nussbaum.

Justice Department officials told the committee that, as of 5 p.m. on July 21, 1993, they had an agreement with Mr. Nussbaum to review documents in the Foster office to see if they were of any interest to authorities.

By 10 a.m. the next day, Mr. Nussbaum had changed his mind, ordering Justice officials, the FBI and U.S. Park Police to sit in chairs in the office while he alone reviewed the records.

During the night of July 21, 1993, and into the early morning hours of July 22, Mrs. Clinton — who was at her mother's house in Little Rock, Ark. — placed calls to Mrs. Williams in Washington and Mrs. Thomases in New York. Mrs. Williams and Mrs. Thomases also made calls to the first lady.

The records show Mrs. Clinton called Mrs. Thomases on July 22, 1993, at 7:57 a.m., and talked for three minutes. One minute later, Mrs. Thomases called Mr. Nussbaum. Two hours later, the White House-Justice agreement on the search of the Foster office was canceled.

In their previous appearance before the panel, Mrs. Williams and Mrs. Thomases denied advising Mr. Nussbaum on the pending search. Mr. Nussbaum testified that no one asked him to change his deal with the Justice Department. He said he did not recall having a deal.

"Why was there a change? Why was it that at 5 p.m. on July 21, Mr. Nussbaum was amenable to allowing the Department of Justice to look at the documents, and ... at 10 the following morning, that deal was changed?" asked Michael Chertoff, the committee's majority counsel. "Naturally, the question suggested itself: Was anybody



Margaret A. Williams.



Susan Thomases

During the night of July 21, 1993, and into the early morning hours of July 22, Mrs. Clinton placed calls to Mrs. Williams in Washington and Mrs. Thomases in New York.

besides Mr. Nussbaum involved in changing that arrangement?"

In August, former Deputy Attorney General Philip B. Heymann and Associate Deputy Attorney General David Margolis told the committee that Mr. Nussbaum renege on an agreement to let federal investigators review records in the Foster office after the death.

Mr. Margolis, a 30-year Justice Department veteran and former strike-force chief, said he "believed then and I believe now" that an agreement had been reached on July 21, 1993, and that Mr. Nussbaum, for reasons unexplained, changed his mind the next day.

The Republicans believe Mrs. Thomases, who handled questions concerning Whitewater Development Corp. and its ties to Madison

Guaranty Savings and Loan Association when the issue surfaced during the 1992 presidential campaign, made calls to Mr. Nussbaum to direct his activities in the Foster document review.

Mrs. Williams was involved in searching Mr. Foster's office the night of his death: Uniformed Secret Service Officer Henry P. O'Neill has told the committee he saw Mrs. Williams take papers out of the White House counsel's suite that night.

Mrs. Thomases has denied she tried to influence the review, saying she was only "reaching out" to comfort people after the Foster death, which police ruled a suicide. Mrs. Williams has denied any wrongdoing.

Ex-CIA chiefs reject report's blame

Letter to Deutch asks probe of IG

By Bill Gertz
THE WASHINGTON TIMES

Three former CIA directors have asked for an investigation of CIA Inspector General Frederick Hitz for failing to mention use of tainted intelligence in the agency's reports.

William Webster, Robert Gates and R. James Woolsey — in a letter Monday to CIA Director John Deutch — expressed "dismay" that Mr. Hitz recommended in a September report that the three former directors be held personally accountable for allowing tainted intelligence source reports to be passed to U.S. policy-makers.

"The inspector general did nothing effectively to bring to the attention of any us during our tenures the matter about which he now urges that we be held personally accountable," the former directors said.

"Further, it strikes us as rather hypocritical for the person we

each charged with uncovering wrongdoing and problems in the agency to have failed to reflect in the recent September 1995 report upon IG shortcomings in his own 1991 and 1993 reports, especially in light of his uniquely broad interpretation of personal accountability."

The issue surfaced Tuesday in a CIA statement that followed congressional testimony regarding damage caused by the Aldrich Hazen Ames espionage case. One new finding, disclosed to Congress and confirmed in a special IG report, was that agents' intelligence reports — called "blue-border reports" — included bogus material that was not properly labeled as having come from agents known to be controlled by Moscow.

Messrs. Webster, Gates and Woolsey wrote that there is "no basis" for holding them accountable for the lapse, but ample grounds for probing Mr. Hitz, the agency's first independent inspector general, who was approved by Congress in 1990.

"Appropriate action should be taken against those who did wrong, who made flawed decisions, who failed to act on prob-

lems when informed. And each of us took those actions," they wrote. "But there is no value, and much potential damage, in sweeping accusations of culpability or failure against those who are innocent of either — whether DCIs or others at lower levels."

The former directors said Mr. Deutch should set up a special panel to "examine thoroughly and assess the functioning" of the IG office. "In the absence of such a review, the IG's office is the only office in the CIA that is free from scrutiny," they wrote. "This cannot be healthy, either for the IG or for the CIA as a whole."

Mr. Hitz recommended in his recent report that the three directors be "held accountable" for the compromised CIA reports. The report does not say they should be "reprimanded," as reported by The Washington Post, according to sources familiar with the report.

Mr. Deutch said Tuesday there is no basis to chastise Mr. Webster, Mr. Gates or Mr. Woolsey regarding the tainted reports. Mr. Webster was CIA director from 1987 to 1991, Mr. Gates held the post from 1991 to 1993, and Mr. Woolsey served from 1993 to 1994.

The former directors said in their letter that Mr. Hitz's April 1991 report on the Soviet operations division discussed the use of information from controlled sources "but made no recommendations or conclusions about the issue." A second 1993 IG report did not mention the problem at all, they said.

Meanwhile, a Justice Department official said yesterday Mr. Hitz and several other CIA officials are under investigation by the Justice Department's Criminal Division regarding a CIA case officer who said she was harassed and had her career ruined by an improper IG probe.

Janine Brookner, a former station chief in Jamaica, wrote to Attorney General Janet Reno in July to ask for a criminal investigation of Mr. Hitz in connection with a January 1993 IG report that contained false statements.

She sued the agency, saying she was harassed with an IG inquiry after she reported a male subordinate for spousal abuse. The lawsuit was settled in her favor for a cash payment of some \$700,000, but it ruined her 25-year career as a clandestine service officer.

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THE WHITE HOUSE
WASHINGTON

Amend RICO-

include gun crimes

use RICO to go after
assets.

18 USC 1961

involving illegal possession
or sale of firearms
(state)

acts in violation of ...
(list federal statutes)

How about making all
these other things,
involving threats & assaults
agst fed off'ls, predicate
acts as well?

Are they already?
I don't think in the federal
statute books.
Oh the state crimes

THE WHITE HOUSE

WASHINGTON

August 9, 1995

Old version

MEMORANDUM FOR THE CHIEF OF STAFF

FROM: ABNER J. MIKVA
Counsel to the President

ELENA KAGAN
Associate Counsel to the President

SUBJECT: FEDERAL LAW ENFORCEMENT

The POTUS recently has noted interest in newspaper articles on the Ruby Ridge shooting; the "Good Ol' Boys Roundup"; and threats to federal law enforcement officials, especially from militia members. These articles all address federal law enforcement, but do so from different (if ultimately complementary) directions. The militia issue highlights what a community owes to its law enforcement officials; the Roundup highlights what law enforcement officials owe to their community; and Ruby Ridge highlights both. Together, the articles the POTUS has noted might be said to call attention to the reciprocal responsibilities of the protectors and the protected within a civil society.

The POTUS might use this broad issue to advantage in the next year. Coming off the Waco hearings, where the Democrats used their alignment with law enforcement to such great effect, he can come down foursquare behind law enforcement agents and against militias and other groups that would threaten or thwart them. This pro-law enforcement, anti-militia message should mesh well with continuing reminders of the Administration's efforts to gain a counterterrorism bill, now seemingly thwarted, and its success in gaining a crime bill. At the same time, the POTUS can insist that agents live up to their own high standards, by providing good, honest, impartial justice. Ruby Ridge and Roundup will in any event become issues in the fall; the POTUS can deal with these issues most effectively by placing them in a broader context. This memo addresses the three issues the POTUS has raised within this broader context, involving the creation of an ideal, mutually respectful relationship between a community and its law enforcers. The memo closes with a summary of suggested actions.

1. Threats to federal law enforcement.

Factual background. In recent months, partly because of the Oklahoma City bombing, attention has begun to focus on threats to and harassment of federal (and also state and local) law enforcement and land management officials. The problem comes

in many guises. Employees have received specific threats of death or injury to themselves or their family. A Forest Service office and Bureau of Land Management office recently were bombed, though with no injury. So-called common law courts, having no rightful authority, issue decrees against federal officials. Those who assert the legitimacy of such courts attempt to file bogus "common law liens" against officials (especially IRS agents), which until removed can cause inconvenience. They also resort to "paper terrorism," filing numerous harassing complaints and suits.

Available statistics, though incomplete, suggest some recent increase in threats against federal officials. The FBI reports that the number of cases opened involving threats or assaults against federal officials, other than Department of Treasury personnel, jumped from 639 in 1993 to 665 in 1994 to 361 in the first three months of 1995. (The 1991 and 1992 figures are closest to the 1994 figure.) The ATF, which retains investigative jurisdiction over threats and assaults against its own employees, reports a dramatic increase in threats against agents and other employees in 1993 (probably due to Waco), but a decline since then: the numbers are 31 in 1991, 36 in 1992, 69 in 1993, 43 in 1994, and 8 in the first quarter of 1995. Statistics from the Forest Service, Bureau of Land Management, Fish and Wildlife Service, and National Park Service are scanty, but these agencies believe that in the last year cases of harassment and of specific threats have increased.

Side by side with the increase in actual threats to law enforcement officials is the increase in resistance to their authority. Such resistance also takes many forms. Individuals may tear up their driver's licenses and other official papers. They may refuse to acknowledge the authority of courts, state or federal. Some persons, including county officials, brazenly violate federal land use regulations, for example by bulldozing open a forest road previously closed by federal officials or erecting fences on federally owned land or refusing to pay grazing or mining fees. Some counties (even states) have considered or passed ordinances (known as Catron County ordinances) claiming title to, or otherwise asserting authority over, federal lands. Under these ordinances, several county officials have arrested or threatened to arrest federal land management officials. (Actions in defiance of federal control over land are associated particularly with the county supremacy movement, noted below.) Other counties or states have considered enacting laws requiring all federal agents to obtain permission from sheriffs before carrying out official duties.

The widespread perception within the law enforcement community is that the increased risk and resistance to federal officials is attributable to the recent growth of right-wing extremist groups hostile to government: the militia, white supremacist,

tax protestor, and county supremacy movements (all of which overlap with each other). (Just a few months ago, two members of the Minnesota Patriots Council were convicted of conspiring to poison federal law enforcement agents.) The Anti-Defamation League estimates that active militias exist in 40 states, with 15,000 members. (Other estimates range up to 100,000.) The ADL claims that the movement has grown since the Oklahoma City bombing, but also has gone further underground, breaking up into ever smaller units, which are less prone to detection. Members of such groups, of course, often harbor special hatred of gun control laws and maintain large caches of firearms, which increases further the danger to law enforcement agents.

The rise of this anti-government movement has led to the use of new precautionary measures and also, perhaps, to the inhibition of some enforcement activity. The Director of the BLM in Idaho issued a "County Supremacy Movement Safety Guidance" memorandum instructing employees prior to leaving for the field, to notify a supervisor of destination, route, and expected time of return; to identify alternative routes; and to maintain constant radio contact. Other BLM supervisors have told field employees always to travel in unmarked vehicles. The Forest Service in Montana has declined to conduct fire prevention flyovers across parts of the state for fear of being shot at by militia members. Stories abound of individual federal officers so intimidated as to turn a blind eye to law violators.

Legislative action. Legislative hearings on this subject have occurred, and more will occur in the fall. Senator Specter's Judiciary Subcommittee on Terrorism held a hearing in June on the militia movement, at which both militia members and high-level officials of federal law enforcement agencies testified. Specter intends to hold at least one more hearing in the fall. Charles Schumer led a Democrats-only hearing in July on militia activities -- attended by threatened government workers and members of watchdog groups -- after Republicans on the House Judiciary Committee refused his request for formal hearings. Chairman William McCollum now has agreed to hold official hearings sometime in the Fall. The content of these hearings is still uncertain. Over the next few weeks, we should work with Rep. Schumer's staff to devise a hearing strategy.

Several legislative proposals addressing these issues are currently under discussion. The ADL has drafted a model paramilitary training law, introduced by Rep. Nadler in the House, which probably would pass constitutional muster. This bill, versions of which are on the books in about 40 states, would make it a federal crime (assuming a connection to interstate commerce) to train with firearms with the intent of using them in furtherance of a "civil disorder." (The Federal Civil Obedience Act of 1968 already makes it a crime to teach the use of firearms with such an intent.) Another, broader

version of the bill would remove the strict intent requirement; such a law would make it easier to prosecute those who participate in paramilitary training, but would raise severe constitutional (and perhaps political) problems. The pending Counterterrorism Act would expand federal jurisdiction over threats and assaults against both current and former federal officials. Other possible approaches would be to increase penalties for threats and assaults and also to cover threats and assaults against members of an official's family.

On another track entirely, the government might respond to so-called Catron County ordinances by withdrawing or escrowing all payments to counties based on federal land tenure (e.g., payments in lieu of taxes and shared proceeds from public land uses). (Trying to do this by executive action would be a stretch as a legal matter, but may be worth looking into).

Executive action. The most obvious response to these dangers is strictly to enforce existing laws against threats and violence. While federal law enforcement agencies insist this is what they are doing, some watchdog groups contend that federal officials shy away from confrontational situations. For example, these groups note, the Justice Department brings civil suits, but not criminal prosecutions, against persons who challenge federal ownership of lands by bulldozing roads, erecting fences, etc.

Thought might be given to restructuring, or at least reviewing, the way in which the government currently handles prosecutions against those who threaten or assault federal officials. The Justice Department recently has made increased efforts to coordinate and systematize its response to the kind of problems discussed in this memo. But further steps might be considered. For example, the FBI currently has investigative jurisdiction in cases involving threats or assaults against federal officials, but perhaps it also should have a special unit devoted to them. Similarly, prosecutions usually are handled by local US Attorneys' offices; perhaps the Criminal Division of the Justice Department should exercise greater control over these cases or provide some kind of centralized coordination. A Justice Department review of this subject might be in order. More dramatically, the President might issue a set of directives relating to the way in which such cases are handled.

2. Good Ol' Boys Roundup.

If the above discussion suggests something about what a community owes to its law enforcement officials, discussion of the Roundup suggests something about what officials owe to the community. The Roundup, of course, is an annual social event, largely for law enforcement agents and their families, with a racist tone: few non-whites have been invited, and racist incidents have occurred (e.g., the sale of "nigger hunting

licenses," the display of racist signs, the production of racist skits). The facts relating to federal law enforcement participation are incomplete; each agency is now undertaking an investigation. Of the agencies, ATF seems to have the greatest involvement with the Roundup: a now-retired ATF agent helped organize the event each year (probably using agency resources), and approximately 12 ATF agents (active and retired) attended in most years. The number of other federal agents who attended the event is smaller: 1 or 2 a year from the FBI, for example.

Chairman Hatch recently held a Judiciary Committee hearing on the Roundup. At that hearing, Senators from both parties urged a panel of enforcement officials (Freeh, Magaw, Constantine, Noble, Lau, and Gorelick) to discover not only the identity of employees who attended the event, but also the identity of any supervisors who knew that employees attended. This is a special concern at ATF, because knowledge of the Roundup was most widespread there and because the Roundup was specifically mentioned in a deposition, attended by ATF's counsel, last year. (The deposition was part of an ongoing race discrimination suit brought against ATF by African-American employees, who allege pervasive racism within the agency.)

We should anticipate two different kinds of legislative responses following the close of the agency investigations. First, some Senators might use the Roundup to strengthen the case for disbanding the ATF and transferring its functions to the FBI. Several Senators discussed this possibility at the Roundup hearing, and several Congressmen proposed it during the House hearing on Waco. The NRA seems to be pushing this proposal, but it is unclear whether such a move would harm gun law enforcement. The ATF is an agency in trouble: although there have been some recent improvements, all reports suggest that ATF agents suffer from poor morale and bad training; more, the precarious situation of the agency has caused it to shy away from certain kinds of investigations, including probes of licensed gun dealers. (The number of firearms ATF has taken into custody dropped considerably between 1992 and 1995.) In 1980, the NRA also pushed to dismantle the ATF; then, when Reagan announced he would shift its functions to the Secret Service, the NRA realized its mistake and reversed its position. The NRA might now be making the same error. Support of the ATF, as against proposals to transfer its functions to another agency, will not necessarily best serve the interest of gun law enforcement. It is, however, an attractive political position, given that the NRA is the ATF's principal enemy.

Second, some Senators may use the Roundup hearing as a predicate for legislation stripping federal employees of certain kinds of employment protection. A constant refrain of the Roundup hearings was the difficulty of disciplining federal employees for infractions of agency rules, given the current

Merit System Protection Board (MSPB) system. (This subject also came up at the Waco hearings: after the failed raid, the ATF reinstated two agents whom it initially had fired for fear that the MSPB would do so anyway, on terms even more favorable to the agents.) Reforms in the system may well be warranted from the standpoint of effective personnel management. Such a stance may provoke flak from unions. But supporting or even advancing a balanced proposal would enable the POTUS to respond to the Roundup in an activist way that allows him to note the "public trust" aspect of law enforcement and the need to remove the few agents who fail to understand responsibility.

3. Ruby Ridge. Senator Specter is scheduled to hold hearings on Ruby Ridge beginning September 6. Those hearings probably will focus both on the incident at Ruby Ridge and on the subsequent investigation of that incident.

The incident began in January 1991, when ATF agents arrested Randy Weaver, a white supremacist with violently anti-government views, for having sold sawed-off shotguns to an ATF agent. When Weaver failed to appear in court as scheduled in August of the following year, a deputy US Marshal went to his retreat to arrest him. A gunfight ensued in which the deputy marshal and Weaver's son were killed. The FBI then took over the scene, under rules of engagement that everyone agrees were improper: the rules allowed -- indeed, instructed -- agents to use deadly force not only in self-defense or defense of others, but whenever a person within the retreat was observed with a weapon. At some point, an FBI sniper shot and killed Weaver's wife. Freeh has insisted that the sniper was not following the improper rules of engagement, but instead was acting in accord with usual FBI policy on deadly force. That position is controversial. Those critical of law enforcement's performance at Ruby Ridge argue both that the rules of engagement were improper and that those rules caused the death of Mrs. Weaver.

The second issue concerns the adequacy and honesty of the subsequent investigation of Ruby Ridge. The FBI review resulted in a letter of censure to Larry Potts, who supervised the operation from Washington; Eugene Glenn, the field agent in charge, received a 15-day suspension. In May, Glenn wrote to the Justice Department's Office of Professional Responsibility, complaining that the FBI review had been distorted to protect Potts. Glenn alleged that Potts himself issued the faulty rules of engagement (Potts has disputed this); Glenn further alleged that documents shedding light on this matter had been purposely destroyed. Another FBI official, Michael Kahoe, recently confirmed a part of Glenn's allegation by admitting that he shredded documents collected during the FBI review. No other facts are currently known. The Justice Department is in the process of another investigation, this time into both the Ruby Ridge incident and the charges of cover-up.

The Ruby Ridge story highlights the way responsibilities between law enforcement and the broader community run in both directions. On the one hand, the incident would never have occurred had Weaver submitted to lawful authority (shades of David Koresh); too, the incident is being used by those who wish to undermine law enforcement (again, shades of Waco). On the other hand, the actions of agents at Ruby Ridge were, at the least, ill-considered; and a cover-up in the review process would violate every conceivable norm of law enforcement. The POTUS, in addressing this issue (should he have to do so later this Fall), might use this kind of two-pronged message.

Summary of suggested actions

This memo has suggested a series of actions to deal with issues of federal law enforcement, including the protection of federal agents from right-wing extremists, the Roundup, and Ruby Ridge. Within the context of discussing the mutual respect and obligation that ought to mark the relationship between law enforcement and the broader community, the Administration should, in summary:

- Continue to push counterterrorism legislation, blaming the failure to pass it on the Republicans;
- In consultation with members of Congress, develop a strategy for the hearings on militias and Ruby Ridge;
- Support anti-paramilitary training legislation and advance legislation strengthening federal criminal provisions relating to threats and assaults against federal agents;
- Advance legislation responding to Catron County ordinances by withholding certain federal monies, and consider ways to accomplish this object through executive action;
- Issue directives relating to the prosecution of cases involving threats or assaults against federal agents, either specifying specific changes in prosecution policy or instigating a general review by the Justice Department;
- Reform MSPB system, to enable law enforcement agencies to remove more easily agents who violate codes of conduct.

cc: Secretary Robert E. Rubin

THE WHITE HOUSE

WASHINGTON

August 3, 1995

MEMORANDUM FOR THE CHIEF OF STAFF

FROM: ABNER J. MIKVA

SUBJECT: FEDERAL LAW ENFORCEMENT

The POTUS recently has noted special interest in newspaper articles concerning the Ruby Ridge Shooting; the "Good Ol' Boys Roundup"; and threats to federal law enforcement officials, especially from militia members. These articles, of course, all address federal law enforcement, but they do so from two different (if ultimately complementary) directions. The militia issue highlights what a community owes to its law enforcement officials; the Roundup incident highlights what law enforcement officials owe to their community; and Ruby Ridge may in some sense highlight both. Together, the articles the POTUS has noted call attention to the reciprocal responsibilities of the protectors and the protected within a civil society.

← The POTUS might use this broad issue to ~~great~~ advantage during the next year. Coming off the Waco hearings, where the Democrats used their alignment with law enforcement to such great effect, he can come down foursquare behind law enforcement officials and against those who would threaten or thwart them. At the same time, he can insist that ~~law such enforcement~~ officials live up to their own highest standards, in the way of providing good, honest, and impartial justice. (Ruby Ridge and possibly Roundup will in any event become issues in the fall; the POTUS may be able to deal with these issues most effectively by placing them in a broader context.) This memo addresses the particular issues the POTUS has noted within this broader context, ~~as pointing toward some aspect of~~ *noting* what might become a central theme: the creation of an ideal, because mutually respectful, relationship between a community and its law enforcers.

1. Threats to federal law enforcement. In recent months, partly because of the Oklahoma City bombing, many anecdotes concerning threats to federal (and also state and local) law enforcement and land management officials have received publicity. Such threats come in many guises. ~~A few examples: A federal wildlife worker received a threat that his wife and children would be bound in barbed wire and stuffed down a well. A Forest Service office and Bureau of Land Management office in Nevada were bombed, though with no loss of life. So-called common law courts, having no rightful authority, issue decrees against federal officials. Those who assert the legitimacy of such courts attempt to file bogus "common law liens" against~~

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Side by side with the increase in actual threats to law enforcement officials is the increase in resistance to their authority. Such resistance also takes many forms. Individuals may tear up their driver's licenses and other official papers. They may refuse to acknowledge the authority of courts, state or federal. Some persons, including county officials, brazenly violate federal land use regulations, for example by bulldozing open a forest road previously closed by federal officials or erecting fences on federally owned land or refusing to pay grazing or mining fees. Some counties (even states) have considered or passed ordinances (known as Catron County ordinances) claiming title to, or otherwise asserting authority over, federal lands. Under these ordinances, several county officials have arrested or threatened to arrest federal land management officials. (Actions in defiance of federal control over land are associated particularly with the county supremacy movement, noted below.) Other counties or states have considered enacting laws requiring all federal agents to obtain permission from sheriffs before carrying out official duties.

The widespread perception within the law enforcement community is that the increased risk and resistance to federal officials is attributable to the recent growth of right-wing extremist groups hostile to government: the militia movement, the white supremacist movement, the tax protestor movement, the county supremacy movement (all of which, of course, overlap with each other). (Just a few months ago, two members of the Minnesota Patriots Council were convicted of conspiring to poison federal law enforcement agents.) The Anti-Defamation League estimates that active militias exist in 40 states, with perhaps 15,000 members. (Other estimates range up to 100,000.) The ADL claims that the movement has grown since the Oklahoma City

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As for executive action, the most obvious way to respond to these dangers is strictly to enforce existing laws against threats and violence. While federal law enforcement agencies insist this is what they are doing, some watchdog groups contend that federal officials too often shy away from confrontational situations. For example, these groups note, the Justice Department brings civil suits, but not criminal prosecutions, against persons who challenge federal ownership and control of lands by ~~themselves~~ bulldozing roads, erecting fences, etc. Putting these complaints aside, some thought might be given to restructuring the way in which the government currently handles prosecutions against those who threaten or assault federal officials. The FBI currently has investigative jurisdiction in such cases, but perhaps it also should have a special unit devoted to them. Prosecutions usually are handled by local US Attorneys' offices; perhaps the Criminal Division of the Justice Department should exercise greater control over these cases or provide some kind of centralized coordination. *Perhaps*

2. Good Ol' Boys Roundup. If the above discussion suggests *staying about* the obligations of a community to its law enforcement officials, discussion of the Roundup suggests the obligations of such officials to the community. The Roundup, of course, is an annual social event, largely for law enforcement officials and their families, with a racist tone: only whites are invited, and racist incidents have occurred (e.g., the sale of "nigger hunting licenses," the display of racist signs, the putting on of racist skits). The facts relating to federal law enforcement participation are not complete; each of the agencies currently is undertaking an investigation. Of the agencies, ATF seems to have the greatest involvement with the Roundup: a now-retired ATF agent helped organize the event each year (probably using agency resources), and approximately 12 ATF agents (active and retired) attended in most years. The number of other federal agents who attended the event is smaller: 1 or 2 a year from the FBI, for example.

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government views, for having sold sawed-off shotguns to an ATF agent. When Weaver failed to appear in court as scheduled in August of the following year, a deputy US Marshal went to his retreat to arrest him. A gunfight ensued in which the deputy marshal and Weaver's son were killed. The FBI then took over the scene, under rules of engagement that everyone agrees were improper: the rules allowed -- indeed, instructed -- agents to use deadly force not only in self-defense or defense of others, but whenever a person within the retreat was observed with a weapon. At some point, an FBI sniper shot and killed Weaver's wife. Freeh has insisted that the sniper was not following the improper rules of engagement, but instead was acting in accordance with usual FBI policy ~~to use deadly force in defense of life~~. That position is controversial. Those critical of law enforcement's performance at Ruby Ridge argue both that the rules of engagement were improper (which they clearly were) and that those rules caused the death of Weaver's wife.

The second issue concerns the adequacy and honesty of the subsequent investigation of Ruby Ridge. The FBI review resulted in a letter of censure to Larry Potts, who supervised the operation from Washington; Eugene Glenn, the field agent in charge, received a 15-day suspension. In May, Glenn wrote to the Justice Department's Office of Professional Responsibility, complaining that the FBI review had been distorted to protect Potts. Glenn alleged that Potts himself issued the faulty rules of engagement (Potts has disputed this); Glenn further alleged that documents shedding light on this matter had been *purposely* destroyed. Another FBI official, Michael Kahoe, recently confirmed a part of Glenn's allegation by admitting that he *intentionally* destroyed documents collected during the FBI review. No other facts are currently known. The Justice Department is in the process of another investigation, this time into both the Ruby Ridge incident and the charges of cover-up.

The Ruby Ridge story highlights the way in which responsibilities between law enforcement and the broader community run in both directions. On the one hand, the incident would never have occurred had Weaver submitted to lawful authority (shades of David Koresh); too, the incident is being used by those who wish to undermine law enforcement generally (again, shades of Waco). On the other hand, the actions of agents at Ruby Ridge were, at the least, ill-considered; and a cover-up in the review process of course violates every conceivable norm of law enforcement. The POTUS, in addressing this issue (should he have to do so later this fall), might use this kind of two-pronged message -- a message which sometimes oriented toward ~~the one side~~, sometimes oriented toward the other, and sometimes in perfect balance *between* encompasses all the issues discussed in this memo. *Page 2*

The community's

one of the responsibilities.

Pick-up
at

✓ 2211 Rayburn

Myn Rieper

225-6616

Kamihira +
Putela should
call

- GTF festiment?
McCullen

- Klawwater

- check notes

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Michael Gibano

11:00

Package

Read J Dept stuff

so can call

if not sure

5-7005

rt. address = room #

blg.

9:30/1:00/ 3:00 contact w/
phone #

To Justice: Where is everything?

To Tom Diaz (House):

1. Transcripts of forum?

2. Statements

McCallum - [3. H. Jud subcommittee on crime - May 3 hearing
Freele on domestic terrorism - ADL testimony
Gorelick
Estim
ADL]
7 | 4. Anything re fall hearings? (what are dates?)
5. Hearings on roundup? } materials?
6. Hearings on Ruby Ridge?

To Chris Putalo (Senate):

1. Transcripts of roundup hearings

2. Statements from " "

3. Anything on Ruby Ridge yet?

4. Senate hearing on militia last month

Statements / transcript

Anything to come?

THE WHITE HOUSE

WASHINGTON

August 3, 1995

DRAFT

MEMORANDUM FOR THE CHIEF OF STAFF

FROM: ABNER J. MIKVA

SUBJECT: FEDERAL LAW ENFORCEMENT

The POTUS recently has noted special interest in newspaper articles concerning the Ruby Ridge Shooting; the "Good Ol' Boys Roundup"; and threats to federal law enforcement officials, especially from militia members. These articles, of course, all address federal law enforcement, but they do so from two different (if ultimately complementary) directions. The militia issue highlights what a community owes to its law enforcement officials; the Roundup incident highlights what law enforcement officials owe to their community; and Ruby Ridge may in some sense highlight both. Together, the articles the POTUS has noted call attention to the reciprocal responsibilities of the protectors and the protected within a civil society.

The POTUS might use this broad issue to advantage during the next year. Coming off the Waco hearings, where the Democrats used their alignment with law enforcement to such great effect, he can come down foursquare behind law enforcement agents and against those who would threaten or thwart them. At the same time, he can insist that agents live up to their own highest standards, in the way of providing good, honest, and impartial justice. (Ruby Ridge and Roundup will in any event become issues in the fall; the POTUS may be able to deal with these issues most effectively by placing them in a broader context.) This memo addresses the three issues the POTUS has raised within this broader context, noting what might become a central theme: the creation of an ideal, because mutually respectful, relationship between a community and its law enforcers.

*of sufficient
to
create*

1. Threats to federal law enforcement. In recent months, partly because of the Oklahoma City bombing, attention has begun to focus on threats to and harassment of federal (and also state and local) law enforcement and land management officials. The problem comes in many guises. Employees have received specific threats of death or injury to themselves or their family. A Forest Service office and Bureau of Land Management office recently were bombed, though with no injury. So-called common law courts, having no rightful authority, issue decrees against federal officials. Those who assert the legitimacy of such courts attempt to file bogus "common law liens" against officials (especially IRS agents), which until removed can cause inconvenience. They also resort to "paper terrorism," filing numerous harassing complaints and suits.

Available statistics, though far from complete, suggest some recent increase in threats against federal officials. The FBI reports that the number of cases opened involving threats or assaults against federal officials, other than Department of Treasury personnel, jumped from 639 in 1993 to 665 in 1994 to 361 in the first three months of 1995. (The 1991 and 1992 figures are closest to the 1994 figure.) The ATF, which retains investigative jurisdiction over threats and assaults against its own employees, reports a dramatic increase in specific threats against agents and other employees in 1993 (probably attributable to Waco), but a decline since then: the numbers are 31 in 1991, 36 in 1992, 69 in 1993, 43 in 1994, and 8 in the first three months of 1995. Statistics from the Forest Service, the Bureau of Land Management, the Fish and Wildlife Service, and the National Park Service are scanty, but these agencies believe that in the last year cases of harassment, and also of specific threats, have increased.

Side by side with the increase in actual threats to law enforcement officials is the increase in resistance to their authority. Such resistance also takes many forms. Individuals may tear up their driver's licenses and other official papers. They may refuse to acknowledge the authority of courts, state or federal. Some persons, including county officials, brazenly violate federal land use regulations, for example by bulldozing open a forest road previously closed by federal officials or erecting fences on federally owned land or refusing to pay grazing or mining fees. Some counties (even states) have considered or passed ordinances (known as Catron County ordinances) claiming title to, or otherwise asserting authority over, federal lands. Under these ordinances, several county officials have arrested or threatened to arrest federal land management officials. (Actions in defiance of federal control over land are associated particularly with the county supremacy movement, noted below.) Other counties or states have considered enacting laws requiring all federal agents to obtain permission from sheriffs before carrying out official duties.

The widespread perception within the law enforcement community is that the increased risk and resistance to federal officials is attributable to the recent growth of right-wing extremist groups hostile to government: the militia movement, the white supremacist movement, the tax protestor movement, the county supremacy movement (all of which, of course, overlap with each other). (Just a few months ago, two members of the Minnesota Patriots Council were convicted of conspiring to poison federal law enforcement agents.) The Anti-Defamation League estimates that active militias exist in 40 states, with perhaps 15,000 members. (Other estimates range up to 100,000.) The ADL claims that the movement has grown since the Oklahoma City bombing, but also has gone further underground, breaking up into ever smaller units, which are less prone to detection. Members of such groups, of course, often harbor special hatred

of gun control laws and maintain large caches of firearms, which increases further the danger to law enforcement agents.

The rise of this anti-government movement has led to the use of new precautionary measures and also, perhaps, to the inhibition of some enforcement activity. The Director of the BLM in Idaho issued a "County Supremacy Movement Safety Guidance" memorandum instructing employees prior to leaving for the field, to notify a supervisor of destination route, and expected time of return; to identify alternative routes; and to maintain constant radio contact. Other BLM supervisors have warned field employees always to travel in unmarked vehicles. The Forest Service in Montana has announced it will not schedule fire prevention flyovers across parts of the state for fear of being shot at by militia members. Stories abound of individual federal officers so intimidated as to turn a blind eye to law violators.

Legislative hearings on this subject have occurred, and more will occur in the fall. Senator Specter's Judiciary Subcommittee on Terrorism held a hearing in June on the militia movement, at which both militia members and high-level officials of federal law enforcement agencies testified. Specter intends to hold at least one more hearing in the fall. Charles Schumer led a Democrats-only hearing in July on militia activities -- attended by threatened government workers and members of watchdog groups -- after Republicans on the House Judiciary Committee refused his request for formal hearings. Bill McCollum now has agreed to hold official hearings sometime in the fall. The content of these hearings is still uncertain.

Several legislative proposals addressing these issues are currently under discussion. The ADL has drafted a model paramilitary training law, introduced by Rep. Nadler in the House, which probably would pass constitutional muster. This bill, versions of which are on the books in approximately 40 states, would make it a federal crime (assuming a connection to interstate commerce) to train with firearms, explosives, or other devices with the intent of using them in furtherance of a "civil disorder." (The Federal Civil Obedience Act of 1968 already makes it a crime to teach the use of firearms and other devices with such an intent.) Another, broader version of the bill would remove the strict intent requirement; such a law would make it easier to prosecute those who participate in paramilitary training, but would raise severe constitutional (and perhaps political) problems. The pending Counterterrorism Act would expand federal jurisdiction over threats and assaults against both current and former federal officials. Other possible approaches would be to increase penalties for such threats and assaults and also to cover threats and assaults against members of an official's family. On another track entirely, the government might respond to so-called Catron County ordinances by withdrawing or escrowing all payments to counties based on federal land tenure (e.g., payments in lieu of taxes and shared proceeds from public land uses). (Trying

to do this by executive action would be a stretch as a legal matter, but may be worth looking into).

As for executive action, the most obvious way to respond to these dangers is strictly to enforce existing laws against threats and violence. While federal law enforcement agencies insist this is what they are doing, some watchdog groups contend that federal officials too often shy away from confrontational situations. For example, these groups note, the Justice Department brings civil suits, but not criminal prosecutions, against persons who challenge federal ownership and control of lands by bulldozing roads, erecting fences, etc. Putting these complaints aside, some thought might be given to restructuring the way in which the government currently handles prosecutions against those who threaten or assault federal officials. The FBI currently has investigative jurisdiction in such cases, but perhaps it also should have a special unit devoted to them. Prosecutions usually are handled by local US Attorneys' offices; perhaps the Criminal Division of the Justice Department should exercise greater control over these cases or provide some kind of centralized coordination. A Justice Department review of this subject might be in order.

W. Reviewing

2. Good Ol' Boys Roundup. If the above discussion suggests something about what a community owes to its law enforcement officials, discussion of the Roundup suggests something about what officials owe to the community. The Roundup, of course, is an annual social event, largely for law enforcement agents and their families, with a racist tone: very few non-whites have been invited, and racist incidents have occurred (e.g., the sale of "nigger hunting licenses," the display of racist signs, the production of racist skits). The facts relating to federal law enforcement participation are not complete; each of the agencies currently is undertaking an investigation. Of the agencies, ATF seems to have the greatest involvement with the Roundup: a now-retired ATF agent helped organize the event each year (probably using agency resources), and approximately 12 ATF agents (active and retired) attended in most years. The number of other federal agents who attended the event is smaller: 1 or 2 a year from the FBI, for example.

Sen. Hatch recently held a Judiciary Committee hearing on the Roundup. At that hearing, Senators from both parties urged a panel of enforcement officials (Freeh, Magaw, Constantine, Noble, Lau, and Gorelick) to discover not only the identity of employees who attended the event, but also the identity of any supervisors who knew that employees attended. This is a special concern at ATF, because knowledge of the Roundup was most widespread there and because the Roundup was specifically mentioned in a deposition, attended by ATF's counsel, last year. (The deposition was part of an ongoing race discrimination suit brought against ATF by African-American employees, who allege pervasive racism within the agency.)

We should anticipate two different kinds of legislative responses following the close of the agency investigations. First, some Senators might use the Roundup to strengthen the case for disbanding the ATF and transferring its functions to the FBI. Several Senators discussed this possibility at the Roundup hearing, and several Congressmen proposed it during the House hearing on Waco. The NRA seems to be pushing this proposal, but it is unclear whether such a move would harm gun law enforcement. The ATF is an agency in trouble: although there have been some recent improvements, all reports suggest that ATF agents suffer from poor morale and bad training; more, the precarious situation of the agency has caused it to shy away from certain kinds of investigations, including probes of licensed gun dealers. (The number of firearms ATF has taken into custody dropped considerably between 1992 and 1995.) In 1980, the NRA also pushed to dismantle the ATF; then, when Reagan announced he would shift its functions to the Secret Service, the NRA realized its mistake and reversed its position. The NRA might now be making the same error. Support of the ATF, as against proposals to transfer its functions to another agency, will not necessarily best serve the interest of gun law enforcement. It is, however, an attractive political position, given that the NRA is the ATF's principal enemy.

Second, some Senators may use the Roundup hearing as a predicate for legislation stripping federal employees of certain kinds of employment protection. A constant refrain of the Roundup hearings was the difficulty of disciplining federal employees for infractions of agency rules, given the current Merit System Protection Board (MSPB) system. (This subject also came up at the Waco hearings: after the failed raid, the ATF reinstated two agents whom it initially had fired for fear that the MSPB would do so anyway, on terms even more favorable to the agents. Reforms in the system are probably long overdue: many describe it as a serious impediment to sensible personnel decisions. Of course, such a stance may provoke flak from unions. But supporting such a proposal (or getting out in front and making it himself) would enable the POTUS to respond to the Roundup in an activist way that allows him to note the "public trust" aspect of law enforcement and the need to remove the few agents who fail to understand this responsibility.

3. Ruby Ridge. Senator Specter is scheduled to hold hearings on Ruby Ridge beginning September 6. Those hearings probably will focus both on the incident at Ruby Ridge and on the subsequent investigation of that incident.

The incident began in January 1991, when ATF agents arrested Randy Weaver, a white supremacist with violently anti-government views, for having sold sawed-off shotguns to an ATF agent. When Weaver failed to appear in court as scheduled in August of the following year, a deputy US Marshal went to his retreat to arrest him. A gunfight ensued in which the deputy marshal and Weaver's son were killed. The FBI then took over

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Schumer - Paretta
to call me all
this

→ tied to militia
issue
All related.

SEPT. / OCT -
Harris Crime Bill

Terrorism issue -
How long it would
bill.

report of assault weapons.

Exec order -
re signed
this?

Get John?

What are the
meanings?

THE WHITE HOUSE

WASHINGTON

August 3, 1995

MEMORANDUM FOR THE CHIEF OF STAFF

FROM: ABNER J. MIKVA

SUBJECT: FEDERAL LAW ENFORCEMENT

← The POTUS recently has noted interest in newspaper stories on the Ruby Ridge shooting; the "Good Ol' Boys Roundup"; and threats to federal law enforcement officials, especially from militia members. These articles, ~~of course~~, all address federal law enforcement, but ~~they~~ do so from two different (if ultimately complementary) directions. The militia issue highlights what a community owes to its law enforcement officials; the Roundup highlights what law enforcement officials owe to their community; and Ruby Ridge highlights both. Together, the articles the POTUS has noted might be said to call attention to the reciprocal responsibilities of the protectors and the protected within a civil society.

The POTUS might use this broad issue to advantage during the next year. Coming off the Waco hearings, where the Democrats used their alignment with law enforcement to such great effect, he can come down foursquare behind law enforcement agents and against militias and other groups that would threaten or thwart them. ~~This pro-law enforcement, anti-militia message should mesh well with continuing reminders of the Administration's efforts to gain a counterterrorism bill, now seemingly thwarted, and its success in gaining a crime bill, including an assault weapons ban.~~ At the same time, the POTUS can insist ~~that agents live up to their own highest standards, in the way of~~ providing good, honest, and impartial justice. Ruby Ridge and Roundup will in any event become issues in the fall; the POTUS may be able to deal with these issues most effectively by placing them in a broader context. This memo addresses the three issues the POTUS has raised within this broader context, involving the creation of an ideal, mutually respectful relationship between a community and its law enforcers.

1. Threats to federal law enforcement. In recent months, partly because of the Oklahoma City bombing, attention has begun to focus on threats to and harassment of federal (and also state and local) law enforcement and land management officials. The problem comes in many guises. Employees have received specific threats of death or injury to themselves or their family. A Forest Service office and Bureau of Land Management office recently were bombed, though with no injury. So-called common law courts, having no rightful authority, issue decrees against federal officials. Those who assert the

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The rise of this anti-government movement has led to the use of new precautionary measures and also, perhaps, to the inhibition of some enforcement activity. The Director of the BLM in Idaho issued a "County Supremacy Movement Safety Guidance" memorandum instructing employees prior to leaving for the field, to notify a supervisor of destination, route, and expected time of return; to identify alternative routes; and to maintain constant radio contact. Other BLM supervisors have warned field employees always to travel in unmarked vehicles. The Forest Service in Montana has announced it will not schedule fire prevention flyovers across parts of the state for fear of being shot at by militia members. Stories abound of individual federal officers so intimidated as to turn a blind eye to law violators.

? *Legislative activity*

Legislative hearings on this subject have occurred, and more will occur in the fall. Senator Specter's Judiciary Subcommittee on Terrorism held a hearing in June on the militia movement, at which both militia members and high-level officials of federal law enforcement agencies testified. Specter intends to hold at least one more hearing in the fall. Charles Schumer led a Democrats-only hearing in July on militia activities -- attended by threatened government workers and members of watchdog groups -- after Republicans on the House Judiciary Committee refused his request for formal hearings. *Chairman* Bill McCollum now has agreed to hold official hearings sometime in the ~~fall~~ fall. The content of these hearings is still uncertain. *Shady*

Several legislative proposals addressing these issues are currently under discussion. The ADL has drafted a model paramilitary training law, introduced by Rep. Nadler in the House, which probably would pass constitutional muster. This bill, versions of which are on the books in approximately 40 states, would make it a federal crime (assuming a connection to interstate commerce) to train with firearms, explosives, or other devices with the intent of using them in furtherance of a "civil disorder." (The Federal Civil Obedience Act of 1968 *✓* already makes it a crime to teach the use of firearms and other devices with such an intent.) Another, broader version of the bill would remove the strict intent requirement; such a law would make it easier to prosecute those who participate in paramilitary training, but would raise severe constitutional (and perhaps political) problems. The pending Counterterrorism Act would expand federal jurisdiction over threats and assaults against both current and former federal officials. Other possible approaches would be to increase penalties for such threats and assaults and also to cover threats and assaults against members of an official's family. { On another track

4

entirely, the government might respond to so-called Catron County ordinances by withdrawing or escrowing all payments to counties based on federal land tenure (e.g., payments in lieu of taxes and shared proceeds from public land uses). (Trying to do this by executive action would be a stretch as a legal matter, but may be worth looking into).

Executive
action

~~As for executive action,~~ The most obvious way to respond to these dangers is strictly to enforce existing laws against threats and violence. While federal law enforcement agencies insist this is what they are doing, some watchdog groups contend that federal officials too often shy away from confrontational situations. For example, these groups note, the Justice Department brings civil suits, but not criminal prosecutions, against persons who challenge federal ownership and control of lands by bulldozing roads, erecting fences, etc.

~~Putting these complaints aside,~~ Some thought might be given to restructuring, or at least reviewing, the way in which the government currently handles prosecutions against those who threaten or assault federal officials. The Justice Department recently has made increased efforts to coordinate and systematize its response to the kind of problems discussed in this memo. But further steps might be considered. For example, the FBI currently has investigative jurisdiction in cases involving threats or assaults against federal officials, but perhaps it also should have a special unit devoted to them. Similarly, prosecutions usually are handled by local US Attorneys' offices; perhaps the Criminal Division of the Justice Department should exercise greater control over these cases or provide some kind of centralized coordination. A Justice Department review of this subject might be in order. More dramatically, the President might issue a set of directives relating to the way in which such cases are handled.

2. Good Ol' Boys Roundup. If the above discussion suggests something about what a community owes to its law enforcement officials, discussion of the Roundup suggests something about what officials owe to the community. The Roundup, of course, is an annual social event, largely for law enforcement agents and their families, with a racist tone: very few non-whites have been invited, and racist incidents have occurred (e.g., the sale of "nigger hunting licenses," the display of racist signs, the production of racist skits). The facts relating to federal law enforcement participation are not complete; each of the agencies currently is undertaking an investigation. Of the agencies, ATF seems to have the greatest involvement with the Roundup: a now-retired ATF agent helped organize the event each year (probably using agency resources), and approximately 12 ATF agents (active and retired) attended in most years. The number of other federal agents who attended the event is smaller: 1 or 2 a year from the FBI, for example.

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change

3. Ruby Ridge. Senator Specter is scheduled to hold hearings on Ruby Ridge beginning September 6. Those hearings probably will focus both on the incident at Ruby Ridge and on the subsequent investigation of that incident.

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Suggested actions

1. Push anti-terrorism laws
2. Response to Catron County Ordinance
3. New prosecution policy
4. Reforms of MSPB system

5. Hearing strategy
 6. ?
- Developing a*

*don't say about
we will*

THE WHITE HOUSE
WASHINGTON

*Elena
see changes*

Judge --

Attached is a memo on federal law enforcement. Sorry it took so long; it took a while to gather all the necessary information.

A few points:

1. It's quite long -- almost six pages. But it's really three memos in one: on (1) militias and the threat to law enforcement; (2) the Good Ol' Boys Roundup; and (3) Ruby Ridge. The President had expressed interest in each of these. It seemed to me most sensible to discuss them all together. But let me know if you think it needs to be shorter (and by how much and what sorts of things should be cut).

2. As you'll see, the memo tries to develop a message, as well as to prevent information. (Indeed, it's the overarching message that really hooks all these things together and makes it sensible to talk about them all at once.) Let me know if you think it works; let me know if you think trying to do this is a mistake.

Elena

P.S. I now officially have nothing (OK, very little) to do.

*- and Panetta had
wanted help on them.*

~~yes~~
PPS - Schuman won't be back until Congress comes back. I will meet with Ben Chovit and Tom Diaz while you're gone. Would it also be a good idea to get Yarowsky involved in this? He has real ties to those people, which is bad from my own selfish perspective, but probably good from all others. *yes*

Judge --

~~MSA~~ = changes = your way gets even longer, but we can't try it.

I'm thinking you're right. What about this: A half page or so at the end (just bullits, not paragraphs) listing all proposals for executive action discussed earlier in the memo (including, in addition to exclusively executive action, such things as supporting legislative action, working with Congressmen on hearings etc.) That would focus the decisions to be made to the maximum extent possible, while providing (for those inclined to want it) some ordered discussion of the discrete issues and the proposals that grow out of them.

Elena

Time —

Anecdotes re hatred of ATF agents
+ general statements re demoralization of the agency

Racism of ATF

*** Stories from pubs of licensed producers.

Drop in # of firearms ATF has taken into custody
Lm later in '90

RR facts - no ATF in alt incident

1980 Dwyer case - Jackboasted fascists

Story re 1980 - NRA backtrach

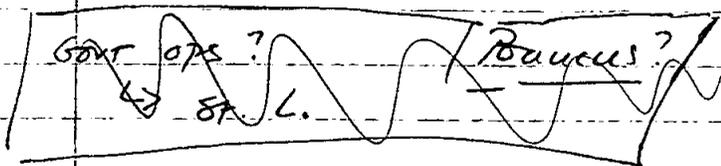
Training pubs? Major's inners. Other references.

Black agents' class action - Rinder just one incident

RR - Potts inners.

Chris Putela

Don't know if he's going to. Poly Ridge?
Seen Waco - not clear
whether go to w/ Waco
Make more or less likely?
PCR



Take for own profit Fed'l lands

~~Highly mortality, etc =
ATF - from old
times regulatory
alcohol~~

~~Exec. of chicken botchers
Guess why?
Depression era.~~

Do the MIPB
incorporate in other
responsibilities the other way!

↓
Mgmt 2000 - 4 or 5 yrs.
V. Dickman Com'n
↓
Fed'l pay, merit pay etc.

discipline

↑
FBI unit dedicated to
this?

⇒ who has the auth to
invest when threats
to, e.g., BLM/gam.
Ought to go to FBI
for serious invest.
EU + FF bills?

Track what happens when
there's a threat.
Go to P who are inept?

- ✓ Matthews testimony - threats + physical intimidation
- Attempt to file liens agt IRS officials (CL liens)
 - anti-semitism, racism link. (see Schoch) ² (see also Kottel)
 - relation to gun-running, anti-gun control

✓ Berthel testimony

- Suits agt local officials - (see also Kottel)
 - Creation of CL cts - (see also Kottel)
 - Denial of jurisdiction of local officials
 - Threats / Bomb Threat
- MT eg: intimidating a public off' - felony
(Ctd felony - yes?)

✓ Gray testimony

- Threats to persecute participating in pdl process (e.g. environmental advocate at local mtg)
- (Prop Rts Alliance) See also Schoch

✓ Kottel testimony

Bills agt fed govt - eg permission from local sheriffs

Protection of 10A bills

- Bill - threats to person, spouse, child, parent, sibling, prop (not non-incl??)

✓ Also see Schoch - ordinances to shift control of fed lands.

See this - interesting examples. Passed! County govt controlled by (Threats - US Fish + Wildlife Service) then Heller.

Schoch

Forest Service
- Does respond? Or avoidance of contractual suits + execution of

Offenders? Not defending pub lands / emboldening militants?

DeBarnis testimony -

- ✓ Threats agt. fed resource mgmt. + effects on environment
- ✓ Ords challenging fed. auth on pub lands (see above)
- ✓ Bombings, threats, & hoodlums.
- ✓ Advice from supervisors: good anecdotal
- ✓ Bulldozer incident - civil suit; no crim penalties.
- ✓ Other anecdotes - obstruction of ees - even arrest!

Anemic response by fed govt. - ^{Do} not act on crim referrals from
investigation + land mgmt
afs.

- more aggressive prosecution
- stop all subsidies to counties that repudiate federal auth over land.

✓ Eaton testimony -

- Internet comments.

• monitoring hate + viol. oriented postings

✓ ADL testimony

- Far right anti-semit. msg: fundamentally anti-democratic

- connection to pen center?

- Threaten security + civic order w/ peaceful exercise of const freedoms

- connection to anti-semit, racism

[- obsession w/ Waco + Ruby Ridge

• paramil training legis - already in many states - model law by ADL - 41 states

response to prohib. of paramil training camps

Expansion of Fed Civil Obid Act of 68 -

expanded to include participants as well

as instructors. In p. 9 of testimony

Need interstate commerce connection

(Coker)

✓ • Nadler Act - same on fed level

Levitas testimony

1 - Invariant: covering of all fls w/ state - ex drivers license

1 - Sheriff empowerment legislative

- State laws re private militias as paramil activ.

few prosec.

bec. of intent req?

reluc to prosec - Thus fed juris needed?

• Comp fed anti-paramil training act.

OK City of course

HR 1544 not enuf: intent vs: + just
like 18 USC 231-33.

✓ Stein testimony

Militar - anti - serv (g.c., enu) focus, w/ racism +
a - sentiment on side 4, 18

✓ Wasson testimony

- Examples (good) of effects of intimidation on witnesses.
- Load w/ racism + a - sentiment - good description of
the relation.

- Info + training for law enf.
- In old proposed 4p

✓ Center for Dem Renewal

- Link to racism / anti - sentiment

Klaumin testimony

- COA of 1868 - too limited

- Proposed statute
need to nexus to 15 commed given Lopez
2A objection?
1A objection?

• HR 1899

✓ ADL statement - May 95

- some nice rhetoric

✓ ADL studies

40
- militia active in 32 states (15,000)

- anti fed-pwr idea - see also p. 1 of A+D

- facts of Ruby Ridge

(Calowaco - symbols of perceived Fed tyranny)

But we R.R: They may be right!

- mil. mov grown since OK City.

- new strat - small units, less prone to detection etc

Speaker hearing

him - get a r

- connection btw mil gps + acts of viol aft serv + low ent of f's.

ch - #s of gps

- leg 1) anti-militia 2) anti-paramilitary training

✓ Baucus stmt

Threats aft law ent routine in some areas.

o Enhance the law!

Brown

ch Baucus stmt (A+D) (A+D)

- Figures re militia mbrs low p.

- Anecdotes of fed of f's threatened or injured.

Speaker transcript

- KSBt anecdotes - Threats to fed EE's

- Baucus - anti-serv plus shades of racism, a-sism

- Anecdotes - threat to law ent

same from Levin's testimony

- FBI agent - process under 2 sections of guide lines:

WHAT ABOUT ANTI-TERRORISM
LEGISLATION?

- ctr-terrorism investigations

- general crimes investigations

anecdotes

Feinberg: new legislation helpful?

Lots of talk by speakers abt how Waco + RR -
and failure to hold hearings on those issues - may
have led to the growth of militias

Alysa Rieff -
225-6616

ADL testimony
Michael Liberman
452-8320

July 11 - Renegade hearing.

- DNC taping -

Hearings in September -
McCallum

No cons abt anything but Waco.
Not locked in yet?

Klanwatch - ~~80~~ Per Law Ch
Dannay, Welsh
Mike Reynolds

ask for background
into -
look 2 Klanwatch
reports.

legislation / how to
protect victims

states have anti-militia +
anti-paramil statutes

Nadler - introduced
H.R. ~~1899~~ federal limit
1899 - to ADL

Cont?

Am. J. Curke - model statute -
stat + memo on
const.

leg -

ADL report on Anti-paramil. stats
18 USC 2381 / bill in 24 states
draft of model leg in
states - const?
Report on wh of getting passed
in states.

banning
paramil
other approaches
let them exist,
protect people

Schumer - incorp both: protecting st. local,
go to courts of 1/s - able to

- Protect priv activists testifying at local mtgs etc.

Organization -

PEEP → trading viol.

→ ideas for ug -

hold monies given to counties in excess until dispute re

New wh - legislative.

amends ~~to~~ to
terrorism bill?

Chr for Demo Renewal - summary sheet on
militia unit.

Interview - lot of this stuff
goes on over that.

Patrol
K. Matthews

interview - training stuff
etc.

What is IT doing?

Pick-up -
at Capt Eberhart's
2211 Rayburn →

Behavioral 5's.

You said, in response to article,
must do...
Here's what's going on.

Problem? Solutions?
Policies?
Guidelines?
Legislation?

^{harassment}
Militias / intimidation of law enforcement

Tel conv. w/ Schmidt -

Goal: putting things together?

Paul Fishman environmental + civil rts
aspects

testimony - former officials - land input agencies
protesting → grazing case (as described by Mikva)
→ floor: civil actions / contempt power of
Ct.

Notes: local
Sheriff built
dozens fence
around
grazing
land.

drum - provokes violence.
All agree on more moderate approach.

Tel conv. w/ Paul Fishman -

Generally unhelpful.

Asked for -

- description of problem
 - solutions, guidelines etc.
- Point me to testimony.

Kamiki -
anything sent
over to her?

Ask: legislation? (NB - Montana bill?)
(crime to impersonate or
intimidate a fed. off'l)

2985

Called Demetra
Talk to John re talking to
Horn Isler (when?)
(Epstein / McNulty)
→ how to structure hearings.
Chris Petula to call.

Beth Wilkinson

514-~~2268~~ 2268

1. Briefed Kamahil Kitty
2. Summary Paper
3. Personal briefing to VP -
law ent folks

FBI

ent division lead

ATF

} 5 min spiel
regarding
what written

Post/Times articles - 16th

Schumer urged a forum - 15th July

Dems 2 units - harassment, threats

anti-govt
extremists
crfs } Anti-tax protesters
freedmen

What we've done - in resp to above
(the gov't lead)

Richard Hartung

Specter

Richard Hartung

FBI / ATF test. vid.
Mo. state police
county prosecutor
in Montana
[5 law enforcement]

Just 1st?

Specter asked to supply info -
hrs

↳ #s, activities

wasting - some haven't responded.

intention - follow-up hearing (maybe more)

watchdog grps; sociologists / psychologists

no timing - this fall (late Sept)

Not sure re legislati -
(Nadler's bill)

Almost all state has laws
- permitting putting out of
business - it. They enforce
them.

- his cute -
Specter Dates - Sept 6
Ruby Ridge
all rest up in air

how serious the problem? 1st hearing - serious threat.
Not simple block of people - lots of just nuts.

Lots more wh to do to flesh out

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FOREST HILLS, NY 11375
(718) 368-8300
88-18 ROCKAWAY BEACH BLVD
ROCKAWAY, NY 11866
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Congress of the United States
House of Representatives
Washington, DC 20515

COMMITTEE ON
CRIME AND CRIMINAL JUSTICE
BANKING, FINANCE
AND URBAN AFFAIRS
FOREIGN AFFAIRS
WIP-AT-LARGE
NEW YORK STATE
CONGRESSIONAL DELEGATION
TREASURY

FAX FROM U.S. REP. CHARLES E. SCHUMER'S
WASHINGTON DC OFFICE

DATE 11/3/95

TO: ELENA KAGAN

FROM: BILL MCGEVERAN

FAX NUMBER: 456-1647

NUMBER OF PAGES: (including this page) 8

Please call 202-225-6616
if fax is incomplete.

Comments:

The bill was introduced yesterday as
H.R. 2850. Yarowsky wanted to be
sure you had a copy.

Thanks.

PRINTED ON RECYCLED PAPER

-Bill-

(Original signature of Member)

104TH CONGRESS
1ST SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

Mr. SCHUMER introduced the following bill; which was referred to the
Committee on _____

A BILL

To guarantee a republican form of government to the States
by preventing paramilitary violence.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Republican Form of
5 Government Guarantee Act".

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1 (1) section 4 of article IV of the Constitution
2 provides that the United States shall guarantee a re-
3 publican form of government to the States;

4 (2) organized criminal actions are an increasing
5 threat to the republican form of government in some
6 States;

7 (3) people who are responsible for upholding
8 the laws of the United States and the several States,
9 or people who assist them, have been threatened,
10 harassed, and assaulted because of these activities;

11 (4) this violence is having a chilling effect on
12 the democratic process because Americans are afraid
13 to participate in town hall meetings, express their
14 views publicly, or take part in the political process;

15 (5) most victims are targeted solely because of
16 their views or activism on controversial political is-
17 sues such as gun control, abortion, environmental
18 matters, or the role of government in society;

19 (6) this violence is causing a breakdown of law
20 and order in many parts of the United States;

21 (7) this violence has increased in part because
22 of unfounded exaggerations about the impact of re-
23 cent firearms laws such as the Brady Law and the
24 ban on assault weapons, as well as baseless conspir-
25 acy theories regarding the government;

F:\M4\SCHUME\SCHUME.059

H.L.C.

3

1 (8) the climate of violence created by these
2 criminals threatens to undermine republican govern-
3 ment in some States.

4 **SEC. 3. PROTECTION AGAINST ASSAULT.**

5 Section 111(a) of title 18, United States Code, is
6 amended—

7 (1) in paragraph (1), by inserting “who is an
8 officer or employee of any State or local government,
9 is assisting such an officer or employee in the per-
10 formance of official duty, or is” after “any person”;
11 and

12 (2) in paragraph (2), by striking “designated in
13 section 1114” and inserting “described in paragraph
14 (1)”.

15 **SEC. 4. INCREASED PENALTIES.**

16 (a) **ASSAULT.**—Section 111 of title 18, United States
17 Code, is amended

18 (1) in subsection (a), by striking “shall, where”
19 and all that follows through the end of the sub-
20 section and inserting “shall be punished as is pro-
21 vided in subsection (b)”; and

22 (2) so that subsection (b) reads as follows:

23 “(b) **PENALTIES.**—Whoever is convicted of an offense
24 under this section shall be fined under this title and im-

F:\M4\SCHUME\SCHUME.069

H.L.C.

4

1 prisoned not less than 2 nor more than 3 years, except
2 that—

3 “(1) in the case of a second or subsequent of-
4 fense the maximum term or imprisonment shall be
5 not more than 5 years; and

6 “(2) in the case of an offense committed with
7 a deadly weapon, the offender shall be imprisoned
8 not less than 8 nor more than 10 years.”.

9 (b) **EXTORTION AND THREATS.**—

10 (1) **INTERSTATE COMMUNICATIONS.**—Section
11 875 of title 18, United States Code, is amended in
12 subsection (c), by striking “not more than five years,
13 or both” and inserting “not less than 2 nor more
14 than 5 years”.

15 (2) **MAILING THREATENING COMMUNICA-**
16 **TIONS.**—Section 876 of title 18, United States Code,
17 is amended in the third undesignated paragraph, by
18 striking “not more than five years, or both” and in-
19 serting “not less than 2 nor more than 5 years”.

20 **SEC. 5. RIGHT TO PARTICIPATE IN A REPUBLICAN FORM**
21 **OF GOVERNMENT; ENFORCEMENT.**

22 (a) **REAFFIRMATION OF RIGHT.**—Each person not
23 otherwise disqualified, barred, or disabled by State or Fed-
24 eral law shall have the right to participate in a republican
25 form of State government free from interference from un-

1 lawful violence and the reasonably perceived threat of un-
2 lawful violence.

3 (b) RIGHT TO PARTICIPATE DEFINED.—As used in
4 subsection (a), the term “right to participate in a repub-
5 lican form of State government” means the right to—

6 (1) carry out the duties of a State, county, or
7 local office to which the person has been duly elected
8 or appointed;

9 (2) lawfully assist any duly elected or appointed
10 person described in paragraph (1) in carrying out
11 such duties;

12 (3) run for elective office, campaign for such of-
13 fice on one’s own behalf, or campaign on behalf of
14 another’s candidacy, in accordance with applicable
15 State and local laws;

16 (4) initiate and campaign for any initiative, ref-
17 erendum, petition, or similar political exercise, in ac-
18 cordance with applicable State and local laws;

19 (5) assemble peaceably to petition the Federal,
20 State, or local government, or to attend any public
21 forum concerning such Federal, State, or local gov-
22 ernment; and

23 (6) exercise the rights guaranteed under article
24 IV of the Constitution of the United States, and the
25 1st and 14th amendments thereto.

6

1 (c) ENFORCEMENT.—

2 (1) IN GENERAL.—A person whose right under
3 subsection (a) is violated by any person or organiza-
4 tion may bring an action in any United States dis-
5 trict court against such other person or organization
6 for damages, injunctive relief, and such other relief
7 as the court deems appropriate.

8 (2) GOVERNMENT REMEDY.—The chief execu-
9 tive officer of any State may bring an action in any
10 United States district court located within that State
11 for damages, injunctive relief, and such other relief
12 as the court deems appropriate against any organi-
13 zation wherever located which unlawfully violates or
14 which conspires, attempts, aids, or abets another
15 person or organization to unlawfully violate the right
16 under subsection (a) of any resident of that State.

17 (3) AUTHORITY TO AWARD A REASONABLE AT-
18 TORNEY'S FEE.—In an action brought under para-
19 graph (1) or (2), the court, in its discretion, may
20 allow the prevailing plaintiff a reasonable attorney's
21 fee as part of the costs.

22 (4) STATUTE OF LIMITATIONS.—An action may
23 not be brought under paragraph (1) or (2) after the
24 5-year period that begins with the date that the vio-
25 lation described in paragraph (1) is discovered.

1 **SEC. 6. LAW ENFORCEMENT TRAINING.**

2 The Attorney General, in consultation with the Sec-
3 retaries of Treasury, Agriculture, and the Interior, shall
4 develop and implement a training program for Federal law
5 enforcement personnel to enable such personnel to deal
6 more effectively with politically motivated violence.

7 **SEC. 7. FEDERAL PAYMENTS WITHHELD.**

8 (a) **COMPLAINT.**—If an agency determines that in
9 any county any of that agency's employees or agents is
10 being unlawfully physically prevented or impeded, by em-
11 ployees or agents of a State, county, or local government,
12 from carrying out lawful duties, the agency may file a
13 complaint with the Attorney General.

14 (b) **ESCROW.**—The Attorney General shall investigate
15 the complaint, and if the Attorney General finds the com-
16 plaint is meritorious, the Attorney General may place in
17 escrow any payments that otherwise would be made to
18 that county under the Payments in Lieu of Taxes Act of
19 1976 (31 U.S.C. 6901 et seq.), until such time as the At-
20 torney General is satisfied that such interference has
21 ceased.

22 (c) **RULES.**—The Attorney General shall make rules
23 governing the procedures used to carry out this section.