

NLWJC - KAGAN

EMAILS RECEIVED

ARMS - BOX 026 - FOLDER -005

[03/31/1998]

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Maria Echaveste (CN=Maria Echaveste/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:31-MAR-1998 13:48:59.00

SUBJECT: Tobacco--Specialty Press

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TO: Christopher C. Jennings (CN=Christopher C. Jennings/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

CC: Doris O. Matsui (CN=Doris O. Matsui/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

CC: Deborah B. Mohile (CN=Deborah B. Mohile/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

CC: Estela Mendoza (CN=Estela Mendoza/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

CC: Barbara D. Woolley (CN=Barbara D. Woolley/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

CC: Maritza Rivera (CN=Maritza Rivera/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

CC: Jena V. Roscoe (CN=Jena V. Roscoe/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TEXT:

In an effort to energize minority and religious communities on tobacco, we suggest getting Dr. Saatchar to author an op/ed. One targetted directly to minorities re the special advertising, killing minority youth and how minority communities have to press for comprehensive tobacco--on the faith side it needs to focus on kids dying, targetting of low-income, need for legislation and maybe make reference to resources for childcare (maybe). How do we get this done? We are working with specialty press to get this placed--and we also need anything HHS could provide on data that would be relevant to minorities or the faith community.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Jennifer L. Klein (CN=Jennifer L. Klein/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:31-MAR-1998 10:57:02.00

SUBJECT: Child Care

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Bruce N. Reed (CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Neera Tanden (CN=Neera Tanden/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

CC: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

CC: Nicole R. Rabner (CN=Nicole R. Rabner/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TEXT:

I know you two are swamped with tobacco so I've been trying to avoid bothering you, but I have two questions:

1. Elena, do those scheduling requests look okay? I'm trying to get them in before April and May are filled.
2. Paul mentioned that Rahm is interested in doing a "tax" radio address on April 11, focusing primarily on child care tax credits. That seems fine to me. Paul said that Rahm did not envision doing anything new in the radio address. The only issue is whether we push to do anything on stay at home at that time or not. Let me know what you think.

Also, FYI, a few highlights. . . Today the Women's Caucus is doing a bipartisan press conference on child care, Chafee has scheduled a hearing for April 22, and Andie King has created a Democratic task force on child care.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Mary L. Smith (CN=Mary L. Smith/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:31-MAR-1998 14:24:41.00

SUBJECT: Equal Pay Announcements

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Sally Katzen (CN=Sally Katzen/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

CC: Cecilia E. Rouse (CN=Cecilia E. Rouse/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Jess A. Gupta (CN=Jess A. Gupta/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Emil E. Parker (CN=Emil E. Parker/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Jonathan Orszag (CN=Jonathan Orszag/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TEXT:

We had thought about trying to get another event out of the Administration piece of the announcement for Equal Pay Day. However, if we don't announce the BLS study along with the Daschle bill, we will not have a data analysis component. And without the BLS study, the rest of the announcements -- an MOU, best practices, OPM Guide to Recruiting Women, and self-audit don't seem like they would be enough of an announcement to stand on their own. In addition, the Taking the Daughters to Work Day, which is a day we thought we could use these announcements for, is already being planned with a childcare announcement. So it is probably best to leave the package as it is. Let me know if you have any problems with that. Mary

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Melissa N. Benton (CN=Melissa N. Benton/OU=OMB/O=EOP [OMB])

CREATION DATE/TIME:31-MAR-1998 16:44:19.00

SUBJECT: JUSTICE letter on Fair Housing Amendments Act of 1998

TO: Todd A. Summers (CN=Todd A. Summers/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN

TO: William P. Marshall (CN=William P. Marshall/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO: David C. Childs (CN=David C. Childs/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TO: Alice E. Shuffield (CN=Alice E. Shuffield/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN

TO: John E. Thompson (CN=John E. Thompson/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TO: Susan M. Carr (CN=Susan M. Carr/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TO: Alan B. Rhinesmith (CN=Alan B. Rhinesmith/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TO: Robert G. Damus (CN=Robert G. Damus/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TO: Diana Fortuna (CN=Diana Fortuna/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN

TO: Joseph F. Lackey Jr. (CN=Joseph F. Lackey Jr./OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TO: Julie A. Fernandes (CN=Julie A. Fernandes/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN

TO: Jose Cerda III (CN=Jose Cerda III/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN

TO: David J. Haun (CN=David J. Haun/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TO: Francis S. Redburn (CN=Francis S. Redburn/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TO: Michael Deich (CN=Michael Deich/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

CC: James J. Jukes (CN=James J. Jukes/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

CC: Janet R. Forsgren (CN=Janet R. Forsgren/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN

CC: James C. Murr (CN=James C. Murr/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN

TEXT:

You should have already received, or will receive shortly, a draft Justice letter on H.R. 3206, the Fair Housing Amendments Act of 1998. The bill is being marked up Wednesday morning at 10 a.m. by the House Judiciary Committee.

In this letter to House Judiciary, Justice presents the same position on H.R. 3206 as it did in its letter to the Constitution Subcommittee (strongly oppose). The letter to the full Committee, however, describes in more detail the basis for the Department's opposition to the bill as it is expected to be amended by Rep. Canady. (A copy of Canady's amendment in the nature of a substitute was sent along with the draft letter.)

Please note that the deadline for review is 5:30 p.m. today. I apologize for the extremely short turnaround time.

Please call me (5-7887) if you have any questions or did not receive the report.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Andrea Kane (CN=Andrea Kane/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:31-MAR-1998 21:10:15.00

SUBJECT: Welfare-to-Work Data Collection

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Bruce N. Reed (CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Diana Fortuna (CN=Diana Fortuna/OU=OPD/O=EOP [OPD])
READ:UNKNOWN

CC: Cynthia A. Rice (CN=Cynthia A. Rice/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TEXT:

Apologies in advance --- what you're about to read is somewhat long and complicated, but we really want your feedback!
Over the last several weeks, HHS and DOL, prompted largely by OMB and us, have begun to work more closely together on developing a coordinated approach to WtW evaluation and data collection. This has resulted in a much improved evaluation strategy, for which HHS is ready to issue an RFP. However, the agencies are at an impasse on one particular issue related to data collection (see below). HHS needs to issue the evaluation RFP by tomorrow in order to get the money out the door by the end of the fiscal year. OMB has used their control over the evaluation funds to force his coordination and is not inclined to let the RFP go until agreement is reached on data collection. We want to get your reaction to the data collection issue in hopes that we can weigh in to push this issue forward. Barbara Chow has a call set up with Olivia (and we think Ray Uhalde) tomorrow at 11.

Background

The BBA gives DOL responsibility for administering the WTW program, but gives HHS responsibility for evaluation and data collection on participants. The \$3 billion provided through WTW are split 75/25 between formula and competitive grants. Formula grants are disbursed to states, which in turn allocate 85 percent of funds by formula to PICs who administer the programs locally in consultation with the Governor. Competitive grants are awarded directly to PICs, political subdivisions of states, and other private entities who must apply in conjunction with PICs and in consultation with the Governor.

The current dispute concerns which department has the authority and responsibility for data collection on competitive grantees. The statute clearly gives DOL authority to collect financial data from both formula and competitive grantees.

What data is to be collected?

There is general agreement that neither the WtW data collection requirements, nor their interaction with the TANF data collection, were carefully thought through in drafting the WtW part of BBA. The WtW law listed four types of individual participant level information to be collected for WtW participants (basically about WtW activities, costs,

what kind of employment they got, and wage levels). However, this got embedded in the overall TANF data collection section (the infamous section 411(a) that lists 17 types of information required from states on TANF participants, which has now mushroomed into the 160+ that we've heard so much about).

There is also a general sense that we do not really need to know all the TANF information about the WtW grantees, particularly the competitive grantees. However, OMB and DOL are assuming we can't do anything about this without a legislative fix. HHS believes we might be able to, if we accept their interpretation of the legal argument below. We think it is definitely worth considering a way to pare back the data collection for competitive grantees if there is a way to do that within current law and without causing an explosion on the Hill (OMB has pushed to resolve this internally before going to the Hill). While a legislative clean up on the data issues may be useful, it could also put us in an awkward position in terms of reopening the TANF data collection issues.

What is the argument?

Section 411(a) opens by saying:

"Each eligible State shall collect on a monthly basis, and report to the Secretary on a quarterly basis, the following disaggregated case record information on the families receiving assistance under the State program funded under this part:" then goes on to list 17 types of information. WtW added as #18, "With respect to families participating in a program operated with funds provided under section 403(a)(5) [WtW]" and goes on to list 4 types of information.

HHS argues that competitive grants are not part of the "state programs funded under this part" and therefore, HHS cannot require the states to gather data from the competitive grantees. This interpretation also leads them to believe that 411(a) does not even apply to the competitive grantees. DOL argues that the state program implies the entire WtW program--both formula and competitive. We have asked Rob Weiner to look at these two conflicting interpretations. OMB feels strongly that we should treat competitive and formula grantees the same.

Options

1) The main option under consideration, and preferred by OMB, is to have formula and competitive grantees in each state submit WtW participant data (4 items) to a state agency designated by the governor, who would then merge this data with TANF data to extract the other 17 items (160 elements) on these participants (it's worth noting that this merge will not be simple or clean for a variety of reasons). This state agency (either workforce or welfare) would then submit rolled up data to HHS. This relieves the WtW grantees from having to collect all the additional TANF data and relieves HHS from having to roll up data from hundreds of competitive grantees. However, it shifts the burden to the states who are already unhappy about TANF data collection and are not thrilled about the WtW structure either. HHS does not believe they have the legal authority to require states to play this data collection role (see above). HHS also has a more political concern about how states will react to being required to collect data from competitive grantees.

While we're waiting to see how Rob Weiner rules on the legal issue, we also think the political concern is worth considering seriously. Is the cost/pain of imposing these data requirements on states and competitive grantees worth it--do we really need to know all the TANF information about the competitive grantees?

2) A possible alternative would be to collect only a subset of the 17 TANF data items, along with the 4 WtW items, from competitive grantees. Potentially this could be done by accepting HHS' interpretation that 411(a) does not apply to the competitive grantees, but DOL still has authority to ask them for any reasonable information as a condition of getting a grant. HHS would say they still don't have authority to compel states to collect and merge the WtW data from competitive grantees. However, we could give states the option to do this. If they refused, then the competitive grantees would submit directly to either HHS or DOL. HHS will also say they don't have the resources to collect information directly from the competitive grantees.

One possible sweetener is to offer technical assistance to the competitive grantees to help them gather and submit the data--either to states or the feds. Perhaps DOL or HHS could hire a contractor to do this, using WtW evaluation funds or some of the competitive grant money.

It would be helpful to have your general reaction to the following:

1. How important is it to treat competitive and formula grantees alike?
2. How important is it to collect all TANF data elements on WtW grantees? (barring a legislative fix, there is less flexibility to pare these back for formula grantees than for competitive grantees)
3. What do you think about a future legislative fix that tries to rationalize the data collection for WtW grantees (both competitive and formula)?
4. How much do we want to ask the states to do in terms of merging and submitting data for competitive grantees? (OMB, HHS, and DOL agree that under Option 1 above we would/could ask them to do this for formula grantees)
5. Would it be OK to check with Hill on intent and whether they have any strong feelings about various approaches?
6. Finally, would you support asking OMB to let HHS to release the evaluation RFP tomorrow even while some of the data collection issues are being resolved?

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Paul J. Weinstein Jr. (CN=Paul J. Weinstein Jr./OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:31-MAR-1998 10:35:12.00

SUBJECT: DPC Staff Meeting

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP [OPD])

READ:UNKNOWN

TO: Bruce N. Reed (CN=Bruce N. Reed/OU=OPD/O=EOP [OPD])

READ:UNKNOWN

TEXT:

At the staff meeting today the following issues were discussed:

1. Equal Pay -- This week there is a VP Equal Pay event. At the event the VP will offer an administration endorsement of the Daschle Bill.
2. Needle Exchange -- Today is the end of the needle exchange moratorium. The AIDS office is getting lots of calls and needs some guidance.
3. Welfare to Work -- Andrea Kane is working with the Vice President's office on a federal welfare to work hiring event for the 9th.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Andrea Kane (CN=Andrea Kane/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:31-MAR-1998 19:20:54.00

SUBJECT: Good news on Access to Jobs

TO: Diana Fortuna (CN=Diana Fortuna/OU=OPD/O=EOP [OPD])
READ:UNKNOWN

TO: Cynthia A. Rice (CN=Cynthia A. Rice/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Paul J. Weinstein Jr. (CN=Paul J. Weinstein Jr./OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Bruce N. Reed (CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Dorothy Robyn (CN=Dorothy Robyn/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Emil E. Parker (CN=Emil E. Parker/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TEXT:

We just heard that Congressman Danny Davis from Chicago successfully offered a Rules Committee amendment to the ISTEA bill in the House to increase funding for Access to Jobs from \$42 M to \$150 M, bringing it to the same level as the Senate bill. Apparently the amendment does not lift the 10 demo project cap, leaving this for conference.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Michael Cohen (CN=Michael Cohen/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:31-MAR-1998 16:41:46.00

SUBJECT: Another LEP education flare-up in CA

TO: Mickey Ibarra (CN=Mickey Ibarra/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Janet Murguia (CN=Janet Murguia/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Maria Echaveste (CN=Maria Echaveste/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Karen E. Skelton (CN=Karen E. Skelton/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TEXT:

I want to give you all a heads-up about a rapidly moving situation in California that is closely related to the Unz/bilingual ed issue we are dealing with, and in which the Education Department will likely become publicly involved in the next several days--unless we decide to stop it. (I'm not recommending that we intervene--I just want to make sure everyone is aware of this, and that there be ample time to slow things down if necessary)

1. Last year, at Pete Wilson's insistence, the CA legislature passed a new statewide testing program that requires all local school districts in the state to administer the same battery of tests to its students. The testing occurs in a number of grade levels and subject areas.

2. Districts are required to give the tests, and the state pays for it. The tests have to be administered this Spring, and districts have to sign up to give the test within the next week or so (i don't have the exact deadline handy.)

3. The law requires that all kids, including LEP kids who have been in school for at least a year, take the tests in English, regardless of their English language proficiency. The results are reported publicly for every school district--which means that school districts with large proportions of LEP kids will look worse on the tests than one might otherwise predict, because there will be scores from a lot of kids who couldn't even read the test questions.

4. Big city school districts with lots of LEP kids (LA, San Diego, San Francisco, etc.) are up in arms. Initially, a number said they would refuse to participate, though all but San Francisco have now signed up. SF either has or will soon file a civil rights complaint with ED on this issue.

5. In the midst of the state/local power struggle over this, the CA Board of Education adopted a policy that required local districts to provide an assurance that they would participate in the tests as a condition for receiving \$ under the federal education technology program. The CA

Department of education adminsters this program. Subsequently, the board decided that it would withhold all federal education \$ from districts that don't participate in the test.

6. The Council of Great City Schools, the DC based group that represents a number of the big districts in CA (and elsewhere) protested this action to the Education Department--which is looking into the legality of the state's move.

7. There is a recommendation bubbling up within ED to Riley that would tell CA that they can't use federal \$ as a club to force implementation of its testing policy. A letter to that effect could go from ED to CA by the end of this week.

8. I think ED is making the right call on this--while states can add requirements to federal programs they administer, the requirements must be fair and reasonable. I don't think the testing program in its current form meets that standard. While we shouldn't interfere with CA's state-determined testing policy, neither should we let them use our \$ as the hammer to force compliance. They've got plenty of their own \$ they can use for that purpose if they want to.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Ingrid M. Schroeder (CN=Ingrid M. Schroeder/OU=OMB/O=EOP [OMB])

CREATION DATE/TIME:31-MAR-1998 09:35:27.00

SUBJECT: Biomaterials Liability MARKUP - Tomorrow

TO: Robert J. Pellicci (CN=Robert J. Pellicci/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN

TO: Christopher C. Jennings (CN=Christopher C. Jennings/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN

TO: Marc Garufi (CN=Marc Garufi/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TO: Steven D. Aitken (CN=Steven D. Aitken/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TO: William P. Marshall (CN=William P. Marshall/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO: Paul J. Weinstein Jr. (CN=Paul J. Weinstein Jr./OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN

TO: Mark E. Miller (CN=Mark E. Miller/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TO: Timothy B. Hill (CN=Timothy B. Hill/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TO: John E. Thompson (CN=John E. Thompson/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

CC: James J. Jukes (CN=James J. Jukes/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TEXT:

2 of 2 items

CQ's WASHINGTON ALERT 03/31/98

JUDICIARY BILLS

Full Committee Markup

Future House committees

* New *

(SCHEDULE 04/01/98; Judiciary)

Item Key: 115

JUDICIARY BILLS * New *

Full Committee Markup

House Judiciary Committee (Chairman Hyde, R-Ill.) will mark up pending legislation.

April 1 10:00 am 2141 Rayburn Bldg.

Agenda:

- HR872 - A bill to establish rules governing product liability actions against raw materials and bulk component suppliers to medical device manufacturers, and for other purposes.
- HR2925 - A bill to establish felony violations for the failure to pay legal child support obligations, and for other purposes.
- HR3565 - A bill to amend part L of the Omnibus Crime Control and Safe Streets Act of 1968.
- HR2281 - A bill to amend title 17, U.S. Code, to implement the World Intellectual Property Organization Copyright Treaty and Performances and Phonograms Treaty.
- HR3209 - A bill to amend title 17, U.S. Code, to limit liability for copyright infringement for on-line material.
- HR3206 - A bill to amend the Fair Housing Act.
- HR375 - A bill for the relief of Margarito Domantay.
- HR2729 - A private bill for the private relief of Ruth Hairston by waiver of a filing deadline for appeal from a ruling relating to her application for a survivor annuity.
- HR1949 - A private bill for the relief of Nuratu Olarewaju Abeke Kadiri.

Information verified as of 06:50pm 03/30/98

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Cynthia A. Rice (CN=Cynthia A. Rice/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:31-MAR-1998 12:10:13.00

SUBJECT: Bruce -- you should do this 9:00 am Thursday Kick Butts Kickoff, don't you

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TO: Cathy R. Mays (CN=Cathy R. Mays/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TO: Bruce N. Reed (CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TEXT:

----- Forwarded by Cynthia A. Rice/OPD/EOP on 03/31/98
12:09 PM -----

Anne E. McGuire
03/31/98 11:54:47 AM
Record Type: Record

To: Cynthia A. Rice/OPD/EOP
cc:
Subject: kick butts update

Can we see if Bruce can be there?

----- Forwarded by Anne E. McGuire/WHO/EOP on 03/31/98
11:59 AM -----

From: Julia M. Payne on 03/31/98 11:45:19 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: Michelle Crisci/WHO/EOP
Subject: kick butts update

right now, we are proposing a 9:00 am send-off event at the white house on thursday for kick butts day. we hope to have the vp, togo west, alexis herman, erskine bowles, bruce reed, david satcher, and maybe riley. also present will be any undersecretaries and deputy secretaries and administrators who are traveling for kick butts day.

there is a conference call today at 5 pm, 72104, code 2466 for all interested parties. anne mcguire, barbara woolley, and myself are coordinating this possible event if you have questions.

Message Sent

To: _____
Barry J. Toiv/WHO/EOP

Amy W. Tobe/WHO/EOP
Lori L. Anderson/WHO/EOP
Jodi R. Sakol/OVP @ OVP
Toby Donenfeld/OVP @ OVP
Anne E. McGuire/WHO/EOP
Megan C. Moloney/WHO/EOP
Kara Gerhardt/WHO/EOP
Joshua Silverman/WHO/EOP
Ansley Jones/OVP @ OVP

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Cynthia A. Rice (CN=Cynthia A. Rice/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:31-MAR-1998 15:46:00.00

SUBJECT: Elena can you review--- two pager on McCain--we need it COB to give to the

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

CC: Cynthia Dailard (CN=Cynthia Dailard/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

CC: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TEXT:

I made changes per Bruce's comments. He wants to know if you think we should add a bullet on the connection to liability. I don't think we should. After all, we kind of like the public health link, but this is supposed to be a unity document that gets all us Dems talking off the same page, so mentioning liability is dangerous.

----- Forwarded by Cynthia A. Rice/OPD/EOP on 03/31/98
03:42 PM -----

Bruce N. Reed

03/31/98 03:10:02 PM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP

cc: Elena Kagan/OPD/EOP, Laura Emmett/WHO/EOP, Cynthia Dailard/OPD/EOP

Subject: Re: For Review --- two pager on McCain--we need it COB to give to the Hill for tomorrow's markup

This looks OK, except for the first bullet. I would make the penalties argument the way Erskine does:

1. The \$3.5 billion cap on penalties significantly reduces the incentive for the tobacco industry to reduce youth smoking. Under the current plan, the tobacco industry would pay the same penalty for missing the youth smoking targets by 40% as it would for missing the targets by 20%. The cap should be eliminated or raised to a higher level, so that the tobacco industry has the strongest incentive to do everything in its power to stop hooking kids.

2. Individual companies need to be held accountable for reducing youth smoking as well. In addition to strong industry-wide penalties, a separate company-by-company penalty scheme will help take the profit out of addicting teenagers.

3. If EK thinks so, something about closing the liability/performance

loophole (although I wouldn't call it a loophole).

===== ATTACHMENT 1 =====
ATT CREATION TIME/DATE: 0 00:00:00.00

TEXT:
PRINTER FONT 12_POINT_COURIER

"Medicaid Provider Tax and Donation Amendments of 1998"
Section

-by

-section Summary

(Except as otherwise indicated, this bill amends provisions of the Social Security Act. References to the "Secretary" are to the Secretary of Health and Human Services.)

SEC. 2. HEALTH CARE LICENSING FEES.

Section 2 makes various amendments to provisions of 1903(w) that specify the types of health care related taxes that will be treated as "impermissible taxes" for purposes of determining whether a State will be subject to a disallowance of medical assistance expenditures eligible for Federal matching payments. These amendments provide that a tax consisting of a licensing fee or similar charge will not be subject to a disallowance if (1) the total amount of revenue raised by the State from such tax will be used in the administration of the licensing program for which the charge was assessed or for regulation of the entities subject to the charge, and the State maintains on file a certification by the Governor (or other official specified by the Secretary) to that effect; and (2) the tax does not contain a hold

-harmless provision.

The bill also provides that if the Secretary finds that the State has used any revenue from a tax described above for purposes other than those described in a certification, the Governor (or other certifying official) is subject to a civil monetary penalty of not to exceed \$10,000. The bill specifies the administrative procedures that will apply if the Secretary imposes a civil monetary penalty pursuant to this authority.

SEC. 3. SECRETARY'S AUTHORITY TO ADJUST CERTAIN AMOUNTS OWED BY STATES.

Section 3 amends section 1903(w)(1)(A) (which requires that the amount of State medical assistance expenditures eligible for Federal matching payments be reduced by the amount of State revenues from certain impermissible taxes and donations (the "standard reduction") and adds new subparagraphs (H) and (I) to section 1903(w)(1). The amendments require the Secretary to reduce the amount of the standard reduction attributable to revenues from impermissible tax or donation programs in effect prior to the date of enactment of the bill if the State eliminates all such impermissible programs within two years of enactment of the bill. The Secretary is not authorized to adjust the amount of the standard reduction for revenues (1) received

more than one year after the enactment of the bill; or (2) from impermissible tax or donation programs initiated after the

enactment of the bill.

The bill requires the Secretary to determine an appropriate adjustment percentage within a range that varies depending on the date by which the State eliminates all such past tax or donation programs (the "compliance date"). For a State with a compliance date that is (1) within one year after the enactment of the bill, the range is 20 to 60 percent of the standard reduction; and (2) more than one year, but less than two years, after such enactment, the range is 50 to 80 percent of the standard reduction.

In determining the appropriate percentage within the ranges described above, the Secretary is required to consider the following factors: (1) whether the tax or donation program is permissible under the bill; (2) whether the State voluntarily eliminated the tax or ceased to collect the donation prior to formal notification from the Secretary; (3) the level of burden the tax or donation program placed on the Medicaid program; (4) whether the tax or donation program was initiated prior to the enactment of the Medicaid Voluntary Contribution and Provider

-Specific Tax Amendments of 1991; (5) whether the State cooperated with the Secretary after the enactment of the 1998 Amendments by informing the Secretary of all impermissible tax or donation programs; providing the Secretary with all information necessary for the evaluation of such programs, and expeditiously eliminating such programs; and (6) the number of years the impermissible tax or donation program was in effect.

The bill authorizes the Secretary to take adjusted reductions against States over a five year period. The Secretary is required to take a minimum of 20 percent of a State's reduction amount per fiscal year, unless the State agrees to allow the Secretary to take the remaining balance in fewer than five years.

SEC. 4. GENERALLY REDISTRIBUTIVE WAIVER TEST.

Section 4 amends section 1903(w)(3)(E) (the "waiver" authority under which a tax that does not otherwise meet the requirements for treatment as a broad

-based and uniform tax will be so treated if the Secretary finds that it is generally redistributive and does not include a hold

-harmless provision). The amendments clarify that a tax cannot be considered generally redistributive unless the burden it places on the Medicaid program is no greater than the burden that would be placed on the Medicaid program by a tax that is broad

-based and uniform.

The amendments also prescribe elements of the method for performing the calculation to determine whether a proposed tax is generally redistributive. Specifically, a State must compare (A) the revenues that would be raised if the State were to tax all health care items, services, or providers within the class or classes that the State proposes to tax (including all Medicare and Medicaid revenues and receipts), with (B) the revenues that would be raised from only those items, services, or providers that are subject to the proposed tax.

Finally, the amendments add a new provision that allows a State that seeks to impose a tax on more than one class of health care items, services, or providers to consider in the aggregate the net impact of the tax on all such classes when performing the generally redistributive test.

SEC. 5. ADDITIONAL PERMISSIBLE HEALTH CARE CLASSES.

Section 5 amends section 1903(w)(7)(A) (which specifies the classes of items or services on which a broad

□

-based tax may be

imposed). First, the bill adds as permissible classes (1) health insurance coverage; and (2) every health care item or service within a State. Second, in order to clarify the conditions under which the Secretary may establish an additional class, the bill adds language from the preamble to the final provider tax and donation regulation published on August 13, 1993, specifying that the additional class must meet the following criteria: (1) no more than 50 percent of the gross revenues or receipts of the class may be derived from Medicaid; (2) no more than 80 percent of such revenues or receipts may be derived from Medicaid, the Children's Health Insurance Program, Medicare, and any other Federal health care program; (3) the class is a designated category for purposes of State licensing or Federal regulation or taxation, is included as a type of health care provider under Medicare or Medicaid, or is otherwise clearly identifiable; and (4) the class is not unique to a State.

===== END ATTACHMENT 1 =====

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Cynthia A. Rice (CN=Cynthia A. Rice/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:31-MAR-1998 11:46:51.00

SUBJECT: Kick Butts Meeting

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Bruce N. Reed (CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TEXT:

----- Forwarded by Cynthia A. Rice/OPD/EOP on 03/31/98
11:46 AM -----

Mary L. Smith
03/31/98 11:41:26 AM
Record Type: Record

To: Cynthia A. Rice/OPD/EOP
cc: Thomas L. Freedman/OPD/EOP
Subject: Kick Butts Meeting

Cabinet Affairs tentatively decided that we would try to have a stakeout at the White House at 9 a.m. on Thursday with the VP and Cabinet Secretaries who are going to go out on the road later in the day. This event would be a kick-off for the day as a whole. Barbara Woolley is going to try to get 3 or 4 kids from the Campaign from Tobacco Kids to be there as well. Here is the list of folks they were thinking of the 9 a.m. event:

Erskine
Riley
Togo West
Janet Yellin?
Herman
Satcher?
Rubin

The VP's folks were not at the meeting -- so I don't know if this works in his schedule. Thanks, Mary
Howe

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Mary L. Smith (CN=Mary L. Smith/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:31-MAR-1998 16:32:39.00

SUBJECT: Re: Hill/Equal Pay

TO: Cecilia E. Rouse (CN=Cecilia E. Rouse/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Robin Leeds (CN=Robin Leeds/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: David R Thomas (CN=David R Thomas/O=OVP @ OVP [UNKNOWN])
READ:UNKNOWN

TO: Sally Katzen (CN=Sally Katzen/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Jonathan Orszag (CN=Jonathan Orszag/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Thomas L. Freedman (CN=Thomas L. Freedman/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Susan M. Liss (CN=Susan M. Liss/O=OVP @ OVP [UNKNOWN])
READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Audrey T. Haynes (CN=Audrey T. Haynes/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TEXT:

Dave Thomas has confirmed that DeLauro will be the co-sponsor of the equal pay bill.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Cynthia Dailard (CN=Cynthia Dailard/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:31-MAR-1998 17:28:36.00

SUBJECT: markup

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TO: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TO: Bruce N. Reed (CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

CC: Cynthia A. Rice (CN=Cynthia A. Rice/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TEXT:

Peter Jacoby said that he has reserved 6 seats for the markup tomorrow for Administration officials. He is presuming that Elena will go, and some combination of representatives from HHS/FDA and Treasury. He also suggested Cynthia Rice. Do you have any preference as to who should go?

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Leanne A. Shimabukuro (CN=Leanne A. Shimabukuro/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:31-MAR-1998 18:24:59.00

SUBJECT: .08 BAC

TO: Bruce N. Reed (CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TO: Michelle Crisci (CN=Michelle Crisci/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TO: Eleanor S. Parker (CN=Eleanor S. Parker/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

CC: Jose Cerda III (CN=Jose Cerda III/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TEXT:

I have heard from WH Leg Affairs that it looks unlikely that the House rule on ISTEPA will permit a vote on the Lowey .08 BAC amendment. The Rules Committee is scheduled to vote on the rule at 8:00pm tonight.

On a separate but related matter, the Justice Department is prepared to announce formula grants (\$360,000 to each state) to combat underage drinking. If we want to beat up on the House for failing to vote on .08, the grants could give us an additional opportunity to do it. The Department is holding the announcement until Friday, but we could probably get them to hold on longer if necessary.

At the very least, we could get a quote in the DOJ release or do our own statement. If we want to further highlight, we could have the VP announce, or do a radio address. Please let me know if there is interest in any of these options.

Thanks,
Leanne

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Leanne A. Shimabukuro (CN=Leanne A. Shimabukuro/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:31-MAR-1998 20:12:59.00

SUBJECT: crime meeting agenda

TO: Mary L. Smith (CN=Mary L. Smith/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TO: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TO: Thomas L. Freedman (CN=Thomas L. Freedman/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TO: Michelle Crisci (CN=Michelle Crisci/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

CC: Jose Cerda III (CN=Jose Cerda III/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TEXT:

===== ATTACHMENT 1 =====
ATT CREATION TIME/DATE: 0 00:00:00.00

TEXT:

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**Crime Meeting Agenda
April 1, 1998**

Automated Records Management System
Hex-Dump Conversion

Pending Events

- * .08 BAC event and underage drinking grants today
- * Assault weapons -- release report on April 6 (tentative)
- * School Crime Supplement (joint DOJ/Education report) -- April 10

Next week, AG and Secretary Riley convene roundtable with experts on juvenile violence

Legislative Update

- * Juvenile crime
- * Durbin legislation ("Brady II")

Other Potential Events

- * Houston COPS or crime event April 14 (tentative)
- * NYC school uniforms event April 27 (tentative)
- * United Nations drug speech June 6 (tentative)
- * VP crime technology event

Miscellaneous/ Pending Items

- * Any other pending events/releases--DOJ Reports
- * Model youth handgun legislation
- * International Crime Bill and Strategy

KICK BUTTS DAY 1998 TALKING POINTS
-3/30 DRAFT-(may be updated with legislative message update)

The following quotations are taken from internal industry documents released by the tobacco companies under protest:

“It’s a well known fact that teen-agers like sweet products. Honey might be considered.”
-Brown & Williamson internal documents, 1972

“Today’s teen-ager is tomorrow’s potential regular customer, and the overwhelming majority of smokers first begin to smoke while still in their teens.”
-Phillip Morris internal documents, 1975-1988

“To ensure increased and longer-term growth for Camel filter. The brand must increase its share penetration among the 14 to 24 age group, which represent tomorrow’s cigarette business”
-RJR Reynolds internal documents, 1975

“The success of Newport has been fantastic during the past few years. The base of our business is the high school student.”
-Lorillard Tobacco Company internal documents

“Comic strip type copy might get a much higher readership among younger people than any other type of copy.”
-RJR Reynolds (creator of Joe Camel) internal documents, 1973

The cigarette companies want you. They want you to start smoking early, as early as 12 and 13 years old, and keep smoking until you die.

- **90% of smokers became addicted before they were 18 years old; before they were even old enough to buy cigarettes. The tobacco companies have known who they were selling to for decades—young people like yourselves.**
- **Everyday 3,000 young people will become regular smokers. 1,000 of them will die early because of their new habit.**
- **Smoking kills more people every day than AIDS, alcohol, auto accidents, murders, suicides, drugs, and fires combined—400,000 people annually**
- **Where do you see tobacco ads? In Sports Illustrated and Rolling Stone Magazine. At (local professional teams) games. On billboards on the side of the road as you are coming to school. Everywhere.**
- **You are here today because you understand that cigarettes kill. You see what tobacco companies are trying to sell you. You have been smart enough to stand up and say that you will not let cigarettes control you and you will not let cigarettes kill you.**
- **But how many of you have friends that smoke? A lot. That is why the President is fighting to decrease smoking in young people. To make sure that you and your friends have the same opportunity to live a long and healthy life.**

- **If we act now, we can cut teen smoking by almost half in the next five years alone. The means we can stop almost 3 million young people from beginning. That means we can prevent almost 1 million early deaths.**
- **The President wants to sign a law that reduces teen smoking based on five principles:**

Raise the price on a pack of cigarettes as much as \$1.50.

Raising the price of cigarettes will put tobacco out of reach for most young people. Studies show that a 10% increase in the price of cigarettes results in a 7% reduction in the number of kids who start smoking.

Money collected from tobacco company payments should be used to help our children and improve the public health. Both have been hurt by the tobacco industry for decades. The money should not be locked away—too many lives are at stake.

Reaffirm the government (through the FDA) to regulate tobacco products.

Tobacco company documents confirm what independent scientists already know: nicotine, the active ingredient in cigarettes, is addictive. The Food and Drug Administration must have full regulation authority to prevent cigarette makers from manipulating nicotine levels to addict more kids.

Stop marketing and promotion to children.

The most heavily advertised brands of cigarettes—Camel, Marlboro, and Newport—are also the most frequently chosen by underage smokers. Advertising legitimizes smoking as a social activity (i.e. makes smoking look cool) in the eyes of kids who are tempted to smoke.

Advance public health by funding more medical research, reducing second hand smoke, and promoting smoking cessation programs.

Smoking has crippled the public health of America's children for decades. The result has been higher rates of cancer, emphysema, and other illnesses. Still, 70% of smokers want to quit, but fewer than 3% successfully do so each year. We need to help smokers who want to quit and save those who have gotten sick from smoking.

Protecting tobacco farmers and their communities.

Most tobacco farmers live and work on small family farms; in many cases, their families have been growing tobacco for generations. We will not abandon these families and their communities—communities like yours, except their main industry is tobacco farming. They will not be punished for the actions of the cigarette producers.

The President is calling for comprehensive, bipartisan tobacco legislation now. A piece meal approach will not meet our overriding goal of dramatically reducing teen smoking. All five of these principles must be addressed, otherwise the tobacco companies will win the fight for our children and an historic opportunity will have been lost.

McCain Tobacco Bill Leaves Room for Improvement

Enacting comprehensive tobacco legislation to reduce youth smoking dramatically is our most urgent public health priority, and Senator McCain's leadership increases our chances of enacting strong legislation this year. His bill provides a solid foundation for further action, but leaves room for improvement. In particular, comprehensive tobacco legislation should include:

Strong Penalties for Missing Youth Smoking Targets -- Reducing Smoking is Our Bottom Line; We Must Make it the Industry's Bottom Line

- The \$3.5 billion cap on penalties significantly reduces the incentive for the tobacco industry to reduce youth smoking. Under the current plan, the tobacco industry would pay the same penalty for missing the youth smoking targets by 40% as it would for missing the targets by 20%. The cap should be eliminated or raised to a higher level, so that the tobacco industry has the strongest incentive to do everything in its power to stop hooking kids.
- Individual companies need to be held accountable for reducing youth smoking as well. In addition to strong industry-wide penalties, a separate company-by-company penalty scheme will help take the profit out of addicting teenagers.

National Environmental Tobacco Smoke Standards

- Progress toward other public health goals should include limiting exposure to environmental tobacco smoke in work sites and public places.
- We have serious concerns about this bill's provision which would allow individual States to "opt out" of the national smoke-free environment policy. This provision creates a patchwork system in which states could decide to adopt weaker laws or decide against taking any action at all, leaving people with little or no protection from the hazards of environmental tobacco smoke.

No Antitrust Exemption

- There is no need to exempt the tobacco industry from antitrust rules in order to reduce youth smoking. We strongly oppose any exemptions that would allow price fixing agreements.

Public Health Spending

It is critical that any tobacco legislation include core public health investments, including funding for:

- National, state, community and school-based prevention and education efforts;
- Counter-advertising;
- Youth smoking data collection; and
- Research through the National Institutes of Health, the National Science Foundation, the Centers for Disease Control, and the Agency for Health Care Policy and Research.

Assistance for Children

In addition to funding public health efforts, tobacco revenues should be targeted at efforts to assist children, including the President's proposals to:

- Double the number of working families who receive child care assistance;
- Reduce class size by hiring 100,000 additional teachers; and
- Fund Medicaid outreach efforts to ensure all children eligible for Medicaid health care coverage receive it.

The President's Five Principles

President Clinton has said he will only support tobacco legislation that:

- Raises the price of cigarettes by up to \$1.10 a pack over 5 years and \$1.50 a pack over the next ten years, and imposes tough penalties on companies that continue to sell to kids;
- Affirms the FDA's full authority to regulate tobacco products;
- Gets companies out of the business of marketing and selling tobacco to minors;
- Promotes public health research and public health goals; and
- Protects our tobacco farmers and their communities.

If we act now, we can reduce the number of youths smoking by 3 million between now and 2003 -- and help us avoid approximately 1 million premature deaths.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Michael Cohen (CN=Michael Cohen/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:31-MAR-1998 20:16:26.00

SUBJECT: New Unz memo

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TEXT:

Attached is a revised Unz memo, incorporating the approach we discussed earlier. I don't know if you had a chance to review the materials after we talked--and whether you and I were correct in our assumption that you wouldn't be happy with it.

Here are a couple of things to keep in mind:

1. The new approach--less hard edge than before--is one that everyone who has been through all of the Unz discussions, including particularly the Congressional ones in the last week, is convinced is the right way to go. The approach in our earlier memo, proposing specific changes in federal programs as well as a 3-year goal for learning English, would cause us a lot of trouble in many quarters.

2. You may recall that the three people most consistently for the mend it don't end it and 3-year goal have been you, myself and Karen. Karen has been insistent that we not leave ourselves exposed on the center/right when we oppose Unz. She and I have talked extensively--and privately--about the direction that is now incorporated in the memo, and we are both convinced that this newer approach works well politically.

3. A couple of other changes in the structure of the memo: (1) I've incorporated the discussion about the educational and legal problems with Unz into the recommendation to oppose Unz--it makes for a tigher argument in support of the recommendation compared with the earlier memo. (2) In the past week, Riley and all of his lawyers got together and agreed on a single, clear story line on Unz, federal case law, and the odds of litigation if Unz is enacted. I've used their new version--now that they agree on what it is.

I'm going to look this over again tonight. I need to get it around tomorrow, so we can get this put to bed, hopefull before AF1 lands.=====

ATT CREATION TIME/DATE: 0 00:00:00.00

TEXT:

Unable to convert ARMS_EXT:[ATTACH.D60]MAIL478847989.026 to ASCII,

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March 31, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: SECRETARY RILEY
BRUCE REED

SUBJECT: California Proposition 227 (Unz Initiative) to End Bilingual Education

On June 2, California voters will consider Proposition 227, otherwise known as the Unz Initiative, which proposes to eliminate all bilingual education. This is California's third potentially divisive race-related initiative in four years, following on the heels of Proposition 187, which barred public benefits for illegal immigrants, and Proposition 209, which ended affirmative action.

Polls show that the initiative is popular and is likely to pass, although a strong opposition campaign could make this election close. Many Latino voters currently favor the initiative, although the polls show that Latino support has declined considerably as voters become more familiar with the details of the proposal. Latino activists are strongly opposed to Unz, and are looking to the White House to support their efforts to defeat it.

Over the past several months DPC and Education Department staff worked with Maria Echaveste, Mickey Ibarra, Karen Skelton, and Janet Murguia to study the Unz Initiative, including extensive outreach to both opponents and supporters in California, in the Congress and among the advocacy community. Despite legitimate concerns over the effectiveness of some bilingual education programs, your advisors strongly believe that the Unz initiative is bad education policy and will harm students who need help the most.

We recommend that you publicly oppose the Unz Initiative because it deprives local educators of the ability to make educationally sound choices about how to meet the needs of limited English proficient children they serve and almost certainly will result in widespread violations of federal civil rights law. Your opposition to Unz should be coupled with a statement of the principles you support for strengthening programs to help Limited English Proficient students become proficient in English.

I. The Unz Initiative and Bilingual Education in California

A. Overview of the Unz Initiative

This initiative, authored and backed by Silicon Valley millionaire Ron Unz, is designed to end all bilingual education programs in California. More specifically, it would:

- Require that all public school instruction be conducted in English.
- Permit this requirement to be waived only if parents or guardians can show that the child already knows English, has special needs, or would learn English faster through an alternative instructional technique.
- Provide initial placement for Limited English Proficient (LEP) students in "sheltered English immersion" programs for one year. Instruction in these programs would be conducted in English, with some accommodations in the curriculum to take into account the limited English language skills of the students.
- Appropriate \$50 million per year over 10 years to fund adult education programs designed to teach English to LEP adults who in turn pledge to provide English language tutoring to LEP students.
- Make teachers, administrators and school board members subject to suits and personally liable for failure to implement the provisions of the initiative.

Unz and other backers of this initiative regard the existing system of bilingual education in the state as a complete failure. They argue that because bilingual education relies so heavily on use of the students' native language and only slowly introduces English, the approach delays or prevents, rather than promotes, the acquisition of English. Further, they point out that although California's bilingual education law expired a decade ago, the legislature has been unable to enact legislation to reform a broken program. This initiative, they argue, will break the legislative impasse and dramatically change bilingual education policy for the better.

B. Bilingual Education in California

Demographics. There are approximately 1.3 million Limited English Proficient (LEP) students in California, approximately one quarter of California's K-12 students. This number has nearly doubled in less than a decade, and represents some 43% of the national total. Seventy nine percent of California's LEP students are native Spanish speakers. Hispanics have a 50% dropout rate, and by most indicators their academic performance lags behind most other population groups in the state.

Educational Services. LEP students receive a wide variety of services intended to help them learn English and academic subjects. In 1997, only about 30% received what is conventionally considered bilingual education -- programs which make significant use of the student's primary language to teach academics while phasing in ever greater amounts of English language instruction. More than half participate in specially designed instructional programs

that help students learn English through a combination of approaches such as direct instruction in grammar, vocabulary and communications, while teaching other subjects in a way designed to be accessible to LEP students. (The Unz Initiative would eliminate these programs as well as conventional bilingual programs.) Approximately 16% of all LEP students are not receiving any language instruction services at all.

California Legal Framework. The legal framework for providing services to LEP students in California is murky. California's Bilingual Education Act sunsetted in 1987, but the State Board of Education regulations implementing the act have remained in effect. Under this framework, school districts are required to help students become fluent in English and competent in other academic subjects, and are given a significant amount of flexibility in determining how to achieve these goals. Neither bilingual education nor any other specific approach to teaching LEP students is required.

There have been a number of unsuccessful attempts in the past decade to enact new legislation, but bilingual education reformers and advocates have been unable to agree on an approach. There has been a fresh attempt over the past month to craft compromise legislation, partly to take the steam out of Unz and to give Unz opponents something to support. This effort, however, is likely to end in failure.

Early in March the State Board of Education took the first step toward eliminating the state bilingual education regulations. This process should be completed shortly before the vote on Unz. The effect of this action will be to eliminate any state requirement for the provision of specific services to LEP students, and to give local school districts even greater flexibility in this area.

II. Political Context

The Unz initiative is currently the most serious threat to bilingual education, but it is not likely to be the last. Earlier this year Speaker Gingrich proposed eliminating bilingual education, and some conservative education experts (e.g., Diane Ravitch) have also called for its elimination. Last week, Rep. DeLay introduced a bill that would eliminate the federal bilingual education program, and House Republicans have included a \$75 million rescission of FY98 funding for bilingual education in the emergency supplemental bill. Especially if Unz passes, we are likely to see energized opposition to the federal program, and increased opposition in other states and localities.

The Unz initiative presents a political dilemma in California. If we oppose it, we risk alienating a majority of California Anglo voters. If we fail to oppose it, we risk alienating a vocal and increasingly influential group of Latino leaders, and possibly Latino voters.

Current polls show that a large majority of California Anglo voters support Unz. For Anglos, bilingual education may become a hot button issue similar to immigrant services and

affirmative action. In contrast, Latino voters are split on the issue. While many continue to support Unz largely out of frustration at the public schools' failure to help their children, polls show that Latino support is eroding as they become more aware of the particulars of the initiative. And the polls tended to underestimate Latino opposition to Prop. 187 and Prop. 209.

Latino activists and elected officials oppose Unz. To some of the Latino leaders, Unz is a litmus issue, like Propositions 187 and 209. Latino leaders are looking to the White House to become actively involved in the opposition to Unz, and are fearful that we will choose to sit on the sidelines.

More organizations and elected officials are taking positions on Unz. The California education community -- including the California Teachers Association and the California School Boards Association -- is strongly opposed to Unz. Key Democratic officeholders (including Sen. Boxer, Rep. Becerra and most Democrats in the California delegation, State Superintendent Delaine Eastin, and Speaker Villaraigosa) have also announced their opposition to the Unz initiative. All three Democratic gubernatorial candidates have come out against Unz. Sen. Feinstein has not taken a public stance yet, though she appears likely to support Unz. A list of organizations, elected officials, and other leaders that have taken positions on Unz is attached.

The Republican state party has supported Unz, though many Republican officials, including Gov. Wilson, have not yet taken a position. Dan Lungren has not taken a position yet, but has recently said that the recent action by the State Board of Education has eliminated the need for Unz. There is always a chance that White House opposition to Unz could polarize the situation and push Gov. Wilson and other Republicans to support Unz, but at least some Republican leaders are afraid to support another initiative viewed as anti-Hispanic.

The political dilemma can be resolved with a "Mend it / Don't End it" response. We believe the best approach to this issue is to strike a middle ground by admitting that bilingual education needs mending, but asserting that Unz is not the way to do it. More specifically, we can:

- Start by reiterating the overriding importance of helping every child become proficient in English;
- Oppose Unz on the merits because it is too extreme;
- Remind voters what we are for, including both our overall approach to strengthening public education and our Hispanic initiative;
- Articulate the fundamental principles that you believe should be used by local communities to strengthen their efforts to educate LEP students. These principles include helping children become proficient in English as quickly as possible, holding schools accountable for results, providing local flexibility, and emphasizing quality in any approach used.

III. Specific Recommendations

I. Oppose Unz Initiative on educational and legal grounds.

Educational. While evaluations of bilingual education in California and elsewhere have identified some promising efforts, few believe that the services now provided to LEP students are effective on a large scale basis. In many cases, shortages of qualified teachers and poor implementation of limited the effectiveness of existing programs. However, these bilingual education programs should be "mended, not ended." A one-size-fits-all State prescription for how to educate limited English proficient children and demanding that it be done within one year will, in our view, be counter-productive to achieving the goal of helping LEP students learn English and participate effectively in classrooms where English is the language of instruction. Experience and research, including a 1997 report of the National Academy of Sciences, indicate that no one approach is the answer for all limited English proficient children.

Rather -- whether the approach is bilingual education, English as a second language, structured immersion, or some variation or hybrid of them -- the success of programs turns on the quality and commitment of the school and teacher. The Unz Initiative is likely to impair chances for success by limiting the discretion of schools and teachers to determine what works best for their LEP students. In fact, the Unz Initiative is an extreme form of overregulation that prevents teachers and parents from exercising common sense and professional judgment of how to serve individual children. Exceptions can be made only by bureaucrats far removed from the classroom, and personal liability of teachers increases the prospect of court intrusions in educational matters to new and alarming levels.

A National Academy of Sciences study released March 18 shows that LEP children with no English proficiency are best taught to read English by first being taught reading in their native language, if teachers and instructional materials in their native language are available. Thus, while a structured English immersion approach may be effective for some limited English proficient children, it is likely to be ineffective for many others. In addition, our experience in administering the Bilingual Education Act and in reviewing programs for possible violations of Title VI of the Civil Rights Act indicates that one year of special instruction -- whether in Bilingual Education or an English immersion approach -- rarely is sufficient to enable a child who starts the program with almost no proficiency in English to become proficient enough to participate in regular classes.

Legal. Based on the educational problems described above, the Unz Initiative implicates federal civil rights laws. In the seminal 1974 case of Lau v. Nichols, the Supreme Court interpreted Title VI of the Civil Rights Act to require school districts to take steps to ensure that national origin minority students with limited English

proficiency can effectively participate in the regular educational program. Similarly, the Equal Educational Opportunity Act, enacted in 1974, requires public educational agencies to take appropriate action to overcome language barriers that impede student participation in the instructional programs. Neither Lau nor the subsequent cases addressing Title VI or the Equal Educational Opportunity Act mandate a particular approach to meeting these needs, but they require that sound educational approaches be implemented and evaluated.

Assuming that some educational experts will vouch for the soundness of the sheltered English immersion approach mandated by the Unz Initiative, we do not believe that a legal challenge asserting that the Unz Initiative on its face violates Title VI or the Equal Educational Opportunity Act would succeed. However, the Unz Initiative is certain to cause widespread violations of Title VI and the Equal Educational Opportunity Act if it is interpreted and applied in accordance with its intent to eliminate the choices of local educators when providing the appropriate instruction for limited English proficient students. Realistically, the only way that widespread violations will be avoided is if the State or local educational agencies broadly use loopholes in the Proposition to extend services well beyond a year and to provide bilingual education for students who need it.

It is evident that the Unz Initiative inevitably will create legal confrontations between California agencies and this Department, as well as the Department of Justice, over violations of civil rights laws and will divert resources and attention that should be focused on educating children to investigations and litigation.

Recommendation: For these reasons we recommend that you or another senior Administration official (the Vice President or Secretary Riley) announce the Administration's opposition to the Unz initiative within the next 2 weeks. Taking a position soon will allow us to frame the debate and set a constructive tone, rather than get sucked into an already inflammatory debate. We could turn this initiative into an opportunity to fit bilingual education into our overall framework for ensuring effective education in the 21st century.

_____ Agree _____ Disagree _____ Discuss Further

2. Couple opposition to Unz with a clear statement of how local school districts can strengthen education for LEP students.

In accord with our recommendation for a "mend, don't end" approach to bilingual education, we believe that opposition to Unz should be coupled with a strong statement recognizing the importance of helping LEP students learn English and succeed, and a set of principles that should guide local efforts to strengthen rather than end these programs. The intent here is to underscore that while there is a place for bilingual education (and other ways to help LEP students become proficient in English), bilingual education programs in particular and

the schools that serve LEP students must do a better job.

Specifically, we recommend the following principles:

LEP students must become proficient in English as quickly as possible. This is a universal goal--shared especially by parents and students who have come to this country for greater opportunity and who are eager to fully participate in the life of their community and country. Yet one of the most frequent criticisms of bilingual education programs is that they are open-ended--that they prolong the time it takes for students to learn English. School districts should establish clear goals that will tell parents how quickly they can expect their children to master English and to participate in regular classrooms where English is the language of instruction. Participation in bilingual education should not be open-ended or never-ending.

Federally funded bilingual education programs are required to ensure that students master English within 3-5 years. You could challenge every district to meet that standard, and urge them to do better. You could also direct Secretary Riley to develop guidelines for local school districts reflecting the best knowledge of how quickly LEP students can be expected to become proficient in English, and identifying approaches, strategies and programs that can help shorten the time it takes.

Local school districts must be accountable for performance and results. School districts must be held accountable for helping students become proficient in English as rapidly as possible. They should report publicly how well they are meeting the timelines they have established. They should test students periodically for English proficiency (as well as achievement in other subjects) to determine if they are making adequate progress, and to provide additional services or take other corrective actions as appropriate when students are not making adequate progress. School districts should evaluate their bilingual education programs regularly as well. If a program is not helping its students progress rapidly enough, the school district should strengthen it, or use another approach research shows will work.

There must be local flexibility. As discussed above, no one-size-fits-all prescription for how to educate limited English proficient children will work. Rather than state mandates that either prescribe or proscribe particular approaches, local schools must have the flexibility to design programs that meet its particular needs, mix of students and resources. So long as the goal is clear--that students learn English as rapidly as possible--and there is accountability for results, parents and educators should be free to work together to fashion programs that work for them.

The focus must be on strengthening quality, regardless of approach. The research on instruction for LEP students does not identify any approach (e.g. bilingual education, English immersion, English as a Second Language, or dual-language immersion) as particularly effective. Rather, it suggests that effective programs have well-prepared teachers who know how to teach reading and who are knowledgeable about second-language acquisition; provide students with a challenging curriculum and high academic standards; and regularly assess student progress and make adjustments in the instructional program accordingly. In short, if LEP students are to learn

English and succeed in school, they must be in schools that work for all students--schools with high standards, good teachers, smaller classes, challenging curriculum and accountability for results. Because of this, any discussion of the steps required to strengthen local quality provides an opportunity to discuss your overall agenda for strengthening public schools

_____ Agree _____ Disagree _____ Discuss Further

Elected Officials, Associations, Activists are Taking positions on Unz:

Oppose Unz:

Senator Barbara Boxer
Lt. Gov. Grey Davis
Congressman Xavier Becerra
Congressman Cal Dooley
Congressman Bob Filner
Congressman Lucile Roybal-Allard
Congresswoman Zoe Lofgren
Congresswoman Ellen Tauscher
Congressman Vic Fazio
Congressman Marty Martinez
Delaine Eastin, Superintendent of Public Instruction
Assemblyman Cruz Bustamante (former Speaker)
Speaker Antonio Villaraigosa
Senator President John Burton
Supervisor Gloria Molina
CTA
MALDEF
Republican Assemblyman Bill Leonard
Republican Assemblyman Rod Pacheco (only R Latino Assemblyman)
CABE

Support Unz:

Ron Unz
Gloria Matta Tuchman
Jaime Escalante
Fernando Vega
Mayor Richard Riordan
Darrell Issa, Republican Senate Candidate opposing Barbara Boxer

McCain Tobacco Bills Leaves Room for Improvement

Enacting comprehensive tobacco legislation to dramatically reduce youth smoking is our most urgent public health priority, and Senator McCain's leadership increases our chances of enacting strong legislation this year. His bill provides a solid foundation for further action, but leaves room for improvement. In particular, comprehensive tobacco legislation should include:

Strong Penalties for Companies Missing Youth Smoking Targets

- It is critically important that individual companies have financial incentives to meet the youth smoking reduction targets. This means that a company that misses the youth smoking targets by 40 percent will pay a higher penalty than a company that misses by 10 percent.
- Industry-wide penalties, while important, are not a substitute for company specific penalties. Since industry penalties are imposed on all firms at once, companies can pass them on to consumers, raising the price of cigarettes more -- which will help to reduce youth smoking, but won't provide companies with a financial incentive to do more to reduce youth smoking.
- Reducing youth smoking is our bottom line and we must make it the industries' bottom line -- that is why we need company specific penalties.

National Environmental Tobacco Smoke Standards

- Progress toward other public health goals should include limiting exposure to environmental tobacco smoke in work sites and public places.
- We have serious concerns about this bill's provision which would allow individual States to "opt out" of the national smoke-free environment policy. This undermines and significantly weakens the national ETS standard by creating a patchwork system where states could decide to adopt weaker laws or decide against taking any action, leaving people with little or no protections from the hazards of environmental tobacco smoke.

No Anti-Trust Exemption

- There is no need to exempt the tobacco industry from anti-trust rules in order to reduce youth smoking. We strongly oppose any exemptions that would allow price fixing agreements.

Public Health Spending

It is critical that any tobacco legislation include core public health investments in his bill, including funding for:

- National, state, community and school-based prevention and education efforts;
- Counteradvertising;
- Youth smoking data collection;
- Research through the National Institutes of Health, the National Science Foundation, the Centers for Disease Control, and the Agency for Health Care Policy and Research.

Assistance for Children

In addition to funding public health efforts, tobacco revenues should be targetted at efforts to assist children, including the President's proposals to:

- Double the number of working families who receive child care, and significantly increasing the number of students receiving after school care;
- Reduce class size by hiring 100,000 additional teachers;
- Funding Medicaid outreach efforts to ensure all children eligible for Medicaid health care coverage receive it.

The President's Five Principles

President Clinton has said he will only support tobacco legislation that:

- Raises the price of cigarettes by up to \$1.10 a pack over 5 years and \$1.50 a pack over the next ten years, and impose tough penalties on companies that continue to sell to kids;
- Affirms the FDA's full authority to regulate tobacco products;
- Gets companies out of the business of marketing and selling tobacco to minors.
- Promotes public health research and public health goals; and
- Protects our tobacco farmers and their communities.

If we act now, we can reduce the number of youths smoking by 3 million between now and 2003 -- and most importantly help us avoid approximately 1 million premature deaths.

Democratic Unveil Patients' Bill of Rights. Today, the Democratic Leadership introduced their version of the patients' bill of rights in a ceremony attended by Labor Secretary Alexis Herman. Your letter to the Leadership, which indicated strong support for this bill without providing an all out endorsement, was extremely well received. This legislation includes every patient protection recommended by your Advisory Commission on Consumer Protection and Quality. It builds on these recommendations and includes an enforcement provision that allows remedies achieved through the state courts. Because this provision would preempt ERISA, it is the most controversial aspect of the bill and has already attracted strong opposition from the employer community. This legislation also includes a compromise whistleblower protection that is acceptable to the labor community and not serious objectionable to the hospital community. We helped draft this compromise provision, and Congressman Dingell and Senator Kennedy were extremely appreciative of our help in this regard.

On Track to Cover One Million Children at Sixth Month Anniversary of the Children's Health Insurance Program. Wednesday marks the sixth month anniversary of the Children's Health Insurance Program. Donna Shalala, in an event with Bruce Reed and Gene Sperling, will announce the approval of New York and Illinois children's health plans. With these two new approvals, eight states will have come into this new program and will provide health care coverage for one million children. At this event, we will also be releasing a NEC/DPC report on the rapid implementation of this new program. The report illustrates that an additional 15 states have already submitted proposals to HHS to expand health care coverage and that virtually every other state has a process underway to submit a proposal.

Crime Meeting Agenda April 1, 1998

Pending Events

- * .08 BAC event and underage drinking grants today
- * Assault weapons -- release report on April 6 (tentative)
- * School Crime Supplement (joint DOJ/Education report) -- April 10

Next week, AG and Secretary Riley convene roundtable with experts on juvenile violence

Legislative Update

- * Juvenile crime
- * Durbin legislation ("Brady II")

Other Potential Events

- * Houston COPS or crime event April 14 (tentative)
- * NYC school uniforms event April 27 (tentative)
- * COPS pilot waiver announcement
- * United Nations drug speech June 6 (tentative)
- * VP crime technology event

Miscellaneous/ Pending Items

- * Any other pending events/releases--DOJ Reports
- * Model youth handgun legislation
- * International Crime Bill and Strategy

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Thomas L. Freedman (CN=Thomas L. Freedman/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:31-MAR-1998 11:47:50.00

SUBJECT: OMB/Commerce draft Privacy entity memo

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TO: Christopher C. Jennings (CN=Christopher C. Jennings/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TO: Bruce N. Reed (CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

CC: Mary L. Smith (CN=Mary L. Smith/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

CC: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

CC: Sarah A. Bianchi (CN=Sarah A. Bianchi/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TEXT:

We've had preliminary meetings with the NEC/Commerce/Treasury/OMB/Commerce working group on privacy. The issues were broken down into: evaluating creation of a privacy entity in the federal government, creating a consumer bill of rights, specific initiatives on medical records and genetic privacy, internet commerce, medical records, genetic privacy, creating privacy principles, and E.U.-US trade issues.

The attached is a draft memo by OMB and Commerce on evaluating creation of a governmental privacy entity which is being pushed by Sally. The memo will go out to career agency types for comment from Commerce/OMB.

The memo lists 7 possible functions of the proposed entity and gives a recommendation. As you can see, the blander functions -- such as representing the US in trade matters and coordinating governmental policy -- are the ones the agencies have had an easier time agreeing to. I think it needs to be beefed up so that the entity is created with some explicit goal (even though it is not regulatory) that includes helping to ensure privacy, and we've asked Treasury to report back on consumer bill of right principles and their evaluation of the pending legislation in the area to see if they would support any of it.

===== ATTACHMENT 1 =====
ATT CREATION TIME/DATE: 0 00:00:00.00

TEXT:

Unable to convert ARMS_EXT:[ATTACH.D11]MAIL43287498G.026 to ASCII,
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6B8C0D3AA85CCA150F046367389CB7F1BEAEC75F5D2EA317DF279FCF6E715609B515B8677385EB

Attachment to Memorandum to Privacy Contacts
REPRESENTATIONAL FUNCTION

What is the Representational function? In performing the representational function, a federal entity would explain and promote the U.S. government position on privacy policy domestically and internationally, advancing the Administration's privacy message, and providing coherence to Administration testimony and public positions.

For what areas is there now a representational function for privacy? The Commerce Department has taken the lead in representing the federal government position on privacy to private industry and the commercial sector generally. Until it was disbanded in 1997, the Office of the Assistant to the President for Consumer Affairs fulfilled this role with respect to consumers and consumer advocacy groups. The Office of Management and Budget is responsible for giving Federal agencies guidance on implementation of the Federal Privacy Act. Each of these offices has represented the government's position in testimony before Congress relevant to its constituent sector. A number of government offices represent the U.S. position on privacy before our international trading, including NTIA/DOC, ITA/DOC, OMB, the Office of Policy Development in the White House, and the State Department, although Commerce is most active in this role.

What were the group's thoughts on the Representation function? Participants agreed that presentation of Administration views on privacy-related policy matters to industry, to members of the public, to Congress, and to our international trading partners should be better coordinated and enhanced.

ADVISORY FUNCTION

What is the Advisory function? The advisory role is one in which experts are available to respond to privacy policy questions raised by government agencies (e.g., when considering legislation or drafting regulations) and by private sector entities (e.g., when developing personnel practices or new information products).

For what areas is there now an advisory role? The OMB provides guidance to federal agencies as to how to implement their responsibilities under the Privacy Act, resolves disputes among agencies about data sharing in its traditional neutral mediating role, and responds to inquiries from the Congress about federal privacy policy when appropriate. The Department of Commerce is working with the private sector (commercial and public interest representatives) to develop effective self-regulation for privacy protection pursuant to the President's directive of July 1, 1997. In conducting their particular regulatory roles, other federal agencies (e.g. HHS) may occasionally provide privacy policy advice to their constituents on request.

What were the group's thoughts on the Advisory function? There seemed to be agreement that an available body of expertise is useful, and tentative agreement that an advisory function might be better coordinated and enhanced.

COORDINATION FUNCTION

What is the Coordination function? A federal privacy entity could apprise appropriate government agencies of emerging privacy issues and ensure that these issues are addressed. It could also ensure that the views of appropriate agencies are represented on privacy policy issues, both domestically and internationally.

For what areas is there now a coordination role being carried out? OMB coordinates Administration positions on legislation, testimony, and reports submitted to Congress. Otherwise, coordination is ad hoc and sporadic.

What were the group's thoughts on the Coordination function?

There was agreement that coordination is an essential function that should be significantly enhanced.

REGULATORY/ENFORCEMENT FUNCTION

What is the regulatory function? The regulatory function involves the creation and administration of legally enforceable regimes of fair information practices including the use of some combination of inspection, registration, reporting, civil or criminal action, adjudication, and penalties.

For what sectors is there now a regulatory regime for privacy? No omnibus law regulates private sector use of information. However, certain kinds of information are subject to sector-specific law. The Federal government's management of records about individuals is governed by the Privacy Act; the Office of Management and Budget oversees its implementation. Consumer credit information is substantially regulated by the Fair Credit Reporting Act with enforcement authority resting in the Federal Trade Commission. The banking and financial sector is governed in part by the Right to Financial Privacy Act. Enforcement is by private right of action. Student records maintained by recipients of federal funding are governed by the Family Educational Rights and Privacy Act (Buckley Amendment, FERPA). While the Department of Education does not directly regulate student records, it does advise educational institutions about their obligations under FERPA. The Electronic Communications Privacy Act as well as other wiretap statutes, governs records transmitted electronically, by telephone, electronic, or wireless communication. The Federal Communication Commission has regulatory authority over private telephonic communications, and to the extent that these laws create criminal penalties, the law enforcement community is responsible for their implementation. There is no comprehensive national legal framework for the protection of medical records in the hands of private care providers, insurance companies, pharmacies, or manufacturers of devices or drugs, although such a framework was proposed by the Secretary of HHS on behalf of the Administration in 1997.

What were the group's thoughts on the Regulatory function? There was general agreement in the group that, consistent with the President's memorandum of July 1, 1997, a sectoral approach continues to be appropriate, and a comprehensive regulatory role across all sectors would be inappropriate.

OMBUDSMAN FUNCTION

What is the Ombudsman Role? This role involves providing case-by-case assistance to consumers or businesses in resolving in response to their particular problems or complaints. An ombudsman could act on behalf of aggrieved parties whose privacy has been unfairly or unreasonably compromised, press individual cases, and help individuals navigate the bureaucracy, either directly or by referral to an appropriate party. It could advise parties on how to resolve their disputes, or serve as decision-maker in dispute resolution.

For what sectors is there an Ombudsman now? In the federal government, some agencies have offices that assist citizens, and occasionally citizens seek help from OMB, but no single agency has authority or resources to pursue individual cases. Although individual companies may provide ombudsmen, in general the commercial sector does not provide an administrative avenue of redress for aggrieved parties.

What were the group's thoughts on the Ombudsman function? There was general agreement that such a function, while commendable, would swamp the resources of any office that took it on in a centralized way. There was some discussion as to whether it would be appropriate for each agency to create its own Office of Consumer Affairs to assist its constituencies.

CONSUMER ADVOCACY FUNCTION

What is the Consumer Advocacy function? This role involves monitoring privacy policies that affect consumers and promoting improvements through public appearances, media presence, writing to organizations about whom complaints are received, and involvement in litigation, either on behalf of groups that have been harmed or as *amicus curiae*.

Is there any Consumer Advocacy activity now? Within the Federal government, each agency handles its own privacy policy issues, sometimes with the assistance of OMB. Some agencies have even created a formal Privacy Advocate, such as at HHS and IRS. Since the Office of Consumer Affairs was disbanded in 1997, there is no federal office whose mission is to advocate the interests of consumers in the private sector. Private sector not-for-profit privacy advocacy organizations promote the cause of consumer privacy rights in the federal government, private industry, and overseas.

What were the group's thoughts on the Consumer Advocacy function? Participants disagreed as to whether a consumer-oriented privacy advocate would be useful. Some thought it would be viewed unfavorably by the business community and therefore counterproductive; others thought it would enhance credibility for good actors, in a manner similar to the Better Business Bureau.

EDUCATION FUNCTION

What is the Education function? The entity could provide privacy information (including

model practices and “rights and responsibilities”) to citizens, industry, and government. With respect to business, the entity could publicize new techniques and technologies to promote privacy as an enhanced customer service. This function would encourage consumers to learn about their rights in, and responsibilities for, their information. The entity could conduct or fund research to support this role.

What types of privacy education are going on now? In the federal sector, a variety of entities—OMB, Justice, USDA grad school, and each agency individually—works to ensure the training of agency officials who carry out the dictates of the Privacy Act or privacy-related statutes. The Congressional subcommittees with responsibility for privacy publish a consumers guide to the Privacy Act, and the FTC has begun more activity in the area of private sector consumer issues. Since the Office of Consumer Affairs was disbanded, however, little privacy-related education is carried out by the federal government. Some private sector public interest groups have initiated activities in this area.

What were the group’s thoughts on the Education function? There seemed to be no strong feelings about this role—neither objection nor a sense of urgency. This is an area that may merit further discussion given the importance of educated consumers in creating a “market” for privacy.

EVALUATION FUNCTION

What is the Evaluation function? This function would be a policy advocacy role (as contrasted with a consumer advocacy or ombudsman role) to give opinions, promote good ideas and practices, and scrutinize less good ones. The function would include providing technical and policy assistance at the early stages of new ideas, products, technologies, or services either upon request from a government or private sector organization, or independently. A government imprimatur on the basis of this evaluation could provide an indication of industry good actors.

Is there any Evaluation being carried out now? Where federal government programs are concerned, OMB has the authority to review new or revised systems of records (which are also published for public comment in the Federal Register), oversee new technology development and purchase, and promote best practices. Depending on the program’s size and visibility, OMB takes a more or less active role. Regulated entities may receive such input from the regulating entities, but no federal agency comprehensively evaluates private sector or overseas activities. Private sector industry and advocacy groups are significantly increasing their activities in this area.

What were the group’s thoughts on the Evaluation function? The participants agreed such a role would be controversial and disagreed whether it would be productive. Although issuing opinions about private sector products and services might promote good privacy practices in industry, such a function could also evolve into a quasi-regulatory standards-setting role or be viewed as “picking winners and losers.”

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Mary L. Smith (CN=Mary L. Smith/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:31-MAR-1998 19:44:25.00

SUBJECT: Equal Pay Proclamation

TO: Sally Katzen (CN=Sally Katzen/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Jess A. Gupta (CN=Jess A. Gupta/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Emil E. Parker (CN=Emil E. Parker/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Thomas L. Freedman (CN=Thomas L. Freedman/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Cecilia E. Rouse (CN=Cecilia E. Rouse/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Jonathan Orszag (CN=Jonathan Orszag/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TEXT:

As you recall, we are issuing a proclamation for Equal Pay Day. We need to review the proclamation by noon tomorrow. You should have received a paper copy of the latest draft of the proclamation from Lana Dickey. Attached is a revised copy with comments from DPC and NEC. The changes are basically as follows:

- 1. Ist paragraph, Changes first two sentences to read: Americans have always believed in the dignity of work. The American Dream means that if we work hard and play by the rules, we will be able to provide for our families and give our children a head start on a better life and a brighter future. But for many women . . .
- 2. 3rd paragraph, changes 1st sentence to read: Equal pay not only treats women fairly, it benefits us all, particularly this Nation's families.
- 3. Page 2, 1st paragraph, 3rd sentence: revises sentence on President's budget

ATT CREATION TIME/DATE: 0 00:00:00.00

TEXT:

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NATIONAL EQUAL PAY DAY, 1998

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BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

Americans always have believed in the dignity of work. The American Dream means that if we work hard and play by the rules, we will be able to provide for our families and give our children a head start on a better life and a brighter future. But for many women in America, that dream is not yet a reality.

This year, National Equal Pay Day falls on April 3, the day on which an average U.S. woman's 1998 earnings, when added to her 1997 wages, will finally equal the wages earned by an average U.S. man in 1997 alone. This means that, in general, women who work full-time earn just 74 cents for each dollar that men earn. For women of color, the wage gap is even wider -- African American women earn only 65 cents for each dollar earned by men, and Hispanic women earn only 55 cents. While women now hold almost half of all executive and managerial jobs, their wages are only 70 percent of the average pay of their male counterparts. And, according to the Department of Labor's Glass Ceiling Commission report, women in management jobs generally remain at entry-level and mid-level positions. In part, these differences in treatment exist because of differing levels of experience, education, and skill. But study after study shows that, even after legitimate differences are accounted for, a significant gap still persists between what men and women are paid, in comparable positions.

Equal pay not only treats women fairly, it benefits us all -- particularly this Nation's families. It empowers women to become more self-sufficient, reducing the dependence of many families on government assistance. It also raises women's purchasing power, increases their pensions, and improves their capacity to save, all

of which help to strengthen our economy.

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During the past three decades, our Nation has made a strong commitment to ensuring that every American is treated with dignity and equality in the workplace. Such legislation as the Equal Pay Act and Title VII of the Civil Rights Act have helped us to make progress in correcting discriminatory practices, but we still have a long way to go before the wage gap between men and women is eliminated. This year the President proposed in his Fiscal Year 1999 budget an additional \$43 million for the Equal Employment Opportunity Commission (EEOC) and the Department of Labor in order to strengthen enforcement of the laws that prohibit discrimination, including wage discrimination; to encourage mediation; and to help the EEOC reduce the average time it takes to resolve private-sector complaints). This additional funding will help all victims of discrimination, including wage discrimination, obtain relief in a more timely manner. Over the years, the EEOC and the Department of Labor have helped thousands of workers to fill better-paying positions in industries from which they have been excluded in the past. The Women's Bureau of the Department of Labor will continue to make resources available through the Fair Pay Clearinghouse to highlight model pay practices and educate employers about the practical benefits of assuring equal pay for their employees.

As we observe National Equal Pay Day, I urge businesses and State and local governments across our Nation to make a solemn commitment to recognize the value of women's contributions to the workplace and to reward them appropriately. By doing so, we will help to ensure that America fulfills its promise of opportunity, equality, and justice for all.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States of America, do hereby

proclaim April 3, 1998, as National Equal Pay Day. I call upon
Government officials, law enforcement agencies, business leaders,
educators, and the American people to

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recognize the full value of the skills and contributions of women in the labor force. I urge all employers to review their wage practices and to ensure that all their employees, including women, are paid fairly for their work.

IN WITNESS WHEREOF, I have hereunto set my hand this
day of _____, in the year of our Lord
nineteen hundred and ninety-eight, and of the Independence of the
United States of America the two hundred and twenty-second.

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Mary L. Smith (CN=Mary L. Smith/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:31-MAR-1998 17:12:57.00

SUBJECT: Updated Equal Pay Announcement

TO: Eli G. Attie (CN=Eli G. Attie/O=OVP @ OVP [UNKNOWN])
READ:UNKNOWN

TO: Cecilia E. Rouse (CN=Cecilia E. Rouse/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Emil E. Parker (CN=Emil E. Parker/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Susan M. Liss (CN=Susan M. Liss/O=OVP @ OVP [UNKNOWN])
READ:UNKNOWN

TO: Lawrence W. Hush (CN=Lawrence W. Hush/OU=OMB/O=EOP @ EOP [OMB])
READ:UNKNOWN

TO: Jonathan Orszag (CN=Jonathan Orszag/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Thomas L. Freedman (CN=Thomas L. Freedman/OU=OPD/O=EOP @ EOP [.OPD])
READ:UNKNOWN

TO: Sally Katzen (CN=Sally Katzen/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

CC: Jess A. Gupta (CN=Jess A. Gupta/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TEXT:

Here is the most recent copy of the equal pay announcements. Sally and
Elena have not reviewed this yet -- so this is just for informational
purposes. Thanks, Mary ===== ATTACHMENT 1 =====
ATT CREATION TIME/DATE: 0 00:00:00.00

TEXT:

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DRAFT 3-31-98

**THE VICE PRESIDENT ANNOUNCES SUPPORT FOR
LEGISLATION ON PAY EQUITY AND ADMINISTRATION
INITIATIVES TO COMBAT WAGE DISCRIMINATION**

April 2, 1998

Today the Vice President will announce the Administration's support for legislation, introduced by Senator Daschle and Congresswomen DeLauro, to improve enforcement of wage discrimination against women and to strengthen the remedy provisions in the Equal Pay Act to allow for compensatory and punitive damages. The Vice President also will announce several Administration initiatives aimed at reducing wage discrimination in the private sector and the federal government. The Vice President will announce the development of a Memorandum of Understanding between the Equal Employment Opportunity Commission (EEOC) and the Department of Labor to cross-train their staffs to be sensitive to potential violations of the laws they enforce, including the Equal Pay Act, and to help the Department of Labor to collect damages for wage discrimination. The Vice President also will announce a ten-step voluntary self-audit for both private businesses and the federal agencies in order to help them monitor their efforts on equal pay. Finally, the Vice President will announce the "Guide to Recruitment and Retention of Women" in the federal government, a manual designed to assist agency managers hire and retain talented women.

Legislation to Improve Enforcement of Wage Discrimination. The Vice President will call on Congress to pass the legislation introduced today which strengthens current laws prohibiting wage discrimination and provides training and outreach to help enforce these laws. The highlights of this legislation include:

- **Increased Penalties for the Equal Pay Act.** This legislation amends the Equal Pay Act to allow for compensatory and punitive damages. Currently, the EPA only provides for liquidated damages and back pay awards.
- **Non-retaliation Provision.** This legislation amends the Equal Pay Act (EPA) to prohibit employers from penalizing employees for sharing information about their salaries with coworkers.
- **Class Actions.** The bill amends the procedures for filing class actions under the EPA to conform with the general procedural rules for filing federal class actions in other areas of the law.
- **Training, Research, Education, and Outreach.** The bill also enhances programs already in place at the Department of Labor, requiring DOL to undertake research in the area of sex-based pay disparities; provide information on means of eradicating such disparities; assist State and local information and educational programs; recognize and promote the achievements of employers that have made strides to eliminate pay disparities; and convene a national summit to discuss and highlight the issue of sex-based pay disparities. The bill also provides for training on matters involving wage discrimination.

- **Pay Equity Award.** The bill establishes “The National Award for Pay Equity in the Workplace,” to be administered by the Department of Labor, to recognize and promote the achievements of employers that have made strides to eliminate pay disparities.

Administration Actions to Provide Data Analysis, Technical Assistance, and Enhanced Enforcement of Wage Discrimination. The Vice President also will announce a number of Administration initiatives that will supplement the legislation introduced today. These initiatives will provide increased analysis of data on the wage gap; assist federal agencies in enforcing wage discrimination law; provide technical assistance by highlighting “best practices” and offering a voluntary self-audit on the Internet; and strengthen the role of the Federal Government in hiring and retaining qualified women. These initiatives are:

- **Increased Data Analysis on Pay Equity.** The Vice President will announce an annual report on the pay gap by sex produced by the Department of Labor. This easy-to-access report will raise the awareness of wage disparities and will highlight the issue every year in order to spur Americans to achieve increased gender pay equity.
- **Memorandum Of Understanding (MOU) between EEOC and DOL to Cross Train and Collect Damages.** The Vice President will announce that the Department of Labor and the EEOC will work together to develop a MOU between the EEOC and the Department of Labor to train each other’s staff to be sensitive to potential violations of the statutes they enforce, including the Equal Pay Act, and to assist referrals of potential violations to the applicable EEOC or Labor Department office for appropriate action. In addition, this MOU will be developed to permit the Department of Labor’s Office of Federal Contractor Compliance Programs (OFCCP) to serve as the EEOC’s agent for purposes of collecting damages that are not otherwise collectible by OFCCP, including relief for intentional discrimination under Title VII of the Civil Rights Act of 1964.
- **Federal Contractor Best Practices.** The Department of Labor will begin to publicize successful programs of federal contractors by placing them on the Department of Labor’s web site.
- **10-Step Voluntary Self-Audit for Businesses and Employees.** The Department of Labor will place on the Internet a 10-step package that would give companies guidelines in order to determine whether they offer equal pay, hiring, and promotional opportunities. A similar checklist for employees will also be placed on the Internet.
- **10-Step Voluntary Self-Audit for Agencies.** The Vice President will announce that the federal agencies will take the 10-step self-audit developed by the Department of Labor and use the results from the self-audit to monitor their efforts on equal pay.
- **Guide to Recruitment and Retention of Women.** The Vice President will announce OPM’s new Guide on Recruitment and Retention of Women in the federal government

which contains information to make agency managers aware of career opportunities for women and to provide guidance on recruitment and career development for women.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Michael Cohen (CN=Michael Cohen/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:31-MAR-1998 14:45:49.00

SUBJECT: UNZ MEMO UPDATE--IMPORTANT

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TEXT:

Karen, Maria, Mickey, Janet and I have had a number of meetings over the past week and a half--with Boxer and Feinstein's staff, with Becerra and Hinajosa, and again last night with Becerra himself. Secretary Riley has also become more personally engaged in this issue within the last week. As a result of all these discussions, we've shifted our views about what we ought to recommend to the President. Briefly, here are the key differences in where we all are coming out, compared to the memo from a week ago:

1. In opposing Unz, the President should talk about principles for strengthening bilingual education (our "mend it don't end it" approach) but should not propose changes to the existing federal bilingual education program.

Proposing changes to the existing law is risky--our proposal is very unlikely to be taken up by this Congress, but its existence could feed or encourage more substantial attacks on bilingual ed programs. Boxer and Feinsteins staff in particular urged us not to propose statutory changes, because such a step would force Dems in the CA delegation to take a position on the President's proposal. They didn't think that would be helpful during the campaign season. Becerra and others in the Hispanic Caucus, as well as the advocacy groups, also urged us not to propose changes in the bilingual ed program--whatever we propose is likely to cause controversy within the Caucus, fuel the debate in CA over bilingual ed and detract from efforts to focus public attention on the weaknesses in the Unz initiative.

Attached is a rough draft of the principles and how they might be fleshed out. I am working on incorporating them into our memo, which I would like to circulate by COB today.

2. Our principles should make clear that participation in bilingual education programs should not be an open-ended party--but we should not specify a three year (or other specific) time frame for mastering English. The CHC and the advocacy groups are adamantly opposed to talking about a 3-year time limit. They argue that this is arbitrary and unsupported by any research, and that any discussion of a time limit will undermine their criticisms of Unz. Politically, it will undermine any political credit we would get with that community by opposing Unz, and start an unwinnable debate over how long is long enough.

3. Final issue: Karen, Riley, and Maria have each indicated that we should use this debate to make the case for having more of our students, including native English speakers, become bilingual in order to better participate in the global economy.

Riley argues that it would be seen as bold, gutsy and unexpected. While I agree with the basic argument, I'm afraid that we have not laid

Draft

Principles for Educating LEP students

There are 3.2 million limited English proficient students in our schools. Immigrant children are the fastest growing group in our schools. The language problems they face are compounded by the fact that about three-fourths of these students are in high poverty schools. The vast majority of limited English proficient children are Hispanic. Over the last 20 years, there has been little progress in closing the achievement gap between Hispanic and non-Hispanic white students in reading, math, and science. These problems are at the core of the 20% drop-out rate for Hispanic students enrolled in the Nation's elementary and secondary schools. Accordingly, many young Hispanic adults do not have the basic level of education necessary to participate in today's or our future economy, which demands high level skills. To ensure that our nation's workforce is competitive, limited English proficient students must succeed. As a Nation, our efforts to accomplish this must be based on a clear understanding of what works best, not on politics or ideology.

1. Our goal must be to help all students become proficient in English as quickly as possible, and meet academic standards in all subjects.

- This is a universal goal--shared especially by parents and students who have come to this country for greater opportunity and who are eager to fully participate in the life of their community and country
- Every school district should establish and make public clear timelines for LEP students to become proficient in English and to participate in regular classrooms where English is the language of instruction. Participation in bilingual education should not be open ended or never-ending.
- *(Possible: Federal law now requires that federally funded bilingual education programs ensure that students master English within 3-5 years. No district should set a longer timeline, and I believe we can do better in many cases). Issue a directive to Riley to develop guidelines for local school districts reflecting the best knowledge of how quickly it is reasonable and appropriate for LEP students to become proficient in English, and identifying approaches, strategies and programs that can help speed things up.*

2. Schools/Districts must be accountable for performance and results

- School districts must be held accountable for performance, and must help students become proficient in English as rapidly as possible.
- School districts must assess students periodically (annually) to measure progress. If a student is not making adequate progress, the school/district must provide additional help. If programs are not helping students progress rapidly enough, they should be strengthened or another approach tried.

3. There must be local flexibility in how to reach the goal

- No one-size-fits-all prescription for how to educate limited English proficient children will work.
- Experience and research, including a 1997 report of the National Academy of Sciences, indicate that no one approach is the answer for all limited English proficient children.

- Rather -- whether the approach is bilingual education, English as a second language, structured immersion, or some variation or hybrid of them -- the success of programs turns on the needs of the students, the resources available to the community, and the quality and commitment of the school and teacher.
 - A National Academy of Sciences study released March 18 shows that LEP children with no English proficiency are best taught to read English by first being taught reading in their native language, if teachers and instructional materials in their native language are available. Thus, while a structured English immersion approach may be effective for some limited English proficient children, it is likely to be ineffective for many others.
- 4. Regardless of approach, our focus must be on quality**
- Students must be taught by well-prepared teachers; no approach will work well if its implemented by teachers who lack the knowledge and skills to get the job done effectively. That is why the Administration has proposed \$xx million to invest in teacher training in its bilingual education program
 - All students must be expected to meet challenging academic standards. Academic instruction in bilingual education programs must be aimed at preparing LEP students to meet the same academic standards all other students are expected to meet--and they must be exposed to the same challenging curriculum. We must not accept watered down expectations for LEP students
 - To improve the academic performance of LEP students, and to help them master English as quickly as possible, we must strengthen the public schools they attend, as well as strengthening the language acquisition programs that serve them. That is why the President's agenda of higher standards, smaller classes, greater choice and accountability, etc....is so important.