

NLWJC - KAGAN

EMAILS RECEIVED

ARMS - BOX 075 - FOLDER -008

[04/23/1998 - 04/24/1998]

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001a. email attachment	Karen Skelton to Elena Kagan, et al. Subject: Bilingual (1 page)	04/24/1998	P6/b(6)
001b. email attachment	Phone No. (Partial) (1 page)	04/24/1998	P6/b(6)
002. email	Phone No. (Partial) (1 page)	04/24/1998	P6/b(6)

COLLECTION:

Clinton Presidential Records
 Automated Records Management System (Email)
 WHO ([Kagan])
 OA/Box Number: 500000

FOLDER TITLE:

[04/23/1998 - 04/24/1998]

2009-1006-F
ke736

RESTRICTION CODES

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

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

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

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Jason S. Goldberg (CN=Jason S. Goldberg/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:23-APR-1998 18:56:47.00

SUBJECT: DAY CHANGE: LCCR Prep

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

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

TO: June G. Turner (CN=June G. Turner/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

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

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

TO: Peter G. Jacoby (CN=Peter G. Jacoby/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

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

TO: Robert N. Weiner (CN=Robert N. Weiner/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

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

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

TO: Judith A. Winston (CN=Judith A. Winston/OU=PIR/O=EOP @ EOP [PIR])
READ:UNKNOWN

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

TO: Marjorie A. Black (CN=Marjorie A. Black/OU=PIR/O=EOP @ EOP [PIR])
READ:UNKNOWN

TO: Dawn L. Smalls (CN=Dawn L. Smalls/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

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

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

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

TO: Richard Socarides (CN=Richard Socarides/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TO: Edward W. Correia (CN=Edward W. Correia/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Dawn M. Chirwa (CN=Dawn M. Chirwa/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

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

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

TO: Charles F. Ruff (CN=Charles F. Ruff/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Sylvia M. Mathews (CN=Sylvia M. Mathews/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

Records Management (Records Management @ EOP [UNKNOWN])
READ:UNKNOWN

TEXT:

Sorry folks but we are going to do this prep Monday morning.

I'll get back to everyone with a time.

Thanks.

Jason

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:23-APR-1998 19:09:02.00

SUBJECT: New press paper

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

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

Christa says the press office is interested in having state-by-state numbers for the school modernization and class size proposals, as a way to capitalize on the regional press that the 50 state teachers of the year will get. We are only using numbers that have already been released, not providing anything new. Christa will get those to the press office--these are the tables that Jon's message was about.===== ATTACHMENT 1 =====

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

TEXT:

Unable to convert ARMS_EXT:[ATTACH.D52]MAIL46433821N.126 to ASCII,
The following is a HEX DUMP:

FF57504344090000010A02010000000205000000B131000000020000E3A40F0A02CDF761879970
C63983F8BE551BDE66B7CA4F268C1DD3D46855CF8208E44E0C9F5E4E85EDBC7447C2701E159415

HONORING TEACHERS OF THE YEAR AND STRENGTHENING PUBLIC SCHOOLS

April 24, 1998

To have the best schools, we must have the best teachers . . . We should reward and recognize our best teachers.

President Clinton, 1997 State of the Union Address

President Clinton honored the National and State Teachers of the Year in a ceremony held today in the Rose Garden at the White House. In his remarks to the teachers, the President thanked the teachers for their efforts to bring excellence to our schools, and criticized the Senate for squandering an opportunity to strengthen public education, and instead passing a bill that moves education backwards.

PRESIDENT CLINTON RECOGNIZES NATIONAL AND STATE TEACHERS OF THE YEAR. Each April, the President introduces the National Teacher of the Year to the American people in a ceremony held at the White House. The National Teacher of the Year program began in 1952 and continues as the oldest, most prestigious national honors program that focuses public attention on excellence in teaching. Cosponsored by the Council of Chief State School Officers and Scholastic Magazine, the National Teacher of the year is chosen from among the State Teachers of the Year by a national selection committee representing the major education organizations. The 1998 National Teacher of the Year, Philip Bigler, will spend the year traveling nationally and internationally as a spokesperson for the teaching profession. This year marks the 47th year that the President has introduced the National Teacher of the Year to the nation. Fifty-four State Teachers of the Year including DOD schools, Guam, Puerto Rico and the District of Columbia will be represented at today's ceremony.

CHALLENGING CONGRESS TO STRENGTHEN OUR PUBLIC SCHOOLS, AND PROMISING TO VETO SENATE EDUCATION MEASURE. President Clinton underscored his commitment to strengthening public schools by raising standards, increasing accountability, expanding choice, and investing in quality. He called on Congress to support his call for national standards and tests in the basic skills, smaller classes in grades 1-3, and a national effort to address the education infrastructure needs of the Nation. President Clinton reiterated that he would veto H.R. 2646 --the Coverdell bill-- as passed by the Senate yesterday, which is bad education policy and bad tax policy. Instead of targeting limited Federal resources to build stronger public schools, this proposal would divert needed resources from public schools. In addition, the bill provides the families of public school students an average of only \$7 in tax benefits in 2002, while disproportionately benefiting the highest-income tax payers.

The President also assailed Republican-majority led Senate votes on several key amendments to derail critical efforts to improve education. The Republicans:

- **Rejected support for modernizing 5,000 public schools.** The Senate defeated an amendment which would have allowed for nearly \$22 billion in bonds for modernizing public schools. This action leaves communities and states continuing to cope with

record student enrollments and deteriorating public school buildings.

- **Rejected efforts to reduce class size.** Voted down a sense of the Senate resolution supporting the President's plan to reduce class size to a national average of 18 students in grades 1-3 by hiring an additional 100,000 teachers.
- **Blocked National tests.** The Senate voted to deny parents information about how their child performs academically compared to widely accepted national standards in the basic skills, by halting the development of national tests in 4th grade reading and 8th grade mathematics -- tests that would enable parents, schools and students to identify areas of improvement in key subject areas.

REWARDING EXCELLENCE IN TEACHING AND SUPPORTING THE NATIONAL BOARD FOR PROFESSIONAL TEACHING STANDARDS. President Clinton expressed his strong opposition to a provision in a House bill that would eliminate funding for the National Board of Professional Teaching Standards, a nonprofit, nonpartisan, and nongovernmental body devoted to strengthening the teaching profession by developing rigorous standards of excellence in teaching. The Board has been at the forefront of bipartisan efforts at the national and state level to strengthen teaching in America, and has received bipartisan support in the Congress and in both the Bush and Clinton Administrations. The House bill would derail the President's plan to help 100,000 master teachers seek board certification by the year 2006--enough for one for every school in the nation.

By defining standards of excellence for experienced teachers, the Board helps to focus and upgrade teacher training, recognize and reward outstanding teachers, and keep our best teachers in the classroom where they are needed the most. Earlier this month, the House Education and Workforce Committee included a provision in the Higher Education Act that would eliminate funding for the research and development work of the Board. The President pledged to work with Congress to delete this provision before the Higher Education Act reaches his desk. The President's budget request of \$105 million over 5 years would help the Board complete assessments in 25 academic areas covering the fields of 90% of the nation's teachers and help defray the cost to teachers of taking part in the Board certification process.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Diana Fortuna (CN=Diana Fortuna/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:23-APR-1998 19:28:49.00

SUBJECT: Fred DuVal sent attached email on FICA/workfare to Bruce, Podesta, etc. fy

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

TEXT:

----- Forwarded by Diana Fortuna/OPD/EOP on 04/23/98
07:28 PM -----

William H. White Jr.
04/23/98 07:25:30 PM
Record Type: Record

To: Diana Fortuna/OPD/EOP
cc:
Subject: FYI

----- Forwarded by William H. White Jr./WHO/EOP on
04/23/98 07:27 PM -----

Fred Duval 04/23/98 06:32:22 PM

Record Type: Record

To: Mickey Ibarra/WHO/EOP, John Podesta/WHO/EOP, Bruce N. Reed/OPD/EOP
cc: William H. White Jr./WHO/EOP, Emory L. Mayfield/WHO/EOP, Suzanne Dale/WHO/EOP
Subject:

Governor Carper's office just indicated that the issue of FLSA - and the Treasury ruling on whether TANF payments will be treated as income for federal income and employment purposes - may be brought up at tomorrow's Governors meeting. You will recall that the Governor's have been pressing Treasury for this ruling since last summers NGA meeting in Las Vegas, and the ruling was poised for announcement before the Governors Winter meeting here in Washington but was postponed at Governor Carper's request because he wanted to avoid that controversy with the Governors here. Two months later, they are eager for it to come out and will ask about its status.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:23-APR-1998 20:03:23.00

SUBJECT: draft q&a on mad cow disease study

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

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

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

TEXT:

Here is a draft q&a from Tom and I on the cooperative agreement that USDA will announce tomorrow to study mad cow disease. This is from USDA's release which USDA is also sending directly to Barry Toiv. Mary =====
ATT CREATION TIME/DATE: 0 00:00:00.00

TEXT:

Unable to convert ARMS_EXT:[ATTACH.D29]MAIL41984821M.126 to ASCII,
The following is a HEX DUMP:

FF5750430A050000010A02010000000205000000521100000002000008AB2E1E31817AB6A2836C2
5F96DE3549CCE4E1CAEAC1C73A80432AAC548FE6BB606EA7EFF9A859539EAE32195C3DF00F3156

Q. What did USDA announce today with regard to bovine spongiform encephalopathy (BSE)?

A. The United States Department of Agriculture announced it has entered into a cooperative agreement with Harvard University's School of Public Health to begin an analysis and evaluation of the Department's current measures to prevent bovine spongiform encephalopathy (BSE). The two-year study will review current scientific information, assess the ways that BSE could potentially enter the United States, and identify any additional measures that could be taken to protect human and animal health.

Initiating this study is the latest step in a ten-year record of aggressive measures USDA has taken to prevent the entry of BSE into the United States. In coordination with other government agencies, the USDA BSE Working Group has been regularly reviewing the available science and implementing appropriate regulatory measures to prevent BSE. These measures include the 1989 ban of cattle and cattle products from countries where BSE has been reported, as well as an active inspection, testing, and education program.

No cases of BSE have been diagnosed in the United States.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:23-APR-1998 20:27:07.00

SUBJECT: Education Weekly

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

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

TEXT:

D.C. Vouchers. Mr. Armev announced earlier this week his plan to bring a D.C. voucher bill to the House floor next week. DPC, Legislative Affairs and the Education Department are working with Ms. Norton and Mr. Gephardt's staff to fashion a message and legislative strategy that builds on the ideas in your Education Opportunity Zones proposal (e.g., ending social promotions and fixing failing schools) and your budget proposals for D.C. already worked out with the D.C. schools (e.g., funding for summer school to support the District's new effort to end social promotions, for efforts to implement proven practices in low performing schools, and to provide reading specialists and teacher training in reading. Elena--we have a meeting at 4:30 Friday with Norton/Gephardt staff to finalize our plan; that's why this is a bit short on detail now.

Ending Social Promotions: NYC Chancellor Rudy Crew unveiled a proposal this week to end social promotions, by requiring students to pass tests in the 4th and 7th grade in order to be promoted. The proposal has received favorable reactions from a number of quarters, including the press--which has routinely noted your call to end social promotions. The proposal has also focused public attention on the need to strengthen teaching in all grades, to provide extra help early on to students who need it, and to provide students in danger of failing with summer school.

D.C. Charter Schools. 19 applicants for charter schools have received preliminary approval to begin operations in the District of Columbia, bringing the total of charter schools in DC to 23. Nine of these schools were approved by the DC Board of Education -- the elected board that was stripped of all powers except to charter schools. Ten schools were approved by the Independent Public Charter School Board -- a board appointed by Mayor Barry from a pool of names given by Secretary Riley. Among the new schools: a residential charter school for at-risk middle school students, an adult education center for immigrants, and a "hospitality" high school organized by the area hotel industry.

California charter schools. Negotiations are underway between Silicon Valley high-tech executives and the California Teachers' Association (CTA) over a possible legislative alternative to a charter school ballot initiative backed by the executives and opposed by the CTA. The Silicon Valley executives have been prepared to submit and campaign for a ballot initiative making it easier to start charter schools in California, and the CTA -- while expressing support for the concept of charter schools -- has indicated they would strongly oppose the initiative. The CTA has been concerned about specific provisions in the initiative that would eliminate the cap on how many charter schools can be created, as well as the impact of the ballot on teacher certification and due process in charter schools.

The negotiations are aimed at reaching a legislative compromise as a substitute for the ballot initiative. A bill needs to pass the California legislature by May 1 in order for the high-tech executives to drop the ballot initiative, and it appears possible (though not probable) that an agreement will be reached in time. We will provide you a status report before your trip to California next week.

National Board for Professional Teaching Standards: Earlier this week a bipartisan group of eight governors (Hunt, Locke, Chiles, Carper, Voinovich, Racicot, Branstad and Thompson) wrote to Bill Goodling and to the other chairs and ranking members of the appropriate authorizing and appropriations committee chairs, expressing their support for the National Board and for your funding request for the Board's work.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Sean P. Maloney (CN=Sean P. Maloney/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:23-APR-1998 21:27:27.00

SUBJECT: School Violence

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

READ:UNKNOWN

CC: Phillip Caplan (CN=Phillip Caplan/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TEXT:

Is there really nothing more we could have given the President to help him prepare, if he chooses to, for the hour-long school violence event. The briefing memo has a couple short, general paragraphs and a list of attendees. The report that was dropped of with it, conversely, was twenty-something single-spaced pages, but no one thought he should look at even the executive summary, let alone the rest of it. Is this the best we can do with a memo that arrives down here at 9pm?

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:23-APR-1998 23:21:00.00

SUBJECT: fraud q&a

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

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

TEXT:

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

TEXT:

Unable to convert ARMS_EXT:[ATTACH.D5]MAIL46390031R.126 to ASCII,
The following is a HEX DUMP:

FF57504334060000010A0201000000020500000015130000000200006DEE8767560724D23E083A
96AA16669A1358A9A00830C945EA0781217923CED49CEB54ECE5C3C22C304B86DA1A2F6C77BF24

Q: What is your response to the fact that Medicare is losing about \$20 billion last year to the fraud, waste and simple errors?

A: The Administration is proud of our record in fighting fraud and abuse and is committed to doing more. Any report that suggests any problem in this area does cause concern. It is important to note, however, that this report does not take into account many of the actions that the Department has taken on fraud and abuse.

The Administration has a strong record of fighting fraud and abuse. In fact, since 1993, we have assigned more federal prosecutors and FBI agents to fight health care fraud than ever before. In this time, convictions have gone up a full 240 percent and we have saved some \$20 billion in health care claims. The Kassebaum-Kennedy legislation the President signed into law created -- for the first time ever -- a stable funding source to fight fraud and abuse. This law authorized our extremely successful Operation Restore Trust initiative, a nationwide program to fight abuse and fraud that has identified \$23 for every one dollar invested in fines, recoveries, settlements, audit disallowances, and civil monetary penalties owed to the Federal Government.

We welcome the Inspector General's report, but point out that it does not reflect numerous initiatives to fight waste and fraud that are underway or that the President has asked the Congress to pass. There are more than sixteen legislative or administrative actions that HCFA has taken that this report does not reflect. These include implementing the first ever home health moratorium, doubling the number of medical review audits, expanding on-site visits, tightening enrollment standards, and requiring home health agencies to post surety bonds. We have also proposed a number of new legislative initiatives to fight waste and abuse, such as doubling audits to ensure that Medicare only reimburses for appropriate provider costs and eliminating wasteful excessive Medicare reimbursement for drugs.

Moreover, it is important to note that last year's report did not include a review of Durable Medical Equipment, an area that is fraught with waste and fraud. Despite the fact that this year's audit did include a review of this, the audit shows less fraud and waste than in last year's report.

Our anti-waste and fraud efforts are already paying new dividends. Earlier this year, the Medicare actuary reported that the home health baseline spending has been reduced from 25 percent to 5.4 percent. These successes are at least partially attributable to our efforts.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:24-APR-1998 01:10:32.00

SUBJECT: weekly

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

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

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

TEXT:

Unable to convert ARMS_EXT:[ATTACH.D15]MAIL45025031C.126 to ASCII,
The following is a HEX DUMP:

FF57504370040000010A020100000002050000007A0E000000020000F732F01D50EB6072223F0F
509EFC2BB15CCF40E600F95046D499E7104A703301920D001DAC5C3528CF00C2BF9F595B51C3C2

Republicans Likely to Join on the Democratic Patients' Bill of Rights Legislation.

Congressman Ganske met with Congressman Dingell this week to inform him that at least five Republicans, and hopefully more, are willing to sign onto the Dingell/Gephardt patients' bill of rights legislation. We view this as extremely positive news, as it will no doubt create additional pressure on the Republicans to produce patients' rights legislation. We are hearing that the Republican House task force is drafting legislation in this area, but that it will likely include "poison pill" provisions that are designed to slow this legislation down, including medical malpractice and expansions of multi-employer welfare associations (MEWAs) that could undermine the insurance market. However, we believe that if Republicans sign onto the Democratic bill it would provide additional leverage to eliminate some of the objectionable provisions the task force will likely propose. We are reaching out to Dr. Ganske and Mr. Dingell to determine if we could set up a high profile meeting with the Republican co-sponsors in the White House next week. Such an event would receive great attention and would enhance the likelihood of Congressional passage this year.

Update on Assisted Suicide Issue. A recent study for the New England Journal of Medicine on assisted suicide found that five percent or less of physicians have ever administered injections or prescribed medications to hasten the death of terminally ill patients. However, the study also found that 36 percent of physicians would write lethal prescriptions if they were legal. This broadly reported study might increase Republicans' interest in seeking Federal legislation to overturn Oregon's assisted suicide law. Their interest in this issue will further intensify when the Justice Department offers its legal interpretation concluding that the Drug Enforcement Agency has no statutory authority to regulate the practice of doctors prescribing medication that hasten death. We believe that we will have to release this interpretation within the next two weeks. We will be sending you a memo next week that outlines options that position us best to respond to the likely Republican initiative.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Mickey Ibarra (CN=Mickey Ibarra/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:24-APR-1998 08:53:18.00

SUBJECT: Notification calls prior to California Proposition 227 announcement

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

----- Forwarded by Mickey Ibarra/WHO/EOP on 04/24/98
08:52 AM -----

Silvia J. Esparza
04/23/98 10:53:16 PM
Record Type: Record

To: Karen E. Skelton/WHO/EOP
cc: Mickey Ibarra/WHO/EOP
Subject: Notification calls prior to California Proposition 227
announcement

April 22, 1998

MEMORANDUM FOR KAREN SKELTON

FROM: Mickey Ibarra

SUBJECT: Notification calls prior to California Proposition 227
announcement

Below is a list of state and local officials that I recommend be contacted prior to our Proposition 227 announcement. IGA will notify each of these officials at the agreed upon time. Please let me know if you would like to make any of these calls or if you have additional suggestions.

- The Honorable Cruz Bustamante, Former Assembly Speaker, CA (916/455-8514)
- The Honorable Antonio Villaraigosa, Assembly Speaker, CA (916/445-0703)
- The Honorable Gloria Molina, Los Angeles County Supervisor, CA (213/974-4111)
- The Honorable Joe Serna, Mayor of Sacramento, CA (916/264-5300)
- The Honorable Rod Pacheco, Republican Assemblyman, Sacramento, CA (916/445-0854)
- The Honorable Miguel Pulido, Mayor of Santa Ana, CA (714/647-6900)

The Honorable John Burton, President Pro Tempore of State Senate, CA
(415/477-1240)

The Honorable Gray Davis, Lt. Governor, CA (916/445-2841)

The Honorable John Medina, San Fransisco County Supervisor, CA
(415/554-5405)

The Honorable Blanca Alvarado, County Supervisor, Santa Clara County, CA
(408/299-2323)

The Honorable Pedro Rossello, Governor of Puerto Rico, CA (787/721-7000)

The Honorable Richard Riordan, Republican Mayor of Los Angeles, CA
(213/847-2489)***

Arturo Vargas, Executive Director, National Association of Latino Elected
Officials (213/720-1932)

Ingrid Duran, Washington Director, National Association of Latino Elected
Officials (202/546-2536)

***Favors Prop. 227

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Minyon Moore (CN=Minyon Moore/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:24-APR-1998 10:18:18.00

SUBJECT:

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

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

TO: Sylvia M. Mathews (CN=Sylvia M. Mathews/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

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

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

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

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

CC: Robert B. Johnson (CN=Robert B. Johnson/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TEXT:

As I mentioned an earlier e-mail, the CBC was scheduled to respond to our position on needle exchange today. As I write, they should be holding a press conference on the Hill.

As I understand it, there position will be to support Shalaha, blast McCaffrey and send a strongly worded letter to the President reflecting their views.

I went back and forth with them on a number of issues -----won a few lost one or two.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:24-APR-1998 10:32:34.00

SUBJECT: outreach calls--UNZ

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

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

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

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

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

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

Marjorie Tarmey (CN=Marjorie Tarmey/OU=WHO/O=EOP [WHO])
READ:UNKNOWN

TEXT:

This is a more formal list of people our office would call (than what I scribbled yesterday):

NCLR--Charles Kamasaki, Raul Yzaguirre

MALDEF--Antonia Hernandez

LULAC--Brent Wilkes, Belen Robles

Hispanic Education Coalition--(Maritza could schedule a quick conference call

Karen Narasaki/Daphne Kwok--Asian advocates

Jim Lyons--NABE

Deborah Escobedo--education advocate--calif

HACU--Antonio Flores/Jacobo Fraire

Ana Guzman--Commission on Hispanic Education/Sarita Brown

Monica Lozano--La Opinion

Latino Civil Rights Task Force--California

Folks--we still don't have closure on how and when the President will articulate his views? Elena--will you be staying on top of this??

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:24-APR-1998 11:44:51.00

SUBJECT: Bilingual Ed Q&A for McCurry

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

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

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

TEXT:

Barry Toiv jsut called and asked for some Q&A on bilingual ed for Mike's 1:00 briefing. He things there's a chance this will come up today.

Here is what I've done. I'll call/page you in the hope you'll have a chance to review before the deadline.

Bilingual Education

Q. What is the President's view of bilingual education?

A. The President believes is is critical for all students to learn English. At present, there are approximately 3.2 million students who are not yet proficient in English, and they need extra help. The President supports bilingual education programs that help immigrant students and other students whose native language is not English, become proficient in English.

The President strongly supports the federal Bilingual Education program, because it provides local communities with the funds they need to provide extra help to students with limited English proficiency, while leaving the decision about how best to provide that help to each local school system. In his FY99 budget, the President called for a 17 percent increase -- \$33 million -- in the Federal bilingual education program. These funds would help train 20,000 teachers over five years to more effectively teach English in the context of high academic standards.

The President has strongly opposed the provision in the House supplemental appropriations bill that would cut funding for the bilingual education program.

Q. What is the President's view of the DeLay bill that would eliminate the Federal Bilingual education program.

A. The President is opposed to this bill or any other bill that would wipe out the funds needed to give students they help they need to learn English. With nearly 20% of the children in our schools immigrants or the children of immigrants, we should be strengthening our efforts to help students learn English, not ending them.

Q. What is the President's view of the Riggs bill that would end funding for bilingual education programs that don't teach kids English

within 2 years?

A. This bill was recently introduced and is being reviewed by the Education Department and the Domestic Policy Council. The review has not been completed, and the matter has not been brought to the President's attention yet.

Q. The President is traveling to California next week, where the Unz Initiative to end bilingual education will be voted on in June. What is the President's position on the Unz Initiative?

A. The President has not announced his views on Unz, though I suspect that you will be hearing from the President or Secretary Riley on this issue in the near future. If so, you will know the Administration's position at that time, and not before.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Jason S. Goldberg (CN=Jason S. Goldberg/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:24-APR-1998 12:00:52.00

SUBJECT: LCCR Prep Meeting

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

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

TO: June G. Turner (CN=June G. Turner/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

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

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

TO: Peter G. Jacoby (CN=Peter G. Jacoby/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

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

TO: Robert N. Weiner (CN=Robert N. Weiner/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

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

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

TO: Judith A. Winston (CN=Judith A. Winston/OU=PIR/O=EOP @ EOP [PIR])
READ:UNKNOWN

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

TO: Marjorie A. Black (CN=Marjorie A. Black/OU=PIR/O=EOP @ EOP [PIR])
READ:UNKNOWN

TO: Dawn L. Smalls (CN=Dawn L. Smalls/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

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

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

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

TO: Richard Socarides (CN=Richard Socarides/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TO: Edward W. Correia (CN=Edward W. Correia/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Dawn M. Chirwa (CN=Dawn M. Chirwa/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

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

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

TO: Charles F. Ruff (CN=Charles F. Ruff/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Sylvia M. Mathews (CN=Sylvia M. Mathews/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

Records Management (Records Management @ EOP [UNKNOWN])
READ:UNKNOWN

TEXT:
9:00 a.m. Monday morning in Erskine's office.

Thanks.

Jason

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:24-APR-1998 12:05:45.00

SUBJECT:

TO: ELENA (Pager) #KAGAN (ELENA (Pager) #KAGAN [UNKNOWN])

READ:UNKNOWN

TEXT:

Melissa Skolfield wants to talk to you ASAP re: TIME piece 690-7850

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Karen E. Skelton (CN=Karen E. Skelton/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:24-APR-1998 12:09:43.00

SUBJECT: Bilingual

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

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

TO: Michael Cohen (CN=Michael Cohen/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

CC: Sylvia M. Mathews (CN=Sylvia M. Mathews/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TEXT:

Attached is an outreach list for calls prior to a bilingual announcement. I recommend we meet today to divide the calls. Please let me know if you have additions or deletions.

Please advise.

Thanks.,

----- Forwarded by Karen E. Skelton/WHO/EOP on 04/24/98
12:07 PM -----

Shawn Heller
04/24/98 12:01:25 PM
Record Type: Record

To: Karen E. Skelton/WHO/EOP
cc:
Subject: Bilingual

Hi Karen,

Here is the document you requested.

Thanx,

Shawn

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001a. email attachment	Karen Skelton to Elena Kagan, et al. Subject: Bilingual (1 page)	04/24/1998	P6/b(6)

COLLECTION:

Clinton Presidential Records
Automated Records Management System (Email)
WHO ([Kagan])
OA/Box Number: 500000

FOLDER TITLE:

[04/23/1998 - 04/24/1998]

2009-1006-F

ke736

RESTRICTION CODES

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

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

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

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Withdrawal/Redaction Marker Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001b. email attachment	Phone No. (Partial) (1 page)	04/24/1998	P6/b(6)

COLLECTION:

Clinton Presidential Records
Automated Records Management System (Email)
WHO ([Kagan])
OA/Box Number: 500000

FOLDER TITLE:

[04/23/1998 - 04/24/1998]

2009-1006-F

ke736

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

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

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

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Bilingual Education Outreach Calls

<i>Name</i>	<i>Organization</i>	<i>Phone</i>	<i>White House Contact</i>
Dee Dee Alper	State Senator		
The Honorable Blanca Alvarado	County Supervisor, Santa Clara County, CA	408-299-2323	
President Richard Atkonson	University of California		
Rep. Xavier Becerra	CA Democratic Congressional Delegation	202-225-6235	
Senator Barbara Boxer	Congress	202-224-3553	
Sarita Brown	Commission on Hispanic Education		
Rep. George E. Brown, Jr.	CA Democratic Congressional Delegation	202-225-6161	
The Honorable John Burton	President Pro Tempore of State Senate, CA	415-477-1240	
The Honorable Cruz Bustamante	Former Assembly Speaker, CA	P6/(b)(6)	[0016]
Rep. Walter H. Capps	CA Democratic Congressional Delegation	202-225-3601	
Al Checchi	Democratic Gubernatorial Candidate		
Rep. Gary Condit	CA Democratic Congressional Delegation	202-225-6131	
The Honorable Gray Davis	Lt. Governor, CA	916-445-2841	
Rep. Ronald V. Dellums	CA Democratic Congressional Delegation	202-225-2661	
Rep. Julian c. Dixon	CA Democratic Congressional Delegation	202-225-7084	
Rep. Calvin Dooley	CA Democratic Congressional Delegation	202-225-3341	
Ingrid Duran	Washington Director, National Association of Latino Elected Officials	202-546-2536	

Bilingual Education Outreach Calls

<i>Name</i>	<i>Organization</i>	<i>Phone</i>	<i>White House Contact</i>
Rep. Esteban Edward	CA Democratic Congressional Delegation	202-225-5256	
Deborah Escobedo	Education Advocate		
Rep. Anna Eshoo	CA Democratic Congressional Delegation	202-225-8104	
Delanine Eastin	Superintendent of Republic Construction		
Rep. Sam Farr	CA Democratic Congressional Delegation	202-225-2861	
Rep. Vic Fazio	CA Democratic Congressional Delegation	202-225-5716	
Senator Dianne Feinstein	Congress	202-224-3841	
Rep. Bob Filner	CA Democratic Congressional Delegation	202-225-8045	
Antonio Flores	HACU		
Jacobo Fraire	HACU		
Ana Guzman	Commission on Hispanic Education		
Rep. Jane Harman	CA Democratic Congressional Delegation	202-225-8220	
John Hein	Labor-CTA		
Antonia Hernandez	MALDEF		
Charles Kamasaki	NCLR		
Daphne Kwok	Asian Advocate		
Rep. Tom Lantos	CA Democratic Congressional Delegation	202-225-3531	
Rep. Zoe Lofgren	CA Democratic Congressional Delegation	202-225-3072	

Bilingual Education Outreach Calls

<i>Name</i>	<i>Organization</i>	<i>Phone</i>	<i>White House Contact</i>
Monica Lozano	LA Opinion		
Jim Lyons	NABE		
Rep. Matthew G. Martinez	CA Democratic Congressional Delegation	202-225-5464	
Rep. Robert T. Matsui	CA Democratic Congressional Delegation	202-225-7163	
The Honorable John Medina	San Francisco County Supervisor, CA	415-554-5405	
Rep. Juanita Millender-McDonald	CA Democratic Congressional Delegation	202-225-7924	
Rep. George Miller	CA Democratic Congressional Delegation	202-225-2095	
The Honorable Gloria Molina	Los Angeles County Supervisor, CA	213-974-4111	
Karen Narasaki	Asian Advocate		
The Honorable Rod Pacheco	Republican Assemblyman, Sacramento, CA	916-445-0854	
Rep. Nancy Pelosi	CA Democratic Congressional Delegation	202-225-4965	
The Honorable Miguel Pulido	Mayor of Santa Ana, CA	714-647-6900	
The Honorable Richard Riordan	Republican Mayor of Los Angeles, CA	213-847-2489	
Belen Robles	LULAC		
The Honorable Pedro Rossello	Governor of Puerto Rico, CA	787-721-7000	
Rep. Lucille Roybal-Allard	CA Democratic Congressional Delegation	202-225-1766	
Rep. Loretta L. Sanchez	CA Democratic Congressional Delegation	202-225-2965	
The Honorable Joe Serna	Mayor of Sacramento, CA	916-264-5300	
	CA Democratic Congressional		

Bilingual Education Outreach Calls

<i>Name</i>	<i>Organization</i>	<i>Phone</i>	<i>White House Contact</i>
Rep. Brad Sherman	Delegation	202-225-5911	
Rep. Fortney Stark	CA Democratic Congressional Delegation	202-225-5065	
Rep. Ellen Tauscher	CA Democratic Congressional Delegation	202-225-1880	
Arturo Vargas	Executive Director, National Association of Latino Elected Officials	213-720-1932	
The Honorable Antonio Villaraigosa	Assembly Speaker, CA	916-445-0703	
Rep. Maxine Waters	CA Democratic Congressional Delegation	202-225-2201	
Rep. Henry A. Waxman	CA Democratic Congressional Delegation	202-225-3976	
Brent Wilkes	LULAC		
Rep. Lynn Woolsey	CA Democratic Congressional Delegation	202-225-5161	
Raul Yzaguirre	NCLR		
	Hispanic Education Coalition		
	Latino Civil Rights Task Force--CA		

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:24-APR-1998 12:57:57.00

SUBJECT: Completed Weekly 4/24

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

TEXT:

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

TEXT:

Unable to convert ARMS_EXT:[ATTACH.D15]MAIL40631531X.126 to ASCII,
The following is a HEX DUMP:

FF5750431A0F0000010A02010000000205000000AFA500000002000005621A12351DF179F4306AF
8602793AAA424BEEB8851C214F21859D8ED8707B664806356BE8C3616E5A4D18B756D39F87528C
41AD264D0DA6A2C012228B922100A0ED999BFCE06421FE8C3CDBD7B242BB560DDD5A4A3F1F3E7A

April 24, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Elena Kagan

RE: DPC Weekly Report

Tobacco -- Surgeon General's Report on Minority Smoking: On Monday, Dr. Satcher will present you with a new Surgeon General's report on tobacco use and the impact of smoking on four minority groups (African Americans, Hispanics, Asian Americans, and American Indians/Alaska Natives). We are planning a South Lawn event (near the sculpture garden) with you, the Vice President, Secretary Shalala, and the Surgeon General. The report is the first comprehensive compilation of all of research on tobacco and minorities, and it is Satcher's first report as Surgeon General.

The report finds that between 1991 and 1997, the prevalence of smoking increased by 80 percent for African-American youths and by 34 percent for Hispanic youths after years of significant decline. Additionally, Native Americans have the highest rate of smoking among any US subgroup. The report finds that cigarette smoking is a major cause of disease and death among minority populations, and says that if tobacco use is not reduced, they will experience increased mortality and morbidity from tobacco. The report also suggests that the tobacco industry's targeted advertising and promotion of tobacco products within minority communities may undermine prevention and cessation efforts and lead to serious health consequences for these populations. Finally, the report calls for more research into effective and culturally appropriate prevention and cessation programs.

We will use this event to demonstrate why Congress needs to pass comprehensive tobacco legislation this year, and to get the minority health groups and Members of Congress invested in the legislation. At the same time, we will carefully craft our message so that it does not appear that we are making new demands for legislation.

Tobacco -- Legislative Update: As you know, we are engaging in discussions in hopes of producing an agreed-upon bill to go to the Senate floor. We had cordial meetings with Senators Daschle and McCain early in the week. On Thursday, we met with Senator Mack, who gave us some insight into the GOP leadership's thinking. He indicated that they need some cover on liability and _____. Also on Thursday, the Vice President, Erskine, Larry and I met with Senators Kennedy and Conrad to discuss changes to the McCain bill.

[Note to Elena -- I've tried, but I don't know enough to really write this, unfortunately]

Health Care -- Republicans Likely to Join on the Democratic Patients' Bill of Rights Legislation: Congressman Ganske met with Congressman Dingell this week to inform him that at least five Republicans, and hopefully more, are willing to sign onto the Dingell/Gephardt patients' bill of rights legislation. We view this as extremely positive news, as it will no doubt create additional pressure on the Republicans to produce patients' rights legislation. We are hearing that the Republican House task force is drafting legislation in this area, but that it will likely include "poison pill" provisions that are designed to slow this legislation down, including medical malpractice and expansions of multi-employer welfare associations (MEWAs) that could undermine the insurance market. However, we believe that if Republicans sign onto the Democratic bill it would provide additional leverage to eliminate some of the objectionable provisions the task force will likely propose. We are reaching out to Dr. Ganske and Mr. Dingell to determine if we could set up a high profile meeting with the Republican co-sponsors in the White House next week. Such an event would receive great attention and would enhance the likelihood of Congressional passage this year.

Health Care -- Update on Assisted Suicide Issue: A recent study for the New England Journal of Medicine on assisted suicide found that five percent or less of physicians have ever administered injections or prescribed medications to hasten the death of terminally ill patients. However, the study also found that 36 percent of physicians would write lethal prescriptions if they were legal. This broadly reported study might increase Republicans' interest in seeking Federal legislation to overturn Oregon's assisted suicide law. Their interest in this issue will further intensify when the Justice Department offers its legal interpretation concluding that the Drug Enforcement Agency has no statutory authority to regulate the practice of doctors prescribing medication that hasten death. We believe that we will have to release this interpretation within the next two weeks. We will be sending you a memo next week that outlines options that position us best to respond to the likely Republican initiative.

Food Safety -- Administration Announced New Rules To Improve Safety of Juice: On Sunday, we leaked the announcement of two proposed regulations by the Food and Drug Administration (FDA) to improve the safety of fruit and vegetable juices. The first regulation would require that all fruit and vegetable juice processors implement a Hazard Analysis and Critical Control Point (HACCP) system which will ensure that processors take extra steps to reduce the numbers of microorganisms that may be in their products. Retailers of packaged juice, as well as processors who sell less than 40,000 gallons of fresh juice per year, would be exempt from this requirement. The second proposed rule would require any packaged untreated juice to be labeled with a warning statement advising consumers of the potential risks of juice that has not been processed to eliminate dangerous bacteria. This requirement will apply to retail and other processors who package untreated juice for consumption off-site -- such as grocery stores that squeeze and bottle juice for home use. But retail sellers of juice for consumption on-site -- such as restaurants and children's lemonade stands -- will be exempt from this labeling requirement. Although 98 percent of juice sold in the United States is pasteurized,

the FDA estimates that there are up to 48,000 juice-related illnesses per year. In 1996, one sixteen-month-old girl died, and at least 66 others were sickened in the western United States and Canada from drinking untreated Odwalla brand apple juice. The Administration received three days of positive press on this announcement, including coverage on ABC News, CNN, every major newspaper, and a lead story on CBS News on Tuesday.

AIDS -- Needle Exchange: Following the needle exchange decision, AIDS advocates and the Presidential Advisory Council on HIV/AIDS expressed sharp criticism. The Office of National AIDS Policy and other members of the Administration continue to talk and meet with them. We are coordinating a response plan, including phone calls to key individuals and mitigating initiatives. We are assessing the possibility of augmenting HIV prevention and drug treatment funding, along with a radio address and/or statement marking the one year anniversary of your announcing the HIV vaccine initiative (May 18). Legislation imposing a permanent restriction on federal funding has been introduced in both the House and the Senate. We will work with Legislative Affairs and OMB to respond.

Welfare Reform -- Campaign to Prevent Teen Pregnancy: On April 30th, Secretary Shalala will host a reception in the Indian Treaty Room for the 1998 Campaign to Prevent Teen Pregnancy honorees. Honorees include: Governor Carper; NBC; the Teen Outreach Program; Students Against Destructive Decisions (SADD); The Children's Network, a conflict-resolution program in San Bernadino; Dayton-Hudson (Target Stores); and Jerry Tello and Geoffrey Canada for their work on male involvement. The Secretary will announce the honorees, read a Presidential Message for Teen Pregnancy Prevention Month, and release a "chart book" of teen birth data. This previously-released data, presented in a comprehensive new user-friendly format, shows that the number of teen births has declined from 1991 to 1996, but remains unacceptably high. This is one of a series of events to mark the Campaign's anniversary and to kick off Teen Pregnancy Prevention Month in May. The theme for this year is "adults matter". Following the reception, the Campaign will hold a press briefing on the Hill with their Congressional Task Force to release new research, focus group results, and tips for parents all highlighting the critical role that parents and adults play in reducing teen pregnancy.

Welfare -- L.A. County Child Support Enforcement System Penalty: Both the House and Senate are moving forward on bills to ensure that states face tough but reasonable penalties if they fail to establish child support enforcement computer systems on time. We will probably favor the tougher House bill. California faces penalties because it has traditionally relied on county-based systems and its state-wide system has failed to function. The Senate bill was specifically crafted to satisfy members from California, but L.A. County remains very unhappy with it and is pushing both Congress and the Administration to give L.A. County a special exemption from any penalty.

Officials from the D.A.'s office argue that L.A. County has an excellent county system that has long functioned well and was designed with federal involvement under a waiver several years ago. DPC, HHS, and OMB believe that offering any such exemption would set a bad

precedent for numerous other counties, and that the federal government must hold states accountable for their actions (states are not required to pass along penalties to counties). So far Hill leaders have not supported L.A. County's exemption, and California members like Matsui and Stark oppose such an exemption. **Elena -- Please note: This item is very probably not ready for him to review, because we haven't gotten our White House position together yet, but we thought we should let you see it and make the call.**

Crime -- Chicago Gang Ordinance: On Monday, the Supreme Court agreed to hear the City of Chicago's defense of an anti-loitering statute that it passed in 1992, and which the Illinois Supreme Court had ruled was impermissibly vague and violating due process (*Chicago v. Morales*). The ordinance authorizes police officers to order individuals loitering in public places to disperse if the officer "reasonably believes" any of the individuals belongs to a street gang. Individuals who refuse to abide by the officers order could be arrested and, if convicted, sentenced up to 6 months in prisons, a \$500 fine or 120 hours of community service. The Chicago ordinance was challenged by the Illinois chapter of the ACLU. Amicus briefs were filed by : (1) a coalition of community organizations in Chicago; (2) the major national associations representing local government officials including, the U.S. Conference of Mayors, National League of Cities, National Association of Counties, and International Association of Chiefs of Police; and (3) 13 of the states.

The Chicago ordinance is similar to other efforts that cities and law enforcement have used to crack down on gangs (e.g., Los Angeles' use of individual restraining orders to disrupt gang presence on city streets), and in which we have taken an interest. We are schedule to meet with Rahm and Chuck Ruff next week to discuss this issue further.

Crime -- Survey of Jail Inmates: On Sunday, the Justice Department's Bureau of Justice Statistics will release a study on jail inmates. By mid-year 1997, the nation's jails held 567,079 inmates -- up 40 percent from the 405,320 at mid-year 1990. The survey of men and women in local jails between October 1995 and March 1996 found:

- **Inmate Demographics:** 90 percent of the inmates were male and 10 percent were female. Whites made up 37 percent of all inmates; 41 percent were black; 19 percent were Hispanics and 4 percent were Asian, Pacific Islanders, American Indians or Alaska natives.
- **Drug use up:** More than half of all convicted jail inmates used drugs in the month before their offense, compared to 44 percent in 1989, the last year the survey was conducted. In addition, there were increases across the board with respect to reported drug use: 82 percent reported having used drugs at least once in their lives (78 percent in 1989); 78 percent reported having used marijuana (71 percent in 1989); 34 percent reported stimulant use (22 percent in 1989); 32 percent used hallucinogens (24 percent in 1989); and 24 percent used heroin (from 19 percent in 1989). In both 1996 and 1989, half of the inmates reported using cocaine.

- **Violent crime charges slightly up.** The percentage of inmates charged with violent crimes increased from 23 percent in 1989 to 26 percent in 1996, with drug offenses largely unchanged 22 percent.
- **Majority already under criminal justice supervision:** Approximately 54 percent of jail inmates were already under the jurisdiction of the criminal justice system at the time of their arrest -- usually probation.
- **Many on welfare or unemployed.** Nearly 39 percent of all inmates were raised in families that had received welfare or public housing assistance. At the time of their arrest, 20 percent were receiving some form of government assistance, such as welfare, SSI, or unemployment compensation. Over one-third (36 percent) were unemployed.
- **History of sexual or physical abuse common.** Almost 48 percent of female and 13 percent of male inmates reported having been sexually or physically abused at least once in their lives. About 27 percent of women and 3 percent of men reported having been raped.

Drugs -- Republican Task Force on Drugs: On Thursday, April 30th, Speaker Gingrich, Representatives Hastert and Portman, and other House Republicans will unveil a national drug strategy and call for the passage of about 12 different pieces of anti-drug legislation throughout the remainder of the Congressional calendar. We do not have any specific details on these bills, but the tentative list includes: (1) the Drug-Free Parents and Youth Empowerment Act; (2) Marijuana Abuse Initiatives (medical marijuana opposition); (3) Drug-Free Workplace Act; (4) Drug-Free America Commission Act; (5) Drug-Free Prisons and Jails Act; (6) Drug-Free Schools Performance Act; (7) Drug-Free Professional and Olympic Athlete Responsibility Resolution; (8) Drug-Free Teenage Drives Act; (9) Drug-Free Congressional Leadership Resolution; (10) Drug Czar Reauthorization Act; (11) Drug-Free Borders and Hemisphere Act; and (12) Drug-Free Communities and National Clearinghouse Act.

Drunk Driving -- .08 BAC: Conferees for the omnibus highway bill convened their first meeting on Thursday. House Transportation Committee Chairman Shuster indicated that he would be willing to make concessions on a variety of provisions, including Senator Lautenberg's amendment to create a national impaired driving standard of .08 BAC, in return for a commitment to use future gas tax revenues exclusively for highway construction. While this particular counteroffer would be unacceptable, WH Leg Affairs is hopeful that the Lautenberg drunk driving provision may be resolved favorably during negotiations. Conferees are attempting to complete work on the bill prior to the Memorial Day recess.

Immigration -- H1B visas: H1B visas are temporary work visas that allow "highly skilled" immigrants (with a BA or equivalent) to work in this country for up to six years. Under current law, the number of H1B visas is capped at 65,000 per year. Last year, this cap was reached for the first time. The information technology industry strongly supports raising the annual cap to address what they maintain is a shortage of U.S. workers with IT skills. Others, including the Department of Labor, challenge the industry's conclusions about a shortage and are concerned that the current H1B program does nothing to target its use to employers who are experiencing skills shortages.

Though the Administration has never before squarely addressed the issue of the cap, we have consistently emphasized training and re-training U.S. workers to enable them to move into jobs within the high-tech industry. Also, since 1993 we have sought reforms to the H1B program that would target their use to industries with genuine short-term skill shortages. In response to the prospect of reaching the annual cap sometime in May or June, the DPC and NEC engaged an inter-agency process (including Labor, Commerce, Treasury, State, Justice and INS) to determine the best course to address both the concerns of the high-tech industry and U.S. labor interests.

On April 2, 1998, the Administration (Secretaries Daley and Herman and Attorney General Reno) sent a letter to Congress that advocated increased training for U.S. workers and reform of the H1B program to target its use to employers who are experiencing skill shortages. We are working with members of the House and Senate to develop legislative language that is consistent with the Administration's objectives.

Education -- D.C. Vouchers: Mr. Armev announced earlier this week his plan to bring a D.C. voucher bill to the House floor next week. DPC, Legislative Affairs and the Education Department are working with Ms. Norton and Mr. Gephardt's staff to fashion a message and legislative strategy that builds on the ideas in your Education Opportunity Zones proposal (e.g., ending social promotions and fixing failing schools) and your budget proposals for D.C. already worked out with the D.C. schools (e.g., funding for summer school to support the District's new effort to end social promotions, for efforts to implement proven practices in low performing schools, and to provide reading specialists and teacher training in reading. *Elena--we have a meeting at 4:30 Friday with Norton/Gephardt staff to finalize our plan; that's why this is a bit short on detail now.*

Education -- Ending Social Promotions: NYC Chancellor Rudy Crew unveiled a proposal this week to end social promotions, by requiring students to pass tests in the 4th and 7th grade in order to be promoted. The proposal has received favorable reactions from a number of quarters, including the press--which has routinely noted your call to end social promotions. The proposal has also focused public attention on the need to strengthen teaching in all grades, to provide extra help early on to students who need it, and to provide students in danger of failing with summer school.

Education -- D.C. Charter Schools: 19 applicants for charter schools have received preliminary approval to begin operations in the District of Columbia, bringing the total of charter schools in DC to 23. Nine of these schools were approved by the DC Board of Education -- the elected board that was stripped of all powers except to charter schools. Ten schools were approved by the Independent Public Charter School Board -- a board appointed by Mayor Barry from a pool of names given by Secretary Riley. Among the new schools: a residential charter school for at-risk middle school students, an adult education center for immigrants, and a "hospitality" high school organized by the area hotel industry.

Education -- California charter schools: Negotiations are underway between Silicon Valley high-tech executives and the California Teachers' Association (CTA) over a possible legislative alternative to a charter school ballot initiative backed by the executives and opposed by the CTA. The Silicon Valley executives have been prepared to submit and campaign for a ballot initiative making it easier to start charter schools in California, and the CTA -- while expressing support for the concept of charter schools -- has indicated they would strongly oppose the initiative. The CTA has been concerned about specific provisions in the initiative that would eliminate the cap on how many charter schools can be created, as well as the impact of the ballot on teacher certification and due process in charter schools.

The negotiations are aimed at reaching a legislative compromise as a substitute for the ballot initiative. A bill needs to pass the California legislature by May 1 in order for the high-tech executives to drop the ballot initiative, and it appears possible (though not probable) that an agreement will be reached in time. We will provide you a status report before your trip to California next week.

Education -- National Board for Professional Teaching Standards: Earlier this week a bipartisan group of eight governors (Hunt, Locke, Chiles, Carper, Voinovich, Racicot, Branstad and Thompson) wrote to Bill Goodling and to the other chairs and ranking members of the appropriate authorizing and appropriations committee chairs, expressing their support for the National Board and for your funding request for the Board's work.

Service -- One-Year Anniversary of Philadelphia Service Summit: On Monday, April 27, General Colin Powell will present a report on what his group America's Promise has accomplished in the year since the service summit. He is expected to focus on corporations that have made new commitments or followed through on prior ones, and on communities that have continued the summit's work. His report will also include an update on federal agency commitments. He will present his report in Chicago to a special meeting of the U.S. Conference of Mayors.

Disability Issues -- First Disability Task Force Meeting: The task force you created last month by executive order on employment of people with disabilities got off to a strong start this week at its first meeting. Secretary Herman chaired an all-day meeting before an audience of 200 disability activists, including panels on health care, education and training, and civil rights. The task force hopes to issue a few recommendations in July, with a fuller report in November. While the health care panel was quite successful, we face particular challenges crafting policies in that area. Specifically, Congress is considering legislation to move forward on the disability community's two highest priorities, but we are still sorting out whether the Administration will be able to support these initiatives, in full or in part.

First, legislation is moving in both houses to encourage people with disabilities on the SSDI or SSI rolls to return to work. Sens. Jeffords and Kennedy have introduced a bill in the Senate, while Reps. Bunning and Kennelly's bill is being marked up in the House. These proposals would allow people to retain Medicare or Medicaid after they return to work, raising

concerns about costs we have not planned for in our budget. While we look at alternatives, we are also stressing the value of a little-known provision we won in the Balanced Budget Act that lets states offer a Medicaid buy-in for this population.

Second, the House held a hearing last month on how to allow more people with disabilities to live in their communities instead of nursing homes. Disability advocates, led by the group ADAPT, are pushing legislation known as CASA. They do not expect CASA to become law because of its cost (\$10-20 billion per year), but hope it will start a dialogue on the subject. Last September, you met with disability advocates, including ADAPT, and stated that the Administration would move forward on this issue. At the hearing, HHS witnesses testified that we have concerns about CASA's cost, but said we are pushing to achieve the goals of the legislation through more modest steps, such as an HHS workgroup that is developing demonstrations and research. Speaker Gingrich testified in favor of this concept, although without endorsing CASA itself. The disability community is disappointed that we have not been more supportive. **Elena -- I heard from Chris Jennings that you wanted an update on the disability task force meeting, and that I should include the update I previously wrote on this topic, since it was not included in past weeklies. Hope this makes sense.**

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:24-APR-1998 12:59:38.00

SUBJECT: Statement for Sunday

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

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

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

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

TEXT:
Michelle/EK:

Here's a draft of the statement Rahm requested this morning on the DOJ report being released Sunday evening. I know he wants to clear it today, but we need to make sure EK has a chance to look at it. Let me know if this works or not.

EK: Please review when you can. This statement is to accompany the report on jail inmates mentioned in our weekly submission...jc3

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

TEXT:
Unable to convert ARMS_EXT:[ATTACH.D55]MAIL48051531C.126 to ASCII,
The following is a HEX DUMP:

FF575043B0040000010A02010000000205000000A209000000020000063953FA8F19485121C0A48
667EA75F7E2BB6D608D16B67124E4438817F7F119C36971C18B6DE1D26EAD5968A5E9414557C4A

--- D R A F T ---

Embargoed until April 26, 1994 at 4:30 pm

Statement by the President

The report on jail inmates released by the Justice Department today confirms the urgent need for government at all levels to pursue a policy of coerced abstinence for drug offenders. It shows that more than half the the criminals in jails are using more drugs, committing more crimes, and returning to the streets with dangerous drug habits. The time is now to install a tough system of testing, treatment and punishment for drug offenders. Congress can take the lead by adopting my Administration's proposals to promote coerced abstinence throughout the criminal justice system.

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
002. email	Phone No. (Partial) (1 page)	04/24/1998	P6/b(6)

COLLECTION:

Clinton Presidential Records
Automated Records Management System (Email)
WHO ([Kagan])
OA/Box Number: 500000

FOLDER TITLE:

[04/23/1998 - 04/24/1998]

2009-1006-F
ke736

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

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

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

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:24-APR-1998 13:33:13.00

SUBJECT: Tobacco Event Paper

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

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

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

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

TEXT:

Jason wants to make sure Erskine gets tobacco paper over the weekend.
Please fax the briefing to Erskine at home when it is done.

home [P6/(b)(6)] [002]
home

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:24-APR-1998 15:06:43.00

SUBJECT:

TO: ELENA (Pager) #KAGAN (ELENA (Pager) #KAGAN [UNKNOWN])
READ:UNKNOWN

TEXT:

Pls stop by Phil Caplan's office on the way back to your office

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:24-APR-1998 15:13:11.00

SUBJECT: LABOR Testimony on HR2871 A bill to amend the Occupational Safety and Health

TO: lrm (lrm @ ostp.eop.gov @ inet [UNKNOWN])

READ:UNKNOWN

TO: US@2=TELEMAIL@3=GOV+GSA2@7=GSALEGISLATION@6=GSA2@mrx@lngtwy (1=US@2=TELEMAIL@3=

READ:UNKNOWN

TO: clrm (clrm @ doc.gov @ inet [UNKNOWN])

READ:UNKNOWN

TO: cla (cla @ sba.gov @ inet [UNKNOWN])

READ:UNKNOWN

TO: oshrc (oshrc @ oshrc.gov @ inet [UNKNOWN])

READ:UNKNOWN

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

READ:UNKNOWN

TO: Karen Tramontano (CN=Karen Tramontano/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO: Sarah S. Lee (CN=Sarah S. Lee/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN

TO: John Kamensky (CN=John Kamensky/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN

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

READ:UNKNOWN

TO: Richard J. Turman (CN=Richard J. Turman/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN

TO: Kevin P. Cichetti (CN=Kevin P. Cichetti/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN

TO: Daniel J. Chenok (CN=Daniel J. Chenok/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN

TO: Derek A. Chapin (CN=Derek A. Chapin/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN

TO: Larry R. Matlack (CN=Larry R. Matlack/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN

TO: CARNEVALE_J@A1@CD@LNGTWY (CARNEVALE_J@A1@CD@LNGTWY [UNKNOWN]) (DON)

READ:UNKNOWN

TO: ola (ola @ opm.gov @ inet [UNKNOWN])

READ:UNKNOWN

TO: jwedekind (jwedekind @ nlr.gov @ inet [UNKNOWN])

READ:UNKNOWN

TO: US@2=TELEMAIL@5=JMD@7=Deborah@6=Clifton@mrx@lmgty (1=US@2=TELEMAIL@5=JMD@7=Deb
READ:UNKNOWN

TO: lrm (lrm @ os.dhhs.gov @ inet [UNKNOWN])
READ:UNKNOWN

TO: Sanders D. Korenman (CN=Sanders D. Korenman/OU=CEA/O=EOP@EOP [CEA])
READ:UNKNOWN

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

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

TO: Kate P. Donovan (CN=Kate P. Donovan/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

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

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

TO: Barry T. Clendenin (CN=Barry T. Clendenin/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

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

TO: John F. Morrall III (CN=John F. Morrall III/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

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

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

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

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

TEXT:

----- Forwarded by Melissa N. Benton/OMB/EOP on 04/24/98

03:06 PM -----

Total Pages: _____

LRM ID: MNB151
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Friday, April 24, 1998

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: Janet R. Forsgren (for) Assistant Director for Legislative Reference

OMB CONTACT: Melissa N. Benton
PHONE: (202)395-7887 FAX: (202)395-6148

SUBJECT: LABOR Testimony on HR2871 A bill to amend the Occupational Safety and Health Act of 1970 to provide for the establishment of advisory panels for the Secretary of Labor.

DEADLINE: 2 p.m. Monday, April 27, 1998

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: To follow is draft Labor testimony to be delivered the morning of Wednesday, April 29th before the Workforce Protections Subcommittee of House Education and the Workforce. The testimony addresses H.R. 2871, as well as five other OSHA reform bills pending before the Committee (H.R. 2869, H.R. 2661, H.R. 2873, H.R. 2879, and H.R. 3519).

The deadline is firm.

DISTRIBUTION LIST

AGENCIES:

94-Occupational Safety & Health Rev Comm - William J. Gainer - (202) 606-5380
107-Small Business Administration - Mary Kristine Swedin - (202) 205-6700
61-JUSTICE - Andrew Fois - (202) 514-2141
52-HHS - Sondra S. Wallace - (202) 690-7760
25-COMMERCE - Michael A. Levitt - (202) 482-3151
80-National Labor Relations Board - Jeff Wedekind - (202) 273-2910
117 and 340-TRANSPORTATION - Tom Herlihy - (202) 366-4687
51-General Services Administration - William R. Ratchford - (202) 501-0563
92-Office of Personnel Management - Harry Wolf - (202) 606-1424
95-Office of Science and Technology Policy - Jeff Smith - (202) 456-6047
89-Office of National Drug Control Policy - John Carnevale - (202) 395-6736

EOP:

Barry White
Larry R. Matlack
Lori Schack
Derek A. Chapin
John F. Morrall III
Daniel J. Chenok
Patricia S. Haney
Kevin P. Cichetti
Barry T. Clendenin
Richard J. Turman
Emil E. Parker
David J. Haun
John E. Thompson
John Kamensky
OMB LA

Kate P. Donovan
Sarah S. Lee
Elena Kagan
Karen Tramontano
William P. Marshall
Robert G. Damus
Sanders D. Korenman
Janet R. Forsgren
James C. Murr

LRM ID: MNB151 SUBJECT: LABOR Testimony on HR2871 A bill to amend the Occupational Safety and Health Act of 1970 to provide for the establishment of advisory panels for the Secretary of Labor.

RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

- (1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
- (2) sending us a memo or letter

Please include the LRM number shown above, and the subject shown below.

TO: Melissa N. Benton Phone: 395-7887 Fax: 395-6148
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-7362

FROM: _____ (Date)
 _____ (Name)
 _____ (Agency)
 _____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

- _____ Concur
- _____ No Objection
- _____ No Comment
- _____ See proposed edits on pages _____
- _____ Other: _____
- _____ FAX RETURN of _____ pages, attached to this response sheet

STATEMENT OF ASSISTANT SECRETARY CHARLES JEFFRESS
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
BEFORE THE
COMMITTEE ON EDUCATION AND THE WORKFORCE
SUBCOMMITTEE ON WORKFORCE PROTECTIONS

UNITED STATES HOUSE OF REPRESENTATIVES

APRIL 29, 1998

Mr. Chairman and Members of the Subcommittee:

Thank you for inviting me to testify about several proposals to amend the Occupational Safety and Health Act of 1970. I appreciate the opportunity to express the views of the Occupational Safety and Health Administration on H.R. 2869, 2661, 2871, 2873, 2879 and 3519. Mr. Chairman, although we have known each other for many years and I previously testified before you as head of North Carolina OSHA, this is my first appearance before your subcommittee since my confirmation as OSHA's Assistant Secretary. I have appreciated your overtures to me and your willingness to discuss OSHA's concerns about various OSHA reform proposals. I was glad to return those overtures and to join you in supporting the passage of two earlier bills, H.R. 2864 and 2877.

OSHA's core mission is to ensure a safe and healthy workplace for every working man and woman in the Nation. We are making progress; the Bureau of Labor Statistics announced last December that the rate of worker injuries and illnesses was at 7.4 per 100 workers, the lowest point in the history of the BLS occupational injury and illness survey. But more must be done to protect our Nation's workers. The Nation still suffers approximately 7,000 fatalities per year from safety hazards and 50-60,000 fatalities from occupational disease. At the same time, we seek methods that avoid placing unnecessary burdens on employers. Through reinvention, OSHA is developing new strategies that leverage the agency's limited resources and, in many cases, re-shape how OSHA interacts with employers and workers to promote safe and healthy work environments.

The New OSHA

OSHA is changing the way it does business. It has been three years since President Clinton announced the "New OSHA" initiative. Since then, we have developed a broad range of partnership programs that promote cooperative efforts between employers, workers and government. We are making enforcement programs smarter and fairer by spending more time at the most hazardous workplaces and less time at safer ones. We are treating responsible employers differently than neglectful ones. OSHA is simplifying standards by rewriting them in plain language, using performance-based approaches wherever possible. We're focusing less on individual, technical violations, and more on systematic approaches that allow workers and employers to find and fix hazards on an ongoing basis. And finally, we're measuring results, where possible, not by numbers of citations or penalties, but by real improvements in the lives of working people, such as reduced injury and illness rates.

I would like to express my appreciation to you, Mr. Chairman, and to the rest of the Committee for your cooperative spirit during my short tenure with OSHA. I was pleased that we could reach compromises on H.R. 2864 and 2877, OSHA reform bills that you recently passed in the House. However, while I appreciate your interest in working together on OSHA-related legislation, I regret that we are unlikely to find common

ground on the proposals on the subcommittee's agenda today. In OSHA's view, the bills to be discussed today are either unnecessary or would undermine OSHA's ability to protect workers.

H.R. 2869 -- Excluding Employer Audits from Discovery

H.R. 2869 would create an evidentiary privilege for employer self-audit documents. This extremely broad privilege would vastly complicate OSHA enforcement. It would force the agency to arrive at conclusions about workplace hazards and accidents without critical information from safety professionals and consultants with firsthand knowledge. In many cases, particularly in fatality and catastrophe investigations, self-audit records and reports are the most reliable, and often the only means of establishing the facts. Under such circumstances, OSHA needs the ability to gather all the information it can to explain why these accidents happened and to help prevent them from happening again.

The fact that the bill contains an exception for "safety and health assessments prescribed under section 6(b)(7)" of the OSH Act does little to ameliorate the bill's harmful effects on enforcement of OSHA requirements. That section of the Act specifically addresses only a limited class of requirements dealing with medical surveillance and exposure monitoring, so the bill would leave the vast majority of workplace health and safety assessments required by OSHA rules off-limits to scrutiny by OSHA, the Review Commission and the courts. Furthermore, many of OSHA's audit requirements are expressed in general, performance-oriented terms, making it difficult if not impossible to discern the line between mandatory and voluntary audit activity, especially in workplaces administered by conscientious employers. Finally, OSHA is required to demonstrate employer knowledge of a cited hazard, and is required, in proposing penalties, to ascertain the extent of an employer's good faith, inquiries which cannot fairly be resolved without access to the very records which document knowledge and good faith.

Contrary to the belief of many businesses, disclosure of self audit documents generally benefits good faith employers. OSHA provides penalty reductions where employers who receive citations have acted in good faith to try and correct deficiencies identified in an audit. For example, in a hypothetical small muffler shop the owner keeps his mufflers in a storage loft, but the loft does not have a railing. While conducting a self audit, the employer discovers that the loft poses a serious fall hazard to his employees. As a result, he moves the mufflers as far away from the ledge as possible and puts cones along the ledge. When an OSHA compliance officer comes to inspect this muffler shop, he immediately spots the fall hazard. Under ordinary circumstances, failure to install a guardrail would result in a \$5,000 fine. In this case, however, the employer would receive a credit worth \$3,875. This is because, through the self-audit documents, the employer can show that he acted in good faith and that he did do something to try to reduce the likelihood of injury to his employees. If this small business has no history of serious violations, the \$5,000 penalty would ultimately be reduced to \$75.

The proposed evidentiary privilege would protect only bad actors -- employers who have identified hazards, have failed to make good faith efforts to correct them, and wish to hide the evidence.

H.R. 2661 and H.R. 2781 -- Additional Scientific and Economic Peer Review

H.R. 2661 and 2871 would both require the Secretary to create an advisory panel to review scientific and economic data every time OSHA proposes a new standard. H.R. 2871 provides an exception where the standard has been promulgated through negotiated rulemaking. This additional committee is unnecessary, duplicative and would create serious delays in our rulemaking process -- a process that many already criticize

as taking too long.

Today, major rules typically take as many as eight years to publish. In the meantime, workers are exposed to hazards every day. During that time, OSHA has a variety of obligations: engage in notice and comment rulemaking; conduct economic and risk analyses; assess impact on small businesses and, depending upon that impact, convene a small business panel under the Small Business Regulatory Enforcement Fairness Act; survey industries; and do extensive review of research on selected topics. When OSHA issues a proposal, the agency also engages in a rigorous public hearing process. On standards where peer review of a part of the supporting material is necessary, a peer review has been done. For example, the risk assessment for tuberculosis was peer reviewed. Once the proposed standard is published in the Federal Register, any interested party can comment upon the standard itself as well as the underlying scientific and economic data.

OSHA's public hearings allow for the fullest, most thorough discourse on every subject relevant to a rule. They provide the greatest possible public access to the process -- scientists, economists, safety and health professionals, representatives of potentially affected industries and any other interested parties may and do participate. At public hearings, interested parties can submit testimony and evidence, cross examine OSHA experts and engage in debate with other participants. For example, OSHA just completed nine days of hearings last week on the agency's proposed standard on occupational exposure to Tuberculosis. Scientists and economists always present new data and test each other's theories through questioning and comment, a process from which OSHA has gained valuable information. The entire discussion is conducted in full public view, and enables participants to challenge one another's positions. Public hearings are often held around the country to make it easier for interested parties to attend. I invite members of this committee to come attend one of our hearings and observe this critical process in action.

A new committee, like the ones proposed in H.R. 2661 and 2871, would provide selected persons an additional closed-door opportunity to influence rulemaking after the public process is complete. This would give the committee members an unfair advantage. In addition, the closed nature of the committee proceedings would prevent the public from a full and fair discussion on their rationale and decisions. The bill's failure to require disclosure from this committee makes its already unnecessary contribution suspect as well.

The President, consistent with Executive Order 12838 and the National Performance Review, has asked Congress to show restraint in the creation of new statutory committees. In the interest of promulgating rules that will best protect workers, this is an appropriate time to exercise that restraint.

H.R. 2873 -- Risk Assessment and Cost-Benefit Analyses for Every Industry

H.R. 2873 would require OSHA to conduct an individual risk assessment and cost-benefit analysis for each industry affected by a proposed standard. OSHA cannot base its health standards on cost-benefit analyses and is required by law to reduce significant risk to the extent feasible. However, OSHA agrees that comprehensive and accurate risk assessments and economic analyses are valuable informational tools, and devotes considerable effort to making these documents clear and methodologically sound. For each rule, the Agency already conducts detailed risk assessments, develops extensive significance-of-risk analyses, demonstrates technological and economic feasibility, evaluates benefits, and assesses impacts (including small business impacts). Cost estimates and feasibility analyses are commonly conducted at the industry level, because data on the technological and financial status of each industry

that reflect real conditions in that industry are usually publicly available. However, it is rarely the case that industry-specific data on risk are available; even where such data are available, they generally cannot be used to produce statistically meaningful results. Because industry-specific risk data are not available, it is not possible to develop industry-specific benefits analyses.

H.R. 2879 -- Limiting Liability at Multi-Employer Worksites

H.R. 2879 would limit the liability of certain employers, particularly general contractors in the construction industry, at multi-employer worksites. This bill would prohibit OSHA from citing an employer for a violation if the employer has no employees exposed to the hazard and has neither created the hazard nor assumed responsibility for ensuring that the other employers at the worksite comply. This would create an incentive for general contractors to give up their authority to ensure that subcontractors comply with safety standards. If we encourage the employers in the best position to enhance workplace safety to reduce their authority, workers will pay the price.

First, let me clear up some misunderstandings about liability under the OSH Act. The OSH Act holds all employers responsible for hazards under their control regardless of which employees are exposed. Some employers have misconstrued our policy as limiting the liability of the subcontractor by holding the general contractor liable instead. This is not the case. We do hold the subcontractor liable. Where a general contractor has failed to exercise due diligence in meeting its responsibility, we then hold the general contractor liable as well. That way, we can ensure that both the subcontractor and the general contractor have the incentive to coordinate their efforts in keeping the workers on the site safe.

OSHA's multi-employer worksite policy reflects court decisions that involved very serious accidents; workers were getting killed because general contractors and subcontractors failed to coordinate their responsibilities for ensuring worker safety and health. The tragedy that occurred at L, Ambiance Plaza in Connecticut is a prime example of the origins of our rule. In that case, 28 workers were killed when a high rise under construction collapsed through the error of one subcontractor. Workers from several subcontractors were killed.

Where one subcontractor creates a hazard for the employees of another subcontractor, only the general contractor may be in the best position to get the problem corrected. Just as general contractors have the ultimate supervisory power of all other aspects of the work, the best way to protect all of the workers at a particular site is for the general contractor to have overall responsibility for coordinating efforts for worker safety and health as well.

Under the case law, the liability of general contractors is not absolute, but depends on the circumstances of the case. Further limiting the liability of the general contractor would be a step backward. None of us wants to revisit the tragedies of the past. In our experience, this has proven the most effective method in reducing injuries and fatalities at multi-employer worksites. The bottom line is that we need all of the contractors to work together to make multi-employer worksites safe. In order to ensure the safety and health of the employees of both the general contractor and the subcontractors we cannot limit the responsibility of either.

H.R. 3519 -- Standard and Electronic MSDS's

H.R. 3519 proposes to amend the OSH Act to require electronic access to Material Safety Data Sheets (MSDS's). The bill would also require OSHA to modify its Hazard Communication Standard (29 CFR 1910.1200) to require a standard format for MSDS's. These proposals are well intentioned, and

OSHA is working along parallel lines. However, we believe that legislation is unnecessary and unwise at this time.

OSHA supports allowing employers to provide their workers with electronic access to MSDS's. In fact, OSHA has allowed such electronic access for some time. However, there has been confusion in some quarters about OSHA's policy regarding electronic access. Consequently, OSHA issued a new compliance directive clarifying the agency's policy at approximately the same time this bill was introduced. Since the bill and the modified compliance directive presumably were being drafted simultaneously, it is entirely possible that the bill's authors were unaware of the impending clarification. OSHA assumes that the clarification should address the authors' concerns. In the event the subcommittee feels that additional action by OSHA is necessary to get the word out, we are prepared to work with you to increase awareness.

The standardization of MSDS's is appealing. In fact, OSHA is participating in international discussions on how MSDS's might be standardized. However, standardization is premature. It is also more difficult than it sounds.

MSDS's have a variety of users, with varying backgrounds and needs. While workers have access to them and have a right to know the information they contain, MSDS's are also used by physicians, nurses, industrial hygienists, safety engineers, toxicologists, firefighters, emergency responders, and others. Because MSDS's serve such a broad function, the American National Standards Institute (ANSI) developed a consensus standard that recognizes the diversity of the MSDS audience by requiring certain information that is of most use to workers to be placed in the beginning of the document, and stated in simple language. ANSI developed this "order of information" after extensive discussions with experts revealed that there is no real consensus on how an MSDS should be presented.

There is an ongoing and extensive international effort to harmonize hazard communication requirements for hazard classification, labeling, and material safety data sheets. OSHA has participated in this effort for many years. The ANSI "order of information" may be part of a globally harmonized system by the year 2000. Therefore, OSHA believes the wisest course is to wait until that system is complete before modifying our hazard communication standard. It is far better to standardize consistent with an internationally accepted approach, both from a worker protection standpoint and trade perspective. If Congress were to mandate a change at this point, U.S. manufacturers would be required to change their MSDS's in the short term, and then again in a few years. This would be costly for business and would have little benefit for workers.

Protecting Workers Better

Mr. Chairman, there are a variety of ways to strengthen the protection provided to workers under the OSH Act. We would, for example, support legislation that strengthens the whistleblower protections of the OSH Act. It is fundamental that workers must feel free to inform their employer or the government when dangerous working conditions threaten their life or safety. There is a good deal of evidence, however, that many employees do not feel free to complain about unsafe conditions and that too many employers feel they can retaliate against whistleblowers with impunity. The provisions in place today in section 11(c) of the Act are too weak and too cumbersome to discourage employer retaliation or to provide an effective remedy for the victims of retaliation. A recent report of the Inspector General of the Department of Labor found that "whistleblowers" frequently face retaliation for exposing unsafe or unhealthy working conditions. A nurse at Skyline Terrace Nursing Home, for example, complained about the home's lack of gloves, which are required to protect employees from bloodborne pathogens. Four days after

an inspection, she was fired in retaliation for the complaint. Another company, Hahner, Foreman & Harness, Inc., fired an employee for refusing to go up in a gondola three or four stories above the ground. The gondola had been malfunctioning and the employee believed it to be unsafe. When the employee refused to risk his safety, his superintendent instructed him that if he did not go back up into the malfunctioning gondola, somebody else would. He was fired for his refusal. If you wish to strengthen the safety and health protection available to workers, I suggest this as a place to begin.

In North Carolina in 1993, the state legislature took several steps that greatly strengthened whistleblower protections after the Hamlet fire revealed the flaws in our State Plan. The changes included a longer statute of limitations, a private right of action and a provision for treble damages. I believe these changes have played an important part in the progress North Carolina has made in reducing injury, illness and fatality rates over the last five years.

In addition, the OSH Act does not effectively protect federal, state and local employees (maintenance workers, construction workers, firefighters, etc.). Consequently, with the exception of the few states that actively provide public sector coverage, OSHA has little ability to require positive change on the part of public employers. As a consequence, this limited authority hinders OSHA's success in reducing illness, injuries and fatalities on the job.

There are numerous examples of on-the-job tragedies that occurred primarily because safety and health protections do not apply to public employees. These tragedies could have been prevented by compliance with OSHA rules. In addition, studies have shown that the overall cost of providing OSH Act coverage for these employees is small, especially compared with the amount of money which would be saved by reducing the cost of worker injuries.

A third option for deterring action that places workers at risk is increasing the criminal penalty for an employer whose willful conduct causes the death of an employee. We would urge that these violations not be classified as misdemeanors, but felonies. We believe that the possibility of incarceration for periods in excess of one year would serve as a more effective deterrent to employers who would risk the safety and health of their employees. The current classification for willful workplace safety and health violations that lead to an employee's death are woefully inadequate to address the harm caused. Classifying such crimes as felonies would more justly reflect the severity of the offense.

Conclusion

In conclusion, the bills before us today would take us in the wrong direction. Prohibiting OSHA from gathering necessary information, adding redundant and burdensome layers to our rulemaking process and limiting employer liability is not the way to protect the working men and women of this country. Again, let me reiterate my appreciation for this opportunity to testify before you today. I look forward to continuing our dialogue in our effort to improve OSHA's contribution to the safety and health of American workers.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:24-APR-1998 15:27:49.00

SUBJECT: Alert: BR or EK you need to call Larry Summers

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

Summers is resisting testifying before Senate Judiciary on Wednesday on Hatch. They claim he is going to be traveling on Monday and Tuesday and will not be able to be prepared by Wednesday and in the same breath claim they are trying to be team players. They propose to have Ed Knight, the Treasury General Counsel, testify. (Ed is Neal Wolin's boss.) Marti Thomas says one of you needs to call Summers to get him to do it.

Better news re: the Democratic Task Force -- Treasury wants to send Gary Genzler (sp?).

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:24-APR-1998 16:27:14.00

SUBJECT:

TO: ELENA (Pager) #KAGAN (ELENA (Pager) #KAGAN [UNKNOWN])
READ:UNKNOWN

TEXT:

Sylvia just called you back 61960 re: bilingual

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Patricia E. Romani (CN=Patricia E. Romani/OU=OMB/O=EOP [OMB])

CREATION DATE/TIME:24-APR-1998 16:51:15.00

SUBJECT: ISTEA Deputies Meeting

TO: Kathleen A. McGinty (CN=Kathleen A. McGinty/OU=CEQ/O=EOP @ EOP [CEQ])
READ:UNKNOWN

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

TO: 1199595@SKYTEL (1199595@SKYTEL [UNKNOWN])
READ:UNKNOWN

TO: Morley A. Winograd (CN=Morley A. Winograd/O=OVP @ OVP [UNKNOWN])
READ:UNKNOWN

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

TO: Thurgood Marshall Jr (CN=Thurgood Marshall Jr/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

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

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

TO: Kenneth L. Schwartz (CN=Kenneth L. Schwartz/OU=OMB/O=EOP @ EOP [OMB])
READ:UNKNOWN

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

TO: Charles M. Brain (CN=Charles M. Brain/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Henry C. Kelly (CN=Henry C. Kelly/OU=OSTP/O=EOP @ EOP [OSTP])
READ:UNKNOWN

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

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

TO: Lawrence J. Stein (CN=Lawrence J. Stein/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

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

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

CC: Jessica L. Gibson (CN=Jessica L. Gibson/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

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

CC: Dario J. Gomez (CN=Dario J. Gomez/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

CC: Sandra L. Via (CN=Sandra L. Via/OU=OMB/O=EOP @ EOP [OMB])
READ:UNKNOWN

TEXT:

will be held on Monday, April 27 @ 6:15pm in the OEB Conference Room, Room 248 to discuss strategies for resolving ISTEAs issues.

Agency invitees are as follows:

Mort Downey, DOT
Steven Palmer, DOT
Jack Basso, DOT
Kitty Higgins, DOL
Eric Holder, DOJ
Gary Gensler, Treasury
James Lyon, USDA
John Berry, DOI
David Gardiner, EPA
Olivia Golden, HHS
Saul Ramirez, HUD

If you wish more information, please call Michael Deich's office @ 5-3120.

Thanks, Pat

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:24-APR-1998 16:58:47.00

SUBJECT: RICO Q&A for First Lady

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

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

The First Lady's office called and asked me to do a Q&A in case she is asked a question during her Milwaukee trip on Monday about the recent court decision involving a Milwaukee women's health clinic and RICO. Please review. Thanks.===== ATTACHMENT 1 =====
ATT CREATION TIME/DATE: 0 00:00:00.00

TEXT:

Unable to convert ARMS_EXT:[ATTACH.D82]MAIL460056310.126 to ASCII,
The following is a HEX DUMP:

FF5750435A040000010A0201000000020500000054080000000200004523881E3D6A9758442330
D031CB7344A4FF7579A51CA7C9239C3AB0179EC08F53A61881A2244A5FE722C6F00EBD1F4D608E

Q. What are your thoughts on the recent court decision involving a Mikwalkee women's health clinic and RICO (*NOW v. Scheidler*)?

A. I was pleased with last week's court decision that found protesters who used violence to close down women's health clinics guilty under the federal anti-racketeering statute known as RICO. This sends a strong message to organizers across this nation who are considering using intimidation, violence, or threats of violence to prevent women from seeking reproductive health services. I believe that this court decision offers some badly needed protection for women and their doctors.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:24-APR-1998 17:14:01.00

SUBJECT: Unz

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

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

Below are talking points for Riley. Based on all my experience with Riley, I am convinced we should not try to overscript him on this--we should lay out the key points, signal if there are any key phrases we want him to use--and then assume he will stay on basic message, using his own unique style.

Draft Unz Talking Points

1. It is essential to educate all of our students, including particularly the growing proportion of our school children who are immigrants or American born children of immigrants. A well educated population is key to a growing economy and a health society. We must help all of our students reach the high standards and acquire the knowledge and skills needed for the 21st Century.

2. We must help every child, especially children whose native language is not English, become proficient in English.

3. The Unz Initiative is the wrong way to do this. It will result in fewer LEP students learning English, lower academic achievement in other subjects, and greater frustration for students and parents.

Kids learn at different rates; The one year time limit in Unz is an extreme, one-size-fits-all approach that will harm kids rather than help them.

Unz limits the discretion of teachers to choose the approach that is best suited for the children they teach

Unz would subject teachers, school board members and administrators to personal liability if they fail to comply with its requirements. This is not the way to build cooperation between parents and teachers.

Unz would fly in the face of local control and strip from local school boards the ability to make educationally sound decisions about how to meet the needs of the children.

Unz will in all likelihood result in problems under federal civil rights laws.

4. The right way is to strengthen our public schools overall and improve how our schools help LEP students learn English.

We can help LEP kids learn English and do well in academic subjects if we give them the same tools that other students need in order to succeed: higher standards, safe schools, smaller classes, well prepared teachers, and a challenging curriculum, and schools that are accountable for success. This is what the Administration is already trying to help schools in every state and community accomplish.

No one approach to educating LEP students works best all the time; we

must give local schools the flexibility to fashion an approach that will work the best for their students.

We must provide LEP students with fully qualified bilingual and English-as-second-language teachers. LEP students will succeed if they are given well-prepared teachers who know how to teach reading and who are knowledgeable about second-language acquisition.

Local school districts must be accountable for performance and results. School districts should be accountable for helping students become proficient in English as rapidly as possible. They should measure progress regularly, report publicly on how well they are doing, and take corrective action if students are not making adequate progress.

If we do these things, we can expect students to meet a goal of becoming proficient in English within 3 years. This is a reasonable goal--many students can learn English faster than they do at present if we set clear expectations and give them the help they need. Some will learn faster, and some students may need more time. A goal is not a mandate or a one-year straight-jacket; if a student needs additional time, he or she should get it, along with the help they need.

Q. Is the Administration planning on proposing changes to the federal bilingual education program now?

A. No, we are opposed to Unz, and we have discussed the principles we think should be used to strengthen efforts to help LEP students learn English. Congress is scheduled to reauthorize the bilingual education program along with other elementary and secondary education program. We will send Congress our reauthorization proposal at that time.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Christa Robinson (CN=Christa Robinson/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:24-APR-1998 18:18:52.00

SUBJECT: Sen. Frist will be the only Member speaking at Monday's Tobacco Event.

TO: Ann F. Lewis (CN=Ann F. Lewis/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

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

TO: Laura D. Schwartz (CN=Laura D. Schwartz/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

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

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

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

TO: Jennifer M. Palmieri (CN=Jennifer M. Palmieri/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

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

TO: Cynthia A. Rice (CN=Cynthia A. Rice/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:

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Peter Rundlet (CN=Peter Rundlet/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:24-APR-1998 18:20:22.00

SUBJECT: Erskine's Briefing for LCCR

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

TO: Judith A. Winston (CN=Judith A. Winston/OU=PIR/O=EOP @ EOP [PIR])
READ:UNKNOWN

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

TO: Charles F. Ruff (CN=Charles F. Ruff/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

CC: Marjorie A. Black (CN=Marjorie A. Black/OU=PIR/O=EOP @ EOP [PIR])
READ:UNKNOWN

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

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

TEXT:

FYI, Attached are Erskine's briefing materials for the LCCR meeting on Monday.

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

TEXT:

Unable to convert ARMS_EXT:[ATTACH.D69]MAIL420496318.126 to ASCII,
The following is a HEX DUMP:

FF57504306080000010A02010000000205000000849E010000020000E68C971CE3A5ED571F56D8

April 24, 1998

LEADERSHIP CONFERENCE ON CIVIL RIGHTS MEETING

DATE: Monday, April 27, 1998

LOCATION: Roosevelt Room

TIME: 1:30 - 3:30 p.m.

FROM: Peter Rundlet

THROUGH: Sylvia Mathews

I. PURPOSE

The purpose of this meeting is to learn about and respond to a number of issues pertaining to civil rights that the members of the Leadership Conference on Civil Rights (LCCR) are concerned about, as well as to inform them of some of the Administration's current priorities in this area.

II. BACKGROUND

LCCR is a coalition of over 185 national organizations committed to the advancement of civil rights laws and policies. LCCR includes organizations representing persons of color, women, labor unions, individuals with disabilities, older Americans, major religious groups, gays and lesbians, and civil liberties and human rights groups. Founded in 1950 by A. Philip Randolph, Roy Wilkinson, and Arnold Aronson, LCCR was created with the mission to implement the historic report of President Truman's Commission on Civil Rights, To Secure These Rights. Dr. Dorothy Height, former President of the National Council of Negro Women, is LCCR's Chairperson and Wade Henderson is the Executive Director.

You have had three previous meetings with LCCR since becoming Chief of Staff --January 6, 1997, March 7, 1997, and March 13, 1998. At the first two meetings you discussed LCCR's policy agenda. At the last meeting, you, Dr. John Hope Franklin, and other senior members of the Administration discussed the President's Initiative on Race. At that meeting, it was determined that this meeting would be held to discuss policy concerns not directly related to the Race Initiative. Maria Echaveste has worked with Wade Henderson to create a list of issues that we expect them to raise with us. The agenda agreed to is attached, along with issue papers that provide background and talking points.

Note: This past Monday evening, April 27, LCCR held its annual Hubert H. Humphrey Civil Rights Award Dinner. At the dinner, LCCR presented its Civil Rights Award to

three individuals: Steven Spielberg and Debbie Allen for their joint contribution to the civil rights movement through their work as Director and Producer of the film, *Amistad*, and to the Honorable Bob Lanier, former Mayor of Houston, for his outstanding leadership of last year's campaign to defeat Houston's anti-affirmative action ballot initiative. *The President provided LCCR with a video message for the dinner and attended the reception that preceded the dinner.*

Note: April 22, the Wednesday before this meeting, was Wade Henderson's 50th birthday.

III. PARTICIPANTS

Event participants

Wade Henderson, Executive Director, Leadership Conference on Civil Rights
Dr. Dorothy I. Height, Chairperson, LCCR and National Council of Negro Women
Judith Appelbaum, National Women's Law Center
Barbara Arnwine, Lawyers' Committee for Civil Rights
Marisa Demeo, Mexican American Legal Defense and Educational Fund
Joe Ervin, National Council of Senior Citizens
Anita Perez Ferguson, National Women's Political Caucus
Jocelyn Frye, National Partnership for Women & Families
Patricia Ireland, National Organization for Women
Elaine Jones, NAACP Legal Defense and Educational Fund, Inc.
Charles Kamasaki, National Council of La Raza
Joan Brown Campbell, National Council of Churches
Judith Lichtman, National Partnership for Women and Families
Robert McAlpine, National Urban League
Laura Murphy, American Civil Liberties Union
Karen Narasaki, National Asian Pacific American Legal Consortium
Michele Pollak, American Association of Retired Persons
Bob Sakaniwa, Japanese American Citizens League
Hilary Shelton, National Association for the Advancement of Colored People
Carole Shields, People for the American Way
Cynthia "Winnie" Stachelberg, Human Rights Campaign
Karin Stanford, Rainbow/PUSH Coalition
Eula Tate, International Union, United Automobile Workers
William L. Taylor, Vice Chairperson, Leadership Conference on Civil Rights
Richard Womack, AFL-CIO
Nancy Zirkin, American Association of University Women

White House Participants

Erskine B. Bowles
Sylvia Mathews
John Podesta
Maria Echaveste
Chuck Ruff
Judy Winston
Chuck Brain
Tracey Thornton
Minyon Moore
Karen Tramontano
Elena Kagan
Dawn Chirwa
Rob Weiner
Eddie Correia
Mark Childress
Richard Socarides
Peter Jacoby
Bob Shireman
Julie Fernandes
Michael Deich
Broderick Johnson
Barbara Chow
Peter Rundlet

IV. **PRESS PLAN**

Closed Press.

V. **SEQUENCE OF EVENTS**

- You welcome participants, formally introduce new White House staff members Eddie Correia and Mark Childress to LCCR, and ask everyone else to introduce themselves.
- You then give your introductory remarks.
- You then recognize Wade Henderson.
- Wade Henderson then makes introductory remarks on the purpose of the meeting and turns to the list of agenda items.

- You make, OR ask Mark Childress or John Podesta to make, remarks about the status of the nomination and confirmation of judicial and other appointees.
- You make, OR ask Karen Tramontano or John Podesta to make, remarks about the Administration's efforts with regard to the decennial Census.
- You make, OR ask Chuck Brain to make, remarks about our strategy to preserve the President's budget priorities (specifically, increased funding for civil right enforcement and food stamps for legal immigrants), in light of the ISTEA bill.
- You may ask Elena Kagan to provide greater detail on the status of our increased funding request for the EEOC, *if necessary*.
- You may ask Barbara Chow to provide greater detail on the status of our request for funding for food stamps for legal immigrants, *if necessary*.
- You make, OR ask Eddie Correia to make, remarks about the Riggs amendment to the Higher Education Reauthorization bill.
- You make, OR ask Bob Shireman to make, remarks about the voluntary early retirement incentive program (VERIP) amendment to the Higher Education Reauthorization bill.
- You make, OR ask Maria Echaveste to make, remarks about our efforts to reach out to higher education leaders to promote diversity and inclusion in higher education.
- You make, OR ask Eddie Correia to make, remarks about Washington state's anti-affirmative action ballot initiative (I-200).
- You make, OR ask Dawn Chirwa to make, remarks about the status of the black farmers' litigation.
- You make, OR ask Peter Jacoby or Richard Socarides to make, remarks about the proposed Employment Non-Discrimination Act (ENDA).
- You make, OR ask Peter Jacoby or Richard Socarides to make, remarks about the status of the proposed Hate Crimes Prevention Act.
- You make, OR ask Broderick Johnson to make, remarks about the proposed Fair Housing Amendments Act of 1998 (H.R. 3206).

- You make, OR ask Rob Weiner to make, remarks about the Japanese/Latin American redress litigation.
- Ask Eddie Correia to make a few remarks about the recent D.C. Circuit court decision regarding FCC's affirmative action regulation.
- Ask Judy Winston to provide a brief update on PIR's April activities.
- You or Sylvia Mathews close the meeting, thanking them again for their support, and encouraging them to stay in close contact with your staff.

VI. REMARKS

Introductory Talking Points (attached at Tab B)

Issue Papers with Background and Talking Points (attached at Tab C)

VII. ATTACHMENTS

Agenda (Tab A)

Introductory Talking Points (Tab B)

Issue Papers with Talking Points (Tab C)

The Leadership Conference on Civil Rights Meeting
The Roosevelt Room
April 27, 1998
1:30 p.m.

Agenda

1. Nomination and Confirmation of Judicial Appointees
and Other Executive Branch Nominees
2. The Decennial Census
3. Budget Implications of the ISTEA Bill, Generally
 - Specifically with Regard to Civil Rights Enforcement
 - Specifically with Regard to Immigration Policy Issues (*i.e.*, Food Stamps)
4. Higher Education Issues:
 - Higher Education Reauthorization -- Riggs Amendment
 - Higher Education Reauthorization -- Early Retirement & Tenured Faculty
 - PIR Outreach Plan to Higher Education Leaders
5. Washington State Anti-Affirmative Action Ballot Initiative (I-200)
6. Black Farmers' Litigation
7. Legislation:
 - Employment Non-Discrimination Act (ENDA)
 - Hate Crimes Prevention Act of 1998
 - Fair Housing Amendments Act of 1998 (H.R. 3206)
8. Japanese/Latin American Redress Litigation
9. Other Issues and Wrap-up

ERSKINE BOWLES TALKING POINTS

I. INTRODUCTIONS

- I want to thank everyone for coming today.
- I enjoyed our previous three meetings and believe that they were productive. I am looking forward to discussing several issues of mutual concern with you. Before we start, I would like to go around the room and introduce ourselves. I am Erskine Bowles, Chief of Staff at the White House, and with me today are a number of the senior White House staff who will introduce themselves. Before they do, however, I would like to make special introductions for two of the newest members of our staff, both of whom I imagine you may have worked with in other contexts.
- Eddie Correia was recently named Special Counsel to the President for Civil Rights. Eddie comes to us most recently from Northeastern Law School in Boston, where he taught Constitutional and anti-trust law. Prior to this, Eddie was Chief Counsel to former Senator Howard Metzenbaum. Eddie is overseeing our current and continuous effort to defend reasonable, appropriate affirmative action.
- Mark Childress joined us less than one month ago as Senior Counsel for Nominations. Prior to joining us, Mark served for many years as Counsel to the Senate Labor Committee, where, among other things, he took the lead on many important nominations. You can rest assured that Mark is working full time to help us nominate and confirm new judges to the federal bench.
- Please welcome both Eddie and Mark; I encourage you to stay in contact with both of them.

[After introductions are concluded, make opening remarks below.]

- I know that there are a number of issues on our agenda that we need to discuss -- and we will turn to them in a moment. Before we do, though, I want to take a moment to thank all of you for your superb efforts in helping us defeat two attempts to eliminate the Disadvantaged Business Enterprise (DBE) program in the ISTEA reauthorization bills in both the House and Senate. Both amendments to eliminate this necessary and fair affirmative action program were defeated handily in bi-partisan votes. Thanks to your efforts, we all have reason to celebrate.
- I also want to thank you, again, for strongly supporting many of the President's nominees. You supported the nomination of Bill Lann Lee, and we responded by appointing him as the Acting Assistant Attorney General for Civil Rights. As you know, we are maintaining our effort to have the Senate remove the "Acting" from his title, by

confirming him as the Assistant Attorney General for Civil Rights.

- Since we first started meeting, we have made great progress on many of our shared objectives -- from holding the Hate Crimes Conference last November to defeating Houston's anti-affirmative action initiative to following through with several policy initiatives designed to reduce economic, educational, and health disparities, and much more. The President has placed a high priority on many of the issues that concern you most. Of course, we have further battles to fight together, and we look forward to working with you on all of them.
- Wade, I know that you have been talking with Maria Echaveste about a number of issues you would like to discuss today. Would you like to make any remarks before we turn to the agenda?

[Turn to the Issue Papers]

Index to the Issue Papers

Note: The list of issues below follows the order of the Agenda (and are tabbed accordingly) and the name of the White House staff person responsible for handling the issue is indicated. Each of them is expected to attend the meeting and each will be prepared to make remarks about their issue or respond to any question that you would like them to handle.

- | | | |
|-----|--|--------------------------------------|
| 1. | Nomination and Confirmation of Judicial Appointees: | Mark Childress |
| 2. | Confirmations of Jim Hormel and Fred Hochberg: | Karen Tramontano |
| 3. | The Decennial Census: | Karen Tramontano |
| 4. | Budget Implications of the ISTEA Bill (Generally): | Chuck Brain |
| 5. | -Specifically with regard to civil rights enforcement: | Elena Kagan |
| 6. | -Specifically with regard to immigration policy/food stamps: | Barbara Chow |
| 7. | Higher Education Reauthorization -- the Riggs Amendment: | Eddie Correia |
| 8. | Higher Education Reauthorization -- ADEA & tenured faculty: | Bob Shireman |
| 9. | PIR Outreach Plan to Higher Education Leaders: | Maria Echaveste |
| 10. | Washington State's Anti-affirmative Action Initiative (I-200): | Eddie Correia |
| 11. | Black Farmers Litigation/Legislation: | Dawn Chirwa |
| 12. | Employment Non-Discrimination Act (ENDA): | Peter Jacoby or
Richard Socarides |
| 13. | Hate Crimes Legislation: | Peter Jacoby or
Richard Socarides |
| 14. | Fair Housing Amendments Act of 1998 (H.R. 3206): | Broderick Johnson |
| 15. | Japanese Latin American Redress: | Rob Weiner |

Other (non-agenda) possible issues:

- | | | |
|-----|--|---------------|
| 16. | The FCC Affirmative Action Decision in the D.C. Circuit: | Eddie Correia |
| 17. | Update on PIR's April Activities | Judy Winston |

Nomination and Confirmation of Judicial Appointees

Staff Persons: *Mark Childress or John Podesta*

Note: *Because of the importance of this issue to LCCR, you may want to ask John to make a few remarks before asking Mark.*

Background

Wade Henderson and others from the Leadership Conference on Civil Rights (LCCR) are concerned about our overall plan and efforts to confirm candidates to the federal bench. Wade's efforts last year helped to focus attention on the Senate's failure to move nominees. Now that the Senate has taken action on a number of nominees, Wade is likely to emphasize the need for us to speed up the pace of nominations.

From the beginning of the Clinton Administration, a high priority has been placed on appointing qualified candidates from diverse backgrounds to the federal bench. Two statistics demonstrate the extent to which the Administration has succeeded: 1) President Clinton has nominated more minority and women judicial candidates than any previous president; and 2) President Clinton has had more nominees confirmed that were rated "well qualified" by the American Bar Association than any previous president:

	<u>Clinton I & II</u>	<u>Bush</u>	<u>Reagan I & II</u>
Number Of Nominations:	327	195	385
% Women and Minorities:	51%	27%	14.5%

ISSUES: Most importantly, Wade is likely to express disappointment over the slow pace of nominations coming out of the White House. He has recently pointed out that the Senate has confirmed more nominees (20) in 1998 than we have nominated (17). (Although by the time of the meeting, we should have nominated more.) Without underrating our mutual concern about speeding up the pace of nominations, it is difficult to limit comparison of confirmation and nomination numbers to 1998 because, for example, of the 20 nominees confirmed this year, an average of 285 days passed between nomination and confirmation, with several of the nominees waiting years for confirmation.

The answer to Wade's concern is to maintain a steadily increasing pipeline of nominees -- which we are now in a position to do. We have been delayed in producing nominations by a number of factors including delays in receiving names from Senators, but we now should be able to nominate **18-20** candidates prior to the Memorial Day recess, beginning with several nominees the week of the 20th. (We also nominated four candidates immediately prior to the current Congressional recess). We are on track to nominate several candidates virtually every week between now and the end of May. These estimates are based on candidates already identified, and most of these are out being reviewed by the ABA and FBI right now.

If we meet this ambitious schedule, we will have cut in half the current number of vacancies for which we do not have a nominee. *It is probably worth stressing to Wade that we keenly understand the limited time left for getting judges confirmed, which is why we are making an all-out push to get nominees before Memorial Day.* This effort includes negotiating with the American Bar Association to meet a much more expedited schedule for reviewing nominees, and pressing Senators for names for all remaining vacancies.

Wade Henderson may also express concern about the extraordinarily long time certain nominees have been awaiting confirmation. Specifically, 6 of the 8 judicial nominees who have been delayed the longest, (nominated over 1 year ago), are women or minorities. (Mark Childress has details on these 6 nominees). The good news is that we are seeing some movement on at least a couple of these long delayed nominations, and we will continue to push on all of the nominees.

Talking Points

- You all know about President Clinton's commitment to diversity on the federal bench. This Administration has placed far more minorities and women on the federal bench than any previous Administration.
- Your efforts in focusing attention on delays in the judicial confirmation process were vital to breaking the deadlock in the Senate last year, and we have recently been seeing real progress on Capitol Hill in addressing the backlog.
- I know that you are concerned about the pace of nominations, and I share that concern. We have to act more rapidly to send judicial nominees up to the Senate, and we will.
- We sent up four nominees immediately prior to the most recent Congressional recess, and we sent up more nominees immediately upon Congress's return last week. And we will be adding to a steadily increasing pipeline over the next few months.
- I believe that we will have 18-20 nominees sent up to the Senate between now and the Memorial Day recess. In fact, we should be sending up several names virtually every week between now and the end of May.

- Your efforts in persuading Senators to send us names of potential nominees have been critical to our ability to put a pipeline into place, but I have to ask you to continue to help in that regard; with, of course, a special emphasis on seeking diversity candidates.
- Mark Childress has recently joined us as our new Senior Counsel for Nominations and he can give you more background on where we are.

If you want to say something about Frederica Massiah-Jackson:

(Wade may mention the failed candidacy of Frederica Massiah-Jackson, the Philadelphia judge who withdrew her nomination after significant controversy arose over her alleged leniency in criminal sentencing.)

- We want to thank you for helping us deal with a very delicate situation in the case of Massiah-Jackson's nomination. We were adamant that under no circumstances were we going to ask her to withdraw.
- Fortunately, with your assistance, she was finally able to make her case for confirmation in a public forum, which enabled her to make the personal decision that she withdraw.

Confirmation of Jim Hormel (*if raised*)

Staff person: *Karen Tramontano*

Background

As you know, the President nominated Jim Hormel to be Ambassador of Luxembourg. Secretary Albright worked with Senator Helms to get Hormel voted favorably out of the Committee. He has been on the Executive Calendar since last fall. Senators Inoufe, Hutchinson (Arkansas), and Smith (NH) have holds on the nominee because he is gay. According to these three Senators, they do not oppose Hormel because he is gay, they oppose him because he is a *gay activist*.

We have been working each week to try to get the “holds” released. From the beginning of this battle, LCCR and Wade Henderson have been supportive. LCCR wrote a letter to Senator Lott supporting Hormel and asking that a vote be scheduled. You should thank LCCR for their early support and for their letter.

We currently have 54 votes, we are trying to get 60. If appropriate, you could ask LCCR for any help they could offer to add to our list of Republicans. The two strongest Republican supporters are Senators Hatch and Gordon Smith (Washington). Senator Lott has said he believes there is not sufficient time to deal with this issue, but he has stopped short of saying he will not schedule a vote. Frank Rich wrote a very strong piece recently in the *New York Times*. We have a lobbying strategy that involves the Human Rights Campaign and the State Department talking with Republicans who we believe will vote for cloture and for Hormel.

The only issue that LCCR may raise is that Secretary Albright--of late--has not said anything in public supporting the nominee. We have really tried to hold Albright for the final push, rather than have her in the public debate on this issue. The advocacy groups are concerned about this strategy--we are reevaluating it with the State Department. There is a *Time Magazine* story that is due out Monday and State is putting Albright in that story to quell these concerns.

LCCR may ask what the President has done with regard to Hormel. He has talked with Senator Lott about giving Hormel a vote. And, last month while in California he publicly stated his support for Hormel and said he thought the Senate should schedule a vote.

Talking Points

- We are working very hard to break the logjam on Jim’s nomination. We’re pleased with the recent favorable press and believe that Senator Lott ultimately will be forced to give us a vote.
- We appreciate the help you have given us so far on this important nomination.

Confirmation of Fred Hochberg (*if raised*)

Staff person: *Karen Tramontano*

Background

Fred Hochberg has been nominated by the President to be the Deputy Director of SBA. I am not sure that this issue will be on LCCR's list. The Republicans have successfully centered the debate about Hochberg on his finances. Additionally, Hochberg has not wanted to make the issue be that he is gay. As a result, we have been very low key about this nominee with the advocacy groups, including LCCR.

If they do raise the issue, the current status is as follows: Senator Bond had been refusing to hold a hearing unless he can review all the documents in the White House relating to this nominee. Buzz Waitzkin in Counsel's office has done a very good job of narrowing the scope of Bond's inquiry. As a result, we have a resolution to the issue. Senator Bond reviewed a narrower set of documents on Friday. We believe that he will now schedule the hearing for Hochberg. At this time we believe we have the votes to confirm Hochberg.

Talking Point

- We had a good meeting with Senator Bond on Friday and he has agreed to hold a hearing, probably on May 12th. This is real progress and we believe we have the votes to confirm Fred.

The Decennial Census

Staff person: *John Podesta or Karen Tramontano*

Note: *Because of the importance of this issue to LCCR, you may want to ask John to make a few remarks before asking Karen.*

Background

The Leadership Conference on Civil Rights is very involved in the Decennial Census. In 1990, as you will recall, there were many problems with the census. The one that most concerns LCCR is the undercount of minorities. They are part of the Census 2000 coalition (put together to support an accurate Decennial Census) and at LCCR's annual conference this week they hosted a panel discussion on achieving accuracy in the next census--which included a discussion of sampling.

As you know, the Republicans in the House with the exception of Chris Shays, oppose our plan to use sampling. Our goal is to have the most accurate census, employing the most up-to-date, scientific methods with the most cost-effective use of taxpayer dollars. Statistical sampling has been endorsed by the National Academy of Sciences--the Justice Departments for the Carter and the Bush Administration's have found sampling to be legal and constitutional.

The Leadership Conference supports sampling but has additional concerns. They are concerned they we have not selected a permanent director to replace Dr. Ritchie, who left the Census Bureau at the end of January. The Secretary of Commerce and the White House will have interviewed the top three finalists for this position on Friday, April 24. We will have a recommendation memo to the President as soon thereafter as possible. The position is confirmed by the Senate so the President's selection will have to be vetted, which will take some time. Carolyn Maloney and other Democrats in the House want us to appoint Barbara Bryant -- President Bush's Census Director. I doubt very strongly that we will make that recommendation to the President, although she has been interviewed for the position. **We have not told any of the advocates that it is unlikely Bryant will be selected. I recommend you do not mention it to this group.** If you are asked, you should say that Bryant is under consideration.

The President has appointed the Census Monitoring Board -- with Tony Coehlo as one of the Co-Chairs. The Monitoring Board has 8 members -- 4 Republicans and 4 Democrats with Republican and Democratic Co-Chairs. The Board will have two Executive Directors. I believe LCCR is happy with the appointments, although they were concerned that the vetting process took too long.

Another concern is whether the Commerce Department and the Census Bureau can accomplish all they have to accomplish as the 2000 census gets more politicized. This is a legitimate concern but one that the Commerce Department and the Census Bureau is aware of

and both are up for the challenge. Finally, LCCR has been very helpful to us in this process, you should thank them.

Talking Points

- The Administration is focused on ensuring we have a fair and accurate census, that we are using the most up-to-date technology including sampling, and that every one is counted. In 1990, the Census Bureau undercounted millions of individuals -- many minorities, children and women. We do not want that to happen again.
- This is a priority for our Administration and we are putting the people in place to see that it receives the appropriate attention. John Podesta is our point person here in the White House.
- The Senate recently confirmed the President's nominee for Undersecretary for Economic Affairs -- Rob Shapiro, who has oversight of this matter in the Commerce Department. The White House has interviewed several finalists for the Director of the Census Bureau and we will be making a recommendation to the President shortly.

**Budget Implications of the House and Senate ISTEA Reauthorization Bills
(H.R. 2400 and S. 1173)**

Staff person: *Chuck Brain*

Background

The highway bill now in conference spends approximately \$33.4 billion in outlays above the surface transportation levels proposed in the President's FY 99 budget submission. The intent of Chairman Shuster and Congressman Oberstar is to fund the additional highway spending with the mandatory spending cuts proposed in the President's budget as offsets for Administration initiatives. If the mandatory offsets are insufficient, as they are likely to be, the Speaker has instructed the conferees to reduce the discretionary spending pot by the amounts needed to offset the rest of the bill. These exorbitant highway funding levels will inevitably exert a crowding out effect on the already constrained pool of domestic discretionary resources.

If we assume the level of domestic discretionary funding in the President's budget, the highway bill would require a 2 percent outlay reduction in the other non-defense accounts and up to a 3.9 percent reduction in budget authority for FY 99.

The ultimate endpoint of the highway bill is by no means clear. It is uncertain whether the conference can get a majority of votes for all the offsets proposed in the President's budget. In addition, the House bill contains approximately 1600 "demonstration" projects portioned out roughly 55% to 45% between Republicans and Democrats. The Senate bill contains none. Finally, due to the vote, 96-4 in the Senate and 337-80 in the House, the President may be faced with a bill that has veto proof margins in both chambers

Talking Points

- We have become increasingly concerned regarding the effects of the spending in the highway bills on the remainder of the budget, in general, and our priorities, in particular. There has been much confusion concerning the total costs of both of these bills and exactly how this spending would be offset.
- According to the current estimates, it now appears that the House bill would cost an additional \$34.5 billion beyond current projections. The Senate bill would cost an additional \$35.5 billion.
- Under current budget rules, all of this spending would have to be offset with other spending reductions. In fact, since some of the spending in the House bill is mandatory spending, the necessary offsets would have to come from mandatory programs. Rather than identify specific spending reductions, one rumor that we've heard is that they might simply reduce the spending caps for discretionary spending by the amount needed.

- We share your concerns regarding the effects of this bill on our priorities and government programs.
- We are now beginning the process of dealing with the transportation committee staffs and the leadership to make them realize how big a job they have to offset the amount of spending they want to do. We hope that we will be able to instill some reality into their thinking and to realize that there will be much more opposition to the Conference Report than there was to the bills when they were considered in the House and Senate. We're going to make it clear that they have a tough job to do.
- As the Conference on this proceeds, we will determine if they are improving the bill and what our final attitude on signing will be.

Specific Issues with Civil Rights Enforcement Budget

Staff person: *Elena Kagan*

Background

The Administration's 1999 budget contains \$279 million for the EEOC -- \$37 million (15%) more than the enacted 1998 budget. Funds will go to reduce the average time it takes to resolve private sector complaints from over 9.4 months to 6 months by the year 2001 through a combination of investments in information technology, increased use of mediation, and increased staffing.

On March 3, 1998, Speaker Gingrich testified before the Education and Workforce Committee's Subcommittee on Employer-Employee Relations and indicated support for the President's EEOC budget request, conditioned on the agency implementing six "reforms" to its operation:

- (1) improvements to the investigative and intake processes (including greater supervision of the process by lawyers);
- (2) a significant reduction of the backlog of cases and the length of time for case processing;
- (3) a more appropriate allocation of resources to charge processing vis-a-vis litigation;
- (4) expanded use of alternative dispute resolution;
- (5) clarification of the criteria for litigation by the EEOC; and
- (6) an agreement by the EEOC not to use its scarce resources for employment testers.

Congressmen Fawell and Goodling subsequently sent a letter to Chairmen Livingston and Rogers supporting Gingrich's position.

On Friday, April 17, 1998, EEOC staff met with Rogers's and Fawell's staff to better determine where they are headed. The EEOC believes that they can come to favorable agreement on the first five "reforms." However, the Speaker has made clear to Fawell and Rogers that the provision related to testers is a "line in the sand."

At this point, we are still unsure of the breadth of the Speaker's suggested reform related to testers. At a minimum, Gingrich wants the EEOC to agree not to spend any money in FY99 on hiring employment testers. Though the EEOC currently has a very small pilot program to explore whether and how the agency could use testers, the program is only funded through the end of this fiscal year, and there are no plans to expand it. The FY99 budget does not include any money for testers. However, depending on the results obtained from the pilot, we may want to include a testing program as part of a future EEOC budget. Thus, we could likely agree not to spend money on testers in FY99 as long as the agreement would not limit the agency's ability to use or hire testers in the future and did not in any way send a signal that we do not think that testing is an appropriate tool for civil rights enforcement.

However, Gingrich's condition may be broader -- perhaps to include a prohibition on the use of evidence obtained from testers generally (commissioned by non-profits, for example). This would be very difficult for us to agree to. It could be interpreted as questioning the validity of the use of employment testers in the enforcement of anti-discrimination laws. The use of testers is an established tool for the enforcement of the Fair Housing Act, and HUD now provides grants (through the Fair Housing Initiative Program) to non-profits for the use of testers to gather evidence in housing discrimination cases. Also, the President's FY99 budget includes an additional \$10 million for HUD to conduct a nationwide testing program.

Talking points

- The Administration is committed to working hard to get a 15% increase (\$37 million) for the EEOC in FY99. Though we have been encouraged by the expressed support of Speaker Gingrich and others in Congress on this issue, we are concerned that some of the conditions for their support may inhibit the agency's ability to effectively determine how to allocate resources, set litigation priorities, or utilize effective tools for the enforcement of federal anti-discrimination laws. Most particularly, we are concerned about the Speaker's suggested "reform" that would prohibit the agency from utilizing discrimination testers.
- The EEOC currently has a small pilot program to determine whether and how to use testers as part of their enforcement arsenal. This program ends at the end of this fiscal year. The EEOC's FY99 proposed budget does not include any money for testers.
- Though the EEOC could likely commit to not employing testers in FY99, we are concerned that Gingrich and others may try to statutorily limit the EEOC's ability to use testers in the future or to limit the ongoing use of evidence obtained by outside testers (e.g., those employed by non-profits). This would be a very bad result. Though we have not yet concluded that the EEOC's use of testers is effective and appropriate (the pilot has been operating for approximately 6 months), we do not want to tie the agency's hands.
- Moreover, we do not want to signal that the use of testers is not an appropriate tool for enforcement of the anti-discrimination laws generally. This is particularly true in light of the President's strong endorsement of the use of testers in the housing context, reflected in his request for a new \$10 million for HUD to conduct a nationwide testing program.
- Our strategy is to continue to meet with Hill staff (both Democratic and Republican) to determine precisely what their bottom line is on the issue of testers. If, in order to get necessary Republican support for our budget request, the agency would need to agree not to employ testers in FY99, we need to assess whether this commitment would somehow institutionalize the limitation, thus making it harder for the agency to use testers in the future. If, however, they want a broader restriction, we need to assess the degree to

which such a limitation weakens the agency's ability to effectively enforce the law.

Budget Implications on Food Stamps for Legal Immigrants

Staff person: *Barbara Chow*

Background

- The 1996 welfare reform bill denied Supplemental Security Income (SSI) and Food Stamps to most legal immigrants currently in the country and who enter in the future. Immigrants who enter after the enactment of welfare reform are also denied means tested benefits, including Medicaid and TANF, for their first 5 years.
- The Balanced Budget Act (BBA) significantly reversed these restrictions and restored benefits to immigrants. The BBA restored SSI benefits to 420,000 immigrants in FY 1998 at a cost of \$11.5 billion over 5 years (CBO estimate).
- The Conference Report on the agriculture research bill reflects a bipartisan agreement to address Congressional and Administration priorities. Using offsets almost entirely from the Food Stamp program, the bill restores Food Stamps to vulnerable groups of immigrants, including children, refugees, the elderly and disabled, and addresses priority agriculture issues.
 - The bill provides more than \$800 million over five years and restores benefits to 250,000 people in 1999, including 75,000 children. These provisions are financed using less than half (43%) of the Food Stamp savings in the bill.
 - The bill helps 5 important groups: children, the elderly, individuals with disabilities, refugees and asylees, and Hmong who helped the U.S. during the Vietnam conflict.
 - The provisions for the elderly and the disabled mirror what was provided for them in SSI and Medicaid in last year's BBA. In general, the bill only provides benefits to individuals who were in the country as of the signing of the welfare bill in 1996. The bill provides assistance to immigrant children -- a group that did not receive any restorations in the BBA.
- Status of the Legislation. Majority Leader Lott is apparently concerned that the agriculture research bill uses a \$1.7 billion offset from Food Stamp administrative costs which is earmarked in the Senate budget resolution to finance highway spending. It is possible that the House will try to use these funds for transportation as well. As noted above, several other Republican Senators have also expressed concerns with the bill.

- We have urged the Senate leadership to allow the Conference Report to be considered by the full Senate in its entirety. Delaying consideration or splitting the report will create a conflict between spending on highways and spending on farmers and vulnerable immigrants. The Administration believes that restoring food assistance to vulnerable immigrants and improving programs for our nation's farmers is the highest priority.

Talking Points

- The President's FY99 Budget included a comprehensive \$2.4 billion proposal to restore Food Stamps to vulnerable groups of legal immigrants who lost benefits due to the cuts in welfare reform that had nothing to do with moving people from welfare to work.
- Through the Administration's efforts, the Conference Report on the agriculture research bill provides over \$800 million to restore Food Stamp benefits to legal immigrants. The major offset in the bill saves \$1.7 billion from Food Stamp State administrative costs.
- The agriculture research bill, which also contains funding for some other Administration priorities in addition to legal immigrants -- crop insurance, agriculture research, rural development -- is currently being blocked from consideration in the Senate.
- Majority Leader Lott had indicated to Senator Harkin that he would bring the bill up for Senate floor consideration after the Easter recess. We are hopeful that this will occur, but significant hurdles remain. Several Republican Senators reportedly have "holds" on the bill and there is a rumor that at least one (possibly Sen. Gramm) may offer a motion to recommit the bill to strip out the food stamp provisions, a motion we would strongly oppose.

Higher Education Reauthorization Bill: The Riggs Amendment

Staff person: *Eddie Correia*

Background

The higher education reauthorization bill is likely to be on the floor of the House in the next two weeks. Rep. Riggs (R-Calif.) may offer an amendment that would bar any college or university receiving federal funds from considering race or gender in its admissions decisions. The practical effect of the Riggs amendment would be to prohibit hundreds of institutions from using affirmative action in admissions to increase the diversity of their student body. It goes further than Prop. 209 because it applies to private institutions as well as public institutions. It would lead to drastic drops in minority enrollment in major universities and graduate schools throughout the country. Consequently, there is enormous concern in the civil rights and higher education communities about the amendment.

We have a good chance of prevailing in the House, but the importance of the issue warrants significant efforts. (A comparable amendment in the Senate is unlikely.) White House staff have been working with the Department of Education to develop briefing materials for Members. Secretary Riley (perhaps joined by the Attorney General) intends to send a strong letter to Members opposing the amendment and recommending a veto if it is enacted. The President could also send a short letter opposing the amendment. These statements would parallel those made by the administration prior to the DOT/DBE vote. The Riley/Reno letter will be coordinated with the release of the SAP on the overall bill.

Talking Points

- We have all seen stories about the drastic decline in minority enrollments in California as a result of a bar on affirmative action. The full story is actually worse since the final enrollment levels will be even lower.
- Many of the minority applicants who were rejected were extremely well-qualified to do the work; many had outstanding academic records. The fact that they were denied admissions means that the educational experience of all of the students who were admitted will suffer. We cannot tolerate a country where the classrooms at our best universities are full of white faces.
- The President strongly opposes the Riggs amendment and we are working hard to defeat it. He considers it one of his highest priorities.
- With your help, the House and Senate recently rejected efforts to kill the Department of Transportation's Disadvantaged Business Enterprise (DBE) program. The Administration

and the country are grateful for your hard work on those votes. We intend to make the defeat of the Riggs amendment the third straight vote for reasonable affirmative action.

- I know representatives of LCCR have met recently with White House and Department of Education staff. Please let us know what we can do.

Higher Education Reauthorization Bill: Early Retirement and Tenured Faculty

Staff person: *Bob Shireman*

Background

Overview: A House committee has moved legislation that includes an exception to the Age Discrimination in Employment Act (ADEA) to allow colleges to target *early* retirement incentives on tenured professors. College and faculty organizations support the change. The AARP (and, we anticipate, the LCCR) oppose the idea because it would discriminate against older workers; *e.g.*, a 55-year-old targeted for early retirement would be eligible, while a 65-year-old with the same or more years of service would not. The EEOC also opposes the change. Discussions on a possible compromise have begun (at the Administration's suggestion).

As part of the 1986 ADEA amendments that prohibited mandatory retirement ages for most workers, Congress permitted colleges and universities to continue requiring tenured faculty members to retire at age 70 until the end of 1993. Colleges were concerned that without mandatory retirement, aging faculty would be unremovable because of tenure, leaving less room for new faculty who are traditionally the source of new ideas.

Congress directed the EEOC to seek advice from the National Academy of Sciences on whether to continue the exemption from the mandatory retirement prohibition for tenured faculty. In 1991, the NAS concluded that ending mandatory retirement would not be a problem for most colleges and universities. Some research universities, however, "are likely to suffer adverse effects from low faculty turnover: increased costs and limited flexibility to respond to changing needs and to provide support for new fields by hiring new faculty." **The NAS recommended that to address this problem, Congress should permit age-capped retirement incentive programs.** However, no changes have been made in response to that recommendation, and colleges are concerned that EEOC and court decisions have narrowed rather than expanded the options available to them. For the past several years, colleges have been lobbying for legislation permitting a broader array of voluntary early retirement incentive programs (VERIPs).

The AARP, the EEOC, and others have opposed the VERIP proposals in Congress. They argue that offering a retirement incentive that is available only when a worker is younger (such as age 60) rather than older (such as age 70) allows just the type of arbitrary, age-based discrimination that the ADEA was intended to prohibit.

The House Education and the Workforce Committee included a VERIP amendment in its proposal for reauthorization of the Higher Education Act. Similar legislation has been introduced in the Senate. We are preparing a SAP on the House bill, and the EEOC has recommended language opposing the VERIP proposal. Administration officials (NEC) have spoken to the AARP, EEOC, and higher education representatives, and have urged them to attempt to reach a compromise on this issue.

Talking points

- We are aware of the problems with the early retirement incentives proposal that has been included in the House bill reauthorizing the Higher Education Act.
- However, we are also mindful of the National Academy of Sciences' recommendation in 1991 that some additional options be provided to address reduced faculty turnover as a result of the prohibition on mandatory retirement.
- We are encouraging the EEOC to sit down with the higher education community and the AARP to see whether a compromise can be worked out on this issue.
- The SAP has not been finalized, but it will certainly also attempt to push in the direction of compromise on this issue.

PIR Outreach Plan to Higher Education Leaders

Staff person: *Maria Echaveste*

Background

LCCR has expressed concerns about the Administration's response to the attacks on diversity in higher education. While they applaud the President's defense of affirmative action and his impassioned call for continued diversity in institutions of higher education, they hope to see more leadership in this area.

In response to Hopwood and Prop. 209, in connection with the President's Initiative on Race and in anticipation of continued attacks on affirmative action in higher education, the Administration has undertaken the following steps:

- Begun meeting with university leaders informally, together with ACE, to discuss the possibility of the creation of an independent coalition of university leaders, possibly also including foundation and corporate leaders. This coalition would undertake an aggressive and proactive campaign to educate the public about the value of diversity in higher education -- to make the case to the public. The coalition would also share best practices for how to achieve diversity in a changing legal environment.
- Our preliminary conversations have been very positive with leaders of the some of the country's elite institutions. Our goal is to have a core group of 20-30 leaders who will publicly commit to this undertaking and who will, in turn, seek to expand the number of people with credibility to make the case.
- The Administration is also meeting regularly with persons involved in ongoing litigation to stay informed of potential opportunities for action. This area is more problematic since it involves litigation and it is not always clear that Administration action would be helpful in a particular case. We are committed, however, to ensuring that the Administration stays fully informed and fully engaged on this issue.

Talking Points

[Maria Echaveste would like you to ask her to make the remarks with regard to this issue.]

Washington State's Anti-Affirmative Action Ballot Initiative (I-200)

Staff person: *Eddie Correia*

Background

This fall the voters of the State of Washington will decide whether to adopt I-200, a ballot initiative modeled after California's Proposition 209. It will represent the third high profile ballot initiative following the adoption of Prop. 209 and the rejection of a similar initiative in Houston. The outcome will be closely watched as a signal of where the country is heading on affirmative action. The demographics of Washington are less favorable to defeating the initiative than Houston's. On the other hand, the voters tend to be more progressive, and one of the leading opponents of the initiative is Gary Locke, the popular Asian-American Governor.

White House staff have been in contact with elected leaders in Washington as well as advocacy groups working to defeat I-200. At one point, their strategy was to offer an alternative ballot initiative, which would have conveyed a "mend it, don't end it" message. This was rejected because of procedural problems, the costs of mounting a signature drive and mixed signals about the support it would receive. The opponents of the initiative need help in raising funds and in communicating their message in a way that has broad appeal. We cannot help them raise money, but we can encourage Cabinet Secretaries and others to visit the state to speak on the issue. The opponents of the initiative have asked for our help in arranging for visits by the Secretary of State, the Secretary of HHS, and Colin Powell, among others.

Talking Points

- The ballot initiative in Washington will be a critical test of the country's direction on affirmative action. The Administration cares about this vote and we want to help.
- We understand that the demographics in Washington are different than in Houston. Women and moderates will be critical to the outcome.
- Our staff has been in frequent contact with people in Washington. We have offered our assistance and we will continue to work with, and take the lead from, them. We understand that financial support is critical, but raising money for their effort is something we cannot do. However, we may be able to help in others ways, for example, by speaking out about the importance of the issue.

Black Farmers Litigation

Staff person: *Dawn Chirwa*

Background

We have been informed that it is likely LCCR will wish to discuss issues related to black farmers at our meeting. In anticipation of this, Dawn Chirwa spoke with Wade Henderson to discuss the impact of the Justice Department's Office of Legal Counsel (OLC) opinion with him and the steps we are taking to resolve the problems caused for particular black farmers by the statute of limitations bar. He was pleased with our efforts and said that the issue is still likely to come up, but primarily as a request for an update on our efforts.

As you know, the Justice Department's OLC opinion concludes that the statute of limitations in the Equal Credit Opportunity Act bars claims by many black farmers. The opinion was released last week and copies were sent to interested Members of Congress. Since the opinion was released, the team working on this issue (USDA, Justice, and from the White House -- WH Counsel, Legislative Affairs and Public Liaison) has been working closely with Hill staff on legislation that would provide remedies for farmers currently barred from relief by the statute of limitations.

Various Members have expressed considerable interest in passing such legislation, including Reps. Clayton, Thompson, Waters, McKinney, Conyers, the Speaker and Rep. Smith, Chairman of the Agriculture committee. Our team met with staff from the Speaker's office and majority staff of the House Agriculture committee last week to discuss USDA's proposed legislative language. The meeting went well and it appeared that the staff was interested in working cooperatively with the Administration on passing legislation. Legislative Affairs and USDA are also engaged in ongoing discussions with House and Senate Democrats and are working with them on legislative language changes. At the same time, we are working with representatives of the black farmers to ensure that any concerns they have with the legislation are addressed.

On the litigation front, we are awaiting the district court's decision on the statute of limitations issue. Justice filed papers with the district court last week arguing the same position articulated in the OLC opinion. In opposition, the black farmer plaintiffs have argued essentially that the statute of limitations should be equitably tolled with respect to all the farmers' cases. It is highly unlikely that the plaintiffs will prevail on this issue. Of course, there is always the possibility that the court will rule against the government. We do not expect, however, that the court will rule prior to our meeting with LCCR. Until the court rules on this and other legal issues, mediation of the farmers cases is being held in abeyance.

In addition, WH Counsel is discussing with Justice other, non-legislative means of remedying the problems caused by the statute of limitations. The OLC opinion did leave open the possibility that, in certain cases, an argument could be made that the statute was equitably tolled. While we

are exploring this option in the event the legislation does not pass, these arguments are very difficult to make and will not help all farmers harmed by the statute of limitations. This is why we have made the legislative route our first priority. However, you should know that Wade Henderson is particularly concerned that we continue to explore this option and we have assured him that we are doing so.

Finally, WH Counsel has also asked a team of USDA and Justice staff to explore enforcement actions that can be taken against individuals within USDA who are discriminating against farmers. It will be important to point this out to LCCR attendees.

Talking points

- We understand and appreciate the concern you and others have expressed over OLC's conclusions with respect to this statute of limitations issue. We share your desire that all black farmers who have suffered from discrimination be able to obtain a remedy for the harm done to them; we do not like the effect of this statutory provision any more than you. I want to let you know what we and USDA have done in this area and what we are doing to address the OLC opinion.
- As you know, Secretary Glickman has made it a top priority of his to provide a remedy for the farmers who have faced discrimination by USDA. Recently, he reconstituted the team set up to review claims of discrimination to expedite the process and get farmers with valid claims their money sooner, including hiring 14 new full-time investigators. He also brought on a new Associate General Counsel for Civil Rights (David Harris) and a Special Assistant for Civil Rights (John Sparks) who works directly for the Secretary and is overseeing the review process to ensure it is moving along efficiently.
- USDA has closed 295 program discrimination cases of the 1,088 total. There have been 15 settlements -- some in the hundreds of thousands of dollar range. (For example, recently, Mr. Eddie Ross from Mississippi received a settlement in excess of \$300,000.) Of the remaining cases, 180 are claims of discrimination filed by African-American farmers. The Secretary hopes that the new team in place will soon clear up the backlog.
- Justice and USDA are also looking at ways to take enforcement action against discriminators within USDA to attack the problem at the source.
- As for the statute of limitations issue, I am personally committed to doing everything we can to pass legislation which will cure the problems this time bar creates. In recent days, my staff has been working closely with the Hill on a bi-partisan basis on such legislation. I also had a conversation with the Speaker about the legislation; he was receptive and his staff have been very cooperative with our staff. We will continue to keep you informed of our progress.

The Employment Non-Discrimination Act (ENDA)

Staff person: *Peter Jacoby or Richard Socarides*

Background

Overview: The Employment Non-Discrimination Act (ENDA) would provide federal protections against employment discrimination based on sexual orientation. Those protections are currently provided based on race, religion, gender, national origin, age and disability. The measure would prohibit employers (including Congress), employment agencies and labor unions from using an individual's sexual orientation as a basis for employment decisions, such as hiring, firing, promotion, or compensation. Employers could not subject an individual to different standards or treatment based on that individual's sexual orientation --real or perceived --or discriminate against an individual based on the sexual orientation of those with whom he or she associates.

Additionally, the bill prohibits any form of preferential treatment, including quotas, and prohibits discrimination claims based solely on statistics ("disparate impact" claims). It does not require an employer to provide benefits for the same-sex partner of an employee. Although the bill does not apply to religious organizations, including schools and educational institutions that are substantially controlled or supported by religious organizations, it does apply to their "for-profit activities subject to taxation." Finally, the measure does not apply to the armed forces or to small businesses with fifteen (15) or fewer employees.

Legislative Status: In the Senate, Senators Kennedy (D-MA), Jeffords (R-VT) and Lieberman (D-CT) have gathered 35 cosponsors for their bill since its introduction last year. Additionally, Senator Jeffords as Chairman of the Labor and Human Resources Committee held a hearing on the measure last October. Unfortunately, however, the measure remains mired in the Labor Committee because Chairman Jeffords cannot convince any Republican on the Committee to join him and vote to report the measure to the full Senate. Consequently, there is a debate going on within the ranks of the bill's supporters over whether they should continue to work to secure the necessary votes in the Labor Committee (an approach strongly favored by Senator Jeffords) or take the bill directly to the Senate floor and offer it as an amendment to some appropriate legislative vehicle (an approach favored by Senator Kennedy). Given the closeness of the vote on this measure when it was offered as a floor amendment during the last Congress (49-50), the high number of cosponsors, and the likely votes of freshman Senators, any floor vote can be expected to be very close.

In the House, Congressman Frank (D-MA) and Congressman Shays (R-CT), the measure's lead sponsors, have signed up a total of 158 cosponsors (12 Republicans and 146 Democrats) for ENDA. That number will jump to 159 when Lois Capps (D-CA) signs on

to the measure after Congress returns from its Easter recess. This represents the highest number of cosponsors the measure has had since its was first introduced several Congresses ago.

While the bill introduced in this Congress is much more moderate than previous versions of ENDA, the measure has not gained much support from Republicans, especially the moderate northeastern and Californian Republicans whose support will be critical for moving this bill through the House. Consequently, the measure is not a priority in any of the committees with jurisdiction (Judiciary, Government Reform and Oversight, Education and the Workforce and House Oversight) - which have not held a single hearing on the measure - or for the Republican House leadership.

Talking Points

- **We are strongly committed to getting ENDA passed in the Senate during this Congress. To that end, we will support all efforts to bring the measure to the floor of the Senate for debate and passage.**
- **With respect to ENDA, moderate Republican support is the key in both the House and the Senate. This bill is about a creating a government that is fair and doesn't interfere in the private lives of its citizens- - this should have great appeal to moderate Republicans.**
- **In the House, there are many Californian and northeastern Republicans who have not yet cosponsored the bill and we should work to get those Members on board.**
- **In the Senate, moderate Republicans are the key, especially those swing Republicans on the Labor Committee like Senators Frist, Collins, DeWine and Warner, and we will work to gain their support.**

The Hate Crimes Prevention Act of 1998

Staff person: *Peter Jacoby or Richard Socarides*

Background

Overview: The Hate Crimes Prevention Act of 1998 is designed to give federal prosecutors both the statutory authority and the necessary resources to prosecute flagrant acts of racial or religious violence, gay-bashing, gender-motivated violence and violence against the disabled. Specifically, the measure expands the federal government's current ability to punish racial violence by removing unnecessary jurisdictional requirements in existing law. The measure also gives federal prosecutors new authority to prosecute violence against women, the disabled and gays.

On the resource side, the measure would authorize additional funding to hire the necessary law enforcement personnel to investigate and prosecute hate crimes. The bill would also authorize new spending for programs designed to prevent hate crimes. Finally, the measure directs the U.S. Sentencing Commission to determine whether additional criminal sentencing enhancements would be appropriate for adults who recruit juveniles to commit hate crimes.

Senator Kennedy and Congressman Schumer introduced the measure in the Senate and the House last November in conjunction with the President's White House Conference on Hate Crimes. The Attorney General is strongly supportive of the measure which is modeled after the highly effective Church Arson Prevention Act passed by Congress two years ago.

Legislative Overview: In the Senate, Senator Kennedy has been pressuring Judiciary Committee Chairman Hatch (R-UT) to convene a hearing on the hate crimes legislation. Senator Hatch has reportedly agreed to hold a hearing but he has been slow to deliver. One concern that Senator Hatch has expressed, which has been echoed by other opponents of the measure, is that this may be an issue better left to state jurisdiction. Due to the uncertainty in Committee, sponsors had originally planned to offer the measure to S. 10, the Senate's juvenile crime bill. That measure, passed by the Judiciary Committee last fall, is currently stalled in the Senate due to the Senate Republican leadership's fears that Republicans will be forced to vote on politically volatile amendments offered by Democrats during the measure's floor consideration.

In the House, Congressman Schumer (D-NY) has garnered 64 cosponsors for the measure but no action is expected. It is unlikely that any activity will occur until the Senate acts.

Talking Points

- We are strongly committed to enacting Hate Crimes legislation during this

Congress. To that end, we will support all efforts to bring this measure to the floor of the Senate for debate and passage.

- **With respect to the Hate Crimes bill, we should be working to get Senator Hatch to hold a hearing on the measure prior to the Memorial Day recess. Following that, we must identify an appropriate legislative vehicle to get it through the Senate.**

Fair Housing Amendments Act of 1998 (H.R. 3206)

Staff person: *Broderick Johnson*

Background

On February 12, 1998, Representatives Charles Canady (R-FL), Brian Bilbray (R-CA), and Jane Harman (D-CA) introduced H.R. 3206, the "Fair Housing Amendments Act of 1998." The legislation constitutes a major restructuring of the Fair Housing Act, which celebrates its 30th anniversary this year. The Fair Housing Act is regarded as fundamental civil rights legislation, and thus H.R. 3206 has caused great concern among the civil rights community and fair housing advocates.

As currently drafted, H.R. 3206 addresses complicated matters involving relationships between the Fair Housing Act and the First Amendment; protections against discrimination based upon familial status; the relationship between state and local governments and the federal government on zoning and land use issues; and complaint procedures under the Fair Housing Act. These issues were hotly debated and resolved during debate and passage of the "Fair Housing Amendments Act of 1988".

Two major concerns of LCCR with regard to H.R. 3206 have to do with: (1) whether it should be made more difficult to bring Fair Housing Act cases against those who publicly espouse opposition (in the context of zoning proceedings, for instance) to certain disabled and minority persons living in their neighborhoods; and (2) the ability of state and local governments to cluster group homes in certain neighborhoods and whether they can restrict the categories of persons who can live in certain such homes and neighborhoods (e.g., disabled persons as opposed to recovering substance abuse patients).

The original version of the bill is apparently being modified since the bill was considered by the House Judiciary's Subcommittee on the Constitution. Some of these changes were made to address criticisms raised by Subcommittee Democrats (led by Ranking Democrat Bobby Scott (D-Va)). Nevertheless, the bill was reported out of the subcommittee on a straight party line vote, and the anticipated changes are not likely to affect HUD's recommendation that the Administration strongly oppose the bill. A coalition of advocacy groups, which includes civil rights groups, disability groups, and religious organizations, is likely to continue to strongly oppose the bill. The National League of Cities is a major supporter of the bill.

Full Judiciary Committee consideration has been delayed several times, but could occur as early as next week.

Talking Points

- The President has made clear his unequivocal commitment to strong, fair, and effective enforcement of the Fair Housing Act, and HUD's recent enforcement program under Secretary Cuomo exemplifies the President's commitment.
- The 30th anniversary of enactment of this landmark civil rights statute is certainly no time to weaken that law or to retreat from our nation's commitment to fair housing for all Americans. The various issues raised in H.R. 3206 are best addressed through joint efforts by HUD and the Justice Department, perhaps involving greater flexibility, rather than through the changes advanced by this legislation.
- The Administration stands ready to work with the Congress, civil rights and fair housing advocates, and such entities as the National League of Cities to try to achieve mutual objectives. Nonetheless, we remain strongly opposed to this or any other legislation that threatens the ability of minorities and the disabled to be protected under the Fair Housing Act.

Japanese - Latin American Redress Litigation

Staff person: *Rob Weiner*

Background

During World War II, several Latin American countries sent residents of Japanese descent to the U.S. to be used for prisoner exchange with Japan or interned in U.S. camps. Approximately 2300 Japanese Latin Americans, most from Peru, were brought here. Of these, we sent 800 to Japan during the war. Another 900 left after the war. Most of these went to Japan because Peru and other Latin American countries would not let them return. Others remained here and eventually became citizens.

In 1988, Congress enacted the Civil Liberties Act to apologize for the internment of Japanese Americans and to authorize a \$20,000 payment to eligible internees. "Eligible" internees included only those who were American citizens or permanent resident aliens at the time of internment. "Permanent resident aliens" included only persons "lawfully admitted into the United States for permanent residence." The U.S. government has deemed most Japanese Latin American internees ineligible because they were brought to this country against their will for internment or prisoner exchange, rather than admitted for permanent residence.

Five Japanese Latin Americans brought a class action, Mochizuki v. United States, in the U.S. Court of Claims seeking redress under the Civil Liberties Act. They claim:

- (1) they were "lawfully admitted" because the U.S. government brought them here, and they were "permanent residents" because they came for an indefinite time period;
- (2) they should be treated as "permanent residents under color of law" -- a constructive permanent residency status used under some welfare statutes to provide benefits; and
- (3) to deny redress unconstitutionally discriminates based on national origin.

The U.S. has opposed these claims on the basis that the statute clearly intended to exclude these individuals and that Congress has broad constitutional power to distinguish between citizens, permanent residents, and others.

In January 1998, the President responded to a letter from Representative Tom Campbell, who had urged settlement of the Mochizuki case. The President stated that:

My staff and the Department of Justice explored thoroughly the possibilities of redress for these people under the Civil Liberties Act of 1988. The Act provides redress to persons of Japanese ancestry who were citizens or permanent resident aliens at the time of their internment. Unfortunately, many Japanese individuals from Latin American did not have such status at that time. . . . Nor is it within my power to confer the requisite status retroactively.

Although this is a succinct statement of the position that the Administration has taken in the Mochizuki litigation, it does not resolve whether the Justice Department has power, as part of its overall authority to settle lawsuits, to settle this one by offering some compensation from the redress fund.

After struggling with the issue, the Justice Department offered to settle the case for \$5,000 per claimant. The offer of 25 cents on the dollar reflected an assessment of the low litigation risk of the case, which the Justice Department must consider in settling cases, as well as the amount of money left in the fund. Absent a settlement, approximately \$6-8 million should be left in the redress fund when the program sunsets in August 1998. If all 1300 Japanese Latin American claimants sought redress at \$5000 each, the total claimed would be \$6.5 million.

After initially rejecting the offer, representatives of the Japanese Latin Americans decided to accept it. A few items remain to be negotiated, but they are unlikely to derail the settlement. The representatives of the Japanese Latin Americans are likely to want the Administration to seek legislation to treat their clients the same as others who can make claims on the redress fund.

Talking Points

- We are pleased that settlement negotiations appear to be on track and that a resolution appears to be within reach.
- We believe that the moral claim of Japanese Latin Americans to redress stands on the same footing as the claim of Japanese-Americans who were interned during World War II. Unfortunately, the legal basis of their claim under the Civil Liberties Act was not strong, and the Justice Department had to be able to justify a settlement legally.

If LCCR brings up legislation:

- We are happy to work with you on a legislative solution that treats Japanese Latin Americans the same as other internees. You should recognize that it will not be easy to achieve such a solution, and you will need to put in a great deal of effort with us.

The FCC Affirmative Action Decision

Staff person: *Eddie Correia*

Background

A unanimous panel of the D.C. Circuit just struck down FCC rules that require a radio station licensee to engage in a number of outreach and recruiting efforts in order to achieve a diverse workforce. Lutheran Church-Missouri Synod v. FCC. (The panel was made up of three of the most conservative judges in the circuit.) The licensees were required to provide EEO notices to employees, to submit information on their hiring, and to use minority-specific recruiting sources. Such requirements are common in EEO programs. The court found these requirements, as applied, amounted to race classifications under Adarand and, therefore, triggered strict scrutiny. It held that the FCC's asserted interest, "diversity in programming," was not compelling, and, in any event, the rules were not narrowly tailored to accomplish it.

The most serious problem is that the opinion could make it difficult to justify common recruiting and outreach requirements in many areas, including contracting, and hiring. For example, the opinion says that FCC's policy of reviewing the hiring record of licensees puts pressure on employers to make certain hiring decisions. Obviously, most EEO programs will involve some type of review. The government has an interest in determining whether an outreach program is ever implemented and whether it is working. This review is important even if the government makes it as clear as possible that it is assessing outreach efforts, not actual hiring or contracting decisions. If the opinion means that any race-specific recruiting or outreach program that creates even the slightest incentive to hire minorities triggers strict scrutiny, it could have very wide and devastating affect. DOJ is currently considering its options, one of which is to ask for a rehearing en banc (in front of a panel of the full D.C. Circuit).

Talking Points

- The administration is deeply concerned about the recent FCC decision and the implications that it has for recruiting and outreach requirements in affirmative action programs. I know Rev. Jackson, Wade Henderson, and others met with Bill Lann Lee to express their views on this case, and I know Bill understands your feelings.
- Recruiting and outreach efforts are essential if affirmative action programs are going to work and if we are going to open up opportunities for people who have been shut out of them. Even conservative Republicans support recruiting and outreach, so that is a sign of how extreme this opinion is.
- The Justice Department and the FCC are studying this decision now. One of the options is to ask the full circuit to grant a rehearing on the decision. We will be monitoring this case closely.

Highlights of Recent Activities of the President's Initiative on Race

Staff person: *Judy Winston*

Note: Judy will briefly review for LCCR the following events.

ESPN Conversation on Race and Sports. On April 14, the President participated in the ESPN discussion in Houston, *Sports and Race: Running In Place?*. The conversation was successful in moving the dialogue on race forward and reaching an audience that may not have been aware of the Race Initiative. Participants from the sports world included current and former athletes, coaches, and executives in football, baseball, basketball, and track and field.

They included:

- Jim Brown, former football player; currently president of Amer-I-Can program
- Vince Dooley, former college football coach, currently university Athletic Director
- Dennis Green, professional football coach
- Keyshawn Johnson, professional football player
- Jackie-Joyner Kersee, five-time Olympic medalist in track and field
- Felipe Lopez, college basketball player
- Joe Morgan, former professional baseball player, currently ESPN sports broadcaster
- Carmen Policy, president of professional football team
- John Thompson, college basketball coach
- John Moores, owner of professional baseball team

Three Advisory Board members (Governor Winter, Reverend Cook, Mr. Thomas), consultant Laura Harris, and Executive Director Judy Winston also attended.

HUD Roundtable Discussion on Fair Housing. In commemoration of the 30th anniversary of the Fair Housing Act, the U.S. Department of Housing and Urban Development conducted a public meeting and roundtable discussion on April 23 in Newark, New Jersey, with representatives from fair housing and community organizations. The meeting focused on race and housing issues in New Jersey. Advisory Board members Franklin and Kean participated in the discussion. HUD Assistant Secretary for Fair Housing and Equal Opportunity Eva Plaza also participated in this event.

Statewide Days of Dialogue. Statewide Days of Dialogue is an effort to involve governors, mayors, and others in the Race Initiative by issuing a proclamation, participating in a dialogue, organizing a town hall meeting on race, or other activities. Statewide Days is being launched on April 30 in conjunction with the YWCA's National Day to Erase the Hate and Eliminate Racism. To date, 16 Governors, several Mayors, and more than 100 YWCA's in 37 states and the District of Columbia have agreed to participate. Attorney General Reno will be attending a Capitol Hill luncheon related to these events and Secretary Riley will be participating in a dialogue with school children in Birmingham, Alabama.

Campus Week of Dialogue. Campus Week of Dialogue engaged colleges and universities across the country in the Race Initiative in town hall meetings, smaller discussions, campus-community projects, and other activities. Close to 600 schools participated in Campus Week of Dialogue events from April 6-9, including universities both large and small, historically black colleges and universities, Hispanic serving institutions, tribal colleges, and community colleges. Advisory Board members and Initiative staff participated in a number of events at different campuses. Cabinet participants included Attorney General Reno and Secretary Babbitt. White House staff participating in Campus Week events included Maria Echaveste.