

NLWJC - KAGAN

EMAILS RECEIVED

ARMS - BOX 092 - FOLDER -007

[03/27/1999 - 03/30/1999]

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Stacie Spector to Minyon Moore and Elena Kagan re Celebration (2 pages)	03/29/1999	Personal Misfile
002. email	Phillip Caplan to Gene Sperling et al re Passover (3 pages)	03/30/1999	Personal Misfile

COLLECTION:

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

FOLDER TITLE:

[03/27/1999-03/30/1999]

2009-1006-F

kc204

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

CREATION DATE/TIME:27-MAR-1999 10:37:47.00

SUBJECT: Statement by Vice President Gore on Additional Funds for America's Farmers

TO: Patricia M. Ewing (CN=Patricia M. Ewing/O=OVP @ OVP [UNKNOWN])

READ:UNKNOWN

TO: Richard L. Siewert (CN=Richard L. Siewert/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TO: Mary E. Cahill (CN=Mary E. Cahill/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

TO: Loretta M. Ucelli (CN=Loretta M. Ucelli/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TO: Jeffrey A. Forbes (CN=Jeffrey A. Forbes/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TO: Linda Ricci (CN=Linda Ricci/OU=OMB/O=EOP @ EOP [OMB])

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

TO: Douglas B. Sosnik (CN=Douglas B. Sosnik/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TEXT:

To: Team that discussed a departure/driveway/I'm-here- and- working for-you statement by POTUS on Monday (If I left anyone out I'm sorry)

This statement suggest that there might be a way to package signing the ag bill , plus restate the \$30 million, plus a recommitment to importance of farmers and need to move forward on supplemental . Should be topped by statement on action in Kosovo.

I realize it may not be a great or even large bill, but it does offer a way to show Presidential action (bill signing) on an issue that most people think is a good thing to do (help farmers)

----- Forwarded by Ann F. Lewis/WHO/EOP on 03/27/99 10:25
AM -----

From: Alejandro G. Cabrera @ OVP on 03/26/99 07:27:30 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Statement by Vice President Gore on Additional Funds for
America's Farmers

THE WHITE HOUSE

Office of the Vice President

For Immediate
Release
Friday, March 26,
1999

Contact:

(202) 456-7035

STATEMENT BY VICE PRESIDENT GORE
ON ADDITIONAL FUNDS FOR AMERICA'S FARMERS

Last month, President Clinton and I called on Congress to provide additional funding for the thousands of productive family farms in America that continue to face severe economic pressures. Unfortunately, Congress did not fully act before leaving for a two-week recess.

I am pleased however that our Administration is taking action, action that will provide additional funds in time for the spring planting season.

Today, President Clinton instructed Secretary Glickman to provide additional resources to help our nation's hurting farmers and ranchers. This action will make more than \$300 million in loans available to America's farming community, the heart of our country.

Let me be clear, however: this is only a temporary measure and I urge Congress upon its return to act on our earlier request and provide more lasting relief for our nation's farmers.

###

Message Sent

To: _____
Amy Weiss/WHO/EOP
Paul D. Glastris/WHO/EOP
Thomas M. Rosshirt/OVP @ OVP
Jordan D. Matyas/OVP @ OVP
Jeffrey K. Nussbaum/OVP @ OVP
Paul K. Orzulak/OVP @ OVP
Maurice Daniel/OVP @ OVP
Tamagni_J @ al.eop.gov @ inet
cafernandez @ efeamerica.com @ inet
Thurgood Marshall Jr/WHO/EOP
Kris M Balderston/WHO/EOP

William T. Glunz/OVP @ OVP
Sean P. O'Shea/WHO/EOP
Jon P. Jennings/WHO/EOP
Linda L. Moore/WHO/EOP
Heather M. Riley/WHO/EOP
Craig Hughes/WHO/EOP
Orson C. Porter/WHO/EOP
Bridget T. Leininger/WHO/EOP
Simeona F. Pasquil/WHO/EOP
Cynthia M. Jasso-Rotunno/WHO/EOP
Andrew J. Mayock/WHO/EOP
Jocelyn A. Bucaro/WHO/EOP
Anne E. McGuire/WHO/EOP
Maya Seiden/WHO/EOP
Lisa J. Levin/WHO/EOP
Lynn G. Cutler/WHO/EOP
Jodi R. Sakol/OVP @ OVP
Jonathan Weiss/OVP @ OVP
Nathan B. Naylor/OVP @ OVP
Roger V. Salazar/WHO/EOP
Julie B. Goldberg/WHO/EOP
Minyon Moore/WHO/EOP
Alejandro G. Cabrera/OVP @ OVP
Ruby Shamir/WHO/EOP
Julianne B. Corbett/WHO/EOP
Jason H. Schechter/WHO/EOP
Mark A. Kitchens/WHO/EOP
Philip J. Crowley/NSC/EOP
Natalie S. Wozniak/NSC/EOP
Patricia M. Ewing/OVP @ OVP
Monica M. Dixon/OVP @ OVP
Jennifer N. Devlin/OVP @ OVP
Kay Casstevens/OVP @ OVP
Sarah A. Bianchi/OVP @ OVP
Natalie S. Wozniak/NSC/EOP
Michael B. Feldman/OVP @ OVP
Robin J. Bachman/WHO/EOP
Glen M. Weiner/WHO/EOP
Julie E. Mason
Laura D. Schwartz
David Thomas @ OVP @ EOP
Thomas D. Janenda/WHO/EOP
Elizabeth R. Newman
Eli G. Attie @ OVP @ EOP
Ann F. Lewis/WHO/EOP
Lori E. Abrams
Brenda M. Anders
David S. Beaubaire
Marsha E. Berry
Anne M. Edwards
James M. Teague/WHO/EOP
Nanda Chitre
Elliot Diringer
Donald Goldberg
Shelley N. Fidler/WHCCTF/EOP
Michael V. Terrell/CEQ/EOP
David E. Kalbaugh
Catherine T. Kitchen
Jim Kohlenberger @ OVP@EOP
Sara M. Latham

Gordon Li
Laura S. Marcus
Andrew J. Mayock
Anne E. McGuire
Cheryl D. Mills
Megan C. Moloney
Kevin Moran
Paul Thornell/OVP @ OVP
Jake Siewert
Richard Socarides
Douglas B. Sosnik
Todd Stern
Sylvia M. Mathews
Barry J. Toiv
June G. Turner
Dag Vega
Julia Payne
Michael Waldman
Angelina Walker @ ovp@eop
SUNTUM_M @ A1@CD@LNGTWY
backup @ wilson.ai.mit.edu@INET@LNGTWY
BARBUSCHAK_K @ A1@CD@LNGTWY
BARTHOLOW_T @ A1@CD@LNGTWY
BLINKEN_A @ A1@CD@LNGTWY
GRIBBEN_J @ A1@CD@LNGTWY
JOHNSON_DT @ A1@CD@LNGTWY
JOHNSON_WC @ A1@CD@LNGTWY
NAPLAN_S @ A1@CD@LNGTWY
RILEY_R @ A1@CD@LNGTWY
SAMBURG_T @ A1@CD@LNGTWY
STUMPF_D @ A1@CD@LNGTWY
SULLIVAN_M @ A1@CD@LNGTWY
WEINER_R @ A1@CD@LNGTWY
WOZNIAK_N @ A1@CD@LNGTWY
usia01 @ access.digex.com@INET@LNGTWY
62955104 @ eln.attmail.com@INET@LNGTWY
INFOMGT @ A1@CD@LNGTWY
Susanna B. McGuire/WHO/EOP
Sarah E. Gegenheimer/WHO/EOP
RUBIN_E @ A1 @ CD @ VAXGTWY
Victoria L. Valentine/WHO/EOP
Martha B. Schiele/OA/EOP

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:27-MAR-1999 12:28:46.00

SUBJECT:

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

READ:UNKNOWN

TEXT:

big typos in your weekly -phil -62702

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Dawn L. Smalls (CN=Dawn L. Smalls/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME: 27-MAR-1999 13:14:10.00

SUBJECT: Pls come to COS ofc for 1:00 Med

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Dawn L. Smalls (CN=Dawn L. Smalls/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:27-MAR-1999 13:26:27.00

SUBJECT: Podesta waiting for you for Medicare Mtg. in COS ofc

TO: RON (SKY) (Pager) #KLAIN (RON (SKY) (Pager) #KLAIN [UNKNOWN])

READ:UNKNOWN

TO: BRUCE N. (Pager) #REED (BRUCE N. (Pager) #REED [UNKNOWN])

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Dan Marcus (CN=Dan Marcus/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:28-MAR-1999 20:03:42.00

SUBJECT: Helms v. Picard

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

TEXT:

Attached is a draft memo to the President, sans recommendation. The last paragraph can be expanded or changed once we hear more from Education. But, in the meantime, please edit away (as if you needed any encouragement).===== ATTACHMENT 1 =====

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

TEXT:

Unable to convert ARMS_EXT:[ATTACH.D24]MAIL45808689C.036 to ASCII, The following is a HEX DUMP:

FF57504370040000010A02010000000205000000803300000002000028C13AA4D5ADB61C4185FF
E5F65430DCBBADB61C27E3978582A1595B35B1A600727B4B8092FFECFB02213B33F10AC35A07F0
D0E8A0747405731EBB4E6221B660671537282824A59DDF8E4842138D31E9A9C0F61B6B8322AB26
8B1B54AA3B82DCD492AB80C7E40569AD7C7C3ACCEEB0D684950263A6126E6EE4044DC73ED8269A
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F5A6C4C1D9E07D9FC756647ACDBC3BA87CBCEF8ACB7478BC7B6E7465BC020AB73E8C940CB6CAA1
3170AC7D678F21C796D67A80413CC0A6A5434A17B96F4736AD96D8EF97A5795AEE08C25B3FF170

DRAFT 3/28/99

MEMORANDUM TO THE PRESIDENT

FROM: Charles F.C. Ruff, Elena Kagan, Daniel Marcus

RE: Petition for certiorari in Helms v. Picard

The Solicitor General has discussed with us his conclusion that the United States should not file a cert petition (due April 13) in this case, in which the Fifth Circuit held unconstitutional, as applied, a provision of Chapter 2 of the Elementary and Secondary Education Act that authorized local educational agencies (LEAs) to use federal funds to purchase computers and other materials for loan to private schools, including sectarian schools. That ESEA provision was replaced by a similar provision in Title VI of the Improving America's Schools Act of 1994, which remains in effect today. The U.S. Department of Education, as well as the state (Louisiana) and local (Jefferson Parish) public school authorities, were defendants in the case and are subject to an ongoing injunction.

The Fifth Circuit found that two longstanding Supreme Court precedents -- Meek v. Pittenger, 421 U.S. 349 (1975), and Wolman v. Walter, 433 U.S. 229 (1977) -- dictated the conclusion that the Title VI/Chapter 2 program was unconstitutional. In those cases the Supreme Court struck down state laws that authorized public authorities to lend instructional equipment and materials to private schools, including sectarian schools, reasoning that such materials could be used directly in aid of the sectarian enterprise of parochial schools -- unlike secular textbooks, the lending of which to sectarian schools the Court had upheld in Board of Education v. Allen, 392 U.S. 236 (1968). The Fifth Circuit rejected arguments that the Title VI/Chapter 2 program was distinguishable from those held unconstitutional in Meek and Wolman. And it also rejected arguments that Meek and Wolman had been repudiated or modified by the Supreme Court itself in later decisions -- particularly Agostini v. Felton, 521 U.S. 203 (1997), in which a closely divided Court upheld the constitutionality of using Title I ESEA funds to send public school teachers into private sectarian schools to provide remedial education to disadvantaged children.

The Fifth Circuit's decision conflicts with an earlier decision of the Ninth Circuit in Walker v. San Francisco Unified School District, 46 F.3d 1449 (1995), upholding a similar Title VI/Chapter 2 program. In Walker, the Ninth Circuit found that Meek and Wolman were no longer good law in light of later Supreme Court decisions that the Ninth Circuit viewed as establishing the principle that the Establishment Clause simply required neutrality between secular and religious schools in the provision of government aid.

After the Fifth Circuit decision, the Department of Education, in consultation with the Department of Justice, published a Guidance on compliance with Title VI, directing LEAs to employ several safeguards to ensure that equipment and materials lent to sectarian schools will not be diverted to religious purposes. The Guidance provides that LEA should obtain written assurances from private schools that materials will be used only for secular purposes; should

review the contents of library books lent to private schools and conduct periodic on-site monitoring; and should ensure that violations are promptly corrected, including, if necessary, removing the materials from the private school. This Guidance amplifies for the first time the very general requirement of ensuring secular use contained in the statute and the Department's regulations.

After extensive consideration, the Solicitor General has concluded that, although it is important to persuade the Supreme Court to revise its Establishment Clause jurisprudence to permit programs of this kind, this is not the appropriate case in which to ask the Court to take that step, and we should therefore not file a petition for certiorari. His reasoning is basically as follows: While the Supreme Court (most notably and recently in Agostini) has opened the door to some forms of assistance by public authorities to sectarian schools (or their students), its decisions have not called into question its longstanding holdings that direct aid to the sectarian school enterprise -- even on a "neutral" basis -- is forbidden, and that the provision of instructional materials that are capable of use by the sectarian school for religious purposes is therefore also forbidden. The distinctions of this case from Meek and Wolman proffered to the Fifth Circuit unsuccessfully by the Justice Department as well as the state and local authorities are unconvincing and should not be the basis for a petition for certiorari. Accordingly, any petition would have to ask the Court to overrule in substantial part Meek, Wolman, and several other precedents. (We agree with Waxman that if we seek Supreme Court review we will have to ask the Court to overrule, at least in part, the Meek-Wolman precedents.)

The Supreme Court could be asked to overrule these precedents on one of three theories. First, we could embrace the "neutrality" principle advocated by Rehnquist, Scalia, and Thomas, and argue that the Court should allow direct aid to parochial schools so long as it does not prefer one religion to another and does not favor the religious over the non-religious. Second, we could urge the Court to abandon its treatment of elementary and secondary sectarian schools as "pervasively religious" institutions, regarding them instead -- like religiously-affiliated universities -- as institutions in which the secular and the sectarian aspects of operations can easily be kept separate. The Solicitor General believes that neither of these broad arguments would be successful or should be made, and we agree.

There is a third, less radical argument that the Solicitor General believes can and should be made in an appropriate case. This argument would not challenge the principle that the Government cannot directly aid the religious mission of a sectarian school, but would urge the Court to abandon its insistence that materials be "incapable of diversion" to sectarian purposes, and substitute a test that would look to whether there are adequate safeguards against such diversion.

Justice O'Connor is the key to the success of any such argument. Four Justices -- Rehnquist, Scalia, Kennedy, and Thomas -- have indicated a willingness to go this far, and probably further. But the four "liberal" Justices -- Stevens, Souter, Ginsburg, and Breyer, all of whom dissented in Agostini -- would almost certainly reject it. O'Connor wrote Agostini, but has not questioned the principle that public funds may not be used to support the religious enterprise of a sectarian school. The Solicitor General believes, however, that she could be

persuaded to uphold programs such as Title VI if she were convinced that there were adequate safeguards to ensure that the computers or other materials lent to the sectarian schools would in fact be used for secular, not religious, purposes. These safeguards could take the form of certifications by the private schools, monitoring visits by public school teachers or officials, prescreening of library books, and sanctions for violations. (The Court would have to find that such safeguards did not amount to the "excessive entanglement" of state with church forbidden by decisions such as Lemon v. Kurtzman, 403 U.S. 602 (1971), or would have to revise its "excessive entanglement" doctrine.)

But the Solicitor General believes that Helms v. Picard is not the right case in which to make that argument. The statute itself and the federal regulations in place at the time the case was decided contained only general requirements that the public agency ensure that the loaned materials be used only for secular purposes. Nor did the State of Louisiana or Jefferson Parish establish an ambitious monitoring program. Since the Solicitor General believes that it will be difficult, even on a good record, to persuade Justice O'Connor to embrace an "adequate safeguards" exception to the Meek and Wolman line of cases, he worries not only that she will reject that argumen, but also that she will react negatively to what she will regard as a disingenuous argument by the Solicitor General that there were adequate safeguards in this case, and that her unhappiness will carry over to other cases in which we need her vote. The Guidelines adopted recently by the Department of Education are an improvement in this regard, but Waxman thinks they are too late to be of much help in this case, and he has advised the Department to adopt an amended Guidance or (preferably) regulations embodying more specific safeguards against diversion of computers and other materials to use for sectarian purposes.

Of course, if no cert petition is filed, the injunction in Helms v. Picard would remain in effect. The Solicitor General notes, however, that the Fifth Circuit decision does not strike down the statute on its face, and applies only to the particular program at issue in the Helms case.

The decision is the law only in the Fifth Circuit, and even there LEAs are free to devise other programs under Title VI. Waxman hopes that, with a new Guidance or regulations, a more attractive program-with-safeguards could be adopted by an LEA and become a more promising vehicle for winning over Justice O'Connor and a majority of the Court.

The Secretary of Education and his General Counsel do not want to wait for that better case. They think our friends in the private school community will not understand why the Administration, having supported the legality of this program during more than a decade of litigation in the lower courts, is abandoning them at the Supreme Court stage and allowing the Fifth Circuit decision to stand. They are not convinced that we should give up on the distinctions urged unsuccessfully in the Fifth Circuit but successfully earlier in the Ninth Circuit.

And they think the Justice Department understates the difficulty that LEAs will have in devising viable Title VI programs during the time (perhaps a long time) before a better case can be found and work its way up to the Supreme Court. They recognize that Helms v. Picard is not the ideal case to present to the Court and that it is by no means a sure winner. But they are not as pessimistic as the Solicitor General is, and they think the importance of this kind of program from both a policy and a political standpoint should lead us to take the risk involved in

petitioning for certiorari.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Tracy Pakulniewicz (CN=Tracy Pakulniewicz/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:29-MAR-1999 09:52:49.00

SUBJECT: Meeting

TO: Michael Waldman (CN=Michael Waldman/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

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

READ:UNKNOWN

TO: Mary E. Cahill (CN=Mary E. Cahill/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: Elena Kagan (CN=Elena Kagan/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: Ann F. Lewis (CN=Ann F. Lewis/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TO: Jeffrey A. Forbes (CN=Jeffrey A. Forbes/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TO: Gene B. Sperling (CN=Gene B. Sperling/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TO: Douglas B. Sosnik (CN=Douglas B. Sosnik/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

CC: Leslie Bernstein (CN=Leslie Bernstein/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

CC: Mindy E. Myers (CN=Mindy E. Myers/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

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

READ:UNKNOWN

CC: Anne Whitworth (CN=Anne Whitworth/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

CC: Heather M. Riley (CN=Heather M. Riley/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

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

READ:UNKNOWN

CC: Joshua S. Gottheimer (CN=Joshua S. Gottheimer/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: Ann C. Hertelendy (CN=Ann C. Hertelendy/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

CC: Joseph D. Ratner (CN=Joseph D. Ratner/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: Dominique L. Cano (CN=Dominique L. Cano/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TEXT:

Loretta Ucelli will be hosting a meeting to discuss messages for the next two weeks, today, March 29, at 4:00 pm in the Roosevelt Room.

Thank you.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:29-MAR-1999 11:00:37.00

SUBJECT:

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

READ:UNKNOWN

TEXT:

I have Welfare Q&A's from Cynthia for your review -Laura

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:29-MAR-1999 12:37:18.00

SUBJECT: CR

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

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

Thought you should see this. Do you want to talk to Maria about this? i
assume you do.

----- Forwarded by Paul J. Weinstein Jr./OPD/EOP on
03/29/99 12:37 PM -----

LESLIE

BERNSTEIN

03/29/99 11:28:41 AM

Record Type: Record

To: See the distribution list at the bottom of this message

cc: Ora Theard/WHO/EOP

Subject: CR

As a follow-up to Maria and Chuck's civil rights meeting on Friday,
we will be meeting again on Thursday at 11:30am in The Roosevelt Room.

Thanks

Message Sent

To: _____

Edward W. Correia/WHO/EOP

Peter Rundlet/WHO/EOP

Tanya E. Martin/OPD/EOP
Thomas L. Freedman/OPD/EOP
Paul J. Weinstein Jr./OPD/EOP
Mary L. Smith/OPD/EOP
Jonathan A. Kaplan/OPD/EOP
Clara J. Shin/WHO/EOP

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:29-MAR-1999 12:51:12.00

SUBJECT: Updated Welfare Reform Accomplishments

TO: Beach-Benjamin (Beach-Benjamin @ dol.gov @ inet [UNKNOWN])
READ:UNKNOWN

TO: Heyman-Stephen (Heyman-Stephen @ dol.gov @ inet [UNKNOWN])
READ:UNKNOWN

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

TO: mkharfen (mkharfen @ acf.dhhs.gov @ inet [UNKNOWN])
READ:UNKNOWN

TO: pbravo (pbravo @ acf.dhhs.gov @ inet [UNKNOWN])
READ:UNKNOWN

TO: zina.pierre (zina.pierre @ sba.gov @ inet [UNKNOWN])
READ:UNKNOWN

TO: Daniel I. Werfel (CN=Daniel I. Werfel/OU=OMB/O=EOP @ EOP [OMB])
READ:UNKNOWN

TO: pruggles (pruggles @ osaspe.dhhs.gov @ inet [UNKNOWN])
READ:UNKNOWN

TO: dahm-emily (dahm-emily @ dol.gov @ inet [UNKNOWN])
READ:UNKNOWN

TO: kamela-william (kamela-william @ dol.gov @ inet [UNKNOWN])
READ:UNKNOWN

TO: art_foley (art_foley @ fcs.usda.gov @ inet [UNKNOWN])
READ:UNKNOWN

TO: corine.hegland (corine.hegland @ ost.dot.gov @ inet [UNKNOWN])
READ:UNKNOWN

TO: deborah_greenstein (deborah_greenstein @ hud.gov @ inet [UNKNOWN])
READ:UNKNOWN

TO: michael.barr (michael.barr @ ms01.do.treas.sprint.com @ inet [UNKNOWN])
READ:UNKNOWN

TO: betsy.myers (betsy.myers @ sba.gov @ inet [UNKNOWN])
READ:UNKNOWN

TO: nancy_kirshner-rodriquez (nancy_kirshner-rodriquez @ hud.gov @ inet [UNKNOWN])
READ:UNKNOWN

TO: ljenning (ljenning @ dol.gov @ inet [UNKNOWN])
READ:UNKNOWN

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

READ:UNKNOWN

TO: Andrew R. Feldman (CN=Andrew R. Feldman/OU=CEA/O=EOP @ EOP [CEA])
READ:UNKNOWN

TO: William H. White Jr. (CN=William H. White Jr./OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: YAMIN_S (YAMIN_S @ A1 @ CD @ VAXGTWY [UNKNOWN]) (OMB)
READ:UNKNOWN

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

TO: Joseph C. Fanaroff (CN=Joseph C. Fanaroff/OU=WHO/O=EOP [UNKNOWN])
READ:UNKNOWN

TO: Robin J. Bachman (CN=Robin J. Bachman/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

TO: efurd-laura (efurd-laura @ dol.gov [UNKNOWN])
READ:UNKNOWN

TO: Stephen_J._Yank (Stephen_J._Yank @ hud.gov [UNKNOWN])
READ:UNKNOWN

TO: Melissa G. Green (CN=Melissa G. Green/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

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

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

TO: eparker (eparker @ acf.dhhs.gov @ inet [UNKNOWN])
READ:UNKNOWN

TO: Lori Schack (CN=Lori Schack/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: cpian (cpian @ osaspe.dhhs.gov @ inet [UNKNOWN])
READ:UNKNOWN

TO: xavier_briggs (xavier_briggs @ hud.gov @ inet [UNKNOWN])
READ:UNKNOWN

TO: bonny_o'neil (bonny_o'neil @ fcs.usda.gov @ inet [UNKNOWN])
READ:UNKNOWN

TO: john_f._bohm (john_f._bohm @ hud.gov @ inet [UNKNOWN])

READ:UNKNOWN

TO: linda.lawson (linda.lawson @ ost.dot.gov @ inet [UNKNOWN])

READ:UNKNOWN

TO: irma.tucker (irma.tucker @ treas.sprint.com @ inet [UNKNOWN])

READ:UNKNOWN

TO: uhalde-raymond (uhalde-raymond @ dol.gov @ inet [UNKNOWN])

READ:UNKNOWN

TO: JMONAHAN (JMONAHAN @ ACF.DHHS.GOV @ inet [UNKNOWN])

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

TO: Anil Kakani (CN=Anil Kakani/OU=OMB/O=EOP @ EOP [OMB])

READ:UNKNOWN

TO: Robert F. Schoeni (CN=Robert F. Schoeni/OU=CEA/O=EOP @ EOP [CEA])

READ:UNKNOWN

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

READ:UNKNOWN

TO: Lee Ann Brackett (CN=Lee Ann Brackett/O=OVP @ OVP [UNKNOWN])

READ:UNKNOWN

TO: Chandler G. Spaulding (CN=Chandler G. Spaulding/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TO: J. Eric Gould (CN=J. Eric Gould/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

Here's updated document for your use -- it's also posted on White House welfare reform web site

===== ATTACHMENT 1 =====

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

TEXT:

Unable to convert ARMS_EXT:[ATTACH.D87]MAIL452556994.036 to ASCII,
The following is a HEX DUMP:

FF575043BA060000010A02010000000205000000AD680000000200000D23A865B05E74DDF7296E
1B5674C72BFF03280EAF2A215F85A9BAAD025E73CA2F56C41BF0B5E58A46AE51FBE8FCDDD8B6C9

03/23/99

CLINTON-GORE ACCOMPLISHMENTS

REFORMING WELFARE

On August 22, 1996, President Clinton signed the Personal Responsibility and Work Opportunity Reconciliation Act, fulfilling his longtime commitment to 'end welfare as we know it.' As the President said upon signing, "... this legislation provides an historic opportunity to end welfare as we know it and transform our broken welfare system by promoting the fundamental values of work, responsibility, and family."

TRANSFORMING THE BROKEN WELFARE SYSTEM

- **Overhauling the Welfare System with the Personal Responsibility Act:** In 1996, the President signed a bipartisan welfare plan that is dramatically changing the nation's welfare system into one that requires work in exchange for time-limited assistance. The law contains strong work requirements, performance bonuses to reward states for moving welfare recipients into jobs and reducing illegitimacy, state maintenance of effort requirements, comprehensive child support enforcement, and supports for families moving from welfare to work -- including increased funding for child care. State strategies are making a real difference in the success of welfare reform, specifically in job placement, child care and transportation.
- **Law Builds on the Administration's Welfare Reform Strategy:** Even before the Personal Responsibility Act became law, many states were well on their way to changing their welfare programs to jobs programs. By granting Federal waivers, the Clinton Administration allowed 43 states -- more than all previous Administrations combined -- to require work, time-limit assistance, make work pay, improve child support enforcement, and encourage parental responsibility. The vast majority of states have chosen to continue or build on their welfare demonstration projects approved by the Clinton Administration.
- **Welfare Rolls Decline as More Recipients go to Work:** In January 1999, the President released state-by-state data (from September 1998) showing that welfare caseloads are at their lowest level in 30 years and that the welfare rolls have fallen by nearly half since he took office. Since January 1993, 36 states have had caseload declines of more than 40 percent and nationwide the rolls have fallen by 44 percent, from 14.1 million to just below 8 million. This historic decline occurred in response to the Administration's grants of Federal waivers to 43 states, the provisions of the new welfare reform law, and the strong economy. Recent information released by the Department of Health and Human Services also shows that the percentage of welfare recipients working has tripled since 1992, that an estimated 1.5 million people who were on welfare in 1997 were working in 1998, and that all states met the first overall work participation rates required under the welfare reform law.

MOVING PEOPLE FROM WELFARE TO WORK

- **Mobilizing the Business Community:** At the President's urging, the Welfare to Work Partnership was launched in May 1997 to lead the national business effort to hire people from the welfare rolls. Founded with 105 participating businesses, the Partnership grew to 5,000 within one year, and in his 1999 State of the Union address, the President announced that the Partnership now includes over 10,000 businesses who have hired hundreds of thousands of people. Since 1997, these businesses have hired over 410,000 welfare recipients, more than meeting the challenge the President set in May of 1998. The Partnership provides technical assistance and support to businesses around the country, including: a toll-free number, a web site, a quarterly newsletter, and a "Blueprint for Business" hiring manual. The Partnership also published The Road to Retention, a report of companies that have found higher retention rates for former welfare recipients for other new hires, and strategies they used to achieve this success.
- **Connecting Small Businesses with New Workers:** The Small Business Administration is addressing the unique and vital role of small businesses who employ over one-half of the private workforce, by helping small businesses throughout the country connect with job training organizations and job-ready welfare recipients. In addition, SBA provides training and assistance to welfare recipients who wish to start their own businesses. SBA provides assistance to businesses through its 1-800-U-ASK-SBA number, as well through its network of small business and women's business centers, one-stop capital shops, district offices, and its home page.
- **Mobilizing Civic, Religious and Non-profit Groups:** The Vice President created the Welfare to Work Coalition to Sustain Success, a coalition of national civic, service, and faith-based groups committed to helping former welfare recipients succeed in the workforce. Working in partnership with public agencies and employers, Coalition members provide mentoring, job training, child care, transportation, and other support to help these new workers with the transition to self sufficiency. Charter members of the Coalition include: Alpha Kappa Alpha, the Boys and Girls Clubs of America, the Baptist Joint Committee, Goodwill, Salvation Army, the United Way, Women's Missionary Union, the YMCA, the YWCA, and other civic and faith-based groups.
- **Doing Our Fair Share with the Federal Government's Hiring Initiative:** Under the Clinton Administration, the Federal workforce is the smallest it has been in thirty years. Yet, this Administration also believes that the Federal government, as the nation's largest employer, must lead by example. The President asked the Vice President to oversee the Federal government's hiring initiative in which Federal agencies have committed to directly hire at least 10,000 welfare recipients in the next four years. On March 1st, the Vice President announced that the federal government has hired over 10,000 welfare recipients nearly two years ahead of schedule. As a part of this effort, the White House pledged to hire six welfare recipients and has already exceeded this goal.
- **Funds to Help Move More People from Welfare to Work, with a Focus on Fathers:** Because of the President's leadership, the 1997 Balanced Budget Act included the total funding requested by the President for the creation of his \$3 billion welfare to work fund.

This program helps states and local communities move long-term welfare recipients, and certain non-custodial parents, into lasting, unsubsidized jobs. These funds can be used for job creation, job placement and job retention efforts, including wage subsidies to private employers and other critical post-employment support services. The Department of Labor provides oversight but most of the dollars are placed, through the Private Industry Councils, in the hands of the localities who are on the front lines of the welfare reform effort. In addition, 25 percent of the funds are awarded by the Department of Labor on a competitive basis to support innovative welfare to work projects. The President announced the first round of 49 competitive grants in May, and the Vice President announced the second round of 75 competitive grants in November 1998. In January 1999, the Department of Labor announced the availability of \$240 million in competitive grants for FY 1999. These funds will support innovative local welfare-to-work strategies for noncustodial parents, individuals with limited English proficiency, disabilities, substance abuse problems, or a history of domestic violence.

The President's FY 2000 budget includes \$1 billion for the Welfare-to-Work program to help 200,000 long-term welfare recipients in high-poverty areas move into lasting unsubsidized employment. This is an extension of the two-year \$3 billion Welfare-to-Work program the President secured in the Balanced Budget Act. The initiative, as reauthorized, will provide at least \$150 million to ensure that every state helps fathers fulfill their responsibilities by working, paying child support, and playing a responsible part in their children's lives. Under this proposal, states and communities will use a minimum of 20 percent of their formula funds to provide job placement and job retention assistance to low-income fathers who sign personal responsibility contracts committing them to work and pay child support. This effort will further increase child support collections, which have risen 80 percent since the President took office, from \$8 billion in 1992 to \$14.4 billion in 1998. Remaining funds will go toward assisting long-term welfare recipients with the greatest barriers to employment to move into lasting jobs. The reauthorized program also will double the welfare-to-work funding available for tribes.

- **Tax Credits for Employers:** The Welfare to Work Tax Credit, enacted in the 1997 Balanced Budget Act, provides a credit equal to 35 percent of the first \$10,000 in wages in the first year of employment, and 50 percent of the first \$10,000 in wages in the second year, to encourage the hiring and retention of long term welfare recipients. This credit complements the Work Opportunity Tax Credit, which provides a credit of up to \$2,400 for the first year of wages for eight groups of job seekers. The Omnibus Budget Act included an extension through June 30, 1999 and the President's FY 2000 budget proposes to extend both credits for an additional year.
- **Welfare-to-Work Housing Vouchers:** In his FY 1999 budget, the President proposed \$283 million for 50,000 new housing vouchers for welfare recipients who need housing assistance to get or keep a job, and Congress approved full funding for this new initiative. Families will use these housing vouchers to move closer to a new job, to reduce a long commute, or to secure more stable housing to eliminate emergencies that keep them from getting to work every day on time. Nearly all of these vouchers will be awarded to communities on a competitive basis, to communities who create cooperative efforts among their housing, welfare and employment agencies to assure the most effective use

of this flexible new tool to help people make the transition from welfare to work. The President's FY 2000 budget provides \$430 million for 75,000 welfare-to-work vouchers, including \$144 million in new funds for 25,000 additional vouchers.

- **Welfare-to-Work Transportation:** One of the biggest barriers facing people who move from welfare to work -- in cities and in rural areas -- is finding transportation to get to jobs, training programs and child care centers. Few welfare recipients own cars. Existing mass transit does not provide adequate links to many suburban jobs at all, or within a reasonable commute time. In addition, many entry level jobs require evening or weekend hours that are poorly served by existing transit routes. To help those on welfare get to work, President Clinton proposed a \$100 million a year welfare to work transportation plan as part of his ISTEA reauthorization bill. The Transportation Equity Act for the 21st Century (TEA-21) authorized \$750 million over five years for the President's initiative and reverse commute grants. Of this amount, \$50 million is guaranteed funding in FY 1999, rising to \$150 million in 2003. The Omnibus Budget Act included \$75 million for this program in FY 1999 and the Department of Transportation is currently reviewing applications for this first year funding. The President's budget proposes to double funding for FY 2000, bringing it to the full authorized level of \$150 million. The Job Access competitive grants will assist states and localities in developing flexible transportation alternatives, such as van services, for welfare recipients and other low income workers.
- ***Eliminating Anti-Work and Anti-Family Rules that Denied Families Health Coverage.*** In August 1998, the President eliminated a vestige of the old welfare system by announcing that the Department of Health and Human Services will revise its regulations to allow all states to provide Medicaid coverage to working, two-parent families who meet State income eligibility. Under the old welfare regulations, adults in two-parent families who worked more than 100 hours per month could not receive Medicaid regardless of income level, while there were no such restrictions on single-parent families. Because these regulations provided disincentives to marriage and full-time work, the Administration allowed a number of states to waive this rule. The new regulation eliminates this rule for all States, providing health coverage for more than 130,000 working families to help them stay employed and off welfare.

PROMOTING PERSONAL RESPONSIBILITY

- **Enforcing Child Support -- 80% Increase in Collections:** The Clinton Administration collected a record \$14.4 billion in child support in 1998 through tougher enforcement, an increase of \$6.4 billion, or 80% since 1992. Not only are collections up, but the number of families that are actually receiving child support has also increased. In 1997, the number of child support cases with collections rose to 4.2 million, an increase of 48% from 2.8 million in 1992. In addition, a new collection system proposed by the President in 1994 and enacted as part of the 1996 welfare reform law located one million delinquent parents in its first nine months of operation. This National Directory of New Hires helps track parents across state lines by enabling child support officials to match records of delinquent parents with wage records from throughout the nation. Approximately one-third of all child support cases involve parents living in different

states. In June 1998, the President signed the Deadbeat Parents Punishment Act, a law based on his 1996 proposal for tougher penalties for parents who repeatedly fail to support children living in another state or who flee across state lines to avoid supporting them. This new law creates two new felonies, with penalties of up to two years in prison, for egregious child support evaders who travel across state or country lines to evade child support obligations, or who have an unpaid obligation to a child living in another state that is more than \$10,000 or has remained unpaid for more than two years.

Increasing Parental Responsibility: The President's unprecedented and sustained campaign to ensure parents financially support their children is working. Paternity establishment, often the crucial first step in child support cases, has dramatically increased, due in large part to the in-hospital voluntary paternity establishment program begun in 1994 by the Clinton Administration. In 1997, the number of paternities established or acknowledged rose to a record 1.3 million, two and a half times the 1992 figure of 512,000. In addition to tougher enforcement including a strong partnership with states, President Clinton has taken executive action including: directing the Treasury Department to collect past-due child support from Federal payments including Federal income tax refunds and employee salaries, and taking steps to deny Federal loans to any delinquent parents. The Federal government collected over \$1.1 billion in delinquent child support from federal income tax refunds for tax year 1997, a 70 percent increase since 1992. The welfare reform law contains tough child support measures that President Clinton has long supported including: the national new hire reporting system; streamlined paternity establishment; uniform interstate child support laws; computerized state-wide collections; and tough new penalties. These five measures are projected to increase child support collections by an additional \$24 billion over the next ten years.

- **Breaking the Cycle of Dependency -- Preventing Teen Pregnancy:** Significant components of the President's comprehensive effort to reduce teen pregnancy became law when the President signed the 1996 Personal Responsibility Act. The law requires unmarried minor parents to stay in school and live at home or in a supervised setting; encourages "second chance homes" to provide teen parents with the skills and support they need; and provides \$50 million a year in new funding for state abstinence education activities. Since 1993, the Clinton Administration has supported innovative and promising teen pregnancy prevention strategies, including working with boys and young men on pregnancy prevention strategies. The National Campaign to Prevent Teen Pregnancy, a private nonprofit organization, was formed in response to the President's 1995 State of the Union. In 1997, the President announced the National Strategy to Prevent Teen Pregnancy, mandated in the welfare reform law. The first annual report on this Strategy reported that HHS-supported programs already reach at least 31 percent or 1,470 communities in the United States. Notably, data shows we are making progress in reducing teen pregnancy -- teen births have fallen six years in a row, by 15 percent from 1991 to 1997. And, teen pregnancy rates are at their lowest level in 20 years.

RESTORING FAIRNESS AND PROTECTING THE MOST VULNERABLE

The President made a commitment to fix several provisions in the welfare reform law that had nothing to do with moving people from welfare to work. In 1997, the President fought for and ultimately was successful in ensuring that the Balanced Budget Act protects the most vulnerable.

In 1998, the President continued to reverse unfair cuts in benefits to legal immigrants. The Administration's FY 2000 budget would build on this progress by restoring important disability, health, and nutrition benefits to additional categories of legal immigrants, at a cost of \$1.3 billion over five years.

- **Disability and Health:** The Balanced Budget Act of 1997 restored disability and health benefits to 420,000 legal immigrants who were in this country before welfare reform became law (August 22, 1996), at an estimated cost of \$11.5 billion. The Administration's new budget would restore eligibility for SSI and Medicaid to legal immigrants who enter the country after that date if they have been in the U.S. for five years and become disabled after entering the United States. This proposal would cost approximately \$930 million and assist an estimated 54,000 legal immigrants by 2004, about half of whom would be elderly.
- **Nutritional Assistance:** The Agricultural Research Act of 1998 provided Food Stamps for 225,000 legal immigrant children, senior citizens, and people with disabilities who came to the United States by August 22, 1996. The Administration's budget would extend this provision by allowing legal immigrants in the United States on August 22, 1996 who subsequently reach age 65 to be eligible for Food Stamps at cost of \$60 million.
- **Childrens' Health Care and Maternal Care for Pregnant Women:** States currently can provide health coverage to immigrant children who entered the country before August 22, 1996. The President's FY 2000 budget would give states the option to provide health coverage to legal immigrant children who entered the country after August 22, 1996. Under this proposal, states could provide health coverage to those children through Medicaid or their CHIP allotment. The proposal would cost \$220 million and serve approximately 55,000 children by FY 2004. Furthermore, the budget proposes to give states the option to provide Medicaid coverage to legal immigrant women who entered the country after August 22, 1996 and subsequently became pregnant. Such coverage would help reduce the number of high-risk pregnancies, ensure healthier children, and lower the cost of emergency Medicaid deliveries. This proposal would cost \$105 million and serve approximately 23,000 women by FY 2004.
- **Helping People Who Want to Work but Can't Find a Job:** The Balanced Budget Act (BBA), as amended by the Agricultural Research Act, also restored \$1.3 billion in food stamp cuts. The welfare reform law restricted food stamps for able-bodied childless adults to only 3 out of every 36 months, unless they were working. This move ignored the fact that finding a job often takes time. The BBA provided funds for work slots and food stamp benefits to help those who are willing to work but, through no fault of their own, have not yet found employment. In addition, the BBA allows states to exempt up to 15 percent of the food stamp recipients (70,000 individuals monthly) who would

otherwise be denied benefits as a result of the "3 in 36" limit.

Automated Records Management System
Hex-Dump Conversion

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Stacie Spector to Minyon Moore and Elena Kagan re Celebration (2 pages)	03/29/1999	Personal Misfile

COLLECTION:

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

FOLDER TITLE:

[03/27/1999-03/30/1999]

2009-1006-F
kc204

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

CREATION DATE/TIME:29-MAR-1999 15:10:43.00

SUBJECT: EEOC Management Directive

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

READ:UNKNOWN

TEXT:

EEOC staff have drafted a "management directive" to give guidance to federal agencies on hiring and affirmative action. It also includes guidance on affirmative action plans and disabled employees. The Counsel's Office is preparing to review it and discuss it with DOJ and EEOC staff before it goes before the Commission. Would you like someone from DPC to participate? Who?

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Carolyn T. Wu (CN=Carolyn T. Wu/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME: 29-MAR-1999 16:21:12.00

SUBJECT: Equal Pay

TO: Lynn G. Cutler (CN=Lynn G. Cutler/OU=WHO/O=EOP @ EOP [WHO])

READ: UNKNOWN

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

READ: UNKNOWN

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

READ: UNKNOWN

TO: Loretta M. Ucelli (CN=Loretta M. Ucelli/OU=WHO/O=EOP @ EOP [WHO])

READ: UNKNOWN

TO: Caroline R. Fredrickson (CN=Caroline R. Fredrickson/OU=WHO/O=EOP @ EOP [WHO])

READ: UNKNOWN

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

READ: UNKNOWN

CC: Mona G. Mohib (CN=Mona G. Mohib/OU=WHO/O=EOP @ EOP [WHO])

READ: UNKNOWN

CC: Kelley L. O'Dell (CN=Kelley L. O'Dell/OU=WHO/O=EOP @ EOP [WHO])

READ: UNKNOWN

CC: Tracy Pakulniewicz (CN=Tracy Pakulniewicz/OU=WHO/O=EOP @ EOP [WHO])

READ: UNKNOWN

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

READ: UNKNOWN

June G. Turner (CN=June G. Turner/OU=WHO/O=EOP [WHO])

READ: UNKNOWN

TEXT:

This meeting will take place in the Roosevelt Room tomorrow at 2. Thanks.

----- Forwarded by Carolyn T. Wu/WHO/EOP on 03/29/99

04:20 PM -----

Carolyn T. Wu

03/26/99 10:23:19 AM

Record Type: Record

To: See the distribution list at the bottom of this message

cc: See the distribution list at the bottom of this message

Subject: Equal Pay

Karen Tramontano will be holding a meeting on Equal Pay on Tuesday 3/20 at 2 pm. Location TBD. Please let me know of conflicts. Thanks.

Message Sent

To: _____

Elena Kagan/OPD/EOP
Thomas L. Freedman/OPD/EOP
Caroline R. Fredrickson/WHO/EOP
Jennifer M. Luray/WHO/EOP
Maria Echaveste/WHO/EOP
Loretta M. Ucelli/WHO/EOP
Lynn G. Cutler/WHO/EOP

Message Copied

To: _____

Laura Emmett/WHO/EOP
Kelley L. O'Dell/WHO/EOP
Leslie Bernstein/WHO/EOP
Tracy Pakulniewicz/WHO/EOP
Mona G. Mohib/WHO/EOP

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:29-MAR-1999 16:58:20.00

SUBJECT: Illegitimacy Bonus

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

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

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

OMB is ready to clear HHS' Final Rule implementing the "Illegitimacy Bonus" provision of PRWORA. The Rule provides up to \$25 million each to up to five states and territories with the largest percentage decrease in their out-of-wedlock birth rates. These states must also have a lower rate of abortions than they did in 1995. The total amount of the bonus will not exceed \$100 million annually in FY99-02.

Most of the provisions of the rule were required by statute. The final rule has not changed significantly from the NPRM, which was published last March. There were not a lot of comments on the NPRM and those received were generally supportive of the approach HHS took given statutory constraints. Since funds must be awarded before the end of the fiscal year, HHS is anxious to get this published so states have time to submit required data. Unless you have concerns or questions, we'd like to give OMB the green light to get this out today or tomorrow. It would likely get published the week of April 5th. HHS is not planning any splashy release -- they will alert states and other interested parties and will provide us Q&As. AP did run a story when the NPRM was released.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:29-MAR-1999 18:04:39.00

SUBJECT: Teacher of the Year

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

READ:UNKNOWN

TEXT:

What are we doing with the Teacher of the Year request? It looks like they're in town between 4/19 and 4/23

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Todd Stern (CN=Todd Stern/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:29-MAR-1999 18:29:50.00

SUBJECT: race

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

READ:UNKNOWN

TEXT:

The memo talks about the need to make a compelling case for our ESEA proposal. Do you have some (hopefully short) handy paper that lays out the key elements of our ESEA proposal? Also, the memo notes many off-the-cuff speeches the P. has given making his argument for equal opportunity in education. Do you know of any in particular that I might look at? If they're off-the-cuff, I assume they're of the fundraising variety, but I don't really know. tds

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:29-MAR-1999 18:34:19.00

SUBJECT: questionnaire & speeches

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.D29]MAIL478842002.136 to ASCII,

The following is a HEX DUMP:

FF57504389090000010A02010000000205000000CA6D000000020000DC808F142831CD9A3AFC9A
B81CDF4FFABAB46E9522984F484E1166573FADE47C38FFF8CD0EF74F955734E14E31F39A4F9827
A929E324746046AB9DEA61EAF46AFED2ECFC5E63E2E9E5508B22DA4AB308A2C2A9E7CB65468FDA
9A1E9363BE88E8CB764E766E39A59BF6283963356C583BD5DF13CF29A7DD84C3DE0FDCAA53DB24

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. **Full name (include any former names used.)**
2. **Address: List current place of residence and office address(es).**
3. **Date and place of birth.**
4. **Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**
5. **Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.**
6. **Employment Record: List (by year) all businesses or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.**
7. **Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.**
8. **Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest of the Committee.**
9. **Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.**
10. **Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.**
11. **Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.**
12. **Published Writings: List the title, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published materials not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.**
13. **Health: What is the present state of your health? List the date of your last physical**

examination.

14. **Judicial Office:** State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.
15. **Citations:** If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgement was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.
16. **Public Office:** State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.
17. **Legal Career:**
 - a. Describe chronologically your law practice and experience after graduation from law school including:
 1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;
 2. whether you practiced alone, and if so, the addresses and dates;
 3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;
 - b.
 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?
 2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.
 - c.
 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.
 2. What percentage of these appearances was in:
 - (a) federal courts;
 - (b) state courts of record;
 - (c) other courts.

3. What percentage of your litigation was:
 - (a) civil;
 - (b) criminal.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

5. What percentage of these trials was:
 - (a) jury;
 - (b) non-jury.

18. **Litigation:** Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:
 - (a) the date of representation;
 - (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
 - (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

19. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**
2. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.**
3. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain:**
4. **List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substitutes here.)**
5. **Please complete the attached financial net worth statement in detail (Add schedules as called for).**
6. **Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank account, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks				Notes payable to banks - secured			
U.S. Government securities - add schedule				Notes payable to banks - unsecured			
Listed securities - add schedule				Notes payable to relatives			
Unlisted securities - add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid tax and interest			
Doubtful				Real estate mortgages payable - add schedule			
Real estate owned - add schedule				Chattel mortgages and other liens pay-able			
Real estate mortgages receivable				Other debts - itemize:			
Autos and other personal property							
Cash value - life insurance							
Other assets - itemize:							
				Total liabilities			
				Net Worth			
Total Assets				Total liabilities and net worth			
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add sched-ule.)			
On leases or contracts				Are you defendand in any suits or legal actions?			
Legal Claims				Have you ever taken bankruptcy?			
Provision for Federal Income Tax							
Other special debt							

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II. GENERAL (PUBLIC)

1. **An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.**
2. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that individually discriminates on the basis of race, sex, or religion. Do you currently belong, or have belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?**
3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).**
4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.**
5. **Please discuss your views on the following criticism involving "judicial activism."**

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. **A tendency by the judiciary toward problem-solution rather than grievance-resolution;**
- b. **A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;**
- c. **A tendency by the judiciary to impose broad, affirmative duties upon governments and society;**

- d. **A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and**
- e. **A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.**

IV. CONFIDENTIAL

- 1. Full name (include any former names used).**
- 2. Address: List current place of residence and office address(es). List all offices and home telephone numbers where you may be reached.**
- 3. Have you ever been discharged from employment for any reason or have you ever resigned after being informed that your employer intended to discharge you?**
- 4. Have you and your spouse filed and paid all taxes (federal, state and local) as of the date of your nomination? Please indicate if you filed "married filing separately". Did you make any back tax payments prior to your nominations? If so, give full details.**
- 5. Has a tax lien or other collection procedure (to include receipt of computer balance due noticed, ever been instituted against you by federal, state, or local authorities? If so, give full details.**
- 6. Have you or your spouse ever been the subject of any audit, investigation, or inquiry for either federal, state, or local taxes? If so, give full details.**
- 7. Have you or your spouse ever declared bankruptcy? If so, give particulars.**
- 8. Have you to your knowledge ever been under federal, state, or local investigation for a possible violation of either a civil or criminal statute or administrative agency regulation? If so, give full details. Has any organization of which you were an officer, director, or active participant ever been the subject of such an investigation with respect to activities within your responsibility? If so, give full details.**
- 9. Have you ever been the subject of a complaint to any court, administrative agency, bar association, disciplinary committee, or other professional group for a breach of ethics, unprofessional conduct or a violation of any rule of practice? If so, give particulars.**
- 10. Have you ever been the party (whether plaintiff, defendant, or in any other capacity) to any litigation?**
- 11. Please advise the Committee of any unfavorable information that may affect your nomination.**

AFFIDAVIT

I, _____ do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

(DATE)

(NAME)

(NOTARY)

Speeches and Briefings

<u>DATE/TIME</u>	<u>GROUP</u>	<u>SUBJECT</u>
April 23, 1997 3:15 PM	Schedule C Appointees	General DPC Agenda
June 25, 1997 3:30 PM	Senior Executive Service Orientation	General DPC Agenda
January 7, 1998 2:00 PM	Irv's class from NYC	General DPC Agenda
February 10, 1998 11:00 AM	IGA Democratic Governor's Staff brief	Tobacco
April 25, 1998 12:45 PM	Cabinet Staff Luncheon at State Dept.	General DPC Agenda
January 26, 1999 5:00 PM	Women's Mayors IGA Brief	General DPC Agenda
February 2, 1999 7:30 PM	MSNBC On-Line Interview	General DPC Agenda
February 22, 1999 9:30 AM	NGA Lt. Governor's Briefing	Budget/General DPC Agenda

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:29-MAR-1999 19:24:02.00

SUBJECT: PR disadvantaged kids decision

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

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

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

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

CC: Jeffrey L. Farrow (CN=Jeffrey L. Farrow/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

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

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

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

TEXT:

Where are we on this? Is there a process to resolve this issue? Please advise. JM

----- Forwarded by Janet Murguia/WHO/EOP on 03/29/99

06:21 PM -----

Jeffrey L. Farrow
03/29/99 07:04:03 PM
Record Type: Record

To: Maria Echaveste/WHO/EOP, Janet Murguia/WHO/EOP
cc: Fred DuVal/WHO/EOP, Mickey Ibarra/WHO/EOP, Maritza Rivera/WHO/EOP
Subject: PR disadvantaged kids decision

A decision will be needed soon on whether the President's Elementary and Secondary Ed bill will propose (A) equal or (B) lesser treatment for disadvantaged students in Puerto Rico since the plan is to submit the bill April 12.

I recommend Option A.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Jeffrey L. Farrow (CN=Jeffrey L. Farrow/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:29-MAR-1999 19:51:48.00

SUBJECT: Puerto Rico & Our Schools Bill

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

READ:UNKNOWN

TEXT:

The Dept. of Ed's budget office gave the reasons below for proposing unequal funding of Puerto Rico in the Even Start, Safe & Drug Free Schools, and Migratory Children's Education sections of their draft Elementary and Secondary Ed Bill. The draft would continue the current provision providing 21% aid for Title I programs in PR vs. 32% in the States. The reasons would not be considered good ones by Puerto Ricans and others, but I have no doubt they are the reasons for the current law.

1. The draft would continue current law. Comment: That will not go over as a good policy reason for the President proposing unequal treatment.

2. Puerto Ricans don't pay most taxes. Comment: The kids denied the benefits of equal funding wouldn't pay the taxes not applied in PR in any case. Many will wind up in the States less well educated. If taxes is the standard, why do we give PRs much anything at all? And why do we treat the other insular areas better than the States in several Education programs? Should we propose commensurate taxation or other cost-sharing contributions from PR?

3. Puerto Rico doesn't have votes. Comment: Crass (reality). If that's the standard, why do we treat Puerto Rico equally in most laws? Again, why do we treat the other insular areas better than the States in some Ed programs? (Fact: There were Delegates on the House committee the last ESEA reauthorization.)

4. Cost. Comment: Should education be the area to treat PR unequally? Should we phase-in equal treatment to make the increase less of a burden? Why then treat other territorial areas better than equal? (there's a 1% set-aside for the smaller territories, which have less than 1/10 PR's population.)

George Miller, second ranking Dem. on the committee, is concerned about this. Romero-Barcelo, also on the committee, will make a push.

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
002. email	Phillip Caplan to Gene Sperling et al re Passover (3 pages)	03/30/1999	Personal Misfile

COLLECTION:

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

FOLDER TITLE:

[03/27/1999-03/30/1999]

2009-1006-F
kc204

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

CREATION DATE/TIME:30-MAR-1999 10:23:35.00

SUBJECT: Zambia

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

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

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

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

TEXT:
FYI -

"AIDS Fight in \$1M Boost"
Africa News Service (03/29/99)

The U.S. government has allocated an additional \$1 million in funding for Zambian HIV/AIDS programs, raising the total U.S. funding for the country's anti-HIV efforts to \$4 million. The money will be committed through the U.S. Agency for International Development, announced White House AIDS policy coordinator Sandy Thurman. Thurman made the announcement in Lusaka, Zambia, during a trip to observe the country's HIV prevention programs.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Melissa G. Green (CN=Melissa G. Green/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:30-MAR-1999 12:46:00.00

SUBJECT: Revised medicare--minor hyphen changes

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

READ:UNKNOWN

TO: Jason H. Schechter (CN=Jason H. Schechter/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TO: Natasha F. Bilimoria (CN=Natasha F. Bilimoria/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

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

READ:UNKNOWN

TO: Jeanne Lambrew (CN=Jeanne Lambrew/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

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

READ:UNKNOWN

TO: Joseph C. Fanaroff (CN=Joseph C. Fanaroff/OU=WHO/O=EOP @ EOP [UNKNOWN])

READ:UNKNOWN

TO: Sarah A. Bianchi (CN=Sarah A. Bianchi/O=OVP @ OVP [UNKNOWN])

READ:UNKNOWN

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

READ:UNKNOWN

TO: Sidney Blumenthal (CN=Sidney Blumenthal/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TO: Brian A. Barreto (CN=Brian A. Barreto/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TO: Mark D. Neschis (CN=Mark D. Neschis/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TO: Noa A. Meyer (CN=Noa A. Meyer/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TO: Andrei H. Cherny (CN=Andrei H. Cherny/O=OVP @ OVP [UNKNOWN])

READ:UNKNOWN

TO: Ruby Shamir (CN=Ruby Shamir/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TO: Robin J. Bachman (CN=Robin J. Bachman/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TO: Elizabeth R. Newman (CN=Elizabeth R. Newman/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

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

READ:UNKNOWN

TO: Jeffrey A. Forbes (CN=Jeffrey A. Forbes/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

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

TO: William H. White Jr. (CN=William H. White Jr./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: Barbara D. Woolley (CN=Barbara D. Woolley/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Charles R. Marr (CN=Charles R. Marr/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

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

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

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

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

TO: Kelley L. O'Dell (CN=Kelley L. O'Dell/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

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

TO: Kevin S. Moran (CN=Kevin S. Moran/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

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

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

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

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

TO: Charles Konigsberg (CN=Charles Konigsberg/OU=OMB/O=EOP @ EOP [OMB])

READ:UNKNOWN

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

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

TO: Nancy V. Hernreich (CN=Nancy V. Hernreich/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

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

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

TO: MCrisci (MCrisci @ arnellgroup.com @ inet [UNKNOWN])
READ:UNKNOWN

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

TO: Jill_M_Blickstein (Jill_M_Blickstein @ Ianmail.fanniema.com @ inet [UNKNOWN])
READ:UNKNOWN

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

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

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

TO: Jeff B. Liebman (CN=Jeff B. Liebman/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Victoria A. Wachino (CN=Victoria A. Wachino/OU=OMB/O=EOP @ EOP [OMB])
READ:UNKNOWN

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

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

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

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

TO: William A. Halter (CN=William A. Halter/OU=OMB/O=EOP @ EOP [OMB])
READ:UNKNOWN

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

TO: Marsha E. Berry (CN=Marsha E. Berry/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TO: Neera Tanden (CN=Neera Tanden/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TO: Michael V. Terrell (CN=Michael V. Terrell/OU=CEQ/O=EOP @ EOP [CEQ])

READ:UNKNOWN

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

READ:UNKNOWN

TO: Virginia N. Rustique (CN=Virginia N. Rustique/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TO: Virginia M. Terzano (CN=Virginia M. Terzano/O=OVP @ OVP [UNKNOWN])

READ:UNKNOWN

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

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TO: Lisa J. Levin (CN=Lisa J. Levin/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TO: Aviva Steinberg (CN=Aviva Steinberg/OU=WHO/O=EOP @ EOP [WHO])

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

READ:UNKNOWN

TO: Beverly J. Barnes (CN=Beverly J. Barnes/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TO: Thomas D. Janenda (CN=Thomas D. Janenda/OU=WHO/O=EOP @ EOP [WHO])

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TO: Lisa M. Kountoupes (CN=Lisa M. Kountoupes/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TO: Michael Waldman (CN=Michael Waldman/OU=WHO/O=EOP @ EOP [WHO])

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TO: Jordan Tamagni (CN=Jordan Tamagni/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TO: Richard L. Siewert (CN=Richard L. Siewert/OU=WHO/O=EOP @ EOP [WHO])

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

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

READ:UNKNOWN

TO: Bob J. Nash (CN=Bob J. Nash/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

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

READ:UNKNOWN

TO: Linda L. Moore (CN=Linda L. Moore/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

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

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

TO: Bruce R. Lindsey (CN=Bruce R. Lindsey/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Ann F. Lewis (CN=Ann F. Lewis/OU=WHO/O=EOP @ EOP [WHO])
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TO: Karin Kullman (CN=Karin Kullman/OU=OPD/O=EOP @ EOP [OPD])
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TO: Jonathan A. Kaplan (CN=Jonathan A. Kaplan/OU=OPD/O=EOP @ EOP [OPD])
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TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

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

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

TO: Betty W. Currie (CN=Betty W. Currie/OU=WHO/O=EOP @ EOP [WHO])
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TO: Brenda B. Costello (CN=Brenda B. Costello/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

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

TO: Kris M Balderston (CN=Kris M Balderston/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.D76]MAIL47164800B.136 to ASCII,
The following is a HEX DUMP:

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MEDICARE TRUSTEES' REPORT: 1999

March 30, 1999

Today, the Medicare Trustees projected that the life of the Medicare Trust Fund has been extended until 2015 -- 7 years longer than projected in last year's report. This report affirms that the President's commitment to strengthening and improving Medicare is paying dividends, but it also underscores the need for additional action to strengthen and improve the program.

- **The Trustees' Report on the Improved Financial Status of Medicare is Good News and Reflects that the Hard Choices the President Made in 1993 and 1997 Strengthened the Program and Were Justified.** When the President came into office, the Medicare program was projected by the Trustees to go bankrupt by 1999. The Trustees' Report validates the President's economic policies. It reports that: "income exceeded expectations as a result of robust economic growth and expenditures declined due to implementation of the Balanced Budget Act of 1997, low increases in health care costs generally, and continuing efforts to combat fraud and abuse." In the last few years, the life of the Trust Fund has been extended by a full 14 years and the actuarial deficit has been cut by two-thirds.
- **Good News Does Not Delay the Need for Decisive Action.** We are proud of our stewardship of the Medicare program. However, our success does not in any way diminish the challenges facing Medicare. Under any scenario, enrollment in Medicare will climb from 39 million to 47 million in 2010, and to 80 million by 2035. As the Trustees' Report points out, "substantially greater changes in income and/or outlays are needed, in large part as a result of the impending retirement of the baby boom generation."
- **The President's Proposal to Modernize Medicare and to Dedicate 15 Percent of the Surplus to the Program is Clearly Necessary to Adequately Extend the Life of the Trust Fund and Add a Long Overdue Prescription Drug Benefit.** While the financial well-being of the Medicare program has improved, its reserves will become exhausted just as the baby boom population begins to retire and long before those of the Social Security program. Moreover, 15 million beneficiaries have absolutely no prescription drug coverage, millions more have totally inadequate coverage, and our nation's elderly are paying excessively high costs for their desperately needed medications. The President's Medicare reform proposal will address these unmet challenges.
- **We Now Face A Historic Fiscal Choice: Do we use the surplus to strengthen and modernize Medicare and keep the program solvent further into the future OR do we use it to provide for an exploding and irresponsible tax cut. If we choose unwisely and use the surplus to finance tax cuts -- rather than Social Security and Medicare -- we will have made one of the most short-sighted fiscal decisions in our nation's history. Not only will we leave two programs unacceptably weakened, but we will have given up on an unprecedented opportunity to reduce our nation's debt from 44 percent of GDP to 7 percent by 2014 -- the lowest level since 1917. We must use this historic opportunity to strengthen Medicare by devoting 15 percent of the budget surplus to this program over the next 15 years and modernizing Medicare to help fund a prescription drug benefit.**

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:30-MAR-1999 13:10:53.00

SUBJECT:

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

READ:UNKNOWN

TEXT:

Immigration Mtg. is ready to start in 211- they are waiting for you

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:30-MAR-1999 14:02:37.00

SUBJECT:

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

READ:UNKNOWN

TEXT:

Equal Pay mtg. is starting now in the Roosevelt Room

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Tracy Pakulniewicz (CN=Tracy Pakulniewicz/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:30-MAR-1999 15:17:03.00

SUBJECT: MESSAGE MEETINGS - TAKE 2

TO: Douglas J. Band (CN=Douglas J. Band/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

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

READ:UNKNOWN

TO: Joshua Gotbaum (CN=Joshua Gotbaum/OU=OMB/O=EOP @ EOP [OMB])

READ:UNKNOWN

TO: Elliot J. Diringer (CN=Elliot J. Diringer/OU=CEQ/O=EOP @ EOP [CEQ])

READ:UNKNOWN

TO: Patricia M. Ewing (CN=Patricia M. Ewing/O=OVP @ OVP [UNKNOWN])

READ:UNKNOWN

TO: Mary E. Cahill (CN=Mary E. Cahill/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TO: Tomasz P. Malinowski (CN=Tomasz P. Malinowski/OU=NSC/O=EOP @ EOP [NSC])

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TO: Matt Gobush (CN=Matt Gobush/OU=NSC/O=EOP @ EOP [NSC])

READ:UNKNOWN

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

READ:UNKNOWN

TO: George G. Caudill (CN=George G. Caudill/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TO: Elisa Millsap (CN=Elisa Millsap/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

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

READ:UNKNOWN

TO: Jonathan A. Kaplan (CN=Jonathan A. Kaplan/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TO: Kim B. Widdess (CN=Kim B. Widdess/OU=WHO/O=EOP @ EOP [WHO])

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

READ:UNKNOWN

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

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

READ:UNKNOWN

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

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

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

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

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

TO: Jeffrey A. Forbes (CN=Jeffrey A. Forbes/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Wendy E. Gray (CN=Wendy E. Gray/OU=NSC/O=EOP @ EOP [NSC])
READ:UNKNOWN

TO: Ted Widmer (CN=Ted Widmer/OU=NSC/O=EOP @ EOP [NSC])
READ:UNKNOWN

TO: David Halperin (CN=David Halperin/OU=NSC/O=EOP @ EOP [NSC])
READ:UNKNOWN

TO: Chandler G. Spaulding (CN=Chandler G. Spaulding/OU=WHO/O=EOP @ EOP [WHO])
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TO: Ann F. Lewis (CN=Ann F. Lewis/OU=WHO/O=EOP @ EOP [WHO])
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TO: Karin Kullman (CN=Karin Kullman/OU=OPD/O=EOP @ EOP [OPD])
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TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

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

TO: Sharon K. Gill (CN=Sharon K. Gill/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Kris M Balderston (CN=Kris M Balderston/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

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

TO: Douglas B. Sosnik (CN=Douglas B. Sosnik/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

CC: Megan C. Moloney (CN=Megan C. Moloney/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

CC: Rachel A. Redington (CN=Rachel A. Redington/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

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

READ:UNKNOWN

CC: Dawn L. Smalls (CN=Dawn L. Smalls/OU=WHO/O=EOP @ EOP [WHO])
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CC: Aviva Steinberg (CN=Aviva Steinberg/OU=WHO/O=EOP @ EOP [WHO])
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CC: Dario J. Gomez (CN=Dario J. Gomez/OU=WHO/O=EOP @ EOP [WHO])
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CC: Alejandro G. Cabrera (CN=Alejandro G. Cabrera/O=OVP @ OVP [UNKNOWN])
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CC: Joseph D. Ratner (CN=Joseph D. Ratner/OU=WHO/O=EOP @ EOP [WHO])
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CC: Anne Whitworth (CN=Anne Whitworth/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

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

CC: Mindy E. Myers (CN=Mindy E. Myers/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

CC: Carolyn T. Wu (CN=Carolyn T. Wu/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

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

CC: Heather L. Davis (CN=Heather L. Davis/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

CC: Ann C. Hertelendy (CN=Ann C. Hertelendy/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

CC: Cecily C. Williams (CN=Cecily C. Williams/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

CC: George G. Caudill (CN=George G. Caudill/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

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

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

CC: Melissa G. Green (CN=Melissa G. Green/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Jon P. Jennings (CN=Jon P. Jennings/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

CC: Jocelyn A. Bucaro (CN=Jocelyn A. Bucaro/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

CC: Dominique L. Cano (CN=Dominique L. Cano/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TEXT:

Loretta Ucelli will be holding town message meetings tomorrow in her office:

9:00 am: Radio Address
9:30 am: Equal Pay
10:00 am: PBOR

Thanks! See you then!

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Tanya E. Martin (CN=Tanya E. Martin/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:30-MAR-1999 17:16:09.00

SUBJECT: Teacher Quality article in ED Week

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: Bethany Little (CN=Bethany Little/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

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

READ:UNKNOWN

CC: Jonathan H. Schnur (CN=Jonathan H. Schnur/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TEXT:

ED Week - 3/3/99

Faced with a proposal requiring that schools notify parents if a child's class was

being taught by "an uncertified or inappropriately certified individual," the Texas school board reacted decisively this month. It voted 12-0 to reject the measure, which the state's teacher-certification board had hoped would call greater attention to the pervasiveness of so-called out-of-field teaching.

The resistance the plan ran into underscores just how tough it would be to eliminate the long-running, albeit lamented, practice. Not only is the issue linked inextricably to the market forces affecting the big demand for new teachers, it also raises fundamental questions about what constitutes a qualified educator.

In debating the Texas measure, which elicited three abstentions along with the 12 negative votes, some state board members said the word "inappropriately" sounded too vague. Others feared maligning teachers who hadn't earned a certificate but still knew their subject matter, like an aeronautical engineer brought in to teach physics. And many asked why they should force districts to make themselves look bad, when schools are just making the best of a difficult situation.

"People who want this rule are trying to say that

superintendents are passing over certified people to hire uncertified ones," board member Grace Shore said. "From what I hear, they're doing their best, but they simply can't find them."

Out-of-field teaching, many national education experts agree, is a problem that defies simple solutions.

"We can't solve it just by telling people: 'Don't assign teachers to subjects they aren't prepared to teach,'" said Willis D. Hawley, the executive director of the National Partnership for Excellence and Accountability in Teaching, a federally funded research initiative aimed at improving the quality of teaching. "The responsibility that we all have is to understand that this is a complex problem, and it has to be addressed on several different levels."

A Secret Exposed

Education groups have long called out-of-field teaching the "dirty little secret" of America's schools, but it's gained urgency with recent forecasts that the country must hire 2 million new teachers in the next decade. Coupled with that challenge are international comparisons showing U.S. high school students lagging behind their peers in many industrialized countries, a connection U.S. Secretary of Education Richard W. Riley made in his State of American Education Address last month.

"Foreign education ministers who visit me are just stumped when I try to explain this practice," he said. "Their translators simply have no words to describe it."

Some education experts go so far as to say it's no coincidence that the U.S. rankings on the Third International Mathematics and Science Study drop after the 4th grade. Generally considered an issue of teachers' knowledge of academic content, out-of-field teaching doesn't become a major problem until the middle grades, when schools departmentalize subjects.

President Clinton lambasted the practice in his State of the Union Address this year, declaring that "in too many schools, teachers don't have college majors--or even minors, in the subjects they teach."

Recent research does show the practice is rampant. Richard M. Ingersoll, a sociologist at the University of Georgia in Athens, has analyzed U.S. Department of Education data and found that in every subject, large numbers of teachers are leading classes for which they lack even the equivalent of a college minor.

Nationwide, for example, he found that about 28 percent of high school mathematics teachers have neither a major nor a minor in math, and 18 percent of all science teachers are similarly deficient in their preparation. Previous Education Department analyses indicated that the practice was most prevalent in poor and urban districts.

In most professions or services, "that sort of behavior would be called consumer fraud," argues John Cole, the president of the Texas Federation of Teachers, an American Federation of Teachers affiliate.

By What Measure?

The state-level picture, however, is often painted in ways that seem less alarming. Some states, Mr. Ingersoll points out, allow teachers to be assigned out-of-field as long as it's not for the majority of the day. Also, many states define an out-of-field teacher as one who lacks state certification, which sometimes doesn't specify a college minor or major.

For example, while Georgia education officials report that just 8 percent of the state's high school science teachers don't hold a science certificate, Mr. Ingersoll's analysis shows that 18 percent of them lack a science major or minor--about the same as the nation as a whole.

The view gets even gloomier when Mr. Ingersoll examines the types of science majors and minors teachers have. In Georgia, he says, only about 66 percent of high school educators teaching a physical science class--such as physics--have at least the equivalent of a college minor in a physical science.

Georgia is trying to improve the situation through the work of its P-16 Council, a task force of leaders from pre-K-12 and higher education institutions. The

group includes Georgia's Professional Standards Commission, which sets teacher-certification rules, and the state university system's board of regents. By June, it plans to have drafted a long-range strategy for ensuring that all Georgia teachers are adequately prepared for the classes they teach.

Margaret M. Torrey, the standards commission's executive secretary, said she hopes the focus isn't only on how many teachers majored or minored in a subject. In addition to content knowledge, she said, teachers need significant training in how to instruct students.

"The public often thinks that content is enough," she said. "But it isn't. So I hope that in all this discussion about out-of-field teaching, we don't go overboard."

Through the P-16 Council, the standards commission and the state university system expect to design new teacher education courses specifically for middle school educators who missed sufficient coursework in either math or science. Though inadequate to qualify for a major or a minor, the courses would give teachers additional knowledge of both content and pedagogy to teach middle school students.

And yet some experts have little faith in either college coursework or states' current certification requirements.

"Those pieces of paper that we pass out don't necessarily ensure that everyone who has them is the most qualified person," said C. Emily Feistritzer, the president of the Washington-based National Center for Education Information, a private research organization. "I think there are better ways to ascertain whether someone is qualified."

Ms. Feistritzer favors testing teachers for both their knowledge of content and of pedagogy.

That sentiment is, in part, why the Texas Board for Educator Certification is drafting a plan to make the state's certification exams more rigorous.

"Our board is interested in certifying competent individuals, and how they achieve the required knowledge and skills is not as

important to us as whether they have them," said Stephanie Korcheck, the panel's director of policy and planning.

Meanwhile, Texas has made it somewhat more difficult for districts to misassign teachers. Although it rejected the parent-notification measure, the state school board did agree to limit to one year the amount of time that educators may teach subjects for which they have no certification. But the new rule doesn't apply to teachers on emergency permits, who have up to three years to become certified.

'No Man's Land'

At one level, though, there is broad consensus that a dearth of content knowledge is a major problem in teaching. A 1985 report by the American Federation of Teachers and the Council for Basic Education called middle school the "no man's land" of out-of-field teaching, and recent surveys suggest little has changed since then.

Based on a sampling of college transcripts of Georgia middle school teachers, a recent survey estimated that at least 37 percent of those teaching math had less than the equivalent of a college minor in the subject. Among science teachers, about 27 percent were similarly unprepared. A recent study in Kentucky also showed that fewer than 40 percent of middle school math teachers there had at least the equivalent of a math minor.

Some experts blame the limited amount of requisite coursework on the way states certify middle school teachers.

Georgia, for example, uses a "broad field" middle-grades certificate. The credential only requires teachers to have concentrated in college in two of four areas--English, math, social studies, or science--but it permits them to teach any of those subjects. Under the regulations, a social studies major who minored in English could be assigned to teach math.

Some states' certification rules also allow educators prepared to teach in elementary school to work in middle school. The Southern Regional Education Board in December reported that an estimated one-third of

the middle school teachers in its 16 member states hold elementary teaching licenses.

Georgia's university regents last summer proposed eliminating broad-field middle school certificates. They also called on Georgia's schools to adopt voluntarily "truth in advertising" policies by which, like the rejected Texas measure, they would notify parents of out-of-field teaching. Neither Georgia proposal has been enacted.

"We cannot realistically say to folks that, in a year, you are not to have anyone in math or science who has not concentrated in those areas," Ms. Torrey said. "The bodies just aren't there."

Making Do

But Mr. Ingersoll believes shortages don't explain the whole problem.

An analysis he carried out for an article in this month's Educational Researcher shows widespread out-of-field teaching even in disciplines considered to have an abundance of candidates. Nearly 22 percent of high school English teachers did not have as much as a minor in the subject. And although 28 percent of the nation's high school math teachers lack even a minor in that subject, he found that only 16 percent of schools report having difficulty filling vacant math teaching positions.

His hypothesis: Convenience could play a significant role in teacher misassignment.

Mr. Ingersoll contends. "It's a problem in how schools are managed and operated," "The source of out-of-field teaching isn't so much a lack of coursework and training, but is a lack of fit between what teachers are educated or trained in and what they are assigned to teach."

Many state officials counter that misassignment is rarely the result of laziness. "I have yet to find a principal, personnel director, or a superintendent who randomly puts people in classrooms and who doesn't want what's best for kids," Ms. Torrey said.

Instead, administrators often must make the best of it, as did Principal Melton Callahan at Colquitt County High School, located in southern Georgia and geographically isolated from the state's largest cities.

The administrator was in a bind this year when one of his math teachers left between semesters and no one certified in the subject applied for the job. He wound up hiring a teacher with social studies certification. Though not an ideal situation, Mr. Callahan trusted that the woman was a competent educator because she had done her student-teaching at the school. He also assigned her one of the school's lowest-level math courses, and she is working toward the proper certification.

"I don't feel these kids are being slighted at all," he said. "If we weren't able to use a provisionally certified person, we'd have to use a substitute."

Tinkering Not Enough

While conceding that many schools do encounter difficulties hiring the right teacher for every spot, Mr. Ingersoll doubts the problem is simply that there aren't enough qualified potential candidates. More likely, he suggests, the teaching jobs that are the toughest to fill just aren't enticing enough to attract--and keep--amply qualified people.

"The way to ensure that we have well-qualified people in the classroom is to improve the job," he said. "A good, well-paying job is like a magnet."

It would take a mighty powerful magnet to draw only fully qualified teachers to a place like Southland, a tiny town outside Lubbock where the school system serves just 190 students. Its small size, remoteness, and low salaries help explain why someone like Neal Wilcox--certified to teach high school biology, physical education, and health--has taught economics, geography, and government there this year.

"Everybody out here has to do a lot of extra things," said the 62-year-old Mr. Wilcox, who also coaches basketball, track, and football.

Making the best of the situation, he tries to draw on his real-world experiences in

teaching social studies, such as his U.S. Army service in the 1950s and 1960s, when he was stationed in 14 countries, and the period when he ran his own construction business.

"With my age and experience and with the materials you've got, you're not likely to miss anything," he said. "I'd retire if I thought I wasn't being effective at teaching students what I do."

Though Southland sounds like an extreme example, some experts say school size is a major contributor to out-of-field teaching. Ms. Feistritz says that nearly one-third of American secondary schools enroll fewer than 300 students. "So the chances of having only physics majors teaching physics in each of those schools is not economically feasible," she said.

Technology may offer partial relief for small, isolated districts. The Southland system is one of about 60 in the region gaining two-way teleconferencing labs, worth \$90,000 each, through a state initiative, said Southland Superintendent Berhl Robertson. Once in place, the network of labs will allow multiple districts to share fully qualified teachers, he said.

Ultimately, such creative approaches may go further than simply trying to outlaw out-of-field teaching, says Terry K. Dozier, who serves as Secretary Riley's special adviser on teaching.

"When I travel across the country, what is extremely frustrating to me is when people say, 'It's impossible'; it is impossible under the current system, but it's not impossible to do," she said. "You can't just tinker around the edges. We've got to look at state and local policies, at how we license teachers, how we support them, and how we compensate them."

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Constance J. Bowers (CN=Constance J. Bowers/OU=OMB/O=EOP [OMB])

CREATION DATE/TIME:30-MAR-1999 17:31:05.00

SUBJECT: LRM CJB31 - - EDUCATION Conference Document on HR800 Education Flexibility

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

TO: Bethany Little (CN=Bethany Little/OU=OPD/O=EOP@EOP [OPD])

READ:UNKNOWN

TO: Jonathan H. Schnur (CN=Jonathan H. Schnur/OU=OPD/O=EOP@EOP [OPD])

READ:UNKNOWN

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

READ:UNKNOWN

TO: Wayne Upshaw (CN=Wayne Upshaw/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN

TO: Sandra Yamin (CN=Sandra Yamin/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

TO: William H. White Jr. (CN=William H. White Jr./OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

TO: Tanya E. Martin (CN=Tanya E. Martin/OU=OPD/O=EOP@EOP [OPD])

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

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

TEXT:

Please direct your comments on the letter below to:

Melissa Benton by

4:00 p.m. Wednesday, March 31, 1999

Note: In the letter to the conferees, Secretary Riley states that he would recommend that the President disapprove HR 800 if it is enacted with unacceptable provisions that are in the Senate version..

click here for letter:

----- Forwarded by Constance J. Bowers/OMB/EOP on
03/30/99 05:26 PM -----

LRM ID: CJB31

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

Tuesday, March 30, 1999

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: EDUCATION Conference Document on HR800 Education
Flexibility Partnership Act of 1999

DEADLINE: 4:00 p.m. Wednesday, March 31, 1999

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: The attached letter from Secretary Riley is directed to the conferees on HR 800. In the letter, Sec. Riley states that he would recommend that the President disapprove the bill, if it is enacted with unacceptable provisions that are in the Senate-passed bill.

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 Constance J. Bowers

LRM ID: CJB31 SUBJECT: EDUCATION Conference Document on HR800 Education
 Flexibility Partnership Act of 1999
 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: _____

Dear Conferee:

I am writing to express my views on the House-and Senate-passed versions of H.R. 800, the Education Flexibility Partnership Act of 1999. As you know, "ED-Flex" authority permits States to waive certain statutory and regulatory requirements that apply to Federal education programs in a manner that complements State educational reform efforts and promotes achievement to high standards by all students. The Administration has long supported the concept of expanding ED-Flex authority beyond the 12 States allowed under current law, so long as that expansion does not undermine the purposes of those Federal programs and maintains a high degree of accountability for results. I am very pleased, therefore, that both bills would expand eligibility for ED-Flex status to all the States, as well as the District of Columbia and the Commonwealth of Puerto Rico, and couple that increased flexibility with a serious attention to maintaining accountability at the State and local level. The Senate bill, however, contains certain unacceptable provisions—unrelated to the expansion of ED-Flex authority—that, if enacted, would force me to recommend to the President that he disapprove the bill. I urge the Conferees to avoid such a disappointing and unnecessary result.

Turning to the ED-Flex provisions, I am very pleased that both bills have strong provisions for ensuring: public notice and comment, at the State and local level, on proposed waivers; State monitoring of local ED-Flex activities; and termination of waivers that have inadequate or harmful results. With respect to State eligibility for ED-Flex status, I prefer the more rigorous conditions in the House bill, as they apply to implementation of standards and assessments under Title I of the Elementary and Secondary Education Act of 1965 (ESEA). With respect to the State's application for ED-Flex status, I prefer the language in the Senate bill, which focuses on how ED-Flex authority will assist in implementing the State's comprehensive reform plan. I believe that complete State reporting of ED-Flex results is important and so support the provisions of the House bill relating to annual State reporting to the Secretary about the numbers and characteristics of waivers granted. Finally, I strongly support the provision of the House bill that would "sunset" this Act upon enactment of the upcoming reauthorization of the ESEA, because it is vitally important that continuation of ED-Flex authority be made consistent with changes to the underlying Federal programs to which it applies.

Last fall, Congress enacted and funded, on a bipartisan basis, a down payment on the President's plan to help the Nation's school districts reduce class sizes in the early elementary grades. Regrettably, the Senate bill contains amendments to the class size reduction authority that would undermine its impact by permitting local school districts to use funds received under that initiative not to reduce class size, but to meet obligations they are already required to meet under Part B of the Individuals with Disabilities Education Act. The value of reducing class size in the early elementary grades is supported by the research, and doing so is one of the most important things we can do to honor our national commitment to ensuring equal educational opportunity for all our children. Moreover, reducing class size in the early grades allows teachers to identify, and work more effectively with, students who have learning disabilities, thereby

potentially reducing those students' need for intensive special education services in the later grades. Rather than undermining the bipartisan effort to reduce class size--and setting parent against parent in school districts across the country--I would have preferred a bill that extended the President's initiative, so that school districts could plan to hire additional qualified teachers, provide additional classrooms, and take the other steps necessary to reduce class size. I certainly cannot support a bill that contains these Senate amendments and would recommend that the President disapprove it, if it were presented to him.

The Office of Management and Budget advises that there is no objection to the submission of this report and that from the standpoint of the Administration's program, enactment of H.R. 800 containing the Senate's amendments relating to the class size reduction initiative would not be in accord with the President's program. [Or do we want to say that enactment without the Senate amendments would be in accord with the President's program?]

Yours sincerely,

Richard W. Riley

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Todd Stern (CN=Todd Stern/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:30-MAR-1999 17:56:25.00

SUBJECT: wjw article

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

READ:UNKNOWN

TEXT:

Do you know the approximate date (ie, year) of the Wilson article?

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Tracy Pakulniewicz (CN=Tracy Pakulniewicz/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:30-MAR-1999 18:01:31.00

SUBJECT: MESSAGE MEETINGS - TAKE 3

TO: Douglas J. Band (CN=Douglas J. Band/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

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

READ:UNKNOWN

TO: Joshua Gotbaum (CN=Joshua Gotbaum/OU=OMB/O=EOP @ EOP [OMB])

READ:UNKNOWN

TO: Elliot J. Diringer (CN=Elliot J. Diringer/OU=CEQ/O=EOP @ EOP [CEQ])

READ:UNKNOWN

TO: Patricia M. Ewing (CN=Patricia M. Ewing/O=OVP @ OVP [UNKNOWN])

READ:UNKNOWN

TO: Mary E. Cahill (CN=Mary E. Cahill/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TO: Tomasz P. Malinowski (CN=Tomasz P. Malinowski/OU=NSC/O=EOP @ EOP [NSC])

READ:UNKNOWN

TO: Matt Gobush (CN=Matt Gobush/OU=NSC/O=EOP @ EOP [NSC])

READ:UNKNOWN

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

READ:UNKNOWN

TO: George G. Caudill (CN=George G. Caudill/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TO: Elisa Millsap (CN=Elisa Millsap/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

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

READ:UNKNOWN

TO: Jonathan A. Kaplan (CN=Jonathan A. Kaplan/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

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

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

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

TO: Jeffrey A. Forbes (CN=Jeffrey A. Forbes/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Wendy E. Gray (CN=Wendy E. Gray/OU=NSC/O=EOP @ EOP [NSC])
READ:UNKNOWN

TO: Ted Widmer (CN=Ted Widmer/OU=NSC/O=EOP @ EOP [NSC])
READ:UNKNOWN

TO: David Halperin (CN=David Halperin/OU=NSC/O=EOP @ EOP [NSC])
READ:UNKNOWN

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

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

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

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

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

TO: Sharon K. Gill (CN=Sharon K. Gill/OU=WHO/O=EOP @ EOP [WHO])
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READ:UNKNOWN

TO: Douglas B. Sosnik (CN=Douglas B. Sosnik/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

CC: Megan C. Moloney (CN=Megan C. Moloney/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

CC: Rachel A. Redington (CN=Rachel A. Redington/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

CC: Aviva Steinberg (CN=Aviva Steinberg/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: Alejandro G. Cabrera (CN=Alejandro G. Cabrera/O=OVP @ OVP [UNKNOWN])

READ:UNKNOWN

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

READ:UNKNOWN

CC: Anne Whitworth (CN=Anne Whitworth/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

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

READ:UNKNOWN

CC: Mindy E. Myers (CN=Mindy E. Myers/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

CC: Carolyn T. Wu (CN=Carolyn T. Wu/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

CC: Ann C. Hertelendy (CN=Ann C. Hertelendy/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

CC: Cecily C. Williams (CN=Cecily C. Williams/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

CC: George G. Caudill (CN=George G. Caudill/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

CC: Stacie Spector (CN=Stacie Spector/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

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

READ:UNKNOWN

CC: Ruby Shamir (CN=Ruby Shamir/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

CC: Melissa G. Green (CN=Melissa G. Green/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

CC: Jon P. Jennings (CN=Jon P. Jennings/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

CC: Jocelyn A. Bucaro (CN=Jocelyn A. Bucaro/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

CC: Dominique L. Cano (CN=Dominique L. Cano/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TEXT:

Loretta Ucelli will be holding message meetings tomorrow in her office:

9:00 am: PBOR

9:30 am: Equal Pay

2:00 pm: Radio Address (Please note new time. thanks)

See you then!

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Todd Stern (CN=Todd Stern/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:30-MAR-1999 19:45:22.00

SUBJECT: Re: wjw article

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

READ:UNKNOWN

TEXT:

Yes, but there's no date on it. I was just curious. I see citations as late as 1995 so it is probably 1996 or 97. tds

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Dan Marcus (CN=Dan Marcus/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:30-MAR-1999 19:58:25.00

SUBJECT: Memo re Helms v.Picard

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

TEXT:

Attached is a further revision of the memo per our discussions. I have tried to give greater emphasis to the Secretary's concerns. And I have presented our compromise approach in the last few paragraphs, and previewed it at the end of the opening paragraph.===== ATTACHMENT 1

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

TEXT:

Unable to convert ARMS_EXT:[ATTACH.D70]MAIL485086100.136 to ASCII, The following is a HEX DUMP:

FF57504370040000010A020100000002050000000624800000002000012DA3C5952C00C7E131FE9
ED85682CBA3C0E0C7E037374E8B90F5D44E78B563BDBA92B64D625A9B9A1295E996C07A9C08C1A
B247B4535FF416BCEEECD181CBB93426DEA39FE8767408DC2CFE16EA563BB26341F98BF95B7B48
B9C66040A86B11ABBFC0E7826CEEA468A68EC231C4D842CA7569847C0B1BAA15F67C684B4CFA87
D0331A830C8D25B2710A9491EDD788C2A5A07CF43129D44F6B88F817E8A70F49900F83123A497D

DRAFT 3/28/99

MEMORANDUM TO THE PRESIDENT

FROM: Charles F.C. Ruff, Elena Kagan, Daniel Marcus

RE: Petition for certiorari in Helms v. Picard

This is to advise you of a difficult decision that the Solicitor General must make concerning whether to seek review by the Supreme Court of a Fifth Circuit decision holding that a federally funded program under which public school authorities lend computers and other instructional materials to sectarian elementary and secondary schools violates the Establishment Clause of the First Amendment. The Solicitor General feels strongly that a petition for certiorari should not be filed, and Secretary Riley feels strongly that one should be filed. We are trying to develop a middle course that would serve the Secretary's needs by making clear to the Court that we believe that it needs to revise its Establishment Clause jurisprudence to permit programs of this kind while also reflecting the Solicitor General's view that this particular case may not present the best vehicle for doing so.

In Helms v. Picard, a case arising in Jefferson Parish, Louisiana, the Fifth Circuit held that a provision of Chapter 2 of the Elementary and Secondary Education Act (ESEA) that authorizes local educational agencies (LEAs) to use federal funds to purchase computers and other materials for loan to private schools, including sectarian schools, is, as applied, in violation of the Establishment Clause. (That ESEA provision was replaced by a similar provision in Title VI of the Improving America's Schools Act of 1994.) The U.S. Department of Education, as well as the Louisiana and the Jefferson Parish public school authorities, were defendants in the case and are subject to an ongoing injunction.

If the Solicitor General is to file a petition for certiorari seeking to overturn the Fifth Circuit's decision, he must do so by April 13. He has discussed with us and with the Department of Education his view that the United States should not file a petition because he believes that the record is insufficient to convince the Court (in essence, Justice O'Connor, who is the swing vote) to overturn a series of earlier decisions limiting aid to sectarian schools.

In Helms, the Fifth Circuit found that two longstanding Supreme Court precedents -- Meek v. Pittenger, 421 U.S. 349 (1975), and Wolman v. Walter, 433 U.S. 229 (1977) -- dictated the conclusion that the Title VI/Chapter 2 program is unconstitutional. In those cases the Supreme Court struck down state laws that authorized public authorities to lend instructional equipment and materials to private schools, including sectarian schools, reasoning that such materials -- unlike secular textbooks, the lending of which to sectarian schools the Court had upheld in Board of Education v. Allen, 392 U.S. 236 (1968) -- could be used directly in aid of the sectarian enterprise of parochial schools. The Fifth Circuit rejected arguments that the Title VI/Chapter 2 program was distinguishable from those held unconstitutional in Meek and Wolman and also rejected arguments that Meek and Wolman had been repudiated or modified by the Supreme Court itself in later decisions -- particularly Agostini v. Felton, 521 U.S. 203 (1997),

in which a closely divided Court upheld the constitutionality of using Title I ESEA funds to send public school teachers into private sectarian schools to provide remedial education to disadvantaged children.

The Fifth Circuit's decision conflicts with an earlier decision of the Ninth Circuit in Walker v. San Francisco Unified School District, 46 F.3d 1449 (1995), upholding a similar Title VI/Chapter 2 program. In Walker, the Ninth Circuit found that Meek and Wolman were no longer good law in light of later Supreme Court decisions, particularly Agostini, that the Ninth Circuit viewed as establishing the principle that the Establishment Clause simply required "neutrality" between secular and religious schools in the provision of government aid.

The Solicitor General believes that, although it is important to persuade the Supreme Court to revise its Establishment Clause jurisprudence to permit programs of this kind, this is not the appropriate case in which to ask the Court to take that step. His reasoning is basically as follows: While the Supreme Court (most notably and recently in Agostini) has opened the door to some forms of assistance by public authorities to sectarian schools (or their students), its decisions have not called into question its longstanding holdings that direct aid to the sectarian school enterprise -- even on a "neutral" basis -- is forbidden. Thus, the provision of instructional materials that are capable of use by the sectarian school for religious purposes is forbidden. The Justice Department was unsuccessful in arguing to the Fifth Circuit that this case can be distinguished from Meek and Wolman, and we agree with the Solicitor General that, if we do seek Supreme Court review, we will have to ask the Court directly to overrule, at least in part, the Meek-Wolman precedents. (The two proffered distinctions are unconvincing: The fact that Title VI provides benefits to both public and private schools, while the programs invalidated in Meek and Wolman provided aid only to private schools provides no basis for distinction since the Meek and Wolman statutes were designed to provide private school students with what public school students already had. And the fact that the Title VI aid "supplements" rather than "supplants" private school expenditures, while relevant in some other contexts, probably is irrelevant here, where the focus is whether the aid promotes the private school's religious mission.)

The Supreme Court could be asked to overrule these precedents on one of three theories. First, we could embrace the "neutrality" principle advocated by Justices Rehnquist, Scalia, and Thomas, and argue that the Court should allow direct aid to parochial schools so long as it does not prefer one religion to another and does not favor the religious over the non-religious. Second, we could urge the Court to abandon its treatment of elementary and secondary sectarian schools as "pervasively religious" institutions, regarding them instead -- like religiously-affiliated universities -- as institutions in which the secular and the sectarian aspects of operations can easily be kept separate. The Solicitor General believes that neither of these broad arguments would be successful or should be made, and we and the Department of Education agree.

There is a third, less radical argument that the Solicitor General believes can and should be made in an appropriate case. This argument would not challenge the principle that the Government cannot directly aid the religious mission of a sectarian school, but would urge the Court to abandon its insistence that materials provided to such schools be "incapable of

diversion” to sectarian purposes, and substitute a test that would look to whether there are adequate safeguards against such diversion.

Justice O'Connor is the key to the success of any such argument. Four Justices -- Rehnquist, Scalia, Kennedy, and Thomas -- have indicated a willingness to go this far, and probably further. But the four “liberal” Justices -- Stevens, Souter, Ginsburg, and Breyer, all of whom dissented in Agostini -- would almost certainly reject it. O'Connor wrote Agostini, but she has not gone so far as to question the principle that public funds may not be used to support the religious enterprise of a sectarian school. The Solicitor General believes, however, that she could be persuaded to uphold programs such as Title VI if she were convinced that there were adequate safeguards to ensure that the computers or other materials lent to the sectarian schools would, in fact, be used for secular, not religious, purposes. These safeguards could take the form of certifications by the private schools, monitoring visits by public school teachers or officials, prescreening of library books, and sanctions for violations. (The Court would have to find that such safeguards did not amount to the “excessive entanglement” of state with church that is forbidden by decisions such as Lemon v. Kurtzman, 403 U.S. 602 (1971), or would have to revise its “excessive entanglement” doctrine.)

After the Fifth Circuit decision, the Department of Education, in consultation with the Department of Justice, did publish a Guidance on compliance with Title VI, directing LEAs to employ several safeguards to ensure that equipment and materials lent to sectarian schools will not be diverted to religious purposes. For the first time, this Guidance amplifies the very general requirement in the statute and the Department's regulations that the LEA “ensure secular use.” It provides that the LEA should obtain written assurances from private schools that materials will be used only for secular purposes; should review the contents of library books lent to private schools and conduct periodic on-site monitoring; and should ensure that violations are promptly corrected, including, if necessary, removing the materials from the private school.

Nonetheless, the Solicitor General believes that Helms v. Picard is not the right case in which to make the “adequate safeguards” argument. The case was brought in 1984, challenging the former Chapter 2 of ESEA, and neither the ESEA nor Title VI of the 1994 statute nor the regulations in place at the time the case was decided contained any restrictions on the use of loaned materials other than the general requirement that the public agency ensure that the loaned materials be used only for secular purposes. Nor had either Louisiana or Jefferson Parish implemented an effective monitoring program to meet that requirement. Since the Solicitor General believes that it will be difficult, even on a good record, to persuade Justice O'Connor to embrace an “adequate safeguards” exception to the Meek and Wolman line of cases, he worries not only that she will reject that argument, but also that she will react negatively to what she will regard as a disingenuous argument by the Solicitor General that there were adequate safeguards in this case. He is concerned, as well, that her unhappiness will carry over to other cases in which we need her vote. The Guidelines adopted recently by the Department of Education are an improvement in this regard, but the Solicitor General thinks they are too late to be of much help in this case and, in any event, has advised the Department to adopt an amended Guidance or (preferably) regulations embodying more specific safeguards against diversion of computers and other materials to use for sectarian purposes.

Of course, if no cert petition is filed, the injunction in Helms v. Picard would remain in effect. The Solicitor General notes, however, that the Fifth Circuit decision does not strike down the statute on its face, and applies only to the particular program at issue in the Helms case.

The decision is the law only in the Fifth Circuit (Texas, Louisiana and Mississippi), and, even there, LEAs are free to devise other programs under Title VI. The Solicitor General hopes that, with a new Guidance or regulations, a more attractive program (with safeguards) could be adopted by an LEA and become a more promising vehicle for winning over Justice O'Connor and, thus, a majority of the Court.

The Secretary of Education and his General Counsel strongly disagree. They do not want to wait for that better case. They are convinced that the private school community will not understand why the Administration, having supported the legality of this program during more than a decade of litigation in the lower courts, is abandoning them at the Supreme Court stage and allowing the Fifth Circuit decision to stand. Indeed, Secretary Riley feels that he has made a personal commitment to the private school groups to defend the current program. They believe that we should not give up on the distinctions urged unsuccessfully in the Fifth Circuit but successfully in the Ninth Circuit. And they think the Justice Department understates the difficulty that LEAs will have in devising viable Title VI programs during the time (perhaps a long time) before a better case can be found and work its way up to the Supreme Court. They recognize that Helms v. Picard is not the ideal case to present to the Court and that it is by no means a sure winner. But they are not as pessimistic as the Solicitor General is, and they think the importance of this kind of program from both a policy and a political standpoint should lead us to take the risk involved in petitioning for certiorari.

The disagreement between the Solicitor General and the Secretary is a strong one, but is basically over strategy and tactics, not principle. All agree that it is important to persuade the Supreme Court to move away from a strict "incapable of diversion" test to a more flexible, realistic test that permits the implementation of programs to provide computers to all children, whether they are in public or private schools. We agree with the Solicitor General's conclusion that this will not be an easy "sell" to Justice O'Connor, the swing vote on the Court on this issue, and that we would be better off presenting that argument in a case in which there was a stronger record of safeguards in place to assure that the computers would not be used for religious purposes. (We do think, however, that the Solicitor General's fears about the consequences of losing this case are somewhat overstated.)

A possible middle course is suggested by the fact that some of the other intervenors/defendants in this case are almost certain to seek Supreme Court review even if we do not. The Solicitor General had proposed to us that, in that event, the United States should file an opposition to their petition for certiorari, arguing that while the Meek-Wolman precedents need to be reconsidered by the Court, this is not the appropriate case in which to do so. But we have begun to discuss with the Solicitor General and the Secretary a somewhat different possibility -- one that we believe would be more acceptable to the Secretary and the private school community while still accepting and presenting the Solicitor General's view on the legal

issues and the nature of this case. Instead of opposing certiorari, the Solicitor General would take no position on whether the Court should take the case, but would instead file a response to the intervening defendants' petition that emphasizes the importance of programs like Title VI, particularly in providing access to computers for all children; explains the need for the Court to modify its precedents; presents the "adequate safeguards" approach that we think the Court should adopt; points to the recent Department of Education Guidance and possible additional guidance from the Department to LEAs; and concludes that the Court has the option of taking this case and deciding this important constitutional question on the record before it or waiting for a case presenting a record containing more specific safeguards in line with the subsequent Guidelines.

If this approach makes sense to you, we will continue our efforts to convince the Secretary and the Solicitor General to agree to it.