

NLWJC - KAGAN

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[06/10/1999-06/15/1999]

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Peter Rundlet to Elena Kagan et al re Brief [partial] (1 page)	06/15/1999	P6/b(6)

COLLECTION:

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

FOLDER TITLE:

[06/10/1999-06/15/1999]

2009-1006-F

kc198

RESTRICTION CODES

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

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

- 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]

- 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]

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.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Barry J. Toiv (CN=Barry J. Toiv/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:10-JUN-1999 09:02:31.00

SUBJECT: two pieces in Times

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

READ:UNKNOWN

TEXT:

1. Thernstrom op-ed -- Is that OCR report a problem for our testing and standards, etc.?

2. Safire -- We should probably think about guidance on the question of repealing the 2nd amendment if Safire's going to be talking about it

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Jeffrey A. Shesol (CN=Jeffrey A. Shesol/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:10-JUN-1999 12:52:54.00

SUBJECT: draft remarks to mayors -- pls do not circulate but do comment to Jeff She

TO: Lisa Green (CN=Lisa Green/OU=OPD/O=EOP@EOP [OPD])

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

Draft 06/10/99 12:30pm

Jeff Shesol

PRESIDENT WILLIAM J. CLINTON

VIDEOTAPED REMARKS TO THE U.S. CONFERENCE OF MAYORS

June 11, 1999

Mayor Corradini, thank you for the kind introduction. I'm thankful for the opportunity to speak with you today, even as I continue to monitor events in Kosovo. I know that you, like all Americans, will join me in honoring our men and women in uniform for their fine and brave service. They will remain on our minds and in our hearts as they complete this important mission and ensure that peace takes hold.

First, I want to thank Mayor Corradini for her leadership on so many issues this past year. And Mayor Webb, I look forward to working with you in the year to come. Let me also thank the chair of your Advisory Board, Mayor Brent Coles, for the fine work he does on your behalf; and to Mayor Mark Morial for hosting this conference.

Even though I can't join you in person, I know I'm well represented in New Orleans by my Cabinet, including the man who just about single-handedly reinvented HUD, Andrew Cuomo. And I know the Vice President, who has been our greatest advocate for urban empowerment, will be speaking to you on Monday. I send you greetings from Mickey Ibarra, my Director of Inter-governmental Affairs, here at the White House, as well as my new special assistant, Barbara Hunt, who is there with you in New

Orleans. My thanks to all of you who work so hard for our cities and for our nation.

As you know, it wasn't too long ago that some people had pretty well lost hope in America's cities. Here in Washington, there was a fervent but false debate raging between those who said that government should just give up on urban America, and those who said that government alone could save the cities. When Vice President Gore and I took office in 1993, we dedicated our administration to a different vision of government — a third way. We have said and you have confirmed that government works best as a catalyst — as a partner with business, community groups, and citizens. By lighting the spark of private enterprise in our poorest neighborhoods. . . by putting community police on once-abandoned streets. . . by providing small-business loans to inner-city residents. . . we have empowered citizens with the tools to make the most of their own lives.

No one knows better than you how far we have come. To experience an American city in 1999 is to feel the same vibrancy and vitality, the same sense of pure possibility that existed in the first great era of urban expansion. Now, on the edge of a new century, our cities are strong — and growing stronger.

This is a point made plain in our third annual State of the Cities report. Secretary Cuomo, who has been a tireless leader and partner and innovator in this effort, will describe the report to you in more detail. But I want to highlight one central finding: that cities are indeed sharing in America's economic renaissance. Urban unemployment has plummeted since 1992, from 8.1 percent to 4.8 percent. Wages are rising, crime is falling, welfare rolls are shrinking. City budgets are balanced and city populations are growing. And — for the first time in our nation's history — a majority of urban families own their own homes. This is no small achievement. This is the American dream.

Still, we cannot grow complacent. Stubborn pockets of poverty do not yet share in our national prosperity. We must keep working together — those of us in the White House and on Capitol Hill, those of you in City Hall, and in every other civic institution. We must bring all Americans into the economic mainstream.

To build on our successful efforts, and the new ideas you continue to generate at the local level, our administration has outlined a 21st Century Agenda for America's Cities and Suburbs. First, we want to open doors to new markets. As my New Markets Initiative makes clear, the greatest opportunities for investment and new customers are not beyond our shores — they're in our own backyard. Second, we intend to keep investing in our people — in the training and transportation that help workers make the most of new opportunities. Third, we want to make housing even more affordable and available. And fourth, as the Vice President has said, we can make our communities more livable by promoting smarter growth.

In all these areas, we know that America's mayors will do their part. But Congress, too, must do its part. As members consider the federal budget for the year 2000, they will make critical choices that will impact our cities and our nation well into the 21st Century. I strongly hope they will not choose a Republican budget that cuts education, cuts HeadStart, cuts job training, cuts toxic waste cleanup — in short, a budget that cuts essential programs and undercuts our progress.

The Senate majority even wants to kill our successful COPS program — the

very community police who have helped cut crime in neighborhoods across our nation. My balanced budget extends our commitment to community police into the 21st Century, putting more officers on our streets and giving them the tools they need to make those streets safe. Now is the time to build on that success, not to undermine it.

It is also time -- high time -- to keep guns out of the wrong hands. But the House leadership seems intent on ignoring the lessons of Littleton. They want to water down the common-sense gun legislation passed by the Senate. According to news reports, the NRA is crowing that the House leadership gave them 90 percent of the new loopholes they wanted.

Clearly, there's a difference of approach here. We have a simple strategy that is reducing crime across America: we want more cops on the street and fewer guns. They want more guns on the street and fewer cops. I think that's the wrong approach for America. The House leadership should heed the clear voice of the American people and stop listening to the deadly whispers of the gun lobby.

America's mayors have been on the frontlines of this and so many fights. I know you will continue to make your presence felt and your voices heard. And thanks to your energy and ingenuity, our cities will offer even more hope, and more opportunity, to millions of Americans as we move forward, together, into the 21st Century. I am grateful, your cities are grateful, and all America is grateful for the hard work you do. Thank you.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:10-JUN-1999 12:59:57.00

SUBJECT: Revisde Gun Chart

TO: Courtney O. Gregoire (CN=Courtney O. Gregoire/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

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

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

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

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

TO: Erica S. Lepping (CN=Erica S. Lepping/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: Leanne A. Shimabukuro (CN=Leanne A. Shimabukuro/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

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

TEXT:
Barry, et.al.:

Here's the gun chart to accompany the Podesta letter...Bruce is now running the letter by John.

jc3

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

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

TEXT:
Unable to convert ARMS_EXT:[ATTACH.D58]ARMS213726868.136 to ASCII,
The following is a HEX DUMP:

FF575043690A0000010A02010000000205000000DA3500000002000060CF0077252C23558BD53D
D948A56D9C41E147C79EBF37F4CA5B2C6B63206A32ABC7CFDB49F2C424C87353BC6B63121A8468

“LAUTENBERG LITE”
HOW H.R. 2037 WEAKENS THE SENATE GUN SHOW BILL
WITH ARTIFICIAL SWEETENERS FOR THE GUN LOBBY

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Hex-Dump Conversion

HOW S. 254 CLOSES THE GUN SHOW LOOPHOLE	HOW H.R. 2037 REOPENS THE GUN SHOW LOOPHOLE	WHY IT MAKES A DIFFERENCE.
<p>Defines “gun show” to cover <i>all</i> events where a large number of guns are for sale.</p>	<p>Applies only to events that are both “sponsored to foster the collecting . . . or . . . use of firearms” and involve at least 10 firearms vendors, as defined to include only sellers who have a fixed, assigned, or contracted location.</p>	<p>Under H.R. 2037, there would still be lots of events where lots of guns are being sold without background checks. Although most buyers at these events are law-abiding, these events also attract criminals, who could still get guns with no questions asked. Under H.R. 2037, if the event is not “sponsored” for a reason set out in H.R. 2037, it would not have checks, no matter how many guns are for sale. And even if it is “sponsored” for the specified reason, there would be no background checks if the event organizers and sellers keep the number of “vendors” below 10.</p>
<p>Applies the current Brady Law to all transfers of guns at gun shows.</p>	<p>Changes the Brady Law applied to gun shows to reduce the amount of time law enforcement has to complete the background check from 3 <i>business</i> days to “72 hours.” If the check cannot be completed within 72 hours, the sale must be allowed to proceed and all records about the transfer must be destroyed.</p>	<p>Under H.R. 2037, felons, fugitives, and other prohibited persons will get guns at gun shows, even though they could not get guns at gun stores. Although more than 70% of all Brady checks are completed within minutes, some checks require a few days. Usually, this is true because a State court criminal record must be examined which has not been made available to the instant check system. If H.R. 2037's 72-hour rule were the rule under the Brady Law's National Instant Check System (NICS), 22% of the people who have been denied guns would have gotten them. And with regard to prohibited people who try to buy guns on Saturday -- when most gun shows occur -- the 72-hour rule would have had even worse effect: 28% of the felons, fugitives, and other prohibited people who have been stopped would have gotten guns.</p>
<p>Requires everyone who wants to sell a gun at a gun show to verify their identity to the gun show promoter, and to be notified that they must have a background check done on their buyer.</p>	<p>Does not require that anyone notify sellers of background check requirements and exempts all gun sellers who do not rent a table as a “vendor” -- but instead walk around selling guns at the gun show -- from verifying their identity.</p>	<p>H.R. 2037 complicates what is otherwise a very simple rule: if you intend to sell a gun at a gun show, you must check in with the promoter and be notified of your obligations to have a background check done on your buyer.</p>

HOW S. 254 CLOSSES THE GUN SHOW LOOPHOLE	HOW H.R. 2037 REOPENS THE GUN SHOW LOOPHOLE	WHY IT MAKES A DIFFERENCE.
Enhances law enforcement's ability to trace used guns if those guns are used in crimes.	Prevents tracing of <i>all</i> crime guns sold through "instant check registrants" at gun shows and does nothing to improve tracing of used guns sold by licensed dealers.	Under H.R. 2037, gun shows remain a safe harbor for criminals, who know that law enforcement will be unable to trace used guns bought and sold at gun shows.
Uses existing framework of federally-licensed firearms licensees to do background checks on behalf of unlicensed sellers at gun shows.	Adds new layer of bureaucracy to federal firearms regulation by resurrecting the "special registrants" (now called "instant check registrants") from the repudiated Craig Amendment to the Senate bill.	Licensed professional firearms dealers already have experience filling out the appropriate paperwork and using the NICS, and will make entries with fewer errors than non-professionals, assuring more accurate background checks and crime gun tracing information.
Protects privacy of gun buyers who get their backgrounds checked by using licensed professional dealers – who are subject to strict recordkeeping and inspection – to do background checks.	Allows anyone to get an "instant check registration" that will allow them to do background checks and transfer guns, even if they don't know anything about guns or the firearms business.	Because H.R. 2037's "registrants" are not professional dealers, they have fewer incentives to carefully follow the rules concerning the NICS. H.R. 2037 compounds this problem by requiring the immediate destruction of NICS records, which will prevent law enforcement from having a means to detect and deter misuse and abuse of the NICS. Under H.R. 2037, law enforcement will not be able to assure that the "registrants" are not using the system to run checks on their friends or enemies for purposes completely unrelated to firearms transfers.
Does not disturb more than 30 years of federal law requiring licensed dealers to sell within their home States only.	Allows federal gun dealers to ship guns directly to unlicensed buyers across State lines.	H.R. 2037 will impede the ability of states to control the flow of guns into their borders by allowing licensees who are unfamiliar with a State's firearms laws to ship guns to private individuals across State lines.
Requires a background check for any gun that is offered for sale, transfer or exchange at a gun show.	Limits background check requirement to guns that are offered for sale <i>and</i> accepted for purchase by a buyer.	H.R. 2037 creates a new loophole that allows unlicensed vendors to offer guns for sale and complete the sale outside the gun show without any background check.
HOW S. 254 CLOSSES THE GUN SHOW LOOPHOLE	HOW H.R. 2037 REOPENS THE GUN SHOW LOOPHOLE	WHY IT MAKES A DIFFERENCE.
Writes into the Brady Law a	Opens up the entire instant check	H.R. 2037 will prevent the FBI from protecting the privacy and

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<p>requirement that records of approved transactions must be destroyed within 90 days or, if possible, even sooner.</p>	<p>system to fraud and abuse by requiring immediate destruction of records.</p>	<p>security of the sensitive information in the NICS. By imposing a requirement that records be destroyed immediately, H.R. 2037 will stop the government from detecting and identifying sales of firearms to criminals and other misuses of the system – such as background checks run on citizens for ulterior purposes – undermining the entire instant check system.</p>
<p>Allows States with instant check system to continue to operate under their existing framework.</p>	<p>Forbids anyone doing background checks as points of contact for the instant check system – even states with their own instant check systems – from retaining records or charging a fee.</p>	<p>Keeping States in the Brady check system assures the most thorough background checks, because States often have access to records that the federal government cannot access. H.R. 2037 will drive States away from doing background checks.</p>
<p>Does not create any new immunities.</p>	<p>Gives gun sellers and “registrants” at gun shows potentially sweeping immunity.</p>	<p>There is no reason to use gun show legislation to decrease the accountability of those who engage in gun transactions.</p>

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:10-JUN-1999 13:23:47.00

SUBJECT: URGENT 1:50PM DEADLINE -- FINAL Draft Letter on Commerce/Justice/State App

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

READ:UNKNOWN

TO: Steve Ricchetti (CN=Steve Ricchetti/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO: George T. Frampton (CN=George T. Frampton/OU=CEQ/O=EOP@EOP [CEQ])

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

TO: Wesley P. Warren (CN=Wesley P. Warren/OU=CEQ/O=EOP@EOP [CEQ])

READ:UNKNOWN

TO: Ron Klain (CN=Ron Klain/O=OVP@OVP [UNKNOWN])

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

TO: Lynn G. Cutler (CN=Lynn G. Cutler/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: Miles M. Lackey (CN=Miles M. Lackey/OU=NSC/O=EOP@EOP [NSC])

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

TO: Jeffrey M. Smith (CN=Jeffrey M. Smith/OU=OSTP/O=EOP@EOP [OSTP])

READ:UNKNOWN

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

READ:UNKNOWN

TO: Martha Foley (CN=Martha Foley/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

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

READ:UNKNOWN

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

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

CC: Courtney O. Gregoire (CN=Courtney O. Gregoire/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN

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

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

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

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

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

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

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

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

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

CC: Shannon Mason (CN=Shannon Mason/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: Daniel B. Shapiro (CN=Daniel B. Shapiro/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN

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

CC: Mara E. Rudman (CN=Mara E. Rudman/OU=NSC/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN

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

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

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

READ:UNKNOWN

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

CC: Mark J. Tavlarides (CN=Mark J. Tavlarides/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN

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

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

CC: Judy Jablow (CN=Judy Jablow/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN

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

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

CC: Charles E. Kieffer (CN=Charles E. Kieffer/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TEXT:

Attached for your sign-off is a final draft letter on the
Commerce/Justice/State Appropriations Bill, FY00. Full committee mark-up
is scheduled for 3:00PM TODAY. Appreciate your sign-off and comments no
later than 1:50PM. Our apologies for the tight turnaround. Thank you

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

TEXT:

Unable to convert ARMS_EXT:[ATTACH.D67]ARMS205366860.136 to ASCII,
The following is a HEX DUMP:

FF5750439A0C0000010A02010000000205000000FC390000000200003BA8009A3B3FC4E597C381
A6F75836FA8D6F307E487A1847077CCE1FDB5DD502AF5C2F9271346D2BC1C4DE6F943EA642E1D0
132CCF82EF18DDE408B6BB32F30A7FA3E8A0B256A0E130990FD744C3F684C8DEDC26C4DE5F329D

The Honorable Ted Stevens
Chairman
Committee of Appropriations
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The purpose of this letter is to provide the Administration's views on the Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Bill, FY 2000, as approved by the Senate Subcommittee. As the Committee develops its version of the bill, your consideration of the Administration's views would be appreciated. These views are based on incomplete information and are, therefore, necessarily preliminary.

The Administration appreciates the Subcommittee's efforts to accommodate some of the Administration's priorities within its 302(b) allocation. However, the inadequacy of the 302(b) allocation has forced the Subcommittee to make choices that are simply unacceptable.

The President's FY 2000 Budget proposes levels of discretionary spending that meet important national needs while conforming to the Bipartisan Budget Agreement by making savings proposals in mandatory and other programs available to help finance vital spending needs. Congress has approved and the President has signed into law nearly \$29 billion of such offsets in appropriations legislation since 1995. The Administration urges the Congress to consider such proposals as the FY 2000 appropriations process moves forward. Such action will be critical in the development of this bill, as it must accommodate additional requests for two vital activities – the decennial census and embassy security – that were transmitted to the Congress, fully offset, on June 8, 1999. We look forward to working with the Committee to ensure that funding is provided for programs included in that budget amendment package as the bill moves forward. In addition, we urge the Committee to keep the bill free of extraneous provisions.

[While information on the bill is not complete, if a bill that did not address the concerns below were presented to the President, the President's senior advisers would recommend that he veto the bill.] The Administration strongly urges the Committee to address the following issues:

Department of Justice

21st Century Policing Initiative/Community Oriented Policing Services. The Administration strongly opposes the Subcommittee's decision not to fund the 21st Century Policing Initiative, the logical successor to the highly-effective Community Oriented Policing Services program. Congress should not terminate this highly-effective program. We urge the restoration of funding for the 21st Century Policing Initiative, which will enable local police Departments to hire up to 50,000 additional community police officers.

Federal Law Enforcement Funding. The Administration is concerned that while the Subcommittee bill purports to fund several new initiatives, it fails to even provide funding to support the FBI, DEA, INS, and U.S. Attorneys at current services levels in FY 2000. If these levels and the earmarks identified in the bill were enacted, reductions in current staffing levels would be required.

Brady Handgun National Instant Check System. The Administration is concerned that the bill does not include the requested fee to fund the cost of the Brady Handgun National Instant Check System (NICS), nor does it provide sufficient funding to the FBI to continue operation of the NICS system to perform these necessary checks. The Administration urges the Committee to approve the requested fee.

State Criminal Alien Assistance. The Administration is disappointed with the Subcommittee's decision to substantially reduce funding for the State Criminal Alien Assistance program.

Department of Commerce

Decennial Census. On June 8, 1999, the President requested \$1.7 billion in additional funding for implementation of the decennial census. This funding will support the increased activities made necessary by the January 25, 1999, U.S. Supreme Court ruling. The funds requested in the amendment primarily address the additional workload associated with a non-sampling census for purposes of congressional apportionment, including additional staff, equipment, office space, and information technology needs. Although proceeding with a non-sampling census for purposes of congressional apportionment will increase our costs substantially, it unfortunately will produce less accurate results than the sampling method proposed by the Census Bureau.

National Oceanic and Atmospheric Administration. We are disappointed that the Subcommittee mark does not provide the \$60 million needed to implement the 1999 Pacific Salmon Agreement, as requested in the Administration's recently-submitted budget amendment. We also urge full funding of the President's Lands Legacy initiative. In addition, we urge the Committee to fully fund the request for the Global Learning and Observations to Benefit the Environment (GLOBE) program. The Subcommittee bill would freeze the program at \$2.5

million, half the requested level. We also urge the Committee to include the requested \$1 million for new education and outreach activities at Historically Black Colleges and Universities. This funding would have a dramatic impact on creating a pipeline of marine biology students at these institutions.

Economic Development Administration. The Subcommittee mark reduces the Economic Development Administration (EDA) by \$165 million, over 40 percent below both the request and the FY 1999 enacted level. This funding level would mean a significant reduction in EDA's ability to create jobs and expand economic opportunity in hundreds of distressed communities around the country.

Critical Infrastructure Protection. The Subcommittee mark does not include the funds necessary to protect our Nation's critical infrastructure. We urge the Committee to fully fund the \$7.3 million requested for NTIA and NIST.

Legal Services Corporation

The Administration urges the Committee to increase the mark for the Legal Services Corporation (LSC) from a freeze at the FY 1999 enacted level, \$300 million, to the requested level of \$340 million. Funding LSC at the requested level will help to ensure equal access to the judicial system.

International Affairs Programs

The Administration is deeply concerned about the Subcommittee's severe reductions to the request for Department of State accounts that fund diplomatic and consular activities, as well as contributions to international organizations and peacekeeping. Reductions of eight percent to the request for ongoing diplomatic and consular operations would impair the ability of the Department to support American interests and provide services to the public by forcing severe reductions to personnel, operations, and investment that would undermine U.S. leadership in world affairs.

The Administration appreciates funding provided to continue enhanced embassy security operations, but the Subcommittee's mark does not meet the President's request for an accelerated construction program of new, secure embassy facilities and does not provide the requested advance appropriations necessary to support a multi-year capital improvement program. The Subcommittee bill significantly underfunds the annual assessed contributions to international organizations and peacekeeping and only partially funds our requirement to pay off U.S. arrearages. These funding levels would increase arrears, further inhibit chances for reforms we are all seeking, and seriously constrain the ability of the United States to address foreign policy interests through the mechanism of U.N. peacekeeping. Most troubling, based on limited information, the Subcommittee mark does not appear to include the \$107 million arrears credit that the Senate Foreign Relations Committee specifically directed to be included as part of the bipartisan arrears package. The Administration considers this credit a key element of our U.N. arrears agreement.

The Administration opposes the Subcommittee's decision not to fund the National Endowment for Democracy.

Small Business Administration

The Administration is disappointed that the Subcommittee mark does not include funding for the new markets initiatives to invest in rural and urban areas -- \$82 million for New Markets Technical Assistance, 7(a) small loans, and the New Markets Venture Capital initiative. In addition, we are concerned that the Subcommittee has not provided the \$233 million in contingent emergency funding requested for disaster loans. This funding will ensure SBA that can meet the projected demand for the program.

The Administration will provide additional views on the bill as information becomes available. We look forward to working with the Committee to address our mutual concerns.

Sincerely,

Jacob J. Lew
Director

Identical Letter Sent to The Honorable Ted Stevens,
The Honorable Robert C. Byrd, The Honorable Judd Gregg,
and The Honorable Ernest F. Hollings

The Honorable Robert C. Byrd
Committee on Appropriations
United States Senate
Washington, D.C. 20510

Dear Senator Byrd:

Automated Records Management System
Hex-Dump Conversion

The Honorable Judd Gregg
Chairman
Subcommittee on Commerce, Justice,
State, and Judiciary Appropriations
Committee on Appropriations
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Automated Records Management System
Hex-Dump Conversion

The Honorable Ernest F. Hollings
Subcommittee on Commerce, Justice,
State, and Judiciary Appropriations
Committee on Appropriations
United States Senate
Washington, D.C. 20510

Dear Senator Hollings:

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:10-JUN-1999 13:34:34.00

SUBJECT: REVISED Lockbox Letter -- 3:00PM Today Deadline

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

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

TO: George T. Frampton (CN=George T. Frampton/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN

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

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

TO: Wesley P. Warren (CN=Wesley P. Warren/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN

TO: Ron Klain (CN=Ron Klain/O=OVP@OVP [UNKNOWN])
READ:UNKNOWN

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

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

TO: Lynn G. Cutler (CN=Lynn G. Cutler/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: Miles M. Lackey (CN=Miles M. Lackey/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN

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

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

TO: Jeffrey M. Smith (CN=Jeffrey M. Smith/OU=OSTP/O=EOP@EOP [OSTP])
READ:UNKNOWN

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

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

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

READ:UNKNOWN

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

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

CC: Courtney O. Gregoire (CN=Courtney O. Gregoire/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN

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

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

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

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

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

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

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

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

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

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

CC: Mara E. Rudman (CN=Mara E. Rudman/OU=NSC/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN

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

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

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

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

READ:UNKNOWN

CC: Mark J. Tavlarides (CN=Mark J. Tavlarides/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN

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

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

CC: Judy Jablow (CN=Judy Jablow/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN

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

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

CC: Charles E. Kieffer (CN=Charles E. Kieffer/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TEXT:

Attached for you clearance is a revised version of the Lockbox letter.
Appreciate your sign-off by 3:00PM. We aim to transmit this letter
today. Thank you!

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

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

TEXT:

Unable to convert ARMS_EXT:[ATTACH.D61]ARMS26887686A.136 to ASCII,
The following is a HEX DUMP:

FF57504381050000010A020100000002050000008F23000000020000597BFBCFD5F6920B0D6D6D

The Honorable Trent Lott
Majority Leader
United States Senate
Washington, D.C. 20510

Dear Mr. Leader:

The purpose of this letter is to provide the Administration's views on S.557. As the Senate acts on this legislation, your consideration of the Administration's views would be appreciated.

In the President's State of the Union, the President presented a budget proposal based on core principles. He called for dedicating the new surplus to a lockbox that would lower the nation's debt and extend the solvency of both Social Security and Medicare. The major elements of the fiscal program are: protecting the solvency of Social Security; saving and improving Medicare; reducing our debt; investing in the future through investing in education, research and development, the environment and national security; and providing targeted tax relief.

The Administration strongly opposes the budget process legislation announced by Senators Abraham and Domenici and the Republican Leadership on March 10, which we understand will be offered on the Senate Floor as a substitute amendment to S. 557. This legislation fails to protect Social Security and would in reality put payment of Social Security benefits at risk. For the reasons detailed below and in the *attached letter* from Secretary of the Treasury Rubin, if the Abraham/Domenici amendment or similar legislation is passed by the Congress, the President's Senior Advisors will recommend to the President that he veto the bill.

The Abraham/Domenici amendment would establish declining statutory limits on debt held by the public. As explained by Secretary Rubin in the attached letter, these arbitrary limitations on the Treasury's ability to borrow funds could trigger periodic debt crises, placing at risk the Federal government's ability to honor its financial obligations -- including payment of Social Security benefits. The Secretary concludes that this mechanism would create "uncertainty about the Federal government's ability to honor its future obligations....potentially threatening the ability to make Social Security payments to millions of Americans." These concerns would exist even if the legislation is amended to include recession waivers, because *any* unanticipated slowdown in the economy would cause a breach of these arbitrary limitations on debt.

Furthermore, the Abraham/Domenici amendment would not extend the solvency of the Social Security Trust Funds by a single day. The legislation is flawed because it fails to extend the solvency of the Trust Funds, fails to ensure that the surplus is used to protect the payment of benefits to Social Security beneficiaries, and contains an escape clause designed to allow the

diversion of surpluses attributable to Social Security to other purposes which neither help Social Security beneficiaries nor reduce the debt.

By contrast, the President has proposed a budget plan that substantially extends the life of the Social Security Trust Funds and dedicates a large portion of projected surpluses for the payment of Social Security benefits. The President's budget framework would reserve 62 percent of unified budget surpluses over the next 15 years to extend the solvency of the Social Security Trust Funds. These surpluses would be fully dedicated to the Social Security Trust Funds and would not be available for tax cuts or other spending programs. The independent Social Security Administration actuaries have estimated that reserving 62 percent of unified budget surpluses for Social Security would extend the life of the Trust Funds until 2059.

Moreover, the Administration supports extension of the Budget Enforcement Act pay-as-you-go requirements and discretionary spending caps, as additional insurance that the dedicated surplus funds will not be used for purposes other than Social Security solvency. The pay-as-you-go requirements and budget caps have been effective for the last ten years, and should be extended without change until the Congress and the President have secured the long-term solvency of Social Security.

In addition to securing the future of the Social Security program, the President's budget framework would lock away an additional 15 percent of total budget surpluses to extend the life of the Medicare Trust Fund by at least a decade. As with the Social Security surpluses, these funds would be dedicated to Medicare by investing the funds in Treasury securities and making them unavailable for any other purpose. The Republican proposal, by contrast, does nothing to guarantee extension of the Medicare Trust Fund and would seriously weaken the budget rules to permit non-Social Security surpluses to be spent on tax cuts.

[The Administration also has concerns about H.R. 1259, the House-passed approach. Although it adopts the principle that a substantial portion of the surplus should be dedicated to debt reduction, it also does nothing to extend social security or Medicare solvency. At the same time, it would promote an unwise and inflexible fiscal policy. It would create a process to force spending cuts or tax increases during a period of economic decline, which would deepen and lengthen an economic downturn.]

The budget debate should be focused on concrete steps to secure the long-term solvency of Social Security and to save and strengthen Medicare. Unfortunately, the Senate "lockbox amendment [and H.R. 1259] would do nothing to move the Nation towards that goal and risks bad fiscal policies that would threaten the health of our economy. The Administration urges the Congress to re-focus its efforts on the goal of saving Social Security first and strengthening Medicare.

Sincerely,

Jacob J. Lew

Director

**Automated Records Management System
Hex-Dump Conversion**

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: MaryEllen C. McGuire (CN=MaryEllen C. McGuire/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:10-JUN-1999 13:58:53.00

SUBJECT: Conference Call

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

READ:UNKNOWN

TO: JGompert@cns.gov (JGompert@cns.gov @ inet [UNKNOWN])

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

TO: Tanya E. Martin (CN=Tanya E. Martin/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: Ann F. Lewis (CN=Ann F. Lewis/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

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

READ:UNKNOWN

CC: Twest@cns.gov (Twest@cns.gov @ inet [UNKNOWN])

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

We will have and AmeriCorps Conference call this coming Monday, June 14th at 5pm. Please call 757-2100, code 4129.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:10-JUN-1999 18:59:30.00

SUBJECT: VP at AFSME

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

i can't think of anything -- canyou?

----- Forwarded by Karen Tramontano/WHO/EOP on 06/10/99

06:58 PM -----

Melissa B. Ratcliff@OVP

06/09/99 12:42:01 PM

Record Type: Record

To: Karen Tramontano/WHO/EOP@EOP

cc: Laura M. Quinn/OVP@OVP

Subject: VP at AFSME

The VP is speaking to AFSME in Iowa on June 25th. Any suggestions or ideas for a deliverable? Please let me or Laura know, thanks!!

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:10-JUN-1999 22:17:09.00

SUBJECT: NRA amendments

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

TO: Janet Murguia (CN=Janet Murguia/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:

Colleagues:

A friend of mine from the Hill told me Dingell, Stupack, and Barcia had a pro-gun amendment meeting today. Seems they're agreed on offering 2 amendments: (1) to limit gun show checks to 24 hours; and (2) to drop the ban on imported clips and replace it w/increased penalties for violating the ban on clips.

Interesting, eh?

jc3

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:10-JUN-1999 23:16:13.00

SUBJECT: Draft Letter to Brady Supporters

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

Sorry so late. What do guys think? jc3

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

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

TEXT:

Unable to convert ARMS_EXT:[ATTACH.D86]ARMS25747796N.136 to ASCII,

The following is a HEX DUMP:

FF57504370040000010A02010000000205000000BA11000000020000D7715A48719B1234747351
770CBEDA79FF45D68FF206077CB3F1E68AEC22C280D27B55888784FB0C09242A0ED4BCFA308496
41691CDD8A35F26D353B91E49FEE0F8B226E87B7B3014D7259FE9C0F6B4A2649D0CC0BB690F01A
6337BB8A0BDF83580CA3D8319136DCBAD3CE945478B3A16A05D69606F9F8E5BB629D9EF1985542
95C2CA019DDEB0428CAE18B5F130D119D548BB45FEA58E691718F19CC35E65C0E0E0A63E5C4BA7

June 11, 1999

Dear [Brady Bill Supporter]:

Next week, you will have the opportunity to vote on one of the most important pieces of gun legislation since you supported the Brady bill in 1993. And I urge you, in the strongest terms possible, to support the common sense gun measures included in Senate's juvenile crime bill.

I especially ask you to support closing the gun show loophole and to reject the false arguments and phony reforms that will be put forward by opponents of this meaningful gun legislation. As a Brady bill supporter, you have heard these arguments before:

Criminals don't buy guns from gun dealers or at gun shows; they buy them on the street or steal them. New gun laws only serve to inconvenience law-abiding citizens.

Gun laws only stop people who need a gun for self protection from getting a gun when they need it most.

Every new gun law is just another step towards federal gun registration or confiscation.

Of course, all Americans now know the truth: since the Brady Law's enactment, well over a quarter of a million illegal handgun sales have been blocked -- and no law-abiding citizen has been stopped from buying a gun for sport or self-protection. In fact, the Brady Law has proven to be one of the most effective law enforcement tools ever. However, none of this has stopped the gun lobby from recycling the same empty arguments in an effort to kill or weaken the gun show legislation passed by the Senate. And unfortunately, the NRA's siren song has swayed at least some in the House leadership, who have proposed gun show legislation that is riddled with new and dangerous loopholes similar to those that were defeated in the Senate.

Make no mistake: your vote on these important details can make the difference in whether or not we close the gun show loophole once and for all. For instance, if the House leadership's proposal to put a 72-hour time limit on background checks at gun shows applied to our National Instant Check System (NICS), the Justice Department estimates that 22 percent of the fugitives and felons that have been denied guns -- or more than 9,300 since the start of this year -- would have them today. But that is not all. The House leadership's bill would also allow hundreds of guns to be sold at flea markets without any background check, and it would prevent law enforcement from tracing many of guns that are sold at gun shows and later used in crimes. I hope you will agree with me that these provisions are simply unacceptable.

As a supporter of the Brady bill, you have a record of putting the interests of the American people over the clout of the gun lobby. In the that same spirit, I ask you again to vote your convictions -- and to vote to strengthen our guns as much as possible.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:11-JUN-1999 11:44:10.00

SUBJECT: Re-write of proposed Brady Letter, as edited by Bruce

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

CC: Courtney O. Gregoire (CN=Courtney O. Gregoire/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

Esteemed Colleagues:

Here's a re-write of the Brady letter. Bruce is going to shop it w/the higher ups in the West Wing, and try and get a final decision. We may or may not do it today, but we'll let you know as soon as we get a decision.

Janet/Broderick: Are you comfortable w/your Brady supporter list? Do we need to re-check?

jc3

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

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

TEXT:

Unable to convert ARMS_EXT:[ATTACH.D12]ARMS25821307T.136 to ASCII,

The following is a HEX DUMP:

FF57504370040000010A0201000000020500000006E100000000200007E88667CCC22D98677520D
1F42FC1D3D7B8269BC76450AC987C297930A410E0DD74C13872E60A155D884E50E62A2AF52AF7D

June 11, 1999

Dear [Brady Bill Supporter]:

Six years ago, you showed extraordinary political courage by standing up to the gun lobby and voting for the Brady bill. That law has helped to make America a safer place.

Next week, you will have the opportunity to vote on one of the most important pieces of gun legislation since the Brady bill. I urge you to stand up to the gun lobby once again, and support common sense measures to close the gun show and other loopholes.

Opponents of meaningful gun legislation are still making the same false arguments you heard six years ago, that criminals don't buy guns from gun dealers or at gun shows, and that any new gun law is just a plot to take away gun owners' rights.

Of course, all Americans now know the truth: since 1993, the Brady Law has blocked well over a quarter of a million illegal handgun sales to felons, fugitives, stalker, and other prohibited persons -- and no law-abiding citizen has been stopped from buying a gun for sport or self-protection. In fact, the Brady Law has proven to be one of the most effective law enforcement tools ever.

Under pressure from the gun lobby, some in the House have proposed gun show legislation that is riddled with new and dangerous loopholes similar to those that were defeated in the Senate. I urge you to reject that approach, and support the common sense measures enacted by the Senate.

Your vote on these important details can make the difference in whether or not we close the gun show loophole once and for all. For instance, if the current House proposal to put a 72-hour time limit on background checks at gun shows applied to our National Instant Check System (NICS), the Justice Department estimates that 22 percent of the fugitives and felons that have been denied guns -- or more than 9,300 since the start of this year -- would have them today. But that is not all. The House bill would also allow hundreds of guns to be sold at flea markets without any background check, and it would prevent law enforcement from tracing many of guns that are sold at gun shows and later used in crimes.

As a supporter of the Brady bill, you have a record of putting the interests of the American people over the clout of the gun lobby. In the that same spirit, I ask you again to vote your convictions -- and vote once again to keep guns out of the wrong hands.

Automated Records Management System
Hex-Dump Conversion

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:11-JUN-1999 12:49:17.00

SUBJECT: FINAL CLEARANCE -- Draft SAP -- S. 1186 Energy/Water Appropriations, FY00

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

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CC: Wendy E. Gray (CN=Wendy E. Gray/OU=NSC/O=EOP@EOP [NSC])
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CC: William G. Dauster (CN=William G. Dauster/OU=OPD/O=EOP@EOP [OPD])
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CC: Adrienne C. Erbach (CN=Adrienne C. Erbach/OU=OMB/O=EOP@EOP [OMB])
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TEXT:

Attached below for your review and sign-off is a final draft SAP for S. 1186 -- Energy/Water Development Appropriations Bill, FY00. S. 1186 is scheduled for Senate floor consideration on Monday, June 14. We would appreciate your comments and sign-off by 3:00PM Today. Thank you!

Draft 6/11 12:45PM

June , 1999

(Senate Floor)

S. 1186 -- ENERGY AND WATER DEVELOPMENT
APPROPRIATIONS BILL, FY 2000
(Sponsors: Stevens (R), Alaska; Domenici (R), New Mexico)

This Statement of Administration Policy provides the Administration's views on S. 1186, the Energy and Water Development Appropriations Bill, FY 2000, as reported by the Senate Appropriations Committee. Your consideration of the Administration's views would be appreciated.

The allocation of discretionary resources available to the Senate under the Congressional Budget Resolution is simply inadequate to make the necessary investments that our citizens need and expect. The President's FY 2000 Budget proposes levels of discretionary spending that meet such needs while conforming to the Bipartisan Budget Agreement by making savings proposals in mandatory and other programs available to help finance this spending. Congress has approved and the President has signed into law nearly \$29 billion of such offsets in appropriations legislation since 1995. The Administration urges the Congress to consider such

proposals.

The Administration appreciates efforts by the Senate Appropriations Committee to accommodate certain of the President's priorities within the 302(b) allocation. However, the Senate bill is nearly \$200 million below the program level requested by the President and includes significant reductions in a number of high priority programs. These concerns are discussed below.

Department of Energy

The Administration is concerned with the large shift in the Committee bill from key domestic priorities of the Department of Energy (DOE) to fund Atomic Energy Defense Activities. The bill provides \$267 million less than the President's request for DOE's domestic programs and adds \$261 million to the President's request for defense activities (\$619 million more than the FY 1999 enacted level, excluding a one-time emergency supplemental appropriation). The bill would significantly reduce vital programs in energy research and other activities to fund unrequested enhancements to nuclear weapons and other defense activities and are also not related to counterintelligence and security concerns.

Specific cuts include:

☐☐ ab Solar and Renewable Energy. The Administration strongly opposes the \$98 million reduction from the President's request for research and development (R&D) in solar and renewable resources technologies (including the use of \$6 million of carryover balances, thus reducing the total appropriation). The Committee mark would severely cripple both Administration efforts to accelerate the introduction of critical renewable energy technologies as well as important R&D efforts to make these clean energy sources more affordable.

☐☐ abEnvironmental Management. The Administration opposes the \$40 million reduction to the Uranium Enrichment Decontamination and Decommissioning Fund. At the Committee-recommended funding levels, the Department would be unable to meet requirements for activities at Oak Ridge, as well as ongoing cleanup activities at Portsmouth, Ohio, and Paducah, Kentucky, uranium enrichment facilities.

☐☐ abScience. The Administration opposes the \$27 million reduction to the request for construction of the Spallation Neutron Source (SNS). We continue to believe that the FY 2000 request represents the optimum funding level. As the funding level decreases, the risk of project cost increases and delays rises. Construction of the SNS must be completed in a timely manner to enable our best scientists to explore critical problems in fundamental science and applications for our materials and biotechnology industries.

Further, the Administration opposes the lack of funding in the bill for the Information Technology Initiative for the 21st Century and for the Next Generation Internet Initiative. Both of these initiatives would propel revolutionary breakthroughs in information technology and scientific computing in the United States.

In addition, the Administration regrets that the Committee has not

restored the funding required to complete the final phase of activities at the Bates Laboratory at the Massachusetts Institute of Technology.

□□ abDepartmental Administration. The Administration opposes the reductions in Departmental Administration programs. The reductions would impair implementation of Secretarial management initiatives now underway to restructure field management, reorganize security functions, enforce reductions in contractor travel and other overhead costs, and improve construction management.

□□ abYucca Mountain. The Administration opposes the reduction of \$54 million from the request for the civilian radioactive waste program. This reduction would threaten planned scientific, engineering, and design work essential to finalizing the Yucca Mountain repository design. This work is necessary to guide DOE's FY 2001 site suitability determination for Yucca Mountain. Reductions in funding for this work would jeopardize DOE's ability to meet its FY 2002 license application milestone if the site is found to be suitable. The proposed reduction would also reduce the Department's ability to provide a remedy for its 1998 waste acceptance obligations, which are currently in litigation.

Power Marketing Administration

The Administration is disappointed that the Committee has not accepted the Administration's proposal to revise the financing of the Power Marketing Administration's Purchase Power and Wheeling programs. The Administration would like to continue to work with the Senate to restructure the funding mechanism for these programs.

Stockpile Stewardship

The Administration believes it is premature for the bill to include provisions for a realignment of the facilities and missions of the Department's National Laboratories and facilities in support of the Stockpile Stewardship program. The Department has begun initial studies of possible realignments and will work with Congress as soon as the Administration has completed its analysis. No major action can be taken to implement such a plan until appropriate studies are completed, including revisions to the Programmatic Environmental Impact Statement on Stockpile Stewardship and Management.

Army Corps of Engineers

The Administration strongly objects to a provision in the Regulatory Program appropriation that would short-circuit the review process for wetlands jurisdictional determinations by making the review of these initial decisions appealable to the Federal courts prior to a final permit decision. Although the Administration supports the creation of an administrative review process for these determinations, the bill would generate unnecessary and premature litigation, set back efforts to ensure a fair and amicable resolution of potential disputes, and undermine the ability of citizens and communities to participate on an equal footing in the permit process.

The Administration is concerned that the \$145 million reduction to the President's request (not including rescissions) for the Army Corps of Engineers would result in significant delays for certain critical construction projects. Of particular concern are reductions from the request to the Columbia River Fish Mitigation project, from \$100 million to \$70 million; the Everglades (FL) project, from \$110 million to \$92 million; and, the Kill Van Kull and Newark Bay Channel (NY, NJ) project, from \$60 million to \$40 million. In addition, the Administration opposes the bill's prohibitions against studying drawdown of John Day and McNary dams. These prohibitions could hamper the objective analysis necessary to formulate Columbia and Snake River salmon recovery plans.

We also urge Cong

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Deborah Akel (CN=Deborah Akel/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:11-JUN-1999 15:01:47.00

SUBJECT: Please approve talking points

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

READ:UNKNOWN

TO: Courtney O. Gregoire (CN=Courtney O. Gregoire/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TEXT:

In Jose's absence, he suggested I have Elena take a look at these before I send them out. Please let me know if they meet your approval. Thanks.

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

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

TEXT:

Unable to convert ARMS_EXT:[ATTACH.D87]ARMS21009507X.136 to ASCII,
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**PRESIDENT CLINTON AND VICE PRESIDENT GORE:
FIGHTING FOR MORE COPS AND FEWER GUNS**

June 11, 1999

"We want more police on the street and fewer guns in the hands of criminals and children. They want more guns on the street and fewer cops. I think that's the wrong approach for America."

President Bill Clinton
June 11, 1999

Today, in a satellite address to the U.S. Conference of Mayors, President Clinton expressed concern for Congressional legislation that threatens to undermine progress on the war against crime. The House version of the Senate-passed gun legislation creates new loopholes at the request of the gun lobby, and a Senate bill voted on yesterday zeros out the President's COPS community police program. The President urged Congressional Republicans to heed the call of the American people and put the interests of our children over that of the gun lobby.

VOWING TO DEFEAT NEW GUN LOOPHOLES. The President expressed his dismay at House Republicans for watering down the gun legislation passed by the Senate last month in an attempt to curry favor with the gun lobby. According to news reports, the NRA is claiming that the Republican bill gives them 90% of the loopholes they requested. The House version of the bill weakens the Senate-passed legislation in that it:

- redefines the term "gun show" so that background checks are not required in all cases where a large number of guns are sold, including flea markets;
- shortens the amount of time given to law enforcement officers to complete background checks;
- makes it more difficult for law enforcement to trace certain guns sold at gun shows which are later used in crimes;
- eliminates the requirement that sellers be notified of background check requirements;
- exempts certain gun sellers from verifying their identity to the gun show promoter;
- allows federal gun dealers to ship guns directly to unlicensed buyers across state lines; and
- opens up the entire instant check system to fraud and abuse by requiring immediate destruction of records.

The President vowed to work hard to defeat the passage of these new loopholes into law.

FIGHTING FOR MORE COPS ON OUR STREETS. The President expressed his opposition to yesterday's Senate vote to zero out his COPS Initiative. COPS, a successful program to put more police officers on the streets, has been instrumental in **helping communities to cut crime nationwide. Local officials and community residents have praised the COPS program for helping to bring down crime and make their communities safer. Just last month, the President announced funding for 100,000 officers for our nation's streets, and the President's balanced budget provides nearly \$1.3 billion to continue the COPS program to put even more officers on our streets and give them the tools they need to make our streets safe.**

BUILDING ON OUR SUCCESS WITH THE RIGHT STRATEGY. The President criticized Congress for cutting funds for more police while adding new loopholes to our gun laws. He urged Congress instead to build on our success in the fight against crime by funding more police and working to keep guns out of the hands of children and criminals.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:11-JUN-1999 15:28:02.00

SUBJECT: fyi

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

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

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TEXT:

Draft 6/11/99 2:45pm

Michael Waldman

PRESIDENT WILLIAM J. CLINTON

"PUTTING A HUMAN FACE ON THE GLOBAL ECONOMY"

ADDRESS TO THE GRADUATES

UNIVERSITY OF CHICAGO

CHICAGO, ILLINOIS

June 12, 1999

It is an honor to join you at this great university, in the heart of our nation, at the height of our strength and prosperity in the world.

To the graduates: You have spent four tough but rewarding years in this crucible of intellectual ferment) and you will carry the discipline and insight you have gained wherever you go and whatever you do. The debate on this campus in recent weeks about the undergraduate program merely underscores the value you place on free, serious, disciplined thought and your faith that ideas, pursued without regard to convenience or convention, will lead us ever upward.

You have learned the most important lessons of all: to see clearly and think originally, to navigate the swiftly flowing currents of new information without losing hold of the traditions and values of a civilized society. Your depth and discipline of mind have made you ready, as few others are, to be leaders in the new global community now taking shape.

[You will be called upon to be leaders in a world that still needs American leadership.

Our success in Kosovo was a victory for the principles of equality and liberty that our nation reveres. It was a victory for the vision of a world in which no people is persecuted because of their ethnicity or religious faith. And it was a victory for a the tide of democracy that continues to rise across the globe.

Now we must consolidate that victory and build the peace. Today, Serb forces continue their rapid withdrawal from Kosovo. American and allied forces are coming together, preparing to enter and begin the work of building peace. And the Kosovar civilians will soon return home, to live with their neighbors in safety and self-government. The whole of Europe has the chance to emerge from its bloodiest century undivided, democratic

and at peace for the first time in history. With our allies and partners, including Russia, we can make this happen for the new century.

This was a test for American leadership □) a new kind of challenge, in a world still torn by ancient hatreds.] [this section will need to be updated, and cleared by the NSC]

And you will be called upon to help fashion American leadership in many ways.

With diplomas in hand, you enter a new economy, in a new world □) an economy in which wealth derives not only from the ore in the ground or the might of our factories but from the power of our minds □) in which flexibility and teamwork are the watchword of success □) in which nations are linked through luminous ties of commerce and communications. It is a world in which a half million airline passengers, [100 million] e-mails messages, and \$1.5 trillion dollars cross national borders every single day. A world transformed: digital, democratic, interactive, a world in which every individual will have the power to publish, to communicate, to learn through a lifetime.

You leave here, ready to prosper in this new world. But you must also prepare to take your place as full citizens of this nation. Today I speak of the extraordinary opportunities that await you □) and the profound responsibilities that come with them.

The qualities prized by the new economy are at the core of the American character. That is no accident. America fought to create this new economy. America leads it. America prospers in it. Today our economy is the strongest in our nation's history.

But the very economic forces that make this a time of hope also carry the portent of instability, risk, and division □) here at home, and around the world.

The very speed with which capital surges into promising markets enables it to rush outward just as quickly □) often in a panic, often because of crowd psychology, often because of an unrelated event half a world away.

The very intensity of competition □) the very pace with which new products, new companies, even new industries, can rise and fall □) creates deep new insecurity in a time of plenty.

The very velocity of technological change and openness to the world that has helped us create tens of millions of new jobs exposes other jobs to sudden risk.

We revere the vision of free markets and free societies that undergirds this new economy. Well before it was conventional wisdom everywhere, here on this campus you proclaimed that freedom is indivisible □) that free economies would lead to free societies. We are proud that American leadership has helped spread this vision across the globe. But just as your scholars taught the world about the power and logic of the market, they have taught us as well about the enduring importance of strong social norms □) the vital institutions and values, rooted in families and communities and religious institutions, that give meaning to our lives. You are teaching us that effective laws and mutual responsibility are not opposed to thriving markets □) they are the basis of thriving markets.

Here, then, is the challenge you face, and all Americans face: Whether we will seize the full potential of this new time, or simply let its often uncontrollable forces overwhelm us.

A century ago, the emerging Industrial Age offered brilliant prospects but posed brutal new challenges to our traditional notions of opportunity and individual liberty. Through the Progressive Era and the New Deal, Americans led by the faculty and graduates of this university struggled to seize the potential of industrialization. Through the hard experience of depression and war, we determined that a national economy demanded decisive action from a strong national government to keep markets honest and free, to temper the cycles of boom and bust, to stretch a safety net beneath our families, to give workers the right to organize and a stake in our bounty. The farsighted generations of a half-century ago built a platform for prosperity on which we stand to this day.

Now, our task is nothing less than this: to find a way to advance these same values and protect these same interests in the international economy. President Lincoln told us, "As our case is new, we must think anew. We must disenthrall ourselves." I say to you today: We can neither resist economic change nor simply tell our people to fend for themselves. We must find a third way. We must build a global economy with a human face.

In this cause, we face three great challenges.

The first challenge is to forge a trading system that honors our values.

Make no mistake: open trade dramatically benefits the United States. Our cutting edge industries, from software to aerospace to biotech to movies, lead the world. Our surging exports create millions of new jobs. We benefit from imports as well: they drive competition, force our firms to innovate, help us grow with practically no inflation. We cannot bask in our prosperity while belittling the free trade that helped create it.

But we must acknowledge the reality that free trade can bring disruption and dislocation. We cannot simply tell families and communities: sorry, but economic theory says it's all for the best. We must recognize that working people in this country and every country will resist a system that they believe does not take their interests into account. That is not only a political dilemma, but an economic dilemma as well.

I believe we must forge a new consensus for trade. One that recognizes the urgent need to continue opening markets. And one that recognizes that we cannot simply ignore the concerns of working people, here or elsewhere.

I believe that the answer is to lift the lives of people everywhere that increasingly, our prosperity depends upon the prosperity of others; that the greatest hope for the American middle class is the creation of a global middle class. A strong economy in a foreign land is not a threat to American jobs; it is a market for American products; it is an economy that will pay its own workers higher wages; it is an economy that will respect the environment.

I believe that those who support free trade have an equal duty to support funding for education, for job training, so that all our people

can reap the rewards of economic change.

I believe that labor and environmental concerns cannot be shunted to the sidelines of trade policy. As ties of trade grow tighter, trade talks have gone beyond traditional issues of tariffs and quotas. I continue to ask Congress for the authority to negotiate new trade agreements to open foreign markets to our goods and services. Presidents have used trade talks to protect interests from intellectual property rights to food safety; Congress should give me the ability to use trade talks, when effective and appropriate, to protect the environment and the rights of workers and the dignity of work as well.

But the effort to honor our values extends well beyond trade agreements among nations.

I believe that we can lift the lives of working people by seeking high labor standards everywhere in the world. Next week I will go to Geneva to meet with the international body that is promoting these universal rights. We should say clearly: There is no economy on earth so in need of a competitive advantage that it cannot guarantee the right to organize, the right to a minimum wage, an end to forced labor.

I believe that forced child labor is an abomination, anywhere and everywhere. Yet in too many communities around the world, tens of millions of children work in conditions that shock the conscience. Last year we increased by tenfold our effort to stop child labor worldwide. Today we go further: With my authority as President, today I am directing the federal government to stop buying products made with forced child labor. Taxpayer dollars should not be used to purchase a single shirt, or brick, or foot of carpet that is the bitter fruit of forced child labor and from now on, government contractors will have to certify that this is so. Next week, I [will sign] an agreement banning coercive child labor everywhere in the world and when I return to the United States, I will ask the Congress to ratify it. In the first days of the 20th Century, we moved to end forced child labor here in America. In the first days of the 21st Century, we can move to end forced child labor everywhere in the world.

As we work to seize the possibilities of the international economy, our second great challenge is this: We must build a financial system that tames the savage cycles of boom and bust, just as we did here in America.

Over the past year and half, we saw the worst financial crisis in half a century. Due to strong efforts led by the United States, the world has pulled back from the brink. But this near miss should not lull us into complacency.

Even today, the free flow of capital is the surest route to prosperity for the greatest number. Even today, after all the economic shocks, citizens of Korea or Thailand are far better off than they were a decade ago. But the world has shown itself too prone to speculation and crowd psychology, as impatient capital first rushes in and then just as suddenly rushes out of emerging markets.

A global economy prone to bouts of euphoria and collapse cannot be sustained. A half a century ago, after the devastation of World War II, we created the International Monetary Fund and the World Bank to stabilize markets and spur growth. Now, at a time of 24 hour markets stretching across 26 time zones, we need a financial architecture as modern as the

markets it serves. We have been working over past year to begin to write new rules. Our watchwords must be openness and honest accounting; strong regulation of financial institutions and the flow of capital. And we must ensure that all countries, creditor nations and debtor nations, are part of the dialogue.

Our third great challenge is both humanitarian and economic: to spread the benefits of global growth as widely as possible.

In our nation, we have learned that growth that is broadly shared is better sustained. We determined that sustaining a strong middle class □) with its mass purchasing power □) was not just morally right, but economically necessary.

The global community cannot survive as a tale of two cities, one modern and integrated, a cellphone in every hand and a McDonalds on every corner, the other mired in poverty and increasingly resentful of the world passing it by.

The answer is to widen the circle of prosperity. Even the poorest nations would benefit more from expanded trade and reduced tariffs than from foreign assistance alone. [from Australian Trade study] But we must recognize that crushing debt keeps dozens of nations and millions of people from joining the economic mainstream. As the millennium approaches, with a rising awareness of the moral obligations of leadership, we must take steps to help lift the debt burden of the poorest countries. Beginning in 1996, America led a comprehensive effort to lift that burden. Today, Treasury Secretary Rubin meets with his counterparts from the other leading economies. We are now close to forging an agreement to take a bold new step □) to more than triple debt relief for the world's poorest nations, and to target those savings to education, health, child survival fighting poverty. We must act prudently -- to ensure that savings are well used, to ensure that countries can attract investment, to ensure that countries that perform best are helped most □) but we must act. I pledge personally to work to find the resources to do our part and contribute to an expanded trust fund for debt relief.

A trading system that honors our values. A financial system that is stable and strong. A new effort to widen the circle of prosperity. This is an expansive vision and an ambitious agenda. It will not be completed this year or the next. Like the Cold War of this century, it will test the skills and challenge the imaginations of leaders for generations to come. But we can do what could never have been imagined by previous generations. If we act, wisely and boldly, we can lift billions of people into a global middle class. A rising tide of global prosperity can make it possible to cure disease, to avoid war, to end hatreds.

As the wealthiest and strongest nation, America has a responsibility to shape that world. That responsibility is your responsibility. As the most promising members of the rising generation, your skills, your creativity, your knowledge, will be your tools. But more important by far is the spirit with which you greet this endeavor. Idealism is not a phase, left behind at the college gates. It is a way of life. If you carry with you the dreams and drive that took you here, and that make your parents so proud, you will fulfill the finest traditions of this university and this nation.

For today, be proud of what you have done. Congratulations, and good luck.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:11-JUN-1999 15:45:58.00

SUBJECT: Team Leaders Mtg

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

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

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

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READ:UNKNOWN

TEXT:

We will be having the DPC Team Leaders Meeting on Monday, June 14, at 9:30 a.m.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:14-JUN-1999 15:05:33.00

SUBJECT: DPC Staff Meeting

TO: Skye S. Philbrick (CN=Skye S. Philbrick/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: Sandra Thurman (CN=Sandra Thurman/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN

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

TO: Leanne A. Shimabukuro (CN=Leanne A. Shimabukuro/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: Nicole R. Rabner (CN=Nicole R. Rabner/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

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

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

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

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

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

TO: Essence P. Washington (CN=Essence P. Washington/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN

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

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

READ:UNKNOWN

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

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

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

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

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

TO: Teresa M. Jones (CN=Teresa M. Jones/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN

TO: Courtney O. Gregoire (CN=Courtney O. Gregoire/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN

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

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

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

TEXT:

We will be holding the DPC Staff Meeting tomorrow, June 15, at 9:15 a.m.
in Room 211, OEOB.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Oscar Gonzalez (CN=Oscar Gonzalez/OU=OMB/O=EOP [UNKNOWN])

CREATION DATE/TIME:14-JUN-1999 16:25:32.00

SUBJECT: LRM OGG21 - - LABOR Testimony on OSHA's Draft Safety and Health Program Ru

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

READ:UNKNOWN

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

READ:UNKNOWN

TO: Courtney B. Timberlake (CN=Courtney B. Timberlake/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN

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

READ:UNKNOWN

TO: Sarah Rosen Wartell (CN=Sarah Rosen Wartell/OU=OPD/O=EOP@EOP [OPD])

READ:UNKNOWN

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

READ:UNKNOWN

TO: Cordelia W. Reimers (CN=Cordelia W. Reimers/OU=CEA/O=EOP@EOP [CEA])

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

CC: justice.lrm (justice.lrm @ usdoj.gov @ inet [UNKNOWN]) (OA)
READ:UNKNOWN

TEXT:

Following is LRM ID: OGG21. Please read and respond to it by 3:00 p.m.,
Tomorrow, Tuesday, June 15, 1999.

NOTE TO EOP STAFF: You will not receive a hard copy of this document.
----- Forwarded by Oscar Gonzalez/OMB/EOP on 06/14/99

04:18 PM -----

LRM ID: OGG21
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Monday, June 14, 1999

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution
below
FROM: Janet R. Forsgren (for) Assistant Director for
Legislative Reference
OMB CONTACT: Oscar Gonzalez
PHONE: (202)395-7754 FAX: (202)395-6148
SUBJECT: LABOR Testimony on OSHA's Draft Safety and Health Program
Rule

DEADLINE: 3:00 Tuesday, June 15, 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: Attached is prepared testimony to be presented before the House
Committee on Small Business by Charles Jeffress, the Assistant Secretary
of Labor for Occupational Safety and Health, on Thursday, June 17 at 10:30
am.

DISTRIBUTION LIST

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Broderick Johnson
Janet R. Forsgren

LRM ID: OGG21 SUBJECT: LABOR Testimony on OSHA's Draft Safety and Health Program Rule
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: Oscar Gonzalez Phone: 395-7754 Fax: 395-6148
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-7362

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

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

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

- shptest4.wpd===== ATTACHMENT 1 =====
ATT CREATION TIME/DATE: 0 00:00:00.00

TEXT:
Unable to convert ARMS_EXT:[ATTACH.D14]ARMS26365527X.136 to ASCII,
The following is a HEX DUMP:

FF5750431F120000010A02010000000205000000B78C000000020000CBAAC073B673D5C042598D

draft -- June 14, 1999 -- 11:15 am

**STATEMENT OF CHARLES N. JEFFRESS
ASSISTANT SECRETARY OF LABOR
FOR OCCUPATIONAL SAFETY AND HEALTH
before the
HOUSE COMMITTEE ON SMALL BUSINESS**

June 17, 1999

Mr. Chairman, Members of the Committee, thank you for inviting me to testify about OSHA's effort to promulgate a rule on safety and health programs. Safety and health programs are systematic, common sense approaches to managing workplace safety and health to provide effective protection for workers. They are widely recognized as fruitful ways to reduce the number of job-related injuries and illnesses and the number of job-related fatalities. And in the words of Occidental Chemical's Vice President for Health, Safety and Responsible Care, Stephen Kemp, safety and health programs "not only help you improve safety, but [also help] in many other areas of your business. We firmly believe that good safety performance leads to higher productivity, better product quality and overall improved performance as a company." However, even with OSHA's growing emphasis on safety and health programs, widespread action at the State level, and strong insurance company encouragement, many employers either are not aware of the benefits of such programs or have not elected to establish their own programs voluntarily.

OSHA's interest in workplace safety and health programs has grown steadily since the early 1980's, when the Agency first developed its Voluntary Protection Program (VPP) to recognize companies in the private sector with outstanding records in the area of worker safety and health. It became apparent that these worksites, which had achieved injury and illness rates

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markedly below those of other companies in their industries, were relying on safety and health programs to produce those results. At VPP worksites, which today routinely achieve injury and illness rates as much as 60 percent below those of other firms in their industry, safety and health programs--and thus the protection of the safety and health of the workforce--have become self-sustaining systems that are fully integrated into the day-to-day operations of the facility. At these worksites, worker safety and health, instead of being relegated to the sidelines or delegated to a single individual, is a fundamental part of the company's business, a value as central to success as producing goods and services or making a fair profit.

The evidence has continued to accumulate as OSHA's stakeholders from industry, labor, State governments, small businesses, trade associations, insurance companies and safety and health organizations have all gained experience with safety and health management systems. OSHA has applied what it learned about safety and health programs from VPP companies and our other stakeholders to smaller businesses, through the addition of the agency's Safety and Health Achievement Recognition Program (SHARP), which is directed at high hazard businesses with 250 or fewer employees.

In 1989, OSHA published its voluntary *Safety and Health Programs Management Guidelines* to help employers establish and maintain management systems to protect their workers. OSHA's guidelines and others like them have helped thousands of companies adopt systematic, ongoing approaches to safety and health, which achieve injury and illness rates markedly below those of other companies in their industries, reduce their workers' compensation costs, improve employee morale, and increase worksite productivity. In fact, OSHA has found

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that programs implemented by individual employers reduce total job-related injuries and illnesses by an average of 45 percent and lost worktime injuries and illnesses by an average of 75 percent. For example, Mereen-Johnson Machine Co. worked with its 95 employees in Minneapolis, Minnesota to implement a program and achieve a lost workday injury rate 60 percent below the industry average. Applied Engineering, Inc., a manufacturer of specialties materials with 74 employees, located in Yankton, SD, reduced its lost workday injury rate from 6.0 in 1993 to 0.0 in 1997, a success the company's president attributes to implementing a safety and health program.

Today, thirty-two states have some form of safety and health program provision, though few are as comprehensive as OSHA's draft proposed rule. In four States that mandate comprehensive programs that have core elements similar to those in OSHA's draft proposal and that cover businesses of all sizes within the State, injury and illness rates fell by nearly 18% over the five years after implementation, in comparison with national rates over the same period. Several States have studied the effectiveness of these programs and found that average workers' compensation costs were reduced by as much as 20 percent per year, and that these benefits were even greater several years later when the program had matured. For example, Colorado evaluated a program that provides premium discounts to firms instituting safety and health programs. Over 50 percent of the more than 500 participants had fewer than 100 employees. Colorado's review found that in all of the five years after the program was established, lost work-time injury rates declined by at least 10% per year and the costs of workers' compensation claims declined by at least 20% per year. The State of North Dakota determined that participants

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in its program, which provided premium discounts to employers who implemented safety and health programs, reduced lost work-time injury claims by 42 percent over 4 years, with significant reductions occurring in each year of the program. The Texas Workers' Compensation Commission implemented requirements for safety and health programs for firms identified as "extra-hazardous." The program averaged 325 participants per year, and these employers reduced injuries and illnesses by an average of 61 percent in each year of the program's existence.

Experience with safety and health programs demonstrates that systematic, common sense efforts to protect workers have a direct impact on workplace injury and illness rates and on compliance with existing worker protections. However, more than 6 million reportable injuries and illnesses continue to occur each year. More than 6000 job-related fatalities are reported to BLS annually, with tens of thousands more job-related fatalities resulting from chronic occupational illnesses. The common sense advantages provided by safety and health programs will reduce these injuries, illnesses, fatalities and associated workers' compensation costs, bringing a clear new benefit to the many establishments that have yet to establish such programs.

COMMON SENSE SOLUTIONS

It is common sense to apply proven solutions to basic problems. Common sense has not only led many businesses to implement safety and health programs, but has also encouraged business associations to adopt their own model programs and recommend them to their members.

The National Federation of Independent Business's (NFIB) Ohio chapter has developed a

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comprehensive document entitled *Workplace Safety Program Guidelines*, which explains to NFIB members how to design and implement an effective safety program. The guidelines include the same elements that OSHA has identified as the keys to a successful program: leadership by top management; responsibility and accountability by managers, supervisors and employees; training in safety and health; identifying, reporting, investigating and controlling hazards; and involvement of employees. According to the NFIB guidelines, "Serious accidents or injuries can be very disruptive to any successful operation and to the lives of people involved. An important step that an employer can take to effectively prevent these losses is the development of an organized safety plan or accident prevention program."

The Synthetic Organic Chemical Manufacturers Association (SOCMA) has also developed *SOCMA's Model Safety and Health Program*, a document intended to help member companies, many of which are small, implement their own safety and health programs. Like the NFIB guidelines, SOCMA's model program calls for: management commitment and employee involvement; worksite analysis; hazard prevention and control; and safety and health training. The manual recommends that a company tailor its safety and health program to the company's site-specific needs and argues that "SOCMA member companies who incorporate this program into their operations will receive benefits by:

- reducing injuries, illnesses, accidents and property loss;
- saving time and resources by not having to develop a program from scratch;
- demonstrating management commitment to safety and health;
- giving employees an alternative means to address safety and health concerns before calling OSHA
- avoiding a wall-to-wall OSHA inspection;
- assisting in conforming with the Responsible Care Employee Health and Safety Code."

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Similar approaches are found in the safety and health programs advanced by other professional associations, trade associations and employers. The National Fire Protection Association, the American Society of Safety Engineers, the American Dental Association, the National Spa & Pool Institute, the BF Goodrich Specialty Chemicals division, the American Industrial Hygiene Association, and Argonaut Insurance Company have all developed model safety and health programs. OSHA has borrowed directly from these associations and employers in fashioning our draft safety and health programs rule. In fact, many companies have already put such model programs to good use. For example, in 1994 the Ryder Company instituted a safety and health program modeled after programs advocated by the International Loss Control Institute, the National Safety Council, and OSHA's own 1989 *Safety and Health Program Guidelines*. Between 1994 and 1998, Ryder reduced lost time cases by 50 percent, lost workdays by 58 percent and its lost workday incidence rate by 42 percent.

Earlier this year, the National Association of Manufacturers, in testimony before the Senate Subcommittee on Employment, Safety and Training, echoed the sentiments of those who proclaim the value of safety and health programs. At the hearing, Robert Cornell from Mon Valley Petroleum in McKeesport, Pennsylvania, told the subcommittee that, "Today, we have an effective safety program resulting in fewer injuries and reduced workers' compensation costs." Mr. Cornell's company used a comprehensive analysis of its safety and health violations and employee involvement proactively to address potential hazards. As a result, they reduced lost workdays from 70 between 1992 and 1994 to zero from 1995 through 1998. Mr. Cornell did not testify on behalf of OSHA's proposal. However, he illustrated quite effectively the value of

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instilling safety and health in the culture of his workplace.

Although the preceding examples generally involve companies that implemented programs voluntarily, the results for mandatory programs are equally impressive. Data from the four States with mandates covering most employers in the State show an 18 percent decline in injury and illness rates relative to national rates in the 5 year period after they required employers to adopt safety and health programs. OSHA's enforcement experience, which has emphasized safety and health programs during inspections at establishments of all sizes and in many different industries, also points overwhelmingly to the effectiveness of the programmatic approach. The General Accounting Office, in 1992, concurred with earlier OSHA assessments of the value of comprehensive safety and health programs. GAO also said consideration should be given to requiring high risk employers to have safety and health programs "because the potential number of lives saved or injuries and illnesses averted is high." OSHA believes that every employer, not just high risk employers, should be covered by such a requirement, but is continuing to examine this issue.

At its heart, a safety and health program promotes the exercise of reasonable diligence in the workplace in order to protect workers. When Congress enacted and President Nixon signed the bipartisan OSH Act in 1970, they imposed on employers a general duty to provide employees with a workplace free of serious recognized hazards and a specific duty to adhere to rules promulgated by OSHA. Because State occupational safety and health and workers' compensation laws provided insufficient incentive to protect workers, the OSH Act, as some courts have held, required employers to exercise reasonable diligence in complying with these

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duties. Through its draft proposed rule, OSHA seeks to assure that employers exercise reasonable diligence in protecting their workers.

THE DRAFT PROPOSED RULE

OSHA has worked extensively with stakeholders from industry, labor, safety and health organizations, State governments, trade associations, insurance companies and small businesses to develop its draft proposal. The draft rule reflects the experience and suggestions of many of these participants and would require that safety and health programs include five "core" elements: management leadership and employee participation; hazard identification and assessment; hazard prevention and control; training; and evaluation of the program's effectiveness. The elements are simple and straightforward. Reduced to their basic level, the elements require an employer to work credibly with its employees to find workplace hazards and fix them, and to ensure that workers, supervisors and managers can recognize a hazard when they see it. The rule creates no new obligations for employers to control hazards that they have not already been required to control under the General Duty Clause of the OSH Act or existing OSHA standards.

The required elements in OSHA's draft mirror those included in the models produced by the NFIB of Ohio, SOCMA, and many other associations, insurance companies and employers. As those on the front lines have found, the elements all support each other. All five must be present to ensure success. They are common sense.

The Agency recognizes that many companies have already embraced the program

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approach to managing safety and health in their workplaces. Because the draft proposed rule only includes those elements that are essential for program effectiveness, and because the rule is framed in broad and flexible performance language, OSHA believes that existing programs that are effective will already meet the proposal's requirements. To reassure those employers, OSHA has incorporated a grandfather clause into the draft proposed rule that would allow such programs to be "grandfathered in."

Program Elements

Management Leadership and Employee Involvement. A safety and health program will only work if management is fully committed to it and communicates that commitment to the entire organization. According to Michael Seitel from Norwalt Design, a 38-employee, New Jersey company that manufactures high-speed assembly machinery for the plastics industry, "One of the biggest things, I think, in regard to the safety and health program that a company needs is management commitment ... you're going to save money on your insurance and on workers not being out due to injury."

Employee involvement means actively engaging front-line employees, who are closest to workplace operations and have the highest stake in preventing job-related accidents, in developing, implementing and evaluating the safety and health program. In the words of Bill Harvey, Senior Vice President of Alliant (formerly Wisconsin Power & Light), "you must build a corporate culture that conditions employees to think of safety as their job, not someone else's job." According to the NFIB of Ohio's guidelines, "Many times employees who are most

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familiar with a job will be excellent sources of solutions to safety problems, just as they are for production or quality problems.” Employee involvement spreads the responsibility for safety and health and ensures that more eyes seek and identify problems and more perspectives are used to develop solutions. When OSHA held stakeholder meetings on the draft proposal in 1996, there was widespread agreement that employee participation is crucial to an effective safety and health program.

Hazard Identification and Assessment. Hazard identification and assessment means, among other things, that the employer reviews workplace safety and health information, inspects the workplace, identifies hazards, and prioritizes covered hazards for elimination or control. Front-line employees are empowered to avert injuries and accidents by identifying and bringing hazards to the attention of their supervisors. In essence, this element calls on employers to look for hazards, decide how serious they are, and prioritize their control or elimination.

Hazard Prevention and Control. Once hazards covered by OSHA standards and the general duty clause are identified and assessed, they must be controlled. Put simply, the element calls for a workplace to obey the law as it already exists--fix identified hazards in accordance with the relevant OSHA standards or the general duty clause. Hazard prevention and control provides the solutions to the safety and health problems discovered by the program’s hazard identification and assessment activities. Unless hazards are prevented, controlled or eliminated, workers who are exposed to them will continue to be killed, hurt, or made ill.

Information and Training. Information and training ensure that both workers and management have the information, knowledge and skills to recognize identified hazards,

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understand what controls are in place to prevent exposure, and understand their roles in preventing or minimizing exposures. People need to know hazards when they see them, so they can protect themselves and their co-workers.

Program Evaluation. Program evaluation simply tells an employer to assess how well its safety and health program works, to ensure that it protects workers. Where the employer identifies deficiencies, they should be corrected.

ISSUES RAISED BY SMALL BUSINESS

Since OSHA last testified before the Small Business Committee regarding this issue, a Small Business Advocacy Review Panel has reviewed the draft proposed rule, as required by the Small Business Regulatory Enforcement Fairness Act. The Panel, which consisted of personnel from OSHA, SBA's Office of Advocacy and OMB's Office of Information and Regulatory Affairs, submitted its report to me on December 18, 1998. The panel report was based in part on the advice and recommendations provided by 18 small entity representatives (SERs).

The version analyzed by the SBREFA panel was different from the one OSHA described to you when last we testified before your Committee. At that hearing, members of the Committee raised a number of questions about the rule. Since that time, OSHA has continued to respond to suggestions made by members of this Committee, small businesses and other stakeholders. OSHA incorporated a number of changes into the draft proposed rule the agency ultimately provided to the SBREFA panel. For example, when OSHA testified before you two years ago, the draft called for employers to conduct hazard assessments at a frequency

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“appropriate to safety and health conditions at the workplace.” The draft discussed by the SBREFA panel provided that such assessments should occur at least every 2 years and when changes in workplace conditions indicate that a new or increased hazard may be present. The agency also added the “grandfather clause” discussed earlier in my testimony to the version of the draft proposal provided to the SBREFA panel. The grandfather clause responded to concerns raised by the Chairman and various small businesses that employers who already operate effective programs should not be required to change them.

OSHA has been clarifying the regulatory text wherever possible. In part because of the flexibility the rule provides, some small businesses questioned whether it incorporated sufficient guidance to help them comply without unnecessary difficulty. Several recommendations in the Panel’s report suggested that OSHA further clarify certain portions of the rule and its accompanying analyses. For example, the Panel suggested that OSHA should clarify in its preamble how the Safety and Health Program rule interacts with other OSHA rules, with the existing requirements of the General Duty Clause, and with National Labor Relations Act (NLRA) requirements. The Panel also recommended that OSHA “solicit comment on the possibility of providing guidance that contains all cross-references in the rule and explains such concepts as the General Duty Clause so that small firms can understand these issues without having to go to other sources.”

OSHA is responding to the issues raised by SERs and the Panel as it readies the proposal for publication in the *Federal Register*. In some cases, we will provide additional explanations in the preamble to the proposed rule and in the accompanying analyses. In other cases, we are

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clarifying language in the rule that some SERs thought to be too vague. For example, the draft provided to the SBREFA panel required training to be provided "as often as necessary to ensure that employees are adequately informed and trained." OSHA is considering a modification that would require training when the employer "has reason to believe" that employees lack the knowledge or understanding they need. With regard to evaluating program effectiveness, the Panel draft included language requiring an evaluation "as often as necessary to ensure program effectiveness." We likely will replace this requirement with language calling for a review "when the employer has reason to believe" that all or part of the program is ineffective. These changes both clarify that an employer need not guess when a reevaluation or new training should be conducted, but instead must exercise reasonable care. Issues concerning cost and coverage also were raised. The issues raised by SERs and the Panel are important and OSHA is considering them all carefully.

In addition, when the final rule is published in a few years, OSHA will provide a variety of informational and outreach materials to simplify compliance. Materials will include checklists, model programs, decision logics and other materials to help employers determine how to comply and when they have met their obligations under the rule. For example, the agency is already developing a new "Expert Advisor" to provide computerized guidance to employers who are attempting to implement or improve safety and health programs. Last year, OSHA released its Hazard Awareness Advisor, which has received excellent reviews from small businesses and is referenced on the Home Page of the National Federation of Independent Business. In addition to this extensive array of informational materials, small businesses will continue to have

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available to them free consultation services through OSHA's 50 state consultation programs. OSHA will also provide intensive training to its compliance officers to ensure that their enforcement of the rule is consistent with OSHA's intent to provide maximum flexibility to employers.

Because OSHA has drafted a performance-based rule rather than a one-size-fits all requirement, it has not specified every action a business must take to comply. Nor should it. However, the agency is committed to providing the most instructive materials possible to help small businesses comply with ease. As Bill Pritchard from MASCO, which has facilities ranging in size from 5 to 2,700 employees, points out, "The program must be performance oriented. Give companies the flexibility to allow them to develop the process which will work for each facility. Don't specify the process, specify the key elements... let companies decide the way to implement the elements." Many models similar to the one OSHA is proposing already exist and should prove invaluable as businesses develop their own programs. Clearly, the flexibility OSHA has built into its draft proposal is preferable to a one-size-fits-all approach.

A particular area of interest to small businesses where the rule will provide significant flexibility is documentation. The program for small businesses, for example, need not be written. And employers with fewer than 10 employees are exempt even from those minimal requirements. Although some small businesses have expressed skepticism, feeling they will need to maintain written records regardless of this exemption, that is emphatically not OSHA's intent. Small businesses will have many ways to demonstrate their compliance. For example, they can simply describe to a compliance officer the hazards that have been or are being

draft -- June 14, 1999 -- 11:15 am

identified and what has been or is being done to identify, assess and control them. They may also demonstrate their compliance using receipts, order forms and other documents developed or obtained in the normal course of business.

Some small business stakeholders have questioned whether the rule should be universally applicable. OSHA believes there is strong evidence to support such coverage. Many stakeholders have expressed a similar point of view. For example, John Cheffer of the Travelers Insurance Company testified in 1995 before the National Advisory Committee on Occupational Safety and Health that, "We consider any proposed safety and health standard to be the centerpiece from which all other rules and standards flow, in effect, the ultimate safety and health guideline document for the nation. If that view is accepted, by its very nature it must be generic, flexible and universally applicable." Another significant reason for applying the rule to establishments of all sizes is the risk currently posed to employees working in small businesses. Although small businesses with 10 or fewer employees account for only about 15 percent of employees, 30 percent of all work-related fatalities reported to the BLS in 1997 occurred in these very same workplaces. By comparison, businesses with 100 or more employees accounted for approximately 45 percent of employees, but experienced only 20 percent of all work-related fatalities in 1997. Based on these numbers, the risk of fatalities in businesses with 10 or fewer employees is 4 to 5 times higher than the risk in businesses with 100 or more employees. Although most stakeholders opposed exempting small businesses from coverage, they agreed with OSHA that every effort should be made to ease compliance burdens for small businesses. The compliance assistance materials that OSHA is now developing will address that need.

CONCLUSION

Safety and health programs already make a significant difference in the lives of many of our nation's workers and in the financial bottom line of many businesses. But many businesses have yet to recognize their value. To fill this gap, OSHA is designing a rule that provides a general framework for employers to follow but leaves each individual employer free to add workplace-specific procedures and to adopt management practices that suit the characteristics of that particular workplace. Safety and health programs are common sense for the workplace. OSHA is committed to working with employers of all sizes, both during and after development of its rule, to ensure that the rule provides sufficient flexibility, OSHA's compliance guidance furnishes suitable information to meet the compliance needs of employers, and that workers are protected.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:14-JUN-1999 16:52:38.00

SUBJECT: Justice letter on Child Custody Bill

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

TO: Sarah Wilson (CN=Sarah Wilson/OU=WHO/O=EOP@EOP [UNKNOWN])

READ:UNKNOWN

TO: Adrienne C. Erbach (CN=Adrienne C. Erbach/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN

TO: KAGAN_E@A1@CD@LNGTWY (KAGAN_E@A1@CD@LNGTWY [UNKNOWN])

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

You will shortly receive via fax Justice's proposed letter for tomorrow morning's markup of HR 1218, the Child Custody Protection Act. This legislation would make it illegal to transport minors across state lines to obtain an abortion in order to circumvent parental consent laws.

The Justice letter opposes the legislation and attaches its letter from last year on HR 3682, an almost identical bill from 105th Congress.

Comments are due at 5:30 p.m.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:14-JUN-1999 17:30:52.00

SUBJECT: Justice letter on Child Custody Bill

TO: Broderick Johnson (CN=Broderick Johnson/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: Daniel N. Mendelson (CN=Daniel N. Mendelson/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

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

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

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

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

TO: KAGAN_E@a1@CD@LNGTWY (KAGAN_E@a1@CD@LNGTWY [UNKNOWN])
READ:UNKNOWN

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

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

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

TEXT:

FYI -- the chronology of the Administration's position on the child custody bill in the 105th Congress was as follows:

June 24, 1998 - Justice letter (the one that is being circulated for clearance) was sent to the House Judiciary Committee. The letter opposed the bill as drafted.

July 8, 1998 - Chief-of-Staff Bowles sends a letter to Sen. Leahy on the Senate version of the bill strongly opposing the legislation.

July 14, 1998 - SAP noting that if the bill fails to address the Administration's concerns, the President's senior advisers would recommend that he veto it.

Last year's bill passed the House 276-150, but went no further in the Senate.

----- Forwarded by Robert J. Pellicci/OMB/EOP on 06/14/99
05:24 PM -----

Robert J. Pellicci
06/14/99 04:52:35 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: Sandra Yamin/OMB/EOP@EOP, James J. Jukes/OMB/EOP@EOP, Janet R.
Forsgren/OMB/EOP@EOP
Subject: Justice letter on Child Custody Bill

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The Justice letter opposes the legislation and attaches its letter from last year on HR 3682, an almost identical bill from 105th Congress.

Comments are due at 5:30 p.m.

Message Sent

To: _____

KAGAN_E@A1@CD@LN@TWY
Sylvia M. Mathews/OMB/EOP@EOP
Adrienne C. Erbach/OMB/EOP@EOP
Daniel N. Mendelson/OMB/EOP@EOP
Sarah Wilson/WHO/EOP@EOP
Jennifer M. Luray/WHO/EOP@EOP
Nicole R. Rabner/WHO/EOP@EOP

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:15-JUN-1999 15:54:12.00

SUBJECT: Cureton brief

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

READ:UNKNOWN

TEXT:

Chuck thought you might like to see this, too.

----- Forwarded by Peter Rundlet/WHO/EOP on 06/15/99

03:53 PM -----

Peter Rundlet

06/15/99 03:04:19 PM

Record Type: Record

To: Charles F. Ruff/WHO/EOP@EOP

cc:

Subject: Cureton brief

I just received this draft of Justice's brief in the NCAA case (in which the E.D. of Pennsylvania struck down the NCAA's use of the SAT as being discriminatory under Title VI). Apparently, Justice and Education are in agreement with the positions taken regarding: (1) the existence of a private right of action for a disparate impact claim under Title VI and (2) the NCAA's liability under Title VI because it receives federal financial assistance through another entity (the National Youth Sports Program) or because it has been ceded controlling authority by a recipient over a program or activity receiving federal financial assistance. However, there is some disagreement (see Anita Hodgkiss's note below) about what position, if any, to take on the merits (i.e., whether the court correctly applied the law to the facts in this case in finding the NCAA violated Title VI).

Anita said that Judy Winston and Norma did not want Justice to take a position on the merits because it would hurt our efforts on issuing the high-stakes testing guidance (this view isn't entirely clear to me, but it may be that so much attention on the Title VI disparate impact regs may invite Congressional meddling with them). Steve Winnick of Judy's office stated that their concern is that some portions of the record are under seal and so that it is imprudent to take a position on the merits absent complete knowledge of the facts. With the exception of the sentence cited in Anita's note, Justice has agreed not to address the merits in any detail, but there is some concern there that the absence of support for the merits will undermine the plaintiffs' argument.

The brief is due to be filed tomorrow. If you have any questions or comments on it, please call.

----- Forwarded by Peter Rundlet/WHO/EOP on 06/15/99

02:45 PM -----

Anita Hodgkiss <Anita.Hodgkiss@usdoj.gov>
06/15/99 02:27:00 PM

Record Type: Record

To: Peter Rundlet/WHO/EOP
cc:
Subject: Cureton brief

Attached is our draft. The Department of Education was concerned about the last sentence in the first paragraph of section 3 in the "Introduction and Summary of Argument" (pp. 13-14 on my printed version). We are all in agreement that this section should be expanded to better explain the legal standard that the court applied. The brief must be filed tomorrow. I can explain in greater detail why this is so late if that's a question.

- CUREBRF.WPD

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

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

TEXT:

Unable to convert ARMS_EXT:[ATTACH.D86]ARMS24932737C.136 to ASCII,
The following is a HEX DUMP:

FF57504390290000010A02010000000205000000A3F800000002000005E9C3202CED98C7371D938
04942078D252A7537B8500332E1B92D87DB56E6F49743C292E9FF5FED36E716D69A35484185266

No. 99-1222

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

TAI KWAN CURETON, et al.,

Plaintiffs-Appellees

v.

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION,

Defendant-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE
SUPPORTING APPELLEES URGING AFFIRMANCE

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STATEMENT OF THE ISSUES

The United States will address the following issues:

1. Whether there is a private right of action for a claim of discrimination based upon disparate impact under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq.

2. Whether the National Collegiate Athletic Association (NCAA) is subject to the requirements of Title VI because it either receives federal financial assistance through another recipient or has been ceded controlling authority by a recipient over a program or activity receiving federal financial assistance.

- 2 -

IDENTITY AND INTEREST OF THE AMICUS CURIAE

The United States Department of Education extends financial assistance to educational programs and activities and is authorized by Congress to ensure compliance with Title VI, 42 U.S.C. 2000d-1, in the operation of those programs and activities. Pursuant to that authority, the Department of Education has issued regulations that define a recipient, 34 C.F.R. 100.13(i), and regulations that prohibit use of criteria for determining the type of services, financial aid, or other benefits a recipient will provide that have a disparate impact based upon race, 34 C.F.R. 100.3(b)(2).

The United States Department of Health and Human Services (HHS) provides federal financial assistance to the National Youth Sports Program Fund, an entity that the district court found to be controlled by the NCAA. HHS has also issued a regulation defining a recipient that tracks the definition in the regulation issued by the Department of Education, 45 C.F.R. 80.13(i), and a regulation that prohibits the use of criteria that have a disparate impact based upon race. 45 C.F.R. 80.3(b)(2).

The United States Department of Justice coordinates enforcement of Title VI by executive agencies. Exec. Order No. 12,250, 28 C.F.R. 0.51. The Department of Justice also has authority to enforce Title VI in federal court upon a referral by an agency that extends federal financial assistance to an education program or activity.

This appeal presents the issue whether a private individual may file a judicial action to enforce agency regulations that prohibit the use by recipients of federal financial assistance of criteria

or methods of administration that have a disparate impact based upon race. Because of the inherent limitations on administrative enforcement mechanisms and on the litigation resources of the United States, the United States has an interest in ensuring that both Title VI and its implementing regulations may be enforced in federal court by private parties acting as "private attorneys general." Such private suits are critical to ensuring optimal enforcement of the mandate of Title VI and the regulations. See Cannon v. University of Chicago, 441 U.S. 677, 705-706 (1979) (permitting private citizens to sue under Title VI is "fully consistent with -- and in some cases even necessary to -- the orderly enforcement of the statute"). The United States filed a brief as amicus curiae on that issue in Chester Residents Concerned For Quality Living v. Seif, 132 F.3d 925 (3d Cir. 1997), vacated as moot, 119 S. Ct. 22 (1998); Powell v. Ridge, No. 98-2096 (3d Cir.); and Sandoval v. Hagan, No. 98-6598 (11th Cir.).

This appeal also presents the issue whether the NCAA is subject to coverage under Title VI. The United States filed a brief as amicus curiae in National Collegiate Athletic Association v. Smith, 119 S. Ct. 924 (1999), which argued (at 19-20) that the NCAA could be a recipient of federal financial assistance through a grant from the Department of Health and Human Services, and (at 20-27) that it could be subject to coverage under Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, et seq., without being a recipient if it had been ceded control by a recipient over a program or activity

receiving federal financial assistance.^{1/} The district court has held that the NCAA is subject to Title VI under both of those theories, and this Court's resolution of this issue could affect the enforcement of Title VI by the United States.

STATEMENT OF THE CASE

A. Course Of Proceedings And Disposition Below

In January 1997, plaintiffs Tai Kwan Cureton and Leatrice Shaw filed a complaint individually and on behalf of a class of African-American student-athletes claiming that the minimum requirements of the National Collegiate Athletic Association (NCAA) for freshman students to compete in intercollegiate activities and to receive athletic scholarships discriminate against them on the basis of race in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, et seq., and its implementing regulations. Cureton v. National Collegiate Athletic Association, C.A. No. 97-131 (E.D. Pa.).

The NCAA filed a motion to dismiss the complaint, arguing that (1) disparate impact discrimination is not actionable under Title VI or its implementing regulations; (2) the NCAA is not a "program or activity" within the meaning of 42 U.S.C. 2000d-4a; and (3) the NCAA is not subject to Title VI because it does not receive federal financial assistance. Plaintiffs opposed the motion to dismiss and also filed a motion for partial summary judgment. On October 9,

^{1/} The Supreme Court's decision did not address the validity of either of these theories. NCAA v. Smith, 119 S. Ct. at 930.

1997, the district court entered an order denying the NCAA's motion to dismiss. The court also granted plaintiffs' motion for partial summary judgment, holding that there is a private right of action under the Title VI regulations for a claim of discrimination based upon disparate impact. 1997 WL 634376, at *2. The district court denied defendant's motion to certify the question for immediate appeal, pursuant to 28 U.S.C. 1292(b), stating that there is not a substantial ground for difference of opinion in light of the "overwhelming circuit law" supporting the reasoning of its decision. Cureton v. NCAA, Civ. A. No. 97-131, 1998 WL 726653, at *1. (E.D. Pa., Oct. 16, 1998).

The October 9 order found that "the NCAA appears to be a program or activity covered by Title VI" under the definition in 42 U.S.C. 2000d-4a(4), but found that the record was not sufficiently developed to determine whether the NCAA receives federal financial assistance. 1997 WL 634376, at *2-*3. The court therefore left that determination to a trial on the merits. Id. at *3.

The NCAA thereafter filed a motion for summary judgment, and plaintiffs filed a cross-motion for summary judgment on the merits of the alleged Title VI violation. On March 8, 1999, the district court granted plaintiffs' motion for summary judgment.

The NCAA filed a timely notice of appeal on March 17, 1999 (JA 1250a). On April 8, 1999, plaintiffs filed a cross-appeal (JA 1414a).

B. Statement Of Facts

1. Background.

The NCAA is a voluntary, unincorporated association of approximately 1200 members, consisting of colleges and universities, conferences and associations, and other educational institutions. Cureton v. NCAA, 37 F. Supp.2d 687, 690 (3d Cir. 1999). The NCAA is responsible for promulgating rules governing all aspects of intercollegiate athletics, including recruiting, eligibility of student-athletes, and academic standards. Its member institutions agree to abide by and enforce those rules. Id. at 695 & n.6. The four-year colleges and universities that are the active members of the NCAA are divided into Divisions I, II, and III. Id. at 690. Some bylaws of the NCAA are applicable to all divisions. Each division may, however, adopt additional bylaws applicable only to that division. This case involves a bylaw that is applicable only to Division I schools. Ibid.

In response to public perception that student athletes were inadequately prepared to succeed academically and to receive an undergraduate degree, the Division I membership adopted requirements for high school graduates seeking to participate in athletics and to receive athletically-related financial assistance during their freshman year. Proposition 48, which was implemented during the 1986-1987 academic year, required high school graduates to have a 2.0 GPA in 11 core academic courses and a minimum score of 700 on the SAT (or a composite score of 15 on the ACT) in order to participate in freshman intercollegiate athletics. 37 F. Supp.2d at 690.

In 1992, these initial eligibility rules were modified through the adoption of Proposition 16. As fully implemented effective

August 1, 1996, Proposition 16 increased the number of core courses required to 13 and introduced an initial eligibility index. Under the index, a student-athlete could establish eligibility with a GPA of 2.0 only if combined with an SAT score of 1010 (or an ACT sum score of 86).^{1/} A student with a GPA of 2.5 or higher was required to have an SAT score of 820 (or an ACT sum score of 68). Since the core GPA cutoff score of 2.0 is two standard deviations below the national mean, while the SAT/ACT cutoff score is only one standard deviation below the national mean, Proposition 16 results in a "heavier weighting of the standardized test." 37 F. Supp.2d at 691.

2. Federal financial assistance

^{2/} In 1995, the College Board recentered the score scales for the SAT. After recentering, a test score of 700 on the old scale is approximately equivalent to a score of 830 on the recentered scale. Cureton v. NCAA, 37 F. Supp.2d at 690 n.2.

In 1969, the NCAA began receiving federal financial assistance for the operation of the National Youth Sports Program (NYSP).^{1/} From that time until 1991, the NCAA was a direct recipient of federal financial assistance from the Department of HHS to operate the NYSP (JA 145a-146a; JA 511a-516a). On October 3, 1989, the NCAA created the NYSP Foundation as a nonprofit corporation under the laws of Missouri (JA 506a-509a). It was later renamed the NYSP fund (see JA 147a, Marshall 7/2/97 Dep. at 29-30). The Fund was created "to insure that [the NCAA] is not a recipient or a contractor of the federal government" (JA 147a-148a, Marshall 7/2/97 Dep. at 31-33).

On August 9, 1991, Edward Thiebe, the Director of Youth Sports for the NCAA, sent a letter to HHS requesting that its Fiscal Year 1991 grant application for the NYSP be amended to designate the NYSP Fund as the grantee (JA 151a-152a). From 1992 to the present, the federal grant has been made to the NYSP Fund. In Fiscal Year 1996, the federal grant from HHS was \$11,520,000 (JA 74a, see also JA 261a (HHS press release announcing that "\$11,520,000 was awarded to the NCAA")).

^{3/} Through subgrantees, the NYSP offers sports instruction and instruction in life skills, science, and math to poor and disadvantaged youths (JA 520a).

Nonetheless, "Guidelines for the 1993 National Youth Sports Program," which are prepared by the NYSP Committee as a required part of the grant application process, listed the NCAA, not the Fund, as the grantee of the HHS grant (JA 254a-259a; see Marshall 6/30/97 Dep. at 28-30). The guidelines stated that "[t]he NCAA has been awarded a grant by the [Office of Community Services]" of HHS (JA 258a). The guidelines also stated that a "specified amount of funds shall be made available to participating institutions through the National Collegiate Athletic Association to conduct projects" (JA 257a) and invited applications to be submitted to the NCAA at its office address in Overland, Kansas (ibid.).^{4/}

Pursuant to its Bylaws, the Fund has four directors, three of whom are NCAA officers or employees (JA 229a).^{5/} The Fund itself has no offices, no employees, and no letterhead (JA 143a, JA 161a, Marshall 7/2/97 Dep. at 13, 85; JA 196a, Thiebe Dep. at 44). The Fund has never had a Board of Directors meeting, but rather has "handled any business that needed to be taken care of through * * * consent minutes" (JA 158a). The Fund's bank account is entitled: "The National Collegiate Athletic Association -- The National Youth Sports Program" (JA 505a). The staff of the NCAA, as well as the

^{4/} In a document dated 2/3/95 that was attached to one of its own pleadings in the district court, the NCAA is listed as the "Applicant organization" for the NYSP grant (JA310a - Assurances given in connection with grant).

^{5/} The bylaws mandate that the Executive Director and Assistant Executive Director of the NCAA, and the chairperson of the NYSP Committee of the NCAA be members of the NYSP Fund Board (JA 229a).

fund, has authority to draw from the federal government's grant through that account (JA 156a-157a, Marshall 7/2/97 Dep. at 68-69).

Through 1994, the NCAA, "d/b/a the National Youth Sports Program," was the named insured on liability policies covering the activities of the NYSP (JA 526a-629a).^{6/} The Fund's Articles of Incorporation provide that upon the dissolution of the Fund, the assets of the Fund shall be distributed exclusively to the NCAA, provided the NCAA continues to be an education organization within the meaning of § 501(c)(3) of the Internal Revenue Code (JA 508a).

Perhaps most important, it is the NCAA's NYSP committee, and not the Fund, that makes all of the decisions about the NYSP and the use of the federal funds. For example, the NYSP committee has final approval over which colleges and universities receive subgrants to operate the NYSP's instructional and educational programs (JA 200a). The NCAA stipulated that once the NCAA's NYSP committee makes a decision, no further action is required to implement that decision (JA 209a-210a).

The NCAA's Executive Director has stated that "[t]he NYSP is one of the NCAA's best-kept secrets, yet it is consistently one of our most successful and influential programs. Our partnership with the federal Government, local civic organizations and individual colleges and universities perfectly embodies the NCAA's team spirit"

^{6/} In the NCAA's 1995-1996 Annual Report, the Fund is included in the NCAA's financial statements (JA 517a-520a). In contrast, the NCAA Foundation is described in the Annual Report as "a separate legal entity" not included in the NCAA's financial statements (JA 520a).

(JA 263a).

C. The Decision Below

In granting summary judgment to the plaintiffs, the district court held that the NCAA is subject to Title VI, and that Proposition 16 violates the disparate impact prohibition of the Title VI regulations. The court's earlier partial grant of summary judgment held that plaintiffs have a private right of action to enforce the Title VI regulation prohibiting disparate impact discrimination (see page , supra).

1. Coverage of NCAA under Title VI.

Plaintiffs raised several theories under which the NCAA would be subject to Title VI. First, they contended that the NCAA receives federal financial assistance indirectly through the receipt of dues from its member schools, all of whom receive federal financial assistance. The district court rejected that theory based upon the Supreme Court's decision in NCAA v. Smith, 119 S. Ct. 924 (1999). 37 F. Supp.2d at 693.

Plaintiffs also argued that the NCAA directly receives federal financial assistance through the National Youth Sports Program Fund because the Fund is nothing more than the alter ego of the NCAA. The district court found that plaintiffs "failed to sustain their heavy burden of 'piercing the corporate veil' sufficient to have the Fund construed as the NCAA's alter ego." 37 F. Supp.2d at 694.

However, the court found "overwhelming evidence" supporting the fact that "the Fund is ultimately being controlled by the NCAA," ibid., and thus concluded that plaintiffs had sustained their burden

of proving that the NCAA "exercises effective control and operation of the" grant given by HHS to the Fund "to be construed as an indirect recipient of federal financial assistance." Ibid. The court found that "although the Fund is the named recipient of the block grant, it is merely a conduit through which the NCAA makes all of the decisions about the Fund and the use of the federal funds." Ibid.

Finally, the court found that plaintiffs also proved that the NCAA is subject to suit under Title VI regardless of whether it receives federal financial assistance, "because member schools (who themselves indisputably receive federal funds) have ceded controlling authority over federally funded programs to the NCAA."

37 F. Supp.2d at 694. It found that the "member colleges and universities have granted to the NCAA the authority to promulgate rules affecting intercollegiate athletics that the members are obligated to abide by and enforce." Id. at 696. Accordingly, "because there is a nexus between the NCAA's allegedly discriminatory conduct with regards to intercollegiate athletics and the sponsorship of such programs by federal fund recipients, the NCAA is subject to Title VI for a challenge to Proposition 16." Ibid.

2. The decision on the merits

The district court held that the disparate impact standard developed under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e et seq., in the employment context is applicable to a claim of disparate impact in educational testing. 37 F. Supp.2d at 696-697. Applying that standard, the court held that Proposition

16 causes a racially disproportionate effect on African-Americans (id. at 697-701); that Proposition 16 is not justified by any legitimate educational necessity (id. at 701-712); and that, in any event, plaintiffs had demonstrated that there are equally effective alternative practices to Proposition 16 having less adverse effect upon African-Americans (id. at 713-714). Accordingly, the court granted plaintiffs' motion for summary judgment (id. at 714).

INTRODUCTION AND SUMMARY OF ARGUMENT

1. This Court in Chester Residents Concerned For Quality Living v. Seif, 132 F.3d 925 (1997), vacated as moot, 119 S. Ct. 22 (1998), correctly held that "private plaintiffs may maintain an action under discriminatory effect regulations promulgated by federal administrative agencies pursuant to section 602 of Title VI of the Civil Rights Act of 1964," and that decision should be reinstated as the law in this Circuit. The reasoning of Chester Residents is still persuasive authority. See Polychrome Int'l Corp. v. Krigger, 5 F.3d 1522, 1534 (3d Cir. 1993); Finberg v. Sullivan, 658 F.2d 93, 100 n.14 (3d Cir. 1981) (en banc). Moreover, the holding in Chester Residents was consistent with that of every other court of appeals to consider the issue. 132 F.3d at 936-937. The NCAA has presented no "compelling basis" for this Court to disregard that holding. Wagner v. PennWest Farm Credit, ACA, 109 F.3d 909, 912 (3d Cir. 1997).

2. In Part II, we argue that the NCAA is subject to coverage under Title VI both because it receives federal financial assistance indirectly through the NSYP Fund, which it controls, and because it

has been conceded controlling authority over the intercollegiate athletics programs of its member colleges and universities, which receive federal financial assistance directly.

3. With respect to the district court's ruling that the minimum standardized test score cutoff in Proposition 16 violates Title VI of the Civil Rights Act of 1964, the court correctly held (37 F. Supp. 2d at 696-697) -- and the NCAA does not dispute -- that the disparate impact standards developed in employment discrimination cases under Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) apply to claims brought pursuant to the regulations implementing Title VI. See, e.g., Georgia State Conference of Branches of NAACP v. Georgia, 775 F.2d 1403, 1417 (11th Cir. 1985); NAACP v. Medical Center, Inc., 657 F.2d 1322, 1331 (3d Cir. 1981); Larry P. v. Riles, 793 F.2d 969, 982 nn.9-10 (9th Cir. 1984). Thus, if the facts relied upon in the district court's rulings (which are based in large measure on the NCAA's own studies) are right, it would appear that the district court correctly held that Proposition 16's cutoff score violates the effects test of the Title VI regulation.¹⁷

¹⁷ The district court mentioned, but did not apply to Title VI, the 1991 amendments to Title VII that require a defendant to bear both a burden of production and persuasion on its business necessity justification. 37 F. Supp. 2d at 697. See 42 U.S.C. 2000e(m), 2000e-2k(1)(A). Although the alleged discrimination in this case occurred after 1991, the court appears to have applied the previous standard, set out in Wards Cove Packing Co. v. Atonio, 490 U.S. 642 (1989), that the defendant bears only a burden of producing evidence that the challenged employment practice has a legitimate business justification. If this Court agrees with the district court's ruling that the NCAA failed to meet its burden under Wards Cove because it "has not produced any evidence demonstrating that the cutoff score used in Proposition 16 serves, in a significant

way, the goal of raising student-athlete graduation rates" (37 F. Supp. at 712), it will be unnecessary for the Court to determine whether the district court erred in failing to require the NCAA to satisfy the heavier burden imposed by the Civil Rights Act of 1991. Cf. Elston v. Talladega County Bd. of Educ., 997 F.2d 1394, 1407 n.14 (11th Cir. 1993). In any event, this Court should not resolve this important issue without the benefit of full briefing from the parties (see NCAA Br. at 47 n.19, Cureton Br. at 36 n.19).

We do not take a position on the factual questions raised in this appeal. Because parts of the record relating to this issue remain under seal (see NCAA Br. at 8 n.3), we have not had access to the information necessary to ascertain whether the district court correctly determined that Proposition 16's cutoff score causes a racially disproportionate effect; that the NCAA had not demonstrated that the cutoff score significantly serves the goal of raising student-athlete graduation rates; and that, in any event, the plaintiffs established the existence of alternative practices that serve the goal of raising student-athlete graduation rates and that have less of an adverse impact upon African-Americans. These are highly fact-bound determinations, and we believe the parties are in the best position to assist the Court in determining whether the district court erred in any of these rulings.

ARGUMENT

I

PRIVATE PLAINTIFFS MAY SUE TO ENFORCE THE DISPARATE IMPACT STANDARD IN AGENCY REGULATIONS IMPLEMENTING TITLE VI

Plaintiffs sought to enforce regulations of the Departments of Education and Health and Human Services promulgated under Section 602 of Title VI of the Civil Rights Act, 42 U.S.C. 2000d-1 (JA 28a). Those regulations prohibit a recipient of federal financial assistance from using "criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race." 34 C.F.R. 100.3(b)(2); 45 C.F.R. 80.3(b)(2) (emphasis added). This Court in Chester Residents

Concerned For Quality Living v. Seif, 132 F.3d 925 (1997), vacated as moot, 119 S. Ct. 22 (1998), held that "private plaintiffs may maintain an action under discriminatory effect regulations promulgated by federal administrative agencies pursuant to section 602 of Title VI of the Civil Rights Act of 1964." Although that decision is no longer binding circuit precedent, the opinion in Chester Residents retains its persuasive authority. See Polychrome Int'l Corp. v. Krigger, 5 F.3d 1522, 1534 (3d Cir. 1993); Finberg v. Sullivan, 658 F.2d 93, 100 n.14 (3d Cir. 1981) (en banc) ("Even if a decision is vacated, however, the force of its reasoning remains, and the opinion of the Court may influence resolution of future disputes."). In addition, the holding in Chester Residents was consistent with that of every other court of appeals to consider the issue. 132 F.3d at 936-937 (collecting cases from the First, Second, Fifth, Seventh, Ninth, Tenth, and Eleventh Circuits). This Court has noted that "[i]n light of such an array of precedent, [it] would require a compelling basis to hold otherwise before effecting a circuit split." Wagner v. PennWest Farm Credit, ACA, 109 F.3d 909, 912 (3d Cir. 1997).

The NCAA has provided no such "compelling basis." All of the arguments raised by the NCAA (Br. 17-25) were correctly rejected by the panel in Chester Residents and should likewise be rejected here.

First, the NCAA (Br. 18-20) attacks the district court's decision for relying on an overly broad reading of Guardians. The district court, however, issued its decision concluding that there is a private right of action to enforce the Title VI regulations in October 1997,

some two months before the decision in Chester Residents. Thus, its conclusion that the Supreme Court in Guardians had resolved the issue could not have anticipated this Court's conclusion in Chester Residents that Guardians is not dispositive, 132 F.3d at 930, and that the Supreme Court's decision in Alexander v. Choate provided "no direct authority * * * that either confirms or denies the existence of a private right of action," 132 F.3d at 931. In any event, the district court's holding that there is a private right of action to enforce the disparate impact regulation is, of course, entirely consistent with this Court's Chester Residents holding.

Second, the NCAA argues (Br. 20-23) that Section 602 does not permit an implied private right of action, in part because Section 602 "prohibits any enforcement of the regulations" until the federal funding agency gives the alleged violator notice and an opportunity to comply voluntarily (Br. 22, emphasis in original). But, as the Court noted in Chester Residents, 132 F.3d at 935, "a private lawsuit also affords a fund recipient similar notice." Moreover, the requirements of Section 602 "were designed to cushion the blow of a result that private plaintiffs cannot effectuate," i.e., termination of funding. Id. at 936. The Court in Chester Residents therefore properly found that "a private right of action would be consistent with the legislative scheme of Title VI." Ibid. In addition, if the NCAA were correct in its reading of the statute, then a private right of action to enforce the prohibition on intentional discrimination (which the federal government also enforces through the procedures established in Section 602) would

also be barred, a result clearly foreclosed by the Supreme Court's decision in Cannon v. University of Chicago, 441 U.S. 677 (1979).

Finally, the NCAA argues (Br. 23-25) that the legislative history of Title VI does not support the implication of a private right of action for unintentional discrimination. It attempts to diminish the import of the legislative history of the Civil Rights Restoration Act of 1987, Pub. L. No. 100-259, 102 Stat. 28 (1988), discussed by this Court in Chester Residents, noting (NCAA Br. at 24) that Chester Residents relied on comments from opponents of the 1987 legislation that "do not shed light on the purpose or intent behind Title VI."

But Chester Residents was following the well-accepted rule that when there is evidence that Congress understands that a private right of action was available under a statutory scheme, and amends the statute without demonstrating any intent to disapprove of such suits, it has ratified that private right of action. See Herman & MacLean v. Huddleston, 459 U.S. 375, 386 (1983); Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran, 456 U.S. 353, 381-382 (1982); see also Cannon, 441 U.S. at 687 n.7; Lindahl v. OPM, 470 U.S. 768, 787-788 (1985).

And while much of the discussion of private enforcement of the discriminatory effects regulations came from opponents to the bill, "they are nevertheless relevant and useful, especially where, as here, the proponents of the bill made no response." Arizona v. California, 373 U.S. 546, 583 n.85 (1963).

The NCAA has not articulated a compelling basis for this Court to discard the holding of Chester Residents and reject the result reached by the other circuits that have addressed the question. This

Court should reinstate the holding of Chester Residents here.^{1/}

II

THE NCAA IS SUBJECT TO THE REQUIREMENTS OF TITLE VI BECAUSE IT RECEIVES ASSISTANCE THROUGH ANOTHER RECIPIENT AND BECAUSE IT HAS BEEN CEDED CONTROLLING AUTHORITY BY A RECIPIENT OVER A PROGRAM OR ACTIVITY RECEIVING FEDERAL FINANCIAL ASSISTANCE

- A. The NCAA Receives Federal Financial Assistance Through Another Recipient.

^{8/} By the time this Court considers the issue whether there is a private right of action to enforce the disparate impact regulations under Title VI in this case, the issue may have been resolved by the panel in Powell v. Ridge, No. 98-2096 (3d Cir.), in which oral argument was held on June 9, 1999. The panel in Powell, however, does not need to reach that issue if it decides that the Title VI discriminatory effect regulations may be enforced through 42 U.S.C. 1983.

The regulations of the Departments of Education and HHS define a recipient of federal financial assistance as any entity "to whom Federal financial assistance is extended directly or through another recipient, for any program" (34 C.F.R. 100.13(i); 45 C.F.R. 80.13(i)).

From 1969 through 1991, the NCAA directly received federal financial assistance for the NYSP in its own name. After passage of the Civil Rights Restoration Act, the NCAA named the NYSP Fund to be the grant recipient for federal funding in order "to insure that [the NCAA] is not a recipient or a contractor of the federal government" (JA 147a-148a, Marshall 7/2/97 Dep at 31-33). The evidence relied upon by the district court, some of which is recited at pp. , supra, demonstrates, however, that the incorporation of the NYSP Fund was largely a formality and that the NCAA itself, through the NYSP Committee, continues to administer the grant program. The NYSP Fund as the listed grantee is itself a direct recipient of federal financial assistance subject to coverage under Title VI. But the NCAA receives federal financial assistance indirectly through its continued control of the NYSP grant, notwithstanding its attempt to distance itself from federal oversight.^{9/} Indeed, the Department of HHS has on two occasions (in 1994 and 1998) taken the position that the NCAA is a

^{9/} The NCAA's assertion (Br. 32) that "there is no evidence to suggest that the NCAA has diverted any federal funds to its own coffers" is beside the point. A recipient of federal financial assistance is required by law to use that assistance to fulfill the ultimate purpose of the grant, and there is no allegation here that the NCAA has not done so. The claim here is not that the NCAA has violated the law by setting up the NYSP Fund as the named grantee, but rather that it cannot escape responsibility under Title VI if it controls the administration of the grant.

recipient of federal financial assistance through a Community Development Block Grant from HHS and has accepted complaints of discrimination for investigation (JA 1257a-1261a).

Based upon the "overwhelming evidence," 37 F. Supp.2d at 694, the district court properly found that "the Fund is ultimately being controlled by the NCAA," and thus that the NCAA is the indirect recipient of federal financial assistance through the NYSP Fund.

Ibid.

- B. The NCAA Is Subject To Title VI Because It Has Been Ceded Controlling Authority Over The Intercollegiate Athletic Programs Of Its Member Colleges And Universities, Which Receive Federal Financial Assistance.

The district court found that "the NCAA is subject to suit under Title VI irrespective of whether it receives federal funds, directly or indirectly, because member schools (who themselves indisputably receive federal funds) have ceded controlling authority over federally funded programs to the NCAA." 37 F.3d at 694. Although the district court did not articulate the statutory basis for this theory of coverage, the United States believes that it is firmly rooted in the text of Title VI.

Title VI proves in relevant part that "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. 2000d. As that statutory text makes clear, Title VI, like Title IX of the Education Amendments of 1972, 20 U.S.C. 1681(a), was not drafted "simply as a ban on

discriminatory conduct by recipients of federal funds." Cannon v. University of Chicago, 441 U.S. 677, 691-692 (1979); see Chowdhury v. Reading Hospital and Medical Center, 677 F.2d 317, 318 & n.2 (3d Cir. 1982) (language of Cannon applicable to Title VI). Instead, the "unmistakable focus" of the statutory text is on the protection of "the benefitted class." Id. at 691. The text itself does not specifically identify the class of potential violators. But given the focus of the text on protection for the individual, and the absence of any language limiting the class of violators to recipients, Title VI is most naturally read as prohibiting any entity that has governing authority over a program from subjecting an individual to race-based discrimination under it.^{10/}

Although recipients are the principal class of entities that may subject an individual to discrimination under a program, they are not the only ones. When a recipient cedes governing authority over a program receiving assistance to another entity, and that entity subjects an individual to discrimination under the program, that entity violates Title VI, regardless of whether it is a recipient

^{10/} Congress has constitutional authority to reach the conduct of anyone who threatens "the integrity and proper operation of [a] federal program." See Salinas v. United States, 118 S. Ct. 469, 475 (1997) (upholding constitutionality of a statute that prohibits the acceptance of bribes by employees of state and local agencies that receive federal funds, as applied to a case in which a county received funds for the operation of a jail and the sheriff and deputy sheriff at the jail accepted bribes in violation of the statute). Since the NCAA's actions, if discriminatory, pose a threat to the integrity and proper operation of the federally assisted programs at member schools, Congress had constitutional authority to subject the NCAA to liability for such discrimination.

itself.

That commonsense reading of Title VI furthers its central purposes -- "to avoid the use of federal resources to support discriminatory practices" and to "provide individual citizens effective protection against those practices." Cannon, 441 U.S. at 704. Several considerations support that conclusion. First, as the district court recognized, 37 F. Supp.2d at 695, intercollegiate athletics is unique in that it is "one of the few educational programs of a college or university that cannot be conducted without the creation of a separate entity to provide governance and administration." Out of the necessity for a supervising authority comes the NCAA's power to establish the rules, such as Proposition 16, governing eligibility for intercollegiate athletics at member schools. "By joining the NCAA, each member agrees to abide by and to enforce such rules." NCAA v. Tarkanian, 488 U.S. 179, 183 (1988).

Because the NCAA has effective control over eligibility determinations for intercollegiate athletics, it is the entity most responsible for any discrimination that enters into those determinations.

If there is discrimination in the NCAA's rules, a member school may attempt to persuade the NCAA to change the rules, but if it is unsuccessful, its only option is to withdraw from the NCAA. Since the NCAA has a virtual monopoly on intercollegiate athletics, a school that has withdrawn from the NCAA in order to satisfy its own Title VI obligations could no longer offer intercollegiate athletic opportunities to its students. That would leave victims of

discrimination without an effective remedy and deprive innocent third parties of intercollegiate athletic opportunities as well. Those harsh consequences may be avoided if victims of the NCAA's discrimination may seek relief against the NCAA directly.

Finally, because of its unique power over intercollegiate athletics, discrimination by the NCAA in the promulgation of its rules has the capacity to result in discrimination at numerous member schools simultaneously. Permitting a private right of action against the NCAA provides a mechanism for stopping discrimination at its source before it becomes entrenched at member schools.^{11/}

^{11/} A member school, of course, remains liable for any discriminatory decision of the NCAA that it implements. For the reasons discussed above, however, when the NCAA is the source of the discrimination and uses its power over member schools to implement that discrimination, a remedy against the NCAA is more appropriate and efficacious than a remedy against member schools.

Permitting a judicial cause of action against the NCAA is consistent with the principle that entities should not be subjected to liability under Title VI without adequate notice. See Gebser v. Lago Vista Indep. School Dist., 118 S. Ct. 1989, 1997-1999 (1998).

Unlike the situation in Gebser, plaintiffs do not seek to hold the NCAA liable for discrimination committed by others; rather, plaintiffs seek to hold the NCAA liable for its own alleged discrimination in the promulgation and continued use of Proposition 16. The text of the Title VI regulations provides sufficient notice to the NCAA that it had an obligation not to use its authority over an education program receiving federal assistance to subject an individual to race-based discrimination under that program.¹⁷

If the NCAA did not wish to subject itself to Title VI obligations on the basis of its relationship to member institutions that receive assistance, it could have refrained from exercising governing authority over intercollegiate athletics at those institutions. Once the NCAA assumed that governing role, it also assumed an obligation not to use that authority to discriminate on the basis of race against individuals seeking access to intercollegiate athletic programs at those institutions.

The NCAA argues (Br. 38-39) that it cannot be subject to Title VI coverage because it did not assume a contractual commitment not

^{17/} Moreover, this case involves a claim for injunctive relief only, and not money damages, and so many of the "notice" concerns that played a particularly significant role in Gebser are not so compelling in this context.

to discriminate. The text of Title VI, however, is not framed exclusively in contract terms, and a contractual commitment not to discriminate is not a precondition to application of the statute.

If a contract analogy were needed, the relevant one would be to the tort of intentional interference with a contract. Restatement of Torts, § 766 (one who intentionally and improperly interferes with the performance of a contract between another and a third person by inducing or otherwise causing the third person not to perform the contract is subject to liability to the other). When an entity that has been ceded controlling authority over a recipient requires the recipient to act in a discriminatory manner by, for example, imposing a discriminatory requirement for eligibility, it effectively causes the recipient to breach its agreement with the federal funding agency.

Moreover, when an entity created by recipients makes and enforces rules for recipients, it is on ample notice that it cannot do so in a way that subjects an individual to discrimination under the programs of the recipients.

Finally, contrary to the NCAA's contention (Br. 37-39) subjecting non-recipients that have been ceded controlling authority over federally assisted programs to coverage under Title VI is not in conflict with the Supreme Court's decision in United States Department of Transportation v. Paralyzed Veterans, 477 U.S. 597 (1986). There are statements in that opinion that support the NCAA's argument that federal funding statutes like Title VI apply only to recipients of federal financial assistance. 477 U.S. at 605-606.

The context of those statements makes clear, however, that the Court

was addressing only whether coverage should extend past recipients to beneficiaries. The Court did not purport to address the entirely different question whether an entity that has been ceded controlling authority over a program receiving federal assistance violates Title VI when it subjects an individual to discrimination under that program. Because the airlines did not have controlling authority over the federally assisted airport programs, the question at issue here was simply not presented in Paralyzed Veterans.

Equally important, the Court's crucial concern in Paralyzed Veterans was that expanding the funding statutes to reach beneficiaries of federal assistance would have resulted in "almost limitless coverage" -- a result that was clearly at odds with Congress's intent. 477 U.S. at 608-609. The situation here is fundamentally different. The class of non-recipients that has governing authority over programs receiving assistance is limited, and permitting a private right of acting against such entities when they subject persons to discrimination under those programs advances the purposes of Title VI.

CONCLUSION

For the foregoing reasons, the judgment should be affirmed insofar as it (1) permits plaintiffs to bring an action to enforce the Title VI disparate impact regulations and (2) finds that the NCAA is subject to Title VI coverage. Since the district court properly determined that the disparate impact standards developed in employment discrimination cases under Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) apply to claims

brought pursuant to the regulations implementing Title VI, the judgment should also be affirmed if the facts relied upon in the district court's rulings are correct

-- a determination that the parties are in the best position to assist the Court in making.

Respectfully submitted,

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I spoke to Chuck and then Justice. They will take out the offending sentence and rewrite the section to reflect that we are not taking a position on the merits. They will share iterations with us as they go, and I will be sure that you all see them. We have until midnight tomorrow night.

Elena Kagan

06/15/99 04:48:58 PM

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This is a reminder that your comments on the Labor testimony on OSHA's Draft Safety and Health Program Rule (LRM ID OGG21) were due today. I just got word that the OSHA hearing has been postponed, so I'm extending the deadline until 3pm tomorrow. Please provide any comments to me by then. If I don't hear from you, I'll assume you have no objection to the testimony in its current form.

Thanks

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CC: Lisa M. Kountoupes (CN=Lisa M. Kountoupes/OU=WHO/O=EOP@EOP [WHO])
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CC: Mark J. Tavlarides (CN=Mark J. Tavlarides/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN

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

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

CC: Judy Jablow (CN=Judy Jablow/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN

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

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

CC: Charles E. Kieffer (CN=Charles E. Kieffer/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TEXT:

Attached for your sign-off is the final draft SAP on S. 1205 -- Military Construction Appropriations Bill, FY00. S. 1205 will be on the Senate floor for consideration Tues, June 16. Please provide sign-off and/or comments to me no later than 8:30AM Tues morning. Our aim is to transmit the SAP by 9:30AM. Appreciate your quick review. Thank you!

Please note that Jack Lew has not had an opportunity to review this draft.

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

TEXT:

Unable to convert ARMS_EXT:[ATTACH.D2]ARMS28125147X.136 to ASCII,
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June xx, 1999
(Senate Floor)

S. 1205 -- MILITARY CONSTRUCTION APPROPRIATIONS BILL, FY 2000

(Sponsors: Stevens (R), Alaska; Burns (R), Montana)

This Statement of Administration Policy provides the Administration's views on S. 1205, the Military Construction Appropriations Bill, FY 2000, as reported by the Senate Appropriations Committee. Your consideration of the Administration's views would be appreciated.

Section 129: Bluegrass Chemical Demilitarization Facility

The Administration strongly opposes section 129, which would require the demonstration of six alternative technologies to chemical weapons incineration before construction of the Chemical Demilitarization facility at Bluegrass, Kentucky, could begin. Prompt construction of the Bluegrass site is critical to ensuring U.S. compliance with the deadline for chemical weapons destruction agreed to under the Chemical Weapons Convention. The Department of Defense has demonstrated three alternative technologies, one more than required by P.L. 104-208, the Omnibus Consolidated Appropriations Act of 1997. This provision would delay construction of the Bluegrass site by at least one year, resulting in a breach in the Chemical Weapons Convention deadline.

Overall Funding Level

The Administration commends the Committee for developing a bill that funds most of the construction projects requested in the President's FY 2000 Budget. However, the Administration is concerned that the Committee bill, which exceeds the President's budget by \$2.8 billion, will drain critical resources from other programs. The Administration believes that the President's budget request correctly addresses our most important FY 2000 military construction and housing needs and that additional funding is not required.

Unrequested Projects

The Administration questions the Committee's increase of over \$650 million to the President's request for approximately 70 unrequested FY 2000 projects. Though much of the unrequested funding is for projects that are funded in DoD's Future Years Defense Program (FYDP), about \$125 million is added for projects that are not in DoD's FYDP. While many of these unrequested projects may have some military utility, they are of much lower priority than

the projects requested in the FY 2000 Budget and contained in DoD's FYDP. The Administration urges the Senate to delete the funding added for unrequested projects, especially those not in the FYDP.

Restriction on the Use of NATO Security Investment Program Funds

The Administration objects to section 121 which would prohibit the use of NATO Security Investment Program (NSIP) funds for Partnership for Peace programs or to provide support to non-NATO countries. No NSIP funds have been, or are proposed to be, spent on projects that do not have direct military benefit to the Alliance. Indeed, NSIP-funded proposals for projects that happen to be located in non-NATO countries must meet the same NATO military criteria as NSIP projects located in NATO member nations. The Alliance must have the flexibility to allocate NSIP funds as needed to satisfy NATO military requirements. Restrictions of the type included in the Committee bill could invite other NATO members to restrict their NSIP contributions according to narrow national concerns. The restriction could adversely affect future NATO-led military operations. The Administration urges the Senate to remove this restriction from the bill.

Family Housing Improvement Fund

The Administration strongly objects to the Committee's \$52.2 million reduction to the Family Housing Improvement Fund (FHIF). Adequate family housing is critical to recruiting and retaining a quality force. To supplement existing Military Construction funds to revitalize DoD's housing inventory in a cost effective and timely manner, the Administration has sought through privatization to leverage Federal dollars with private sector capital. Subsequent to submission of the President's budget, the Department reviewed congressional concern over the scope of its privatization program, and responded by readjusting its proposed FHIF program. The proposed reduction to this fund would limit the ability of DoD to execute its planned FY 2000 program.

Counter-drug Forward Operating Location Construction

The Administration objects to the \$37.8 million reduction to the \$42.8 million request for Counter-drug Forward Operating Locations. Any delay in funding for new construction at these locations would reduce our ability to detect, and ultimately intercept, illicit drugs being brought into the United States. Plans are moving ahead, and this funding is needed now to meet pressing needs.

General Transfer Authority

The Administration urges the Senate to provide the requested transfer authority that would enable the Secretary of Defense to transfer appropriations among Military Construction Appropriations Act accounts. Similar transfer authority in Defense Appropriations Acts has been used with great success to meet unplanned requirements, without reducing the opportunity for congressional oversight.