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Kagan - Public Record II [4]

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U.S. Newswire, November 19, 1997

LANGUAGE: ENGLISH

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LEVEL 1 - 62 OF 133 STORIES

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FDCH Political Transcripts

November 19, 1997, Wednesday

TYPE: NEWS EVENT

LENGTH: 1035 words

HEADLINE: DELIVERS REMARKS ON ADOPTION; WASHINGTON, D.C.

SPEAKER:
HILLARY CLINTON, FIRST LADY OF THE UNITED STATES

BODY:

FIRST LADY HILLARY CLINTON DELIVERS REMARKS ON ADOPTION

NOVEMBER 19, 1997

SPEAKERS: HILLARY CLINTON, FIRST LADY OF THE UNITED STATES

*

(APPLAUSE)

CLINTON: Thank you. Thank you, and welcome to the East Room.

Please be seated. We are delighted to have all of you join us today for this very important event and one that many of you in this room have worked for and look toward for many years. There are some people that I would like to acknowledge and introduce before we get started.

You will hear from the four members of Congress who are here on the stage -- Representative Kennelly, Representative Camp, Senator Chafee and Senator Rockefeller. Also attending are Senator Craig, Senator DeWine, Senator Landrieu, Representative Levin, Representative Oberstar, Representative Maloney and Representative Morella. And I'd like to ask all the members of Congress to please stand.

(APPLAUSE)

This was truly a bipartisan piece of legislation. It could not have been passed without the strong support of the members whom you see, including the sponsors, who are here on the stage. It was also a work that was very much in the heart of Secretary Donna Shalala and her team from HHS -- Rich Tarplin, Mary Burdette (ph) and Carol Williams. And I'd like to ask the secretary and her team to stand please.

(APPLAUSE)

There were also a number of members of the White House staff who worked very hard with members of Congress and with members of the HHS contingent, and I'd like to acknowledge just a few of them. John Hilley, Bruce Reed, Elena Kagan, and in particular Jen Klein and Nicole Radner (ph). I want to thank all of them.

(APPLAUSE)

I'm also pleased that we have Governor Romer of Colorado. We have children, families, advocates and leaders of the child welfare constituency here in our audience.

Nearly a year ago, the president and I met with children waiting in the foster care system for caring families to call their own. There the president pledged to reform the child welfare system to work better for the children it serves, to put their health and safety first, and to move children more quickly into safe and permanent homes. Today we as a nation make good on that pledge.

And for the thousands of American children who wait for a stable, loving home that will always be there, it is not a moment too soon. Right now there are nearly half a million children in foster care. For most, foster care is a safe haven on the road to a permanent home or back home.

Too many, however, make countless detours along the way, shuffling from family to family without much hope that they will ever find permanent parents to love and take care of them.

These children, who will enter this holiday season unsure about whether the family they celebrate this year will be there with them next year, deserve better. We know it makes a difference for children to have permanent, loving homes. It's not only research that tells us this; we know it by our intuition, by our own experience, and we have all seen it first hand.

It was here in this room two years ago that a young woman named Deanna (ph), a child waiting to be adopted in foster care, stood up
and read a poem about what she wanted in life, and it wasn't real complicated. It is what all of us want.

I'm happy that because of that event here in the East Room, she was able to meet a family who did adopt her. And I saw her last year at an event in Kansas City and almost didn't recognize her. From a shy, withdrawn 13-year-old, she had blossomed into a cheerful, outgoing, confident teenager with a brilliant smile.

This landmark legislation that the president is about to sign will see to it there are more stories like Deanna's (ph). This legislation stands as proof of what we can accomplish when we come together.

CLINTON: As we see today, the national government does have an important role to play in reforming our foster care system, and giving guidance to courts and states in offering incentives to speed up and increase the numbers of adoption, and in making sure that the health and safety of our children is always the first priority.

But we know even more: All Americans have a role and a responsibility. Businesses can make it easier for their employees to adopt a child. And I want to single out Dave Thomas of Wendy's who has led the way in showing all of us how that can be done.

(APPLAUSE)

Religious leaders can help spread the word about the joys of adoption. Parents thinking about adoption can expand their search to reach out to kids in foster care. And if we reform the system so that it works the way that it should, more Americans will look to American children to adopt and not feel compelled to go overseas to adopt children.

(APPLAUSE)

With us today are some extraordinary Americans who have answered this call. This morning, the Department of Health and Human Services observed National Adoption Month by honoring outstanding achievements with the 1997 Adoption 2002 Excellence Awards.

Secretary Shalala developed these awards at the request of the president. The winners are dedicated individuals and organizations, both large and small, who have worked to move children out of the foster care system and into permanent loving homes. Some of them have been at the forefront of this issue for years. Some have promoted and supported adoption in their communities. And some are parents who have opened their homes and hearts to our nation's most vulnerable children.

I'd like to ask all the honorees who were honored this morning to please stand.

(APPLAUSE)

We want to thank you for the work you have done, for the example you have set. And we hope that through these awards in conjunction with this legislation, there will be many, many more in your ranks in the years to come.

Now, I'm pleased and honored to call on members of Congress who have led the way to this piece of legislation. They will speak in the following order. Congresswoman Kennelly, Congressman Camp, Senator Chafee and Senator Rockefeller.

END

NOTES:
???? - Indicates Speaker Unkown
- Could not make out what was being said.
off mike - Indicates Could not make out what was being said.

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November 14, 1997 15:13 Eastern Time

SECTION: NATIONAL DESK

LENGTH: 1614 words

HEADLINE: Transcript of White House Press Briefing by Berger, Bowles (4 of 4)

CONTACT: White House Press Office, 202-456-2100

DATELINE: WASHINGTON, Nov. 14

BODY:
Following is a transcript of a White House press briefing by Chief of Staff Erskine Bowles; National Security Advisor Samuel Berger; Office of Management and Budget Director Franklin Raines; Gene Sperling, assistant to the president for economic policy; Janet Yellin, chair of the council of economic advisors; and Elena Kagan, deputy assistant to the president for domestic policy (4 of 4):

Q How are you coming along in preparing the budget for the next --

DIRECTOR RAINES: We are in the process now of reviewing the proposals from the agencies and the President will be making his decisions in December for the 1999 budget.

Let me say one thing in following up what Erskine said. The President presented his budget in February. Since that time, 15 very important bills have passed to implement that budget: the tax cut bill, the balanced budget bill and 13 appropriations bills. And just as the President said, that his plan presented in February would lead us to a balanced budget, indeed, it will lead us to a balanced budget, and just as he said that it would implement his priorities, indeed, through that, those 15 bills that Congress has enacted on a bipartisan basis, the President's program has, in fact, been enacted whether you look at education, or you look at the support for families in raising their kids, or if you look at the environment, you will see that the President's program has been enacted.

The important part of this isn't simply that we said so in February, but if you look one year ago, one year ago, the conventional wisdom was that the struggle with the Republican Majority where we were so far apart on priorities, would inevitably lead to a clash and no results. And if it didn't lead to a clash, it would lead to the President having to retreat from his priorities and principles.

But if you match up the President's budget and the Republican plan of last year to what has actually happened, case after case, what the President has proposed has actually been enacted into law, so we're no longer at the stage of speculating as to whether or not we could achieve this. In fact, through the enactment of 15 separate bills, the President's plan is now the law of the land.

Q Speaker Gingrich yesterday said he wouldn't be surprised if the President embraces eliminating the marriage tax penalty. Given the White House is

looking at the budget surplus and ways in which perhaps the tax code could be changed, is that one option that you're entertaining?

DIRECTOR RAINES: As all of us have tried to say, that we don't want to spend a surplus before its time, so we would prefer to see any surplus arrive before we had conclusions on how to spend it. But we are looking, as part of this policy process -- and this is the National Economic Council as well as OMB and the Council of Economic Advisors -- at a broad range of policy initiatives that the President can address in his State of the Union Address and in his budget. And so we're looking at a broad range of things, and I think that just as people were impressed by the array of proposals that he made this last January, I think they'll be impressed by his state of the union speech this coming January.

Q -- issue in terms of tax fairness?

DIRECTOR RAINES: Well, there are a lot of issues in our tax system that the President has spoken to. We have managed to deal with several of them in terms of the incentives in the tax system for education and for raising kids. But there are issues of tax equity that he is quite concerned about, and he has asked all of us to look at those issues as well as the issues of long-term entitlements to see what kinds of proposals we can make now to move closer to resolution on those issues.

Q When do you submit the budget?

DIRECTOR RAINES: First week of February.

Q You all are here for a reason, I wonder if I could get somebody -- Mr. Raines or Gene to simply deal with this unspoke, unasked, but answer a lame duck question straight up, because that's what this is all about, I assume. What's your impression of those assessments? The fast track signaled the end of all this success. Now we're into a different kind of a period.

DIRECTOR RAINES: Well, I'm sort of the new guy here, but I remember when I was appointed to this office people asked me why are you going in there. This was last April. And they said he's a lame duck, isn't he? The President -- we've got a Republican Congress -- how in the world can anything happen.

I would just hold up the last year as testament that anytime anyone calls this President a lame duck, he seems to have a very good following year; so I'm not concerned about that. We have an enormous -- an enormous opportunity to pursue the President's program, and I expect we'll be as successful in this coming year as we were in the last year.

This past year has probably been the largest change in fiscal and domestic economic policy that we've seen in 30 years. And we're seeing the results in the economy that continues to grow and produce jobs at low inflation. We're seeing the results in improved fiscal policy, lower deficits. I think we couldn't have seen a better year and I expect that we'll continue to see one. This is an opportunity for this entire administration to continue to produce. Indeed, I think if we focus on the 15 bills that I mentioned -- and there could be another 15 I could have mentioned that are not appropriations bills -- you would see this is one of the most productive sessions of Congress that we've had in a long time.

Q And you're staying on?

DIRECTOR RAINES: Me? Oh, absolutely. What else would you do other than

be OMB Director?

Q Well, there are so many rumors every other day that you're leaving.

DIRECTOR RAINES: Me? No. I think you -- you're confusing me with somebody else.

Q No. I know you. (Laughter.)
DIRECTOR RAINES: No, no, no. I have -- the OMB troops are here. We're going to produce the President's budget, and we'll be here to give you all these wonderful briefings in the future.

Q Oh, God. (Laughter.)
Q I have a question for Gene or for Janet, which is about Korea, whether or not you're watching what's going on in Korea, and whether or not the U.S. will participate in any sort of bailout funds for Korea?

MR. SPERLING: Obviously, we're always watching, particularly the Treasury Department, and obviously Deputy Secretary Summers is going to Manila as part of the deputy finance ministers. So, it's never -- we're always watching and it almost never does any good to say anything -- speculate or say anything about these situations.

Q Did the cutoff of the IMF funding create a problem for the administration in participating in discussions --

MR. SPERLING: I think Erskine's already answered it, so --
Q Gene, you're close to a lot of House Democrats. Is it your sense that some of the problems are related or isolated strictly to the issue of trade, or are there broader concerns in the relationship that the White House should be moving to correct?

MR. SPERLING: I think trade in the House is always going to be a tough issue. And I think that it was always going to be difficult. There were real differences of opinion, and I don't think they have much to do with the timing of the President's term or anything else. That was always going to be a tough battle. I think that there are plenty of things that are going to unite Democrats going forward. I think, certainly, education, certainly children's issues, including child care; certainly tobacco. So I think that there will be -- I think you'll see Democrats figh ting together on many fronts, but as Erskine said, when we -- in order to get something done, you ultimately have to be able to work in a bipartisan way, and whenever we see that opportunity, our goals to -- we're going to try to do that.

Q On the issue of fairness as it relates to entitlement reform, I guess this is directed to the OMB Director, again. Are you speaking in terms of perhaps means testing Medicare or something along that line if you're concerned about future solvency and how to address that issue?

DIRECTOR RAINES: Well, as you know, we have had -- we had discussion in the balanced budget negotiations about the structure of Medicare and in that case, there were discussions about how the premiums might be adjusted for those with the highest income. And those did not happen as part of that reform, although we did manage to extend the life of the Medicare system for 10 to 12 years. We are going to be appointing a Medicare commission next month, and these issues

will be on their agenda for them to make recommendations to the President and Congress.

MR. TOIV: Just one last thing. The President has signed into law -- Frank you'll be interest to hear this -- the President has signed into law the sixth and final continuing resolution for fiscal year 1998.

Q How far does that go?

MR. TOIV: This extends to the 26th of November. This gives the Congress enough time to process the bills and get them over here and gives the White House enough time to review the bills before the President acts on them. And that's it.

THE PRESS: Thank you.

END 3:36 P.M. EST

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LEVEL 1 - 64 OF 133 STORIES

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November 14, 1997 15:13 Eastern Time

SECTION: NATIONAL DESK

LENGTH: 1392 words

HEADLINE: Transcript of White House Press Briefing by Berger, Bowles (3 of 4)

CONTACT: White House Press Office, 202-456-2100

DATELINE: WASHINGTON, Nov. 14

BODY:
Following is a transcript of a White House press briefing by Chief of Staff Erskine Bowles; National Security Advisor Samuel Berger; Office of Management and Budget Director Franklin Raines; Gene Sperling, assistant to the president for economic policy; Janet Yellin, chair of the council of economic advisors; and Elena Kagan, deputy assistant to the president for domestic policy (3 of 4):

Q Sandy, is it a concern that everything that can be done to Saddam has been done? He's lived through sanctions for six and a half years, we've hit him repeatedly with air strikes, and none of this has done much good.

MR. BERGER: Well, I think that's -- I'm not sure I accept that judgment. The fact is that Saddam has been kept in a box, in a sense, for this six-year period. The sanctions, which are the most pervasive sanctions every imposed on a nation in the history of mankind, have cost his country $100 billion. Now, every year or so, Saddam Hussein tries to break out of that containment box, either by moving toward the south as he's done in some instances, moving in the north as he's done in other instances; in this case, throwing out the international inspectors. And what the international community has to do is to be, once again, absolutely clear and firm that is not acceptable behavior -- that he remains a threat and the only way out for him is to come into compliance.

Q But if I can follow up on that, the point of the question is, there isn't much more we could do at this point.

MR. BERGER: Well, I think that we have, as I said before, we have maintained for six years, since the end of the Gulf War, we have kept Saddam Hussein contained. We have done an enormous amount to destroy his weapons of mass destruction through UNSCOM. We have stopped him when he has tried to move again towards Kuwait. And I think we have to -- this is going to be a long-term enterprise on the part of the international community to assure that he does not, once again, become a threat to his neighbors or a threat to the region or a threat to his own people.

Q Is it long-term U.S. policy -- not U.N. policy, but U.S. policy -- to see Saddam removed from power, and is there any possibility of using this current crisis to achieve some more long-term resolutions so that we don't have this sort of episodic annual round of crises?

MR. BERGER: Well, it is American policy to assure that the very least he is not a threat to his neighbors or a threat to his own people. That policy has more or less been successful over the last six years. And I think we have to be prepared when he tries, as he has in a very insidious way in this case to break out of that box to make it very clear that is not something that we'll tolerate.

Q Just to follow up on John's question. Did the President intend to kind of move the goalposts this morning when he said that the sanctions will be kept in place as long as Saddam is in power, as long as he lasts, as he put it? Is it his opinion that the sanctions will not be lifted ever as long as Saddam is in power, whatever he does, even if he were to comply?

MR. BERGER: Let Saddam Hussein come into compliance, and then we can discuss whether there are any circumstances.

Q But, Sandy, for the record, can you say from this podium that if he were --

MR. BERGER: It has been our position consistently that Saddam Hussein has to comply with all of the relevant Security Council resolutions for the sanctions.

Q But can you say for the record, that were he to comply -- I know that the point is moot for you at this point, but were he to comply with the sanctions, the U.S. would not block the U.N. from lifting the sanctions?

MR. BERGER: I don't think under these circumstances, when he is blatantly out of compliance it is the right time for us to talk about how we lift the sanctions. We're not going to negotiate lifting the sanctions at a time when he is in blatant disregard, not only of the sanctions, but also of the Security Council resolutions.

Q It's not a matter of negotiating, it's a point that we're asserting what is in the resolution. They said that if he complies -- that he has complied, the sanctions would be lifted. Is it the U. S. position right now that they would be lifted, or would you oppose such a move?

MR. BERGER: It has been the U.S. position since the Bush administration that Saddam Hussein has to comply with all of the relevant Security Council resolutions.

Q Not to belabor a quote, but what the President said is what he has just done is to ensure that the sanctions will be there until the end of time, or as long as he lasts.

MR. BERGER: Well, that's right. That's not inconsistent with what I've said. In other words, there's no way --if he's got to be in compliance, he can't be in compliance if he's thrown the UNSCOM people out. So it's a necessary condition; it may not be a sufficient condition.

He certainly cannot come into compliance when he's thrown the U. N. inspectors out. And as long as they're out, there's no way we can have an argument about whether he's in compliance.

Q As the President's National Security Advisor, how concerned are you and

how concerned ought the American people be about the fact that we are now, for all intents and purposes, blind in Iraq to what he can do with those weapons of mass destruction?

MR. BERGER: Let me put it this way. I don't believe that he can redo -- the UNSCOM inspectors have been extraordinarily successful over the last six years, and a large portion of Saddam's weapons of mass destruction have been identified and destroyed. I don't believe that he can redo in a few weeks what UNSCOM has destroyed over six years. But certainly, left to his own devices over a long period of time without international inspection, it is a danger.

Q Sandy, could you reassure the public that the United States has the intelligence and the military capacity to destroy Iraq's ability to deliver weapons of mass destruction, or are we limited in what we can do even if we wanted to?

MR. BERGER: I don't think it's appropriate for me to talk about what our military capacity is or not. I think that's a mistake.

Q Sandy, have you made any headway with --

Q What would the justification be -- Mike McCurry said again here today that although you and the President, Madeleine Albright are all working trying to get support from allies, support from the U.N., if necessary, the President could act unilaterally and he could do so legally? Can you explain that? Would it be because any nation has a right to protect itself and could the President argue that Saddam Hussein is a threat to the United States?

MR. BERGER: There is a body of U.N. Security Council resolutions that go back for six years which, our view, confers all the authority that we would need. But obviously, it is our first preference to resolve this without -- by diplomacy and peaceful means, and that's what we are engaged in over the next several days in terms of trying to work with our allies, some of whom have more contact with Saddam Hussein than we do, to make it clear that the international community is resolute with respect to this breach.

Q How can the French government make itself useful to the international effort at this point? What would you like to see from Paris?

MR. BERGER: I think the government of France, as other governments, need to convey -- hopefully will convey and I believe have conveyed to Saddam Hussein that he is totally outside the realm of any kind of acceptability from the international community when he throws out these inspectors, and that the only way that he can get back into any kind of dialogue with the international community is by coming back -- by allowing those inspectors back.

MR. TOIV: We still have Gene Sperling, Frank Raines, Janet Yellin and Elena Kagan here to answer any further questions about the year-end report.

MR. MCCURRY: Why don't you all come up?

LANGUAGE: ENGLISH

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LEVEL 1 - 65 OF 133 STORIES

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November 14, 1997 15:13 Eastern Time

SECTION: NATIONAL DESK

LENGTH: 1557 words

HEADLINE: Transcript of White House Press Briefing by Berger, Bowles (2 of 4)

CONTACT: White House Press Office, 202-456-2100

DATELINE: WASHINGTON, Nov. 14

BODY:
Following is a transcript of a White House press briefing by Chief of Staff Erskine Bowles; National Security Advisor Samuel Berger; Office of Management and Budget Director Franklin Raines; Gene Sperling, assistant to the president for economic policy; Janet Yellin, chair of the council of economic advisors; and Elena Kagan, deputy assistant to the president for domestic policy (2 of 4):

Q Erskine, the fast track debate revealed not only some differences of principle over trade between House Democrats and the White House, but there are also a lot of signs of personal resentment and tension and a lot of ill will on their part or feelings that they weren't appreciated here, the larger relationship between House Democrats and the White House is what I'm talking about. How much of a concern is that to you and the President, and is there anything you plan to do about it?

MR. BOWLES: I think some of that has been overblown, John. I think if you look at the votes that we've had this year, whether it is in the balanced budget where we had between two-thirds and three-quarters of the Democrats voting with us, if you even look at the trade issue where it passed with the majority of Democrats in the Senate where it had the support of the majority of governors, the majority of the mayors, if you look at our positions on education, on health care, on welfare to work, on any number of issues, on tobacco, on some of the issues that we will face next year, I think you can see that there is broad consensus among the Democratic Party.

Only in the area of trade, I believe, and I think it is a very distinct area, has there been somewhat of a schism. And what we are going to try to do over the next couple of months is work hard to make sure we bring ourselves together so that we can have a bill that gets broader bipartisan support.

Q Erskine, why weren't you able to at least round up votes in the new Democratic Caucus? It seems of all the Democrats who should have supported free trade, you would have been able to round up all those votes.

MR. BOWLES: Karen, I hope that we can do a better job in rounding up support for it as we go forward. We were able to get about a quarter of the Democratic Caucus to come forward and support it. We hope if we can make some modifications to the bill that it will make it more acceptable to a larger number of Democrats and we can get their support.

Q Erskine, you were talking about the IMF and how you might try and take care of this next year. There are some crises going, however, in Asia that might prevent you from being able to do that. Yesterday they said Capitol Hill estimated it would require about $50 billion to bail out Korea if that becomes necessary. So if they just cut off part of your IMF funding, will that force you to use the currency stability fund?

MR. BOWLES: In the discussions I have had with Secretary Rubin and Deputy Secretary Summers, they feel comfortable that we can manage the problems that we now face and we expect to be able to go back in the first part of the next legislative session and, hopefully, secure the funding for the IMF and, in addition, get the funding that we need for the U.N. arrears. Both of these should have passed this time. I think the fact that they were linked to international family planning just makes no sense whatsoever.

Q Erskine, you said that you are looking to alter the bill that was out there. Are you looking at this point in offering a broader bill or might you do -- what is the likelihood that you do a fast track bill that is more narrowly tailored to a specific idea such as a treaty with Chile?

MR. BOWLES: We haven't made a decision on that yet.

Q Erskine, the President --

Q Back to Bill Lann Lee -- you were saying that he is going to be the next civil rights enforcer and you say unequivocally. But are you kind of fearful -- is the White House fearful that there could be some retaliatory measures from Congress if there is a recess appointment?

MR. BOWLES: This is a matter that the President believes in strongly. He has supported the principle of civil rights his entire career. Bill Lann Lee is somebody who is qualified, who deserves to be Assistant Attorney General for Civil Rights, who will make a great representative for this country, and he should be and he will be.

Q So you're not fearful of congressional retaliation?

MR. BOWLES: No.

Q Erskine, the President started out the year with a very strong call for bipartisanship that prevailed through part of the year -- Bill Lann Lee and so on. Has bipartisanship totally broken down in Congress?

MR. BOWLES: No, and I think there is a good deal of opportunity for additional bipartisan efforts, whether it's in the international area or whether it's on selected domestic issues.

When we can put together a bipartisan coalition, we want to do that. We think that's in the best interest of the American people. They want to see us get things done and not just talk about things. I think if you look at that laundry list of issues that I went through, whether it was achievement of some real fiscal responsibility in this country, whether it was in the area of education, whether it was in the area of environment, whether it was in the area of moving people from welfare to work, tax relief for middle class families, there was broad bipartisan support for each one of those, and we worked hard to achieve that.

Q When your appearance was billed here, we were told that you were also going to project what the President would be seeking in the future. In

addition, I suppose, to fast track, are there any new initiatives?

MR. BOWLES: I think there are a number of things that you can expect to see us working on as we go forward. First, we do want to make sure that we do open up markets for U.S. goods, so we will come back with some fast track legislation. Secondly, we are going to work again to have some real campaign finance reform. Thirdly, we will work again to pass a strong juvenile justice bill. We do want to secure the U.N. arrearages into funding for the IMF.

In the area of new things that we'll be exploring, I think you will look at us trying to advance our education agenda, stressing the importance of high national standards and infrastructure needs that our schools face today. I think you'll see us working on a consumer bill of rights. You'll see us very active with the tobacco legislation. I think you'll see us moving forward with health care and pension portability, child care initiatives, reforming the Medicare and Social Security needs of this country and trying to solve a structural long-term areas of -- let me bring Sandy up because he's got to leave in just a minute, to talk to you a little bit about --

Q Reform of the tax code -- you know, are you settled?

MR. BERGER: Are there any questions? I have a long statement here about accomplishments in the foreign policy area, but let me answer some questions.

Q Sandy, one thing. With the President's diplomacy, is it your sense that the problem here and that what the President and the administration has to do is convince everybody else in the world that Saddam is as big a threat as you apparently believe he is?

MR. BERGER: No, I think the international community has spoken quite clearly over the last two days. And First, the U.N. Security Council resolution, than last night in the unanimous statement after he decided to throw out the Americans -- UNSCOM inspectors -- indeed, in practical effect, all of the inspectors. So I think there is a clear base of understanding in the international community that this is a threat, that he has the -- certainly has demonstrated the intent to use these weapons, and if he has an unfettered capacity to do so, it's a threat not only to his neighbors but to the world. And we are now engaged in talking, consulting with our allies and friends on how we intensify the pressure on Saddam Hussein to get the same message.

Q Well, isn't there disagreement, though, on how much pressure should be exercised and whether or not it's worth going all the way?

MR. BERGER: I think there is a clear feeling on the part of the international community that this is a threat, this is a serious matter, that this poses a risk to the region and a risk to the world, and I'm not going to speculate on where -- what steps may proceed.

Q The military moves are fairly obvious for us to gauge. They say we're moving a second carrier in. The diplomatic moves are harder for us to ascertain. Can you tell us what it is that precisely that you're trying to accomplish, what the Secretary of State is trying to accomplish, what the President is trying to accomplish, when we call France or Russia or Great Britain or whomever?

MR. BERGER: We are consulting with our allies on how we intensify the

pressure on Saddam Hussein and what should take place if he doesn't reverse himself.

LANGUAGE: ENGLISH

LOAD-DATE: November 14, 1997

LEVEL 1 - 66 OF 133 STORIES

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November 14, 1997 15:13 Eastern Time

SECTION: NATIONAL DESK

LENGTH: 2601 words

HEADLINE: Transcript of White House Press Briefing by Berger, Bowles (1 of 4)

CONTACT: White House Press Office, 202-456-2100

DATELINE: WASHINGTON, Nov. 14

BODY:
Following is a transcript of a White House press briefing by Chief of Staff Erskine Bowles; National Security Advisor Samuel Berger; Office of Management and Budget Director Franklin Raines; Gene Sperling, assistant to the president for economic policy; Janet Yellin, chair of the council of economic advisors; and Elena Kagan, deputy assistant to the president for domestic policy (1 of 4):

The Briefing Room

2:49 P.M. EST

MR. BOWLES: I'm going to talk a little bit about the situation in Iraq and we'll take some questions. I think Gene Sperling and Janet Yellin and the Budget what we have accomplished this year and the events of the last week, and then Sandy is going to come up and talk a little bit about the situation in Iraq, and we'll take some questions. I think Gene Sperling and Janet Yellin and the Budget Director and Elena Kagan are all here to take questions on your behalf.

In thinking about this last year, I thought when I came in a little while ago, I thought of my good friend, Dean Smith back in my beloved North Carolina some of the great teams that he's put together over the years, and I remembered one team he had that went 28 and 4. The team practiced hard, they worked hard together, they accomplished some great results and they got to the Final Four and they lost that last game by two points at the end of the game.

And at the end of that game, the team was disappointed, some of the fans and the critics were disappointed. But I think after the game and after things settled down and they reflected on what had gone on during the entire year, they all decided it was a good year and a year they could be proud of, and they looked forward to keeping the team together and practicing hard and coming back next year and seeing if they could win some of those games and beat some of those teams they lost to during the year just completed.

I think it's fair to say that we did have a good year this year. It was a year of progress and achievement. It's also been a year of true bipartisanship and cooperation, and it's a year in which many of us banded together to prepare our country for the 21st century.

I know a number of you want to talk about the hits and misses that occurred during the last week and I promise you we'll get to those and I'll take those

questions, but let me talk about briefly some of the things we have accomplished during the last year.

Back in February, the President laid out a clear, ambitious call to action in his State of the Union Address for the second term, and as the Congress is now adjourning, I think the record is clear that we have accomplished a great deal. I would begin with the accomplishment of achievement of the first bipartisan balanced budget in a generation that will produce real savings in excess of $900 million. That budget was achieved with some real tax cuts for hard-working middle class families at the times when the

need it the most, when they're raising their kids to pay for education, when they're buying or selling a home and saving for retirement.

We also achieved the largest increase in education funding in 30 years. We did this by vastly increasing the money that's being made available for early childhood programs to prepare our kids so they're ready to enter school ready to learn, and also through the expansion of the America Reads program and the establishment of high national standards for 4th grade reading and 8th grade math, so that when our kids graduate from high school, they'll graduate with a diploma that means something and also with the availability now of increased Pell Grants and with the tuition tax credit and with the HOPE Scholarships, that additional two years of education will be universally available, which was a goal the President outlined in the State of the Union.

We also came forward this year with the largest increase in health care for children since Medicaid in 1965, making it possible for as many as 5 million additional kids to have health care insurance -- kids that don't have insurance today -- through an unprecedented $24 billion for children's health care. We also were able to get forward and pass some critical long-term entitlement reform by taking out and extracting about $400 billion to $450 billion worth of savings in the Medicare program that extends the life of the Medicare Trust Fund out for 10 years, and we also established a Medicare Commission, which will allow us to address the long-term structural problems associated with Medicare.

Sixth, we were able to pass provisions that will enable us to move 2 million people from welfare to work and also to restore basic health and disability benefits to legal, law-abiding immigrants, something that the President had promised to do prior to the beginning of this year.

We also took concrete steps forward to preserve the environment, to clean up over 500 toxic waste dumps, and with our Brown Field tax initiatives to redevelop 14,000 contaminated sites within our inner cities. We also were able to get through ozone and particulate matter regulations which will go a long ways toward improving the health of our children, and the U.S. came out with a very strong position on global climate change.

On the foreign policy front, I think we also have a great deal that we can be proud of. We did ratify the Chemical Weapons Convention. We were able to extend normal trading relations with China. We strengthened the NATO Partnership for Peace through the signing of the NATO-Russia Founding Act and by offering membership in NATO to Poland, the Czech Republic and Hungary.

We also negotiated the Information and Technology Agreement and the

Telecommunications Agreement on shackling over $500 billion in trade in sectors where the U.S. already has a very dominant position, and we launched the Africa Free Trade Initiative.

There are also several areas where we did come up short. While we accomplished a great deal, there were four basic areas that we did not reach the potential that we had hoped to. The first was clearly the renewal of fast track trading authority. We did have strong opposition by some members of the Democratic Party, and we also had opposition from some members of the Republican Party who linked their trade vote to international family planning.

We have had a temporary setback there. We do plan to come back next year, hopefully in February, with a bill that can achieve broader bipartisan support. This is something that the President truly believes is critical to the future economic well-being of this country.

The second area where we fell short was in the passage of real campaign finance reform. The Republican congressional leaders blocked the McCain-Feingold bill from coming to a vote. Thank goodness Senator Tom Daschle, the Minority Leader, was able to extract a pledge from Trent Lott to have a clean up or down vote on this measure before March 6th of 1998, so this is another portion of where we fell short. We'll be able to fight the battle again at the beginning of next year.

Third, we were not able to enact a strong juvenile justice bill, which we had hoped to do this year. However, the President was able to use his executive power to make some progress on this central piece of legislation. Many of you may remember that we were able to issue a directive to all federal agencies requiring child safety locks to be issued with every handgun, and we also reached an agreement with eight major handgun manufacturers to provide child safety locks with each handgun that's sold.

And lastly, just the day before yesterday, we were set back in our efforts to attain funding for U.N. arrears and for the new agreements on barring through the IMF -- again, another area where we plan to go back in early February to meet with the Congress and try to see if we can bring this to a successful conclusion.

I think that summarizes what we were able to achieve, where we felt we fell short, and some of the areas where we did fall short and hope to go back on at the beginning of next year. Sandy is now going to come up and take --

Q How about the nominations that have been set back, Surgeon General and civil rights?

MR. BOWLES: There are a number of nominations which didn't come through -- you just mentioned two -- that we have great concern on. We believe that Mr. Satcher will be confirmed to be the Surgeon General at the early part of next year. We believe that Bill Lann Lee is highly qualified to be Assistant Attorney General for Civil Rights. He certainly has a record of clear integrity. This is a man who has spent his entire life fighting for civil rights. It is someone that the President supports and supports strongly. We believe this man deserves a vote, but I assure you he will be the next Assistant Attorney General for Civil Rights.

Q Without a recess -- are you saying that the recess --
MR. BOWLES: I assure you, he will be the next Assistant Attorney General for Civil Rights.

Q Well, can we make this quantum leap and say there will be? (Laughter.)

MR. BOWLES: Well, we hope he'll get a vote.
Q Mr. Bowles, do you believe that Congress is playing by the rules with all of these appointments?

MR. BOWLES: Well, I think -- you know, yes, they're playing by their own rules. Whether or not we like those rules is another subject. I think the job they have done with Bill Lann Lee is disgraceful. I am deeply disappointed with their effort as it relates to appointing judges. As you know, I have spent my entire life trying to bring people together. I think I am known as a relatively reasonable person with working with both sides, but I think the job they have done with judges and with our Assistant Attorney General for Civil Rights is just plain wrong.

Q What are you going to have to do differently, do you think, to get the fast track passed in the spring?

MR. BOWLES: I think we have to do a number of things. We have already started doing those. We have been reaching out to members of both sides, trying to talk about ways that we can make some modifications in our bill so that we can come forward with a bill that can get broader bipartisan support. We just fell very -- you know, we were very, very close this time and we think we can make the kind of modifications that will allow us to come back and get it passed in February.

Q Even with those modifications --
MR. BOWLES: I would rather spend some time talking with the members of Congress, doing our homework, being properly prepared, going out to the people and generating some additional support in the country, and then come forward a little later on and tell you exactly how we would modify the bill in order to achieve the support we need to get it passed. But it is critical that we get it passed. As you look to the future, one-third of the growth that we have had in the past has come from exports. In the future, world trade is expected to grow at three times the rate of the U.S. economy. Ninety-six percent of the world's customers are not here. We have got to bring down these trade barriers so that we can compete on a level playing field with our competitors in Japan and Europe.

Q Are you going to be around to push it?
Q Dean Smith retired. Are you planning to do the same?
MR. BOWLES: What's that?
Q Dean Smith retired. Are you planning to do the same? Are you going to be here next year?

MR. BOWLES: I am going to be here as long as the President wants me to stay.

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NOVEMBER 14, 1997, FRIDAY

SECTION: WHITE HOUSE BRIEFING

LENGTH: 6523 words

HEADLINE: STATEMENT BY PRESIDENT CLINTON
REGARDING IRAQ STANDOFF
FOLLOWED BY BRIEFING BY ERSKINE BOWLES
WHITE HOUSE CHIEF OF STAFF
THE WHITE HOUSE BRIEFING ROOM
WASHINGTON, DC

BODY:
PRESIDENT CLINTON: Two days ago, and again last night, the United Nations Security Council sent a clear, unanimous message to Iraq: Stop obstructing the international weapons inspectors who are the eyes and ears of the world on your weapons of mass destruction capability.
Instead of complying the unequivocal will of the international community, Saddam chose to expel the weapons inspectors from Iraq, and in so doing, to defy the United Nations.
Saddam has spent the better part of the last two decades, and much of the wealth of his nation, not on providing for the needs and advancing the hopes of the Iraqi people, but on a program to build an arsenal of the most terrible weapons of destruction -- nuclear, chemical, biological -- and on the missiles to carry them to faraway places.
The U.N. inspectors have done a remarkable job of finding and destroying the weapons and the weapons potential he was hiding, and preventing him from building new weapons. These quiet inspectors have destroyed more weapons of mass destruction potential over the last six years than was destroyed in the entire Gulf War.

Their work is important to the safety of Saddam's neighbors and indeed to people all around the world. It must be allowed to continue.
Today and in the days ahead, the United States will work intensively with our allies and our friends in the region and around the world to convince Iraq to comply with the will of the international community as expressed in the United Nations resolution. Meanwhile, the U-2 missions over Iraq must continue. Without inspectors on the ground, it is more important than ever to monitor events from the air.
And we will maintain a strong military presence in the Gulf. To that end, I have ordered today the aircraft carrier George Washington to the region as a prudent measure to help assure that we have the forces we need for any contingency.
This is a crisis of Saddam's making. It can be unmade only when he can no longer threaten the international community with weapons of mass destruction.
Thank you.
Q Mr. President, are you -- (inaudible) -- action?
(President Clinton leaves following his statement.)
MR. ERSKINE: I'm sure you'll all stay live for my part of this. (Laughter.)
I'm going to talk a little bit about what we have accomplished this year and the events of the last week, and then Sandy is going to come up and talk a little

bit about the situation in Iraq, and we'll take some questions. I think Gene Sperling and Janet Yellin and the budget director and Elena Kagan are all here to take questions on your behalf.

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There are also several areas where we did come up short. While we accomplished a great deal, there were four basic areas that we did not reach the potential that we had hoped to.
The first was clearly in a renewal of fast track trading authority. We did have strong opposition by some members of the Democratic Party, and we also had opposition by some members of the Republican Party, who linked their trade vote to international family planning.
We have had a temporary setback there. We do plan to come back next year, hopefully in February, with a bill that can achieve broader bipartisan support. This is something that the president truly believes is critical to the future economic well-being of this country.
The second area where we fell short was in the passage of real campaign finance reform. The Republican congressional leaders blocked the McCain-Feingold bill from coming to a vote. Thank goodness Senator Tom Daschle, the minority leader, was able to extract a pledge from Trent Lott to have a clean up or down vote on this measure before March 6th of 1998.

So this is another portion of where we fell short that we'll be able to fight the battle again at the beginning of next year.
Third, we were not able to enact a strong juvenile justice bill, which we had hoped to do this year. However, the president was able to use his executive power to make some progress on this central piece of legislation. Many of you may remember that we were able to issue a directive to all federal agencies, requiring child safety locks to be issued with every handgun. And we also reached an agreement, with eight major handgun manufacturers, to provide child safety locks with each handgun that's sold.
And lastly, just the day before yesterday, we were set back in our efforts to obtain funding for the U.N. arrears and for the new agreements on borrowing through the IMF; again, another area where we plan to go back, in early February, to meet with the Congress and try to see if we can bring this to a successful conclusion.
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Sandy is now going to come up and take a --
Q How about the nominations that have been set back, surgeon general and civil rights?
MR. BOWLES: There are a number of nominations which didn't come through. Two -- you just mentioned two -- that we have great concern on. We believe that Mr. Satcher will be confirmed, to be the surgeon general, at the early part of next year.
We believe that Bill Lann Lee is highly qualified to be assistant attorney general for civil rights. He certainly has a record of clear integrity. This is a man who has spent his entire life fighting for civil rights and someone that the president supports and supports strongly. We believe this man deserves a vote, but I assure you he will the next assistant attorney general for Civil Rights.
Q Are you talking about a recess appointment?
Q Will there be a recess appointment? Are you saying --
MR. BOWLES: I assure you he will be the next assistant attorney general for Civil Rights. Q Well can we make this quantum leap and say there will be? (Laughter.)
MR. BOWLES: We hope he'll get a vote.
Q Mr. Bowles, do you believe that Congress is playing by the rules with all of these appointments?
MR. BOWLES: Well, I think -- you know -- yes, they're playing by their own rules. Whether or not we like those rules is another subject. I think the job they've done with Bill Lann Lee is disgraceful. I am deeply disappointed with their effort as it relates to appointing judges.
As you know, I have spent my entire life trying to bring people together.

I think I'm known as a relatively reasonable person working with both sides. But I think the job they've done with judges and with our assistant attorney general for civil rights is just plain wrong.
Q What are you going to have to do differently, do you think, to get the fast track passed in the spring?
MR. BOWLES: I think we have to do a number of things. We've already started doing those. We've been reaching out to members of both sides, trying to talk about ways that we can make some modifications in our bill so that we can come forward with a bill that can get broader bipartisan support. We just fell very -- you know, just we were very, very close this time, and we think we can make the kind of modifications that will allow us to come back and get it passed in February.
Q (Off mike) -- modifications might look like?
MR. BOWLES: I'd rather spend some time talking with the members of Congress, doing our homework, being properly prepared, going out to the people and generating some additional support in the country, and then come forward a little later on and tell you exactly how we would modify the bill in order to achieve the support we need to get it passed. But it is critical that we get it passed. As you look to the future, one-third of the growth that we've had in the past has come from exports. In the future, world trade is expected to grow at three times the rate of the U.S. economy. Ninety-six percent of the world's customers are not here. We have got to bring down these trade barriers so that we can compete on a level playing field with our competitors in Japan and Europe.
Q Dean Smith retired. Are you planning to do the same? (Laughter.)
MR. BOWLES: What's that?
Q Dean Smith retired. Are you planning to do the same?
MR. BOWLES: No, I plan --

Q Will you be here next year?
MR. BOWLES: I'm going to be here as long as the president wants me to stay. Q Erskine, the fast track debate revealed not only some differences of principle over trade between House Democrats and the White House, but there are also a lot of signs of personal resentment and tension and a lot of ill will on their part or feelings that they weren't appreciated here. The larger relationship between House Democrats and the White House is what I'm talking about. How much of a concern is that to you and the president? And is there anything you plan to do about it?
MR. BOWLES: I think some of that has been overblown, John. I think if you look at the votes that we've had this year, whether it was in the balanced budget, where we had between two-thirds and three- quarters of the Democrats voting with us, if you even look at the trade issue, where it passed with a majority of Democrats in the Senate, where it had support of a majority of the governors, the majority of the mayors, if you look at our positions on education, on health care, on welfare-to-work, on any number of issues, on tobacco, on some of the issues that we'll face next year, I think you can see that there is broad consensus among the Democratic Party. Only in the area of trade, I believe, and I think it is a very distinct area, has there been somewhat of a schism. And what we're going to try to do over the next couple of months is work hard to make sure we bring ourselves together so that we can have a bill that gets broader bipartisan support.

Q Erskine, why weren't you able to at least round up votes in the New Democratic Caucus? It seems of all the Democrats who should have supported free trade, you would have been able to round up all those votes.
MR. BOWLES: Karen, I hope that we can do a better job in rounding up support for it as we go forward. We were able to get about a quarter of the Democratic Caucus to come forward and support it. We hope, if we can make some modifications to the bill, that it will make it more acceptable to a larger number of Democrats and we can get their support.
Q Erskine, you were talking about the IMF and how you might try and take care of this next year. There are some crises going, however, in Asia that might prevent you from being able to do that. Yesterday they said -- Capitol Hill estimated it would require about $50 billion to bail out Korea, if that becomes necessary. Since they just cut off part of your IMF funding, will that force you to use the currency stability fund?
MR. BOWLES: In the discussions I've had with Secretary Rubin and Deputy Secretary Summers, they feel comfortable that we can manage the problems that we now face. And we expect to be able to go back in the first part of the legislative session and, hopefully, secure the funding for the IMF, and in addition, get the funding that we need for the U.N. arrears. Both of these should have passed this time. I think the fact that they were linked to international family planning just makes no sense whatsoever.
Q Erskine, you said that you're looking to alter the bill that was out there. Are you looking, at this point, in altering a broader bill, or might you do a -- what's the likelihood that you do a fast-track bill that's more narrowly tailored to a specific idea, such as a treaty with Chile?
MR. BOWLES: We haven't made a decision on that yet.
Q Back to Bill Lann Lee, you were saying that he is going to be the next civil rights enforcer, and you say unequivocally. But are you kind of fearful -- is the White House fearful that there could be some retaliatory measures from Congress if there is a recess appointment?
MR. BOWLES: This is a matter that the president believes in strongly. He has supported the principle of civil rights his entire career. Bill Lann Lee is

somebody who is qualified, who deserves to be assistant attorney general for civil rights. He will make a great representative of this country, and he should be and he will be.
Q So you're not fearful of congressional retaliation?
MR. BOWLES: No.
Q Erskine, the president started out the year with a very strong call for bipartisanship that prevailed through part of the year. However, you mentioned the judges, Bill Lann Lee, and so on. Has bipartisanship totally broken down in Congress?

MR. BOWLES: No. I think there's a good deal of opportunity for additional bipartisan efforts, whether it's in the international area or whether it's on selected domestic issues.
When we can put together bipartisan coalition, we want to do that. We think that's in the best interest of the American people. They want to see us get things done and not just talk about things. I think if you look at that laundry list of issues that I went through, whether it was achievement of some real fiscal responsibility in this country, whether it was in the area of education, whether it was in the area of the environment, whether it was in the area of moving people from welfare to work, tax relief for middle-class families, there was broad bipartisan support for each one of those. And we worked hard to achieve that.
Q When your appearance was billed here, we were told that you were also going to project what the president would be seeking in the future -- in addition, I suppose, to fast track. Are there any new initiatives?
MR. BOWLES: I think there are a number of things that you can expect to see us working on as we go forward.
First, we do want to make sure that we do open up markets for U.S. goods. So we will come back with some fast track legislation.
Secondly, we are going to work again to have some real campaign finance reform.
Thirdly, we will work again to have -- to pass a strong juvenile justice bill.
We do want to secure the U.N. arrearages and the funding for the IMF.
In the area of new things that we'll be exploring, I think you will look at us trying to advance our education agenda, stressing the importance of high national standards and infrastructure needs that our schools face today. I think you'll see us working on a consumer bill of rights. You'll see us very active with the tobacco legislation. I think you'll see us moving forward with health care and pension portability, child-care initiatives, reforming the Medicare and Social Security needs of this country, and trying to solve the structural long-term areas of that. Let me bring Sandy up, because he's got to leave in just a minute, to talk to you a little bit about foreign policy.
Q (Off mike) -- the tax code?
SAMUEL BERGER (assistant to the president for national security affairs): Oh, my God. Did you ask me about reform of the tax code, Helen?
Q Yes. (Laughter.) (Off mike.)
MR. BERGER: We're in favor of it.
Are there any questions? I have a long statement here about accomplishments in the foreign policy area, but I think you may have some questions.
Q (Off mike) -- one thing: With the president's diplomacy, is it your sense that the problem here and that what the president and the administration have to do is convince everybody else in the world that Saddam's as big a threat as you apparently believe he is?
MR. BERGER: No, I think the international community has spoken quite clearly over the last two days in first the U.N. Security Council resolution, then last night in the unanimous statement, after he decided to throw out the Americans

-- UNSCOM inspectors -- indeed, in practical effect, all the inspectors.

So I think there is a clear base of understanding in the international community that this is a threat, that he has the -- certainly has demonstrated the intent to use these weapons. And if he has an unfettered capacity to do so, it's a threat not only to his neighbors, but to the world.
And we are now engaged in talking, consulting with our allies and friends on how we intensify the pressure on Saddam Hussein to get the same message.
Q Well -- (inaudible) -- on how much pressure should be exercised and whether or not it's worth going all the way?
MR. BERGER: I think there is a clear feeling on the part of the international community that this is a threat, this is a serious matter, that this poses a risk to the region and a risk to the world. And I'm not going to speculate on where -- what steps may proceed.
Q Sandy, the military moves are fairly obvious for us to gauge. I mean, you know, they say we've moving a second carrier in.
The diplomatic moves are harder for us to ascertain. Can you tell us what it is precisely that you're trying to accomplish, what the secretary of state is trying to accomplish, what the president is trying to accomplish when we call France or Russia or Great Britain or whomever?
MR. BERGER: We are consulting with our allies on how we intensify the pressure on Saddam Hussein and what should take place if he doesn't reverse himself.
Q Sandy, is it a concern that everything that everything that can be done to Saddam has been done? He's lived through sanctions for six and a half years. We've hit him repeatedly with airstrikes. And none of it has done much good.
MR. BERGER: Well, I think that's -- I'm not sure I accept that judgment. The fact is that Saddam has been kept in a box, in a sense, for this six-year period. The sanctions, which are the most pervasive sanctions ever imposed on a nation in the history of mankind, have cost his country $100 million. Now -- $100 billion.
Now every year or so, Saddam Hussein tries to break out of that containment box, either by moving toward the South, as he's done in some instances, moving in the North, as he's done in other instances -- in this case, throwing out the international inspectors. And what the international community has to do is to be once again absolutely clear and firm that that is not acceptable behavior, that he remains a threat and the only way out for him is to come into compliance.
Q Sandy, can you --
Q But if I can follow up on that, I mean, the point of the question is, there isn't much more we could do at this point.
MR. BERGER: Well, I think that we have -- as I've said before, we have maintained -- for six years, since the end of the Gulf War, we have kept Saddam Hussein contained.

We have done an enormous amount to destroy his weapons of mass destruction through UNSCOM. We have stopped him when he has tried to move again towards Kuwait. And I think we have to -- this is going to be a long-term enterprise, on the part of the international community, to assure that he does not once again, become a threat to his neighbors or a threat to the region or a threat to his own people.
John?
Q Sandy, is the long-term U.S. policy, not U.N. policy, but U.S. policy, to see Saddam removed from power? And is there any possibility of using this current crisis to achieve some more long- term resolution so that we don't have this sort of episodic annual round of crisis?

MR. BERGER: Well, it is American policy to assure that at the very least, he is not a threat to his neighbors or a threat to his own people. That policy has more or less been successful over the last six years. And I think we have to be prepared, when he tries as he has in a very insidious way in this case, to break out of that box, to make it very clear that that is not something that we'll tolerate.
Q Just to follow up on that, on John's question. But did the president intend to kind of move the goalposts, this morning, when he said that the sanctions would be kept in place as long as Saddam is in power, as long as he lasts as he put it? Is it -- (inaudible) -- opinion that the sanctions will not be lifted ever, as long as Saddam is in power, whatever he does?
MR. BERGER: Well, let Saddam Hussein come into compliance, and then we can discuss whether there are any circumstances.
Q (Off mike) -- but, Sandy, for the record, can you say --
MR. BERGER: It has been our position consistently, that Saddam Hussein has to comply with all relevant Security Council resolutions for the sanctions.
Q (Off mike) -- for the record that where -- if (you ?) comply -- in other words, the point is moot for you at this point -- where if you comply with the sanctions, the U.S. would not block the U.N. from lifting the sanctions?
MR. BERGER: Well, I don't think under these circumstances, when he is blatantly out of compliance, it is the right time for us to talk about how we lift the sanctions. We're not going to negotiate lifting the sanctions at a time when he is in blatant disregard of not only the sanctions, but also of the Security Council resolutions.
Q It's not a matter of negotiating; it's the point that we're asserting what is in the resolution. You know, they say that if he complies -- (inaudible) -- (if ?) he has complied, the sanctions would be lifted. Is it still the U.S. position right now that they would be lifted, or --
MR. BERGER: It's been the U.S. position, since the Bush administration, that Saddam Hussein has to comply with all of the relevant Security Council resolutions.
Q Not to belabor a quote, but what the president said is what he has just done is to ensure that the sanctions will be there until the end of time or as long as he lasts.
MR. BERGER: Well, that's right. That's not inconsistent with what I have said. In other words, if he's got to be in compliance, he can't be in compliance if he's thrown the UNSCOM people out.

So it's a necessary condition. It may not be a sufficient condition. He certainly cannot come back -- come into compliance when he's thrown the U.N. inspectors out. And as long as they're out, there's no way we can have an argument about whether he's in compliance.
Q Sandy, as the president's national security adviser, how concerned are you and how concerned ought the American people be about the fact that we are now for all intents and purposes blind in Iraq to what he can do with those weapons of mass destruction?
MR. BERGER: Well, let me put it this way. I don't believe that he can redo -- the UNSCOM inspectors have been extraordinarily successful over the last six years, and a large portion of Saddam's weapons of mass destruction have been identified and destroyed. I don't believe that he can redo in a few weeks what UNSCOM has destroyed over six years. But certainly, left to his own devices over a long period of time without international inspection, it is a danger.
Q Sandy, could you reassure the public that the United States has the intelligence and the military capacity to destroy Iraq's ability to deliver weapons of mass destruction, or are we limited in what we can do even if we

wanted to?
MR. BERGER: I don't think it's appropriate for me to talk about what our military capacity is or not. I think that's a mistake.
Q What would the justification be -- Mike McCurry said again here today that although you and the president and Madeleine Albright are all working to try to get support from allies, support from the U.N. If necessary, the president could act unilaterally, and he could do so legally. Can you explain that? Would it be because any nation has a right to protect itself? And could the president argue that Saddam Hussein is a threat to the United States?
MR. BERGER: There is a body of U.N. Security Council resolutions that go back for six years which in our view confers all of the authority that we would need. But obviously, it is our first preference to resolve this without -- by diplomacy and peaceful means, and that's what we're engaged in over the next several days in terms of trying to work with our allies, some of whom have more contact with Saddam Hussein than we do, to make it clear that the international community is resolute with respect to this breach.

Q How can the French government make itself useful at this point?
MR. BERGER: Excuse me?
Q How could the French government make itself useful to the international effort at this point? What would you like to see from -- (inaudible word)?
MR. BERGER: I think the government of France, as other governments, need to convey, or hopefully will convey, and I believe have conveyed to Saddam Hussein that he is totally outside the realm of any kind of acceptability from the international community when he throws out these inspectors, and that the only way that he can get back into any kind of dialogue with the international community is by coming back -- by allowing those inspectors back.

MR. TOIV: Thanks, Sandy.
Q Of those accomplishments --
MR. TOIV: Yeah, we still have Gene Sperling, Frank Raines, Janet Yellen and Elena Kagan here to answer any further questions about the year-end report.
Q Now what's the next budget agreement?
MR. RAINES: What's the next budget?
Q How are you coming along in preparing the budget for this next year?
MR. RAINES: We are in the process now of reviewing the proposals from the agencies, and the president will be making his decisions in December for the 1999 budget.
But let me -- let me say one thing, in following up what Erskine said. The president presented his budget in February. Since that time, 15 very important bills have passed to implement that budget; the tax cut bill, the balanced budget bill, and 13 appropriations bills. And just as the president said that his plan, presented in February, would lead us to a balanced budget, indeed, it will lead us to a balanced budget. And just as he said that it would implement his priorities, indeed, through that, those 15 bills that Congress has enacted on a bipartisan basis, the president's program has in fact been enacted. Whether you look at education or you look at support for families in raising their kids, or if you look at the environment, you see that the president's program has been enacted.
The important part of this isn't simply that we said so in February, but that if you look one year ago, one year ago, the conventional wisdom was that the struggle with the Republican majority, where we were so far apart on priorities, would inevitably lead to a clash and no results. And if it didn't lead to a clash, it would lead to the president having to retreat from his priorities and principles. But if you match up the president's budget and the Republican

plan of last year to what has actually happened, case after case, what the president has proposed has actually been enacted into law. So we're no longer at the stage of speculating as to whether or not we could achieve this. In fact, through the enactment of 15 separate bills, the president's plan is now the law of the land. Yeah?
Q Speaker Gingrich yesterday said he wouldn't be surprised if the president embraces eliminating the marriage tax penalty. Given the White House is looking at the budget surplus and ways in which perhaps the tax code could be changed, is that one option that you're entertaining?
MR. RAINES: Well, as all of us have tried to say, that we don't want to spend a surplus before its time. So we would prefer to see any surplus arrive before we had conclusions on how to spend it. But we are looking, as part of this policy process -- and this is the National Economic Council as well as OMB and the Council of Economic Advisers -- at a broad range of policy initiatives that the president can address in his State of the Union Address and in his budget. And so we're looking at a broad range of things. And I think that just as people were impressed by the array of proposals that he made this last January, I think they'll be impressed by his State of the Union speech this coming January.
Q But is that a legitimate issue in terms of tax fairness?
MR. RAINES: Well, there are a lot of issues in our tax system that the president has spoken to.

We have managed to deal with several of them in terms of the incentives in the tax system for education and for raising kids. But there are issues of tax equity that he is quite concerned about, and he has asked all of us to look at those issues as well as the issues of long-term entitlements to see what kinds of proposals we can make now to move closer to resolution on those issues.
Q When do you submit the budget?
MR. RAINES: First week of February.
Q You all are here for a reason. And I wonder if I could get somebody, Mr. Raines or Gene, to simply deal with this unasked but answered lame duck question straight up, because that's what this is all about, I assume. What's your impression of those assessments we've heard, that the fast track signals the end of all this success, and now we're into a different kind of period.
MR. RAINES: Well, I'm sort of the new guy here, but I remember when I was appointed to this office, people asked me, "Why are you going in there?" I mean, this was last April, and they said, "He's a lame duck, isn't he? The president -- we've got a Republican Congress. How in the world can anything happen?" I would just hold up the last year as testament that any time anyone calls this president a lame duck, he seems to have a very good following year. So I'm not concerned about that.
We have an enormous, an enormous opportunity to pursue the president's program. And I expect we'll be as successful in this coming year as we were in the last year. This past year has probably been the largest change in fiscal and domestic economic policy that we've seen in 30 years, and we're seeing the results in the economy that continues to grow and produce jobs at low inflation, we're seeing the results in improved fiscal policy, lower deficits. I think we couldn't have seen a better year, and I expect that we'll continue to see one. This is an opportunity for this entire administration to continue to produce. Indeed, I think if we focus on the 15 bills that I mentioned, and there could be another 15 I could have mentioned that are not appropriations bills, you would see this was one of the most productive sessions of Congress that we've had in a long time.
Q Are you staying on?

MR. RAINES: Me? Oh, absolutely. I mean, what else would you do other than be OMB director? (Laughter.) Q But there are so many rumors, every other day, that you're leaving.
MR. RAINES: Me??? No, I'm not -- I think you're confusing me with somebody else.
Q No. (Laughter.)
MR. RAINES: No, no, no. I have -- the OMB troops are here. We're going to produce the president's budget and we'll be here to give you all these wonderful briefings in the future.
Q Oh, God. (Laughter.)
Q A question for Gene, or for Janet, actually, about Korea, whether or not you're watching what's going on in Korea, and whether or not the U.S. will participate in any sort of bailout funds for Korea?

MR. SPERLING: Obviously -- obviously, we're always watching, particularly the Treasury Department. And, obviously, Deputy Secretary Summers will be going to Manila as part of the deputy finance ministers. So, you know, it's never -- we're always watching and it almost never does any good to say anything -- speculate or say anything about these situations.
Q Does the cut-off of the IMF funding create a problem for the administration in participating in discussions about it?
MR. SPERLING: I think Erskine's already answered it and -- so.
Q Gene, you're close to a lot of House Democrats. Is it your sense that some of the problems are related -- they're isolated strictly to the issue of trade, or are there broader concerns in the relationship that the White House should be moving to correct?
MR. SPERLING: I think trade in the House was always going to be a tough issue. And I think that it was -- it was always going to be difficult. There were real differences, real differences of opinion. And I don't think they have, you know, much to do with, you know, the timing of the president's term or anything else. That was always going to be a -- that was always going to be a tough battle. I think that there are plenty of things that are going to unite Democrats going forward. I think certainly education, certainly children's issues, including child care, certainly tobacco. So I think that there will be -- I think you'll see Democrats, you know, fighting together on many fronts.. But as Erskine said, when we -- in order to get something done, you ultimately have to be able to work in a bipartisan way. And whenever we see that opportunity, our goal is to -- you know, we're going to try to do that.
Q On the issue of fairness as it relates to entitlement reform -- I guess this is directed to the OMB director again -- are you speaking in terms of perhaps means-testing Medicare or something along that line, if you're concerned about future solvency and how to address that issue?
MR. RAINES: Well, as you know, the -- we have had -- we had discussions in the balanced budget negotiations about the structure of Medicare, and in that case, there were discussions about how premiums might be adjusted for those with the highest income, and those did not happen as part of that reform, although we did manage to extend the life of the Medicare system for 10 to 12 years. We're going to be appointing a Medicare commission next month, and these issues will be on their agenda for them to make recommendations to the president and Congress.
Okay?
MR. TOIV: Just one last thing. The president has signed into law -- Frank, you'll be interested to hear this. The president has signed into law the sixth and final continuing resolution for fiscal year 1998. This extends till the 26th of November. This gives the Congress enough time to process the bills

and get them over here, and gives the White House enough time to review the bills before the president acts on them.
Q Thank you.
MR. TOIV: And that's it.
END

LANGUAGE: ENGLISH

LOAD-DATE: November 15, 1997

LEVEL 1 - 68 OF 133 STORIES

Public Papers of the Presidents

November 14, 1997

CITE: 33 Weekly Comp. Pres. Doc. 1813

LENGTH: 235 words

HEADLINE: Checklist of White House Press Releases

HIGHLIGHT:
The following list contains releases of the Office of the Press Secretary that are neither printed as items nor covered by entries in the Digest of Other White House Announcements.

BODY:

Released November 8

Fact sheet: Gulf War Illnesses

Released November 10

Transcript of a press briefing by Press Secretary Mike McCurry

Released November 12

Transcript of a press briefing by Press Secretary Mike McCurry

Statement by Press Secretary Mike McCurry: Meeting With President Nazarbayev of Kazakstan

Released November 13

Transcript of a press briefing by Press Secretary Mike McCurry

Transcript of a press briefing by Special Envoy to Latin America Thomas F. (Mack) McLarty, NSC Senior Director for Inter-American Affairs Jim Dobbins, and Office of National Drug Control Policy Director Barry McCaffrey on the upcoming visit of President Ernesto Zedillo of Mexico

Released November 14

Transcript of a press briefing by Press Secretary Mike McCurry

Transcript of a press briefing by Chief of Staff Erskine Bowles, National Security Adviser Samuel Berger, Office of Management and Budget Director Franklin Raines, National Economic Council Director Gene Sperling, Council of Economic Advisers Chair Janet Yellen, and Domestic Policy Adviser Elena Kagan on Iraq and the first year of the President's second term

Transcript of remarks by President Zedillo at the signing ceremony for the OAS Hemispheric Arms Trafficking Convention

Fact sheet: OAS Convention Against Illicit Firearms Trafficking

LANGUAGE: ENGLISH

LOAD-DATE: December 15, 1997

LEVEL 1 - 71 OF 133 STORIES

The Associated Press

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November 10, 1997, Monday, PM cycle

SECTION: Washington Dateline

LENGTH: 644 words

HEADLINE: President convening meeting to consider responses to hate crimes

BYLINE: By SONYA ROSS, Associated Press Writer

DATELINE: WASHINGTON

BODY:

Noting an alarming rise in hate crimes but uncertain of how it happened, President Clinton called today for broader laws to penalize acts of violence based on gender, disability or sexual orientation.

The president kicked off a White House Conference on Hate Crimes by endorsing a plan by Sens. Edward Kennedy, D-Mass., and Arlen Specter, R-Pa., to make it illegal to injure someone because they are gay, disabled or a member of the opposite sex.

"All Americans deserve protection from hate," Clinton said. "We should make our current laws tougher to include all hate crimes that cause physical harm."

The president was interrupted by a heckler who shouted: "If you murder Vince Foster, it is not a hate crime." It was a reference to a longtime friend and former aide to Clinton who committed suicide in 1993.

"We have the First Amendment, even here," Clinton replied. "But I think the hate's coming from your way, not mine."

Clinton said Americans can no longer ignore "what happens when racial or ethnic or religious animosity joins with lawlessness." He announced measures that include allowing victims of housing-related hate crimes to seek monetary damages from their attackers and devoting up to 50 extra FBI agents and federal prosecutors toward enforcing hate crime laws.

"Anybody who thinks that in the world of today and tomorrow that he or she can hide from the kind of poison that we see in various places in our country is living in a dream world," Clinton said. "Whether we like it or not, our futures are bound together, and it is time we acted like it."

The conference, involving about 350 people, is an offshoot of the president's race relations initiative. It was convened in part to address concerns raised by gay and lesbian activists that are not directly covered by the race effort.

Besides law enforcement, the participants in today's conference were to include civil rights activists, educators, religious leaders and victims of

hate crimes.

The conference drew at least one note of protest. The National European American Society, a private advocacy group for whites, took exception to being excluded from the conference.

In a letter to FBI Director Louis Freeh, the group's researcher, Joseph Fallon, argued that while victims of hate crimes are identified by race, ethnicity or sexual orientation, the perpetrators of such crimes are labeled only by race. Fallon said that unfairly inflates the number of offenders classified as white, promoting "a false and inflammatory view of European Americans."

"If law enforcement agencies can identify a known victim of a hate crime as a Hispanic," Fallon wrote, "they can just as easily ascertain whether a known perpetrator of a hate crime is a Hispanic."

According to Justice Department statistics, 8,759 hate crimes were reported in 1996, compared with 7,947 reported in the previous year. White House officials said they are not sure whether the increase indicates that hate crimes are up or that they are reported better.

Race was a factor in 63 percent of all reported hate crimes, followed by religion, 13.9 percent; sexual orientation, 12 percent; and ethnic origin, 11 percent. The White House did not provide a breakdown by race.

The efforts Clinton was announcing today are designed to ensure that current laws are working and are leading to arrests, said Elena Kagan, deputy assistant to the president for domestic policy.

She noted that 30 percent of hate crime victims require hospitalization after an attack. By comparison, only 7 percent of victims of other crimes are hospitalized.

"So these crimes do tend to be serious and often violent," Kagan said.

Today's conference was following up on Clinton's landmark speech over the weekend before the Human Rights Coalition. It was the first time a sitting president publicly before a gay and lesbian group.

LANGUAGE: ENGLISH

LOAD-DATE: November 10, 1997

LEVEL 1 - 72 OF 133 STORIES

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Charleston Daily Mail

November 10, 1997, Monday

SECTION: News; Pg. P8B

LENGTH: 586 words

HEADLINE: Clinton targets hate crimes - President offering steps to curb sharp rise in reported cases

BODY:

WASHINGTON - Noting an alarming rise in hate crimes but uncertain of how it happened, President Clinton is gathering with law enforcement officials and others to consider how to confront the problem.

The president planned to kick off today's White House Conference on Hate Crimes by announcing a series of enforcement and prevention efforts.

The conference, involving about 350 people, is an offshoot of the president's race relations initiative. It was convened in part to address concerns raised by gay and lesbian activists that are not directly covered by the race effort.

"We're drawing a line against hate," said Maria Echaveste, White House director of public liaison.

"There should be no question anywhere around this country that we do not tolerate violence against a person because of what they look like, what they believe in, because of their sexual orientation."

Besides law enforcement, the participants in today's conference were to include civil rights activists, educators, religious leaders and victims of hate crimes.

The conference drew at least one note of protest. The National European American Society, a private advocacy group for whites, took exception to being excluded from the conference.

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"So these crimes do tend to be serious and often violent," Kagan said.

Today's conference was following up on Clinton's landmark speech over

the weekend before the Human Rights Coalition. It was the first time a sitting president publicly before a gay and lesbian group.

In an interview on NBC's "Meet the Press" aired Sunday, the president said that while dealing with the crime of gay-bashing is urgent, it may be easier to resolve if the root cause of all hate crimes is better addressed.

"We're going to deal with that not only against homosexuals, but against other groups of Americans," he said.

"The real problem in America is still continuing discrimination and fear and downright misunderstanding."

LOAD-DATE: November 12, 1997

legislative fact-finding, this inquiry serves both to educate members of the Senate and public and to enhance their ability to make reasoned choices. Open exploration of the nominee's substantive views, that is, enables senators and their constitutuents to engage in a focused discussion of constitutional values, to ascertain the values held by the nominee, and to evaluate whether the nominee possesses the values that the Supreme Court most urgently requires. These are the issues of greatest consequence surrounding any Supreme Court nomination (not the objective qualifications or personal morality of the nominee); and the process used in the Senate to serve the intertwined aims of education and evaluation ought to reflect what most greatly matters. n28 At least this is true in the absence of any compelling reasons, of prudence or propriety, to the contrary; later I will argue, as against Carter, that such reasons are nowhere evident.

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n28 To structure the process to avoid these issues would be akin to enacting a piece of legislation without trying to figure out or explain the legislation's principal consequences. I presume that no one would commend such an approach generally to Congress.

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The kind of inquiry that would contribute most to understanding and evaluating a nomination is the kind Carter would forbid: discussion first, of the nominee's broad judicial philosophy and, second, of her views on particular constitutional issues. By "judicial philosophy" (a phrase Carter berates without explanation), I mean such things as the judge's understanding of the role of courts in our society, of the nature of and values embodied in our Constitution, and of the proper tools and techniques of interpretation, both constitutional and statutory. A nominee's views on these matters could prove quite revealing: contrast, for example, how Antonin Scalia and Thurgood Marshall would have answered these queries, had either decided (which neither did) to [*936] share his thoughts with the Senate. But responses to such questions can--and have--become platitudinous, especially given the interrogators' scant familiarity with jurisprudential matters. n29 And even when a nominee avoids this vice, her statements of judicial philosophy may be so abstract as to leave uncertain, especially to the public, much about their real-world consequences. Hence the second aspect of the inquiry: the insistence on seeing how theory works in practice by evoking a nominee's comments on particular issues--involving privacy rights, free speech, race and gender discrimination, and so forth--that the Court regularly faces. It is, after all, how the Court functions with respect to such issues that makes it, in Carter's words, either a "salutary" or a "destructive" institution.

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n29 Carter often takes senators to task for failing to question nominees on constitutional theory with the appropriate level of sophistication and nuance. Although there is some truth to this criticism, it is mixed in Carter's account with a healthy measure of professorial condescension. Given the need to explain matters of constitutional theory to the public, at least a few senators do quite well. To the extent Carter's criticism has merit, the real problem is that senators now can expect answers only to high-blown questions of constitutional theory. Senators wander in the unfamiliar ground of constitutional theory

because they cannot gain access to the real, and very familiar, world of decisions and consequences. See Robert F. Nagel, Advice, Consent, and Influence, 84 Nw U L Rev 858, 863 (1990) ("Senators are certainly qualified to consider the impact of the law's abstractions.").

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A focus on substance in fact would cure some of the deficiencies in the confirmation process that Carter pinpoints. Carter says that the process turns "tiny ethical molehills into vast mountains of outrage" (p 8)--and he is right that we have seen these transformations. To note but one example, the amount of heat generated by a few senators (and the New York Times) concerning Justice Breyer's recusal practices far exceeded the significance of the issue. But this occurs precisely because we have left ourselves with nothing else to talk about. Rather than feeling able to confront directly the question whether Justice Breyer was too moderate, Senator Metzenbaum (and likewise the New York Times) fumed about an issue not nearly so important, either to them or to the public. Carter also says that participants in the process have attempted to paint nominees (particularly Judge Bork) as "radical monsters--far outside the mainstream of both morality and law" (p 127). But assuming, as seems true, that senators and others at times have engaged in distortion--it would be surprising if they hadn't--the marginalization of substantive inquiry that Carter favors only would encourage this practice. If evaluating (and perhaps rejecting) a nominee on the
[*937] basis of her substantive positions is appropriate only in the most exceptional cases, then the natural opponents of a nomination will have every incentive to--indeed, will need to--characterize the nominee as a "radical monster." The way to promote reasoned debate thus lies not in submerging substantive issues, but in making them the centerpiece of the confirmation process.

Further, a commitment to address substantive issues need not especially disadvantage scholars and others who have left a "paper trail," as the received wisdom intones and Carter accepts (p 38). The conventional view is that substantive inquiry promotes substantive ciphers; hence the hearings on Robert Bork led to the nomination of David Souter. But this occurs only because the cipher is allowed to remain so--only because substantive questioning is reserved for nominees who somehow have "opened the door" to it by once having committed a thought to paper. If questioning on substantive positions ever were to become the norm, the nominee lacking a publication record would have no automatic advantage over a highly prolific author. The success of a nomination in each case would depend on the nominee's views, whether or not previously expressed in a law review or federal reporter. Indeed, a confirmation process devoted to substantive inquiry might favor nominees with a paper trail, all else being equal. If there was any reason for the Senate to have permitted the testimonial demurrals of Justices Breyer and Ginsburg, it was that their views already were widely known, in large part through scholarship and reported opinions--and that those views were widely perceived as falling within the appropriate range. When this is so, extended questioning on legal issues may seem hardly worth the time and effort. n30 More available writing thus might lead to less required testimony in a confirmation process committed to substantive inquiry.

anti-ciphers (a.la. Fletcher)

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n30 The value of questioning in such circumstances is almost purely educative; the inquiry is a means not of discovering what the nominee thinks, in order to decide whether confirmation is warranted, but instead of conveying to members of the public what the nominee thinks, in order to give them both an understanding of the Court and a sense of participating in its composition. This function is itself important, see text accompanying note 28; it may provide a reason for holding substantive hearings even when senators can make, and have made, a decision as to a nominee's views prior to asking a single question (as senators could have and, for the most part, did about the views of Justices Breyer and Ginsburg). The need for such hearings, however, is much greater when (as was true for Justices Souter and Thomas) the prior record and writings of the nominee leave real uncertainty as to the nominee's legal philosophy.

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Finally, a confirmation process focused on substantive views usually will not violate, in the way Carter claims, norms of judi- [*938] cial impartiality or independence. Carter's "blank slate" notion of impartiality of judgment--"appointing Justices who make up their minds about how to vote before they hear any arguments rather than after is a threat," fusses Carter (p 56)--is an especial red herring. Judges are not partial in deciding cases because they have strong opinions, or previously have expressed strong opinions, on issues involved in those cases. If they were, the Supreme Court would have to place, say, Justice Scalia in a permanent state of recusal, given that in the corpus of his judicial opinions he has stated unequivocal views on every subject of any importance. And the Senate would have had to reject, on this ground alone, the nomination of Justice Ginsburg, who not only had written about abortion rights n31 --perhaps the most contentious issue in contemporary constitutional law--but who testified in even stronger terms as to her current views on that issue. n32 That both suggestions are absurd indicates that we do not yet, thankfully enough, consider either the possession or the expression of views on legal issues--even when strongly held and stated--to be a judicial disqualification.

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n31 See, for example, Ruth Bader Ginsburg, Some Thoughts on Autonomy and Equality in Relation to Roe v. Wade, 63 NC L Rev 375 (1985).

n32 See, for example, Confirmation Hearings for Ginsburg at 268-69 (cited in note 5).

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As for "judicial independence," Carter speaks as though the term were self-defining--and as though it meant that in appointing judges to a court, the President and Senate must refrain from considering what they will do once they arrive there. But this would be an odd kind of decision to leave in the hands of elected officials: far better, if such subjects were forbidden, to allow judges to name their own successors--or to cede the appointment power to some ABA committee. In fact, the placement of this decision in the political branches says something about its nature--says something, in particular, about its connection to the real-world consequences of judicial behavior. Indeed, contrary to Carter's view, the President and Senate themselves have a constitutional obligation to consider how an individual, as a judge, will read the Constitution: that is one part of what it means to preserve and protect the

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REVIEW: Confirmation Messes, Old and New

Elena Kagan*

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TEXT:
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The Confirmation Mess. Stephen L. Carter.

Basic Books, 1994. Pp xiii, 252.

What confirmation mess?

Stephen Carter's new book decries the state of the confirmation process, especially for Supreme Court nominees. "The confirmation mess," in Carter's (noninterrogatory) phrase, consists of both the brutalization and the politicization of the process by which the nation selects its highest judges. That process, Carter insists, is replete with meanness, dishonesty, and distortion. More, and worse, it demands of nominees that they reveal their views on important legal issues, thus threatening to limit the Court "to people who have adequately demonstrated their closedmindedness" (p xi). A misguided focus on the results of controversial cases and on the probable voting patterns of would-be Justices, Carter argues, produces a noxious and destructive process. Carter's paradigm case, almost needless to say, is the failed nomination of Robert Bork.

But to observers of more recent nominations to the Supreme Court, Carter's description must seem antiquated. President
[*920] Clinton's nominees, then-Judges Ruth Bader Ginsburg and Stephen Breyer, confronted no unfair or nasty opposition; to the contrary, their confirmation hearings became official lovefests. More important, both nominees felt free

Carter's critique
Bork proceedings as model / awkwardness of his and nominees' stubbornness to be opinions / cuts both ways

to decline to disclose their views on controversial issues and cases. They stonewalled the Judiciary Committee to great effect, as senators greeted their "nonanswer" answers with equanimity and resigned good humor. And even before the confirmation process became quite so cozy (which is to say, even before the turn toward nominating wellknown and well-respected moderates), the practice to which Carter most objects--the discussion of a nominee's views on legal issues--had almost completely lapsed. Justices Kennedy, Souter, and Thomas, no less than Justices Ginsburg and Breyer, rebuffed all attempts to explore their opinions of important principles and cases. Professor Carter, it seems, wrote his book too late. Where, today, is the confirmation mess he laments?

The recent hearings on Supreme Court nominees, though, suggest another question: might we now have a distinct and more troubling confirmation mess? If recent hearings lacked acrimony, they also lacked seriousness and substance. The problem was the opposite of what Carter describes: not that the Senate focused too much on a nominee's legal views, but that it did so far too little. Otherwise put, the current "confirmation mess" derives not from the role the Senate assumed in evaluating Judge Bork, but from the Senate's subsequent abandonment of that role and function. When the Senate ceases to engage nominees in meaningful discussion of legal issues, the confirmation process takes on an air of vacuity and farce, and the Senate becomes incapable of either properly evaluating nominees or appropriately educating the public. Whatever imperfections may have attended the Bork hearings pale in comparison with these recent failures. Out, then, with the new mess and in with the old! n1

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n1 And no, I haven't changed my mind since, several months after I drafted this Review, the Senate turned Republican and Orrin Hatch assumed the chairmanship of the Judiciary Committee. The conclusion of this Review still holds--even if I am no longer quite so sanguine about it.

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I. Carter's Critique

Carter depicts a confirmation process out of control--a process in which we attend to the wrong things in the wrong manner, in which we abjure reasoned dialogue about qualifications in favor of hysterical rantings about personalities and politics. Car- [*921] ter is no partisan in this description; he blames Republicans and Democrats, right and left alike (pp 10, 142). Similarly, Carter takes no sides as between the President and the Senate; he assumes that both ought to evaluate judicial candidates by the same criteria and argues that both have performed poorly this evaluative function (pp 29-30). Carter views the current mess as having deep roots. He refers often to the attempt of segregationist senators to defeat the nomination of Thurgood Marshall (pp 62-63) and describes as well some yet more distant confirmation battles (pp 65-73). Although he focuses on the nomination and confirmation of Supreme Court Justices, he buttresses his case with discussion of the recent travails of Lani Guinier (pp 37-44) and Zoe Baird (pp 25-28). Always, though, the face in the foreground is Robert Bork's. Carter's understanding of the Bork hearings informs--sometimes explicitly, sometimes not--the whole of his argument and analysis.

Carter identifies two cardinal flaws in the confirmation process. The first concerns the absence of "honesty" and "decency" (p ix). Here Carter laments the deterioration of public debate over nominations into "the intellectual equivalent of a barroom brawl" (p x). He catalogues the ways in which opponents demonize nominees and distort their records, referring to the many apparently purposeful misreadings of the writings of Robert Bork (pp 45-52) and Lani Guinier (pp 39-44). He describes the avid search for disqualifying factors, whether of a personal kind (for example, illegal nannies) or of a professional nature (for example, ill-conceived footnotes in scholarly articles) (pp 25, 42-43). He deplores "smears" and "soundbites" (p 206)--the way in which media coverage turns nominations into extravaganzas, the extent to which public relations strategy becomes all-important. And in a semimystical manner, he castigates our refusal to forgive sin, accept redemption, and acknowledge the complexity of human beings, including those nominated to high office (pp 183-84).

The second vice of the confirmation process, according to Carter, lies in its focus on a nominee's probable future voting record. In Carter's portrayal, the President, Senate, press, interest groups, and public all evaluate nominees primarily by plumbing their views on controversial legal issues, such as the death penalty or abortion (pp 54-56). Carter's paradigmatic case, again, is Robert Bork, a judge of superior objective qualifications whose views on constitutional method and issues led to the defeat of his nomination. Carter is "struck" by the failure of participants in the Bork hearings to consider "that trying to get him to tell the
[*922] nation how he would vote on controversial cases if confirmed might pose a greater long-run danger to the Republic than confirming him" (p x). This danger, Carter avers, arises from the damage such inquiry does to judicial independence. Examination of a nominee's views on contested constitutional matters, Carter claims, gives the public too great a chance to influence how the judiciary will decide these issues, precisely by enabling the public to reject a nominee on grounds of substance (p 115). At the same time, such inquiry undermines the eventual Justice's ability (and the public's belief in the Justice's ability) to decide cases impartially, based on the facts at issue and the arguments presented, rather than on the Justice's prior views or commitments (p 56).

The failures of the confirmation process, Carter urges, ultimately have less to do with rules and procedures than with public "attitudes"--specifically, "our attitudes toward the Court as an institution and the work it does for the society" (p 188). We view the Court as a dispenser of decisions--as to individual cases of course, but also as to hotly disputed public issues. Our evaluation of the Court coincides with our evaluation of the results it reaches (p 57). Because we see the Court in terms of results, we yearn to pack it with Justices who will always arrive at the "right" decisions. And because the decisions of the Court indeed have consequence, we feel justified, as we pursue this project, in resorting to "shameless exaggeration" and misleading rhetoric (p 51). The key to change, according to Carter, lies in viewing the Court in a different--a more "mundane and lawyerly"--manner (p 206). And although Carter is unclear on the point, this seems to mean judging the Court less in terms of the results it reaches than in terms of its level of skill and craftsmanship.

In keeping with this analysis, Carter advocates a return to confirmation proceedings that focus on a nominee's technical qualifications--in other words, his legal aptitude, skills, and experience (pp 161-62). At times, Carter

suggests that this set of qualifications constitutes the only proper criterion of judgment (pp 187-88). But Carter in the end draws back from this position, which he admits would provide no lever to oppose a nominee, otherwise qualified, who wished to overturn a case like Brown v Board n2 (pp 119-21). Carter urges, as a safeguard against extremism of this kind, an inquiry into whether a nominee subscribes to the "firm moral consensus" of society (p 121). The Senate, Carter writes, should resolve this question by "undertaking moral
[*923] inquiry, both into the world view of the nominee and, if necessary, into the nominee's conduct" (p 124). This inquiry, in other words, would involve a determination of whether a nominee has the "right moral instincts" and whether his "personal moral decisions seem generally sound" (p 152). Carter views this inquiry as wholly distinct from an approach that asks about a nominee's legal views or philosophy (id). He suggests, for example, that the Senate ask a nominee not whether discriminatory private clubs violate the Constitution, but whether "the nominee has belonged to a club with such policies" (id). An assessment of moral judgment alone, independent of legal judgment, would combine with an evaluation of legal aptitude to form Carter's ideal confirmation process.

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n2 Brown v Board of Education, 347 US 483 (1954).

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II. Current Events

Does Carter's critique of the confirmation process ring true? It might have done so eight years ago. It ought not to do so now.

Carter tries to update his book, to make it more than a comment on the Bork proceedings. He invokes the nomination, eventually withdrawn, of Lani Guinier to serve as Assistant Attorney General for Civil Rights (pp 37-44). Consider, Carter implores us, the distortion of Guinier's academic work, initially by her many enemies, finally and fatally by some she thought friends. Do not the exaggeration, name-calling, and hyperbole that surrounded the discussion of Guinier's views prove the existence of a confirmation mess? And Carter then invokes the battle over the nomination of Clarence Thomas to serve as a Supreme Court Justice (pp 138-42). Recall, Carter tells us (and it is not hard to do), the intensity and wrath surrounding that battle--the fury with which the partisans of Thomas and Anita Hill, respectively, exchanged charge and countercharge and bloodied previously unsullied reputations. Does not this episode, this display of raw emotion and this unrelenting focus on personal traits and behavior, demonstrate again the existence of a confirmation mess?

Well, no--not on either count, at least if the term "confirmation mess" signifies a problem both specific to and common among confirmation battles. Carter is right to note the distortions in the debate over Guinier's prior writings; but he is wrong to think they derived from a special attribute of the confirmation process. It is unfortunate but true that distortions of this kind mar public debate on all important issues. Professor Carter, meet Harry and Louise; they may convince you that the Guinier episode is less a part of a confirmation mess than of a government
[*924] mess, the sources and effects of which lie well beyond your book's

purview. And the Thomas incident, proposed as exemplar or parable, suffers from the converse flaw. That incident is unique among confirmation hearings and, with any reasonable amount of luck, will remain so. The way the Senate handled confidential charges of a devastating nature on a subject at a fault line of contemporary culture reveals very little about the broader confirmation process.

Indeed, Carter's essential critique of the confirmation process--that it focuses too much on the nominee's views on disputed legal issues--applies neither to the Guinier episode nor to the Thomas hearings. Carter concedes that the Senate ought to inquire into the views and policies of nominees to the executive branch, for whom "independence" is no virtue (p 32). The public debate over Guinier's articles (problems of distortion to one side) thus fails to implicate Carter's concern with the focus of the process on legal issues. And so too of the Thomas hearings. Carter's own description of the "mess" surrounding that nomination highlights the Senate's inquiry into the charges of sexual harassment and not its investigation of the nominee's legal opinions (pp 13345). The emphasis is not surprising. No one can remember the portion of the hearings devoted to Justice Thomas's legal views, and for good reason: Justice Thomas, or so he assured us, already had "stripped down like a runner" and so had none to speak of. n3 The apparent "mess" of the Thomas hearings thus arose not from the exploration of legal philosophy that Carter abjures, but instead from the inquiry into moral practice and principle that he recommends to the Senate as an alternative. n4

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n3 Clarence Thomas, as quoted in Linda Greenhouse, The Thomas Hearings: In Trying to Clarify What He Is Not, Thomas Opens Questions of What He Is, NY Times A19 (Sept 13, 1991).

n4 The same is true of the controversy surrounding the nomination of Zoe Baird as Attorney General. As Carter discusses, Baird's nomination ran into trouble because she had hired illegal immigrants and then failed to pay social security taxes on their salaries (pp 25-28). Here, too, the dispute arose from an inquiry into the nominee's personal conduct, rather than her views and policies.

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What, then, of the "confirmation mess" as Carter defines it--the threat to judicial independence resulting from a misplaced focus on the nominee's legal views and philosophy? Lacking support for his argument in the recent controversies surrounding Guinier and Thomas, Carter must recede to the Bork hearings for a paradigm. But time has overtaken this illustration: no subsequent nomination fits Carter's Bork-based model
[*925] any better than do the nominations of Guinier or Thomas. Not since Bork (as Carter himself admits) has any nominee candidly discussed, or felt a need to discuss, his or her views and philosophy (pp 57-59). It is true that in recent hearings senators of all stripes have proclaimed their prerogative to explore a nominee's approach to constitutional problems. The idea of substantive inquiry is accepted today to a far greater extent than it was a decade ago. n5 But the practice of substantive inquiry has suffered a precipitous fall since the Bork hearings, so much so that today it hardly deserves the title "practice" at all. To demonstrate this point, it is only necessary to review the recent hearings of Ruth Bader Ginsburg and Stephen Breyer--one occurring before, the other after,

publication of Carter's book. Consider the way these then-judges addressed issues of substance and then ask of what Carter's "confirmation mess" in truth consists.

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n5 Senator Joseph Biden made this point near the beginning of the Ginsburg hearings. After listening, in turn, to Senators Hatch, Kennedy, Metzenbaum, and Simpson expound on the need to question the nominee about her judicial philosophy, Senator Biden said: "I might note it is remarkable that seven years ago the hearing we had here was somewhat more controversial, and I made a speech that mentioned the 'p' word,
philosophy, that we should examine the philosophy, and most . . . said that was not appropriate. At least we have crossed that hurdle. No one is arguing that anymore." Nomination of Ruth Bader Ginsburg, to be Associate Justice of the Supreme Court of the United States, Hearings before the Senate Committee on the Judiciary, 103d Cong, 1st Sess 21 (July 20-23, 1993) ("Confirmation Hearings for Ginsburg").

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Justice Ginsburg's favored technique took the form of a pincer movement. When asked a specific question on a constitutional issue, Ginsburg replied (along Carter's favored lines) that an answer might forecast a vote and thus contravene the norm of judicial impartiality. Said Ginsburg: "I think when you ask me about specific cases, I have to say that I am not going to give an advisory opinion on any specific scenario, because . . . that scenario might come before me." n6 But when asked a more general question, Ginsburg replied that a judge could deal in specifics only; abstractions, even hypotheticals, took the good judge beyond her calling. Again said Ginsburg: "I prefer not to . . . talk in grand terms about principles that have to be applied in concrete cases. I like to reason from the specific case." n7 Some room may have remained in theory between these two responses; perhaps a senator could learn something about Justice Ginsburg's legal
[*926] views if he pitched his question at precisely the right level of generality. But in practice, the potential gap closed to a sliver given Ginsburg's understanding of what counted as "too specific" (roughly, anything that might have some bearing on a case that might some day come before the Court) and what counted as "too general" (roughly, anything else worthy of mention).

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n6 Id at 184.

n7 Id at 180. See also id at 333 ("I can't answer an abstract issue. I work from a specific case based on the record of that case, the briefs that are presented, the parties' presentations, and decide the case in light of that record, those briefs. I simply cannot, even in areas that I know very well, answer an issue abstracted from a concrete case.").

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So, for example, in a colloquy with Senator Feinstein on the Second Amendment, Ginsburg first confronted the question whether she agreed with a

fifty-four-year-old Supreme Court precedent n8 on the subject and with the interpretation that lower courts unanimously had given it. Replied Ginsburg: "The last time the Supreme Court spoke to this question was 1939. You summarized what that was, and you also summarized the state of law in the lower courts. But this is a question that may well be before the Court again . . . and because of where I sit it would be inappropriate for me to say anything more than that." n9 The Senator continued: if the Judge could not discuss a particular case, even one decided fifty years ago, could the Judge say something about "the methodology she might apply" and "the factors she might look at" in determining the validity of that case or the meaning of the Second Amendment? n10 "I wish I could Senator," Ginsburg replied, "but . . . apart from the specific context I really can't expound on it." n11 "Why not?" the Senator might have asked. Because the question functioned at too high a level of abstraction: "I would have to consider, as I have said many times today, the specific case, the briefs and the arguments that would be made." n12 Many times indeed. So concluded a typical exchange in the confirmation hearing of Justice Ginsburg.

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n8 United States v Miller, 307 US 174 (1939).

n9 Confirmation Hearings for Ginsburg at 241-42 (cited in note 5).

n10 Id at 242.

n11 Id.

n12 Id.

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Justice Breyer was smoother than Justice Ginsburg, but ultimately no more forthcoming. His favored approach was the "grey area" test: if a question fell within this area--if it asked him to comment on issues not yet definitively closed (and therefore still a matter of interest)--he must, he said, decline to comment. n13 Like Justice Ginsburg, he could provide personal anec- [*927] dotes--the relevance of which were open to question. He could state settled law--but not whether he agreed with the settlement. He could explain the importance and difficulty of a legal issue--without suggesting which important and difficult resolution he favored. What he could not do was to respond directly to questions regarding his legal positions. Throughout his testimony, Breyer refused to answer not merely questions concerning pending cases, but questions relating in any way to any issue that the Supreme Court might one day face.

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n13 Confirmation Hearings for Stephen G. Breyer to be an Associate Justice of the United States Supreme Court, Senate Committee on the Judiciary, 103d Cong, 2d Sess 85 (July 12, 1994) (Miller Reporting transcript). Sometimes Justice Breyer referred to this test as the "up in the air" test. So, for example, when Chairman Biden asked him to comment on the burden imposed on the government to sustain economic regulation,
Breyer noted that "this is a matter . . . still up in the air." When the Chairman replied "that is why I am trying to get you to talk about it, because

you may bring it down to the ground," Justice Breyer repeated that "I have a problem talking about things that are up in the air." Id at 55 (July 12, 1994).

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I do not mean to overstate the case; Justice Ginsburg and Justice Breyer did provide snippets of information. Both Justices discussed with candor and enthusiasm issues on which they previously had written. So the Judiciary Committee and public alike learned much about Justice Ginsburg's current views on gender discrimination and abortion and about Justice Breyer's thoughts on regulatory policy. Both Justices, too, allowed an occasional glimpse of what might be termed, with some slight exaggeration, a judicial philosophy. A close observer of the hearings thus might have made a quick sketch of Justice Ginsburg as a cautious, incrementalist common lawyer and of Justice Breyer as an antiformalist problem solver. (But how much of this sketch in fact would have derived from preconceptions of the Justices, based on their judicial opinions and scholarly articles?) If most of the testimony disclosed only the insignificant and the obvious--did anyone need to hear on no less than three separate occasions that Justice Ginsburg disagreed with Dred Scott? n14 --a small portion revealed something of the nominee's conception of judging.

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n14 Dred Scott v Sanford, 60 US 393 (1856). See, for example, Confirmation Hearings for Ginsburg at 126, 188, 270 (cited in note 5).

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Neither do I mean to deride Justices Ginsburg and Breyer for the approach each took to testifying. I am sure each believed (along with Carter) that disclosing his or her views on legal issues threatened the independence of the judiciary. (It is a view, I suspect, which for obvious reasons is highly correlated with membership in the third branch of government. n15 ) More, I am sure
[*928] both judges knew that they were playing the game in full accordance with a set of rules that others had established before them. If most prior nominees have avoided disclosing their views on legal issues, it is hard to fault Justice Ginsburg or Justice Breyer for declining to proffer this information. And finally, I suspect that both appreciated that, for them (as for most), the safest and surest route to the prize lay in alternating platitudinous statement and judicious silence. Who would have done anything different, in the absence of pressure from members of Congress?

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n15 In 1959, lawyer William Rehnquist wrote an article criticizing the Senate's consideration of the nomination of Charles Evans Whittaker to the Supreme Court. The Senate, he stated, had "succeeded in adducing only the following facts: . . . proceeds from skunk trapping in rural Kansas assisted him in obtaining his early education; . . . he was the first Missourian ever appointed to the Supreme Court; and since he had been born in Kansas but now resided in Missouri, his nomination honored two states." William Rehnquist, The Making of a Supreme Court Justice, Harv L Rec 7, 8 (Oct 8, 1959). Rehnquist specifically complained about the Senate's failure to ask Justice Whittaker about his views on equal protection and due process. Id at 10. By

founding instrument. The value of judicial independence does not command otherwise, however much Carter tries to convert this concept into a thought-suppressing mantra. The judicial independence that we should focus on protecting resides primarily in the inability of political officials, once having placed a person on a court, to interfere with what she [*939] does there. That seems a fair amount of independence for any branch of government.

I do not mean to argue here that the President and Senate may ask, and a nominee (or potential nominee) must answer, any question whatsoever. Some kinds of questions, as Carter contends, do pose a threat to the integrity of the judiciary. Suppose, for example, that a senator asked a nominee to commit herself to voting a certain way on a case that the Court had accepted for argument. We would object--and we would be right to object--to this question, on the ground that any commitment of this kind, even though unenforceable, would place pressure on the judge (independent of the merits of the case) to rule in a certain manner. This would impede the judge's ability to make a free and considered decision in the case, as well as undermine the credibility of the decision in the eyes of litigants and the public. And once we accept the impermissibility of such a question, it seems we have to go still further. For there are ways of requesting and making commitments that manage to circumvent the language of pledge and promise, but that convey the same meaning; and these scantly veiled expressions pose dangers almost as grave as those of explicit commitments to the fairness, actual and perceived, of the judicial process.

But we do not have to proceed nearly so far down the road of silence as Carter and recent nominees would take us--to a place where comment of any kind on any issue that might bear in any way on any case that might at any time come before the Court is thought inappropriate. n33 There is a difference between a prohibition on making a commitment (whether explicit or implicit) and a prohibition on stating a current view as to a disputed legal question. The most recent drafters of the Model Code of Judicial Conduct acknowledged just this distinction when they adopted the former prohibition in place of the latter for candidates for judicial office. n34 Of course, there will be hard cases--cases in which reasonable people may disagree as to whether a nominee's statement of opinion manifests a settled intent to decide in a [*940] particular manner a particular case likely to come before the Court. But many easy cases precede the hard ones: a nominee can say a great, great deal before making a statement that, under this standard, nears the improper. A nominee, as I have indicated before, usually can comment on judicial methodology, on prior caselaw, on hypothetical cases, on general issues like affirmative action or abortion. To make this more concrete, a nominee can do . . . well, what Robert Bork did. If Carter and recent nominees are right, Judge Bork's testimony violated many times a crucial norm of judicial conduct. In fact, it did no such thing; indeed it should serve as a model.

Bork as model

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n33 For a similar conclusion, see Steven Lubet, Advice and Consent: Questions and Answers, 84 Nw U L Rev 879 (1990).

n34 See pp 96-97. Compare Model Code of Judicial Conduct Canon 5(A)(3)(d) (1990), with Code of Judicial Conduct Canon 7(B)(1)(c) (1972). See generally Buckley v Illinois Judicial Inquiry Board, 997 F2d 224, 230 (7th Cir 1993) (Judge Posner noting the difference between these two kinds of prohibitions

1986, when he appeared before the Senate Judiciary Committee as a sitting Associate Justice and a nominee for Chief Justice, Rehnquist had changed his mind about the propriety of such inquiries.

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And of such pressure, there was little evidence. To be sure, an occasional senator complained of the dearth of substantive comment, most vocally during the preternaturally controlled testimony of Justice Ginsburg. Chairman Biden and Senator Spector in particular expressed impatience with the game as played. Spector warned that the Judiciary Committee one day would "rear up on its hind legs" and reject a nominee who refused to answer questions, for that reason only (p 54). And Biden lamented that no "nominee would ever satisfy me in terms of being as expansive about their views as I would like." n16 But for the most part, the senators acceded to the reticence of the nominees before them with good grace and humor. Senator Simon sympathetically commented to Justice Breyer: "You are in a situation today . . . where you do not want to offend any of us, and I understand that. I hope the time will come when you may think it appropriate . . . to speak out on this issue." n17 Senator DeConcini similarly remarked to Justice Ginsburg that it was "fun" and "intellectually challenging"--a sort of chess game in real life--for a senator to "try[ ] to get inside the mind of a nominee . . . without violating their oath and their potential conflicts . . . ." n18 And of course no one voted against either nominee
[*929] on the ground that he or she had declined to answer questions relating to important legal issues.

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n16 Confirmation Hearings for Ginsburg at 259 (cited in note 5). In a similar vein, Senator Cohen accused Justice Ginsburg of resorting to "delphic ambiguity" in her responses. Senator Cohen recalled the story of the general who asked the oracle what would occur if he (the general) invaded Greece. When the oracle responded that a great army would fall, the general mounted the invasion--only to discover that the great army to which the oracle had referred was his own. See id at 220.

n17 Confirmation Hearings for Breyer at 77-78 (July 13, 1994) (cited in note 13).

n18 Confirmation Hearings for Ginsburg at 330 (cited in note 5).

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The ease of these proceedings in part reflected the nature of both the nominations and the political context. First replace divided government with single-party control of the White House and Senate. Now posit a President with an ambitious legislative agenda, requiring him to retain support in Congress, but with no judicial agenda to speak of. n19 Assume, as a result, that this President nominates two clear moderates, known and trusted by leading senators of both the majority and the minority parties. Throw in that each nominee is a person of extraordinary ability and distinction. Finally, add that the Court's rulings on some of the hot-button issues of recent times--most notably abortion, but also school prayer and the death penalty--today seem relatively stable. This is a recipe--now proved successful--for confirmation order, exactly opposite

to the state of anarchy depicted by Carter. At the least, this suggests what David Strauss has argued in another review of Carter's book: n20 that the culprit in Carter's story is nothing so grand and seemingly timeless as the American public's attitudes toward the courts; that the cause of Carter's "mess" is the simple attempt of the Reagan and Bush administrations to impose an ideologically charged vision of the judiciary in an unsympathetic political climate.

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n19 See David A. Strauss, Whose Confirmation Mess?, Am Prospect 91, 96 (Summer 1994), reviewing Carter, The Confirmation Mess. Herein lies one of the mysteries of modern confirmation politics: given that the Republican Party has an ambitious judicial agenda and the Democratic Party has next to none, why is the former labeled the party of judicial restraint and the latter the party of judicial activism?

n20 Id at 92, 95-96.

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But even this view overstates the longevity of the "confirmation mess," as Carter defines it. That so-called mess in fact ended long before President Clinton's nominations; it ended right after it began, with the defeat of the nomination of Robert Bork. The Senate overwhelmingly approved the nominations of Justices Kennedy and Souter after they gave testimony (or rather, nontestimony) similar in almost all respects to that of Justices Ginsburg and Breyer. n21 This was so even though the Senate knew little about Justice Kennedy and still less about Justice
[*930] Souter prior to the hearings--an ignorance which should have increased the importance of their testimony. (Just ask Senator Hatch whether he now wishes he had insisted that Justice Souter be more forthcoming.) The Senate also confirmed the nomination of Justice Thomas after his substantive testimony had become a national laughingstock. Take away the weakness of Justice Thomas's objective qualifications and the later charges of sexual harassment (inquiry into which Carter approves), and the Justice's Pinpoint, Georgia, testimonial strategy would have produced a solid victory. n22 This history offers scant support for Carter's lamentation that the confirmation process has become focused on a nominee's substantive testimony and obsessed with the nominee's likely voting record. So what, excepting once again Robert Bork, is Carter complaining about?

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n21 Prior to nominating Justice Kennedy, the Reagan White House nominated Judge Douglas Ginsburg, only soon to withdraw the nomination. The decision to pull the nomination followed revelations about Judge Ginsburg's prior use of marijuana. Carter barely mentions this nomination. Carter, however, generally considers the prior illegal conduct of a nominee to be a meet subject for investigation, although not necessarily a sufficient reason for disqualification (pp 169-77).

n22 The margin of victory would have increased yet further had Thomas not made controversial statements, before his nomination, on subjects such as abortion and affirmative action. Carter is unclear as to whether (or how)

participants in the confirmation process ought to take account of such prenomination statements. If Carter does approve of an evaluation of the substantive views expressed by a nominee in prior speeches or writings, then virtually all of the votes cast against Justice Thomas would have derived from the consideration of factors that Carter himself deems relevant to the process.

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If Carter is right as to what makes a "confirmation mess," he had no reason to write this book--or at least to write it when he did. Senators today do not insist that any nominee reveal what kind of Justice she would make, by disclosing her views on important legal issues. Senators have not done so since the hearings on the nomination of Judge Bork. They instead engage in a peculiar ritual dance, in which they propound their own views on constitutional law, but neither hope nor expect the nominee to respond in like manner. Under Carter's criteria, this process ought to count as nothing more than a harmless charade, not as a problem of any real import. It is only if Carter's criteria are wrong--only if the hearings on Judge Bork ought to serve less as a warning than as a model--that we now may have a mess to clean up.

III. Critiquing Carter

What, then, of Carter's vision of the confirmation process? Should participants in the process accede to Carter's view of how to select a Supreme Court Justice? Or should they adopt a different, even an opposite, model?

One preliminary clarification is necessary. Carter's argument [*931] against a Bork-like confirmation process focuses entirely on the scope of the inquiry, not at all on the identity (executive or legislative) of the inquirer. This is an important point because other critics of the Bork hearings have rested their case on a distinction between the roles of the President and the Senate; they have argued that in assessing the substantive views of the nominee, the Senate ought to defer to the President. n23 Carter (I think rightly) rejects this claim, adopting instead the position that the Senate and the President have independent responsibility to evaluate, by whatever criteria are appropriate, whether a person ought to serve as a Supreme Court Justice. n24 Carter's argument concerns the criteria that the participants--that is, all the participants--in the confirmation process ought to use to make this decision. It is thus Carter's contention not merely that the Senate ought to forgo inquiry into a nominee's legal views and philosophy, but also that the President ought to do so--in short, that such inquiry, by whomever conducted, crosses the bounds of propriety. (And although Carter does not address the issue, his arguments apply almost equally well to an investigation of the views expressed in a person's written record as to an inquiry into the person's views by means of an oral examination.)

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n23 See, for example, John O. McGinnis, The President, the Senate, the Constitution, and the Confirmation Process: A Reply to Professors Strauss and Sunstein, 71 Tex L Rev 633, 636, 653-54 (1993).

n24 This position has become common in the literature on the confirmation process. See David A. Strauss and Cass R. Sunstein, The Senate, the Constitution, and the Confirmation Process, 101 Yale L J 1491 (1992). See also

Charles L. Black, Jr., A Note on Senatorial Consideration of Supreme Court Nominees, 79 Yale L J 657 (1970). Because Carter and I agree on the issue, and because the relevant arguments have been stated fully elsewhere, this Review addresses the issue only indirectly.

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This analysis raises some obvious questions. If substantive inquiry is off-limits, on what basis will the President and Senate exercise their respective roles in the appointments process? Will this limited basis prove sufficient to evaluate and determine whether a nominee (or would-be nominee) should sit on the Court? Will an inquiry conducted on this basis appropriately educate and engage the public as to the Court's decisions and functions? Some closer exploration of Carter's views, as they relate to this set of issues, will illustrate at once the inadequacy of his proposals and the necessity for substantive inquiry of nominees, most notably in Senate hearings.

Carter argues that both the President and the Senate ought to pay close attention to a nominee's (or a prospective nominee's) [*932] objective qualifications. There may be, as Carter notes, some disagreement as to what these are (pp 161-62). Must, for example (as Carter previously has argued n25 ), a nominee have served on another appellate court--or may (as I believe) she demonstrate the requisite intelligence and legal ability through academic scholarship, the practice of law, or governmental service of some other kind? Carter writes that we must form a consensus on these issues and then rigorously apply it--so that the Senate, for example, could reject a nomination on the simple ground that the nominee lacks the qualifications to do the job (p 162). On this point, Carter surely is right. It is an embarrassment that the President and Senate do not always insist, as a threshold requirement, that a nominee's previous accomplishments evidence an ability not merely to handle but to master the "craft" aspects of being a judge. In this respect President Clinton's appointments stand as models. No one can say of his nominees, as no one ought to be able to say of any, that they lack the training, skills, and aptitude to do the work of a judge at the highest level.

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n25 See Stephen Carter, The Confirmation Mess, 101 Harv L Rev 1185, 1188 (1988).

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But Carter cannot think--and on occasion reveals he does not think--that legal ability alone ought to govern, or as a practical matter could govern, either the President's or the Senate's decision. If there was once a time when we all could agree on the single "best" nominee--as, some say, all agreed on Cardozo--that time is long past, given the nature of the work the Supreme Court long has accomplished. As Carter himself concedes, most of the cases the Supreme Court hears require more than the application of "mundane and lawyerly" skills; these cases raise "questions requiring judgment in the finding of answers, and in every exercise of interpretive judgment, there comes a crucial moment when the interpreter's own experience and values become the most important data" (p 151). Carter offers as examples flag burning, segregated schools, and executive power (p 151), and he could offer countless more; it should be no surprise by now that many of the votes a Supreme Court Justice casts have little to do

with technical legal ability and much to do with conceptions of value. Imagine our response if President Clinton had announced that he had chosen his most recent nominee to the Supreme Court by conducting a lottery among Richard Posner, Stephen Breyer, and Laurence Tribe because they seemed to him the nation's three smartest lawyers. If we are all realists now, as the saying goes, it is in the sense that we understand a choice among
[*933] these three to have large consequences and that we would view a lottery among them as demonstrating a deficient understanding of the judicial process.

Carter recommends, in light of the importance of a judge's values, that the President and Senate augment their inquiry into a person's legal ability with an investigation of the person's morality. He says that "the issue, finally, is . . . what sort of person the nominee happens to be" (p 151); and he asks the President and Senate to determine whether a person "possesses the right moral instincts" by investigating whether her "personal moral decisions seem generally sound" (p 152). Here, too, it is easy to agree with Carter that this trait ought to play some role in the appointments process. Moral character, and the individual acts composing it, matter for two reasons (although Carter does not disentangle them). First, elevating a person who commits acts of personal misconduct (for example, sexual harassment) to the highest legal position in the nation sends all the wrong messages about the conduct that we as a society value and honor. Second, moral character, as Carter recognizes, sometimes will be "brought to bear on concrete cases," so that "the morally superior individual" may also "be the morally superior jurist," in the sense that her decisions will have a "salutary rather than destructive effect on the Court and the country" (p 153).

But focusing the confirmation process on moral character (even in conjunction with legal ability) would prove a terrible error. For one thing, such a focus would aggravate, rather than ease, the meanness that Carter rightly sees as marring the confirmation process (and, one might add, much of our politics). The "second" hearing on Clarence Thomas ought to have taught at least that lesson. When the subject is personal character, rather than legal principle, the probability, on all sides, of using gutter tactics exponentially increases. There are natural limits on the extent to which debate over legal positions can become vicious, hurtful, or sordid--but few on the extent to which discussion of personal conduct can descend to this level.

More important, an investigation of moral character will reveal very little about the values that matter most in the enterprise of judging. What makes the Richard Posner different from the Stephen Breyer different from the Laurence Tribe is not moral character or behavior, in the sense meant by Carter; I am reasonably sure that each of these persons is, in his personal life and according to Carter's standard, a morally exemplary individual. What causes them to differ as constitutional interpreters is
[*934] something if not completely, then at least partly, severable from personal morality: divergent understandings of the values embodied in the Constitution and the proper role of judges in giving effect to those values. Disagreement on these matters can cause (and has caused), among the most personally upright of judges, disagreement on every concrete question of constitutional law, including (or especially) the most important. It is therefore difficult to understand why we would make personal moral standards the focal point of a decision either to nominate or to confirm a person as a Supreme Court Justice. n26

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n26 It is also true that a person may engage in immoral behavior without allowing that immorality to influence his judicial decision making. Our government is replete with womanizers who always vote in sympathy with the goal of sexual equality; our Court has seen a former Ku Klux Klan member who well understood the constitutional evil of stateimposed racism. Perhaps the (im)moral conduct in these cases is all that matters; perhaps, in any event, we ought to rely on the (im)moral conduct as a solid, even if not a foolproof, indicator of future judicial behavior. But consideration of these cases may increase further our reluctance to make moral character the critical determinant of confirmation decisions.

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What must guide any such decision, stated most broadly, is a vision of the Court and an understanding of the way a nominee would influence its behavior. This vision largely consists of a view as to the kinds of decisions the Court should issue. The critical inquiry as to any individual similarly concerns the votes she would cast, the perspective she would add (or augment), and the direction in which she would move the institution. n27 I do not mean to say that the promotion of "craft values"--the building of a Court highly skilled in legal writing and reasoning and also finely attuned to pertinent theoretical issues--is at all unimportant. Justice Scalia by now has challenged and amused a decade's worth of law professors, which is no small thing if that is your profession; more seriously, the quality and intelligence (even if ultimate wrong-headedness) of much of Justice Scalia's work has instigated a debate that in the long run can only advance legal inquiry. But the bottom-line issue in the appointments process must concern the kinds of judicial decisions that will serve the country and, correlatively, the effect the nominee will have on the Court's decisions. If that is too results oriented
[*935] in Carter's schema, so be it--though even he notes that a critical question is whether the Court's decisions will have a "salutary" or a "destructive" impact on the country (p 153). It is indeed hard to know how to evaluate a governmental institution, or the individuals who compose it, except by the effect of their actions (or their refusals to take action) on the welfare of society.

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n27 The President and Senate thus ought to evaluate the nominee (or potential nominee) in the context of the larger institution she would join if confirmed. They are not choosing a judge who will staff the Supreme Court alone; they are choosing a judge who will act and interact with eight other members. The qualities desirable in a nominee may take on a different cast when this fact is remembered. Most obviously, the benefits of diversity of viewpoint become visible only when the nominee is viewed as just one member of a larger body.

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If this is so, then the Senate's consideration of a nominee, and particularly the Senate's confirmation hearings, ought to focus on substantive issues; the Senate ought to view the hearings as an opportunity to gain knowledge and promote public understanding of what the nominee believes the Court should do and how she would affect its conduct. Like other kinds of

and holding the broader prohibition, on "announcing . . . views on disputed legal or political issues," to violate the First Amendment).

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Return for a moment to those hearings, in which the Senate--and the American people--evaluated Robert Bork's fitness. Carter stresses the distortion, exaggeration, and vilification that occurred during the debate on the nomination. And surely these were present--most notably, as Carter notes, in the misdescription of Bork's opinion in American Cyanimid. n35 But the most striking aspect of the debate over the Bork nomination was not the depths to which it occasionally descended, but the heights that it repeatedly reached. n36 What Carter tongue-in-cheek calls "the famous national seminar on constitutional law" (p 6) was just that. The debate focused not on trivialities (Carter's "ethical molehills") but on essentials: the understanding of the Constitution that the nominee would carry with him to the Court. Senators addressed this complex subject with a degree of seriousness and care not usually present in legislative deliberation; the ratio of posturing and hyperbole to substantive discussion was much lower than that to which the American citizenry has become accustomed. And the debate captivated and involved that citizenry in a way that, given the often arcane nature of the subject matter, could not have been predicted. Constitutional law became, for that brief moment, not a project reserved for judges, but an enterprise to which the general public turned its attention and contributed.

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n35 Oil, Chemical & Atomic Workers Intl. Union v American Cyanimid Co., 741 F2d 444 (DC Cir 1984).

n36 For a similar view, see Strauss, Am Prospect at 94 (cited in note 19).

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Granted that not all subsequent confirmation hearings could, or even should, follow the pattern set by the Bork hearings, in either their supercharged intensity or their attention to substance. A necessary condition of both was the extreme conservatism of Bork's known views, which made him an object of terror to some
[*941] senators and veneration to others. It would be difficult to imagine hearings of the same kind following the nomination of Justice Ginsburg or Justice Breyer--two well-known moderates whose nominations had been proposed by senators on both sides of the aisle. To insist that these hearings take the identical form as the hearings on Judge Bork is not only to blink at political reality, but also to ignore the very real differences in the nature of the nominations.

But that said, the real "confirmation mess" is the gap that has opened between the Bork hearings and all others (not only for Justices Ginsburg and Breyer, but also, and perhaps especially, for Justices Kennedy, Souter, and Thomas). It is the degree to which the Senate has strayed from the Bork model. The Bork hearings presented to the public a serious discussion of the meaning of the Constitution, the role of the Court, and the views of the nominee; that discussion at once educated the public and allowed it to determine whether the nominee would move the Court in the proper direction. Subsequent hearings have

presented to the public a vapid and hollow charade, in which repetition of platitudes has replaced discussion of viewpoints and personal anecdotes have supplanted legal analysis. Such hearings serve little educative function, except perhaps to reinforce lessons of cynicism that citizens often glean from government. Neither can such hearings contribute toward an evaluation of the Court and a determination whether the nominee would make it a better or worse institution. A process so empty may seem ever so tidy--muted, polite, and restrained--but all that good order comes at great cost.

And what is worse even than the hearings themselves is a necessary condition of them: the evident belief of many senators that serious substantive inquiry of nominees is usually not only inessential, but illegitimate--that their insistent questioning of Judge Bork was justified, if at all, by his overt "radicalism" and that a similar insistence with respect to other nominees, not so obviously "outside the mainstream," would be improper. This belief is not so often or so clearly stated; but it underlies all that the Judiciary Committee now does with respect to Supreme Court nominations. It is one reason that senators accede to the evasive answers they now have received from five consecutive nominees. It is one reason that senators emphasize, even in posing questions, that they are asking the nominee only about philosophy and not at all about cases--in effect, inviting the nominee to spout legal theory, but to spurn any demonstration of [*942] what that theory might mean in practice. It is one reason that senators often act as if their inquiry were a presumption--as if they, mere politicians, have no right to ask a real lawyer (let alone a real judge) about what the law should look like and how it should work. What has happened is that the Senate has absorbed criticisms like Carter's and, in so doing, has let slip the fundamental lesson of the Bork hearings: the essential rightness--the legitimacy and the desirability--of exploring a Supreme Court nominee's set of constitutional views and commitments.

The real confirmation mess, in short, is the absence of the mess that Carter describes. The problem is not that the Bork hearings have set a pattern for all others; the problem is that they have not. And the problem is not that senators engage in substantive discussion with Supreme Court nominees; the problem is that they do not. Senators effectively have accepted the limits on inquiry Carter proposes; the challenge now is to overthrow them.

In some sense, Carter is right that we will clean up the mess only when we change "our attitudes toward the Court as an institution"--when we change the way we "view the Court" (p 188). But as he misdescribes the mess, so too does Carter misapprehend the needed attitudinal adjustment. We should not persuade ourselves, as Carter urges, to view the Court as a "mundane and lawyerly" institution and to view the position of Justice as "simply a job" (pp 205-06). We must instead remind ourselves to view the Court as the profoundly important governmental institution that, for good or for ill, it has become and, correlatively, to view the position of Justice as both a seat of power and a public trust. It is from this realistic, rather than Carter's nostalgic, vision of the Court that sensible reform of the confirmation process one day will come. And such reform, far from blurring a nominee's judicial philosophy and views, will bring them into greater focus.