

# Withdrawal/Redaction Sheet

## Clinton Library

| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                                                                                                                                                                                                               | DATE       | RESTRICTION |                |
|--------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|-------------|----------------|
| 001. memo                | Memorandum for Attorney General Janet Reno and Associate Attorney General Webster Hubbell. From Walter Dellinger and H. Jefferson Powell, Department of Justice. Re: The Constitutionality of Health Care Reform. (7 pages) | 10/29/1993 | P5          | 274            |
| 002. memo                | Memorandum for Attorney General Janet Reno and Associate Attorney General Webster Hubbell. From Walter Dellinger and H. Jefferson Powell, Department of Justice. Re: The Constitutionality of Health Care Reform. (7 pages) | 10/29/1993 | P5          | 275 Dup of 274 |
| 003a. memo               | Memorandum for Melanne Verveer. From Walter Dellinger, Department of Justice. [Re: Health Care Task Force]. (1 page)                                                                                                        | 09/27/1993 | P5          | 276            |
| 003b. memo               | Memorandum for the Health Care Task Force. From Walter Dellinger, Department of Justice. Re: Anticipated Constitutional and Legal Challenges to the President's Health Care Task Force. (5 pages)                           | 09/16/1993 | P5          | 277            |
| 004a. memo               | Memorandum for Melanne Verveer. From Walter Dellinger, Department of Justice. [Re: Health Care Task Force]. (1 page)                                                                                                        | 09/27/1993 | P5          | 278 Dup        |
| 004b. memo               | Memorandum for the Health Care Task Force. From Walter Dellinger, Department of Justice. Re: Anticipated Constitutional and Legal Challenges to the President's Health Care Task Force. (5 pages)                           | 09/16/1993 | P5          | 279 Dup        |
| 004c. memo               | Memorandum for Melanne Verveer. From Walter Dellinger, Department of Justice. [Re: Health Care Task Force]. (1 page)                                                                                                        | 09/27/1993 | P5          | 280 Dup        |
| 005a. memo               | Photocopy. Memorandum for Melanne Verveer. From Walter Dellinger, Department of Justice. [Re: Health Care Task Force]. (1 page)                                                                                             | 09/27/1993 | P5          | 281 Dup        |

### COLLECTION:

Clinton Presidential Records  
Counsel's Office  
Neuwirth  
OA/Box Number: CF370

### FOLDER TITLE:

OLC Memo to M. Verveer Regarding Health Care September 27, 1993

Van Zbinden

2006-0223-F

vz66

### RESTRICTION CODES

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

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

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

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

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

RR. Document will be reviewed upon request.

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
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- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
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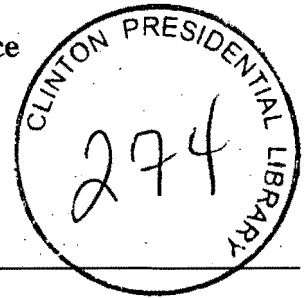
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U. S. Department of Justice

Office of Legal Counsel



Office of the  
Assistant Attorney General

Washington, D. C. 20530

October 29, 1993

**MEMORANDUM FOR ATTORNEY GENERAL JANET RENO  
AND ASSOCIATE ATTORNEY GENERAL WEBSTER HUBBELL**

*WD*  
From: Walter Dellinger  
H. Jefferson Powell

Re: The Constitutionality of Health Care Reform

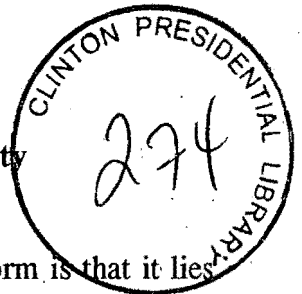
The Health Security Act creates for all citizens the security that health care coverage will always be available to them. It accomplishes this by building on the existing American system for providing health care, which largely operates through employers. Much of the system will be administered by the states, which will have primary responsibility to ensure that regional health alliances are established, to certify accountable health plans, and to provide mechanisms to resolve complaints and disputes.

This legislation is well within the long-recognized authority of the federal government. It is fair to say that, just as the substantive contents of the legislation draw on existing models and approaches to health care delivery and financing, the structure, processes and mechanisms the legislation uses to accomplish its substantive objectives draw on already existing and validated techniques that the national government has employed on numerous other occasions.

Notwithstanding the well-established legitimacy of the means that the Act employs to achieve a public purpose of paramount importance, some interest groups have such financial stake in the current system that they have strong incentives to challenge the Act even on implausible grounds, if the consequences of raising constitutional challenges could be to alter even slightly in their favor the ultimate design of the system.

The Act has been described as the most historic piece of social legislation since the Social Security Act of 1936, and in a curious way the challenges to the constitutionality of the Health Security Act's basic structure replay arguments levelled at the Social Security Act and other New Deal legislation enacted over fifty years ago. These arguments were considered and dismissed then, they remain unsound to this day, and they should not be allowed in any way to deflect consideration of the merits of the President's proposal. (Nor, indeed, could these challenges to the Health Security Act succeed without threatening to unravel numerous vital statutes enacted since the 1930s.)

- **The National Government Possesses the Constitutional Authority to Undertake National Health Care Reform.**



The most fundamental constitutional challenge to national health care reform is that it lies beyond the power of Congress and the President to enact. Fortunately, the Supreme Court has long since rejected the constricted view of national legislative authority that necessarily lies behind such a challenge.

For a brief time during the 1930's, a narrow majority of the Supreme Court invalidated significant aspects of the New Deal. These Justices concluded that Congress lacked the constitutional power "to protect the general public interest and the health and comfort of the people."<sup>1</sup> These decisions were predicated on an exceedingly narrow conception of the authority of the national government to address problems of national dimension under the commerce clause of the Constitution. By the early 1940's the Supreme Court had rejected that short-lived attack on the New Deal as inconsistent with the text and structure of the Constitution and, indeed, with the Court's own precedents.<sup>2</sup> Noting that "there has long been recognition of the authority of Congress to obtain ... social, health or economic advantages from the exercise of constitutional powers,"<sup>3</sup> the Court concluded that Congress's authority over "commerce among the several States" empowers the national government to address all activity, "whatever its nature ... if it exerts a substantial economic effect on interstate commerce."<sup>4</sup> Upholding Congress's power to regulate the sale and distribution of coal because of the impact of that industry on American economic and social life, the Court stated:

If the strategic character of this industry in our economy and the chaotic conditions which have prevailed in it do not justify legislation, it is difficult to imagine what would. To invalidate this Act we would have to deny the existence of power on the part of Congress under the commerce clause to deal directly and specifically with those forces which in its judgment should not be permitted to dislocate an important segment of our economy and to disrupt and burden

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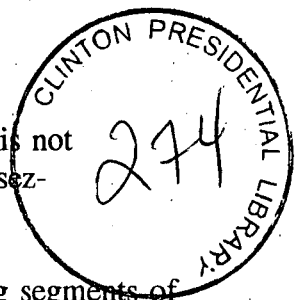
<sup>1</sup> Carter v. Carter Coal Co., 298 U.S. 238, 290 (1935). Justice Cardozo, joined by Justices Brandeis and Stone, dissented from the majority's denial to Congress of the power to deal with a problem -- unrestrained competition in the coal industry -- that "choked and burdened" commerce and had produced "bankruptcy and waste and ruin." Id. at 331. (Cardozo, J., dissenting). Five years later, the Supreme Court explicitly endorsed Justice Cardozo's understanding of congressional power with only one Justice in dissent. See Sunshine Anthracite Coal Co. v. Adkins, 310 U.S. 381, 395 (1940). The following Term, a unanimous Court dismissed the views of the Carter Coal majority as inconsistent with sound constitutional principle. United States v. Darby, 312 U.S. 100, 123 (1941).

<sup>2</sup> The Court's flirtation with a limited view of national power was brief indeed: Carter Coal was decided on May 18, 1936, and effectively repudiated by a trilogy of cases decided on April 12, 1937. See, e.g., NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937).

<sup>3</sup> Cloverleaf Butter Co. v. Patterson, 315 U.S. 148, 163 (1942).

<sup>4</sup> Wickard v. Filburn, 317 U.S. 111, 125 (1942).

interstate channels of commerce. ... Congress under the commerce clause is not impotent to deal with what it may consider to be dire consequences of laissez-faire.<sup>5</sup>



The American health care industry is one of the largest and fastest growing segments of the American economy, and it has the most direct and crucial impact on the lives of all Americans. Spiralling health care costs and inequities in the provision of health care services have an immediate and massive effect on the national economy and thus upon interstate commerce. As a result Congress unquestionably possesses the power "to deal directly and specifically" with health care in order to obtain "social, health [and] economic advantages" for the American people.

- **National Health Care Reform Preserves our Federal System.**

The President's health care reform plan will invite state participation in the formulation and administration of national health policy; if an individual state government should choose not to participate, the federal government will administer the health care system in that state. This type of cooperative federal-state program is now quite common in federal legislation. Examples range from many of the major modern environmental laws, including the Clean Air Act, the Clean Water Act, and the Resource Conservation and Recovery Act, to much older legislation, such as Title IX of the Social Security Act, establishing a system for unemployment compensation. Challenges to such legislation based on constitutional principles of federalism were made during the New Deal, when it was alleged that the national reform legislation of that era stripped the states of powers that were reserved to them by the Tenth Amendment. But that argument was wholly without merit then, and it remains wholly without merit today.

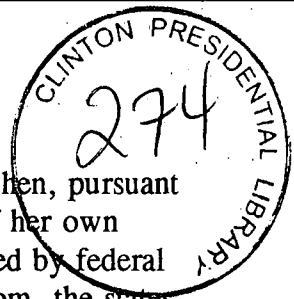
In rejecting the notion that principles of federalism rendered the old age benefits of the Social Security Act of 1935 invalid under the Tenth Amendment, the Supreme Court admonished that "nation-wide calamit[ies]. . . may be checked, if Congress so determines, by the resources of the Nation [in order] to save men and women from the rigors of the poor house as well as from the haunting fear that such a lot awaits them when journey's end is near."<sup>6</sup> More fundamentally, that same day, the Court also rejected a Tenth Amendment challenge to elements of the Social Security Act that created a cooperative plan whereby states were free to provide unemployment compensation and thereby trigger benefits under the Act for employers in the state. In so doing, the Court declared that Congress may enact legislation that addresses a "problem ... national in area and dimensions" by providing the states with the option to share in the solution or not, at the choice of the individual state.<sup>7</sup>

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<sup>5</sup> Sunshine Anthracite Coal Co. v. Adkins, 310 U.S. 381, 395-96 (1940).

<sup>6</sup> Helvering v. Davis, 301 U.S. 641 (1937).

<sup>7</sup> Steward Machine Co. v. Davis, 301 U.S. 548, 586 (1937).



The Court did not accept the claim that a state is "coerced" by Congress when, pursuant to federal legislation the state "cho[oses] to have relief administered under laws of her own making, by agents of her own selection, instead of under federal laws, administered by federal officers."<sup>8</sup> The Court described such legislation as "the creation of a larger freedom, the states and the nation joining in a cooperative endeavor to avert a common evil."<sup>9</sup> Similarly, under the President's health care proposals, states will have the option to formulate specific plans for implementing the federally guaranteed package of benefits and to oversee the provision and quality of care to their residents as a means of addressing our "common" health care crisis.

- **Health Care Reform will Respect the Constitutional Rights of Individuals.**

The President's plan will guarantee to all Americans an extensive package of health care benefits while protecting the individual's right to make fundamental choices about health care. The plan will ensure the availability of health care by taking into account the economic needs of providers and freeing them from unnecessary paperwork. At the same time, as the President has stated, an essential principle of national health care reform is the exercise of responsibility by health care providers and consumers.

Reports in the media already suggest that opponents of health care reform are preparing to object to the plan as an intrusion into the Constitution's protections of liberty or as a "taking" of private property.<sup>10</sup> Neither argument can be sustained. Indeed, both arguments were pressed unsuccessfully by those who sought to undermine the New Deal.

Almost sixty years ago, the Supreme Court rejected the claim that New Deal-era regulation of the economic choices individuals or businesses make is unconstitutional. While the Justices acknowledged that "[u]nder our form of government the use of property and the making of contracts are normally matters of private and not of public concern," the Court stated that

Equally fundamental with the private right is that of the public to regulate it in the common interest. ... Thus has this court from the early days affirmed that the power to promote the general welfare is inherent in government. ... [N]o exercise of the legislative prerogative to regulate the conduct of the citizen [can be imagined] which will not to some extent abridge his liberty or affect his property.

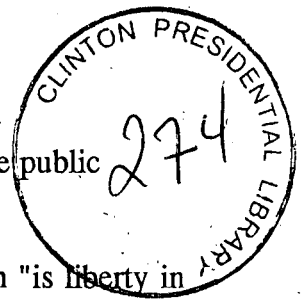
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<sup>8</sup> Id. at 590.

<sup>9</sup> Id. at 587.

<sup>10</sup> See "AMA to Fight Limits on Doctors' Fees," Wall Street Journal (Sept. 9, 1993).

But subject only to constitutional restraint the private right must yield to the public need.<sup>11</sup>



Three years later, the Court explained that the liberty protected by the Constitution "is liberty in a social organization which requires the protection of law against the evils which menace the health, safety, morals and welfare of the people."<sup>12</sup> Health care reform will require responsible participation by providers and consumers alike "in the interests of the community."<sup>13</sup> In doing so the President's plan preserves "'the balance which our Nation, built upon postulates of respect for the liberty of the individual, has struck between that liberty and the demands of organized society.'"<sup>14</sup>

The contention that health care reform would in some manner effect an unconstitutional "taking" of the property of providers rests on a mistaken equation of the Constitution's requirements with the dictates of a particular economic theory.<sup>15</sup> Health care reform undeniably will have an impact on the business decisions and economic interests of providers, and it will require financial contributions and personal accountability on the part of consumers. As such, however, the plan will be an "adjust[ment of] the benefits and burdens of economic life to promote the common good"<sup>16</sup> rather than a taking of private property.<sup>17</sup>

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<sup>11</sup> Nebbia v. New York, 291 U.S. 502, 523-525 (1934). While the particular question before the Court in Nebbia concerned the relationship between individual liberty and the power of a state, the Court expressly stated that within its sphere Congress also possesses the "power to promote the general welfare:" "Touching the matters committed to it by the Constitution, the United States possesses the power." Id. at 524. See also

<sup>12</sup> West Coast Hotel Co. v. Parrish, 300 U.S. 379, 391 (1937). As in Nebbia v. New York, the Justices were addressing the meaning of liberty in the context of a challenge to state legislation but made it clear that their reasoning applied to the Constitution's restraints on the federal government as well. Id.

<sup>13</sup> West Coast Hotel Co. v. Parrish, 300 U.S. 379, 391 (1937).

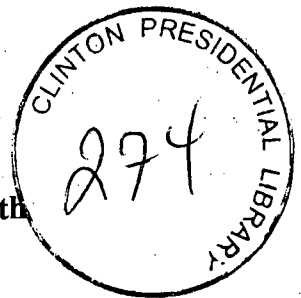
<sup>14</sup> Planned Parenthood v. Casey, 112 S. Ct. 2791, 2806 (O'Connor, Kennedy, & Souter, JJ.) (1992) (quoting Poe v. Ullman, 367 U.S. 497, 542 (1961) (Harlan, J., dissenting)).

<sup>15</sup> When a majority of the Supreme Court's members appeared to make just such an equation, Justice Holmes pointed out the error in their reasoning in a famous dissent: The "Constitution is not intended to embody a particular economic theory, whether or paternalism and the organic relation of the citizen to the state or of *laissez faire*." Lochner v. United States, 198 U.S. 45, 75 (1905). The Court came to decide that Holmes was right and the Lochner majority wrong many decades ago. See Ferguson v. Skrupa, 372 U.S. 726, 729-30 (1963) (citing Holmes's dissent and noting that "the doctrine that prevailed in Lochner ... has long since been discarded").

<sup>16</sup> Penn Central Transportation Co. v. New York City, 438 U.S. 104, 124 (1978). By requiring responsibility on the part of all, the plan clearly avoids economic impositions "disproportionately concentrated on a few persons" -- the hallmark of an unconstitutional taking. Id.

<sup>17</sup> That health care reform will have differing economic impacts on different persons, while obviously true, does not mean that those impacts will be "takings" within the meaning of the Constitution. "Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law." Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 413 (1922). See also United States v. Sperry Corp., 493 U.S.

- **The President and Congress May Establish A National Health Board and State Health Alliances to Implement National Health Care Reform**



The health care reform initiative will set-up a National Health Board and corresponding state health alliances to implement the plan pursuant to congressionally-prescribed standards. National level administrative agencies are commonplace components of many federal statutes, and are necessary for the sound administration of complicated systems. The devolution of some administrative responsibility to states, which then establish health alliances, is vital to the Act's objective of building to the extent possible on the private sector aspects of our current health care delivery system.

Once more, the Supreme Court's New Deal jurisprudence clearly establishes the legitimacy of such delegations of administrative authority. The creation of administrative bodies to carry out legislative mandates was a touchstone of New Deal reforms. At first, the Court concluded that such schemes constituted impermissible delegations of legislative power.<sup>18</sup> Quickly and firmly, however, the Court moved away from that approach -- which was at odds with over a century of the Court's own constitutional interpretations. For example, in sustaining actions taken by an official of the Department of Labor pursuant to the Fair Labor Standards Act against a delegation doctrine challenge, the Court admonished that the Constitution did not "preclude Congress from resorting to the aid of administrative officers or boards as fact-finding agencies whose findings, made in conformity to previously adopted legislative standards or definitions of congressional policy, have been made prerequisite to its statutory command."<sup>19</sup> Similarly, in rejecting a delegation doctrine challenge to actions of the Secretary of Agriculture under the Tobacco Inspection Act of 1935, the Court observed that the statute set forth Congress' "policy for the establishment of standards. . . The provision that the Secretary shall make the necessary investigations to that end and fix the standards according to the kind and quality is plainly appropriate and conforms to familiar legislative practice."<sup>20</sup>

Relying on a constitutional precedent from the early days of the nation, the Court stated that "[w]e have always recognized that legislation must often be adapted to conditions involving details with which it is impracticable for the legislature to deal directly. . . In such cases, 'a general provision may be made, and power given to those who are to act under such provisions to fill up the details.'"<sup>21</sup> The health care reform initiative is such a case. Simply put, the

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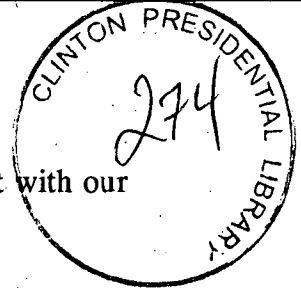
52, 61 n.7 (1989) ("Congress routinely creates burdens for some that directly benefit others").

<sup>18</sup> See Panama Refining Co. v. Ryan, 293 U.S. 388 (1935); Schechter Poultry Corp. v. United States, 295 U.S. 495 (1935).

<sup>19</sup> Opp Cotton Mills, Inc. v. Administrator, 312 U.S. 126, 144 (1940).

<sup>20</sup> Currin v. Wallace, 306 U.S. 1, 16-17 (1939).

<sup>21</sup> Id. at 15 (quoting Wayman v. Southard, 23 U.S. 1, 43 (10 Wheat) (1825)).



establishment of administrative bodies to implement the plan is entirely consistent with our constitutional tradition.

- **Conclusion: The President's Health Care Reform Plan is Legislation Based on Well-Established Constitutional Principles.**

As President Clinton has observed, finding a solution to the problems with our health care system will require a willingness to change, and his reform plan is a comprehensive proposal for far-reaching change in both the public and the private sectors. It is possible that some confusion concerning the constitutional legitimacy of the Health Security Act will arise precisely because it is so comprehensive and detailed, and thus necessarily will affect all the major components of our current health care delivery system. There may indeed be no historical analogue of a single bill that does so many things at once. Its comprehensiveness, however, should not mask the fact that the basic means and mechanisms of the plan rest on long-settled principles of constitutional law, principles that seldom have been challenged since the New Deal and that stem ultimately from the work of the Founders of the Republic. The President's plan, far from being constitutionally questionable, rests on what has rightly been called "the first of the constitutional achievements of the American people ... the formation of a national government that may lawfully deal with all national needs."<sup>22</sup>

The Nation's debate over how best to deal with the great national need for health care reform should proceed untrammelled by questions about the national government's lawful powers that were laid to rest over half a century ago.

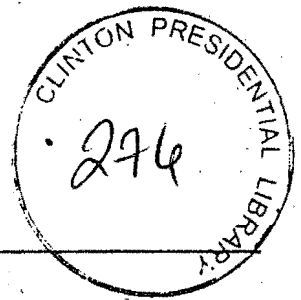
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<sup>22</sup> Charles L. Black, Jr., The Humane Imagination 120 (1986).



U. S. Department of Justice

Office of Legal Counsel



Office of the  
Assistant Attorney General

Washington, D. C. 20530

September 27, 1993

MEMORANDUM FOR MELANNE VERVEER

From: Walter Dellinger  
Acting Assistant Attorney General

Today's N.Y. Times story, "Officials Predict Deluge of Suits on Health Plan" is unnecessarily alarming. The evolving health care plan is legally and constitutionally sound, and once in place, suits for remedies can be handled in a more efficient manner than under present law.

It is possible to include in the plan a constitutionally defensible provision insuring prompt resolution of facial challenges to the plan's legality. [The confidential working draft now provides, at my suggestion, that "any civil action brought to invalidate any provision of this Act on the ground of its being repugnant to the Constitution of the United States on its face" must be brought within one year of enactment in a three-judge court in the District of Columbia with direct appeal to the U.S. Supreme Court.]

We are also working on efficient methods of resolving disputes that arise under the plan. Rather than leading to increased litigation, this plan can be designed to provide for a more rational and streamlined system of remedies in the area of health care than now exists. Of course, we will want to preserve the opportunity of individuals to seek judicial redress for claims of unlawful discrimination. On the other hand, claims for reimbursement, and challenges by providers to reimbursement methodology, should be resolved without extensive judicial involvement. It is also important to limit the opportunity of providers to challenge in court the overall budgetary ceilings that have been established by policymakers.

A 1990 Supreme Court decision, Wilder v. Virginia Hospital Association allows Medicaid providers access to federal court to sue state officials for more money than had been appropriated. This can and should be fixed. Instead of allowing every federal district judge to issue orders for more spending, we can substitute a process of administrative review of reimbursement decisions, and make that the exclusive remedy.

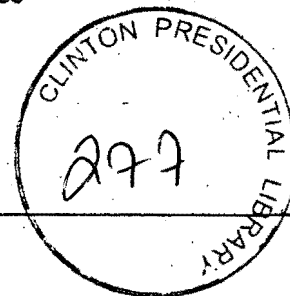
A summary of potential legal issues is attached.

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U. S. Department of Justice

Office of Legal Counsel



Office of the  
Assistant Attorney General

Washington, D.C. 20530

September 16, 1993

**MEMORANDUM FOR THE HEALTH CARE TASK FORCE**

**Re: Anticipated Constitutional and Legal Challenges to the  
President's Health Care Reform Initiative**

In the 1930s, the United States faced a grave economic crisis that threatened the very fabric of the nation's social and political life. The response of the administration of Franklin D. Roosevelt was a bold and ultimately successful attempt to reinvent much of American government.

As always in our constitutional system, novelty raised constitutional concerns. The Supreme Court greeted these developments at first with caution, and for a brief and dramatic time with constitutional rejection. In the end, however, the Court concluded that the Constitution provided the national government with ample authority to address problems that implicate the health and well-being of the national community.

President Clinton's health care reform legislation will be the most constitutionally innovative national initiative since the New Deal. Like the New Deal, health care reform will necessarily involve the creation of new structures of government and of new relationships between the public and the private sectors. Like the New Deal, some aspects of health care reform are likely to be assailed in Congress and (if enacted) in the courts as unconstitutional. Careful and creative legal advice in the formulation of the President's proposals will be critical to his initiative's success in Congress and to the ability of the Department of Justice to defend health care reform in any lawsuits that ensue.

Health care reform on the scale that the President will be proposing may be challenged as an intrusion on a variety of constitutionally protected interests. It is our preliminary judgement that these challenges should clearly fail under current standards. Even so, the novel context in which the courts would address these substantive issues makes it important to consider with care even those questions that would have uncontroversial answers in more familiar settings.

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The Office of Legal Counsel is preparing to provide the President and the Attorney General with the legal advice necessary to ensure that health care reform legislation is effective and constitutional.<sup>1</sup> We anticipate that OLC's review of the legislation will be an ongoing process. We will continue to provide advice during the current, drafting phase, and will comment on the entire bill when it is completed. The process of congressional consideration and debate, furthermore, will produce a need to prepare administration testimony as well as to formulate responses to criticisms of the bill couched in constitutional terms. At each stage, OLC and the other units of the Department of Justice that are involved will need to marshal the resources to provide the President with legal support of the highest quality. This memorandum outlines OLC's current understanding of the legal issues posed by health care reform, and the Office's plan for providing the President and the administration with the necessary advice.

### I. Structural Constitutional Issues

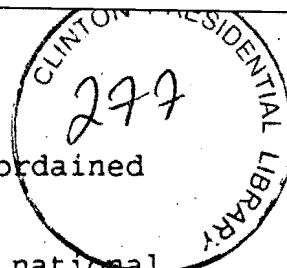
● **Federalism:** National health care is dependent by definition on universal availability. At the same time, the President's initiative does not contemplate creation of a vast new federal bureaucracy, but rather the innovative use of state regulatory bodies to administer the national plan wherever possible. The constitutionality of the means chosen for inducing the states to participate in national health care and for ensuring state compliance with federal requirements are vital questions. The extent to which state laws would (or would not) be preempted by provisions of the federal plan should be carefully considered, and deliberate choices made about the desirability of such preemption.

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<sup>1</sup> Media reports that the American Medical Association has obtained a report from a major Chicago law firm stating that aspects of health care reform might violate the fifth amendment's takings clause, see "AMA to Fight Limits on Doctors' Fees," *Wall Street Journal* (Sept. 9, 1993), are a reminder that the very scope of the initiative may make it appear worthwhile to opponents to expend serious resources generating legal arguments that will demand response even if they would not ultimately prevail in court.

President's appointments power and the constitutionally ordained separation of powers.



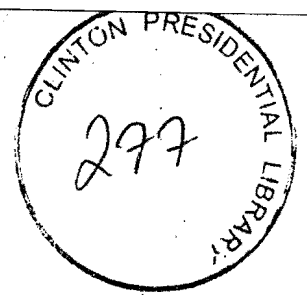
● **Providing for the transition:** The importance of national health care will focus attention on the President's choices of those who will administer it. For that and other reasons, it may be some time before all necessary posts under the plan are filled, especially assuming Senate confirmation is required for members of the National Health Board. At the same time, the gravity of the problems we face counsels the swift inauguration of the plan's initial phases after enactment. The methods chosen for the interim administration of the plan must be tailored to meet any constitutional objections. [OLC now has a draft memo setting forth several methods for getting a National Health Board up-and-running without delay.]

## II. Remedies Questions

● **Channeling attacks on the legislation as a whole.** It will be important for the full implementation and administration of national health care reform that we obtain swift answers to the general constitutional challenges to the plan. Providing a specific and exclusive jurisdictional framework for such legal actions and imposing a strict statute of limitations on their initiation would address this concern. [We are exploring a requirement that any actions seeking to invalidate any provisions of the act must be brought within one year and consolidated before a three-judge court district court in the District of Columbia with direct review by the U.S. Supreme Court.]

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● **Harmonizing the health care system with existing federal rights and remedies.** The relationship between the specific remedies and substantive rights guaranteed by the health care reform legislation and preexisting federal law must be clear. Among the issues to be addressed are the interaction between the new provisions and federal anti-discrimination legislation and the availability of § 1983 for claims arising under the health care plan. In order to reduce the volume of federal court litigation over disputes arising within the system, it may be necessary to establish alternative remedial mechanisms.



### III. Substantive Constitutional Issues

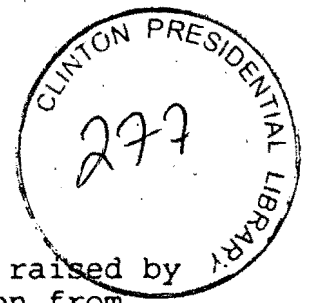
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#### IV. Other Issues

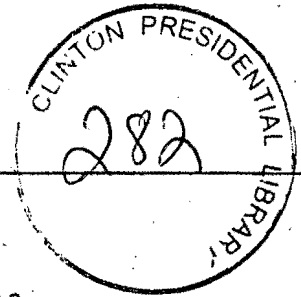
• There are many other important legal questions raised by the health care initiative that demand careful attention from other units of the Department of Justice. The Civil and Criminal Divisions (anti-fraud and anti-waste provisions), the Antitrust Division (coordinating antitrust enforcement with the creation of a coherent system for providing health care), the Civil Rights Division (ensuring non-discriminatory access to health care for all Americans), and the Office of Policy Development (coordinating health care reform with other administration initiatives) should all be involved in the process of reviewing draft legislation and providing legal advice.

Walter Dellinger  
Acting Assistant Attorney General



U. S. Department of Justice

Office of Legal Counsel



Office of the  
Assistant Attorney General

Washington, D.C. 20530

September 16, 1993

**MEMORANDUM FOR THE HEALTH CARE TASK FORCE**

**Re: Anticipated Constitutional and Legal Challenges to the  
President's Health Care Reform Initiative**

In the 1930s, the United States faced a grave economic crisis that threatened the very fabric of the nation's social and political life. The response of the administration of Franklin D. Roosevelt was a bold and ultimately successful attempt to reinvent much of American government.

As always in our constitutional system, novelty raised constitutional concerns. The Supreme Court greeted these developments at first with caution, and for a brief and dramatic time with constitutional rejection. In the end, however, the Court concluded that the Constitution provided the national government with ample authority to address problems that implicate the health and well-being of the national community.

[REDACTED]

Careful and creative legal advice in the formulation of the President's proposals will be critical to his initiative's success in Congress and to the ability of the Department of Justice to defend health care reform in any lawsuits that ensue.

Health care reform on the scale that the President will be proposing may be challenged as an intrusion on a variety of constitutionally protected interests. It is our preliminary judgement that these challenges should clearly fail under current standards. Even so, the novel context in which the courts would address these substantive issues makes it important to consider with care even those questions that would have uncontroversial answers in more familiar settings.

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The Office of Legal Counsel is preparing to provide the President and the Attorney General with the legal advice necessary to ensure that health care reform legislation is effective and constitutional.<sup>1</sup> We anticipate that OLC's review of the legislation will be an ongoing process. We will continue to provide advice during the current, drafting phase, and will comment on the entire bill when it is completed. The process of congressional consideration and debate, furthermore, will produce a need to prepare administration testimony as well as to formulate responses to criticisms of the bill couched in constitutional terms. At each stage, OLC and the other units of the Department of Justice that are involved will need to marshal the resources to provide the President with legal support of the highest quality. This memorandum outlines OLC's current understanding of the legal issues posed by health care reform, and the Office's plan for providing the President and the administration with the necessary advice.

### I. Structural Constitutional Issues

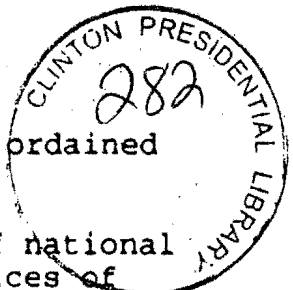
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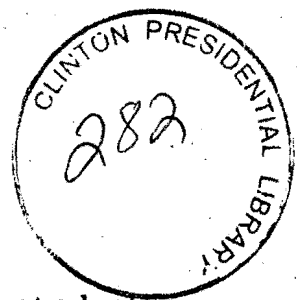
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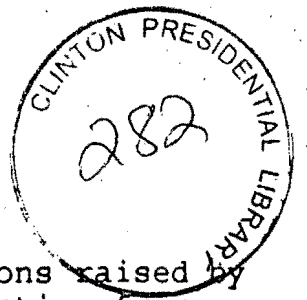
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Walter Dellinger  
Acting Assistant Attorney General

# Withdrawal/Redaction Sheet

## Clinton Library

| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                                                                                                               | DATE       | RESTRICTION          |
|--------------------------|-----------------------------------------------------------------------------------------------------------------------------|------------|----------------------|
| 001. fax                 | Lynn Gibson to Steve Neuwirth at 17:43. [Re: GAO investigation of Health Care Task Force and FACA]. (4 pages)               | 03/17/1993 | P5 283               |
| 002. note                | AK to MV. Continued rumblings re Hillary and FACA. (1 page)                                                                 | 03/22/1993 | P5 284               |
| 003. fax                 | Lynn Gibson to Steve Neuwirth at 17:43. [Re: GAO investigation of Health Care Task Force and FACA]. [second copy] (4 pages) | 02/17/1993 | P5 285 Dup<br>of 283 |

### COLLECTION:

Clinton Presidential Records  
Counsel's Office  
Neuwirth  
OA/Box Number: CF375

### FOLDER TITLE:

Health Care Task Force GAO Investigation

Van Zbinden

2006-0223-F

vz67

### RESTRICTION CODES

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

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

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
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- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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

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

RR. Document will be reviewed upon request.

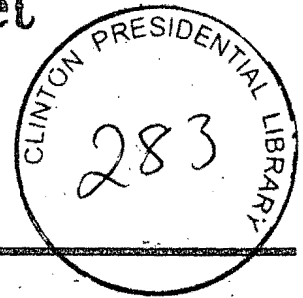
- b(1) National security classified information [(b)(1) of the FOIA]
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GAO

## United States General Accounting Office

## Fax Transmittal Sheet



To: (Name and address)

Steve Neuwirth

Telephone No.

Fax Telephone No. 456-6279 Date 2/17/93

From: (name and address)

Lynn Gibson, OGC

Telephone No.

Fax Telephone No.

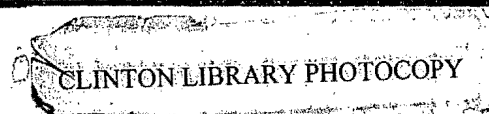
Subject:

Additional Information

## Acknowledgement Requested

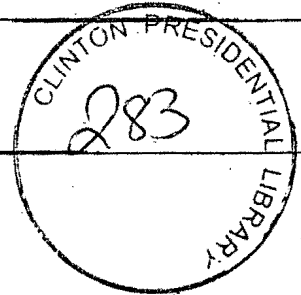
1. ☐ Yes ☐ No2. 4 pages, including this cover sheet, are being transmitted.

3. If pages are not received, call \_\_\_\_\_





United States  
General Accounting Office  
Washington, D.C. 20548



Office of the General Counsel

B-252375

February 17, 1993

Mr. Bernard W. Nussbaum  
Counsel to the President

Dear Mr. Nussbaum:

As we have discussed with Mr. Stephen Neuwirth of your staff, Representative William F. Clinger, Jr., has requested our opinion as to whether the President's health care task force is subject to the Federal Advisory Committee Act (FACA), 5 U.S.C. App. §§ 1-15 (1988). The purpose of this letter is to obtain your views on the issues raised in the request (copy enclosed), so that we may consider them in preparing our response.

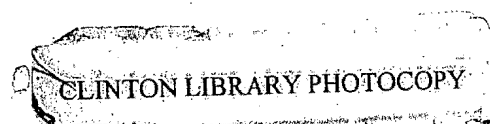
The first issue we have been asked to address is whether the First Lady's presence on the task force renders it an advisory committee subject to FACA. In your February 5 letter to Representative Clinger, you stated the conclusion that FACA does not apply to the task force but did not elaborate on this conclusion.

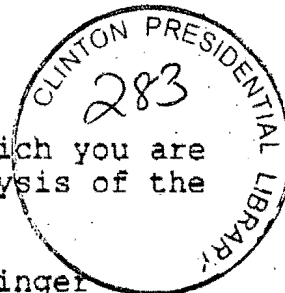
In a recent conversation, Mr. Neuwirth informally advised us that the White House believes FACA does not apply to the task force because the First Lady's participation does not result in the type of outside influence FACA was designed to control, and that Supreme Court cases support an interpretation of FACA based on its broader purposes.

We would appreciate further elaboration of your analysis of this issue, including answers to the following questions:

(1) In concluding that the task force is not subject to FACA, are you relying on FACA's exemption for committees "composed wholly of full-time officers or employees of the Federal Government"? If so, on what basis does the First Lady qualify under this exemption?

(2) Are there other reasons why you believe the task force is not subject to FACA?





(3) What are the Supreme Court cases on which you are relying, and how do they apply to your analysis of the status of the task force?

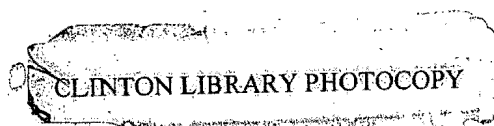
The remaining issues raised by Representative Clinger concern the capacity in which individuals outside the federal government will serve the task force and the interdepartmental working group which will assist the task force. In order to address these issues, we would appreciate your description of the non-federal individuals and groups that are expected to assist the task force and working group and the functions that they will be performing. Additionally, please advise us whether there have been any changes in the membership of the task force and working group as described in your February 5 letter. For example, an article in yesterday's Washington Post indicated that the President's nominee for Surgeon General has become a member of the task force. Is this correct?

In order that we may meet the reply date set by Representative Clinger, we request your response to this letter by February 24, 1993. If you have any questions concerning this request, please call me on 275-5156 or Ms. Lynn Gibson of my staff on 275-5422.

Sincerely yours,

Henry R. Wray  
Senior Associate General Counsel

Enclosure



## Congress of the United States

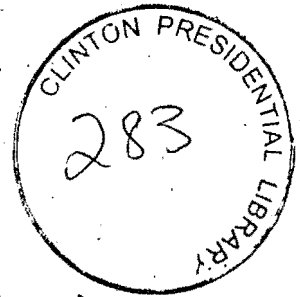
## House of Representatives

## COMMITTEE ON GOVERNMENT OPERATIONS

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-8143

February 12, 1993



13-252375/001

93-0747

The Honorable Charles A. Bowsher  
Comptroller General of the United States  
441 G Street, N.W., Rm. 7000A  
Washington, D.C. 20548

Dear Mr. Bowsher:

It has been brought to my attention that the President's Task Force on Health Care may be in violation of the Federal Advisory Committee Act (FACA), 5 U.S.C. App (1988). The purpose of this letter is to seek a legal opinion from the General Accounting Office on the applicability of FACA to the President's task force.

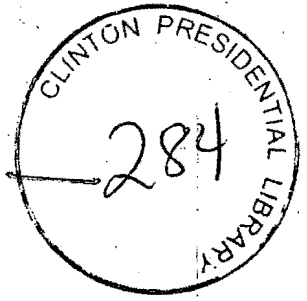
FACA regulates the formation and operation of advisory committees by federal agencies in the Executive branch. It is deliberative bodies such as this task force, which include membership from both within and outside government, which the Congress sought to bring into the sunshine through the enactment of FACA.

Please conduct a review of the Federal Advisory Committee Act to determine whether it is applicable to the President's Task Force on Health Care. Specifically, (1) determine if the presence of the First Lady on the task force violates the express language of FACA, (2) identify to what degree non-federal officers or employees are working with the task force or on subgroups reporting to the task force, and (3) determine if the participation of these non-federal officers or employees violates the express language of FACA. If time permits, identify what steps should be taken to bring the task force into compliance with the Act.

Because this matter involves a possible ongoing violation of federal law, I ask that you proceed with this report at all deliberate speed and provide me with an oral report no later than Monday, February 29. Your staff can contact Kevin Sabo, my committee counsel, at 225-2738, for further information.

Sincerely,

*Bill Clinger*  
William F. Clinger, Jr.  
Republican Chairman



3-22-93

MV --

...Continued rumblings re Hillary and FACA ...

Representative William F. Clinger (R-PA), generally considered a moderate, and is next in line under Frank Horton (R-NY) who is ranking minority, is leading a charge. His staffer is Kevin Sabo. Clinger and or Sabo are telling people, including the plaintiff's attorney Kent Masterson Brown, that Conyers has agreed to full committee hearings on the matter in spring or fall.

Conyers staff is aware of Clinger and Sabo's efforts, and also that of the Washington Times, but say that they have no knowledge of Conyers agreeing to anything -- though they are not asking him either.

In the Senate, Grassley, who is quoted in the court opinion, is not playing the active role that Klinger is describing -- hearings etc -- he's not on our Committee which has the jurisdiction --- and according to my good friend Kris Kolesnik, who now runs all the policy and legislation in the office, says that his boss is just "speechifying". Though that doesn't prevent cosponsorship of legislation or testifying at a House hearing if there is one.

Just a heads up ... though you may already be knowledgeable about all this.

Best,

# Withdrawal/Redaction Sheet

## Clinton Library

| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                                                                                                                   | DATE       | RESTRICTION |
|--------------------------|---------------------------------------------------------------------------------------------------------------------------------|------------|-------------|
| .001. memo               | Memorandum to President Clinton [and] Hillary Rodham Clinton.<br>From: Ira C. Magaziner. Subject: Health Care Reform. (2 pages) | 12/17/1993 | P5 286      |

### COLLECTION:

Clinton Presidential Records  
Counsel's Office  
Podesta  
OA/Box Number: CF356

### FOLDER TITLE:

Dec. 17 '93 memo for the President and Mrs. Clinton from Ira C. Magaziner Re: Health  
Care Reform

Van Zbinden  
2006-0223-F  
vz68

### RESTRICTION CODES

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

- P1 National Security Classified Information [(a)(1) of the PRA]
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C. Closed in accordance with restrictions contained in donor's deed of gift.

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RR. Document will be reviewed upon request.

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

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THE WHITE HOUSE

WASHINGTON 93 DEC 20 P 1:06

December 17, 1993



MEMORANDUM FOR PRESIDENT CLINTON  
HILLARY RODHAM CLINTON

FROM: IRA C. MAGAZINER  
SUBJECT: HEALTH CARE REFORM

Attached is a briefing book for our strategy discussion on Monday. Overall, we are upbeat about our prospects.

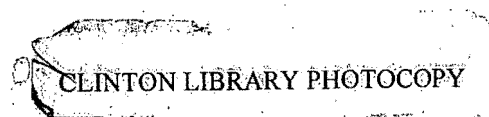
- Supportive interest groups are finally rallying and should be out in force in January.
- The recent Wall Street Journal/NBC poll showing Americans favor a "Clinton" like plan over a "Cooper" like plan by 69%-20% adds weight to our view that we are positioned correctly (and the poll didn't even mention the Cooper tax on benefits). Once the Washington "pundit class" focuses on the other bills, we will look better by comparison.
- Our meetings with members and staff of key committies are yielding good results.

However, beginning in January, the health care effort is going to be like riding a roller coaster in a hurricane.

- Committee chairs and congressional leadership will be at the controls, not us.
- Opposing interest groups will gear up huge media and lobbying campaigns.
- Conservative Republicans are going to intensify their attack trying to pressure the moderate Republicans not to compromise.

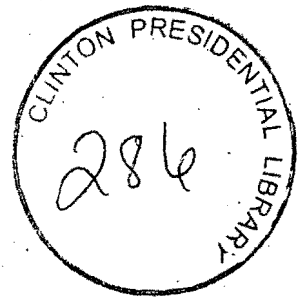
If we are well organized, persistent and "fight like hell" every day for the next nine months, we will succeed.

We look forward to beginning to discuss strategy with you on Monday.



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# Withdrawal/Redaction Sheet

## Clinton Library

| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                                                                                                                                                                   | DATE       | RESTRICTION |     |
|--------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|-------------|-----|
| 001. fax                 | To Cristopher D. Cerf from Eric Holder at 12:08. Remarks: Hard Copy also in Mail. [Re: Ira C. Magaziner]. (6 pages)                                                             | 02/28/1995 | P5          | 287 |
| 002. memo                | Photocopy. Memorandum to File from Christopher D. Cerf. Re: Magaziner Document Review and Production. (3 pages)                                                                 | 03/18/1995 | P5          | 288 |
| 003(a). report           | Wire Report. Clintons Backed into Legal Corner. Paul Craig Roberts, Scripps Howard News Service. Rocky Mountain News. Editorial. [Annotated by staff.] (2 pages)                | 08/06/1994 | P5          | 289 |
| 003(b). report           | Wire Report. Listening to Ollie's Mom: That was no lady--That was Hillary Clinton. Suzanne Fields. Atlanta Journal and Constitution. Editorial. [Annotated by staff.] (2 pages) | 11/03/1994 | P5          | 290 |

### COLLECTION:

Clinton Presidential Records  
Counsel's Office  
Sherburne  
OA/Box Number: CF397

### FOLDER TITLE:

White House Health Care Task Force

Van Zbinden

2006-0223-F

vz69

### RESTRICTION CODES

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

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

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

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

RR. Document will be reviewed upon request.

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

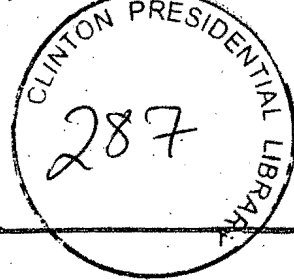
- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or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





United States Attorney

District of Columbia



Judiciary Center  
555 Fourth St. N.W.  
Washington, DC 20001

**FACSIMILE TRANSMISSION COVER SHEET**

**DATE:** 2/28/95

**TO:** Christopher D. Cerf, Esq. **OFFICE**  
Associate Counsel **PHONE #:** \_\_\_\_\_  
**FACSIMILE**  
**PHONE #:** 456-1647

**FROM:** ERIC H. HOLDER, JR. **OFFICE**  
UNITED STATES ATTORNEY **PHONE #:** 202-514-6600  
**FACSIMILE**  
**PHONE #:** 202-307-3569

**NUMBER OF PAGES:** COVER SHEET + 5

**REMARKS:**

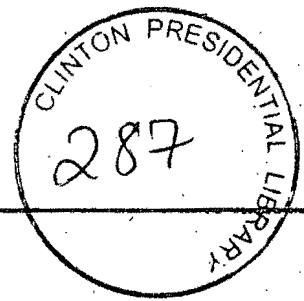
Hard Copy is also in the mail.

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United States Attorney

District of Columbia



Judiciary Center  
555 Fourth St. N.W.  
Washington, DC 20001

February 28, 1995

Charles F.C. Ruff, Esq.  
Covington & Burling  
1201 Pennsylvania Ave. N.W.  
Washington, D.C. 20044

Re: Ira Magaziner

Dear Mr. Ruff:

I am writing in response to your letter dated February 6, 1995 concerning this Office's investigation into allegations made against your client, Ira Magaziner. As you know, those allegations concern certain declarations made by your client in connection with the civil case of Association of American Physicians and Surgeons, et al. v. Hillary Rodham Clinton, et al. In your letter, you expressed your concern over requests from this Office to the White House Counsel's office and the Department of Justice Civil Division that they decline your requests for access to internal government files relating to that litigation. You stated that, in your view, those requests were "inconsistent with certain fundamental legal and ethical doctrines." We have considered your arguments carefully, but we view the relevant issues somewhat differently. Ultimately, we are unpersuaded that our requests were in any way inappropriate or unjustified and, accordingly, we will not be withdrawing or modifying those requests.

As we stated in our letter to Judge Mikva, we are unaware of any legal principle under which you, as privately retained counsel for Mr. Magaziner, would have at this stage of the investigation a right of access to internal files that are the property not of your client but of the United States. After reviewing your letter, we continue to hold this view. The fundamental disagreement we have with your argument concerns the claims that Mr. Magaziner personally was "the client" in the AAPS case and that the case files are "his" files. We do not believe that either of these underlying premises is correct.

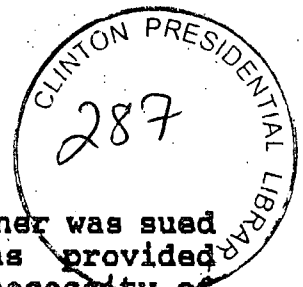
It is clear that in the AAPS litigation Mr. Magaziner was sued in his official, not personal, capacity. The Complaint names him, in a paragraph along with two other individuals, only as a "domestic advisor[]" to President Clinton and . . . official[] of

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U.S. ATTORNEY'S OFFICE

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02-28-1995 12:08



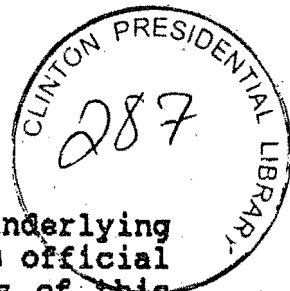
the federal government." Para. 17. Because Mr. Magaziner was sued only in his official capacity, representation was provided automatically by the federal government, without the necessity of the special procedures that must be followed in order to obtain such representation when an employee is sued in his individual capacity. See 28 CFR § 50.15. If Mr. Magaziner had resigned shortly after the litigation began and had been replaced by another individual, that individual surely would have been substituted for Mr. Magaziner as a defendant. The interests at stake were those of the federal government, not of Mr. Magaziner. <sup>1</sup>

Although the plaintiffs in the litigation did file a motion for a "rule of contempt" against Mr. Magaziner, this was only within the context of their broader motion for Rule 11 sanctions against the government, and they never sought any specific monetary damages or other relief against your client's assets. <sup>2</sup> Even if an order of contempt or other civil sanction had issued against Mr. Magaziner, it seems likely that any fine imposed ultimately would have been paid by the United States. The fact that Department of Justice attorneys vigorously defended against the allegations concerning Mr. Magaziner cannot transform the representation from one in an official capacity to one in a personal capacity. In short, we are unable to agree with the assertion on page 2 of your letter that your client "was not sued solely in his official capacity as Advisor to the President."

With respect to your argument based upon D.C. Rule of Professional Conduct 1.16(d), that rule, as you note, concerns only surrendering papers and property "to which the client is entitled."

<sup>1</sup> Although you state that there "can be no reasonable doubt that Civil Division and White House Counsel lawyers were, in every meaningful sense, Mr. Magaziner's counsel . . . and that they represented his personal interests in that litigation," (p.2), we must respectfully disagree. Unlike a private client who has retained counsel, Mr. Magaziner, as a public official sued in his official capacity, did not have the right to choose his counsel, to make tactical decisions in the litigation, to settle the case, or to discharge his attorneys and hire new ones if he were dissatisfied. This is because the Civil Division and White House Counsel attorneys were in fact counsel for the United States, not counsel representing Mr. Magaziner's personal interests.

<sup>2</sup> The Department of Justice Manual Vol. III, §4-5.212, to which you refer, merely highlights why in this case it is clear that Mr. Magaziner was sued only in his official capacity. That section refers to Bivens tort claims, which seek monetary damages against federal employees in their individual capacities. The AAPS litigation was not such a case.

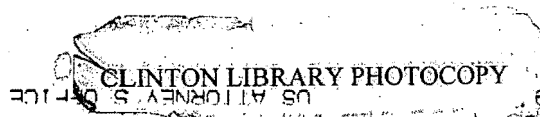


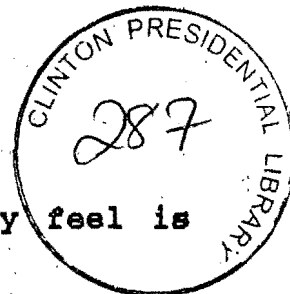
Reference to this rule, however, does not resolve the underlying questions of: 1) whether or not Mr. Magaziner, sued in his official capacity, would be considered "the client" for purposes of this rule; and 2) even if he were, whether or not he would be "entitled" to government files concerning a lawsuit with multiple official defendants, in which he was sued only as a representative of the government and not as a private individual. In contrast to the files of a private attorney retained by an individual and acting as the agent of that individual, these files are not Mr. Magaziner's property but are the property of the United States. For that reason, we find unconvincing your analogies to the files of private attorneys retained by individual clients, and your references to these records as "the client's file." (p.3).

Regarding your access to witnesses, our requests to the White House Counsel and Civil Division plainly referred only to files and documents. You have had, as you know, access to those witnesses with whom you wished to speak. To the extent that your letter suggests on page 5 that this represents a change in our position and that we initially sought to restrict your access to witnesses, that suggestion is inaccurate. There is, however, a fundamental distinction to be drawn between these files, which are the property of the United States, and witnesses, who "belong" to no one. This distinction is recognized throughout every stage of the criminal process, where detailed rules govern the scope of discovery of files and records but do not govern access to witnesses.

We do not believe that our requests would, as a legal or factual matter, be interpreted by the White House and Civil Division as demands that they not provide you with access to their files. The letter to Judge Mikva and the memorandum to the Civil Division clearly are framed only as requests, based upon our assessments of what is appropriate and in the best interests of our investigation. We do not agree that those offices would feel powerless to act contrary to the wishes of this Office should they determine it is necessary or appropriate to do so.<sup>3</sup> They are, of

<sup>3</sup> In this regard, you cite Gregory v. United States, 369 F.2d 185 (D.C. Cir. 1966), cert. denied, 396 U.S. 865 (1969), for the proposition that a request from this Office must, "as a matter of law," be considered equivalent to an instruction or demand. (p. 6) Gregory, however, dealt with the question of access to witnesses, not documents, and arose in the context of a capital trial, not an investigation. The Court in Gregory found that the prosecutor "advised the witnesses not to talk to anyone unless he, the prosecutor, were present," not that he merely made a request that they do so, and the case does not hold that this advice was, "as a matter of law," equivalent to a demand. Finally, even if Gregory (continued...)





course, free to give our request whatever weight they feel is appropriate, but it remains a request nonetheless.

In that regard, it strikes us that many of your arguments concerning the Rules of Professional Conduct relate to your view of the ethical obligations of White House and Civil Division attorneys rather than those of attorneys in this Office. We have set forth above our views as to why we find those arguments unpersuasive. In the end, however, the Office of the White House Counsel and the Civil Division of the Department of Justice must make their own determinations concerning the ethical responsibilities of their attorneys, and we neither presume nor purport to make those decisions for them.

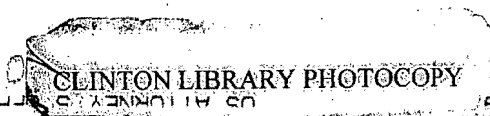
In sum, we continue to believe that, on the admittedly unusual facts of this case, our requests were appropriate and were consistent with our goal of ensuring that this investigation is handled no differently from any other.<sup>4</sup> These files are the property of the United States. They contain materials related to many different issues and individuals, and were generated by a number of people who may well be material witnesses in the investigation. Defense counsel in every case undoubtedly would prefer to have free access to all materials in the government's possession during the early stages of a criminal investigation. As a general rule, however, there is no basis for the defense to claim a right of such access, and we discern no persuasive reason to treat this case any differently.

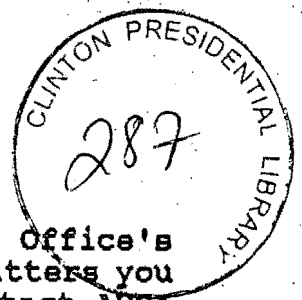
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<sup>3</sup>(...continued)

did hold as you suggest and were applied to a request concerning only documents, we do not find it persuasive to analogize the relationship between a prosecutor and a private individual witness to the relationship between this Office and other offices in the Executive Branch.

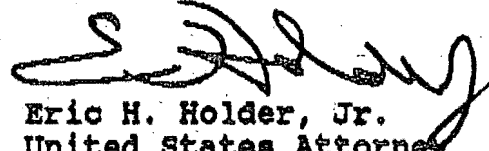
<sup>4</sup> Concerning that goal, you state that "it is inconceivable that the Office would seek to bar counsel for a person under criminal investigation from access to the client's own files or the files of his former attorneys." (p.5) The discussion in the body of this letter makes clear our disagreement with the assumptions contained in this statement and with the relevancy of analogies to private parties with privately retained counsel.





I believe the foregoing fully sets forth this Office's position on these matters. If there are any additional matters you would like to discuss, however, please feel free to contact AUSA Eliason.

Sincerely,



Eric H. Holder, Jr.  
United States Attorney

cc: The Honorable John R. Schmidt  
Associate Attorney General

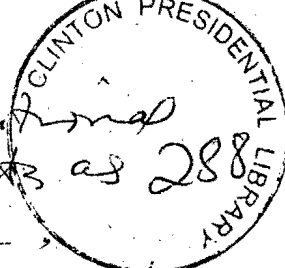
Christopher D. Carf, Esq. ✓  
Associate Counsel to the President

Chris — This looks consistent with our discussion. I have a few additional

THE WHITE HOUSE  
WASHINGTON  
3/15/95

Comments as 288  
noted,

Jane 3/18



MEMORANDUM TO FILE

FROM: CHRISTOPHER D. CERF

RE: Magaziner Document Review and Production

Document review and production will proceed as follows:

1. We will go through all of the boxes again and remove three categories of documents:

a) Documents we have previously identified as non-responsive;

b) Documents to or from the President, Vice President, First Lady, the Chief of Staff or Deputy Chief of Staff and documents taken from Room 511.

c) Material that is protected by the attorney client privilege, i.e., (i) reflecting communications ~~legal~~ memoranda prepared by a member of the White House Counsel's Office and sent to a member of the White House staff or (ii) ~~confidential~~ information from a member of the White House staff and sent to a member of the Counsel's Office. communication

2. Documents that are removed pursuant to paragraph 1 above should be treated as follows:

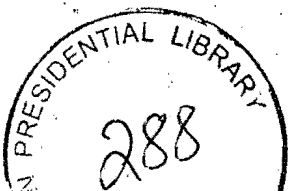
a) Non-responsive documents should be maintained in folders that identify the box and folder from which it was pulled: e.g., Neuwirth Box 1, "HCTF Misc." Folder.

b) Documents in category (1)(b) also should be maintained in folders that identify the box and folder from which it was pulled. In addition, each such folder should be labelled: "Possible Ex.Priv."

c) Documents in category (1)(c) also should be maintained in folders that identify the box and folder from which it was pulled. In addition, each such folder should be labelled "Attorney/Client."

3. While going through the above process, remove all of the Post-its that we have put on. Ones that were given to us as part of the production should, of course, stay.

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-2-

although from a work product or executive privilege may still attach

4. It might be useful to enumerate some of the categories of documents we will not be removing:

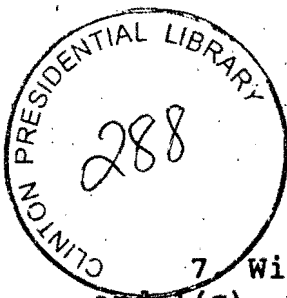
- a) Documents for which the only basis for non-production is that they are work product;
- b) Draft pleadings and affidavits, including those with attorneys' annotations on them;
- c) Correspondence to and from DOJ or another executive branch department and a member of the White House Counsel's office;
- d) documents memorializing internal deliberations pertaining to ethics issues, e.g., whether to allow a particular individual to participate in the Working Group and under what conditions.
- e) Draft responses to inquiries from the GAO
- f) Documents memorializing administrative matters, e.g., membership lists, paperwork associated with bringing people on board, etc.
- g) Draft and final "Talking Points."

5. Once we have completed the above steps, we will attempt to secure an agreement with the U.S. Attorney pursuant to which:

- a) He would be permitted to review all of the documents with the exception of those culled pursuant to Paragraph 1 above
- b) on the express condition that that, by making these documents available, the White House would not be waiving any privilege it might have.

6. After the U.S. Attorney has identified the documents he wishes to have copied, we will review them to determine if we wish to assert any privilege. As of this moment, we have made no firm decision to assert or not assert privilege on any document. Presumably, however, we would not end up asserting privilege on any document reviewed pursuant to paragraph 5. These procedures, however, would allow us to consider asserting privilege on documents that should have been culled pursuant to Paragraph 1, but were not.

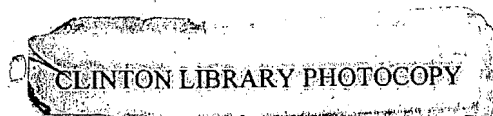
Haven't we decided that we are not claiming that privileges attach to anything other than the #1 documents? US PRESIDENTIAL LIBRARY PHOTO COPY referring to our



-3-

7 With respect to the documents described in Paragraph 1(b) and 1(c), we will identify the nature of the document to the U.S. Attorney, but not permit him to review it. In other words, we would divulge roughly the same quantum of information as we would on a privilege log.

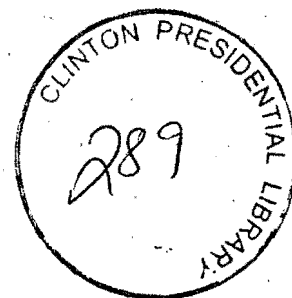
8. If, on the basis of the discussions described in paragraph 7, the U.S. Attorney offers a compelling reason why the document is important to his investigation, we would take that into account in making any final privilege decisions.



15TH STORY of Level 1 printed in FULL format.

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Rocky Mountain News

August 6, 1994, Saturday



SECTION: EDITORIAL; Ed. F; Pg. 49A

LENGTH: 640 words

HEADLINE: Clintons backed into legal corner

BYLINE: Paul Craig Roberts; Scripps Howard News Service

## BODY:

On July 25, U.S. District Judge Royce C. Lamberth ordered first lady Hillary Rodham Clinton and her top health care aide, Ira Magaziner, to face trial in a civil suit charging the cover-up of involvement by special interests in drafting the Clinton health care plan. The trial date is set for Sept. 12.

The specific legal issues before the bench are whether the first lady's health reform task force violated the Federal Advisory Committee Act by holding the meetings in secret and whether Magaziner perjured himself when he testified on March 3, 1993, that only federal employees were involved in the secret meetings.

The issues before the public are more important. They involve the first lady's candor, or lack thereof, and the White House's cynical manipulation of the public's health concerns in order to benefit special interests allied with the Clintons.

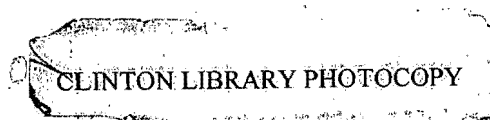
The Federal Advisory Committee Act requires task forces not wholly composed of federal employees to meet in public. When pressed by the Association of American Physicians and Surgeons to comply with the law and open the meetings, Mrs. Clinton and her aides claimed that only federal employees were involved.

This claim disintegrated when Kent Masterson Brown, attorney for the Physicians and Surgeons, presented Lamberth with 37 pounds of evidence that the task force had 357 members who were not federal employees.

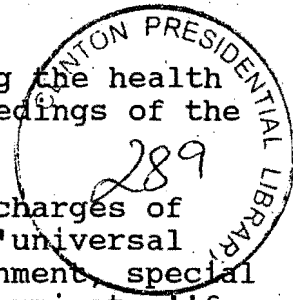
On July 26, under pressure of the evidence, Mrs. Clinton's Justice Department lawyers abandoned the "federal employees only" defense. The new defense is that the health care task force did not influence, and was not intended to influence, the content of Clinton's health care reform plan. If the task force was not established by the president or utilized by him to obtain advice or recommendations, it is not covered by the Advisory Committee Act.

What are we to make of President Clinton's publicly expressed appreciation to the task force for its contribution to his health care plan if the work of the task force was not utilized by the president? Even more puzzling is Magaziner's memo of Jan. 26, 1993, which is in the court's hands and which clearly states that the goal of the task force "is to prepare comprehensive health care reform legislation in the next 100 days."

Mrs. Clinton, Magaziner and their Justice Department lawyers are driven to their implausible argument by their desperate need to keep the public from



finding out that they, too, had special interest groups preparing the health care plan. Once Mrs. Clinton loses the lawsuit, the secret proceedings of the task force will be made public.



The opened files will expose the president and first lady to charges of public deception. Hidden behind President Clinton's promise of "universal coverage" paid for, in part, by employers and the federal government, special interests were working feverishly devising a scheme that would terminate "fee for service" insurance policies, curtail the supply of medical specialists and herd the public into impersonal, bureaucratic health care organizations that would save money by rationing medical services.

Among the lawsuits and investigations that threaten Clinton's presidency, there are no greater dangers than the secret files of the health care task force which will reveal a cynical president defrauding the public on behalf of special interests.

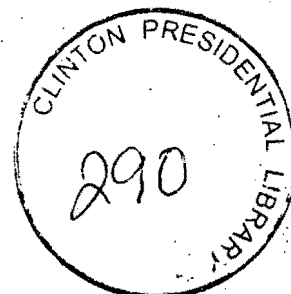
LANGUAGE: English

LOAD-DATE-MDC: August 9, 1994

3RD STORY of Level 1 printed in FULL format.

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The Atlanta Journal and Constitution

November 3, 1994



SECTION: EDITORIAL; Section A; Page 18

LENGTH: 442 words

HEADLINE: LISTENING TO OLLIE'S MOM That was no lady - that was Hillary Clinton

BYLINE: SUZANNE FIELDS

BODY:

Washington - Well, well. Nancy Reagan seems to have consulted her astrologer and found the time propitious to trash Oliver North. She accuses him of being unable to tell "fact from fiction." That's chutzpah from a woman who reads the stars before making her husband's travel reservations. The liberal establishment, who mocked her as first lady, loves her now.

Ollie responded with gallantry: "My mother told me a long time ago never to get in a fight with a lady." It was an appropriate reaction, since Nancy Reagan was posing as the protective wife defending her husband's honor. She says Col. North lied to the president about Iran- contra.

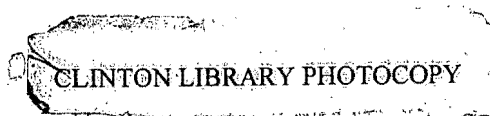
She may be right. She may not be. But one thing we can be fairly sure of: Nancy Reagan, as first lady, is unlikely to have had direct knowledge of what Ollie North knew and didn't know about anything. She should let her husband speak for himself. The bully pulpit was his, not hers, and now it belongs to Hillary.

It's easy to dismiss Nancy Reagan as having little if any power to persuade Virginians. No one really cares what Rosalynn Carter, Betty Ford or Lady Bird Johnson says about candidates in Virginia or Idaho or North Dakota. But Hillary Clinton, in the wake of the failure of the health-care initiative, continues to raise questions about her accountability. Justice Department lawyers for her and Ira Magaziner, who headed the health-care effort for the president, originally told a federal judge that they turned over all the documents of the health-care task force meetings to the court. Now the court learns that many documents vanished.

Washington correspondent Elizabeth Drew in a new book, "On the Edge: The Clinton Presidency," raises questions about the role of the first lady and the veil the White House drew across much of what she did.

"The title Domestic Policy Adviser was seriously considered, but it was decided that Mrs. Clinton would essentially have the role without the title," writes Drew. "It would be less threatening." Less threatening to whom? The voters? Bill's staff?

Before the Clintons left Arkansas, Vernon Jordan strongly opposed a West Wing office for Mrs. Clinton. "He thought it was, in effect, an announcement of a co-presidency and was too much to spring on the public." But she moved into the West Wing anyway, and it was sprung on the public. Sure enough, many critics cried "co-presidency."

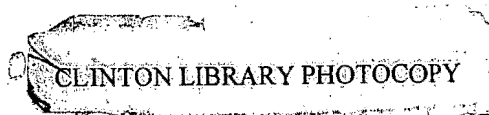
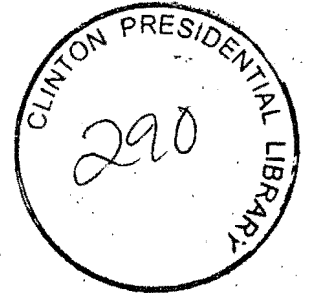


Moral of the story: It's harder than ever to follow Ollie's mother's advice. But maybe Mama North wasn't talking about a first lady.

Suzanne Fields is distributed by the L.A. Times Syndicate. Her column appears in The Journal on Monday and Thursday.

LANGUAGE: ENGLISH

LOAD-DATE-MDC: November 5, 1994



# Withdrawal/Redaction Sheet

## Clinton Library

| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                                                                                                  | DATE | RESTRICTION |
|--------------------------|----------------------------------------------------------------------------------------------------------------|------|-------------|
| 001. report              | Background: Litigation Involving the Health Care Task Force and the Interdepartmental Working Group. (4 pages) | n.d. | P5 291      |

### **COLLECTION:**

Clinton Presidential Records  
Counsel's Office  
Waldman  
OA/Box Number: CF640

### **FOLDER TITLE:**

Health Care Task Force: Background

Van Zbinden  
2006-0223-F  
vz70

### **RESTRICTION CODES**

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

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
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C. Closed in accordance with restrictions contained in donor's deed of gift.

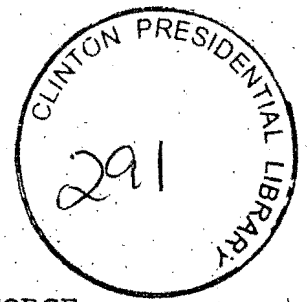
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

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

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BACKGROUND:

LITIGATION INVOLVING THE HEALTH CARE TASK FORCE  
AND THE INTERDEPARTMENTAL WORKING GROUP

The Court of Appeals Held  
That the Health Care Task Force  
Was Not Subject to the FACA

In early 1993, three plaintiffs opposed to the President's health reform efforts alleged with great fanfare that the President's Task Force on National Health Care Reform -- the 12-member body chaired by the First Lady and composed of Cabinet Secretaries and senior White House staff -- was subject to the Federal Advisory Committee Act ("FACA"). U.S. District Judge Royce Lamberth ruled in the plaintiffs' favor.

The United States Court of Appeals for the District of Columbia Circuit, however, reversed Judge Lamberth's decision and held that the Task Force was not subject to the FACA. In a June 1993 opinion, a panel composed of three Reagan-appointed judges unanimously rejected the plaintiffs' arguments about the Task Force. The Task Force, which terminated in May 1993, acted in full compliance with every applicable law.

Litigation involving the separate  
interdepartmental working group

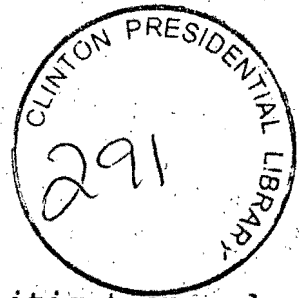
Separate and distinct from the Health Care Task Force was an interdepartmental working group that gathered information and developed options for the Task Force. The interdepartmental working group, which ended its work in May 1993, ultimately had over 500 members.

When the pending litigation was initially in the district court in the Spring of 1993, District Judge Lamberth held that the interdepartmental working group was not subject to the FACA.

On appeal, the Court of Appeals held that while the interdepartmental working <sup>group</sup> indeed appeared not to have the characteristics of a FACA committee, it would be necessary to conduct further fact-finding of the group's structure, purpose and personnel to confirm the group's status. The Appeals Court therefore remanded the case to the district court solely to address the status of the interdepartmental working group. All issues relating to the separate Health Care Task Force were, as discussed above, resolved by the Court of Appeals in the government's favor.



The district court held only that a trial is necessary to resolve factual issues relating to the working group



In April 1994, the plaintiffs in the pending litigation made a motion for summary judgment -- i.e., a motion for the court to rule in the plaintiffs' favor on the merits.

This past month, District Judge Lamberth rejected plaintiffs' motion, and held that the plaintiffs had failed to establish that they were entitled to a judgment that the interdepartmental group was subject to the FACA. The Justice Department argued that the factual record was sufficient to establish that the plaintiffs' claims should therefore be dismissed. Judge Lamberth decided, however, that a trial should be held to resolve the facts that the plaintiffs had, to date, been unable to prove.

While the plaintiffs employed a press strategy of claiming a "victory," the truth is that the district court denied the plaintiffs' motion for a judgment on the merits. The Justice Department explained why it was unnecessary to conduct further fact finding, but we are, at the same time, confident that any further fact-finding would establish that the plaintiffs' claims about the working group -- just like their claims last year against the Task Force -- are entirely without merit.

Plaintiffs allege that Ira Magaziner should be held in contempt of court

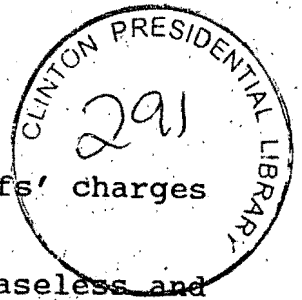
Plaintiffs have made assertions -- wholly unsubstantiated to date -- that Mr. Magaziner made misrepresentations to the court in the Spring of 1993 about the composition of the interdepartmental working group. Plaintiffs have alleged that Mr. Magaziner should therefore be held in contempt of court.

Neither Judge Lamberth, nor any other court, has made any finding that Mr. Magaziner should be held in contempt. Indeed, the Judge was unwilling to grant plaintiffs' motion for a contempt finding. Instead, the Judge said that because contempt charges are inherently serious, he wanted to wait until after any further fact-finding before making a final decision about plaintiffs' charges against Mr. Magaziner.

Throughout this litigation, the plaintiffs have made unsubstantiated assertions -- for example, an assertion in 1993 that the Health Care Task Force had shredded some of its documents. Although Judge Lamberth allowed the plaintiffs to make those assertions and even entered an order based on them, he promptly withdrew the order after the Justice Department was



given the opportunity to demonstrate that the plaintiffs' charges were not only baseless, but nonsensical.



The charges against Mr. Magaziner are similarly baseless and nonsensical. The plaintiffs allege that Mr. Magaziner made misrepresentations to the court by claiming in March 1993 that all of the members of the working group were either permanent federal employees or special government employees. Mr. Magaziner's statements were completely accurate.

- the Justice Department has shown in its court papers that the actual members of the working group were, in fact, either permanent or special government employees;
- Mr. Magaziner's declaration explained in unambiguous terms that the working group members were assisted, in full compliance with applicable law, by non-employee consultants;
- the Justice Department has shown in its court papers that it is the plaintiffs who have themselves misrepresented the membership of the working group by seeking to include as "members" many of the various and diverse outside parties with whom Mr. Magaziner and other working group members consulted. For example, plaintiffs treat as "members" of the working group:
  - ♦ a group of professors who attended one meeting to give input on medical malpractice issues;
  - ♦ several individuals who attended one meeting on AIDS; and
  - ♦ actuaries who attended a single meeting to give input on actuarial issues.

The plaintiffs have told the press that the Justice Department has now "conceded" that the working group membership included non-federal employees. This is simply untrue. The Justice Department has maintained from the outset that, as set forth in Mr. Magaziner's March 1993 declaration, the members of the working group were either permanent or special government employees. The Justice Department continues to maintain this position.

However, the Court of Appeals held in its June 1993 decision that the fact that the members of a working group are limited to permanent and special government employees is no longer sufficient, in and of itself, to establish that the group is not subject to the FACA. The Justice Department therefore has advised the Court that it would pursue the different legal argument called for by the Court of Appeals -- namely, that the



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structure, purpose and personnel of the interdepartmental working group were not of the type that the FACA was intended to cover.

The plaintiffs have used the unproven charges against Mr. Magaziner as a basis to assert that the health care working group was purportedly "dominated" by certain special interest groups, such as the Robert Wood Johnson Foundation. In fact, the Justice Department has already shown these charges to be baseless. For example, the only working group participants with any connection to the Robert Wood Johnson Foundation were six individuals -- out of over 500 -- five of whom were actually members of Congressional staffs who had been hired pursuant to the Senate Code of Official Conduct and assigned by Members of Congress to work on the interdepartmental working group. The sixth individual was hired by HHS to participate in the working group as a special government employee.

Indeed, the working group sought to incorporate a wide range of expertise and views. The plaintiffs themselves had an opportunity in 1993 to give direct testimony to members of the Health Care Task Force. No one group or type of group "dominated," or could have had an opportunity to dominate, the interdepartmental working group -- and none did.

#### The First Lady

When Judge Lamberth held that a trial would be held on issues related to the interdepartmental working group, plaintiffs -- though not the Judge -- promptly advised the press that the First Lady would be called as a witness.

The government is aware of no grounds why testimony by the First Lady would be relevant to any of the working group issues now pending before the court. All issues relating to the First Lady and the Health Care Task Force were resolved by the Court of Appeals in June 1993, when it ruled that the Task Force is not subject to the FACA.

Indeed, until Judge Lamberth's most recent ruling, the plaintiffs never even suggested that any matters involving the First Lady were relevant to their claims.

Of course, if plaintiffs were to make a showing that the First Lady's testimony would somehow be relevant, the government would be prepared to consider that request, and the White House will follow the Justice Department's guidance on how to respond.

# Withdrawal/Redaction Sheet

## Clinton Library

| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                                                                                                                       | DATE       | RESTRICTION |
|--------------------------|-------------------------------------------------------------------------------------------------------------------------------------|------------|-------------|
| 001. memo                | Memorandum for Jennifer O'Connor. From: Cherly Mills and Beth Nolan. Subject: Additional Guidance on Health Care Support. (2 pages) | 10/19/1993 | P5 292      |
| 002. report              | Wire Report. Associate Press article. U. S. Attorney Finds 'Missteps'; Lawmaker Seeks Action On. (2 pages)                          | 08/04/1995 | P5 293      |
| 003. letter              | From William I. Weston. To: Beth Nolan [Re: Maryland's Health Care Claims Arbitration Program.] (2 pages)                           | 04/10/1993 | P5 294      |
| 004. note                | [handwritten notes regarding health care issues.] (2 pages)                                                                         | n.d.       | P5 295      |
| 005. fax                 | Photocopy. From Bill Gadsby, GAO to Christopher Cerf at 16:35. [Re: Health Care Task Force and Working Groups.] (7 pages)           | 1994       | P5 296      |
| 006(a). note             | [Unknown Recipient or Sender. Re: Health Care Case Investigation]. (1 page)                                                         | n.d.       | P5 297      |
| 006(b). draft            | [Annotated draft of legal document]. (5 pages)                                                                                      | n.d.       | P5 298      |
| 007. memo                | Memorandum to Abner Mikva and James Castello. From: Chris Cerf. Re: Magaziner Case. (2 pages)                                       | 06/08/1995 | P5 299      |

### COLLECTION:

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Counsel's Office  
Whalen  
OA/Box Number: CF812

### FOLDER TITLE:

Health Care Task Force

Van Zbinden

2006-0223-F

vz72

### RESTRICTION CODES

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

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

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

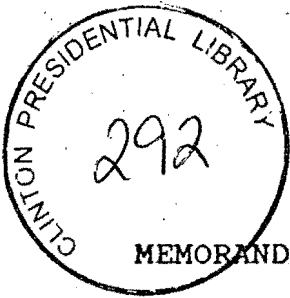
b(1) National security classified information [(b)(1) of the FOIA]  
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]  
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]  
b(4) Release would disclose trade secrets or confidential or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

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

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

RR. Document will be reviewed upon request.

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THE WHITE HOUSE  
WASHINGTON  
October 19, 1993

Health care task  
force

MEMORANDUM FOR JENNIFER O'CONNOR  
OFFICE OF MANAGEMENT AND ADMINISTRATION

FROM: CHERYL MILLS *[Signature]*  
ASSOCIATE COUNSEL TO THE PRESIDENT

BETH NOLAN  
ASSOCIATE COUNSEL TO THE PRESIDENT

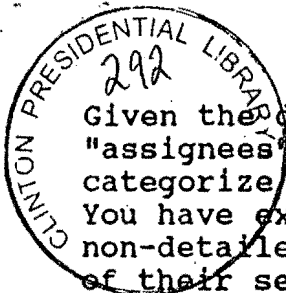
SUBJECT: Additional Guidance on Health Care Support

This memorandum responds to your inquiry regarding our memorandum of October 5, 1993, "Staffing Issues Related to the Health Care Interagency Coordinating Committee." In particular, you asked whether clerical staff for agency representatives should be categorized differently than assignees as defined in a 1992 General Accounting Office ("GAO") report. See GAO Report, "Personnel Practices" (November 6, 1992).

This inquiry reflects a question of nomenclature rather than legality -- the legal issue is whether these individuals meet the definition of a detailee. Clerical staff who perform their regular duties for agency employees who are representatives to an interagency task force or committee do not meet the definition of a detailee. GAO Report at 15. A detail is "the temporary assignment of an employee to a different position or set of duties for a specified period of time." Id. at 2. Because clerical staff supporting agency representatives would continue to be supervised by an agency employee, remain in their same position and continue to perform the same set of duties, they are not detailees. Id. at 15.

In the 1992 GAO Report, the Office of Administration provided a list of categories of other government employees working at the White House who did not meet the definition of a detailee. This list was not exhaustive; rather, it identified groups of other agency employees who were located at the White House who did not meet the definition of a detailee.

The clerical staff who may be brought to the White House to support their agency's representatives to an interagency task force or committee meet the definition of an assignee as described by GAO in its report. However, such individuals are also distinguishable from assignees as described in the report because they will be working for an agency employee who is a representative to a task force on-site at the White House, as opposed to working for an agency employee located at their home agency.



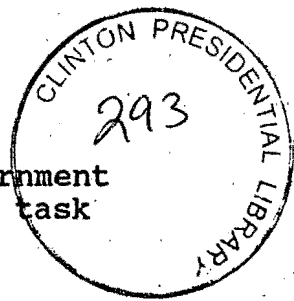
Given the distinction between this group and those defined as "assignees" in the GAO Report, you have inquired whether you may categorize this group of non-detailees as other than "assignees." You have expressed a desire to create more specific categories of non-detailees to reflect potential distinctions in the conditions of their service. While it is permissible for your office to draw such distinctions, they are not required by law.

The legal issue with respect to such employees is only whether or not they are detailees, not what they are labelled if they are not detailees. Thus, narrower categories are not required by law. Ultimately, the delineation of additional categories of non-detailees may make it more difficult to categorize such employees accurately. However, the issue of how such employees are labelled is an administrative issue within the discretion of your Office, so long as the categories created accurately include only those persons who are properly termed non-detailees.

cc: Jim Dorskind  
John Podesta  
Christine Varney  
Maggie Williams

Date: 08/04/95 Time: 16:47

## U.S. Attorney Finds 'Missteps'; Lawmaker Seeks Action on



WASHINGTON (AP) Though there were "missteps" by government lawyers in a legal battle over the White House health reform task force, there is no evidence the group's leader should be prosecuted, a U.S. attorney has concluded.

But one of the Republican lawmakers who had requested an independent counsel in the case said Friday that Congress should further investigate the conduct of White House aide Ira Magaziner.

"I think it's something that Congress ought to pursue," said Rep. Bob Barr, R-Ga., who with the other Republicans on the House Judiciary Committee asked for an independent counsel last March. "I intend to see what I can do to see that Congress looks into this," he said in a telephone interview.

Barr said it would be appropriate for the Judiciary Committee to hold hearings on the formation of the White House task force and "the way in which Mr. Magaziner lied about it."

Magaziner said, "I'm happy to be exonerated. I've been completely truthful. I've done nothing wrong. And I'm glad that that's finally been proved after a thorough investigation."

Eric Holder, U.S. attorney for the District of Columbia, has decided not to prosecute Magaziner over allegations he lied under oath during the litigation by medical groups over the task force.

Holder explained his decision in an 18-page letter to U.S. District Judge Royce Lamberth, who released it Friday.

Magaziner, who helped first lady Hillary Rodham Clinton supervise the task force, was accused of lying about its makeup in a March 3, 1993, sworn statement.

Magaziner swore that all members of the working groups, which met in secret, were either government employees or consultants. Magaziner also declared the consultants had no supervisory role or decision-making authority over the Clinton proposals.

In his letter, Holder criticized the White House and Justice Department lawyers for generating confusion in the case by going "back after the fact" and making people who had been involved in the task force fit into the original categories described by Magaziner.

Holder said that led to "strained interpretations," such as classifying outside consultants as special government employees.

Lamberth concluded last December that Magaziner made some false statements about the task force's members. The judge asked Holder to decide whether to charge that Magaziner knowingly and intentionally made false statements, which would be a crime.

"We have concluded that there is no legal basis for prosecuting Mr. Magaziner for either perjury or contempt of court," Holder told Lamberth in the letter. "We have found no credible evidence that Mr. Magaziner committed a criminal offense."

At the same time, however, Holder was critical of the White House and Justice Department attorneys involved in the case. Holder, as a federal prosecutor, is part of the Justice Department.

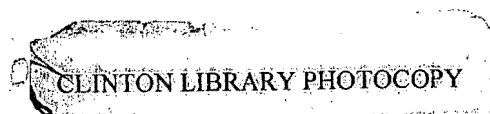
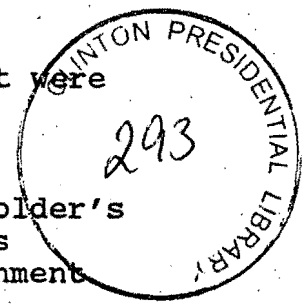
He told Lamberth that parts of Magaziner's sworn statement were "subject to conflicting interpretations and were inartfully used," thereby leaving Magaziner open to charges that his statement was inaccurate.

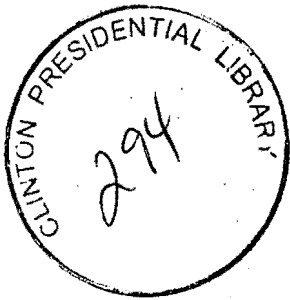
"These problems ... were further compounded by certain tactical judgments and missteps" made by the government lawyers, Holder wrote. "It is fair to say that portions of ... (Magaziner's

statement) are confusing, and that some terms in the document were used imprecisely. The statements that have been challenged, however, cannot be proven true or false."

Thomas Spencer, attorney for the Association of American Physicians and Surgeons, one of the groups that sued, said Holder's criticism of the government lawyers represents "a tremendous stinging indictment of how the very top echelon of our government is run."

APNP-08-04-95 1654EDT





University of Baltimore

April 10, 1993

*Hoffberger Center for  
Professional Ethics*

1420 N. Charles Street  
Baltimore, Maryland 21201-5779  
(301) 234-3930  
(301) 625-3079

Beth Nolan, Esquire  
Office of Counsel to the  
President  
The White House  
1600 Pennsylvania Avenue NW  
Washington, D.C. 20500

Dear Ms Nolan:

Your name was given to me in a letter from Bernard W. Nussbaum, Esquire. He indicated in his letter that he had passed my earlier correspondence on to you.

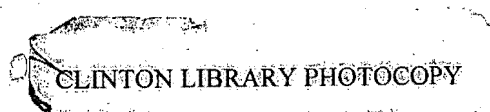
On May 4-7, 1993, I am presiding at a full hearing on the merits in a medical malpractice case under Maryland's Health Claims Arbitration Program. The Hearing will take place in Frederick, Maryland. If Mrs. Clinton, you or anyone would like to sit in for all or part of the Hearing to see how the Maryland arbitration system works, I would be most happy to make arrangements. As you may know, Maryland has had this system for more than ten years and it works well. After serving as panel chair in more than 65 cases, I have come to the conclusion that medical malpractice has little impact on real health care costs and that what we see in medical malpractice is just the tip of the iceberg of what goes on. Those conclusions, by the way, were recently confirmed in a New England Journal of Medicine article which indicated that the current malpractice litigation is a miniscule amount in comparison to the real malpractice. Part of the problem is a lack of effective and responsive discipline of doctors. While lawyer discipline increases in intensity and numbers, doctor discipline does not.

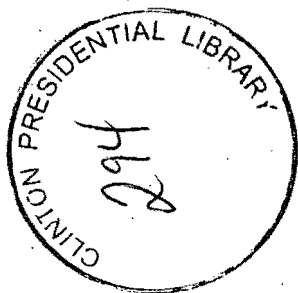
I would be happy to share my experiences with you, Mrs. Clinton or the Task Force. Please let me know if there is any interest in viewing all or part of the Hearing. Personal best wishes.

Very truly yours,

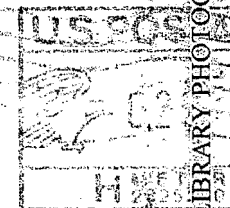
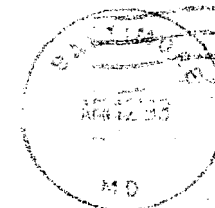
(Prof.) William I. Weston,  
Senior Fellow in Ethics

wiw



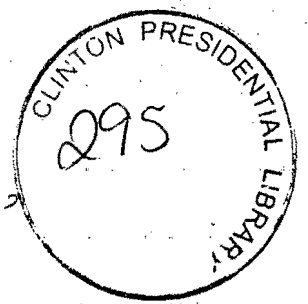


Prof. William I. Weston  
**UNIVERSITY OF BALTIMORE • SCHOOL OF LAW**  
1420 North Charles Street • Baltimore, MD 21201-5779



Beth Nolan, Esquire  
Office of Counsel to the President  
The White House  
1600 Pennsylvania Avenue NW  
Washington, DC 20500





Charlotte/Marge

Glenn Guthrie - lawyers - where are we?

- we need to get going on issues

Lois Quonn

Ann Hall (HHS)

TTTB AGE for HCTF

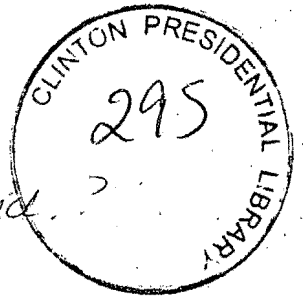
- United Healthcare

(holding co. for HMOs)

Want her to come in and brief people on world health issues

- program from Steve Eddleston

BN can mention  
4SDs = dep. mtg. Fri.



Ethics committee = SGEs - financial disc.?

Recommended WW

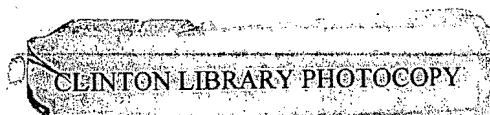
Not required to use WW

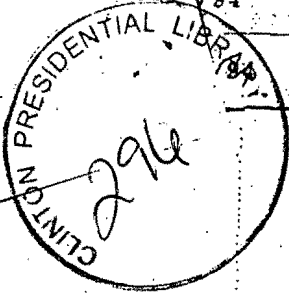
Many did not use WW - no carrier b/w NY and Wash.

Didn't recommend other agencies, although did tell them they could ~~at~~ consult / use WH Travel Office

Charlotte Hayes may have directed them

Catherine Cornelius - rec WW - to Marge "you could use Worldwide. We got good rates from them."





10:35 202 512 3938

USGAO/GGD/HQ

OA DIR OFF

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16:34 2025127919

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|                                         |             |            |            |
|-----------------------------------------|-------------|------------|------------|
| Post-It brand fax transmittal memo 7671 |             | # of pages | 6          |
| To                                      | Chris. Cerr | From       | Bill Gadsb |
| Co.                                     |             | Co.        | GAO        |
| Dept.                                   |             | Phone #    | 512-8387   |
| Fax #                                   |             | Fax #      | 512-8938   |

Congress of the  
Washington, DC 20515

October 5, 1994

94-2241

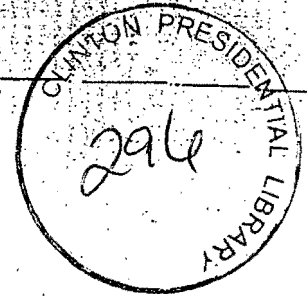
The Honorable Charles A. Bowsher  
Comptroller General  
441 G Street, N.W., Suite 7000  
Washington, D.C. 20548

Dear Mr. Bowsher:

As you know, Representatives Lightfoot, Wolf and Istook wrote to you on August 3rd to request a GAO audit of the expenditures associated with the President's Task Force on National Health Care Reform. They wrote to join the request for this audit made earlier by Representative Clinger. This letter is intended to flesh out that earlier request and to add specific questions based on new information that has come to light.

The White House has recently released the files of the Task Force to the public through the National Archives. A memo dated April 6, 1993 was discovered among these files. The memo mentions Worldwide Travel as the agency to be used for arranging travel for some members of the Ethics Working Group. The document does not mention whether federal or private funds would be used to pay for travel. Additional documents at the National Archives indicate that travel budgets were worked out for at least one of the Working Groups, and that Ira Magaziner reviewed at least one "Budget Memo," although it evidently was not supplied to the Archives.

Similarly, the documents shed little light on the total costs of the Task Force or whether these costs were borne by the taxpayer. The March, 1993 Charter of the Task Force states that the Task Force is estimated to cost less than \$100,000. On March 30, 1993, however, Ms. Patsy Thomasson testified before a House Appropriations Subcommittee that the Task Force would cost \$325,000, and provided an itemized list of expenses. Yet official Salary and Earnings Statements and travel vouchers revealed during the court case AAPS v. Clinton show that the Task Force spent at least \$685,297.69 for full and part-time employees and their travel. This amount covered only thirty-nine of the more than 500 participants of the working groups, so the overall expense obviously was far higher. Multiple references in the documents make it clear that some costs were paid by non-federal government entities.



October 5, 1994

Page Two

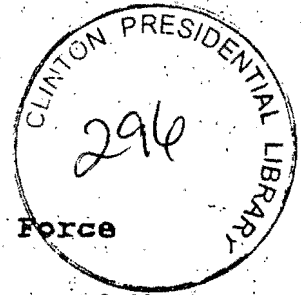
specific questions we would like GAO to address in its investigation.

In these questions, the terms "Health Care Task Force" and "Task Force" are used for simplicity. But they are intended to refer to the entire President's National Health Task Force, including its Interdepartmental Working Group and all its fifteen Cluster Groups and forty-one smaller Working Groups.

Very truly yours,

Paul Coverdell  
United States Senator

Ernest J. Istook, Jr.  
Member of Congress



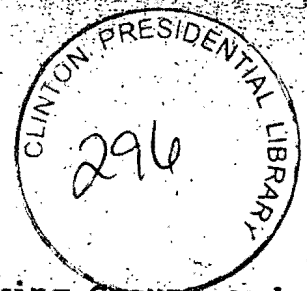
Page Three

Questions Regarding the  
President's National Health Care Task Force

NOTE: In these questions, the terms "Health Care Task Force" and "Task Force" are used for simplicity. But they are intended to refer to the entire President's National Health Task Force, including its Interdepartmental Working Group and all its fifteen Cluster Groups and forty-one smaller Working Groups.

Overall Costs of the Health Care Task Force:

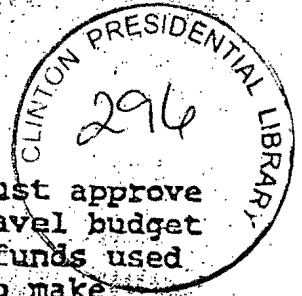
- o What in fact were the actual, total costs of the President's National Health Care Task Force?
- o Of the actual, total costs, what amounts were paid out of federal funds?
- o Were any federal funds appropriated to the White House (or the Executive Office of the President) used to pay for the operations of the Task Force? If so, how much?
- o Were any of the operations of the Task Force paid for out of the official budget of the Department of Health and Human Services? If so, how much?
- o Were the official budgets of any other Executive Branch agencies used to finance the operations of the Task Force? If so, what amounts were used and from what accounts were they paid?
- o What was the total amount of salary and other compensation the Federal government paid to Task Force participants?
- o The Task Force documents available to the public at the National Archives do not provide a complete picture of the actual costs of the Task Force. Does the White House intend to release further documents which will show whether and how federal funds were used to support the Task Force?
- o The documents available at the National Archives do not show what private interests may have paid for part of the Task Force's operations. Did outside interests pay for all or part of the Task Force's operations, including travel and other expenses? If so, how much was so paid?
- o Which private interests paid portions of the Task Force's expenses? Does the White House intend to make this information public?



Page Four

Task Force Travel and Expenses:

- o Over 500 people served on the forty-one Working Groups and fifteen Cluster Groups of the Health Care Task Force. What was the total cost to the government of travel and expenses for these individuals?
- o Were any appropriated, taxpayer funds used to pay for the travel and expenses of any Health Care Task Force participants?
- o Did all participants travel only at "government rate," or were their reimbursements limited to just the "government rate?"
- o Was the White House Travel Office and its staff used to make travel arrangements for participants of the President's National Health Care Task Force?
- o Was any distinction made between federal and non-federal employees in determining whether federal funds would be used to pay for travel?
- o Did their lodgings, meals and per diem expenses conform to federal limitations? What were the total amounts paid in reimbursement for these items?
- o Were the official accounts of any federal agencies used to pay for the travel and expenses of Task Force participants who were federal employees? If so, how much was paid, from what accounts, and for what purpose?
- o Were any funds from White House accounts used to pay for the travel or expenses of Task Force participants? If so, how much was paid, from what accounts, and for what purpose?
- o In a February 24, 1993 memo, Ira Magaziner required all participants of the Task Force to submit the "appropriate forms" to the White House Counsel's office before payment to any entity, government or private, could be approved. But these forms were not found among the documents released to the public through the National Archives. Were such expense approval forms actually submitted to the White House Counsel by Task Force Participants? If so, does the White House intend to release these records to the public?
- o A March 4, 1993 memo from Marian Secundy and Nancy Dubler, co-chairs of the Ethics Working Group, stating that they are trying to arrange for government travel vouchers, "permitting incredible savings." The memo states that "when we add the government discount, we will spend very little."



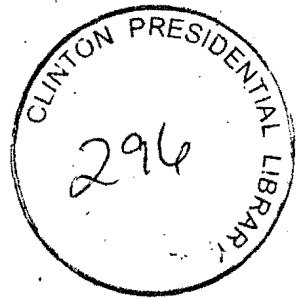
Page Five

(This will be explained to Ira Magaziner, who must approve our budget.)" Did Mr. Magaziner approve the travel budget for the Ethics Working Group, and were federal funds used for this budget? Does the White House intend to make these records public?

- o Some Task Force documents refer to university funds being used to pay for the travel of some Task Force participants? What was the form and total amount of funding assistance (for travel or for other purposes) provided to the Task Force by any outside entity?

#### Worldwide Travel:

- o What instructions were given to Task Force participants regarding travel arrangements, how to pay for them, and whether any particular agent was to be used? Who gave these instructions?
- o Were Task Force participants directed or encouraged by the White House or other federal officials to use Worldwide Travel to make their travel arrangements? Were Task Force participants given information or encouragement about any other travel agency?
- o What was the working relationship between Worldwide Travel and the President's National Health Care Task Force? Was there any instruction or encouragement for participants to use Worldwide Travel?
- o Did Worldwide Travel have a formal contract with the federal government? If so, what were the terms of that agreement?
- o If it had a federal contract, was Worldwide Travel selected through the normal federal procurement and competitive bidding process? Was Worldwide Travel granted a sole-source government contract? Did federal regulations require a formal government agreement before Worldwide Travel's services could be used by Task Force participants?
- o In a April 6, 1993 memo to David Watkins, Marjorie Tarmey states that she has forwarded invoices for travel reimbursement from health care ethics experts who had met with Hillary Clinton to Catherine Cornelius at the White House Travel Office. Were the travel expenses of this group paid for out of White House or any other federal funds?
- o In a second April 6, 1993 memo, Marjorie Tarmey informed David Watkins that seven (of the thirty-two) participants of the Ethics Working Group were expecting reimbursement for their travel costs. She reports that, "Thus far, we have



April 6, 1993

MEMORANDUM FOR DAVID WATKINS

FROM: MARJORIE TARMEY *MJT*

SUBJECT: TRAVEL EXPENSES

Several members of the Ethics Working Group (7 of the 32 members) are expecting to be reimbursed for travel expenses, they include:

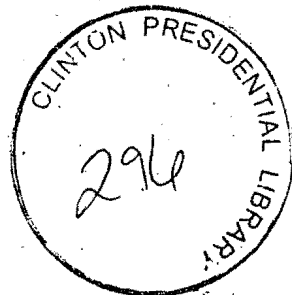
Adrienne Asch  
Ellicott Dorff  
Joan McIver Gibson  
Lawrence Costin  
Carol Levine  
Bernard Lo  
Pilar Ossorio

Thus far, we have assisted them in getting the best travel rates possible through Worldwide Travel. As we approach the end of the Working Group Process we will need to set up a procedure to both reimburse as well as identify the source of the money.

If we expect HHS to pay their travel expense we will need to be sure that they are on the roster of DHHS Special Government Employees. I suggest that these expenses come from the \$50,000 travel budget that was included in the recent Budget Memo that I sent to you.

Please let me know how to handle this matter.

cc: Maggie Williams  
Ira Magaziner



April 6, 1993

MEMORANDUM FOR DAVID WATKINS

FROM: MARJORIE TARMEY *MCT*

SUBJECT: TRAVEL

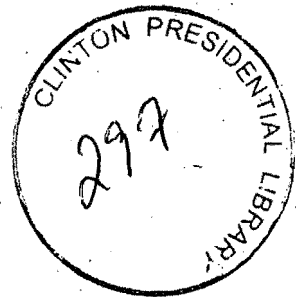
Early in February the First Lady requested that our office set up some meetings for her with some noted Health Care Experts. I forwarded invoices from some of those individuals who requested reimbursement to Catherine Cornelius of your office as you instructed.

Professor E. Richard Brown has joined us as a member of the Working Group. He was also among those experts who briefed the First Lady and he has asked me on several occasions about being reimbursed for those expenses.

I have not heard from the other participants.

Please let me know how to handle this issue.

cc: Maggie Williams  
Ira Magaziner ✓

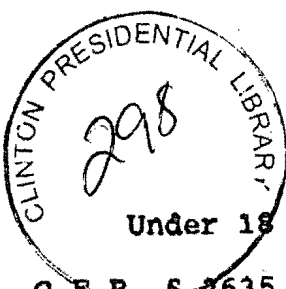


could result  
in Qs  
for KMW  
re: Health  
care case  
investig.

Sent to  
US Atty.  
office

- Health care  
case

DRAFT



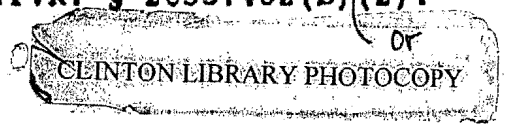
Under 18 U.S.C. § 208, and the implementing regulation, 5 C.F.R. § 2635.402(a) (1993), an employee of the executive branch including a special Government employee, is prohibited from participating personally and substantially in an official capacity in a particular matter in which, to the employee's knowledge, the employee, or any other person whose interests are imputed to the employee, has a financial interest, if the particular matter will have a direct and predictable effect on that interest.<sup>1</sup>

In analyzing whether an employee has a conflict of interest under § 208, it is necessary to consider the totality of circumstances and interplay among several factors: (1) the nexus between the actions taken by the Government employee and the employee's financial interests; (2) the nature and importance of the (employee's) "particular matter" in which employee is participating. See United States v. Mississippi Valley Generating Co., 364 U.S. 520, 555-61 (1961).

The Office of Government Ethics ("OGE") has determined that a financial nexus exists when an employee participates in an activity having a "direct and predictable effect" on the employee's interests. A particular matter has a "direct effect" when

- (i) there is a close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the [employee's] financial interest. . . . A particular matter will not have a

<sup>1</sup> "Imputed financial interest" means the financial interests of an employee's spouse, minor child, partner, organization in which the employee serves as an officer, director, trustee, partner, or employee, or any person or organization with whom the employee is negotiating or has any arrangement for prospective employment. 5 C.F.R. § 2635.402(b)(2).



direct effect on a financial interest, however, if the chain of causation is attenuated or <sup>s</sup> ~~is~~ contingent upon the occurrence of events that are speculative, ~~or that are~~ independent or, <sup>and</sup> ~~or~~ unrelated to, the matter. . . .

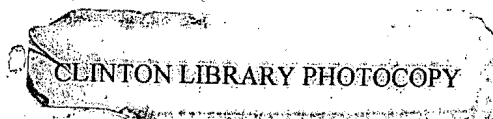
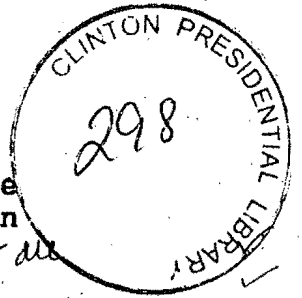
(ii) A particular matter will have a predictable effect if there is a real, as opposed to a speculative <sup>sur</sup> possibility that the matter will the affect the financial interest.

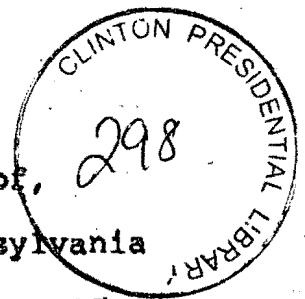
5 C.F.R. § 2635.402(b)(1) (emphasis added).

The nature and importance of the employee's participation in a matter must be both "personal and substantial." 18 U.S.C. § 208. OGE defines "personal" participation as "direct and active" participation. 5 C.F.R. § 2635.402(b)(4). "Substantial" participation means that the employee's involvement is of significance to the matter, not only in terms of the employee's effort, but also on the importance of the employee's effort to the outcome of the matter. Id.

Finally, OGE's regulations define "particular matter" to encompass only matters that involve deliberation, decision, or action that is narrowly focused upon the interest of specific persons, or a discrete and identifiable class of persons. 5 C.F.R. § 2635.402(b)(3). Excluded from the definition of "particular matter" are broad technical areas, as well as policy and conceptual work done before a program has been particularized into such specific matters as contract, procedures, rulings and bills affecting a narrow class of persons or interests. See, e.g., 5 C.F.R. § 2637.204(g).

Plaintiffs contend that Lois Quam, a vice-president of United Healthcare Corporation; David Eddy, a professor at Duke University and a consultant for Kaiser Permanente; and Robert

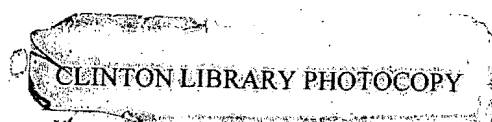


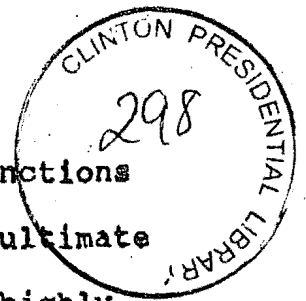


Berenson, a consulting physician to, and equity co-owner of, National Capital Preferred Provider Organization and Pennsylvania Preferred Provider Organization, had conflicts of interest. SJ Memo at 213-16. Plaintiffs offer no analysis to support their claim. Rather, they quote § 208 at length, note that these individuals were employed in, or by, "managed care" corporations, and conclusorily assert that these individuals violated the statute. That was not the case.

The over five-hundred person interdepartmental working group of which Ms. Quam, Dr. Eddy and Dr. Berenson, were participants, served, in effect, as the Task Force's staff in the first, preliminary step of the process to develop the Administration's health care reform proposal. [cite]. They has no decision-making authority regarding the health care reform legislation proposal, and, in fact, each worked only on discrete issues among the panoply of questions examined by the working group as whole. The working group provided information to and developed health care reform options for Mr. Magaziner. [Cite]. He, in turn, presented key issued for the Task Force's consideration. [Cite]. The Task Force advised the President, who, with his senior advisors, thereafter developed the Administration's legislative proposal. [Cite]. And, of course, before health care reform becomes law, it is subject to Congressional consideration and debate. The temporal and causal connection between the working group as a whole, much less any particular participant, and the as-yet unpassed final health care reform legislation was, therefore, an attenuated one.

I don't think we should say that they worked on "discrete" matters - even as part of a larger matter whole

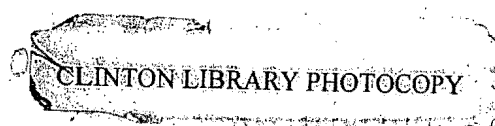


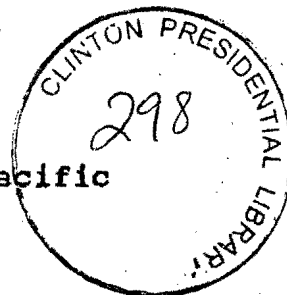


Consequently, the nexus between the staff support functions performed by Ms. Quam, Dr. Eddy and Dr. Berenson and any ultimate financial interest in health care reform legislation, is highly speculative, and is neither direct nor predictable, as defined in the OGE regulations. See C.F.R. § 2635.402(a). Similarly, the importance of the work of <sup>by</sup> one of the over five-hundred working group staffers to the final, as-yet unpassed, health care reform legislation is attenuated. Accordingly, it cannot be concluded that the participation of Ms. Quam, Dr. Eddy and Dr. Berenson would be expected to have a "substantial" effect on health care reform legislation. ✓

Finally, the "matter" in which Ms. Quam, Dr. Eddy and Dr. Berenson were participating -- the review of information and the development of preliminary health care reform options -- was not sufficiently particularized to characterize it as "particular matter" under § 208. See, e.g., OGE Informal Op. 80 X 9 (a specific contract to produce a study of research on stress in health and disease would constitute a particular matter; the underlying generic issue -- research on stress in health can<sup>?</sup> disease -- is not such particular matter). The working group participants confined their work to gathering information and developing policy options well before the issues had been particularized into a bill. See 5 C.F.R. § 2637.204(g). ✓

Moreover, their work was wholly unlike the matters enumerated in the statute, such as a proceeding, application, request for ruling, contract, claim charge, accusation, or other "particular





matter," all of which are focused upon the interests of specific persons. See 18 U.S.C. § 208.<sup>2</sup>

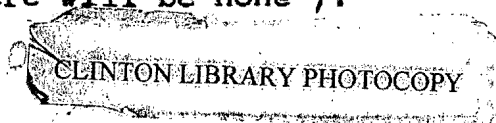
At bottom, the § 208 inquiry [turns on an analysis of the degree to which the preliminary staff and support work of these three individuals, among the over five hundred staffers on the working group, might directly and predictably affect them financially.<sup>3</sup> Each working group participant had such a small and preliminary role in the process by which health care reform is ultimately enacted that they did not violate § 208 during their service on the working group.]

turns on whether the health care initiative, -- at the time the ~~effort was made to change the~~ individuals and other "staffers" on the working group provided input and services, -- ~~it~~ could be considered a particular matter. Because the effort at that time was not focused on ~~part~~ discrete persons or classes of persons, it cannot be considered a particular matter. Therefore, the working group participants did not violate the conflict statutes.

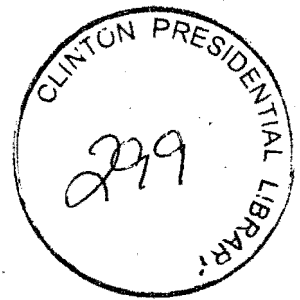
Section 208 is not implicated, and

<sup>2</sup> See also Off. Legal Counsel Memorandum to the Solicitor of the Interior of Jan. 12, 1987, at 7 (the term "particular" was intended to limit the reach of the statute to discrete and identifiable matters affecting the employee's financial interest, rather than encompassing a general area of activity).

<sup>3</sup> See, e.g., OGE Informal Op. 87 X 7 ("We will first look to determine whether the actions taken has a direct and predictable effect on the . . . financial interest of . . . [the employee, and if] not, there is no question as to a possible violation of section 208; there will be none").



THE WHITE HOUSE  
WASHINGTON



June 8, 1995

MEMORANDUM TO ABNER MIKVA  
JAMES CASTELLO

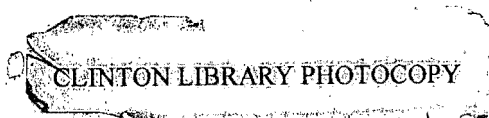
FROM: CHRIS CERF

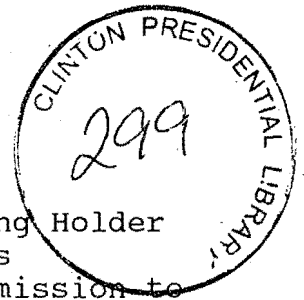
RE: Magaziner Case

As we discussed earlier this week, there appears to be a reasonable possibility that the U.S. Attorney's investigation of Ira Magaziner is drawing to a close. Prior to the criminal referral, Judge Lamberth indicated his intent to impose sanctions on the attorneys. At the request of the parties, however, he has held the sanctions motion (as well as the application for attorneys fees) in abeyance pending the resolution of the criminal portion of the case. We should begin planning now for the next phase of the case, as it has enormous potential to lead to some awful press for the Administration.

Without in any way intending to cast aspersions on DOJ, we need to give serious consideration to the possibility of retaining outside litigation counsel for the White House. I have reliably heard that Lamberth intends to rip into DOJ for the manner in which it conducted the litigation. (This would be profoundly unfair as, from my vantage point, they conducted themselves ably and professionally throughout.) While this is unfortunate, it would be even more so if his predicted tirade also was directed into the White House Counsel's Office. Regrettably, there has been a great deal of finger pointing between the Civil Division and certain members of the Counsel's Office -- a tendency that has every potential for continuing in the context of a heated sanctions proceeding. Thus, there is a good argument that DOJ's and the WH's interests are less than perfectly aligned.

Having said all of this, I am not at all sure that outside counsel is the right way to go. First, we will need to look to DOJ's expertise as to whether it is even feasible under applicable law. Second, doing so would feed indirectly into the Republican claim that an Independent Counsel should have been appointed to investigate Ira. And third, any expenditure of funds for attorney's fees will be criticized by the Hill. (Istook has already asked for a report on this.)





We also talked about the possibility of approaching Holder to make two important points: (1) we would have serious reservations about any public statement or written submission to the Judge, other than a simple statement that the U.S. Attorney's office would take no further action on the matter; and (2) we would object to any ex parte contact with the Judge by Holder's office. (It is not at all inconceivable that the Judge would seek to piggy back on Holder's investigation as he evaluates his approach to sanctions.)

I believe that we should clear any such contact with Holder's office with John or Jamie before it occurs. We certainly do not want to create an impression, however false, that the White House was trying to muscle the outcome of this matter. On the other hand, we have our client's interest to protect, and the kind of discussions set out in the prior paragraph seem to me both necessary and entirely appropriate.

At risk of seeming pushy, I do not think you should raise this matter at your meeting today. There is so much history and nuance here of which you are understandably unaware that I think I need to be part of the discussion. I recommend that we set up a meeting with John early next week to discuss where we are going on this.

cc: Beth Nolan

# Withdrawal/Redaction Sheet

## Clinton Library

| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                                                  | DATE | RESTRICTION |
|--------------------------|----------------------------------------------------------------|------|-------------|
| 001. note                | [Handwritten notes regarding the Ira Magaziner case]. (1 page) | n.d. | P5 300      |

### COLLECTION:

Clinton Presidential Records  
Counsel's Office  
Oetken, Paul  
OA/Box Number: 40308

### FOLDER TITLE:

AAPS - Health Care Task Force

Van Zbinden  
2006-0223-F  
vz73

### RESTRICTION CODES

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

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

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

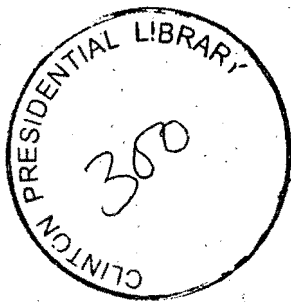
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

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

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

CLINTON LIBRARY PHOTOCOPY



AAPS case  
v. Clinton

Tom Millett  
DOJ - Civil  
514-3313

Health Care Task Force

→ working grp (= staff of task force)

FACA complaint

Magaziner declaration

working grp consisted  
of govt employees

DC Cir: functional test, not formal  
rest



D.Ct: its allege 100s of  
non-govt employees

→ Becomes moot

Case dismissed

Lambert refers to U.S. Atty  
→ no action

Lambert order:

bad faith -

award atty fees

(higher than usual  
FACA fees)

Clinton Library Photocopy  
possib. but allows action for like

# Withdrawal/Redaction Sheet

## Clinton Library

| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                                                                                                                                                                                                             | DATE       | RESTRICTION |
|--------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|-------------|
| 001. letter              | Bernard W. Nussbaum, Counsel to the President to the Honorable William F. Clinger, Jr. concerning the President's health care task force. (2 pages)                                                                       | 02/05/1993 | P5 303      |
| 002. memo                | Memorandum to Thomas F. McLarty and Bruce Lindsey. From: Vincent W. Foster [Re: the American Association of Physicians and Surgeons, Inc., et. al.] (1 page)                                                              | 02/19/1993 | P5 304      |
| 003. memo                | Phone message for B. Nussbaum, V. Foster, S. Neuwirth at 11:00 am. From Tim Smith of Webster, Chamberlin & Bean and Frank Northam. [Re: American Association of Physicians and Surgeons, Inc., et. al. lawsuit.] (1 page) | 02/19/1993 | P5 305      |
| 004. memo                | Talking points regarding the FACA (2 pages)                                                                                                                                                                               | n.d.       | P5 306      |
| 005. letter              | Bernard W. Nussbaum, Counsel to the President to the Honorable William F. Clinger, Jr. concerning the President's health care task force. (2 pages)                                                                       | 02/04/1993 | P5 307      |
| 006. memo                | Talking points Re FACA. (2 pages)                                                                                                                                                                                         | n.d.       | P5 308 Dup  |
| 007. fax                 | Henry R. Wray, Senior Counsel, GAO to Bernard Nussbaum, Counsel to the President at 5:23 pm. [Re: Federal Advisory Committee Act.] (3 pages)                                                                              | 02/17/1993 | P5 309      |
| 008. fax                 | Jeff Gutman to Steve Neuwirth at 4:46 pm. [Re: Draft of Charter, President's Health Care Task Force.] (3 pages)                                                                                                           | 03/12/1993 | P5 310      |

### COLLECTION:

Clinton Presidential Records  
Counsel's Office  
Nemetz, Miriam  
OA/Box Number: CF453

### FOLDER TITLE:

Health Care Task Force Documents Gibson Potentially Privileged Copies [2]

Van Zbinden  
2006-0223-F  
vz55

### RESTRICTION CODES

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

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

P1 National Security Classified Information [(a)(1) of the PRA]  
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]  
P3 Release would violate a Federal statute [(a)(3) of the PRA]  
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]  
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]  
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b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]  
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]  
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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

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

RR. Document will be reviewed upon request.

COPY

# Withdrawal/Redaction Sheet

## Clinton Library

| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                                                                                                                                                                                                                                                        | DATE       | RESTRICTION |
|--------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|-------------|
| 009. fax                 | Jeff Gutman to Steve Neuwirth at 3:58 pm. [Memorandum to Vincent Foster and Stephen Neuwirth from Robert E. Kopp and David J. Anderson. Re: Compliance Issue and Appeal Prospects in Assn. of American Physicians and Surgeons v. Hillary Rodham Clinton] (10 pages) | 03/12/1993 | P5 311      |
| 010. memo                | Privileged and Confidential Attorney-Client/Work Product. Pros and Cons of Appealing or Not Appealing the FACA Decision (2 pages)                                                                                                                                    | n.d.       | P5 312      |
| 011. fax                 | Jeff Gutman to Steve Neuwirth at 4:48 pm. [Re: GSA review of task force charters.] (6 pages)                                                                                                                                                                         | 03/15/1993 | P5 313      |
| 012. memo                | Privileged and Confidential Attorney-Client/Work Product. Guidelines for Meetings with the President to Discuss Health Care Reform Issues. (4 pages)                                                                                                                 | n.d.       | P5 314      |
| 013. letter              | Draft of letter from Bernard W. Nussbaum to the Honorable William F. Clinger, Jr. [Re: the President's Health Care Task Force.] (2 pages)                                                                                                                            | 02/03/1993 | P5 315      |
| 014. memo                | Memorandum to Hillary Rodham Clinton from Bernard W. Nussbaum, Vincent W. Foster, and Stephen F. Neuwirth. Re: Health Care Task Force/Federal Advisory Committee Act. (6 pages)                                                                                      | 02/02/1993 | P5 316      |
| 015(a). note             | To Counsel's Office from Kevin Sabo, Committee on Government Operations. Re: attached letter to the President from Congressman Clinger on the Federal Advisory Committee Act/Health Care Task Force (1 page)                                                         | 02/04/1993 | P5 317      |

### COLLECTION:

Clinton Presidential Records  
Counsel's Office  
Nemetz, Miriam  
OA/Box Number: CF453

### FOLDER TITLE:

Health Care Task Force Documents Gibson Potentially Privileged Copies [2]

Van Zbinden  
2006-0223-F  
vz55

### RESTRICTION CODES

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

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

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- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
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C. Closed in accordance with restrictions contained in donor's deed of gift.

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

RR. Document will be reviewed upon request.

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

COPY

# Withdrawal/Redaction Sheet

## Clinton Library

| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                                                                                                                                                                                               | DATE       | RESTRICTION |
|--------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|-------------|
| 015(b). fax              | To White House Counsel from Kevin Sabo, Minority General Counsel at 5:12 pm. [Re: letter to the President from Congressman Clinger on the Federal Advisory Committee Act/Health Care Task Force.] (3 pages) | 02/01/1993 | P5 318      |
| 016. fax                 | No cover sheet. Letter to Gloria Gutierrez, Commerce Department. From: Ira C. Magaziner [Re: staffing for the Health Care Task Force.] (1 page)                                                             | 02/24/1993 | P5 319      |

### COLLECTION:

Clinton Presidential Records  
Counsel's Office  
Nemetz, Miriam  
OA/Box Number: CF453

### FOLDER TITLE:

Health Care Task Force Documents Gibson Potentially Privileged Copies [2]

Van Zbinden

2006-0223-F

vz55

### RESTRICTION CODES

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

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

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

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

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

RR. Document will be reviewed upon request.

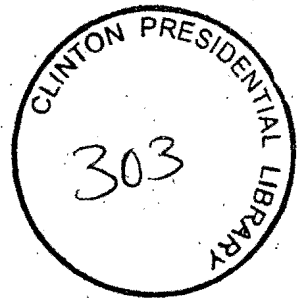
- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
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- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

COPY

THE WHITE HOUSE

WASHINGTON

February 5, 1993



The Hon. William F. Clinger, Jr.  
Committee on Government Operations  
Congress of the United States  
House of Representatives  
2157 Rayburn House Office Building  
Washington, D.C. 20515-6143

Dear Representative Clinger:

The President has asked me to respond to your letter, dated February 1, 1993, concerning the President's health care task force.

The President has selected the First Lady, Hillary Rodham Clinton, to chair the health care task force. In addition to the First Lady, the task force currently includes the Secretaries of the Treasury, Defense, Commerce, Labor, Health and Human Services, and Veterans Affairs; the Director of the Office of Management and Budget; the Assistant to the President for Domestic Policy; the Assistant to the President for Economic Policy; the Chair of the Council of Economic Advisors; and the Senior Advisor to the President for Policy Development.

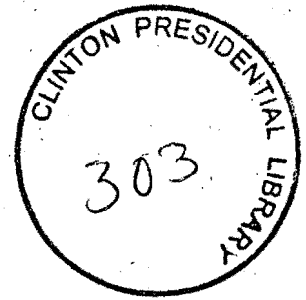
The task force has not yet held a meeting, although members of the task force were present on January 25 when the President announced the formation of the task force and defined its mission. The task force is planning to hold some public meetings in the future. Those meetings have not yet been scheduled.

As the President announced on January 25, the Senior Advisor to the President for Policy Development will lead an interdepartmental working group which will gather information for, and provide information to, the task force. The working group will consist of government employees, and will consult with a wide range of citizens in the public and private sectors. The task force, in turn, will review information provided by the working group and make recommendations to the President.

It is our opinion that the Federal Advisory Committee Act ("FACA") does not, and was not intended by Congress to, apply to the health care task force. The participation of the First Lady on the task force does not trigger application of the Act.

COPY

The Hon. William F. Clinger, Jr.  
February 5, 1993  
Page 2



Finally, we appreciate your intention to introduce legislation to amend FACA to provide that the Act is not triggered by the participation of the spouse of the President or the spouse of the Vice President on a committee or task force making recommendations to the President. We believe, however, that the existing statute already provides for such a result.

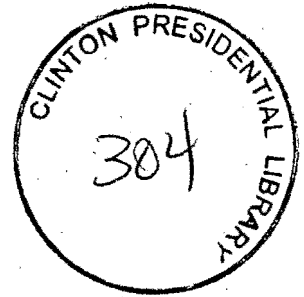
Please feel free to contact me, my deputy Vincent Foster or Stephen Neuwirth of this office, should you require further information in response to your inquiry.

Very truly yours,

Bernard W. Nussbaum  
Counsel to the President

COPY

THE WHITE HOUSE  
WASHINGTON



PRIVILEGED AND CONFIDENTIAL

FEBRUARY 19, 1993

MEMORANDUM TO THOMAS F. MCLARTY  
CHIEF OF STAFF

BRUCE LINDSEY  
ASSISTANT TO THE PRESIDENT AND SENIOR  
ADVISOR AND DIRECTOR, OFFICE OF PERSONNEL

FROM: VINCENT W. FOSTER <sup>Y</sup>  
DEPUTY COUNSEL TO THE PRESIDENT

We received notice today that three organizations (The Association of American Physicians and Surgeons, Inc.; American Council for Health Care Reform; National Legal and Policy Center) will file suit Tuesday morning in U.S. District Court against the members of the Health Care Task Force, including the First Lady, Secretaries of six agencies, Director and Deputy Director of OMB, Rasco, Magaziner and Fedder, and against the Task Force as an entity and the Executive Office of the Presidency, alleging a violation of Federal Advisory Committee Act (FACA) and the Government in the Sunshine portion of the FOIA. We understand the plaintiffs will seek a temporary restraining order preventing the Task Force from meeting pending a permanent injunction against any meetings in violation of these acts.

We have been in touch with Webb Hubbell, and he is assembling a defense team at the Justice Department.

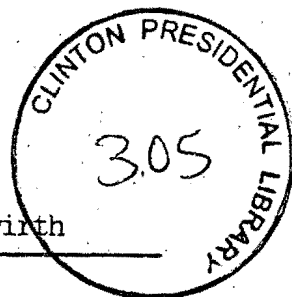
We have alerted the Communications Department.

By copy of this to Ira Magaziner, we are requesting the Task Force staff to accumulate copies of any communications received from the plaintiffs. We will independently do a public record search on them.

cc: Hillary Rodham Clinton  
Bernard W. Nussbaum  
Stephen R. Neuwirth  
Robert Boorstin  
George Stephanopoulos  
Dee Dee Myers  
Ira Magaziner

COPY

## Message Information



MESSAGE FOR: B. Nussbaum, V. Foster, S. Neuwirth

Time of Call: 2/19/93 - 11:00 a.m.

Caller Name: Tim Smith of Webster, Chamberlin & Bean (law firm)

Caller Affiliation: Frank Northam - litigation lead counsel

Telephone Number: 785-9500

Address: \_\_\_\_\_ Apt. \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

### Message/Comments:

Next week, on behalf of several clients who are participating as co-counsel, we will be filing in U.S. District Court a TRO against the Presidential Task Force on Health Reform. Because of the nature of the relief we are seeking, we are going to seek a hearing quickly. In order to give you as much lead time as possible, wanted to know how to serve White House Counsel as soon as possible. Also, were wondering whether it would be possible to serve the First Lady through White House Counsel's office.

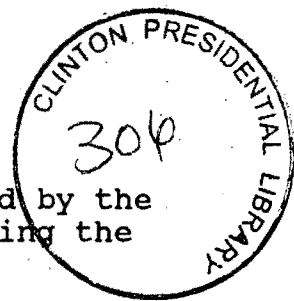
2pm

HRC -

3 Assn's, which wrote contending violation of EACA & requesting to meet with task force, will sue Thur. Am. Defendants will be members of Task Force, Task Force of Exec Office of Pres. Members will be sued in official and personal capacities. TRO requested is to prevent a meeting of task force except as permitted by EACA & EATD

COPY

TALKING POINTS RE FACA



1. We believe it is clear that FACA is not triggered by the First Lady's participation on a task force advising the President.
2. The Federal Advisory Committee Act was intended to regulate outside influences on the advice given to the President or federal agencies.

Indeed, FACA expressly does not apply to "any committee which is composed wholly of full-time officers or employees of the Federal Government." 5 U.S.C. App. § 3(2).

3. According to the Supreme Court, the purpose of FACA in regulating outsiders was "to cure specific ills, above all the wasteful expenditure of public funds for worthless committee meetings and biased proposals." Public Citizen v. Dep't of Justice (1988).
4. The First Lady plainly is not the type of "outsider" with which Congress was concerned when it enacted FACA.

Significantly, 3 U.S.C. § 105(e), concerning "Assistance and Services for the President," expressly recognizes the First Lady's historic role:

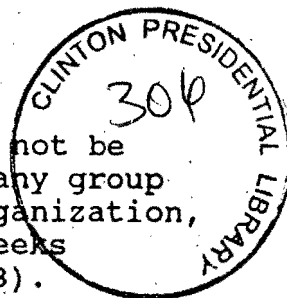
" (e) Assistance and services authorized pursuant to this section to the President are authorized to be provided to the spouse of the President in connection with assistance provided by such spouse to the President in the discharge of the President's duties and responsibilities."

[3 U.S.C. § 106(e) includes a similar provision on the spouse of the Vice President -- you may not want to raise this.]

5. Moreover, the task force has made clear that it will hold public meetings (though no task force meetings have yet been held or scheduled). As a practical matter, any concerns about public disclosure of the task force's work do not arise here. [Note, if pressed, that FACA's public meeting and document disclosure requirements do not apply to staff or working groups that provide information to the task force for its use.]
6. If pressed:

We believe that for purposes of this statute, a committee composed solely of cabinet secretaries, senior White House officials and the First Lady is a committee "which is composed wholly of full-time officers or employees of the Federal Government."

COPY

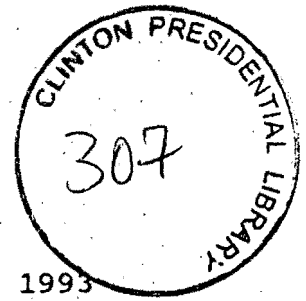


The Supreme Court has instructed that FACA should not be read literally to "extend FACA's requirements to any group of two or more persons, or at least any formal organization, from which the President or an Executive agency seeks advice." Public Citizen v. Dep't of Justice (1988).

That is why, for example, the Supreme Court held that an ABA Advisory Committee on Judicial Nominations is not subject to FACA even though a literal reading of the statute would bring such a committee within the Act's purview.

7. The statutory definition of "officer" and "employee" appears at 5 U.S.C. §§ 2104-05. But in the context of FACA, those terms must be interpreted consistent with the Act's purposes.
8. This is particularly so given that the Constitutionality of FACA is itself questionable -- Congress is regulating an express power of the Executive in Article II, in this case preparing legislation to present to Congress.
9. In Public Citizen, the Supreme Court held that to the extent the proper interpretation of FACA is unclear, the statute should be interpreted to avoid having to raise such a constitutional question.
  - Three justices (Rhenquist, Kennedy and O'Connor) found that FACA is unconstitutional.
  - A fourth justice, Scalia, recused himself, but had written an OLC opinion in 1974 finding the Act unconstitutional insofar as it sought to regulate the advice the President receives in connection with the exercise of his Article II powers.

COPY



February 4, 1993

The Hon. William F. Clinger, Jr.  
Committee on Government Operations  
Congress of the United States  
House of Representatives  
2157 Rayburn House Office Building  
Washington, D.C. 20515-6143

Dear Representative Clinger:

The President has asked me to respond to your letter, dated February 1, 1993, concerning the President's health care task force.

The President has selected the First Lady, Hillary Rodham Clinton, to chair the health care task force. In addition to the First Lady, the task force currently includes the Secretaries of the Treasury, Defense, Commerce, Labor, Health and Human Services, and Veterans Affairs; the Director of the Office of Management and Budget; the Assistant to the President for Domestic Policy; the Assistant to the President for Economic Policy; the Chair of the Council of Economic Advisors; and the Senior Advisor to the President for Policy Development.

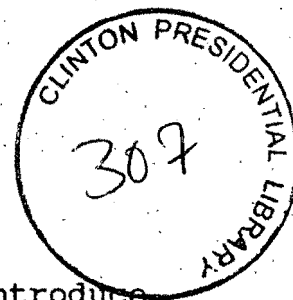
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It is our opinion that the Federal Advisory Committee Act ("FACA") does not, and was not intended by Congress to, apply to the health care task force. The participation of the First Lady on the task force does not trigger application of the Act.

COPY

The Hon. William F. Clinger, Jr.  
February 4, 1993  
Page 2



Finally, we appreciate your intention to introduce legislation to amend FACA to provide that the Act is not triggered by the participation of the spouse of the President or the spouse of the Vice President on a committee or task force making recommendations to the President. We believe, however, that the existing statute already provides for such a result.

Please feel free to contact me, my deputy Vincent Foster or Stephen Neuwirth of this office, should you require further information in response to your inquiry.

Very truly yours,

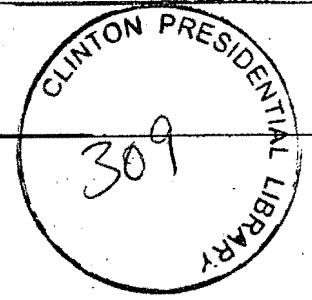
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Bernard W. Nussbaum  
Counsel to the President

COPY



United States  
General Accounting Office  
Washington, D.C. 20548



Office of the General Counsel

B-252375

February 17, 1993

Mr. Bernard W. Nussbaum  
Counsel to the President

Dear Mr. Nussbaum:

As we have discussed with Mr. Stephen Neuwirth of your staff, Representative William F. Clinger, Jr., has requested our opinion as to whether the President's health care task force is subject to the Federal Advisory Committee Act (FACA), 5 U.S.C. App. §§ 1-15 (1988). The purpose of this letter is to obtain your views on the issues raised in the request (copy enclosed), so that we may consider them in preparing our response.

The first issue we have been asked to address is whether the First Lady's presence on the task force renders it an advisory committee subject to FACA. In your February 5 letter to Representative Clinger, you stated the conclusion that FACA does not apply to the task force but did not elaborate on this conclusion.

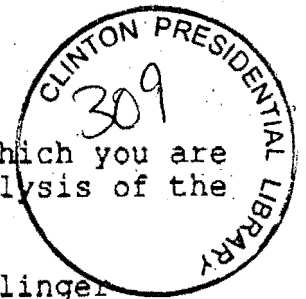
In a recent conversation, Mr. Neuwirth informally advised us that the White House believes FACA does not apply to the task force because the First Lady's participation does not result in the type of outside influence FACA was designed to control, and that Supreme Court cases support an interpretation of FACA based on its broader purposes.

We would appreciate further elaboration of your analysis of this issue, including answers to the following questions:

- (1) In concluding that the task force is not subject to FACA, are you relying on FACA's exemption for committees "composed wholly of full-time officers or employees of the Federal Government"? If so, on what basis does the First Lady qualify under this exemption?
- (2) Are there other reasons why you believe the task force is not subject to FACA?

COPY

(3) What are the Supreme Court cases on which you are relying, and how do they apply to your analysis of the status of the task force?



The remaining issues raised by Representative Clinger concern the capacity in which individuals outside the federal government will serve the task force and the interdepartmental working group which will assist the task force. In order to address these issues, we would appreciate your description of the non-federal individuals and groups that are expected to assist the task force and working group and the functions that they will be performing. Additionally, please advise us whether there have been any changes in the membership of the task force and working group as described in your February 5 letter. For example, an article in yesterday's Washington Post indicated that the President's nominee for Surgeon General has become a member of the task force. Is this correct?

In order that we may meet the reply date set by Representative Clinger, we request your response to this letter by February 24, 1993. If you have any questions concerning this request, please call me on 275-5156 or Ms. Lynn Gibson of my staff on 275-5422.

Sincerely yours,

Henry R. Wray  
Senior Associate General Counsel

Enclosure

# Congress of the United States

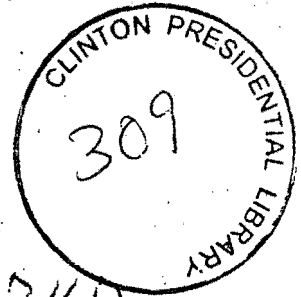
## House of Representatives

### COMMITTEE ON GOVERNMENT OPERATIONS

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

February 12, 1993



93-0747

13-252375/001

The Honorable Charles A. Bowsher  
Comptroller General of the United States  
441 G Street, N.W., Rm. 7000A  
Washington, D.C. 20548

Dear Mr. Bowsher:

It has been brought to my attention that the President's Task Force on Health Care may be in violation of the Federal Advisory Committee Act (FACA), 5 U.S.C. App (1988). The purpose of this letter is to seek a legal opinion from the General Accounting Office on the applicability of FACA to the President's task force.

FACA regulates the formation and operation of advisory committees by federal agencies in the Executive branch. It is deliberative bodies such as this task force, which include membership from both within and outside government, which the Congress sought to bring into the sunshine through the enactment of FACA.

Please conduct a review of the Federal Advisory Committee Act to determine whether it is applicable to the President's Task Force on Health Care. Specifically, (1) determine if the presence of the First Lady on the task force violates the express language of FACA, (2) identify to what degree non-federal officers or employees are working with the task force or on subgroups reporting to the task force, and (3) determine if the participation of these non-federal officers or employees violates the express language of FACA. If time permits, identify what steps should be taken to bring the task force into compliance with the Act.

Because this matter involves a possible ongoing violation of federal law, I ask that you proceed with this report at all deliberate speed and provide me with an oral report no later than Monday, February 29. Your staff can contact Kevin Sabo, my committee counsel, at 225-2738, for further information.

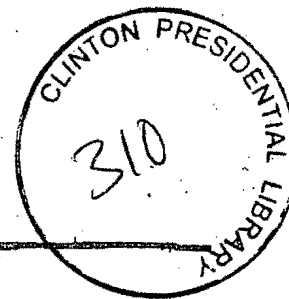
Sincerely,

*Bill Clinger*  
William F. Clinger, Jr.  
Republican Chairman

COPY



U.S. Department of Justice



Washington, D.C. 20530

## CIVIL DIVISION

## FEDERAL PROGRAMS BRANCH

## FAX TRANSMITTAL COVER SHEET

DATE:

3/12/93

TO:

Steve Newman

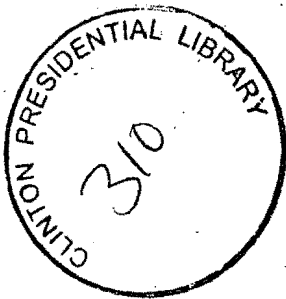
FAX NUMBER:

456-1647

FROM:

Jeff GormanFax No. (202) 616-8202 (LOCAL) -- 360-8202 (FIS)  
9th FLOORTHERE ARE A TOTAL OF 3 PAGES INCLUDING THIS COVER PAGE IN THIS TRANSMISSION.

COPY



THE PRESIDENT'S TASK FORCE ON  
NATIONAL HEALTH CARE REFORM

DRAFT  
JAN 20 1993

CHARTER

I. Official Designation

The official designation of this task force is the "President's Task Force on National Health Care Reform" as established in the Statement of the President, dated January 25, 1993. 29 Weekly Compilation of Presidential Documents 96 (Feb. 1, 1993).

II. Membership

The Task Force is chaired by Hillary Rodham Clinton in her capacity as First Lady pursuant to 3 U.S.C. § 105(e) to provide assistance to the President in the course of his executive duties. The Task Force is composed of Secretary of the Treasury Lloyd Bentsen; Secretary of Defense Les Aspin; Secretary of Commerce Ron Brown; Secretary of Labor Robert Reich; Secretary of Health and Human Services Donna Shalala; Secretary of Veterans Affairs Jesse Brown; Office of Management and Budget Director Leon Panetta; Assistant to the President for Domestic Policy Carol Rasco; Assistant to the President for Economic Policy Robert Rubin; Council of Economic Advisors Chair Laura Tyson and Senior Advisor to the President for Policy Development Ira Magaziner.

This membership includes those officials who presently have leading responsibility for the administration and regulation of government-related health care services, for developing domestic and economic policies that affect public and private health care systems and are affected by them, and for advising the President on health care and economic issues.

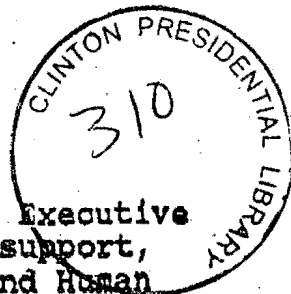
III. Objectives and Scope of Activity

The duties of the Task Force are to gather and analyze information provided by federal, state and local governmental entities and employees, private organizations and individuals on the state of existing health care policies and delivery services, to assess possible alternatives to such policies and services and to recommend to the President a comprehensive proposal on health care reform for enactment by the Congress.

IV. Timing and Duration

The Task Force shall commence its work on January 25, 1993 and will terminate on May 30, 1993, unless terminated earlier by the President. This charter is subject to renewal.

COPY



V. Official Reporting and Agency Support

The Task Force shall report to the President. The Executive Office of the President will arrange for all necessary support, including staff support from the Department of Health and Human Services, Office of Management and Budget, Department of Defense, Department of Veterans Affairs, Department of Labor, Department of Commerce, Department of Treasury, Council of Economic Advisors and Congress.

VI. Estimated Costs

The estimated costs of the Task Force are \$\_\_\_\_\_ (and XX full-time employees).

VII. Meetings

The Task Force will conduct meetings as necessary.

This Charter is filed as a result of the March 10, 1993 Order entered in Association of American Physicians and Surgeons, Inc., et al. v. Hillary Rodham Clinton, et al., No. 93-399 (D.D.C.). The Task Force was not established pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 because I did not believe and do not believe that the Task Force is or may constitutionally be subject to the Act. I reserve the right to withdraw this Charter should the Court's Order later be vacated.

FILED this \_\_\_\_\_ day of \_\_\_\_\_, 1993

\_\_\_\_\_  
William Jefferson Clinton  
President of the United States

COPY



U.S. Department of Justice

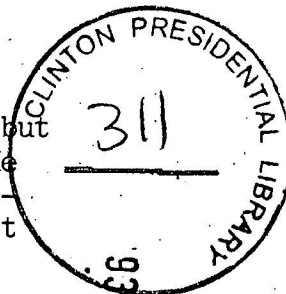
Vince

Q - Best course  
action  
a) to get clarification  
while  
b) avoiding discovery  
c) avoiding contempt

3-12, 4:15

Steve --

I let Gutman know we got fax but  
you were not in right now. He  
then asked if Vince was avail-  
able and I said he too was not  
here. He said he'll check in  
again in a while.



93 MAR 12 PM 4:15

Indur  
514-3354

CIVIL

FEDERAL PM

Sherry

FAX TRANSMIT

DATE:

3/12/93

TO:

STEVE NEWMITH

WHITE HOUSE COUNSEL OFFICE

FAX NUMBER:

456-6279 or 456-1647

FROM:

JOE GURAN

514-4775

Fax No. (202) 616-8202 (LOCAL) -- 369-8202 (FIS)  
9th FLOOR

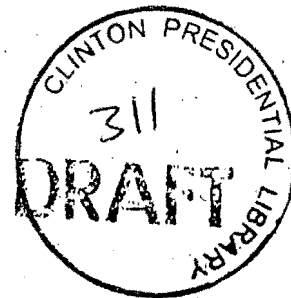
THERE ARE A TOTAL OF 10 PAGES INCLUDING THIS COVER PAGE IN THIS  
TRANSMISSION.

I'll stand by ~~the~~ to receive any comments or  
changes, revise accordingly and re-send a  
final to you today so that you can get a copy to  
your clients.

Also, I have drafted a check. Once Dave  
gives it a look, I'll send it on.

fax at back

COPY



Washington, D.C. 20530

Memorandum

To: Vincent Foster  
Deputy Counsel to the President

Stephen Neuwirth  
Associate Counsel to the President

From: Robert E. Kopp  
Director, Appellate Staff

PRIVILEGED ATTORNEY-  
CLIENT AND WORK  
PRODUCT MATERIAL

David J. Anderson  
Director, Federal Programs Branch  
Civil Division

Re: Compliance Issues and Appeal Prospects in  
Ass'n. of American Physicians and Surgeons v.  
Hillary Rodham Clinton, et al., No. 93-399 (D.D.C.)

INTRODUCTION

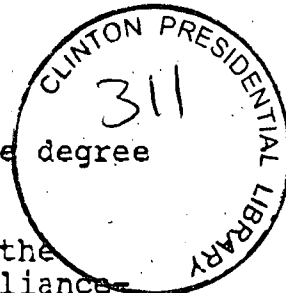
You asked us to provide you with an analysis of the compliance issues arising from Judge Lamberth's March 10 Order, likelihood of success of litigation involving them and the prospects of reversing the award of preliminary injunctive relief to plaintiffs on appeal. The memo does not represent definitive legal conclusions based on exhaustive analysis, but should serve as our initial views on the problems you presented to us yesterday.

Neither the Federal Advisory Committee Act ("FACA"), 5 U.S.C. App. 2, implementing General Services Administration ("GSA") regulations, 41 C.F.R. Subpart 101-6.10, nor the Judge's Opinion and Order are models of clarity or provide certain answers to many of the compliance issues you have raised. Actions taken in reliance on narrow readings of these three sources of guidance pose litigation risks, and plaintiffs may well challenge them through an amended complaint, motions for further relief or motions for contempt in the district court. Overly broad constructions of defendants' obligations, on the other hand, may unduly hamper the work of the Task Force.

It is, in part, for these reasons that we strongly recommend an expedited appeal of the March 10 Order. The Court's Order

COPY

undoubtedly impairs the Task Force's work to a measurable degree and questions over compliance with its less-than-certain requirements may cloud its efforts with uncomfortable uncertainty. However, an expedited appeal may diminish the likelihood that these or other plaintiffs will file compliance-related papers in the district court, or that Judge Lamberth will be inclined to rule on them.



Even if we were to file an expedited appeal and demonstrated a likelihood of success on most compliance-related questions, there is a good chance that plaintiffs will return to the district court in effort to ensure compliance with FACA and the Order. Plaintiffs will likely seek discovery, and it will be difficult to resist such discovery without leaving the public impression that something is being hidden. The prospect of discovery requires us to be particularly careful in ensuring full compliance with the Order's written and implicit requirements.

The opinion is, of course, favorable in many respects. All claims regarding the working group were dismissed and the Court recognized the constitutional dimensions of the President's effort to obtain advice on recommended legislation. Nonetheless, the Order does place some significant roadblocks in the Task Force's effort to continue its work unimpeded,<sup>1</sup> and, because it does, it offers the plaintiffs a chance to divert the Task Force's energies and resources to defending against compliance motions.

We also believe that Judge Lamberth's opinion poses significant long-term concerns. The Court's ruling potentially weakens Presidential power by allowing Congress to regulate the process by which he and his close advisors receive both factual and policy information. The opinion also narrows potential opportunities for the First Lady to perform valuable public service and to assist the President in the same private manner allowed other close government advisors.

On balance, we believe that the advantages to taking an expedited appeal far outweigh the risks. As detailed below, we believe that the prospect for success of appeal are quite good.

## DISCUSSION

### Compliance Issues

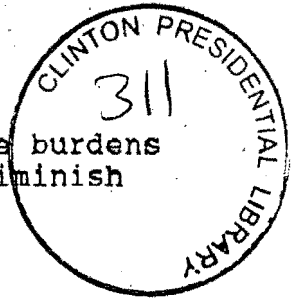
Judge Lamberth's Order raises four categories of compliance issues: 1) charter and membership, 2) "subgroup" meetings, 3) the fact-finding vs. advice formulation function and 4) public access

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<sup>1</sup> We underline those requirements that appear to us to be particularly onerous.

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to information. Each imposes significant administrative burdens on the Task Force, may potentially delay its work and diminish its flexibility.



# 1. Charter and Membership

a. Section 9(c) of FACA prohibits an advisory committee from meeting or taking any action until a charter is filed with GSA. Prior to filing a charter, the President or designee must submit a letter and proposed charter to the GSA's Committee Management Secretariat in accordance with 41 C.F.R. § 101-6.1007(b)(2). The GSA will, if possible, approve or disapprove establishment of the advisory committee within 15 days. § 101-6.1007(c). Once approved, a notice that the committee is being established must be published in the Federal Register. § 101-6.1015(a)(1). An exception for committees established by Executive Order would not apply here. Id. Such notice shall appear 15 days before the charter is filed with the Congress and Library of Congress, unless the Secretariat permits a shorter time for good cause. § 101-6.1015(a)(2). These regulations could effectively bar the Task Force or any subgroups of it from working at all for 30 days, but this delay could be overcome if the GSA is asked to, and does, expedite this process. Still a 15 day delay

Delays inherent in filing charter  
—  
delays mtgs of TF

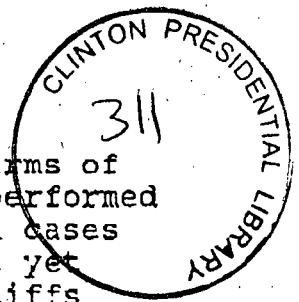
b. It is unlikely that this moratorium applies to the inter-departmental working group, although the matter is not free from doubt. Section 9(c) of FACA bars an "advisory committee" from meeting or taking action until the charter is filed. "Advisory committee" is defined to include "subgroups" or "subcommittees" thereof that meet the requirements of § 3(2). The Court held, however, that the interdepartmental working group is not an "advisory committee." Nevertheless, to allow a working group to begin work prior to the chartering of a just-established parent advisory committee would be of dubious legality. Under the unusual circumstances of this case, we have a reasonably strong argument, however, that neither the Court nor FACA intended the working groups to stop their work for days or weeks pending filing of the charter.

Shut down of working gr

c. However, there is a serious question whether, under the Order, a "subgroup" of the Task Force may meet at all until the charter is approved and filed. What constitutes a "subgroup" is discussed in ¶ 2(c), infra. Paragraph 1 specifically enjoins meetings of a Task Force subgroup until the Task Force as a whole complies with FACA, of which filing the charter is the first step. While the Magaziner Decl. ¶ 9 explains that there are no "formal" subgroups of the Task Force, neither FACA nor the Order expressly distinguish between formal and informal subgroups, and a meeting between Mr. Magaziner and the First Lady, for example, may be a subgroup. The Order may, therefore, bar meetings between members of the Task Force, whatever their purpose, at least until charter is filed.

mtgs of subgroup

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d. FACA committees must be "fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee." FACA, § 5(2). Several FACA cases have dealt with this provision and, while the law is not yet settled, the better view in this District is that plaintiffs generally lack standing to enforce this provision and that it is judicially unreviewable. This may not prevent these or other plaintiffs, possibly frustrated by a perceived lack of influence, from bringing suit to reconstitute the Task Force. But, in addition to these jurisdictional defenses, defendants can argue that the "fairly balanced" requirement does not require the seating of representatives of medical, public interest and insurance organizations on the Task Force, but that the relevant point of view and function here is that of the government agencies that will be charged with implementing the resulting legislation.

## 2. Subgroup meetings

It is clear under the Court Order that working group meetings are not subject to FACA and that the fact-finding meetings of the Task Force are. The Opinion does not explain whether meetings of two or more Task Force members together or with members of the working group or the public are subject to FACA.

a. It is reasonably clear that members of the Task Force may attend forums or meetings organized by private groups on health care without triggering FACA's procedural requirements. Those requirements apply to meetings of the advisory committee, §§ 10(a)(1), (2), not meetings of private groups attended by FACA committee members.

ok to attend forum

b. For the same reason, it is unlikely that a meeting convened by the interdepartmental working group, or one of its cluster groups, that is attended by a Task Force member is an advisory committee meeting. National Anti-Hunger Coalition, which involved working groups chaired by FACA committee members, supports this conclusion.

ok based for one TF member to attend w/6 Mtg

c. Meetings initiated by more than one Task Force member with members of the working group and/or the public, which would in all likelihood be informational in nature, might lead to a different result. The Order enjoins meetings of "subgroups" or "subcommittees" until the requirements of FACA are satisfied. Order, ¶ 1. The issue is whether an informal meeting between, for example, the First Lady, Mr. Magaziner and Ms. Rasco constitutes a "subgroup."

2 or more TF mem

We could argue that the term "subgroup" refers only to groups of two or more Task Force members that are convened with some degree of formality or structure, and not to chance or

4) require formality or structure

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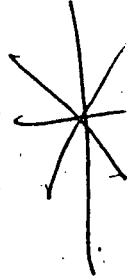
informal meetings. A GSA regulation, 41 C.F.R. § 101-6.1004(k), would support this view. It provides that meetings of two or more advisory committee members to gather information or to analyze facts is not covered by FACA. While the regulation, which would apply as much to the full Task Force as to a subgroup of two or three, is helpful, reliance on it poses a some risk of contempt. Paragraph 1 of the Order plainly says that "all fact-finding and fact-reporting meetings of the Task Force must comply fully with the requirements of FACA." FACA and the order could be circumvented by dividing into "informal" subgroups to engage in fact-finding and fact-reporting meetings. This may violate the spirit, if not the letter of the Order. As a result, it can plausibly be argued that two or more members of the Task Force cannot meet to discuss factual or deliberative issues unless public notice is provided.

d. "Formal" fact-reporting meetings described in (c), [any meetings of the Task Force or two or more members thereof involving the formulation of advice,] and, perhaps, "informal" subgroup meetings require public notice. 41 C.F.R. § 101-6.1015(b) requires notice of 15 calendar days prior to the meeting unless "exceptional circumstances" exist that are stated in the Federal Register. What such circumstances might be are not stated in the GSA regulations. That 15 days (or really any) notice is required prior to a fact-reporting meeting seriously hampers the ability of the Task Force to produce prompt recommendations to the President. Such notice prior to deliberative meetings, which would presumably occur near the end of the process, might not be as burdensome. Nevertheless, under these circumstances, there would be an understandable inclination to exercise this exception frequently, presenting fertile ground for litigation. Challenges might be filed in order to disrupt the Task Force's work. A strong defense lies in the President's imposition of a 100-day time-table, although we may need explain why such a compressed time-table is needed in somewhat more detail. Defendants' chances of prevailing would likely depend on the nature of the meeting, how much less than 15 days notice was provided and how often the exception was exercised. Defendants might have a better chance of prevailing on such cases involving shortened notice to deliberative meetings because the public would not be able to attend, but, again, these meetings might be the easiest ones to provide full notice.

what  
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fact report  
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order re  
subgroup

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e. Meetings of two or more Task Force members for either fact-finding or deliberative purposes may be subject to the Order. It is possible to imagine, however, meetings of Task Force members that fall into neither category. If the First Lady and Mr. Magaziner meet to discuss operational or logical issues, such as when to schedule a meeting or the general progress of the working group, it is doubtful that FACA would apply. FACA's legislative history suggests that operational groups or meetings are not covered by FACA.



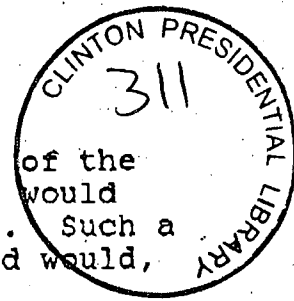
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Is this fact rptg  
to TF or from TF to P?

ISSUE  
Narrowing

f. Finally, it would seem likely that, at the end of the process, the Task Force as a whole or a subgroup of it, would present its advice and recommendations to the President. Such a meeting would be a meeting of the advisory committee and would, therefore, require public notice.



These meetings also raise a tricky issue about public access. It may well be that these meetings would not involve fact-reporting or advice formulation, but, instead, "advice-reporting." The Order is not clear on whether public access to such a meeting would be required. It is very difficult to believe, even following the reasoning in Judge Lamberth's opinion, that FACA could constitutionally require public access to meetings in which the President receives advice. Public interest may be greatest in meetings between the Task Force and the President, and, it is, therefore, more likely that a lawsuit or a motion for contempt by plaintiffs would be filed in this context. Defendants' chances of prevailing in such litigation would appear quite strong.

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### 3. Advice Formulation vs. Fact-Finding

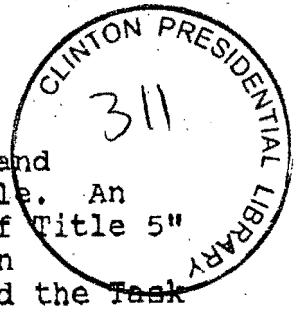
The Court's Order affords public access to Task Force fact-reporting or fact-finding meetings, but not to those involving advice formulation. Perhaps the most difficult part of complying with the Court's order is trying to determine if and how such a distinction can be drawn in free-flowing meetings.

Perhaps it is possible for the Task Force or subgroups thereof to structure their meetings in a way such that some are plainly intended to involve fact reporting, such as meetings in which the public is invited to speak, and some clearly involve deliberation. The problem is in dealing with meetings likely to involve both.

fact-reporting  
vs  
fact-finding  
q

Paragraph 2 of the Order, which refers to meetings scheduled for the "purpose" of formulating advice, offers a partial solution. Meetings may well be called, and so described in the public notice, for the purpose of deliberation. Factual discussion that is part and parcel of the deliberative process would not violate the Order. Other meetings, however, may not have such a specific agenda. There is precedent in the FOIA context that, if facts and opinion are inextricably intertwined in an inter-agency document such that deliberative material cannot easily be redacted, the entire document may be withheld. The problem of possible "intertwining" seems much more likely in oral discussions. Under such circumstances, it is hard to imagine the Court holding defendants in contempt if the Task Force made a good faith effort to segregate meetings or portions of meetings between fact finding and deliberation, but could not do so in other portions without completely disrupting the gathering.

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#### 4. Public Access to Information

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of not saying  
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a. Section 10(b) requires documents prepared by and furnished to the Task Force to be made publicly available. An argument can be made that the "subject to section 552 of Title 5" language in § 10(b) exempts non-agencies such as certain components of the Executive Office of the President, and the Task Force, from FACA's document access requirements. Such a result would exempt many, if not all, Presidentially-established FACA committees from these requirements and would be contrary to intent of Congress. After all, if open committee meetings are to be truly meaningful for the public, interested persons should have access to the documents at issue in these meetings. As a result, we believe that Task Force documents, except those protected by a FOIA privilege other than deliberative process,<sup>2</sup> are subject to public inspection "until the Task Force ceases to exist." § 10(b). Non-privileged documents received in the "intake center," Magaziner Decl. ¶ 22, for example, are subject to public disclosure.

b. Although the First Lady and the other Task Force members serve in public capacities other than on the Task Force, it is likely that most of the documents that they have received are readily identifiable as having been sent to them because of their role on the Task Force. Indeed, Magaziner Decl. ¶ 22 states that mail sent to the First Lady and Mr. Magaziner on health care issues has been handled by the "intake center." These documents would be subject to disclosure.

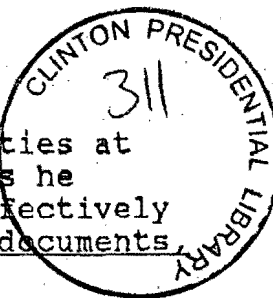
c. Documents received by the First Lady during her meetings with outside groups, the Hill or the working group are subject to disclosure as well. It would be difficult to argue that she received these documents in her capacity as First Lady rather than her capacity as Chair of the Task Force.

✓

d. Documents received by Mr. Magaziner during similar meetings presents a somewhat more difficult issue. Documents received or produced by the working group are generally not subject to disclosure because the working group is not a FACA committee. But see ¶ e, infra. When they are furnished to or made directly available to the Task Force, they become Task Force documents subject to disclosure. Mr. Magaziner serves a dual role as Task Force member and head of the working group. Whether documents he receives or produces are subject to disclosure, such as the decision tree he has prepared for the President, may turn on the capacity in which he received or produced the document.

<sup>2</sup> The Office of Legal Counsel has concluded that agency documents transmitted to a FACA committee would be subject to deliberative process privilege protection if sought from the Task Force.

The problem is that Mr. Magaziner serves in two capacities at once, and it would be difficult to argue that documents he produces or receives as working group chair are not effectively in his possession as Task Force member as well. Such documents, therefore, are likely to be subject to disclosure.



acw

e. Documents currently in the possession of the working group are likely not considered Task Force documents and are not subject to disclosure. However, § 10(b) of FACA provides that documents "made available to" or "prepared for" the FACA committee must be disclosed. This suggests that documents need not be in the FACA committee's physical custody to be disclosable. Neither can it mean, however, that all staff documents are disclosable. Even if the Task Force does not possess a document, it would seem that the Task Force must disclose documents that the Task Force has 1) specific knowledge were prepared for them, or 2) specific knowledge are available to them and 3) access to them. Whether we could prevail in a challenge in which we take the position that only documents possessed by the Task Force must be made public is questionable.

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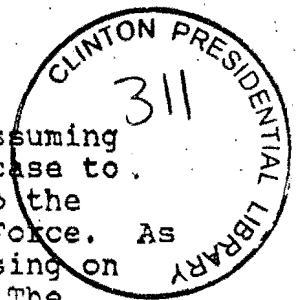
f. Finally, those working group documents which have not been "made available to" or "prepared for" the Task Force are not subject to disclosure. The working group is neither a FACA committee nor a FOIA agency. Working group documents prepared by executive branch agencies are, however, subject to FOIA requests on the agency if the document remains in the agency's custody and control. Such documents may be withheld pursuant to any FOIA privilege. Deliberative process may, however, be difficult to assert because that privilege applies, in part, to "inter-agency" documents, and, as noted, the working group is not an agency.

#### Appellate Prospects

While prospects for success cannot, of course, be predicted with any certitude, we believe that the advantages of appeal outweigh the risks. We believe that our statutory argument is far stronger than the district court recognized and that we have a strong basis for asserting that the court erred in believing it was bound by the Title 5 definitions of "officer" and "employee." With respect to the constitutional argument, the D.C. Circuit is particularly sensitive to Executive Branch prerogatives and will certainly recognize the seriousness of the issues presented. In short, there is a very good prospect that the D.C. Circuit may remove doubts cast by the district court on the status of the First Lady and the scope of Presidential privilege.

The worst case scenario, of course, is that the D.C. Circuit would find both our statutory and constitutional arguments unpersuasive and would also disagree with the district court's analysis of the working group issue. Even under this scenario, however, it is unlikely that the court would order that

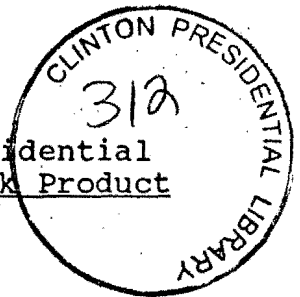
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working group meetings be opened to the public. Even assuming the worst, the court would almost certainly remand the case to the district court for further factual development as to the relation of the working groups in relation to the Task Force. As noted, however, we think that our chances of totally losing on both the statutory and constitutional issues is small. The judges who will be most troubled by our statutory argument will be those most likely to support us on the constitutional issues. Conversely, those least inclined to a broad ruling on executive powers may be those most willing to interpret the statute broadly to comport with congressional purpose.

cc: Judge Webster Hubbell  
Nancy McFadden

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PROS AND CONS OF APPEALING OR NOT  
APPEALING THE FACA DECISION

Appeal

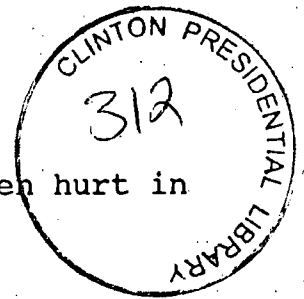
Pros:

- Only way to undo a ridiculous decision that will undermine President's ability ever again to make First Lady officially in charge of any work effort
- Only way to free this Task Force (and other Presidential advisory bodies) from untenable restrictions (including advance public notice of all meetings and potential disclosure of every document created by or for the advisory body)
- Will make it virtually impossible for plaintiffs to seek further relief in district court
- We have a substantial chance of prevailing in Court of Appeals
- We define the agenda of any appeal

Cons

- Appeal could be construed as inconsistent with prior statements to the press
- Court of Appeals might uphold district court decision -- thereby making it more of a controlling precedent -- or make it worse
- Reopens issue of secrecy
- Poses risks to working group

Not Appeal

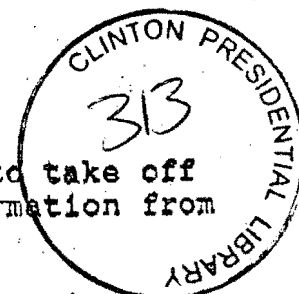


Pros:

- Allows us to maintain posture that we have not been hurt in any way by district court
- Avoids reopening debate in the press
- Avoids risk that Court of Appeals might convert decision of one district judge into a powerful precedent
- Avoids immediate risk to working group
- Forces plaintiffs to appeal (and right now, they have obtained no relief)

Cons:

- Subjects Task Force and any other body including First Lady, to burdensome restrictions
- Leaves district court in charge of case, and plaintiffs may seek relief re working group documents and Task Force "subgroup" meetings
- Leaves in place an absurd and burdensome opinion
- Makes it difficult to tell Court of Appeals at later time (or in response to an appeal by plaintiffs) that the district court's order is problematic
- We lose chance to frame the issues on appeal and define public perception of case



NOTE TO STEVE NEUWIRTH:

At the risk of missing you today, as I'm about to take off to rescue my stranded wife, I have some helpful information from GSA on the Charter.

I spoke with Helen Moss, a lawyer, (501-1460) and Jim Dean, who is the head of the Secretariat (632-1126, 632-1133).

The difficulty in applying the regs to this case is that the regs were not written in contemplation of the establishment of an advisory committee by anything other than an executive order. There is precedent, however, for the creation of Presidential committees under FACA by statement, most recently an education group established by President Bush.

GSA takes the position that the 15 day period by which GSA may review a proposed charter, created in § 101-6.1007, does not apply to Presidential advisory committees. Moreover, GSA takes the view that the Federal Register notice required in § 101-6.1015 does not apply here either. Therefore, all that needs to be done is that the Charter is filed with the GSA Secretariat and with the Library of Congress. § 101-6.1013(c).

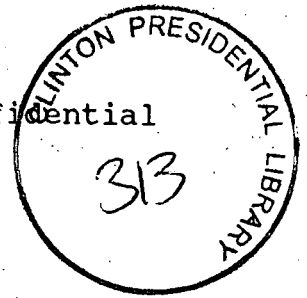
GSA is willing to help write the charter and help with the mechanics of filing. They say that they can turn the thing around in a day or less. GSA suggests that you, they and Mac Reed, an attorney at OMB with a lot of experience in this area, should work together in getting a final product together.

I should be home for at least part of the evening if you have any questions.

Jeff Gutman

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[WHITE HOUSE LETTER HEAD]

Committee Management Secretariat  
General Services Administration  
Washington, D.C.

To whom it may concern:

Enclosed herewith is a proposed charter establishing the President's Task Force on National Health Care Reform.

The Task Force has been established in the public interest to gather and analyze information provided by federal state and local governmental entities and employees, private organizations and individuals on the state of existing health care policies and delivery services; to assess possible alternatives to such policies and services; and to recommend to the President within the first 100 days of his Administration a proposal for comprehensive health care reform legislation to be enacted by Congress.

The President has determined that the establishment of this Task Force is the best means to ensure that he receives a comprehensive health care reform proposal within the first 100 days of his Administration. The breadth and complexity of the issues to be addressed require the special attention of a task force.

The membership of the Task Force includes those officials who presently have principal responsibility for the administration and regulation of government-related health care services; for developing domestic and economic policies that affect, and are affected by, public and private health care systems; and for advising the President on health care and economic issues.

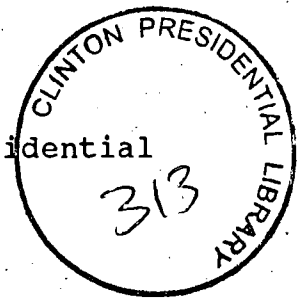
[Because the President has requested that the Task Force present him with a health care reform proposal within the first 100 days of his Administration, it is imperative that this Charter be approved immediately. Please inform me no later than March \_\_, 1993, of your views on this proposed Charter, or of your approval.]

Very truly yours,

Bernard W. Nussbaum  
Counsel to the President

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THE PRESIDENT'S TASK FORCE ON  
NATIONAL HEALTH CARE REFORM

CHARTER

I. Official Designation

This task force shall be designated the "President's Task Force on National Health Care Reform," as set forth in the Statement of the President, dated January 25, 1993. See 29 Weekly Compilation of Presidential Documents 96 (Feb. 1, 1993).

II. Membership

This Task Force is chaired by Hillary Rodham Clinton, the First Lady, who in this capacity is assisting the President in the discharge of his duties and responsibilities. See 3 U.S.C. § 105(e). The other members of the Task Force are Secretary of the Treasury Lloyd Bentsen; Secretary of Defense Les Aspin; Secretary of Commerce Ron Brown; Secretary of Labor Robert Reich; Secretary of Health and Human Services Donna Shalala; Secretary of Veterans Affairs Jesse Brown; Office of Management and Budget Director Leon Panetta; Assistant to the President for Domestic Policy Carol Rasco; Assistant to the President for Economic Policy Robert Rubin; Council of Economic Advisors Chair Laura Tyson; and Senior Advisor to the President for Policy Development Ira Magaziner.

This membership includes those officials who presently have principal responsibility for the administration and regulation of government-related health care services; for developing domestic and economic policies that affect, and are affected by, public and private health care systems; and for advising the President on health care and economic issues.

III. Objectives and Duties

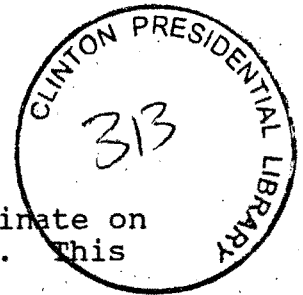
The Task Force's mission is to build on the work of the 1992 Presidential Campaign and Transition in the area of health care reform; to gather and analyze information provided by federal, state and local governmental entities and employees, private organizations and individuals on the state of existing health care policies and delivery services; to assess possible alternatives to such policies and services; and to recommend to the President within the first 100 days of his Administration a proposal for comprehensive health care reform legislation to be enacted by Congress.

The Task Force shall not delegate its responsibilities to subcommittees or subgroups.

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#### IV. Timing and Duration

The creation of the Task Force was announced by the President on January 25, 1993. The Task Force will terminate on May 30, 1993, unless terminated earlier by the President. This charter is subject to renewal.



#### V. Official Reporting and Agency Support

The Task Force shall report to the President. Support shall be provided to the Task Force by the Executive Office of the President, the Department of Health and Human Services, the Department of Defense, the Department of Veterans Affairs, the Department of Labor, the Department of Commerce, the Department of Justice, the Department of the Treasury, the Office of Management and Budget, the Council of Economic Advisors, and Congress.

Mr. Magaziner, the Senior Advisor to the President for Policy Development, leads an interdepartmental working group that is gathering information for, and will provide information to, the Task Force. The working group consists of government employees and is consulting with a wide range of citizens in the public and private sectors. The Task Force, in turn, will review information provided by the working group and make recommendations to the President.

#### VI. Estimated Costs

[TO BE ADDED.]

#### VII. Meetings

The Task Force shall conduct meetings as necessary. The Task Force has not yet met, and as of the date of the filing of this Charter no meetings of the Task Force have yet been scheduled.

\* \* \*

This Charter is filed pursuant to the order of the district court in Association of American Physicians and Surgeons, Inc. v. Clinton, No. 93-399 (D.D.C. Mar. 10, 1993). The Task Force was not established pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2, because I do not believe that the Task Force is, or may constitutionally be, subject to the Act. I reserve the right to withdraw this Charter should the order of the district court be reversed or vacated.

Filed this \_\_\_\_\_ day of March 1993.

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William Jefferson Clinton

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§ 101-6.1004

full right and obligation to participate in the activities of the committee, including voting on committee recommendations.

**Presidential advisory committee** means any advisory committee which advises the President. It may be established by the President or by the Congress, or used by the President in the interest of obtaining advice or recommendations for the President. "Independent Presidential advisory committee" means any Presidential advisory committee not assigned by the President, or the President's delegate, or by the Congress in law, to an agency for administrative and other support and for which the Administrator of General Services may provide administrative and other support on a reimbursable basis.

**Staff member** means any individual who serves in a support capacity to an advisory committee.

**Utilized (or used)**, as referenced in the definition of *Advisory committee* in this section, means a committee or other group composed in whole or in part of other than full-time officers or employees of the Federal Government with an established existence outside the agency seeking its advice which the President or agency official(s) adopts, such as through institutional arrangements, as a preferred source from which to obtain advice or recommendations on a specific issue or policy within the scope of his or her responsibilities in the same manner as that individual would obtain advice or recommendations from an established advisory committee.

§ 101-6.1004 Examples of advisory meetings or groups not covered by the Act for this subpart.

The following are examples of advisory meetings or groups not covered by the Act or this subpart:

- (a) Any committee composed wholly of full-time officers or employees of the Federal Government;
- (b) Any advisory committee specifically exempted by an Act of Congress;
- (c) Any advisory committee established or utilized by the Central Intelligence Agency;

41 CFR Ch. 101 (7-1-92 Edition)

(d) Any advisory committee established or utilized by the Federal Reserve System;

(e) The Advisory Committee on Intergovernmental Relations;

(f) Any local civic group whose primary function is that of rendering a public service with respect to a Federal program, or any State or local committee, council, board, commission, or similar group established to advise or make recommendations to State or local officials or agencies;

(g) Any committee which is established to perform primarily operational as opposed to advisory functions. Operational functions are those specifically provided by law, such as making or implementing Government decisions or policy. An operational committee may be covered by the Act if it becomes primarily advisory in nature. It is the responsibility of the administering agency to determine whether such a committee is primarily operational. If so, it would not fall under the requirements of the Act and this subpart, but would continue to be regulated under relevant laws, subject to the direction of the President and the review of the appropriate legislative committees;

(h) Any meeting initiated by the President or one or more Federal official(s) for the purpose of obtaining advice or recommendations from one individual;

(i) Any meeting initiated by a Federal official(s) with more than one individual for the purpose of obtaining the advice of individual attendees and not for the purpose of utilizing the group to obtain consensus advice or recommendations. However, agencies should be aware that such a group would be covered by the Act when an agency accepts the group's deliberations as a source of consensus advice or recommendations;

(j) Any meeting initiated by a group with the President or one or more Federal official(s) for the purpose of expressing the group's view, provided that the President or Federal official(s) does not use the group currently as a preferred source of advice or recommendations;

(k) Meetings of two or more advisory committee or subcommittee members

Federal Property Management Regulations

convened solely to gather information or conduct research for a chartered advisory committee, to analyze relevant issues and facts, or to draft proposed position papers for deliberation by the advisory committee or a subcommittee of the advisory committee; or

(l) Any meeting with a group initiated by the President or one or more Federal official(s) for the purpose of exchanging facts or information.

§ 101-6.1005 Authorities for establishment of advisory committees.

An advisory committee may be established in one of four ways:

(a) By law where the Congress specifically directs the President or an agency to establish it;

(b) By law where the Congress authorizes but does not direct the President or an agency to establish it. In this instance, the responsible agency head shall follow the procedures provided in § 101-6.1007;

(c) By the President by Executive Order; or

(d) By an agency under general agency authority in title 5 of the United States Code or under other general agency-authorizing law. In this instance, an agency head shall follow the procedures provided in § 101-6.1007.

§ 101-6.1006 [Reserved]

§ 101-6.1007 Agency procedures for establishing advisory committees.

(a) When an agency head decides that it is necessary to establish a committee, the agency must consider the functions of similar committees in the same agency before submitting a consultation to GSA to ensure that no duplication of effort will occur.

(b) In establishing or utilizing an advisory committee, the head of an agency or designee shall comply with the Act and this subpart, and shall:

(1) Prepare a proposed charter for the committee which includes the information listed in section 9(c) of the Act; and

(2) Submit a letter and the proposed charter to the Secretariat proposing to establish or use, reestablish, or renew an advisory committee. The letter

shall include the following information:

(i) An explanation of why the committee is essential to the conduct of agency business and in the public interest;

(ii) An explanation of why the committee's functions cannot be performed by the agency, another existing advisory committee of the agency, or other means such as a public hearing; and

(iii) A description of the agency's plan to attain fairly balanced membership. The plan will ensure that, in the selection of members for the committee, the agency will consider a cross-section of those directly affected, interested, and qualified, as appropriate to the nature and functions of the committee. Committees requiring technical expertise should include persons with demonstrated professional or personal qualifications and experience relevant to the functions and tasks to be performed.

(3) Subcommittees that do not function independently of the full or parent advisory committee need not follow the requirements of paragraphs (b)(1) and (b)(2) of this section. However, they are subject to all other requirements of the Act.

(4) The requirements of paragraphs (b)(1) and (b)(2) of this section shall apply for any subcommittee of a chartered advisory committee, whether its members are drawn in whole or in part from the full or parent advisory committee, which functions independently of the parent advisory committee such as by making recommendations directly to the agency rather than for consideration by the chartered advisory committee.

(c) The Secretariat will review the proposal and notify the agency of GSA's views within 15 calendar days of receipt, if possible. The agency head retains final authority for establishing a particular advisory committee.

(d) The agency shall notify the Secretariat in writing that either:

(1) The advisory committee is being established. The filing of the advisory committee charter as specified in § 101-6.1013 shall be considered appropriate written notification in this instance. The date of filing constitutes

(2) Nothing in this subsection shall prevent --

(A) an individual who (without regard to his service with an advisory committee) is a full-time employee of the United States; or

(B) an individual who immediately before his service with an advisory committee was such an employee.

from receiving compensation at the rate at which he otherwise would be compensated for was compensated as a full-time employee of the United States.

(e) The Administrator shall include in budget recommendations a summary of the amounts he deems necessary for the expenses of advisory committees, including the expenses for publication of reports where appropriate.

(As amended 1977 Reorg. Plan No. 1, § 4, eff. Nov. 20, 1977, 42 F.R. 56101, 91 Stat. 1634; 1977 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 44 F.R. 36967, 92 Stat. 3783; Pub. L. 96-523, § 2, Dec. 12, 1980, 94 Stat. 3010)

## HISTORICAL AND STATUTORY NOTES

### References in Text

Section 501 of the Rehabilitation Act of 1973, referred to in subsec. (d)(1)(c)(i), is classified to section 791 of Title 29, Labor, rather than to section 794 of Title 29 as shown in text.

### 1980 Amendment

Subsec. (d)(1) Pub. L. 96-523, 11.1. (also (c))

### Effective Date of 1980 Amendment

Amendment by Pub. L. 96-523 effective sixty days after Dec. 12, 1980, see section 1 of Pub. L. 96-523, set out as a note under section 1102 of this title.

### Transfer of Functions

"Administrator", meaning Administrator of General Services, was substituted for "Director", meaning Director of the Office of Management and Budget, in text, "General Services Administration" for "Office of Management and Budget" in subsec. (a), and "Administrators" for "Directors" in subsec. (b), pursuant to Reorg. Plan No. 1 of 1977, § 5F, 42 F.R. 56101, 91 Stat. 1634, set out in Appendix 1 of this title, which transferred all functions of the Office of Management and Budget and its Director relating to the Committee Management Secretariat, which is responsible pursuant to subsec. (a) of this section for all matters relating to advisory committees, to the Administrator of General Services, effective Nov. 20, 1977, as provided by section 1 of Ex. Ord. No. 12024, Dec. 1, 1977, 42 F.R. 61445, set out under section 2 of this Act in this Appendix.

Director of General Services, effective Nov. 20, 1977, as provided by section 1 of Ex. Ord. No. 12024, Dec. 1, 1977, 42 F.R. 61445, set out under section 2 of this Act in this Appendix.

"Director of the Office of Personnel Management" was substituted for "Civil Service Commission" in subsec. (d) pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of this title, which transferred all functions vested by statute in the United States Civil Service Commission to the Director of the Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12167, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of this title.

All functions of the Office of Management and Budget and the Director thereof relating to the Committee Management Secretariat were transferred to the Administrator of General Services by Reorg. Plan No. 1 of 1977, § 5F, 42 F.R. 56101, 91 Stat. 1634, set out in this Appendix, effective on or before Apr. 1, 1978, at such time as specified by the President.

### Legislative History

For legislative history and purpose of Pub. L. 96-523, see 1980 U.S. Code Cong. and Admin. News, p. 6530.

## § 8. Responsibilities of agency heads: Advisory Committee Management Officer, designation

(a) Each agency head shall establish uniform administrative guidelines and management controls for advisory committees established by that agency, which shall be consistent with directives of the Administrator under section 7 and section 10. Each agency shall maintain systematic information on the nature, functions, and operations of each advisory committee within its jurisdiction.

(b) The head of each agency which has an advisory committee shall designate an Advisory Committee Management Officer who shall --

(1) exercise control and supervision over the establishment, procedures, and accomplishments of advisory committees established by that agency;

(2) assemble and maintain the reports, records, and other papers of any such committee during its existence; and

(3) carry out, on behalf of that agency, the provisions of section 552 of title 5, United States Code, with respect to such reports, records, and other papers.

(As amended 1977 Reorg. Plan No. 1, § 5F, eff. Nov. 20, 1977, 42 F.R. 56101, 91 Stat. 1634; 1980 U.S. Code Cong. and Admin. News, p. 6530)

## HISTORICAL AND STATUTORY NOTES

### Transfer of Functions

"Administrator", meaning Administrator of General Services, was substituted for "Director", meaning Director of the Office of Management and Budget, in subsec. (a), pursuant to Reorg. Plan No. 1 of 1977, § 5F, 42 F.R. 56101, 91 Stat. 1634, set out in Appendix 1 of this title, which transferred all functions of the Office of Management and Budget and its Director relating to the Committee Management Secretariat, which is responsible pursuant to section 7(a) of this Act for all matters relating to advisory committees, to the Administrator of General Services, effective Nov. 20, 1977, as provided by section 1 of Ex. Ord. No. 12024, Dec. 1, 1977, 42 F.R. 61445, set out under section 2 of this Act in this Appendix.

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## § 9. Establishment and purpose of advisory committees: publication in Federal Register; charter; filing; contents; copy

(a) No advisory committee shall be established unless such establishment is --

(1) specifically authorized by statute or by the President; or

(2) determined as a matter of formal record, by the head of the agency involved after consultation with the Administrator with timely notice published in the Federal Register, to be in the public interest in connection with the performance of duties imposed on that agency by law.

(b) Unless otherwise specifically provided by statute or Presidential directive, advisory committees shall be utilized solely for advisory functions. Determinations of action to be taken and policy to be expressed with respect to matters upon which an advisory committee reports or makes recommendations shall be made solely by the President or an officer of the Federal Government.

(c) No advisory committee shall meet or take any action until an advisory committee charter has been filed with (1) the Administrator, in the case of Presidential advisory committees; or (2) with the head of the agency to whom any advisory committee reports and with the standing committees of the Senate and of the House of Representatives having legislative jurisdiction of such agency. Such charter shall contain the following information:

(A) the committee's official designation;

(B) the committee's objectives and the scope of its activity;

(C) the period of time necessary for the committee to carry out its purposes;

(D) the agency or official to whom the committee reports;

(E) the agency responsible for providing the necessary support for the committee;

(F) a description of the duties for which the committee is responsible, and, if such duties are not solely advisory, a specification of the authority for such functions;

(G) the estimated annual operating costs in dollars and man-years for such committee;

(H) the estimated number and frequency of committee meetings;

(I) the committee's termination date, if less than two years from the date of the committee's establishment; and

(J) the date the charter is filed.

A copy of any such charter shall also be furnished to the Library of Congress. (As amended 1977 Reorg. Plan No. 1, § 5F, eff. Nov. 20, 1977, 42 F.R. 56101, 91 Stat. 1634)

## HISTORICAL AND STATUTORY NOTES

### Transfer of Functions

"Administrator", meaning Administrator of General Services, was substituted for "Director", meaning Director of the Office of Management and Budget, in subsec. (a) and (c), pursuant to Reorg. Plan No. 1 of 1977, § 5F, 42 F.R. 56101, 91 Stat. 1634, set out in Appendix 1 of this title, which transferred all functions of the Office of Management and Budget and its Director relating to the Committee Management Secretariat, which is responsible pursuant to section 7(a) of this Act for all matters relating to advisory committees, to the Administrator of General Services, effective Nov. 20, 1977, as provided by section 1 of Ex. Ord. No. 12024, Dec. 1, 1977, 42 F.R. 61445, set out under section 2 of this Act in this Appendix.

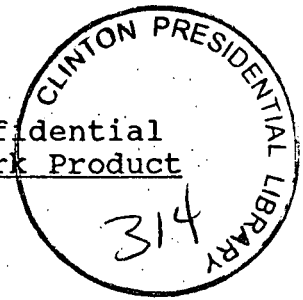
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## NOTES OF DECISIONS

Compliance, necessity of 2.

Members of committee 3  
Purpose 1

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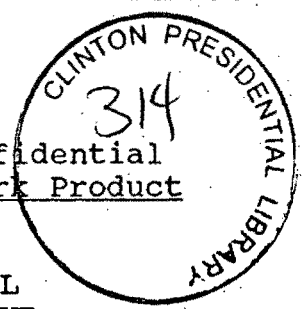
GUIDELINES FOR MEETINGS WITH THE PRESIDENT  
TO DISCUSS HEALTH CARE REFORM ISSUES<sup>1</sup>

1. Each meeting is convened by the President.
2. The persons attending the meeting are attending in their individual capacities, either as government officials or members of the Task Force or working group. The persons attending are not representing the Task Force or working group, and do not have authority to speak on behalf of the Task Force or working group.
3. The persons attending the meeting have been invited by the President. Neither the Task Force nor the working group has appointed individuals to attend the meeting.
4. The meetings are for the purpose of allowing the President, at his request, to obtain information and/or advice from the individuals attending. The President does not seek advice from the group as a whole, and the group does not form a consensus opinion to present to the President.
5. No business of the Task Force or the working group is conducted at these meetings.
6. Those present at the meeting have not been designated either a subgroup or subcommittee by either the Task Force or the working group.
7. No documents will normally be presented to the President during these meetings. Any documents that are presented will not be documents produced by the working group for the purpose of advising the President.
8. All such meetings shall be described in the President's schedule as "meetings with individuals to discuss health care reform."

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<sup>1</sup> These guidelines are set forth in response to the opinion and order of the district court in Association of American Physicians and Surgeons, Inc. v. Clinton, Civ. No. 93-0399 (RCL) (D.D.C. Mar. 10, 1993). These guidelines are not intended to reflect the requirements of the Federal Advisory Committee Act or any federal regulations promulgated thereunder, and are not intended to assume the constitutionality of congressional regulation of meetings for the purpose of advising, or providing information to, the President.

COPY



MEETINGS BETWEEN THE PRESIDENT AND INDIVIDUAL  
MEMBERS OF THE TASK FORCE AND/OR WORKING GROUP

I. Nature of the meetings

- A. These meetings are initiated by the President.
- B. These meetings are for the purpose of allowing the President to obtain advice and information from the individuals attending. [Note that with the exception of the First Lady, all of those attending the meetings are full-time federal employees whose federal positions relate to health care and domestic policy development.]
- C. The meetings are not for the purpose of providing the President with advice or recommendations that represent, or are represented to reflect, a consensus of either the task force or the working group.
- D. The individuals assembled do not conduct business of either the task force or the working group, and do not act as a subgroup or subcommittee of either the task force or the working group.

II. The opinion of the district court

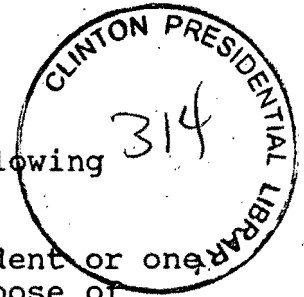
- A. The injunction applies only to meetings of the task force and any subgroups or subcommittees thereof.
- B. The court's opinion holds that it is unconstitutional for Congress to regulate meetings convened for the purpose of "formulating or reporting advice and recommendations" to the President.
- C. The court's opinion also observes that "[t]he President's interest in confidentiality is particularly present" where the President is being "directly advised."
- D. Note that in ruling that the working group is not subject to FOIA, the judge relied heavily on the statement in the Magaziner declaration that "[o]nly the Task Force will have authority to forward recommendations to the President, and only the Task Force will provide advice to the President. The interdepartmental working group is not charged with responsibility for making, and will not make, recommendations to the President, and will not otherwise directly advise him."

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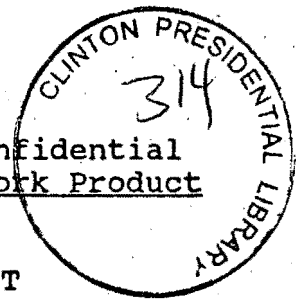
III. Applicable GSA regulations

A. 41 C.F.R. § 101-6.1004 provides that the following types of meetings are not subject to FACA:

1. "(h) Any meeting initiated by the President or one or more Federal official(s) for the purpose of obtaining advice or recommendations from one individual";
2. "(i) Any meeting initiated by a Federal official(s) with more than one individual for the purpose of obtaining the advice of individual attendees and not for the purpose of utilizing the group to obtain consensus advice or recommendations";
3. "(j) Any meeting initiated by a group with the President or one or more Federal official(s) for the purpose of expressing the group's view, provided that the President or Federal official(s) does not use the group recurrently as a preferred source of advice or recommendations";
4. "(l) Any meeting with a group initiated by the President or one or more Federal official(s) for the purpose of exchanging facts or information."



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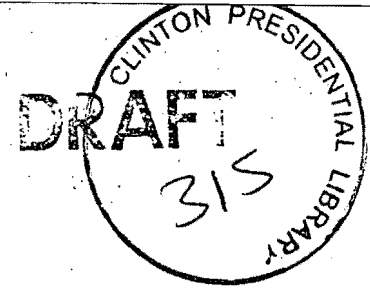
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TO DISCUSS HEALTH CARE REFORM ISSUES<sup>1</sup>

1. Each meeting is convened by the President.
2. The persons attending the meeting are attending in their individual capacities, either as government officials or members of the Task Force or working group. The persons attending are not representing the Task Force or working group, and do not have authority to speak on behalf of the Task Force or working group.
3. The persons attending the meeting have been invited by the President. Neither the Task Force nor the working group has appointed individuals to attend the meeting.
4. The meetings are for the purpose of allowing the President, at his request, to obtain information and/or advice from the individuals attending. The President does not seek advice from the group as a whole, and the group does not form a consensus opinion to present to the President.
5. No business of the Task Force or the working group is conducted at these meetings.
6. Those present at the meeting have not been designated either a subgroup or subcommittee by either the Task Force or the working group.
7. No documents will normally be presented to the President during these meetings. Any documents that are presented will not be documents produced by the working group for the purpose of advising the President.
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COPY



February 3, 1993

The Hon. William F. Clinger, Jr.  
Committee on Government Operations  
Congress of the United States  
House of Representatives  
2157 Rayburn House Office Building  
Washington, D.C. 20515-6143

Dear Representative Clinger:

The President has asked me to respond to your letter, dated February 1, 1993, concerning the President's health care task force.

The President has selected the First Lady, Hillary Rodham Clinton, to chair the health care task force. In addition to the First Lady, the task force currently includes the Secretaries of the Treasury, Defense, Commerce, Labor, Health and Human Services, and Veterans Affairs; the Director of the Office of Management and Budget; the Assistant to the President for Domestic Policy; the Assistant to the President for Economic Policy; the Chair of the Council of Economic Advisors; and the Senior Advisor to the President for Policy Development.

The task force has not yet held a meeting, although members of the task force were present on January 25 when the President announced the formation of the task force and defined its mission. The task force is planning to hold some public meetings in the future. Those meetings have not yet been scheduled.

As the President announced on January 25, the Senior Advisor to the President for Policy Development will lead an interdepartmental working group which will gather information for, and provide information to, the task force. The working group will consist of government employees, and will consult with a wide range of citizens in the public and private sectors. The task force, in turn, will review information provided by the working group and make recommendations to the President.

It is our opinion that the Federal Advisory Committee Act ("FACA") does not, and was not intended by Congress to, apply to the health care task force. The participation of the First Lady on the task force does not trigger application of the Act.

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Finally, we appreciate your intention to introduce legislation to amend FACA to provide that the Act is not triggered by the participation of the spouse of the President or the spouse of the Vice President on a committee or task force making recommendations to the President. We believe, however, that the existing statute already provides for such a result.

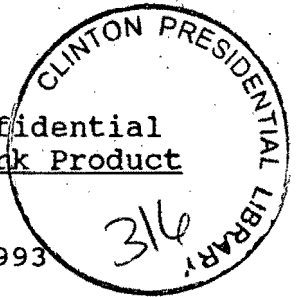
Please feel free to contact me, my deputy Vincent Foster or Stephen Neuwirth of this office, should you require further information in response to your inquiry.

Very truly yours,

Bernard W. Nussbaum  
Counsel to the President

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February 2, 1993



MEMORANDUM FOR HILLARY RODHAM CLINTON

FROM: BERNARD W. NUSSBAUM  
Counsel to the President

VINCENT W. FOSTER  
Deputy Counsel to the President

STEPHEN R. NEUWIRTH  
Associate Counsel to the President

RE: HEALTH CARE TASK FORCE/  
FEDERAL ADVISORY COMMITTEE ACT

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Pursuant to our conversation this morning, we have prepared for your review an outline of several options for structuring the health care task force. As you will see, each proposed option has several advantages and disadvantages.

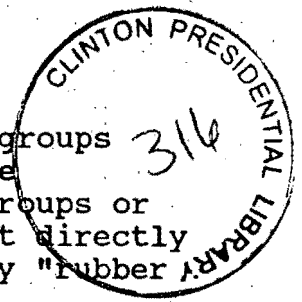
In this regard, you should be aware that the Office of Legal Counsel (that is, the two attorneys in that office with whom we are working) is not prepared to provide a written opinion that your membership on the task force would not trigger application of the Advisory Committee Act (which calls for, among other things, open meetings and publication of documents). We feel strongly that this is an improper interpretation of the Act, and the Counsel's office is prepared to provide you a written opinion that the Act is not triggered by your participation. Phil Verveer (who worked last night with several attorneys to review relevant statutes, legislative history and case law) concurs wholly with our view that the your (or Mrs. Gore's) participation should not trigger application of the Act.

In reviewing the attached options, you should also be aware that:

- only meetings of the task force itself (as opposed to meetings of subgroups and staff) would be subject to the Advisory Committee Act's open meeting requirement (so long as the subgroups or staff groups do not advise the President directly and the task force does more than merely "rubber stamp" subgroup work product);
- only documents, drafts and work papers produced by the task force itself would be subject to the Advisory Committee Act's public disclosure

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requirements; documents produced by subgroups would not be subject to those disclosure requirements (again so long as the subgroups or staff groups do not advise the President directly and the task force does more than merely "rubber stamp" subgroup work product); and

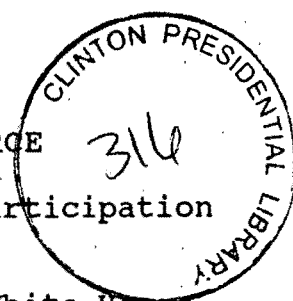


- it is unclear whether task force documents would be treated as "Presidential records" not covered by FOIA (although we believe a strong argument could be made to support this position).

Finally, one option not discussed below is the introduction of legislation that would include the spouse of the President (and, perhaps, the spouse of the Vice President) within the Advisory Committee Act's definition of "federal government officials or employees," whose membership on an advisory committee does not trigger application of the Act. Such a legislative strategy could avoid future problems in this area, although a legislative debate would likely focus, at least in part, on your role in the new Administration.

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OPTIONS FOR STRUCTURE OF HEALTH CARE TASK FORCE



OPTION 1 -- Take position that First Lady/Mrs. Gore participation does not trigger Advisory Committee Act

Task Force Membership: Cabinet secretaries; senior White House staff; First Lady; Mrs. Gore

Staff: Government officers and employees

Subgroups: Membership limited to government officers and employees (can consult and work with outsiders)

Advantages: Does not require First Lady to retreat from her previously announced role as task force chair.

Avoids charge that First Lady is attempting to to put "form" over "substance" by redefining her previously announced role (charges likely to result in litigation even if the First Lady does redefine her role).

Sets positive precedent for future First Lady activities.

This approach is premised on strong legal position that Advisory Committee Act, which does not apply to committees composed solely of federal officials and employees, is not triggered by participation of First Lady (a position that could be supported by opinion of White House Counsel):

It is indisputable that participation of the First Lady's chief of staff would not trigger application of the statute; it is absurd that participation of First Lady would. (And 3 U.S.C. § 105 recognizes, and provides funding to support, First Lady's role as an assistant and advisor to the President.) The Supreme Court has held that the Advisory Committee Act should be interpreted so as to avoid absurd results that appear inconsistent with Act's purposes. And the position to be taken here is enhanced in light of questions about the Act's constitutionality.

(Phil Verveer agrees with this legal analysis.)

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Disadvantages:

Likely to lead to court challenge that would focus on First Lady's role (and that could result in a ruling requiring public disclosure of task force's work) -- though litigation might be limited to legal issues of whether First Lady is "government official" within meaning of Act and, more generally, whether the Act is constitutional.

Could cause members of Congress to begin debate on role of First Lady and statutes addressing that role.

OPTION 1A -- First Lady participates, Mrs. Gore does not.

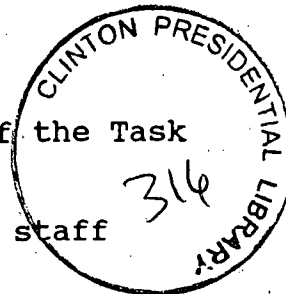
Same as Option 1, except that Mrs. Gore would not be a member of the task force.

Historic role of First Lady supports interpretation that her participation should not trigger Advisory Committee Act. This option would avoid any questions as to whether Mrs. Gore has the same status, for purposes of the Advisory Committee Act, as First Lady.

Rather than serving as a member of the task force itself, Mrs. Gore could serve as a consultant or as a member of a task force subgroup.

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OPTION 2 -- First Lady and Mrs. Gore are not members of the Task Force



Task Force: Cabinet secretaries; senior White House staff

Staff: Limited to government employees

Subgroups: Government officials and employees (can consult and work with outsiders).

First Lady: Consultant to task force and/or coordinator of, or consultant to, subgroups reporting to task force.

Mrs. Gore: Consultant to task force and/or consultant to subgroups.

Advantages: Designed to avoid application of Advisory Committee Act by ensuring that the task force is composed solely of persons who fit well within the technical definition of "employees" and "officers."

Designed to avoid lawsuit that would focus on First Lady's role.

Designed to diffuse political issue of First Lady's role.

Disadvantages: Would require First Lady to retreat publicly from previously announced role as task force chair.

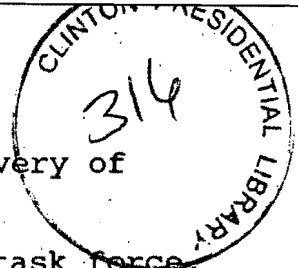
President's Jan. 25 announcement: "The task force will be chaired by First Lady Hillary Rodham Clinton"; "I am grateful that Hillary has agreed to chair the task force."

In light of publicity on the Advisory Committee Act question, a redefining of the First Lady's role could be viewed as a concession that her participation as a formal member of any advisory body will always trigger the Act.

Even if First Lady now relinquishes her role as chair of the task force, previous announcement of that role could give rise to lawsuit alleging that the First Lady is a member of the task force in "substance," even if not in "form." Claim could be that by changing her title to consultant, the First Lady is attempting to bypass rules implemented by a Democratic Congress during the Nixon Administration. This litigation

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likely to involve attempt at discovery of  
First Lady's role.



Option 2A -- First Lady and Mrs. Gore do not serve on task force,  
but First Lady's chief-of-staff and a member of  
Mrs. Gore's staff do serve.

This option is the same as Option 2, except that  
the First Lady and Mrs. Gore could each  
appoint a staff member to serve on the task  
force. (Such staff members are government  
employees and their participation would not  
trigger application of the Advisory Committee  
Act.)

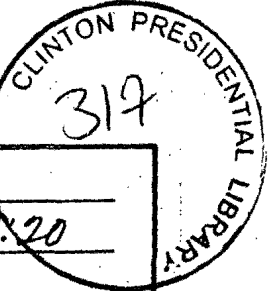
First Lady would serve as a consultant to the task  
force and/or as a coordinator of, or consultant  
to, subgroups.

Mrs. Gore would serve as a consultant to the task  
force and/or as a consultant to subgroups.

Advantage: Gives First Lady and Mrs. Gore a means of indirect  
participation in task force meetings.

Disadvantage: Might appear as a "gimmick" designed to promote  
form over substance.

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To Counsel's Office  
Date 2/4/93 Time 9:20

**WHILE YOU WERE OUT**

M Kevin Sabo  
of Crime & Court Operations  
Phone 225-2738

| Area Code         | Number | Extension                                       |
|-------------------|--------|-------------------------------------------------|
| TELEPHONED        |        | PLEASE CALL <input checked="" type="checkbox"/> |
| CALLED TO SEE YOU |        | WILL CALL AGAIN <input type="checkbox"/>        |
| WANTS TO SEE YOU  |        | URGENT <input type="checkbox"/>                 |

RETURNED YOUR CALL ☐

Message is attached ltr. to  
the Pres. for Cong. Changes  
on the Federal Advertising  
Committee Act / Health  
Care Task Force

Operator helen



AMPAD  
EFFICIENCY®

23-021 - 200 SETS  
23-421 - 400 SETS

CARBONLESS

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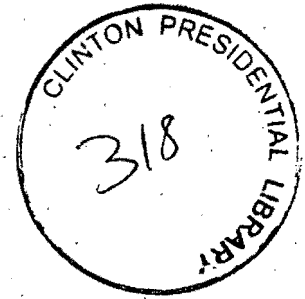
# Congress of the United States

## House of Representatives

COMMITTEE ON GOVERNMENT OPERATIONS

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-8143



### FACSIMILE TRANSMISSION

TO: White House Counsel

FAX: 456-6279

FROM: Kevin Sabo

Minority General Counsel

DATE: February 1, 1993

PHONE: 225-2738

There will be a total of 3 pages, including this cover sheet.

xx For Your Information

IMMEDIATE ATTENTION NEEDED

As Requested

Please Call to Confirm Receipt of Transmission

Comments

If there are any problems or questions  
regarding this transmission, please call the sender  
at (202)225-2738.

COPY

# Congress of the United States

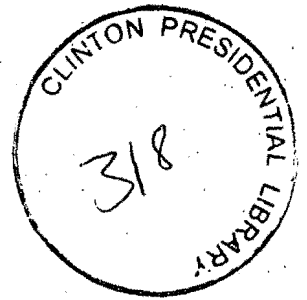
## House of Representatives

### COMMITTEE ON GOVERNMENT OPERATIONS

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

February 1, 1993



The Honorable William J. Clinton  
President of the United States  
The White House  
Washington, D.C. 25000

Dear Mr. President:

It is with concern that I have reviewed recent news accounts suggesting the violation of the Federal Advisory Committee Act, 5 U.S.C. App (1988), by your Task Force on Health Care. The purpose of this letter is to seek immediate action to ensure no further violation of federal law until such time that the task force is exempted from the Act or that it is restructured to render the Act nonapplicable.

The Federal Advisory Committee Act (FACA) regulates the formation and operation of advisory committees by federal agencies in the Executive Branch. It is deliberative bodies such as this task force, which include membership from both within and outside government, which the Congress sought to bring into the sunshine through the enactment of FACA.

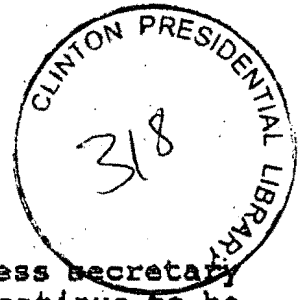
FACA defines "advisory committee" to include, inter alia, any group (1) established by the President, (2) in the interest of obtaining advice or recommendations, and (3) not composed wholly of full-time federal officers or employees. It appears that the Task Force on Health Care meets this definition, as it was established for the purpose of obtaining a consensus on recommendations for health care reform legislation and is chaired by an individual who is not a full-time federal officer or employee.

Once an organization satisfies the statutory definition of advisory committee, all meetings must be advertised in advance through the Federal Register and held open to public observation. Furthermore, all records, transcripts and drafts prepared by the committee must be made available to the public.

To my understanding, the Task Force on Health Care held its first meeting during the week of January 25, 1993. In violation of the statute, the task force had neither filed a charter with the General Services Administration nor allowed the public to attend

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Page 2  
The Honorable William J. Clinton  
February 1, 1993



its first formal meeting. Furthermore, White House press secretary Dee Dee Myers has indicated that such meetings "will continue to be closed throughout the development of the policy."

As the Republican Chairman of the House Committee on Government Operations, with sole jurisdiction over FACA, I must ask that you take immediate steps to ensure that no further violations of this Act occur. Compliance can be achieved by chartering the task force with the General Services Administration and making each of its meetings open to the public following sufficient notice in the Federal Register. You may otherwise wish to submit legislation to Congress seeking an exemption for this task force from the FACA provisions.

I have also asked the minority staff on the House Government Operations Committee to conduct a further inquiry to ensure that no further violation of FACA occurs and that no other federal statute has been violated through the conduct of these meetings. To assist us in this investigation, please make available to my committee staff a list of past and future meeting dates of the task force along with the names of the participants at each meeting.

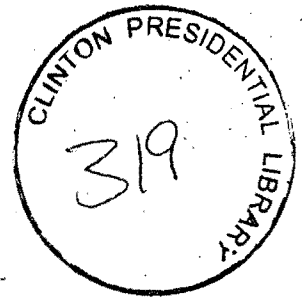
Let me say in closing that while I am concerned that no further violation of federal law occur, I am quite supportive of your efforts to formulate a policy to solve the nation's current health care crises. In fact, I am introducing legislation this week which will include the spouses of the President and Vice President under the definition of full-time federal officer for the purposes of FACA. It is within my support of your efforts, however, that I urge you to take steps to ensure that health care reform policies are developed in full compliance with all federal laws and regulations.

Please contact myself or ask your staff to contact Kevin Sabo, my committee counsel, at 202-225-2738, if you require further information regarding this request.

Sincerely,

  
William F. Clinger, Jr.  
Republican Chairman

COPY



February 24, 1993

Gloria Gutierrez  
Commerce Department  
14th and Constitution Ave.  
Washington, DC 20230

Dear Ms. Gutierrez,

Following a discussion with Rob Stein we are submitting the following three people to be hired on contract with the Commerce Department and assigned as Departmental Staff to the Health Care Working Group. These assignments will run for the specified duration and compensation levels listed below:

| Name               | Duration | Start date | Compensation |
|--------------------|----------|------------|--------------|
| Carolyn Gatz       | 4 mo.    | 2/15/93    | \$23,000.    |
| Suzanna Wellford   | 3 mo.    | 2/23/93    | \$6,500      |
| Simone Rueschmeyer | 3 mo.    | 3/1/93     | \$6,500      |

Thank you very much for your cooperation.

Regards,

Ira C. Magaziner

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# Withdrawal/Redaction Sheet

## Clinton Library

| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                                                                                                                                                                                                                 | DATE       | RESTRICTION |     |
|--------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|-------------|-----|
| 001a. note               | Post-it, handwritten. [Re: responsive documents.] (1 page)                                                                                                                                                                    | n.d.       | P5          | 320 |
| 001b. fax                | No Cover Sheet at 3:07 pm. Memorandum to Robert E. Kopp from Stephen R. Neuwirth, Re: Material for Government's Appeal in the Health Care Task Force Case. (1 page)                                                           | 04/07/1993 | P5          | 321 |
| 001c. memo               | Vincent Foster, Jr. to Melanne Verveer. [Re: Federation of American Hospitals and Healthcare Leadership Council.] (6 pages)                                                                                                   | 06/17/1993 | P5          | 322 |
| 001d. letter             | Jeffery S. Gutman to Kent Masterson Brown and Frank M. Northham. Re: Ass'n of American Physicians and Surgeons v. Hillary Rodham Clinton, et al., No. 93-399. (2 pages)                                                       | 03/02/1993 | P5          | 323 |
| 001e. fax                | Jeff Gutman to Steven Neuwirth at 5:06 pm. [Re: Facts for a Stipulation.] (3 pages)                                                                                                                                           | 02/25/1993 | P5          | 324 |
| 001f. fax                | No Cover Sheet at 2:04 pm. Letter to the Honorable William V. Roth, Jr. and the Honorable John C. Danforth from William J. Danforth, Director GAO. Subject: Selected Aspects of the Federal Advisory Committee Act. (4 pages) | 02/26/1993 | P5          | 325 |
| 001g. memo               | Health Care Reform Working Groups. (11 pages)                                                                                                                                                                                 | n.d.       | P5          | 326 |
| 002a. note               | Post-it; handwritten. [Re: contents of folder marked VWF notes 1993]. (1 page)                                                                                                                                                | n.d.       | P5          | 327 |
| 002b. note               | Handwritten notes (photocopy) [Re: task force lawsuit]. (1 page)                                                                                                                                                              | n.d.       | P5          | 328 |
| 002c. note               | Handwritten notes (photocopy) [Re: task force lawsuit]. (1 page)                                                                                                                                                              | n.d.       | P5          | 329 |

### COLLECTION:

Clinton Presidential Records  
Counsel's Office  
Miriam Nemetz  
OA/Box Number: CF453

### FOLDER TITLE:

Health Care Task Force Documents Gibson Potential Priv. Copies [3] [1]

Van Zbinden

2006-0223-F

vz56

### RESTRICTION CODES

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

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

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

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

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

RR. Document will be reviewed upon request.

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

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# Withdrawal/Redaction Sheet

## Clinton Library

| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                                                                                                                                                          | DATE                  | RESTRICTION            |
|--------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|------------------------|
| <del>002d. note</del>    | <del>Handwritten note. [Re: contact information.] (1 page)</del>                                                                                                       | <del>02/19/1993</del> | <del>P5, P6/b(6)</del> |
| 002e. note               | Handwritten notes. [Re: Task force lawsuit]. (27 pages)                                                                                                                | n.d.                  | P5 330                 |
| 002f. memo               | Q and A's on Health Care Task Force Appeal. (3 pages)                                                                                                                  | n.d.                  | P5 331                 |
| 002g. note               | Phone call message to Vincent Foster from Kevin Sabo, re: Fed. Advisory Comm. Letter (photocopy). (1 page)                                                             | 02/05/1993            | P5 332                 |
| 002h. draft              | Draft of a declaration from Ira Magaziner regarding the Health Care Task Force. (12 pages)                                                                             | n.d.                  | P5 333                 |
| 002i. memo               | Howard Panter and Vincent Foster, discussion Regarding March 11, 1993 letter from Henry R. Wray to Bernard W. Nussbaum. (3 pages)                                      | 03/14/1993            | P5 334                 |
| 002j. memo               | To George Stéphanopoulos and Lisat Caputo from Cheryl Mills. Subject: Wall Street Journal Article on Illegality of Volunteers on the Health Care Task Force. (2 pages) | 03/10/1993            | P5 335                 |

### COLLECTION:

Clinton Presidential Records  
Counsel's Office  
Miriam Nemetz  
OA/Box Number: CF453

### FOLDER TITLE:

Health Care Task Force Documents Gibson Potential Priv. Copies [3] [1]

Van Zbinden  
2006-0223-F  
vz56

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

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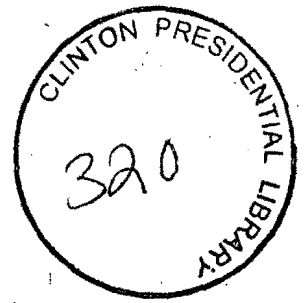
C. Closed in accordance with restrictions contained in donor's deed of gift.

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

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- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
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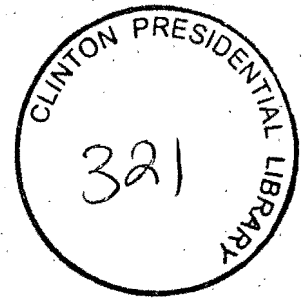


Selected Responsive  
docs from  
/ folder titled: /

"VWF Health Care  
Reform Task Force 1993"

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THE WHITE HOUSE  
WASHINGTON



PRIVILEGED AND CONFIDENTIAL  
ATTORNEY-CLIENT / WORK PRODUCT

April 7, 1993

MEMORANDUM FOR ROBERT E. KOPP

Attorney, Appellate Staff  
Civil Division, Department of Justice

FROM: STEPHEN R. NEUWIRTH  
Associate Counsel to the President

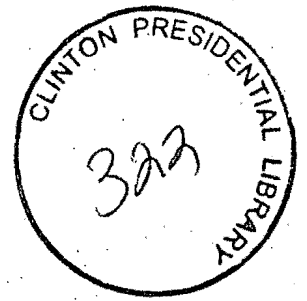
RE: Material for Government's Appeal Brief  
in the Health Care Task Force Case

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The attached statements from the April 2 Congressional Record provide support for our position that Congress never intended FACA to be triggered by the participation of the First Lady on a committee advising the President. The statement by Senator Glenn also recognizes the constitutional ramifications of applying FACA to Presidential advisory committees.

Does it make sense to reference these statements in the government's appeal brief, or to bring these materials to the attention of the Court of Appeals (or Judge Lamberth) in some other way?

COPY



VINCENT FOSTER JR. 6/17

Melanne -

1400  
This group of for-profit  
hospitals feels slighted  
because HRC met with the  
non-profit group (through Beryl)  
but turned down their request.

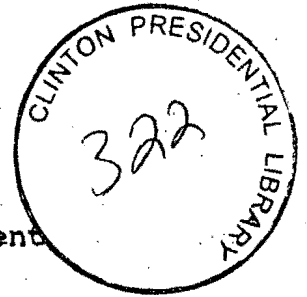
They claim Rusty barasked HRC  
twice to meet with them.

I told them I would  
give this petition for rehearing  
to HRC's senior staff more familiar  
with the decisions concerning her  
schedule.

I don't care

Vum

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MEMORANDUM

TO: Vince Foster, Deputy Counsel to the President  
FROM: W. Jackson Williams, Williams & Anderson  
DATE: June 17, 1993  
RE: Federation of American Hospitals and Healthcare Leadership Council

Since the Inauguration, we have been retained by the Federation of American Hospitals and Healthcare Leadership Council to assist in their government affairs activities.

The Federation of American Hospitals is an organization of some 1,400 for-profit, investor owned hospitals throughout the country. They are the largest for-profit hospital organization in the country and have been a presence in the Washington scene for many years. Their executive director, Mike Bromberg, is a very well-known healthcare lobbyist on the Hill and has access to all the Congressmen and Senators who serve on health care committees and is particularly well-known and highly regarded by Rep. Rostenkowski, Chairman of Ways and Means.

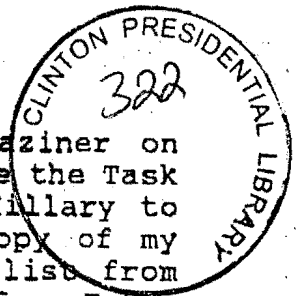
The Healthcare Leadership Council ("HLC") is an organization of approximately 50 healthcare industry chief executive officers - leaders from the hospital, insurance, pharmaceutical, technology and physician/nurse sectors. The group was formed in 1990 with the purpose of developing a health care consensus on solutions to the problems confronting American healthcare. The HLC is committed to working with Congress, the Administration and states on developing more detailed proposals and in generating healthcare support for them. Members of the 1993 Executive Committee of HLC are:

|                     |                                                                        |
|---------------------|------------------------------------------------------------------------|
| David A. Jones      | Chairman & CEO - Humana, Inc.                                          |
| Dwayne Burnham      | Chairman & CEO - Abbott Laboratories                                   |
| Robert O'Leary      | CEO - American Medical International, inc.                             |
| Boone Powell, Jr.   | President - Baylor University Medical Center                           |
| Robert V. Gilmartin | President & CEO - Beckton, Dickinson & Co.                             |
| G. Robert O'Brien   | Executive Vice President - CIGNA Corporation                           |
| Robert Waller, M.D. | Chairman, Board of Governors, Mayo Clinic                              |
| William P. Link     | Executive Vice President - The Prudential Insurance Company of America |

Their President is Pamela G. Bailey.

Earlier this year during the work of the Healthcare Task Force, Mr. Bromberg and Ms. Bailey met with Carol Rasco to discuss the procedures of how the Healthcare Task Force was going to

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operate and on two different occasions with Ira Magaziner on various healthcare matters which were then pending before the Task Force. At their request, on February 17 I wrote to Hillary to suggest a meeting with these two organizations. A copy of my letter is enclosed, as well as a potential attendees list from these two organizations. Last week I received a letter from Patty Solis, Director of Scheduling for the First Lady declining this meeting.

My clients are aware that within the past week or so Hillary has met with the President of American Hospital Association at the behest of Mr. Beryl Anthony, their Washington attorney. The AHA is the largest not-for-profit hospital association with some 5,000 hospital members. While the AHA is sometimes referred to as a companion health organization to the Federation since they both represent hospitals, their interests and perspectives are often dramatically different.

I well appreciate the demands on Hillary's time and the many organizations who have sought meetings with her. Certainly I will abide by whatever ultimate decision is made in this matter, but given Mr. Bromberg's influence on the Hill, his known effectiveness as a healthcare lobbyist and considering the importance of these organizations in the healthcare field and the professional reputations of the attendees, that it would seem preferable to grant this requested meeting, particularly in light of the access provided American Hospital Association recently.

Your counsel and advice is appreciated. Please regard that if it is considered that this request has been carefully considered and the desired conclusion reached, obviously I will accept that and so will my clients. However, I hope that this memo can be received as a sort of "petition" for rehearing or reconsideration and upon further reflection the requested meeting be granted. If you or anyone on the staff would like further elaboration regarding this request, I will of course be glad to oblige.

WJA  
WJW

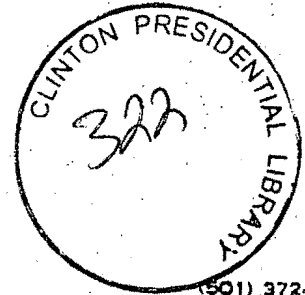
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## WILLIAMS &amp; ANDERSON

TWENTY-SECOND FLOOR  
111 CENTER STREET  
LITTLE ROCK, ARKANSAS 72201

W. JACKSON WILLIAMS



(501) 372-0800

TELECOPIER  
(501) 372-6453

February 17, 1993

Hillary Rodham Clinton, Esq.  
Office of the First Lady  
Room 185 OE0B  
17th Street and Pennsylvania Avenue, N.W.  
Washington, D.C. 20500  
Attention: Ms. Patty Solis

Re: Federation of American Health Systems and Healthcare  
Leadership Council

Dear Hillary:

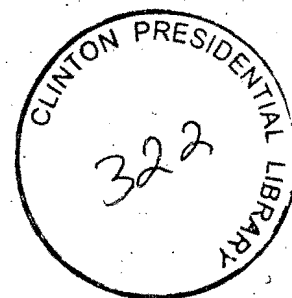
On behalf of the Federation of American Health Systems, who I represent, as well as the Healthcare Leadership Council, I am writing to request a meeting with you at your earliest opportunity.

Last week, Mike Bromberg of the Federation of American Health Systems and Ms. Pam Bailey, representing the Healthcare Leadership Council, and I met with Carol Rasco to discuss how best these two organizations could participate with the Healthcare Task Force in the formulation of a new healthcare policy for the country. While we knew at some point we would want to suggest this meeting with you, it is apparent to my client that in view of the course of events and the healthcare industry's concerns that we should have this initial meeting as soon as we are able to arrange it. Both of these organizations and their memberships are strong supporters of the concept of managed competition which they would like to discuss with you and are most concerned with any concept of price controls being a part of the Administration's healthcare plans.

These organizations represent the leadership of the private sectors' delivery of our healthcare system to the country. The representatives attending this meeting will be taken from the attached list which I am providing with this letter, their attendance dependant solely upon their ability to be in Washington at the time you wish to hold this meeting. I can confirm specific appearances when this meeting is established.

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WILLIAMS & ANDERSON



From the Federation of American Health Systems

Michael D. Bromberg  
Executive Director  
Federation of American Health Systems

Victor L. Campbell  
Vice President of Corporate Relations  
Hospital Corporation of America

W. Randolph Smith  
Senior Vice President  
American Medical International

From the Healthcare Leadership Council

Pamela G. Bailey  
President  
Healthcare Leadership Council

Raymond V. Gilmartin  
President and CEO  
Becton Dickinson & Co.

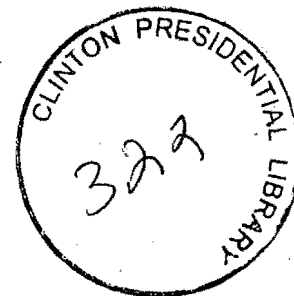
Davis A. Jones  
Chairman and CEO  
Humana Inc.

William P. Link  
Executive Vice President  
The Prudential Insurance Company of America

Robert Waller, M.D.  
Chairman, Board of Governors  
Mayo Clinic

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WILLIAMS &amp; ANDERSON



From the Federation of American Health Systems

Michael D. Bromberg  
Executive Director  
Federation of American Health Systems

Victor L. Campbell  
Vice President of Corporate Relations  
Hospital Corporation of America

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Senior Vice President  
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Davis A. Jones  
Chairman and CEO  
Humana Inc.

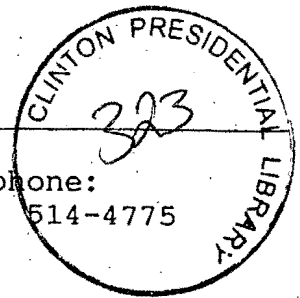
William P. Link  
Executive Vice President  
The Prudential Insurance Company of America

Robert Waller, M.D.  
Chairman, Board of Governors  
Mayo Clinic

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U.S. Department of Justice  
Civil Division



EAP:JGutman  
145-1-1333

Washington, D.C. 20530

Telephone:  
(202) 514-4775

MAR 2 1993

Mr. Kent Masterson Brown  
Brown & Brown  
1114 First National Building  
167 West Main Street  
Lexington, KY 40507

Mr. Frank M. Northam  
Webster, Chamberlain & Bean  
1747 Pennsylvania Ave., N.W.  
Suite 1000  
Washington, D.C. 20006

BY FAX AND REGULAR MAIL

Re: Ass'n. of Amercian Physicians and Surgeons v.  
Hillary Rodham Clinton, et al., No. 93-399

Counsel:

As promised, this letter contains the categories of information we intend to provide in the Declaration of Ira Magaziner. This Declaration will be filed with our opposition to plaintiffs' motion for a temporary restraining order on Wednesday. We have today filed a written opposition to your request that Mr. Magaziner testify at the Friday hearing. You should have received or will soon receive that opposition by fax. We believe that your request should be withdrawn in light of this letter.

The Declaration will contain the following categories of information:

1. A list of the members of the Task Force and a description of its mission;
2. A statement regarding the absence of subgroups or subcommittees of the Task Force;
3. A statement regarding meetings of the Task Force, including open meetings;
4. The purpose of the interdepartmental working group and the nature of its membership;
5. A discussion of the consultants retained by the working group;

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6. A detailed description of the organization of the working group into "cluster groups" and subgroups and their purposes;

7. A statement regarding attendance by any Task Force members in meetings of the working groups, "cluster groups" and subgroups;

8. A discussion of opportunities for public input into the working group;

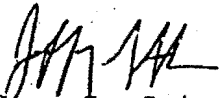
9. A list of meetings with outside groups held by the working group;

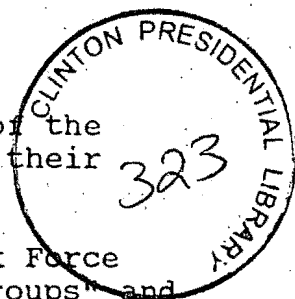
10. A list of meetings attended by Mr. Magaziner with representatives of outside organizations;

11. A list of public forums and conferences attended by and to be attended by the First Lady.

We believe that few, if any, of these facts have any legal relevance to this lawsuit. Nonetheless, because you requested this information and we wish to cooperate with you in this litigation, we will provide it to you.

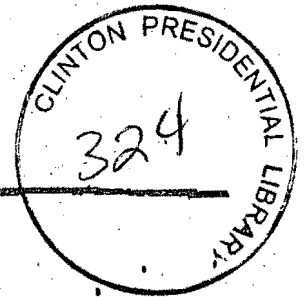
Very truly yours,

  
Jeffrey S. Gutman  
Trial Attorney  
Federal Programs Branch  
Civil Division





U.S. Department of Justice



Washington, DC 20530

CIVIL DIVISION

FEDERAL PROGRAMS BRANCH

FAX TRANSMITTAL COVER SHEET

DATE:

2/23/92

TO:

Steve

FAX NUMBER:

436-6279 X1647

FROM:

J. Gutman

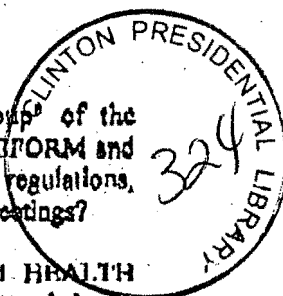
Fax No. (202) 616-8202 (LOCAL) -- 369-8202 (FTE)  
9th FLOOR

THERE ARE A TOTAL OF 3 PAGES INCLUDING THIS COVER PAGE IN THIS TRANSMISSION.

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## FACTS FOR A RTIPULATION

1. Name the persons who form the "interdepartmental working group" of the PRESIDENT'S TASK FORCE ON NATIONAL HEALTH CARE REFORM and describe its and their functions? Have the amending of any statutes, regulations, or policies relating to health care been discussed at any time in those meetings?
2. What members of the PRESIDENT'S TASK FORCE ON NATIONAL HEALTH CARE REFORM are members of or regularly sit in on, or have attended, the meetings of the "interdepartmental working group"?
3. What subgroup(s) and subcommittee(s) (has) have been established to work with the PRESIDENT'S TASK FORCE ON NATIONAL HEALTH CARE REFORM and what is the composition of those subgroup(s) and subcommittee(s)? Who established them? Who named the members? Who are the members?
4. What is (are) the purpose(s) and function(s) of the subgroup(s) and subcommittee(s) of the PRESIDENT'S TASK FORCE ON NATIONAL HEALTH CARE REFORM? Have the amending of any statutes, regulations or policies relating to health care been discussed at any time in those meetings?
5. What member(s) of the PRESIDENT'S TASK FORCE ON NATIONAL HEALTH CARE REFORM is or are members of or sit in on or has or have attended meetings of the subgroup(s) and subcommittee(s) of the PRESIDENT'S TASK FORCE ON NATIONAL HEALTH CARE REFORM?
6. When has or have the "interdepartmental working group" and the subgroup(s) and subcommittee(s) on the PRESIDENT'S TASK FORCE ON NATIONAL HEALTH CARE REFORM met, what members of the interdepartmental working group and the subgroup(s) and subcommittee(s) was or were present at those meetings and what member(s) of the PRESIDENT'S TASK FORCE ON NATIONAL HEALTH CARE REFORM was or were present at those meetings? Have the amending of any statutes, regulations, or policies relating to health care been discussed at those meetings?
7. Have or has the times, place, etc. of the meetings of the "interdepartmental working group" and/or the subgroup(s) and subcommittee(s) of the PRESIDENT'S TASK FORCE ON NATIONAL HEALTH CARE REFORM been announced in the *Federal Register* prior to the meetings and were and are those meetings open to the public?
8. What "interests" or "types of persons" have appeared before the "interdepartmental working group" and the subgroup(s) and subcommittee(s) of the PRESIDENT'S TASK FORCE ON NATIONAL HEALTH CARE REFORM? (Here ) seek only



9. Does the "interdepartmental working group" and the subgroup(s) and subcommittee(s) of the PRESIDENT'S TASK FORCE ON NATIONAL HEALTH CARE REFORM keep detailed minutes or transcripts of the meetings?

In preparing a stipulation, bear in mind that we know that HILLARY RODHAM CLINTON met with three "advisers" on managed competition which included a professor from Stanford University, a Boston consulting group and the President of the "Jackson Hole Group" along with a Bethesda, Maryland-based health consultant and another "architect" on managed competition. We also know that IRA MAGAZINER, a member of the TASK FORCE, is "organizing and working with" twenty (20) groups of consultants.

Washington Post 2/17/93

of interest  
present, i.e.,  
managed  
competition  
experts,

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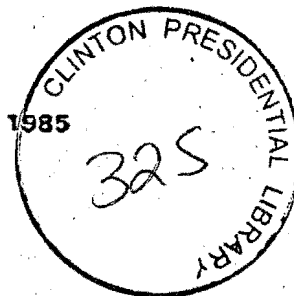


UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

126482

GENERAL GOVERNMENT  
DIVISION

MARCH 20, 1985



B-127685

The Honorable William V. Roth, Jr.  
Chairman, Committee on Governmental  
Affairs  
United States Senate

The Honorable John C. Danforth  
Chairman, Subcommittee on Information  
Management and Regulatory Affairs  
Committee on Governmental Affairs  
United States Senate

Subject: Selected Aspects of the Federal Advisory  
Committee Act (GAO/GGD-85-1)

In August 1983 you jointly requested that we review certain aspects of the Federal Advisory Committee Act (FACA). On June 21, 1984, we discussed our findings in testimony before the Subcommittee on Information Management and Regulatory Affairs and subsequently responded to additional questions arising from our review. This report updates and concludes our review by discussing agency views of our analyses and incorporating actions taken by the President and by the agencies in the months following our June 21, 1984, testimony. There have been several developments relating to the five questions in your request.

OVERSIGHT BY THE GENERAL  
SERVICES ADMINISTRATION

In response to your question on the performance of the General Services Administration (GSA) in guiding and managing federal agencies' compliance with the FACA, we reported in our June 21, 1984, testimony that GSA had not carried out all of its

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<sup>1</sup>Both our testimony and additional responses have been published in Oversight of the Federal Advisory Committee Act, Senate Hearing 98-1037, 98th Congress, 2nd sess., pp. 39-58.

(966152)

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statutory oversight responsibilities. We concluded that unless GSA's Committee Management Secretariat (CMS) were upgraded and given more resources, it was unlikely that GSA could manage the advisory committee system as thoroughly as the FACA envisioned.

Both GSA and the Office of Management and Budget (OMB), in letters to us, defended CMS' selective approach to the implementation of its FACA responsibilities. As we noted in our testimony, the limitation on CMS' staff resources has required CMS to set priorities on its responsibilities. GSA stated that it was reviewing the adequacy of CMS' staffing and had tentatively decided to add a full-time staff member to the unit. Further, the recent full-time involvement of the unit's head, and an initiative to automate a substantial portion of CMS' office functions, provide current indications that CMS can more fully perform all of its required functions. For example, GSA informed us that CMS should be able to resume submitting reports to the Congress about follow-up actions resulting from presidential advisory committee recommendations.

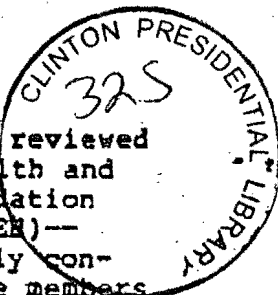
Finally, we have analyzed the fiscal year 1983 annual report on advisory committees and find it more complete and informative than earlier annual reports we considered for our testimony. The 1983 report, for example, cited specific committees that reported no accomplishments and yet were recommended by agencies for continuation. In sum, we believe that GSA has chosen reasonable priorities and has progressively improved its overall level of performance.

#### RESPONSE TO AGENCY ADVISORY COMMITTEE RECOMMENDATIONS

In our testimony, we reported that the executive branch was considering an initiative to improve the quality of consideration given to the recommendations of agency advisory committees, and we concluded that additional legislation in this area was not needed. On January 22, 1985, the President issued a memorandum to agency heads urging them to ensure that all their advisory committees are effectively managed and their recommendations evaluated. Since GSA is also addressing this issue, we continue to believe that legislative action is not needed.

#### NONCOMPENSATION POLICY

In our June 21, 1984, testimony on GSA's interim policy that advisory committee members should not be compensated except under special circumstances, we stated that indications up to that time caused us to believe that the policy should not be issued in final form and that the decision of whether to compensate members should be left to agency heads. GSA formulated this policy in support of the President's commitment to promote



voluntarism. Except for GSA, each of the agencies that reviewed our analyses on this issue—OMB, the Departments of Health and Human Services and Education, the National Science Foundation (NSF), and the National Endowment for the Humanities (NEH)—agreed with our conclusion. OMB noted that it especially concurred in the conclusion that compensation for committee members should be left to agency discretion. "In fact," wrote OMB on November 20, 1984, "we have so advised the Administrator of General Services and expect him to issue revised regulations to that effect shortly." The head of CMS, however, said the compensation issue probably will not be resolved until a new GSA Administrator is confirmed.

#### CONFLICT OF INTEREST CONTROLS

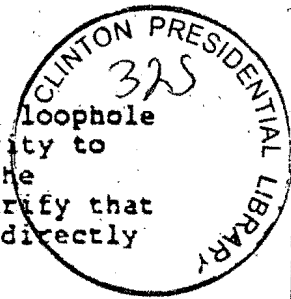
Pursuant to your request we reviewed conflict of interest controls on members of advisory committees at five agencies. We reported in our testimony that two of these agencies—the Food and Drug Administration and the Department of Education—not only had sufficient conflict of interest guidelines in place but also implemented them thoroughly. We also found adequate guidelines and procedures in place at the National Institutes of Health (NIH), NEH, and NSF; but we identified some situations in these agencies where apparent conflicts of interest were not identified, resolved, or documented as prescribed by the guidelines.

In response to our findings, NEH and NSF acknowledged that the appearances of conflict we found could have been prevented by stricter adherence to their own guidelines and procedures. NIH, however, sent us documentation that demonstrated, it believed, that most of the apparent conflicts we found were resolved at the time of the meetings in question. After discussing this with NIH's committee management officer, we concluded that four of the eight apparent conflicts we identified had been resolved, although documentation of this had not been provided to us during our review.

#### COVERAGE OF SUBCOMMITTEES

You asked us to assess the effect of the 1983 court ruling in the case of National Anti-Hunger Coalition v. Executive Committee of the President's Private Sector Survey on Cost Control (557 P. Supp. 524 (D.D.C. 1983), aff'd, 711 P. 2d 1071 (D. Cir. 1983)), which held that the FACA covers only those advisory committee subcommittees or subgroups that provide advice and recommendations directly to a federal official. Since most committee subgroups report to a parent committee instead of directly to a federal official, we expressed our

opinion that the court ruling allows a major potential loophole in the act: it opens the way for much committee activity to circumvent public accountability. We suggested that the Congress may want to consider amending the FACA to clarify that all subcommittees, not just those that provide advice directly to a federal official, are subject to the FACA.



After our testimony, GSA informed us that its proposed final rule has a new section devoted to this issue. However, as of February 1985 the rule had not been published.

In summary, and as we expressed in our testimony last June, we believe that none of the problems we identified warrant a major overhaul of the act; they can be resolved for the most part through administrative adjustments. We will be pleased to provide any further assistance you may request in your oversight of the Federal Advisory Committee Act.

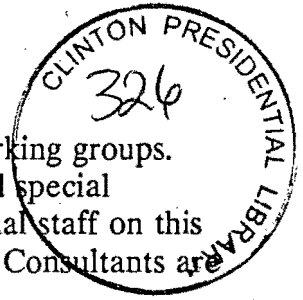
As arranged with your offices, we are sending copies of this report to the Acting Administrator, General Services Administration; the Director, Office of Management and Budget; the Secretaries, Health and Human Services and Education; the Director, National Science Foundation; and the Acting Chairman, National Endowment for the Humanities. Copies will also be available to other interested parties on request.

*W. J. Anderson*

William J. Anderson  
Director

COPY

## HEALTH CARE REFORM WORKING GROUPS



The attached list sets forth the participants in the health care reform working groups. There are three categories, and only full time government employees and special government employees are members of the working groups. Congressional staff on this list serve as liaison for their Member of Congress to the working group. Consultants are not members of the working groups.

The three categories of participants are:

### **1. Full-Time Government Employees--**

Individuals who work for the Executive Office of the President, for federal agencies, for Members of Congress or Senate and House committees. Federal employees are subject to the conflict of interest provisions in 18 U.S.C. Section 202-209 and Standards of Ethical Conduct for Employees of the Executive Branch and all related ethics laws and regulations.

### **2. Special Government Employees--**

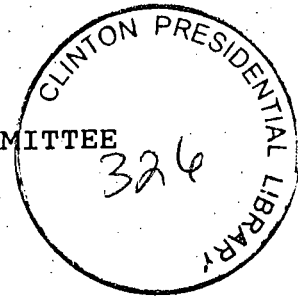
a. Individuals who are employed by any agency or the Executive Office of the President for less than 130 days in a 365 day period either with or without compensation. Such individuals are subject to a limited version of the conflict of interest provisions in 18 U.S.C. Section 202-209 and Standards of Ethical Conduct for Employees of the Executive Branch and all related ethics laws and regulations for the period of time they serve on the working group. Furthermore, they are required to abide by limitations on public speaking and by post-employment restrictions. Such individuals may serve as working group leaders.

b. **Consultants--**Individuals who are consulted by the working group and who attend working group meetings on an intermittent basis with or without compensation. These consultants are subject to some provisions of 18 U.S.C. Section 201-208 and Standards of Ethical Conduct for Employees of the Executive Branch and all related ethics laws and regulations. Such individuals have no decision-making authority within the working groups and may not serve as working group leaders and have other limitations on their participation.

**COPY**

HEALTH CARE WORKING GROUPS  
SORTED BY STATUS

PAGE:1



AME

ORGANIZATION

|                         |                                      |
|-------------------------|--------------------------------------|
| ULL TIME GOV'T EMPLOYEE | CHRMN.M. SABO HOUSE BUDGET COMMITTEE |
| DDISON-BURTON, LAVARNE  | HHS, ASPE                            |
| DLER, MICHELE           | SENATOR LEAHY                        |
| LBERGHINI, THERESA      | COUNCIL ON ECONOMIC ADVISORS         |
| LLEN, LUCY              | VETERANS AFFAIRS                     |
| LPERT, CYNTHIA          | SEN. ROCKEFELLER                     |
| LTMAN, DAVID            | REP. PETE PETERSON                   |
| LTMIRE, JASON           | HHS                                  |
| NTOS, JOSEPH            | COMMERCE                             |
| OELUA, SOLOMONA         | HHS, HCFA                            |
| RNETT, ROSS             | HHS NIMH                             |
| RON, BERNIE             | HHS                                  |
| SH, SHERRI              | REP. LOUIS STOKES                    |
| TKINSON, LESLIE         | HHS - HRSA                           |
| UKERMAN, GLEN           | HHS                                  |
| USTEIN, CHERYL          | CONGRESSIONAL - SENATE/SEN. RIEGEL   |
| AILY, SARAH             | HHS                                  |
| ALL, JUDY               | HHS                                  |
| ANTHIN, JESSICA         | HHS-PHS                              |
| AQUET, CLAUDIA          | VETERANS AFFAIRS                     |
| ARBOUR, GALEN           | REP. MIKE KOPETSKI                   |
| ARSTOW, SCOTT           | HHS - HCFA                           |
| AUM, NANCY              | HHS                                  |
| AYNE, CHRISTY           | VETERANS AFFAIRS                     |
| EASON, CHARLOTTE        | COUNCIL ON ECONOMIC ADVISORS         |
| ERNER, JOHN             | REP. HARRY JOHNSTON                  |
| ERRY, ROGER             | LABOR                                |
| EVERLY, JONATHAN        | SENATE COMMITTEE                     |
| IERUM, DENISE           | REP. SAM GEJDENSEN                   |
| IERWIRTH, MARGARET      | SENATOR BINGHAM                      |
| ILLY, CARRIE            | REP. PETER HOAGLAND                  |
| LAUWET, ROGER           | OPM                                  |
| LOCK, ABIGAIL           | REP. LOUISE SLAUGHTER                |
| LOOM, FELICIA           | HHS                                  |
| LOSS, GREGORY           | SENATE AGING COMMITTEE               |
| ODE, HOLLY              | REP. JILL LONG                       |
| OEHM, JENNIFER          | HOUSE EDUCATION/LABOR COMMITTEE      |
| ORZI, PHYLLIS           | HOUSE VETERANS AFFAIRS COMMITTEE     |
| REW, WILLIAM            | LABOR                                |
| RIGGS, BETTE            | DOD                                  |
| ROCK, CHARLES           | REP. DAVE MCCURDY                    |
| RODBECK, LAURA          | HHS                                  |
| ROSTROM, MOLLY          | REP. BILL GRAY                       |
| RUNS, KEVIN             | HCFA                                 |
| UCK, JEFFREY            | HHS                                  |
| UCKINGHAM, III, WARREN  | HHS - HCFA                           |
| UFFINGTON, MAX          | REP. BARBARA KENNELLY                |
| UONORA, DAVID           | HHS                                  |
| URNER, SALLY            | SENATOR BREAUX                       |
| URNETT, LAIRD           | HHS, HCFA                            |
| URNEY, IRA              | HHS, HCFA                            |
| UTO, KATHLEEN           |                                      |

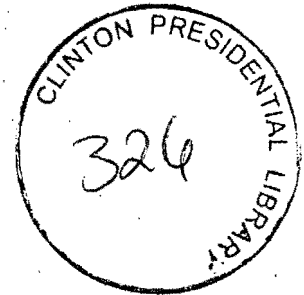
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HEALTH CARE WORKING GROUPS  
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ORGANIZATION



ULL TIME GOV'T EMPLOYEE

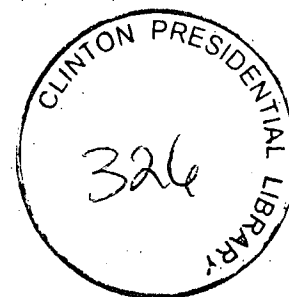
ADE, DAVID  
ALLAHAN, CATHI  
AMPBELL, LAURENCE  
AMPBELL, PAUL  
APLAN, ARTHUR  
ARLSON, RONALD  
AVANAUGH, SEAN  
HAMBERS, CAROLINE  
HANG, DEBORAH  
HARLES, GERALD  
LARK, WILLIAM  
LARK, ROBERT  
LAUSER, STEVEN  
LAY, JIMMIE  
LAYPOOL, ROBERT  
LEMENTE, FRANK  
OHEN, JOEL  
OHEN, RIMA  
OHEN, ALLAN  
OOPER, MICHAEL  
OOPER, PHIL  
OOPER, DAVID  
OOPER, BARBARA  
OPELAND, ROBERT  
OSTER, JOHN  
OX, KENNETH  
RUMP, JANICE  
UTLER, DAVID  
ANIELS, SUSAN  
AVENPORT, KAREN  
AVIES, MONICA  
EIGNAN, KATHLEEN  
ELEW, NANCY  
EMLO, LINDA  
ENHAM, LORI  
EWANE, MARY  
INKELACKER, E. WILLIA  
ONESKI, ELLEN  
OROTINSKY, WILLIAM  
OTY, PAMELA  
OYLE, PATRICIA  
RUMMOND, FAYE  
UGGAN, JAMES  
UNN, VAN  
UZOR, DEIRDRE  
CKERT, KEVIN  
DGELL, JONATHAN  
GAN, JAMES  
INHORN, THEODORE  
MMER, SUSAN  
NGLISH, MICHAEL

HHS  
ARC  
COMMERCE  
CENSUS - COMMERCE  
UNIVERSITY OF NEW MEXICO  
HHS  
REP. BEN CARDIN  
REP. JIM COOPER  
SENATOR DONALD W. RIEGLE  
VETERANS AFFAIRS  
SENATOR DALE BUMPERS  
HHS, ASPE  
HHS, HCFA  
VETERANS AFFAIRS  
U.S. ARMY SURGEON GENERAL  
CHR. JOHN CONYERS  
HHS  
SENATOR TOM DASCHLE  
TREASURY  
INTAKE CENTER  
HHS  
HHS  
HHS, HCFA  
LABOR  
SELECT COMM.ON AGING  
DOD  
REP. CLAYTON  
CEA  
HHS, ACF, ADD  
SEN. BOB KERREY  
SENATOR JEFF BINGAMAN  
SENATE BUDGET COMMITTEE  
HHS  
HHS, AHCPR  
REP. DOOLEY  
HCFA  
TREASURY  
SENATOR ROCKEFELLER  
OMB  
HHS - ASPE  
HHS, AHCPR  
SENATE FINANCE COMMITTEE  
TREASURY  
SENATOR KENNEDY  
HHS, HCFA  
SEN. HARRIS WOFFORD  
COMMERCE  
FEDERAL TRADE COMMISSION  
REP. PETER DEUTSCH  
SEN. BOB GRAHAM  
HHS

COPY

HEALTH CARE WORKING GROUPS  
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PAGE:3



NAME

ORGANIZATION

JLL TIME GOV'T EMPLOYEE

RMANN, DAN  
JLER, JOHN  
VANS, DAVID  
VANS, JENNIFER  
YDT, ALLISON  
ALETTI, THOMAS  
ARLEY, DEAN  
EDER, JUDY  
IEDELHOLTZ, JENNIFER  
INAN, STEVEN  
INIGAN, THOMAS  
ISH, JAMES  
ISKE, MARY BETH  
ITZMAURICE, J. MICHAEL  
LYNN, WILLIAM  
ORBES, RIPLEY  
RANTZ, MOLLY  
RASCHE, MARY  
REDERICK, PAUL  
REELAND, MARK  
RIEDMAN, BERNARD  
JY, GEORGE  
AGEL, BARBARA  
ALE, JOSEPH  
AUDETTE, SYLVIA  
AWANDE, ATUL  
ILLINGHAM, ROBERT  
LAZE, STEVEN  
LEIMAN, EDWARD  
LIED, SHERRY  
OLD, MARTHE  
OLDSTONE, DONALD  
OLDWATER, DAVID  
ODDMAN, NANCY  
ODWIN, MARSHA  
ODY, BRIGID  
OPLERUD, ERIC  
RAMS, TODD  
REENBERG, GEORGE  
REENWALD, LESLIE  
ROSS, MARCY  
ROSS, LAUREN  
RUNDMAN, MARTHA  
UST, STEVEN  
ADLEY, ELIZABETH  
ADLEY, JAMES  
AHON, MELINDA  
ALL, ANNE  
AMERSCHLAG, ART  
ARAHAN, MARY  
ARDOCK, RANDY

HHS, HCFA  
JUSTICE  
HHS  
SEN. BEN CAMPBELL  
OMB  
REP. DICK DURBIN  
HHS  
HHS  
HHS  
LABOR  
SEN. MAX BAUCUS  
OMB  
SENATOR KENNEDY  
HHS - AHCPR  
OFFICE OF PERSONNEL MANAGEMENT  
REP. HENRY A. WAXMAN  
REP. EARL POMEROY  
REP. GLICKMAN  
OFFICE OF ASSIST. SECRETARY OF DEFENSE  
HHS  
HHS, AHCPR  
HHS  
HHS, HCFA  
SENATOR MOYNIHAN  
REP. JOHN OLVER  
HHS  
TREASURY  
SENATOR PRYOR  
SENATE GOVERNMENT AFFAIRS COMMITTEE  
CEA  
HHS, PHS, ODPHP  
HHS, AHCPR  
REP. JIM BILBRAY  
JUSTICE  
VETERANS AFFAIRS  
HHS  
HHS, SAMHSA  
OMB  
HHS, ASPE  
HHS, HCFA  
HHS/OASH  
SEN. CLAIBORNE PELL  
REP. MARTIN SABO - CHAIRMAN  
REP. STRICKLAND  
HHS, ASPE  
HHS  
SENATE ANTITRUST COMMITTEE  
HHS  
VA  
HHS, ASPE  
TREASURY

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[illegible]

FULL TIME GOV'T EMPLOYEE

ARPER, MARY  
 ARRIS, SKILA  
 ARVELL, JENNIFER  
 ASH, MICHAEL  
 ASTINGS, KATHLEEN  
 AYES, SHERRY  
 AYES, CHARLOTTE  
 EADLEY, ELWOOD  
 EATH, KAREN  
 EENAN, CHRISTINE  
 ELLINGER, FRED  
 ERTZ, THOMAS  
 EICKMAN, PETER  
 EIGGINS, MICHAEL  
 EIGHT, JOSEPH  
 EILL, TIMOTHY  
 EINZ, RICHARD  
 EOGUE, BONNIE  
 EOLTON, DWIGHT  
 EOLTZBLATT, JANET  
 EORVATH, THOMAS  
 EORVATH, JANE  
 EUCKABY, MICHELLE  
 EUNAN, JEFFREY  
 EUNTER, GILLIAN  
 EUSEN, RALPH  
 ERWIN, JEAN  
 ESKOWITZ, MICHAEL  
 EWRY, J. MARK  
 JACKSON, PAUL  
 JACOBS, TERRY  
 JACOBSON, LAURENCE  
 JARBOE, KENAN  
 JENCKS, STEPHEN  
 JENNINGS, CHRISTOPHE  
 JODREY, DARREL  
 JOHNSON, K. SCHELEE  
 JOHNSON, ERIK  
 JOHNSON, PATRICIA  
 JOHNSON, DONALD  
 JOHNSON, JAMES  
 JONES, MARCIA  
 JONES, SANDRA  
 JOSEPH-FOX, YVETTE  
 JUNG, PAUL  
 KANE, BRAD  
 KASS, DAVID  
 KATTAN, AZAR  
 KATZ, RUTH  
 KATZ, RUTH  
 KATZ-LEAVY, JUDITH

HHS, NIMH  
OVP  
HHS, HCFA, OLP  
REP. WAXMAN  
HHS, PHS, AHCPR  
SEN. HERB KOHL  
OVP  
VETERANS AFFAIRS  
HOUSE ARMED SERVICES COMMITTEE  
HHS  
HHS  
HHS, ASPE  
HHS, HCFA  
CHR. RONALD DELLUMS/ARMED SERVICES  
LABOR  
HHS, HCFA  
LABOR  
SEN. AGING CMTE.  
WHITE HOUSE  
TREASURY  
VETERANS AFFAIRS  
SENATE FINANCE COMMITTEE  
REP. BOB CLEMENT  
SENATE COMMITTEE ON AGING  
TREASURY  
VETERANS  
REP. MARIA CANTWELL  
SEN. KENNEDY  
TREASURY  
HHS, PHS  
TREASURY  
OMB  
SENATOR RIEGLE  
HHS, HCFA  
HHS  
SENATOR WOFFORD  
REP. JOHN BRYANT  
OMB  
COMMERCE, CENSUS  
HHS, HCFA  
REP. L.F. PAYNE  
SEN. BREAUX  
VETERANS AFFAIRS  
SEN. DANIEL K. INOUE  
NIH, BHP  
CONGRESSIONAL - HOUSE  
COMMERCE  
REP. ROBERT MATSUI  
REP. WAXMAN  
HHS, ASPE  
HHS, CENTER FOR MENTAL HEALTH SERVICES

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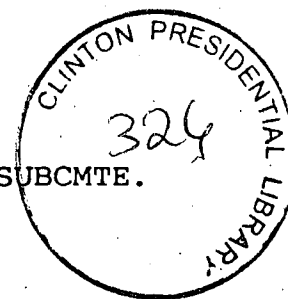
AME

ORGANIZATION

ULL TIME GOV'T EMPLOYEE

AVANAGH, GARY  
AZDIN, ROBERT  
EENE, BRAD  
EMPER, PETER  
ENDALL, DAVID  
ENYON, MARY  
EPNER, COLLEEN  
ERY, PATRICIA  
ICHAK, NANCY  
ING, ANDREA  
ING, ROLAND  
ING, KATHLEEN  
OLODNER, ROBERT  
OPLAN, JEFFREY  
OSS, SHANNAH  
RAKAUER, HENRY  
RESS, JACK  
UZMACK, RICHARD  
ANGENBRUNNER, JACK  
AVIZZO-MOUREY, RISA  
AWSON, KURT  
EATHERS, HOWARD  
EFKOWITZ, BONNIE  
EHMAN, LAURENCE  
EHMANN, LAURENT  
EMASURIER, JEAN  
EVINE, GREGORY  
EVY, HELEN  
EWIS-IDEMA, DEBORAH  
ILLIE, STEVEN  
INCOLN, MICHAEL  
INDREW, GERALD  
INK, KENNETH  
IPNER, ROBYN  
IU, ERIC  
OPATIN, ALAN  
UBITZ, JAMES  
UCAS, DEBORAH  
URIE, ALEXANDER  
UTTBEG, CAROLINE  
UTTER, RANDALL  
YON, ANDREW  
YON, RANDOLPH  
AGAZINER, IRA  
AGUIRE, DANIEL  
ALONEY, DANIEL  
ANDERSCHIED, RONALD  
ANTEL, LEWIS  
ARCONI, KATHY  
ARGHERIO, LYNN  
ARTINEZ, FELIX

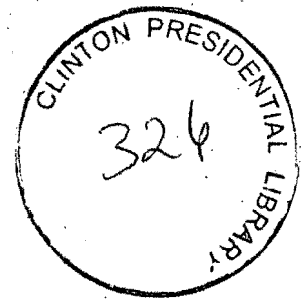
HCFA  
TREASURY  
REP. COLLINS/ENERGY & COMMERCE SUBCMTE.  
HHS, AHCPR  
REP. MICHAEL ANDREWS  
FEDERAL TRADE COMMISSION  
REP. CHARLES STENHOLM  
REP. BARBARA KENNELLY  
OPM  
REP. GEPHARDT - HOUSE MAJORITY LEADER  
HHS, HCFA  
SENATE FINANCE COMMITTEE  
VETERANS AFFAIRS  
HHS, CDC - ATLANTA  
OMB  
HHS, PHPA  
HHS  
OMB  
OMB  
HHS, AHCPR  
TREASURY  
CEA  
HHS, PHS  
VETERANS AFFAIRS  
VETERANS AFFAIRS  
HHS, HCFA  
REP. ROSA DELAURO  
HHS, AHCPR  
HHS  
DOD  
HHS, IHS  
LABOR  
VETERANS AFFAIRS  
SENATOR MIKULSKI  
SEN. DAVID BOREN  
HOUSE EDUCATION AND LABOR  
HCFA  
COUNCIL ON ECONOMIC ADVISORS  
SENATOR  
REP. RON COLEMAN  
OMB  
CEA  
OMB  
WHITE HOUSE  
LABOR  
VETERANS AFFAIRS  
HHS  
VETERANS AFFAIRS  
HHS  
WHITE HOUSE  
REP. JIM BILBRAY



COPY

HEALTH CARE WORKING GROUPS  
SORTED BY STATUS

PAGE:6



NAME

ORGANIZATION

FULL TIME GOV'T EMPLOYEE

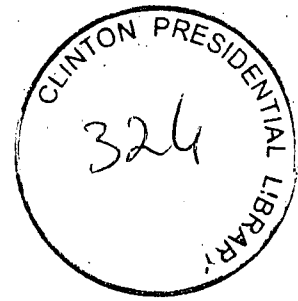
BATHER, SUSAN  
BACCLENNEY-ELLIO, LUCRETIA  
BACCONNELL, BRUCE  
BACKEE, TIMOTHY  
BACKENNEY, NAMPEO  
BEADOW, CYNTHIA  
BEANS, KATHLEEN  
BELNICK, DANIEL  
BERGHEAY, JANET  
BILLER, NANCY  
BILLER, MELANIE  
BILLER, MICHAEL  
BILLER, EDWARD  
BILLMAN, MICHAEL  
BIN, NANCY-ANN  
BINK, DOUGLAS  
BOELLER, JONATHAN  
BOLLOY, JANE  
BONHEIT, ALAN  
BORGAN, JACQUELINE  
BULLAN, FITZHUGH  
BUNNELL, ALICIA  
BURPHY, SHEILA  
BATAHATA, PETER  
BARROW, DAVID  
BELSON, CHUCK  
BELSON, KAREN  
BEUMAN, TRICIA  
BEXON, DAVID  
BICHOLS, LEN  
BICHOLS, LINDA  
BIX, SHEILA  
BOBLE, JONATHAN  
BORMAN, ALLINE  
BORQUIST, GRAYSON  
B'NEILL, KIM  
B'NEILL, PATRICIA  
BEY, CRAIG  
BFFNER, PAUL  
BLIVER, JUDITH  
BSHER, FREDERICK  
BANG, FREDERICK  
BARADISE, JULIA  
BATEL, PARASHAR  
BAYNE, MARY ELLA  
BIDGEON, STEVEN  
BLAUT, THOMAS  
BOLLITZ, KAREN  
BORTMAN, ROBERT  
BOSEY, KENDALL  
BOTETZ, LISA

VETERANS AFFAIRS  
DOD  
OMB  
DOD  
COMMERCE  
REP. JACK BROOKS  
HHS  
HHS  
REP. SLAUGHTER  
HHS  
REP. MIKE ANDREWS  
REP. SANDER LEVIN  
OASD  
HHS  
OMB  
REP. JOHNSON  
HHS  
COMMERCE  
HHS, AHCPR  
DOD  
HHS  
TREASURY  
SENATOR KERREY  
OMB  
FEDERAL TRADE COMMISSION  
USBC  
REP. WAXMAN  
HOUSE WAYS AND MEANS  
SENATOR KENNEDY  
OMB  
VETERANS AFFAIRS  
SENATOR KERREY  
NIAAA  
VETERANS AFFAIRS  
HHS  
CEA  
VETERANS AFFAIRS  
SENATOR CONRAD  
SENATE FINANCE  
HHS  
HHS  
SENATE ARMED SERVICES  
HHS  
OMB  
SENATOR ROCKEFELLER  
HHS  
HHS  
HHS  
LABOR  
CEA  
SENATE FINANCE COMMITTEE

COPY

HEALTH CARE WORKING GROUPS  
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NAME

ORGANIZATION

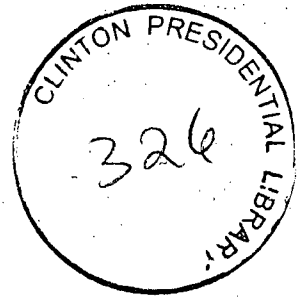
ALL TIME GOV'T EMPLOYEE

|                  |                             |
|------------------|-----------------------------|
| BATT, DONALD     | VA                          |
| RICE, ANDREA     | REP. LEWIS PAYNE            |
| JSKIN, DENA      | HHS                         |
| ADACK, LAURA     | JUSTICE                     |
| AFUSE, ROBERT    | TREASURY                    |
| AYMOND, VICTOR   | VETERANS AFFAIRS            |
| EEVES, LINDA     | HHS                         |
| EGIER, DARREL    | HHS                         |
| EINECKE, PETER   | SENATOR HARKIN              |
| EYES, LUANA      | HHS, IHS                    |
| ICE, CHERI       | OMB                         |
| ICKEL, ANNETTE   | SENATOR RIEGLE              |
| ICKETSON, DENISE | HHS                         |
| IVO, MARC        | HHS/HRSA                    |
| ODGERS, JUDITH   | HHS                         |
| ODRIQUEZ, LOUISE | VA                          |
| ONSEN, ROBERT    | SEN. GEORGE MITCHELL        |
| ONSENMAN, PAT    | HHS                         |
| OSWELL, ROBERT   | VETERANS AFFAIRS            |
| OUSE, BEATRICE   | HHS                         |
| OVIN, LISA       | HHS                         |
| OZEN, ROBERT     | SENATOR MITCHELL            |
| AN, ELAINE       | REP. L. SLAUGHTER           |
| ALMON, MARLA     | HHS/HRSA                    |
| AMUELSON, ELLEN  | REP. MARTIN SABO - CHAIRMAN |
| CHECKEL, LISA    | HHS                         |
| CHIEBER, GEORGE  | HHS, HCFA                   |
| CHMID, STUART    | HHS                         |
| CHNEIDER, ANDREW | REP. WAXMAN                 |
| CHOENING, ATHENA | HHS, IHS                    |
| CHULKE, DAVID    | REP. WIDMAN                 |
| CHULTZ, WILLIAM  | REP. WAXMAN                 |
| CHUSTER, JAMES   | REP. STRICKLAND             |
| HAFFER, ELLEN    | SEN. WELLSTONE              |
| HEINER, LOUISE   | JOINT TAX COMMITTEE         |
| HEINGOLD, STEVE  | HCFA                        |
| HELDON, GEORGE   | VETERANS AFFAIRS            |
| HINN, RUTH       | LABOR                       |
| HORT, ELIZABETH  | VA                          |
| HRIBER, DONALD   | REP.                        |
| ILVA, JOHN       | USUHS                       |
| ILVER, JONATHAN  | COMMERCE                    |
| IMMONS, NICOLE   | HCFA                        |
| IMON, MARSHA     | SEN. TED KENNEDY            |
| ISKIND, FRED     | LABOR                       |
| LACKMAN, JOEL    | DOD                         |
| MITH, ELMER      | HHS                         |
| MITH, CURTIS     | OPM                         |
| MITH, MARY BETH  | VETERANS AFFAIRS            |
| OBEL, LAWRENCE   | DEFENSE                     |
| OCHALSKI, JULIE  | SENATOR BRADLEY             |

COPY

HEALTH CARE WORKING GROUPS  
SORTED BY STATUS

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AME

ORGANIZATION

ULL TIME GOV'T EMPLOYEE

OLOMON, LOEL  
PAULDING, VERNON  
PERANDEO REEVE, LINDA JO  
PRINGER, MICHAEL  
TANTON, TAMERA  
TEELE, PAMELA  
TEINAUER, DENNIS  
TEPHENS, SHARMAN  
UCHINSKY, RICHARD  
VENONIUS, DIANE  
WIRE, ANDREW  
YKES, KATHERINE  
APLIN, CAROLINE  
ARMEY, MARJORIE  
AUEBER, CYNTHIA  
AYLOR, AMY  
ERRY, DONALD  
ESTONI, MAUREEN  
HORPE, KEN  
IBBITS, PAUL  
IMS, FRANK  
ORRES-GIL, FERNANDO  
OWNSSEND, JESSICA  
RACHTENBERG, ALAN  
RAPNELL, GORDON  
KOCKIS, JAMES  
ARMA, VIVEK  
ARNHAGEN, MICHELE  
EAZEY, BRENDA  
ETTLER, SUSAN  
ISTNES, GREG  
ISTRIES, JESSICA  
ALDO, DANIEL  
ALTERS, KAREN  
ARD, TIM  
ASSERMAN, MARK  
EICH, RONALD  
EISS, MARINA  
EISS, GAIL  
ERNER, MICHAEL  
ESTMORELAND, TIM  
ILLIAMS, CHRISTINE  
ILLIAMSON, JONATHAN  
ILLS, DARRYL  
ILSON, FRANK  
ILSON, MARK  
ITTER, JONATHAN  
OO, MICHAEL  
OOD, SUSAN  
OODWARD, ALAN  
YLER, ROBERT

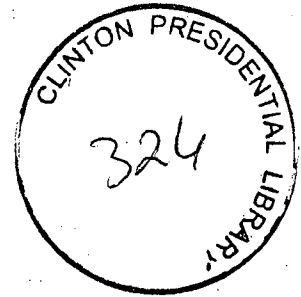
SEN. KENNEDY  
DOD  
HHS/PHS/ACHPR  
TREASURY  
SEN. JAY ROCKEFELLER  
VETERANS AFFAIRS  
COMMERCE  
HHS  
VETERANS AFFAIRS  
LABOR  
OMB  
REP.OBEY  
HHS  
HHS  
COMMERCE  
HHS  
CHR. J. LAFALCE/CMTE. ON SMALL BUSINESS  
SENATOR  
HHS  
DEFENSE  
HHS  
HHS  
HHS  
HHS  
HOUSE WAYS AND MEANS  
TREASURY  
REP.  
SENATOR METZENBAUM  
HHS  
REP. STRICKLAND  
JUSTICE  
HHS  
HHS  
VETERANS AFFAIRS  
HHS  
OMB  
SENATE HEALTH AND HUMAN RESOURCES  
TREASURY  
HOUSE TREASURY/POSTAL CMTE.  
SENATE DEMOCRATIC POLICY COMMITTEE  
REP. HENRY WAXMAN  
SENATOR MITCHELL  
VETERANS AFFAIRS  
CEA  
LABOR  
LABOR  
HHS  
HOUSE ENERGY & COMMERCE  
CONGRESSIONAL CAUCUS-WOMEN'S ISSUES  
HHS  
OMB

COPY

HEALTH CARE WORKING GROUPS  
SORTED BY STATUS

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| <u>NAME</u>                     | <u>ORGANIZATION</u>   |
|---------------------------------|-----------------------|
| <u>FULL TIME GOV'T EMPLOYEE</u> |                       |
| AMAMOTO, ALAN                   | REP. NEIL ABERCROMBIE |
| OSHIKAWA, THOMAS                | VETERANS AFFAIRS      |
| ARABOZO, CARLOS                 | HHS HCFA              |
| ETTTLER, SUSAN                  | REP. T. STRICKLAND    |



COPY

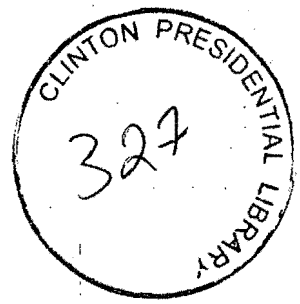
PAGE:1



SPECIAL GOV'T EMPLOYEE

IN-TAKE  
BOSTON UNIVERSITY  
HHS  
HHS  
HHS  
BROWN UNIVERSITY  
HHS  
HHS  
HHS  
HHS  
TUFTS UNIVERSITY  
POLICY ASSISTANT  
HHS  
EINSTEIN UNIVERSITY  
HHS  
HHS  
HHS  
HHS  
FORDHAM UNIVERSITY  
HHS NIMH  
COMMERCE  
POLICY ASSISTANT  
UNIVERSITY OF NEW MEXICO  
MERCY MEDICAL CLINIC  
HHS  
HHS, NIMH, PHS  
AMER. SOCIETY OF LAW, MEDICINE & ETHICS  
INTAKE CENTER  
HHS  
INTAKE CENTER  
HHS, AHCPR  
DOD/RAND  
HHS  
HHS  
POLICY ASSISTANT  
POLICY ASSISTANT  
HHS  
HHS  
UNIVERSITY OF CHICAGO  
HHS  
POLICY ASSISTANT  
POLICY ASSISTANT  
ORPHAN PROJECT/NEW YORK CITY  
HHS  
HHS  
UNIVERSITY OF CALIFORNIA  
HHS, BPHC, HRSA  
POLICY ASSISTANT  
NEW YORK UNIVERSITY  
HENNIMEN COUNTY, MN  
HHS

COPY



Contents of folder  
titled:

1 "VWF Notes 1993"

COPY

A. What to do re TF

1) clarification by him?

2)

FACA

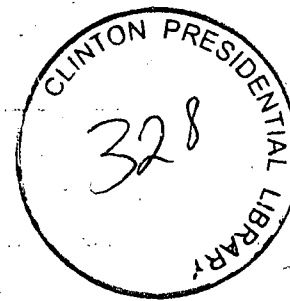
Not a subgroup

A. no authority from TF

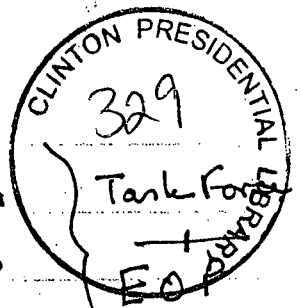
B. not designated by TF

C. ~~is~~ subpara(k)

D. charter not filed, subgroup of TF not authorized since TF can't act



COPY



cheats  
~~cheat~~ parties  
service - when

1<sup>ST</sup> Lady Agency 3 white H  
IHHS Rasco  
Treas Ira  
Def. Judith  
VA Fedden  
Comm  
Labor  
D OMB  
DD OMB

ASS of Amer Physicians & Surgeons Inc  
Amer Council for H&C Reform  
nat'l legal and Policy Center

5 USC 421-14 § 552 b  
task force ntg in viol of FACT - Govt in

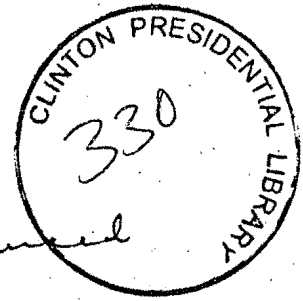
2/12 letters declining request

TRO preventing from ntg now

file Tues morning

Folder:  
Health Care  
Task Force  
lawsuit

COPY



131 + 7 amended  
2 1/2 1/5

7 cmf

15 mm

~~2 pens~~

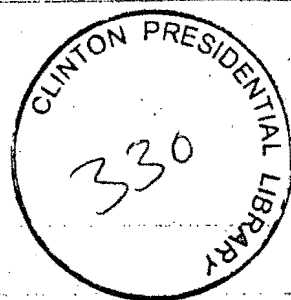
on fact  
& are into.

COPY

max 10:40A

[Brown]

Brown  
not from  
Sharnesky



directed to mtg of Task Force  
& members of Task Force from  
mtg of sub groups

Judge: [Treat as Prelim. ing.]

Judge  
w/holding per

Facts:

Announcement:

like a war room

depts. will be represented in the room

15 cluster groups

100 day time limit

No other analysis must be made than it meets <sup>statutory</sup> determinants

Exceptions

does not meet 1<sup>st</sup> 2 exceptions

CFR 100.3 & 100.4

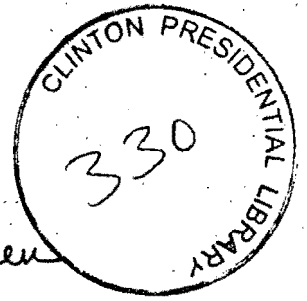
definition

anti-repatriation ["Crenady Act"]

reflects Cong. intent on FSCA

orig. ...

COPY



\*

not here to have her removed  
price Pres. should pay in to have mtgs open

"managed competition"

result in increased taxes of \$90M → \$150M

Pres. hide behind construction to conduct mtgs in secret

"insider" argument

requires to

substitute the term for "officer and employee"

judicial activism

\*

does not inform public of

1) membership of Clinton group

2) cost

no E.O. establishing Committee

SCt is telling us to read statute by clear & unambiguous language

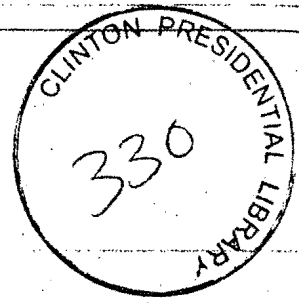
Judge

[This that is the way <sup>through the</sup> law was developing  
the Ct didn't do that in Public Citizen]

Brown

hint to committees not established by  
or financed by govt.

COPY



\* "full-time" officers or employees

[ How do you deal w/ my need to  
address Constitutional question ]

No impairment of Pres by ~~of~~ injunction

DOJ says because EACA not apply

① Don't have to tell us when they are  
going to meet

[ Don't be too sure I won't require that ]

② Have right to close mtgs

→ Not 3 outright compartments  
Judge on brief in a case  
§552 b

Irrep. harm

"wrapped in secrecy"

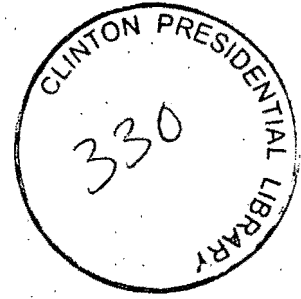
~~can~~

want to allow working groups  
operate by themselves

not get in situation  
Center for Auto Safety

Not like working groups in Nat'l Hunger  
on C... ..

COPY



cluster Gops were formulated by him  
He participates in every one  
Races "

HRC has interviewed  
He reports to HRC

Eg

Drafting Subcommittee

vs only  
assembling info

Gusell - <sup>If</sup> subcommittee makes recommendations

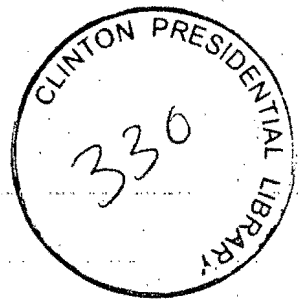
→ Fact that they are "one & the same"  
reflects unrep. harm

, too overruns Reedy is on the Hill

COPY

11:30

Gutman



Public Citizens  
ck my work

FACA is unusually elastic stat.

where more important to control than re free ability to  
get advice

~~What about results.~~

4 flaws

- 1) ignore intent
- 2) 1st body unique position
- 3) avoid const problem

~~But it is not a good idea to have a~~

Relay

2 sources of legis intent

1) purpose

2) [authorization for 1st]

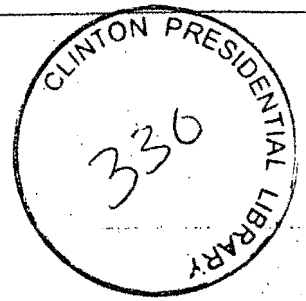
§105c

Intent

also an exception for public <sup>conv</sup> ~~action~~ groups

§105e - public funds  
members of govt.

COPY



Public Citizen:

Interpret statute to avoid constitutional problems, not create them

1) Advice to Pres.

Art 2 § 3 - duty to Pres to progress legis  
on matters he deems —

Constitutionally, FACA cannot be only  
way Pres gets advice from closest advisors

\* Judge - "serious constitutional Q is presented"  
but how is his ability impaired [by requiring  
open mtgs] [reference to Govt in Sunshine Act]

more to FACA than open mtgs  
eg balanced membership

anti-negotium

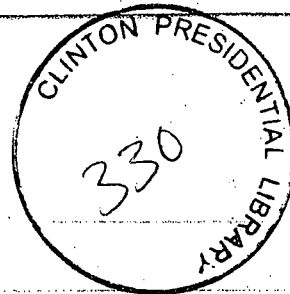
statutes are unrelated

3110 applies to "agency"

- (limited) rich mtg in FOIA

not apply to EOP

COPY



Working gaps

advice will be supplied by Task Force only  
Magazine is mtg only w/ fed ex

Judge

[Assume if I find it is covered by FACT  
what analysis do I do re working gaps]

\*

Analyze what working gap does

- They do not give advice to Pres

Interp. Inquiry

no mtgs scheduled

[Judge - knows must complete work  
w/in 100 days]

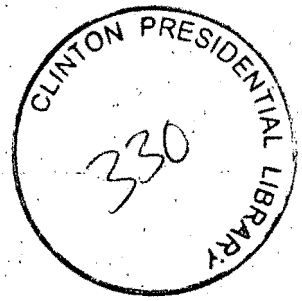
[Assuming I've not decided  
Can you tell me how much time I have  
to rule?]

\*

No problem in advising Ct of when  
mtg will occur

sum

COPY



Public interest

- A) FACT not apply to all fed emp comm
- B) Constitution

[If found FACT applied & thus unconst  
what is procedure]

Brown 12: noon

leg. history is silent

Appropriation to 1<sup>st</sup> lady not make her an employee

Anti-separatism

Not talking about a 1<sup>st</sup> lady planting  
flowers along the highway

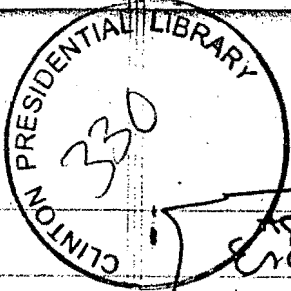
but .....

\* \*  
\*  
\*  
Judge

[Peace is not just open mty  
but balanced membership]

Openness is not enough to ~~im~~ impair Pres. authority

[Conit votes 3 + Souter & Thomas + Scalia?]



Steve - 55526  
is extremely limited  
section \*

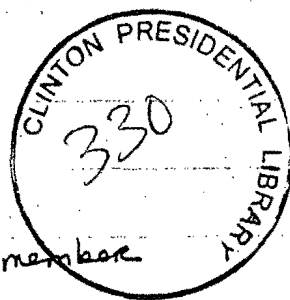
Agree  
Escape valve was not  
available in Public Citizen

Mtg is imminent or working groups  
are serving as tank force

In Auto Care case this Judge said  
if ~~Tank~~ there were more, ~~the~~ eg  
Tank Force

COPY

ch  
Ira 3/11  
SI



① Working Grp

A. Ira meet w/ Pm [ok, as TF member]

B. Ira & WGrp members along

C. Other WGrp response to request for advice

② What is a "Subgroup"

A) S/B name as WG status

B) Unrelevant ~~since~~ when giving advice  
(this would have to comply  
w/ notice)

C) What if 3d party is

③ Document

A) individual TF to Prez.

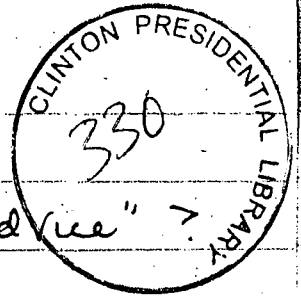
- documents rec'd as indiv. member

4) Fact-finding by TF - what is?

5) Mtg. by WG to TF as a whole?

is this formulating advice

COPY



7) narrowing phase -  
in this "consensus advice" >

8) Policy book - post-acceptance

Product ought to offer various options

9) Drafting Group [a - First full time  
Sara Kosenbloom wants to  
play more active role]

---

Anti-Trust

Drug Cos

want anti-trust exemption - gave copy  
of letter to WH

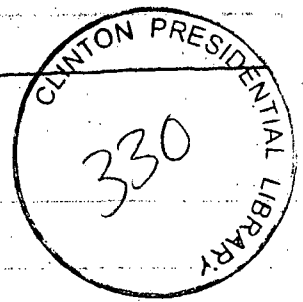
---

\* Match charter to argument

eg - assist the President  
serving as his personal representative

COPY

Conf @ DOS  
Note



FACA is in appendix  
FACA not in Title 5 by amendment  
- just in there by code of  
not explicitly

Title 1 def. - <sup>officer</sup> authorized  
"officer" is flexible concept

Chill on candor (between <sup>WG</sup> Employees)

Serious implications for Pres. power

- cloud over TF

1) balanced membership

2) not inappropriately influenced by appointing  
- independent J authority

3) report to Congress

\*\*

Severability - since openness

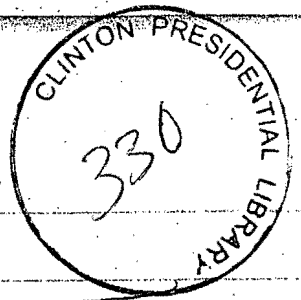
Documents:

FOIA privileges available

is deliberative process exemption available? ~ probably no.

COPY

fluid / <sup>not</sup> workable to distinguish between  
fact-finding vs. formulating



Q - If FOIA only applies when advising  
Pres., how can it apply to what judge  
says is not advice-giving

Pres. has interest in receiving fact

Not to expedite  
not on practical impairment  
but importance of issues

If a FOIA request for document to TF

→ argue

includes a) deliberative process generally

b) " " " constitutionality

If to WGrp

FOIA

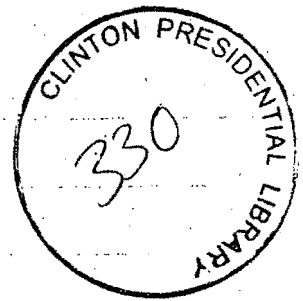
A) claim not an agency " since purpose  
is to assist TF to advise pres

~~B) claim for~~

B) FOIA not apply

COPY

"made available to"



\* Can "work" proceed w/o a charter

9(c)

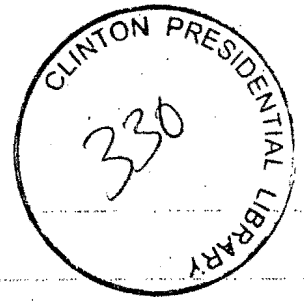
Q - Is ~~the~~ ruling on WG appealable -

Q - FOIA applicable to  
Agency EE on WGp.

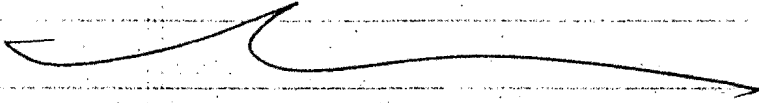
"Subgrp"

§ 101-6.1004 (k)

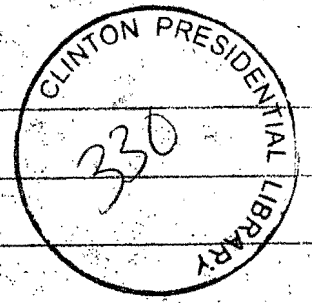
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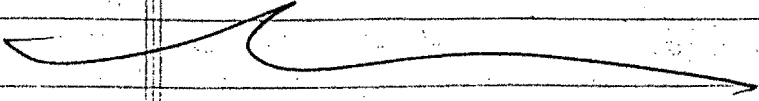
mtgs. of subgrp to formulate advice  
- need for notice



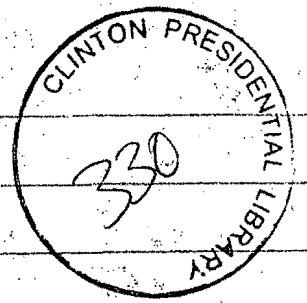
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utys. of subgrp to formulate advice  
- need for notice



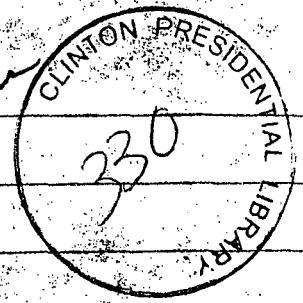
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If H & I meet w/ Pres to give advice  
A) give notes?

If need Feder to help  
is giving her individual advice

COPY



DOJ strongly urges appeal — <sup>believes excellent</sup> <sup>chance of success</sup>

- 1) Compliance issues
- 2) underlying principle  
of bifurcating methods in which Ps  
obtain advice

We prefer to cross-appeal only, for public appearances

### Interim

A) show cause re Compliance

B) discovery, The <sup>believe</sup> judge considers case over & is assuming  
an appeal

C) Ps try to obtain facts informally to support show cause

Appeal has benefit of ~~probably~~ possibly freezing show cause or  
discovery efforts

### Timing:

- 1) reactive
- 2) Risk —

### Subgroup —

|       |             |
|-------|-------------|
| Lauer | Ep. Penetta |
| Lauri | Edging      |
| Reich |             |
| Brown |             |

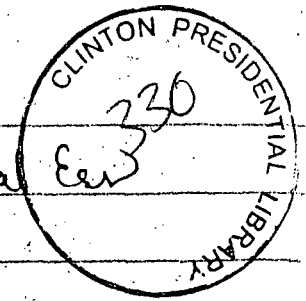
Appeal Ct may not expedite it wait more than a wk

Charts requires designation of certs / <sup>terminations</sup> <sup>date</sup>

① - GAO inquiry

Not a copy of the original  
**COPY**

- B. Comply w/ order  
 C. Try to live w/ spirit of opinion



Why WGo not advise since all federal En

likelihood of discovery?

Headline on subgroup

HRC + IRA meet w/ WG

Complan for 1<sup>st</sup> public mtg.

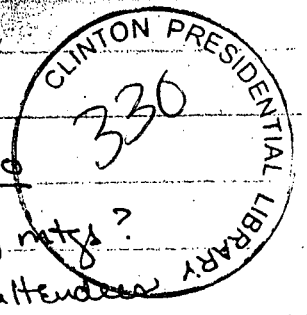
★ Fact Reporting/Subgrp vs 6.1004(k)

#1 Fact Reporting w/ff 1 vs. info gathering  
in open

Ok for wkng grp to find facts?

Vol. of documents

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## Options

### CHARTER

1. Use of E.O.  
- advantages

2. Delete 1<sup>st</sup> Lady

3. Allow 1<sup>st</sup> Lady to chair  
w/o vote

4. Open some  
documents voluntarily  
while disputing

A) discovery

B) FOIA

To Do

1. Schedule of mtgs?  
of attendees

2. Comm. strategy if appeal

3. guidelines to working grp.

Who is dec. perm - Charlotte Hayes

4. Document publication

A. Received by W Group

Writing solicited by  
to TF

B. Rec'd by TF

C. " " " IRA

D. " " " HRC

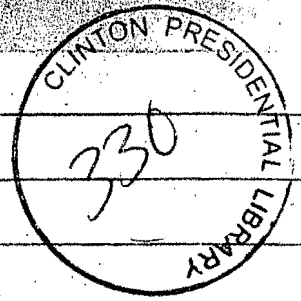
Free

\* E. Generated by W Group -

4A. Volume consideration

5. Drop dead date

COPY



## Compliance issues

### 1. Charter as prerequisite for action, including mtg

- A. Approval of proposed charter by Secretariat  
+ filing of notice of approval
- B. ~~Secretariat~~ <sup>Sec.</sup> Approval of <sup>filing of charter in</sup> establishment notice < 15 days

### 2. Prereq for mtg

- A. 15 day notice except for exceptional circumstances

### 3. Subgroup meetings

- A. with each other
- B. with President

### 4. Fact-reporting meetings

- A. notice
- B. public

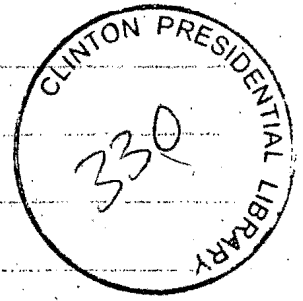
### 5. Advice formulation & fact-finding

### 6. Documents:

- A. Document ~~provided~~ <sup>group advice</sup> produced by TF
- B. "available to" TF
- C. public comment

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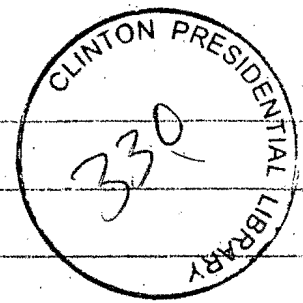
Appeal



1) time restraints

2) advisory documents by TF

COPY



Charter

letter & proposed charter to GSA

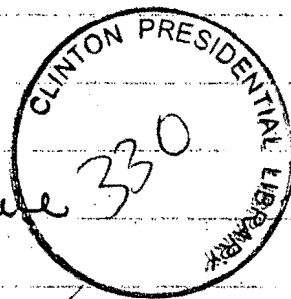
GSA approves

Notes of establishment

15 days

charter filed

COPY



## ORDER

- A) No mtgs until in full compliance
- B) fact-finding and fact-reporting mtgs must comply  
↳ (mean
- C) mtgs for purpose of formulating advice and  
recommendations - <sup>claims</sup> are dismissed

## Opinion

A) gathering or reporting info.

vs

B) formulating recommendations

19-20

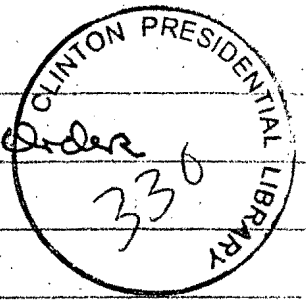
gather info in open mtg  
Report info in open mtg

formulation advice in closed mtg  
recommend advice

Q - when find facts?  
Q - when deliberate?

COPY

SUB GROUP



(A)

(k)

unconsent of order

H + I

or

H + I + WG

(3) was in affidavit + no mention

(c)

But

(1) H + I are chair + head -

(2) narrowing issues

vs learning how

nothing works to be

more effective TF member

(D) Det in on mtgs

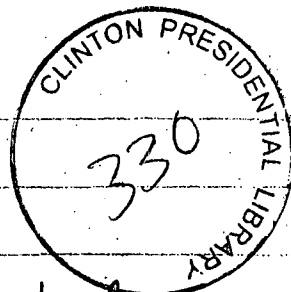
, cluster grp.]

COPY

## Other unconstitutional

TF to

- If Presidential
- A) Fact-reporting / Constitutional pre-notice requirement
  - B) Who & when Pres meets should be confidential
  - C) Timing of when Pres can get advice
  - D) § 5 (b)(3)  
§ 11  
balanced mem



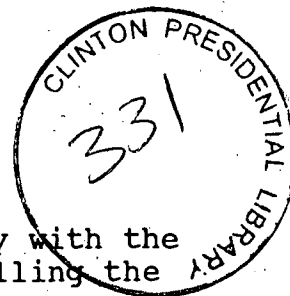
~~Other unconstitutional~~

## Why Sycral

1. Very important
2. Immeasurable constitutional framework for Adv Comm to
3. Slowdown

COPY

Q and A's on Health Care Task Force Appeal



Q: Last week you told us that the President was happy with the district court's decision. Why are you now appealing the decision?

A: As we told you last week, the President was pleased with the district court's decision because the court held that everything that has happened to date is legal, and that everything planned to take place in the coming weeks -- including the long-planned public meeting of the task force that is scheduled for next Monday in Washington -- is also legal.

For this reason, we believe that the Task Force and the working group should be able to continue their work unaffected by the court's decision. However, our lawyers at the Justice Department felt strongly that the court had made substantial errors both in interpreting the Advisory Committee Act and in applying principles of constitutional law. This case has implications beyond the health care task force for the President's ability to seek advice and we were advised by the Justice Department that an appeal was important to ensure that these issues be properly resolved.

Q: But you are not just appealing. You are asking for an expedited appeal. Doesn't that mean that you are really concerned about the impact of the district court's decision on the Task Force?

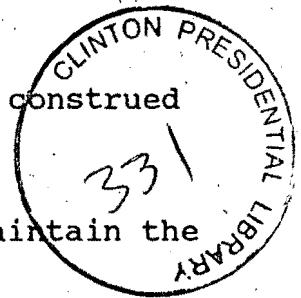
A: Again, we are seeking an expedited appeal based on the advice of our attorneys at the Justice Department. The Justice Department advised us that because of the short time frame within which the Task Force will complete its work, it is important to proceed with an expedited appeal if the issues raised in the case are to receive the full attention of the appellate court.

Q: Don't your papers make reference to the "impracticability" of the judge's decision -- that he has made the FACA unworkable?

A: I am not a lawyer, and I suggest that you read the papers that the Justice Department has filed with the Court today. I can tell you, however, that our Justice Department attorneys, as well as our attorneys in the White House, concluded that the district court had created a framework that was unworkable from a constitutional perspective, and that made it difficult in the long run to know exactly what

COPY

it is that the Advisory Committee Act will now be construed to require.



Q: Aren't you just using this appeal as a means to maintain the secrecy of the Task Force's work?

A: Not at all. We had been planning all along to hold a public meeting, and we would do that even if the district court's decision were withdrawn today. This has been an open process in which thousands of individuals and groups have had an opportunity to give their input, both in person and in writing.

Q: What exactly was wrong with the district court's decision?

A: As our brief filed with the Court of Appeals sets forth, the district court failed to follow Supreme Court precedent when it held that the Advisory Committee Act could be interpreted to apply to a task force made up of cabinet secretaries, senior White House officials and the First Lady. The Court's decision raised significant constitutional questions, and held FACA could not apply at all under certain circumstances and that only part of FACA could apply under other circumstances. Again, our Justice Department lawyers have told us that this application of FACA does not work as a legal matter.

Q: Are you going to continue to maintain the position that the Advisory Committee Act is unconstitutional?

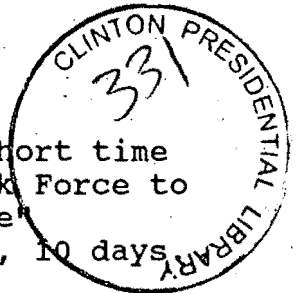
A: Again, I am not a lawyer, but I do know that our position in this case was not to attack the constitutionality of FACA. Rather, our position has been, and remains, that under Supreme Court precedent, FACA must be interpreted consistent with Congressional intent, and in a manner that does not create constitutional problems. The district court itself found that FACA is unconstitutional if applied to advice given to the President by a Task Force composed of Cabinet secretaries, senior White House officials, and the First Lady.

Q: FACA requires 15-days advance notice of public meetings of the Task Force. Why did you wait until this past Friday to publish notice of next Monday's meeting, and doesn't this mean that you have violated FACA?

A: In this instance, we delivered notice of the public meeting to the Federal Register as soon as the Task Force had determined a date and location for its public meeting. Our lawyers advised us that although FACA normally requires 15-days prior notice of a public meeting, the statute also

COPY

allows shorter notice to be given if there are "extraordinary circumstances." In this case the short time frame within which the President has asked the Task Force to complete its work is an "extraordinary circumstance" justifying a shorter notice period -- in this case, 10 days



In addition, this is a situation where it has been widely reported for many weeks that the task force would hold a public meeting, and the date of this meeting has already been widely reported. This is far more publicity than mere publication in the Federal Register normally provides. And each of the plaintiffs in the lawsuit will be invited to attend the public hearings.

COPY

To: VP

Date: 2/5 Time: 1:48

**WHILE YOU WERE OUT**

M: Room 312

Phone: 205-2138

| Area Code                                   | Number                                          | Outgoing |
|---------------------------------------------|-------------------------------------------------|----------|
| TELEPHONED                                  | <input checked="" type="checkbox"/> PLEASE CALL |          |
| CALLED TO SEE YOU                           | <input type="checkbox"/> WILL CALL AGAIN        |          |
| WANTED TO SEE YOU                           | <input type="checkbox"/> URGENT                 |          |
| <input type="checkbox"/> RETURNED YOUR CALL |                                                 |          |

Message: Room 312

332

*Original*

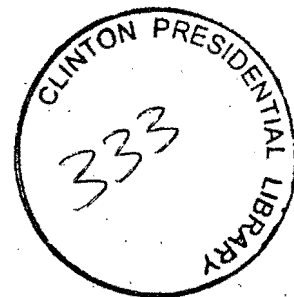
*Salvo call*

*F.A. C. answer*

*2*

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[CAPTION]



IRA MAGAZINER declares:

INTRODUCTION

1. I am Senior Advisor to the President for Policy Development. I have been advised by my counsel in this action that plaintiffs have sought certain information concerning the President's task force on health care reform (the "Task Force") and the interdepartmental working group created by the President in connection therewith. This declaration is intended to provide information in response to that request.

2. On January 25, 1993, the President announced the formation of the Task Force to assist him in developing legislation for comprehensive health care reform.

3. The President asked me to serve as a member of the Task Force. The Task Force is chaired by the First Lady. The Task Force also includes the following other members: Secretary of the Treasury Lloyd Bentsen; Secretary of Defense Les Aspin; Secretary of Commerce Ron Brown; Secretary of Labor Robert Reich; Secretary of health and Human Services Donna Shalala; Secretary of Veterans Affairs Jesse Brown; Office of Management and Budget Director Leon Panetta; Assistant to the President for Domestic Policy Carol Rasco; Assistant to the President for Economic

COPY

Policy Robert Rubin; and Council of Economic Advisors Chair Laura Tyson. These are the only members of the Task Force.

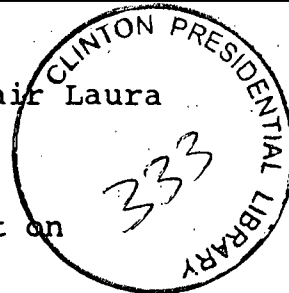
4. The members of the Task Force were present on January 25 when the President announced the Task Force's formation, but no meeting of the Task Force occurred at that time and no business was conducted or discussed by the Task Force members.

5. In addition to serving as a member of the Task Force, I am also leading, at the President's request, an interdepartmental working group that is gathering information concerning the impact of existing health care policies and possible alternatives to those policies. The information that is gathered and analyzed by the working group will be used, in turn, by the Task Force in formulating its recommendations to the President. Only the Task Force will have decision-making authority with respect to recommendations that are forwarded to the President, and only the Task Force will provide advice to the President. The interdepartmental working group is not charged with responsibility for making, and will not make, recommendations to the President, and will not otherwise directly advise him.

#### TASK FORCE MEETINGS

6. No Task Force meetings have been convened to date, and none have yet been scheduled.

7. The Task Force intends to hold several meetings once the interdepartmental working group has had an opportunity



to gather and analyze the information needed by the Task Force to make its recommendations to the President.

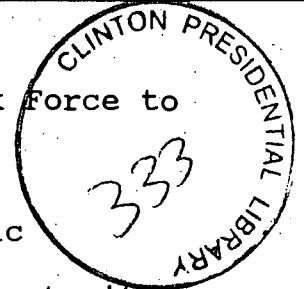
8. The Task Force intends to hold some public meetings at which members of the public will have an opportunity to be heard and to learn of the alternatives that the Task Force is considering.

9. No formal sub-groups or committees of the Task Force have been established, and none are presently contemplated. I have met regularly with the First Lady and, less frequently, with Carol Rasco, Assistant to the President for Domestic Policy, to keep them apprised of the working group's efforts and to receive their input on the working group's efforts. Other members of the interdepartmental working group have, from time to time, been present during my discussions with the First Lady and with Ms. Rasco.

#### THE INTERDEPARTMENTAL WORKING GROUP

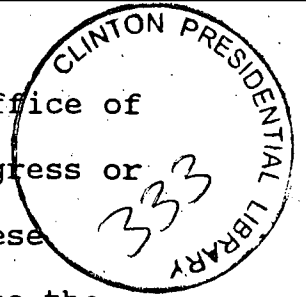
10. Shortly after January 25, the interdepartmental working group began an intensive effort to gather information concerning the present health care system and alternatives for reform. It was a guiding principal of the working group that a wide breadth of outside parties be consulted, and that members of the public and interested organizations have meaningful opportunities for input.

11. Only federal government employees serve as members of the interdepartmental working group. These federal employees fall into two categories. The first category includes full-

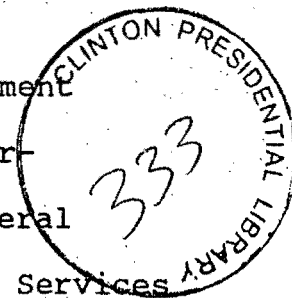


time, permanent employees, who work for the Executive Office of the President, for federal agencies, for Members of Congress or for Senate or House committees. I have arranged for these federal employees to be informed that they are subject to the conflict of interest provisions set forth in 18 U.S.C. §§ 202-209; the Standards of Ethical Conduct for Employees of the Executive Branch; and all related ethics laws and regulations. As of March 1, approximately \_\_\_\_ such permanent employees were serving as members of the working group. These employees have been provided by the White House and several agencies, including the Department of Health and Human Services, and [TO BE ADDED].

12. The second category of federal employees serving as members of the working group includes "special government employees" who have been employed by an agency or the Executive Office of the President for less than 130 days in a 365-day period, either with or without compensation. I have arranged for these special government employees to be informed that throughout the period of their special employment, they are subject to a limited version of the conflict of interest provisions set forth in 18 U.S.C. §§ 202-209; the Standards of Ethical Conduct for Employees of the Executive Branch; and all related ethics laws and regulations. I have also arranged for these special government employees to be informed that they are required to abide by limitations on public speaking and by applicable post-employment restrictions. As of March 1, approximately \_\_\_\_ such special government employees were serving as members of the



interdepartmental working group. These special government employees have been retained, and provided to the interdepartmental working group, by the White House and several agencies, including the Department of Health and Human Services and [TO BE ADDED].



12. The working group has also retained a wide range of consultants, who attend working group meetings on an intermittent basis, either with or without compensation. I have arranged for these consultants to be informed that in connection with their services to the working group, they are subject to some provisions of 18 U.S.C. §§ 201-208; the Standards of Ethical Conduct for Employees of the Executive Branch; and all related ethics laws and regulations. These consultants have not had any supervisory role or decision-making authority in connection with the consulting services they have provided to the working group. These consultants have been retained by the White House and other agencies, including the Department of Health and Human Services and [TO BE ADDED]. These consultants come from a wide-range of backgrounds, including [TO BE ADDED].

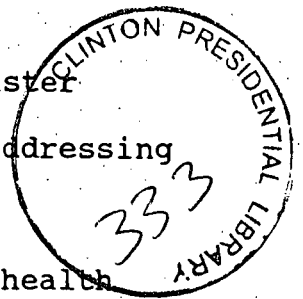
13. All decisions to hire permanent employees and special government employees, or to retain consultants, have been made by the office or agency that has hired or retained the individual involved.

14. The interdepartmental working group has been organized into fifteen "cluster" groups, each of which addresses a subject area relevant to health care reform and the development

of legislative alternatives. To date, fifteen such cluster groups have been created or planned, including groups addressing new system organization; new system coverage; infrastructure/integrated health plans; integration of health programs into new system; ethical foundations of a new system; transition to the new system/short-term cost containment; financing; health policy initiatives for underserved populations; mental health; long-term care; economic impact; quantitative analysis; legal audit; numbers audit; and a drafting group.

15. Several of these cluster groups have, in turn, been further divided into subgroups. The new system organization cluster includes subgroups addressing principles and operation of purchasing cooperatives; health plans, providers and patients in the new system; special issues in purchasing cooperatives toward and beyond; governance issues; a global budget; and insurance reform.

16. The new system coverage cluster includes subgroups addressing benefits packages; coverage for working families; and coverage for low-income and non-working families. The infrastructure/integrated health plans cluster includes subgroups addressing quality measurement; information systems; malpractice and tort reform; and health care workforce development. The integration of health programs cluster includes subgroups addressing Medicare; the Department of Defense; veterans; federal employees' health benefits programs; and other government health programs.



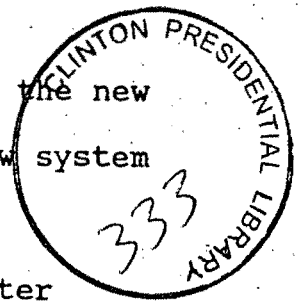
17. The cluster addressing the transition to the new system includes subgroups addressing acceleration of new system development; short-term steps toward administrative simplification; and interim cost containment. The cluster addressing underserved populations includes subgroups addressing high risk populations; urban/rural populations; and women and children. The mental health cluster includes subgroups addressing benefits packages; substance abuse; children's services; and public system impact. And the long-term care cluster includes subgroups addressing background; public care; private care; and cost and revenue.

18. These cluster groups and subgroups have been established since January 25 at my direction. The cluster groups and subgroups have been meeting regularly as part of an intensive effort to document the impact of existing health care policies and to gather information on possible alternatives.

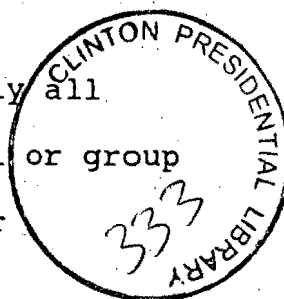
19. I am the only member of the Task Force who has attended meetings of the interdepartmental working group, and who has attended meetings of cluster groups and subgroups. On one occasion, Carol Rasco briefly attended a portion of one such meeting.

#### OPPORTUNITIES FOR PUBLIC INPUT

20. As noted above, it has been a high priority of the interdepartmental working group to ensure opportunities for input by, and consultation with, private citizens and organizations representing a broad range of interests and concerns. We have



sought to open the working group to ideas from literally all corners of the country, and I am aware of no individual or group that has been denied an opportunity to present ideas or suggestions to the working group.

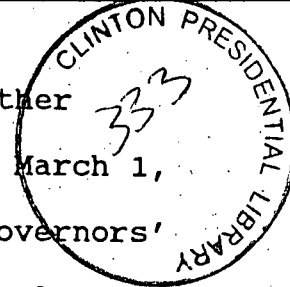


21. Several mechanisms have been established to facilitate public input. First has been the establishment of an "intake center" in the Old Executive Office Building in Washington, D.C.. This intake center accepts letters and phone calls; acknowledges receipt of all correspondence; and forwards all information and recommendations received to appropriate working group members, cluster groups or subgroups. It is my understanding that, to date, this intake center has received between 10,000 and 12,000 pieces of correspondence and several thousand phone calls. The First Lady and I have also received several thousand additional pieces of correspondence, on health care issues, addressed directly to our attention.

22. The White House Office of Public Liaison has also served an important function in facilitating public input to the interdepartmental working group. The Public Liaison office has set up a series of meetings with outside groups, attended by various members of the interdepartmental working group. I have personally attended many of these meetings. To my knowledge, no other Task Force member has attended any of these meetings. A list of the outside groups that have attended such meetings is attached as Exhibit A hereto.

23. I have also participated in a number of other meetings with representatives of organizations. Through March 1, I met with the Washington Business Group; the National Governors' Association; the American Medical Association; the National Committee to Preserve Social Security and Medicare; the National Federation of Independent Businesses; the American Hospital Association; the National Small Business Legislative Council; the Jackson Hole Group; the National Association of Public Hospitals; the Health Insurance Association of America; the National Association of Counties; and Professional Insurance Agents. No other Task Force members attended any of these meetings.

24. On February 24, 1993, the interdepartmental working group sponsored a meeting on \_\_\_\_\_ ("HIPC") Prototypes and State-based reform efforts. Participants included representatives of the California Public Employees' Retirement System; the Alpha Center; the Minnesota Department of Employee Relations; Xerox Corporation; Bank of America; the offices of the governors of Oklahoma, Pennsylvania and Colorado; the health departments of Hawaii, New Mexico, Wisconsin and Arkansas; the Arizona Health Care Cost Containment Program; the West Virginia Public Employee Insurance Agency; the New York State Department of Social Services; the City of Milwaukee; the Agency for Health Care Administration; Medimetrix; the California Major Risk Medical Insurance Board; the Health Care Purchaser's Association; and the California Department of Insurance. No other Task Force members attended this meeting.

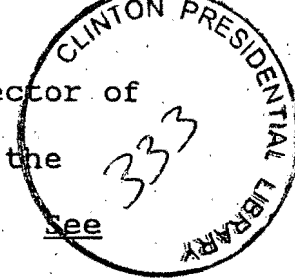


25. Moreover, the First Lady has also participated, and plans further participation, in public forums and conferences addressing issues relevant to health care reform. On February 11, 1993, the First Lady attended and participated in a health care conference in Harrisburg, Pennsylvania, sponsored by Senator Harris Wofford and the Pew Charitable Trust. On February 22, 1993, the First Lady attended a forum at Bunker Hill Community College with representatives of health delivery services. The First Lady also plans to attend four regional health care forums in March 1993 being sponsored by the Robert Wood Johnson Foundation. These forums are now tentatively scheduled to take place in Tampa, Florida on March 12; in Iowa on March 15; in Michigan on March 22; and in Washington, D.C. on March 26-27.

CORRESPONDENCE WITH PLAINTIFFS

26. On February 9, 1993, Jane M. Orient, M.D., executive director of plaintiff Association of American Physicians and Surgeons, Inc., wrote to the First Lady to "advise" that she and the Association's members "desire to attend the next and all subsequent meetings of the President's Task Force on National Health Care Reform." See Complaint, Exhibit B. Ms. Orient stated that her request was made pursuant to the Federal Advisory Committee Act. Ms. Orient also stated that "[a]dvance notice of the next meeting and any and all subsequent meetings would be appreciated so that I and other members may make plans to travel to Washington to be in attendance." Similar requests, dated February 9 and February 12, 1993, respectively,

were delivered to the First Lady by the Executive Director of plaintiff American Council for Health Care Reform and the President of plaintiff National Legal & Policy Center. See Complaint, Exhibits C and D.



27. Bernard Nussbaum, Counsel to the President, responded to plaintiffs' requests in writing. See Complaint, Exhibit E (February 12, 1993, letter to Association of American Physicians and Surgeons, Inc.); Exhibit F (February 12, 1993, letter to American Council for Health Care Reform); Exhibit G (February 16, 1993, letter to National Legal & Policy Center).

28. In his letters to plaintiffs, Mr. Nussbaum advised plaintiffs of his office's opinion that the Federal Advisory Committee Act does not apply to the Task Force. He also advised plaintiffs that that Task Force had not yet met, that no Task Force meetings were presently scheduled, but that "the task force will be holding some public meetings at which citizens, organizations and institutions will have an opportunity to present their views." Mr. Nussbaum explained that such public meetings would be announced in advance. Finally, Mr. Nussbaum informed each of the plaintiffs that if they are interested in attending such public meetings, they should contact a member of the White House staff, Mike Lux, whose name and phone number were set forth in the letters.

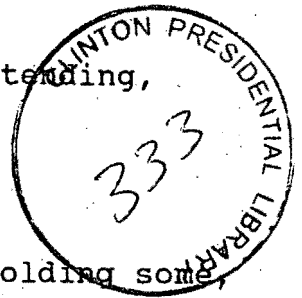
29. I have been informed that none of the plaintiffs has contacted Mr. Lux, or any other person affiliated with the Task Force or the interdepartmental working group, to express an

interest in attending, or to make arrangements for attending,  
public meetings of the Task Force.

CONCLUSION

30. Although the Task Force contemplates holding some, if not all, of its meetings in public, I believe it is critical -- in light of the magnitude of the Task Force's charge and the short time frame in which it is operating -- that the Task Force be able to retain flexibility in its operations and be free from formalistic reporting or mandatory public meeting requirements. I believe that such requirements would impede the Task Force's ability to address, within the time frame set out by the President, the literally hundreds of complex issues that must be considered in formulating proposals for comprehensive health care reform.

[ADD STANDARD LANGUAGE REQUIRED FOR DECLARATION]



VINCENT FOSTER JR.

3/12

To Howard Porter

I wanted to  
make sure you are  
up to speed on this.  
Looks like an  
escalation of the battle  
is coming

V

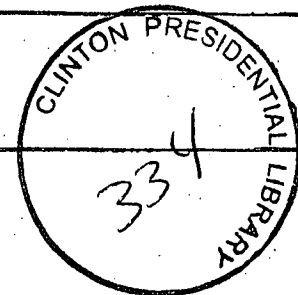
THE WHITE HOUSE  
WASHINGTON

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VINCE -

WE MAY LOSE THE  
FIGHT TO KEEP THE  
LIST SECRET. WE  
ARE CERTAINLY AT  
RISK POLITICALLY, REGARDLESS  
OF OUR LEGAL  
STANDING. I HAVE  
RESERVATIONS ABOUT  
THE POLICY, AND THIS  
MAKES IT WORSE.  
THANKS Howard

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Office of the General Counsel

B-252375

March 11, 1993

Mr. Bernard W. Nussbaum  
Counsel to the President

Dear Mr. Nussbaum:

As you know, Representative William F. Clinger, Ranking Minority Member of the House Committee on Government Operations, has requested our review of certain issues relating to the President's Task Force on National Health Care Reform and the interdepartmental working group that has been established to assist the task force. Incident to this review, we have requested certain information about the composition of the interdepartmental working group and its outside consultants.

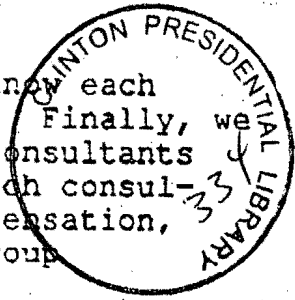
In telephone conversations with Mr. Stephen Neuwirth of your staff, Mr. Neuwirth questioned whether the information we are seeking is within the scope of Representative Clinger's request to us. Representative Clinger, in a meeting with us yesterday, confirmed that he expects GAO to obtain this information and that it is within the scope of his request.

The information we are seeking relates to the interdepartmental working group's membership and use of outside consultants, as described in an affidavit attached to the Justice Department's brief in American Association of Physicians and Surgeons v. Hillary Rodham Clinton, No. 93-0399 (D.D.C. filed Feb. 24, 1993). According to the affidavit, the working group's membership consists of two categories of federal employees: (1) 300 full-time, permanent employees provided to the working group by the White House, Members of Congress, and several federal agencies; and (2) approximately 40 other individuals appointed as special government employees by the White House and several agencies. The affidavit also indicates that outside consultants have been retained to assist the 340-member working group, which has been divided into 15 issue-oriented "cluster groups."

We request that you provide us with a list of the federal employees in each of the two categories described above, indicating the agency or other source of each individual's employment and the cluster group to which the individual has

COPY

been assigned. In addition, we would like to know each special government employee's appointment date. Finally, we would like a list of the names of the outside consultants being used by the working group, identifying each consultant's organizational affiliation, rate of compensation, and, if applicable, the consultant's cluster group assignment.



In order that we may proceed with our review, we request your response no later than March 24, 1993. If you have any questions concerning this request, please call me on 512-5156 or Ms. Lynn Gibson of my staff on 512-5422.

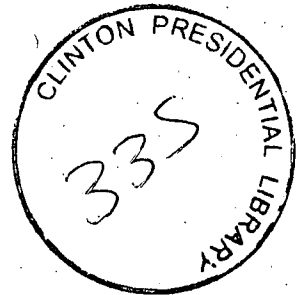
Sincerely yours,

Henry R. Wray  
Senior Associate General Counsel

THE WHITE HOUSE

WASHINGTON

March 10, 1993



MEMORANDUM FOR GEORGE STEPHANOPOULUS  
ASSISTANT TO THE PRESIDENT FOR COMMUNICATIONS

LISA CAPUTO  
DEPUTY SECRETARY TO THE PRESIDENT AND PRESS  
SECRETARY FOR MS. CLINTON

FROM: CHERYL MILLS *CM*  
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Wall Street Journal Article on Illegality of  
Volunteers on the Health Care Task Force

Vince asked that I bring the attached editorial in the Wall Street Journal to your attention specifically for the purpose of addressing a misstatement of the law.

In particular, the article states that the Anti-Deficiency Act prohibits volunteers in the White House, specifically singling out Ms. Clinton's volunteer service. This argument simply is legally wrong.

Because the Congress imposed no minimum salary level for employees of the White House Office (and Office of the Vice President), Congress is said "to have granted the agency the discretion to pay employees nominal sums or even engage their services without compensation." Unpublished Opinion of the Office of Legal Counsel ("OLC"); Memorandum for Fred F. Fielding, Counsel to the President; ("White House Use of Volunteers") (1982). See 3 U.S.C. § 105. See generally, United States v. Crosthwaite, 168 U.S. 375, 377 (1897); United States v. Herron, 170 U.S. 527 (1898); Lee v. United States, 45 Ct. Cl. 57 (1910).

Because the law does not impose a minimum salary requirement on White House Office employees, the Anti-Deficiency Act is interpreted in these circumstances to permit "voluntary services" -- "service intruded by a private person as a "volunteer" and not rendered pursuant to any prior contract or obligations." 30 Opinion of Attorney General 51, 52 (1913). The White House can, and has for years, accepted volunteers.

It might be worth correcting this misrepresentation early before it grows into another problem for the Task Force.

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## Details, Details

As Joe Biden's Judiciary Committee today undertakes its inquiries into the beliefs and background of President Clinton's third-round draft pick for Attorney General, we certainly hope the Senators will ask for Janet Reno's thoughts on enforcement of the Anti-Deficiency Act and the Federal Advisory Committee Act. Certainly Hillary Rodham Clinton would be interested in Ms. Reno's views. These laws currently sit as two flies in the ointment of the Clintons' plans for health-care reform, due by May 1.

Essentially, by appointing his wife to be the unpaid head of a task force that refuses to meet in public, it looks as if Mr. Clinton may be violating two little-known but very stubborn federal laws.

First, FACA (affectionately pronounced "facka" by aficionados of the law). The 1972 law requires that all meetings of advisory committees and subcommittees must be open to the public. Its definition of advisory committee is precise: "any committee, board, commission, council, conference, panel, task force, or other similar group . . . which is . . . established or utilized by the President." An exception is made for any committee wholly made up of federal officers or employees. The First Lady, at least until now, has occupied a kind of political netherworld—neither a federal officer nor a federal employee.

Under FACA, meetings not only must be open to the public but must give advance notice in the Federal Register. Interested parties must be permitted to appear or attend or file statements. If a meeting is closed, there has to be an explanation in advance. Committee records and detailed minutes of every meeting must be made available to the public. The President's secretive health care task force does none of this.

It has never held a formal meeting. Its two dozen or so working groups are staffed by 300 to 400 health care experts whose identities the White House refuses to disclose and whose deliberations are kept secret. Its budget is unspecified. When asked about the status of those working on the task force, White House Press Secretary Dee Dee Myers said, "I don't know what the specifics are and who's paid and who's not paid."

Many health care organizations think the First Lady's task force needs to come out in the open. In a lawsuit filed last month, three groups—the Association of American

and the National Legal and Policy Center—citing FACA, asked that the task force be required to deliberate in public.

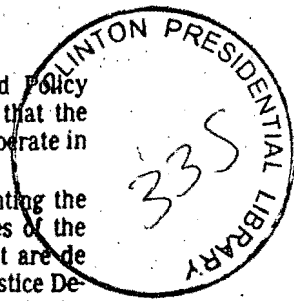
The administration is fighting the suit. It argues that the wives of the President and Vice President are de facto federal workers. The Justice Department says the First Lady is the "functional equivalent of a government employee." But if that's true, Mrs. Clinton's appointment becomes the functional equivalent of a violation of the famous Bobby Kennedy statute—the anti-nepotism law that prohibits government officials from giving jobs to relatives (as JFK did to his brother).

The administration also maintains that FACA unconstitutionally interferes with the President's right to give advice to Congress. What's most ironic about this is that throwing sunshine on any and all meetings was one of the great liberal causes of years back. This "open government" movement led to the enactment of sunshine laws, such as FACA, in the early '70s. A federal judge has said he would rule on the suit this week.

The other legal troll under the Clintons' health care bridge is the Anti-Deficiency Act. Dating back more than 100 years, it prohibits government officials from accepting "voluntary services," that is, letting people work for no pay. Its purpose is to protect Congress's power of the purse and to avoid creating future government liabilities for services rendered. There are some statutory exceptions, but the First Lady "volunteering" her workday in this manner isn't among them.

Defenders of Mrs. Clinton's appointment could say there is no reasonable expectation that the First Lady would later demand payment; in fact, the law makes no such exception. Even so, if Mrs. Clinton can't donate her services, the RFK anti-nepotism law makes it clear that she can't get paid for them, either.

Awkward as they may be, FACA and the Anti-Deficiency Act aren't merely inconvenient details that the new administration can roll over. They are the law of the land, and in the case of the Anti-Deficiency Act have a famous history. Normally, the way a President gets around them is to have his Attorney General get up some language explaining them out of the way. That's what Franklin Roosevelt did to the Anti-Deficiency Act when he transferred destroyers to Britain. What we're wondering is,



GS &  
LISA  
copy of  
3 USC 105(a)  
& OLC opinion  
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