DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION	
001. memo	Photocopy. Memorandum to Vincent Foster and Stephen Neuwirth from Robert E. Kopp and David J. Anderson. 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.) (9 pages)	n.d.	P5	375
002. memo	Talking Points Health Care Task Force Case (1 page)	n.d.	P5	376
003. memo	Photocopy. Memorandum for File from Stephen R. Neuwirth. Subject: Contact with GSA Acting General Counsel. (2 pages)	06/14/1993	P5	377
004. memo	Photocopy. Memorandum for Leon Panetta from Joel Klein and Stephen Neuwirth. Subject: Health care working group documents/litigation. (2 pages)	10/28/1994	P5	378
005. note	Photocopy. [Health Care Task Force Q & A]. (4 pages)	n.d.	P5	379
006. draft	Photocopy. Draft of letter from Vicent Foster. [Re: National Health Care Reform]. (1 page)	n.d	P5	380
007. note	Photocopy. Q & A's on Health Care Task Force Appeal. (3 pages)	n.d.	P5	381
008. note	Photocopy. Talking Points on Health Care Task Force Case. (2 pages)	n.d.	P5	382
009. memo	Photocopy. Memorandum for Robert E. Kopp, Mark B. Stern, Patricia A. Millett, and Malcolm L. Stewart, Civil Division, DOJ from Stephen R. Neuwirth. Re: Plaintiff's Appeal Brief in AAPS. (4 pages)	04/07/1993	P5	383
010. note	Talking Points on Wall Street Journal Editorial. (2 pages)	n.d.	P5	384

COLLECTION:

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

FOLDER TITLE:

Health Care Task Force Documents [Neuwirth Potentially Priv. Copies]

Van Zbinden
2006-0223-F
vz75

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]

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
011. memo	Photocopy. Memorandum to: Health Care Task Force and Working Group Personnel from John D. Podesta and Stephen R. Neuwirth. Re: Task Force and Working Group Records. (2 pages)	04/29/1993	P5 385
012. memo	Photocopy. Memorandum for File from Stephen R. Neuwirth. [Re: Health Care Task Force]. (3 pages)	04/23/1994	P5 386
013. memo	Photocopy. Memorandum to Steve neuwirth from Nicole Gueron. Re: Relevance of Audit Groups in first set of interrogatories in Assocation of American Physicians and Surgeons, Inc. v. Hillary Rodham Clinton et al. (6 pages)	07/16/1993	P5 387
014. memo	Photocopy. Memorandum to Steve Neuwirth from Harold Ickes. Re: Lawsuit against the National Health Care Task Force. (1 page)	04/25/1994	P5 388
015. note	Photocopy. [Handwritten draft of legal document regarding the Health Care Task Force lawsuit]. (10 pages)	n.d.	P5 389

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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

David J. Anderson
Director, Federal Programs Branch
Civil Division

PRIVILEGED ATTORNEY-CLIENT AND WORK PRODUCT MATERIAL

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 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,[1] 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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[1] We underline those requirements that appear to us to be particularly onerous.

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

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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.

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.

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.

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. <u>Subgroup meetings</u>

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.

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. <u>National Anti-Hunger Coalition</u>, which involved working groups chaired by FACA committee members, supports this conclusion.

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."

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 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.

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.

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.

p. 21 of opinion

3. <u>Advice Formulation vs. Fact-Finding</u>

[redacted]

The Court's Order affords public access to Task Force fact-reporting or fact-finding meetings, but not to those involving advice formulation. <u>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.</u>

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.

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.

4. Public Access to Information

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,[2] 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.

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[2] 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.

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.

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 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

TALKING POINTS ON HEALTH CARE TASK FORCE CASE

1. The Court of Appeals ruled that the Health Care Task Force was not subject to the Federal Advisory Committee Act.

2. In so ruling, the Court of Appeals found that First Lady Hillary Rodham Clinton is a "full time officer or employee of the federal government" for purposes of the Act, and therefore her role as Chair of the Task Force did not trigger application of the Act.

3. The ruling means that the Task Force was never subject to requirements that its meetings be open to the public or that its documents be publicly disclosed.

4. The Court of Appeals also sent a separate part of the case back to the district court to determine the status of the interdepartmental working group that provided information and options to the Task Force.

5. However, the Court of Appeals did <u>not</u> hold in any way that the working group was subject to the Advisory Committee Act. Indeed, the district court found that the working group is not subject to the Act. The Court of Appeals merely held that insufficient evidence had been presented for the district court to have reached a final determination on that issue.

6. In its original holding, the district court found that the interdepartmental working group is <u>not</u> subject to FACA because it was the Task Force, and not the working group, that advised the President.

7. At this point, the district court will determine what additional factual information is needed before a final decision can be rendered on the interdepartmental working group.

8. We believe that under the standards articulated by the Court of Appeals, the government will be able to demonstrate that the working group, in fact, is not subject to FACA. The Court of Appeals noted that "it is a rare case when a court holds that a particular group is a FACA advisory committee over the objection of the executive branch."

9. The working group -- which, like the Task Force itself, has now ceased operation -- was a disparate group of several hundred persons. The Court of Appeals has stated that in any further proceedings regarding the working group, the district court should evaluate its purpose, structure and the nature of its composition.

June 14, 1993

MEMORANDUM FOR FILE

FROM: STEPHEN R. NEUWIRTH
Associate Counsel to the President

SUBJECT: Contact with GSA Acting General Counsel

At approximately 12 noon today, I spoke by telephone to Allie Lattimore, the Acting General Counsel of the General Services Administration.

At an internal White House meeting this morning, we sought to determine the accuracy of a story in today's Washington Times suggesting that documents relating to the President's Task Force on Health Care Reform had been shredded by an employee of the GSA. That employee was referred to, but not named, in the article.

Several persons present at the meeting suggested that it might be appropriate to identify, and contact, the GSA employee referenced in the Times article to ascertain what, if any, documents had been shredded and pursuant to whose instructions. I noted that civil service rules or other regulations might make it inappropriate for us to contact directly any civil servant employed by GSA. I therefore suggested that before any such contact be considered, I would contact the General Counsel of GSA to determine whether such contact is appropriate and under what circumstances and terms.

I thus telephoned Ms. Lattimore. In a very brief conversation, I mentioned that an article had appeared in today's Washington Times suggesting that a GSA employee had claimed to be shredding documents addressing health care reform. I stated that the article was unsubstantiated, but that in light of pending litigation concerning the Task Force, we were interested in determining whether any factual predicate for the article in fact exists. I told Ms. Lattimore that the purpose for the call was to determine what steps would be appropriate, in light of any applicable GSA or civil service rules or regulations, in the event the White House staff were interested in speaking to any GSA employees about the article. I then told Ms. Lattimore that I would get back to her.

After speaking to Ms. Lattimore, I determined that it would not be appropriate to have any further discussions with her concerning the Washington Times article. I did not want to convey the impression that the White House is interested in causing GSA to take or not take any action concerning the article.

October 28, 1994

PRIVILEGED AND CONFIDENTIAL

MEMORANDUM FOR LEON PANETTA
CHIEF OF STAFF

FROM: JOEL KLEIN
DEPUTY COUNSEL TO THE PRESIDENT

STEPHEN NEUWIRTH
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Health care working group documents/litigation

Today's Washington Times story, titled "Health panel removed records," misrepresents the facts concerning the Administration's recent production of documents of the interdepartmental working group that support the Health Care Task Force in 1993.

As we believe you are aware, in September the Administration placed approximately 260 boxes of health care working group documents in a public reading room at the National Archives. Following that production, the Justice Department argued to a federal district court that a pending litigation concerning the working group is now moot because release of these documents is the only relief to which the plaintiffs could be entitled. The plaintiffs claim that the working group was subject to the Federal Advisory Committee Act, which requires open meetings and public disclosure of documents.

The Justice Department advised the court in briefs, witness declarations and at oral argument of the procedures that were used to produce the working group documents at the Archives. Among other things, the Department explained that, as a general matter, we had not produced documents that post-dated May 31, 1993, the date when the working group terminated. (The record in the litigation is replete with uncontradicted evidence that the working group terminated in May 1993.) The Justice Department explained that if working group members had included post-May 1993 documents in the boxes they submitted to the White House records management office, those post-May 1993 documents were removed before those boxes were produced at the Archives. At the same time, we did produce the post-May 1993 documents of several health care "audit groups" that did continue their work after May 1993.

The court has never stated that the White House "deceived" anyone about which documents were produced. Two weeks ago, the court ordered some limited discovery, including depositions, but only to confirm whether the case is now moot. The depositions of Ira Magaziner, Marge Tarmey (Ira's assistant) and Terry Good (White House records management) support our position that the White House made a good faith effort to produce -- and did produce -- all working group documents.

Today the court ordered that there is no need for further discovery and set a short briefing schedule for a final decision on whether the case is now moot. Oral argument on this issue will be held on November 10, 1994. The Justice Department feels strongly that the case is moot and that there is no legal basis for a trial. Moreover, we are aware of no legal or factual basis for the plaintiffs' sensational suggestion that the First Lady could be a trial witness. The First Lady did not participate in the interdepartmental working group. She chaired the separate, 12-member Health Care Task Force, composed of Cabinet members and senior White House officials. Last year, the Court of Appeals held that the Task Force was not subject to the Federal Advisory Committee Act.

What is the health care task force?

The President created the Task Force on National Health Care Reform on January 25, 1993. The Task Force's mission is to recommend to the President as promptly as possible a proposal for comprehensive health care reform legislation to be enacted by Congress.

The Task Force is chaired by Hillary Rodham Clinton, the First Lady. The other members of the Task Force are 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 Assistants to the President for Domestic Policy and Economic Policy; the Chair of the Council of Economic Advisors; and the Senior Advisor to the President for Policy Development.

Who are the 400 people we keep hearing about?

Ira Magaziner, the President's Senior Advisor for Policy Development, is leading an interdepartmental working group that is gathering information concerning the impact of existing health care policies and delivery services, and possible alternatives to those policies. The working groups are reaching out to literally hundreds [thousands?] of individuals and groups to ensure that a full range of alternatives is considered. 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 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 or directly advise him.

Only federal employees serve as members of the interdepartmental working group, including more than 90 Congressional staffers.

Are you sure that all of the members of the working group are federal government employees? Aren't some contractors and consultants?

We have been careful to ensure that all members of the working group are federal employees. These federal employees fall into two category. 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.

These federal employees have been 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.

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. These special government employees have been 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. I 202-209; the Standards of Ethical Conduct for Employees of the Executive Branch; and all related ethics laws and regulations. These special government employees have also been informed that they are required to abide by limitations on public speaking and by applicable post-employment restrictions.

Finally, 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. 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, but instead provide information and opinion to the working group members. These consultants have been informed that in connection with their services to the working group, they too are subject to a limited version of the conflict of interest provisions set forth in 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 come from a wide range of backgrounds, including physicians, nurses, health and political economists, sociologists, human resource management experts, health educators, health administrators, public health experts, health researchers and policy analysts.

Aren't these all just White House staff?

No. The full-time employees who are serving on the working group have been provided by the White House, members of Congress, and several agencies, including the Department of Health and Human Services, the Office of Management and budget, the Department of Defense, the Department of Veterans Affairs, the Department of Labor, the Department of Commerce, the Department of the Treasury, and the Council of Economic Advisors. The employees are working on the task force as part of their regular jobs at their home agencies. Health care policy and finance experts from each agency are working together -- this is far more efficient that having each agency work in this area on its own. This is a novel approach. Through this working group, the staffs of different agencies are working together to present ideas and proposals to a Task Force made up of the Cabinet Secretaries of the agencies involved.

The "special government employees" serving on the working group 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, the Department of Defense, and the Office of Management and Budget.

Can we see a list of the staff of the working group?

[to be added]

Who pays for the 400+ staff?

The full-time employees serving as members of the working group have their salaries paid by the agency that employs them.

Those "special government employees" and consultants receiving compensation for their services to the working group are being paid by the agency that retained them. All decisions to hire special government employees or to retain consultants have been made by the office or agency that has hired or retained the individual involved.

What will the Task Force cost?

The Task Force's Charter, filed with the GSA and the Library of Congress on March 17, states that the Task Force's cost is expected to be below $100,000.

As to the working group, each agency involved keeps its own budget. And each has appropriations that are directed to policy research and development, which is what these staff are doing. The cost to each agency depends on the number of staff each agency has provided to the working group, as well as the contributions the agency will make to common costs. It is difficult at this time to estimate the total costs of this health care reform effort. Most of the costs are in staff time. Overall, HHS will be contributing the most because of its primary role and interest in health care reform, and because that department has provided the most staff to the effort.

What about the Court decision? What did it mean?

The judge held, first, that the advisory committee act does not apply in any respect to the interdepartmental working group. Second, the judge held that it would be unconstitutional for the advisory committee act to apply to the task force itself whenever the task force is advising the President or formulating advice for the President. Finally, the judge simply held that the advisory committee act does apply to the Task Force when it is gathering or receiving information -- but the Task Force was already planning to hold an open meeting and to give timely notice of that meeting. So this doesn't really change anything that was planned.

In fact, the Court made clear that everything the working group has done to date is legal, and that everything the task force and working group plan to do in the coming weeks will also be legal.

Will we get to see all of the documents that the working group uses?

The judge's decision does not affect the working groups at all. But the product that the working group presents to the Task Force will be made public, as will the final recommendations presented by the Task Force to the President. Of course, the President's proposed legislation will be submitted to Congress.

EXECUTIVE OFFICE OF THE PRESIDENT

President's Task Force on National Health Care Reform

The President's Task Force on National Health Care Reform will hold closed meetings on the following dates to formulate, and deliberate with respect to, advice for the President on national health care reform: May 13, May 14, May 15, May 16, May 17, May 18, May 19 and May 20. Closed meetings of the Task Force, for the purpose of formulating and deliberating with respect to advice for the President on national health care reform, were also held on May 1, May 3, May 4, May 5, May 6 and May 7.

Pursuant to 41 C.F.R. § 101-6.1015(b)(2), notice of less than 15 days is provided because of the extraordinary circumstance of the short time frame within which the President's Task Force has been asked by the President to formulate advice for the President on a national health care reform proposal.

The above-referenced meetings are closed in their entirety to the public pursuant to the opinion and order of the United States District Court for the District of Columbia in Association of American Physicians and Surgeons, et al. v. Clinton, et al., No. 93-399 (March 10, 1993 D.D.C) (Lamberth, J.).

The above schedule is subject to change. Any changes to the schedule shall be published in the Federal Register.

Dated: May 13, 1993

Vincent W. Foster
Deputy Counsel to the President

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 appealling 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 <u>substantial errors</u> 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 appealling. 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 "impractability" 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

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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 <u>advice given</u> 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 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.

TALKING POINTS ON HEALTH CARE TASK FORCE CASE

Q: What do the government briefs say?

A: The Justice Department filed briefs in federal district court demonstrating that the interdepartmental working group, the 500-member group that gathered information and developed options for consideration by the Health Care Task Force, was not subject to the Federal Advisory Committee Act (FACA).

The papers filed by the Justice Department today demonstrate that the interdepartmental working group was not the type of group covered by FACA.

Q: Do the papers respond to allegations that Ira Magaziner misrepresented the membership of the working group?

A: The papers filed today also demonstrate that the White House and Ira Magaziner have accurately described the membership of the working group.

The papers show that the working group process was an open one, in which literally thousands of individuals and groups -- including the plaintiffs -- had an opportunity to provide input to working group members.

It is the plaintiffs in the litigation who have themselves misconstrued the membership of the working group, by asserting that the members included people who were merely given an opportunity to express their views.

Q: If the working group was not composed solely of full time federal employees, wasn't it subject to FACA?

The record shows that all members of the working group were either permanent or special government employees.

The Justice Department brief explains, however, that this group was not subject to FACA regardless of the composition of its membership because it did not have the qualities that would have made it subject to FACA.

While it is true that groups composed solely of full time employees are exempt from the FACA, it does not follow that a group including persons who are not full-time federal employees is automatically subject to the FACA.

-- The plaintiffs in this action have publicly stated their opposition to the President's health care reform proposals.

-- In June 1993, the United States Court of Appeals for the District of Columbia Circuit held that the Health Care Task Force, the 12-member task force chaired by the First Lady, was not subject to the FACA. The Court of Appeals also asked the district court to consider whether the interdepartmental working group was subject to the FACA.

PRIVILEGED AND CONFIDENTIAL
ATTORNEY-CLIENT / WORK PRODUCT

April 7, 1993

MEMORANDUM FOR ROBERT E. KOPP
MARK B. STERN
PATRICIA A. MILLETT
MALCOLM L. STEWART
Attorneys, Appellate Staff
Civil Division, Department of Justice

FROM: STEPHEN R. NEUWIRTH
Associate Counsel to the President

RE: Plaintiffs' Appeal Brief in AAPS

I have the following observations on the plaintiffs' appeal brief in the Health Care Task Force case:

1. Plaintiffs fail even to mention Public Citizen in their discussion of the constitutional law issues addressed by the district court. Though plaintiffs make reference to various other authorities, they ignore -- and attempt to have the Court of Appeals ignore -- the one case that does address the Federal Advisory Committee Act. In that case, the Court majority expressly held that the statute should be construed, where possible, in a manner that avoids applications of the Act in situations that trigger difficult constitutional questions. The remaining justices participating in the case -- including Justice Rehnquist, to whom the plaintiffs make frequent reference -- concluded that the constitutional questions could not be avoided and that FACA should have been declared unconstitutional.

2. On page 2, plaintiffs' second question -- whether the Federal Advisory Committee Act amounts to an unconstitutional legislative encroachment upon the powers of the President -- misconstrues the issue on appeal. The principal issue is whether, with respect to the First Lady and her alone, FACA can be construed to avoid the difficult constitutional questions that the district court chose to reach.

3. The description of the working group on page 5 and elsewhere is inaccurate. It appears important to set the record straight. As has been publicly disclosed, the working group is

composed solely of full-time federal employees, some of whom (relatively few) are special government employees. Only these full-time federal employees are members of the working group -- with voting rights and the authority to supervise others. Wholly apart from these working group members, the working group is also consulting a small number of outside consultants -- consultants who are not members of the working group, have no voting or decision-making authority, and attend working group meetings only on an intermittent basis.

4. On page 9, plaintiffs overtly fail to mention that they were invited to participate in public meetings of the Task Force, and chose to commence this litigation instead. Plaintiffs also fail to mention that each of the plaintiffs received invitations to participate in the public hearing of the Task Force on March 29, and that the executive directors of two of the plaintiffs each made presentations at the public hearing, submitted written statements, and participated in lengthy -- and nationally televised -- question and answer sessions with Task Force members.

5. On page 9, the plaintiffs make reference to the statement in the Compilation of Presidential Documents that the President attended a meeting of the Task Force on February 7. That statement was plainly a mischaracterization of the meeting; no Task Force meeting occurred on that date, as reflected in the Magaziner affidavit and as the District Court found (in holding that the Task Force had not yet met).

6. In response to plaintiffs arguments in the second full paragraph on page 26, it appears important to emphasize the nature of our argument: it is, simply, that, for purposes of FACA, the exemption for committees composed wholly of full time federal officials and employees applies to a task force composed of cabinet secretaries, senior White House officials, and the First Lady.

7. Plaintiffs' analysis on page 27 seems misguided. 5 U.S.C. § 7342 makes clear, in subsection F, that the spouse of an individual described in subparagraphs A through F <u>is</u> an "employee." The language highlighted by the plaintiffs merely points out that a person would not be an "employee" as defined in subsection G if that person were already an "employee" under subsections A through F.

8. Plaintiffs argue, on page 28, that if the First Lady is an "employee" for purposes of FACA then she is an "employee" for purposes of the Hatch Act. There is no reason why the definition of "employee" in FACA must be the same as the definition in the Hatch Act. Moreover, aren't Presidential employees in the White House exempt from the Hatch Act?

9. In response to arguments on page 29, it would seem important to emphasize that it is the district court that rewrote the statute in attempting to apply it in this case.

10. On page 31, plaintiffs make an illogical point. They claim that we are wrong for asserting that FACA is designed to regulate outside influences on the advisory process; yet they then rely on a Supreme Court quote observing that FACA was "enacted to cure specific ills, above all the wasteful expenditure of public funds for worthless committee meetings and biased proposals."

11. In the footnote on page 31, plaintiffs wholly misconstrue our argument concerning the absurd result plaintiffs' construction would cause. Our analogy concerned the First Lady's chief of staff, not her secretary. By mentioning the First Lady's secretary, plaintiffs seek to make the First Lady like any other person who might claim not to trigger FACA. In fact, though, the First Lady has an entire staff -- and a chief of staff -- pursuant to statutes that recognize her role in assisting the President. No other person -- with the possible exception of the spouse of the Vice President -- can be similarly characterized. There is no slippery slope or parade of horribles in this case. Plaintiffs' attempt to analogize the First Lady to a former President is silly, at best.

Moreover, in this regard, it should be noted that plaintiffs fail even to mention 3 U.S.C. § 105(e).

12. On pages 36 and 37, plaintiffs simply confuse the Federal Advisory Committee Management Regulations. The quoted provision, Section 101-6.1004, merely provides that when a federal official -- the person who would otherwise appoint an advisory committee -- meets with a group of individuals for the purpose of gathering individual advice (as opposed to consensus advice), the group of individuals involved does not constitute an advisory committee. Plaintiffs are arguing, incorrectly, that this provision means that FACA is triggered if a member of an advisory committee meets with outside consultants. Plaintiffs also confuse consultants who have been called upon by the working group with the working group members themselves, who provide information to the Task Force.

13. Plaintiffs argue on page 38 that the Task Force is a sham and a rubber stamp. But, plaintiffs ignore that: the Task Force will have ample opportunity at the end of the process to review and consider several proposals provided by the working group; and that the Task Force has already made public that its work will continue beyond the original May 1 target date. Note that, for purposes of this argument, plaintiffs conveniently argue that the Task Force has met only once to date -- notwithstanding their earlier argument that they are entitled to

discovery because the Task Force has, in fact, already met several times.

14. Plaintiffs' argue that the FOIA exemptions and Sunshine Act exemptions are sufficient to prevent any constitutional problems in this case. Can we emphasize all of the various ways in which these exemptions are not satisfactory (e.g., the balanced membership requirement, and the requirement that notice be given of all meetings)?

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15. Plaintiffs argue that the district court should not have "anticipated" a constitutional question that did not yet arise. But Public Citizen, which plaintiffs seek to ignore, holds that constitutional questions necessarily arise if one attempts to apply FACA to committees that are advising the President in connection with the exercise of an expressly enumerated Article II power.

16. Plaintiffs' argument, on page 42, concerning Congressional staffers, is wrong. Plaintiffs claim that because Congressional staffers participate in the interdepartmental working group, the Task Force cannot argue that Congress may not interfere with the advice that the Task Force gives to the President. Congressional staffers do not participate in the actual advice-giving process; they give input at the working group level only.

cc: Vince Foster
Deputy Counsel to the President

TALKING POINTS ON WALL STREET JOURNAL EDITORIAL

-- Today's Wall Street Journal editorial on Mr. Magaziner is both misleading and inaccurate.

-- The editorial simply ignores the Court papers filed by the Department of Justice, which establish beyond peradventure that Mr. Magaziner's statements about the interdepartmental working group have been both consistent and accurate.

-- The Journal merely repeats unsubstantiated allegations by the plaintiffs in a pending litigation -- plaintiffs who have publicly expressed their opposition to the President's health care reform effort, and whose claims against Mr. Magaziner are an insupportable public relations ploy.

-- The Journal also makes the wholly unsubstantiated allegation that the "Task Force spent at least $4 million and possibly as much as $16 million on expenses, salaries and consulting fees." In fact, as the Administration has already reported to Congress, the expenses of the 12-member Task Force were limited to $100,000, as reflected in the Charter filed for the Task Force. As has also been reported to Congress, the expenses of the separate 500-member interdepartmental working group were limited to $325,000. (The working group was not covered by the Task Force Charter, nor was it required to be.)

Allegations against Mr. Magaziner:

-- The Justice Department has shown in court papers that Mr. Magaziner accurately stated that the actual members of the working group were federal employees -- either permanent full-time federal employees or "special government employees" subject to federal ethics rules.

-- The Journal repeats the plaintiffs' irresponsible assertion that the working group had over 1000 members. In fact, the group had just over 500 members, as Mr. Magaziner accurately reported.

    -- It is true that those working group members had numerous meetings with hundreds of other individuals and organizations to obtain their input on health care reform -- including the very plaintiffs in the pending litigation. The working group by design sought input from a wide variety of interests.

    -- The plaintiffs, and now the Journal, simply treat these other individuals who were consulted by the working group as "members" of the working group itself.

-- Mr. Magaziner's declarations correctly and accurately distinguished between actual working group members and "consultants" to the working group.

-- Mr. Magaziner's declarations also properly recognized that individuals from the private sector can serve as special government employees. When Congress created the special government employee category in the early 1960's, it did so precisely to allow individuals from the private sector to perform temporary, valuable federal service, bound by a modified set of federal ethics rules. The working group employed special government employees precisely in the manner contemplated by Congress.

-- The assertion that the White House "passed off" as Hill staff 6 of the over 500 working group members who were Robert Wood Johnson fellows is a misleading overstatement. The Justice Department showed in its court papers that these individuals were members of the Senate staffs, properly regarded as Senate employees, and subject to Senate ethics rules.

-- The assertion that "dozens" of private interests were represented on the working group is misleading and inaccurate. A broad array of "private interests" -- including, notably, the AMA and other doctors groups -- were consulted by the working group, so that their views could be considered and information from them reviewed. The plaintiffs themselves were among the purported "private interests" who testified before the Task Force.

April 29, 1993

TO: ALL HEALTH CARE TASK FORCE AND WORKING GROUP PERSONNEL

FROM: JOHN D. PODESTA
Assistant to the President
and Staff Secretary

STEPHEN R. NEUWIRTH
Associate Counsel to the President

RE: Task Force and Working Group Records

The following instructions govern the proper handling of records created or received by the President's Task Force on Health Care Reform or the interdepartmental working group, clusters or subgroups:

1. Any documents you create or receive as part of your work with the Task Force or its working group must be preserved. You may not dispose of such documents, even after your work with the Task Force or working group is completed. This rule applies to, among other things, notes, drafts, working papers, charts, graphs, books, publications and incomplete documents. You may dispose of unneeded duplicate copies of existing documents that are not annotated or otherwise marked.

2. You may not delete records created in connection with your work with the Task Force or its working group and stored in computer equipment or any other electronic media. This rule applies to, among other things, e-mail messages you sent or received. Purely personal e-mail messages may be deleted.

3. All Task Force and working group documents are property of the White House Office regardless of whether they are, or have been, transmitted or maintained outside of the White House and Old Executive Office Building. Task Force and working group documents include all documents that you have created or received in your capacity as a Task Force or working group member. These documents include materials received from any source -- <u>e.g.</u>, a member of the Task Force, another working group member, a government employee, or a private citizen or group. Be aware that the White House Office retains control over all such documents and that their confidentiality is to be maintained accordingly. **Moreover, you may not take copies of any Task Force**

or working group materials for any personal use or retention, without express prior consent of Marjorie Tarmey.

4. Working group members employed by a federal department or agency should be sure to segregate Task Force and working group documents from department or agency documents you use in your other work. In all instances, Task Force or working group documents should be maintained in separate files and should not be placed in departmental or agency files.

5. When your work with the Task Force or working group is completed, please (a) return all documents that have been forwarded to you by the Task Force's intake center (including any cover routing sheets) to Mary Schuneman, OEOB Room 287; (b) place all other Task Force or working group documents in boxes; (c) mark the boxes to identify the documents as Task Force or working group documents; and (d) identify the general category or categories of documents in each box.

Thank you for your assistance.

April 23, 1994

MEMORANDUM FOR FILE

FROM: STEPHEN R. NEUWIRTH

On Friday, April 15, I was advised by Marge Tarmey and Ira Magaziner that Ms. Tarmey had been contacted by George Runkle of the FBI, and that Mr. Runkle had asked to interview Mr. Magaziner, Ms. Tarmey and Denise Ricketson, another White House employee.

Pursuant to directions from Joel Klein, I telephoned Mr. Runkle on Friday, April 22, to respond to Mr. Runkle's call the previous week to Ms. Tarmey. I told Mr. Runkle that Ms. Tarmey, a White House employee, had advised the White House Counsel's Office that she had been contacted by Mr. Runkle for the purpose of setting up interviews of three White House employees.

Mr. Runkle told me that these interviews concerned a pending criminal investigation of whether Commerce Department employees had abused the procurement process by hiring three women as consultants to work on the Health Care Task Force effort. Mr. Runkle said that the interviews also related to hiring of Health Care Task Force participants by the Department of Health and Human Services.

Mr. Runkle told me that my name sounded familiar. He said that it may have been mentioned by one of the women he had interviewed last year. I told him that these women, whose offices were in the OEOB, had approached me after being contacted by Mr. Runkle. Because, at the time, these women were not White House employees and this matter concerned their contracts with the Commerce Department, I advised these women to contact the Department of Commerce about the matter. Mr. Runkle said that attorneys at the Department of Commerce General Counsel's Office had attempted to represent these consultants during their interviews. Mr. Runkle said such representation would have been a crime, and added that he is not sure whether the AUSA will want to bring criminal charges related to such attempted representation.

I asked Mr. Runkle if any of the White House staff members he wanted to interview were either subjects or targets of an investigation. Mr. Runkle said that none of these witnesses is a subject or target. At this or some other point in the conversation, Mr. Runkle told me that the White House involvement in this matter would likely be of interest only to the GAO, if it turns out that the White House gave bad advice concerning employing persons to work on the health care reform effort.

I asked Mr. Runkle if there were any other White House employees he was planning to interview. Mr. Runkle told ~~me that~~ in addition to Ms. Tarmey, Mr. Magaziner and Ms. Ricketson, he was also interested in interviewing Mary Schuneman. Mr. Runkle said that he was not sure of the exact spelling of Ms. Schuneman's name and was not sure if she is currently employed by the White House. I told Mr. Runkle that I was not sure if Ms. Schuneman is currently employed by the White House, and that I would make an inquiry on this subject.

I told Mr. Runkle that I was familiar with the availability of Ms. Tarmey and Ms. Ricketson, and that both would be available to be interviewed at the beginning of the coming week of April 25. Mr. Runkle indicated that he would be occupied on the morning of April 25, but would otherwise be available. He did not indicate a preference to conduct the interviews at any particular time, and did not suggest that it would be problematic or inconvenient to conduct these interviews during the week of April 25.

I told Mr. Runkle that the White House Counsel's Office would want to have one of its attorneys present at these interviews. I asked Mr. Runkle if that would be a problem. Mr. Runkle said that it would not be. He added that he would follow standard procedure of advising each witness that the White House Counsel's Office represents the White House, not individual witnesses, and that each witnesses could choose to speak to him without a Counsel's Office attorney present.

I told Mr. Runkle that it would be convenient to conduct the interviews in the Old Executive Office Building. Mr. Runkle said that the interviews could take place in the OEOB. Mr. Runkle said that when he had conducted interviews in this matter last year, he had expressed a preference not to conduct the interviews in the OEOB because he was involved in the Ill Wind investigation and his presence may have raised questions, and because he was working undercover on another matter and did not want to be noticed. Mr. Runkle then said that he is no longer working on either of these matters and would now be comfortable coming to the OEOB.

During our conversation, Mr. Runkle told me that after some work on this investigation last year, a decision had been made to slow down the investigation after someone in the Commerce Department leaked the fact of the investigation to the press. Mr. Runkle said that after a recent issue of U.S. News & World Report referred to the investigation, a decision was made to complete the investigation. Mr. Runkle said that he thought the matter would be wrapped up in a couple of weeks.

Mr. Runkle also told me that there was the possibility that criminal charges would be brought against a Commerce Department employee. He said he was not sure if such charges would be brought -- that there is, in his view, a 55% chance that no charges would be filed. Mr. Runkle added that he does not expect any criminal charges against HHS employees -- at most, there may have been an administrative or "public law" problem at HHS that would lead to a slap on the wrist.

Mr. Runkle volunteered that Mr. Magaziner is the key White House witness, and that the AUSA handling the matter might show up at his interview. I asked Mr. Runkle the name of the AUSA. Mr. Runkle said that the AUSA is Craig Iscoe, who is handling the matter from the U.S. Attorney's Office in D.C. Mr. Runkle added that a Commerce Department investigator would likely attend all of the interviews. I asked Mr. Runkle the name of the Commerce Department official -- he told me the name is Richard Gauthrop.

I told Mr. Runkle that I would check the schedules of Ms. Tarmey and Ms. Ricketson, and would contact him later in the day to identify a convenient time for their interviews. Mr. Runkle said he would be in all day, except for a period between 11 a.m. and noon.

* * *

I called Mr. Runkle late Friday afternoon and told him that Ms. Ricketson would be available for an interview at 3:30 p.m. on Tuesday, April 26, if this would be a convenient time for Mr. Runkle. Mr. Runkle said that it would be.

I told Mr. Runkle that Ms. Tarmey would be available after Ms. Ricketson's interview. Mr. Runkle said that he expected Ms. Ricketson's interview not to exceed 30 or 45 minutes. I told Mr. Runkle that Ms. Tarmey would be prepared to begin her interview at 4 or 4:15 p.m., or at whatever other time Ms. Ricketson's interview is completed.

Mr. Runkle commented that Mr. Gauthrop of the Commerce Department would be attending the interview, and that he was not sure if the AUSA would also attend.

I told Mr. Runkle that he understood it would be standard procedure for him to contact the Secret Service to obtain access to the OEOB. Mr. Runkle said that according to Mr. Gauthrop, a former White House employee, it would be appropriate for me to arrange clearance. I told Mr. Runkle that I would check with the Secret Service to determine the proper procedure. Mr. Runkle asked that I take down clearance information -- i.e., name and birthdate -- for him and Mr. Gauthrop.

PRIVILEGED AND CONFIDENTIAL
ATTORNEY/CLIENT WORK PRODUCT

MEMORANDUM

To: Steve Neuwirth
From: Nicole Guéron
Date: July 16, 1993
Re: Relevance of Audit Groups in first set of interrogatories in Association of American Physicians and Surgeons v. Hillary Rodham Clinton et al.

Summary:

While we should follow this memo with a discussion, it seems to me that the audit groups have a separate and different structure, purpose, and personnel from the working groups. They are not relevant to the question of whether the working groups are advisory committees subject to FACA.

Discussion:

The definitions section of the plaintiff's First Interrogatories in Association of American Physicians and Surgeons v. Hillary Rodham Clinton et al. states in section D that "defendants" includes the Task Force and "all other subgroups or subcommittees," including not only the inter-departmental working group and cluster groups, but also the review teams known as audit groups or review groups. Interrogatory No. 2 requests that we identify all persons who served as members of any of these groups.

Jeff Gutman's July 12 memo indicates that he believes we should identify the names of those in the audit groups. A meeting with him on Tuesday July 13th confirmed this; he thinks we should distinguish between those groups relevant or irrelevant to discovery on the basis of whether the groups were created by the Task Force process or whether the groups pre-existed the process. He cautioned against calling the audit groups irrelevant out of concern that we would not then be able to point to their input as evidence of the "horde-ishness" of the Working Group and all those involved in the policy development process.

Marge Tarmey is, as you know, opposed to releasing the names of those on the audit groups. She considers the audit groups to be completely separate from the working groups and does not see their relevance in an assessment of whether the working groups are subject to FACA.

I think there is a strong argument to be made that the audit groups are not at issue here, and are irrelevant to a determination of whether the working groups are subject to FACA. The audit groups have a separate and different structure, purpose, and personnel from the working groups. Since these are the characteristics relevant to determining whether the working groups are subject to FACA (Association of American Physicians and Surgeons v. Hillary Rodham Clinton et al. 1993 U.S. App. LEXIS 14831, p. 53), it seems logical to treat them as the defining characteristics in assessing whether a group stands on its own or exists as a subset of another group.

Personnel:

As far as records to date show, the working groups and audit groups had nearly completely separate personnel. In comparing personnel lists I have found only one example of overlap: Rick Slowes of the legal audit group who also appeared on the list of working group SGE's. It seems clear that, at least based on personnel, the working groups and audit groups cannot be considered one entity.

Purpose:

The purpose of the working groups was to act as a clearinghouse for all available information on health care; they were to focus and organize the information, and then to present policy options to the Task Force which would advise the President. The working groups were sophisticated, broad-reaching information gatherers and processors. They were formed at the beginning of the health care policy creation process, just after the president named the Health Care Taskforce. Working group members were treated like White House staff: they were assigned areas of work, held meetings, and wrote papers to advance the development of health care plan options for the President's assessment. Beyond that the purpose was not particularly defined: the goal was to let the working groups learn and absorb information in whichever ways seemed best to them.

In contrast, the audit groups were created with a very different and limited purpose. They were not broad reaching information gatherers; rather they were formed so that individual members could respond to specific elements among the emerging health care options presented to them by Ira Magaziner or working group leaders. The audit groups were developed long after the creation of the working groups and met rarely. Audit group members had a brief time commitment and were shown only a small portion of the plans. Their purpose was not to be a clearinghouse of information but rather to use individual expertise to examine a narrow portion of a given proposal and to play devil's advocate and raise specific critiques. The audit groups had a reactive role: individual audit group members provided specific responses to limited information rather than sophisticated analysis of all available information. The audit groups as described in the Preliminary Workplan were "the Contrarians..., a group of outsiders to the process... to serve as 'devils advocates' to our proposals. They should be asked to cast a critical eye on our work so that we can improve it or at the very least, understand better our plan's weaknesses." (Preliminary Workplan for the Interagency Health Care TaskForce, pp. 14-15).

The working groups were created to gather and assess information to develop policy options; the audit groups were created to provide individual responses to working group proposals and to provide critiques to narrow areas of presented plans.

Structure:

Although the working groups had very few structural requirements, they did fit into an overall plan specifically created for them. There were 32 working groups, each with a group leader, each existing within a cluster. Meeting schedules of the groups were created and followed at the discretion of the group leaders, but there were overall "Tollgate" points at which papers were due. This procedure was created to keep the working groups to the rigorous deadlines imposed by the original goal of having a health care reform plan within the first 100 days after the President's inauguration, a goal which clearly changed over time.

The structure of the Audit Groups was completely different: they were not considered to be within the Task Force/Working Group structure, they had no cluster leaders, no Tollgate deadlines, no commitment to the working group timelines. The audit groups were separate from one another, not united by an overall system, not tied into the overall working group structure. They were outsiders providing input.

Conclusion:

The structure, purpose, and personnel of the audit groups are significantly different from those of the working groups. Of course, if one considers purpose at the broadest level of generality, it can be argued that the working groups and the audit groups had the same purpose: helping advance the administration's knowledge about health care. One could also say that since the audit groups reported to Ira Magaziner or working group leaders, they were a part of the working group structure. However, contact between two sets of groups does not merge them into one group, any more than cooperation on an overall goal implies identical purposes for different groups. Interaction between two sets of groups does not equate the groups. It seems to me that the audit groups are distinct from the working groups and are not relevant to an assessment of whether the working groups are advisory committees subject to FACA.

MEMORANDUM

To Steve Neuwirth
(Can I get a briefing on this?)

LNC
4/30

TO: Steve Neuwirth

FROM: Harold Ickes (HI)

DATE: 25 April 1994

RE: Law suit against the National Health Care Task Force

This confirms that the government will file its cross motion for summary judgment in connection with the above referenced matter on or before 4 May 1994 with Ira Magaziner's supporting affidavit. In the event the plaintiffs seek thereafter to depose Ira, we will then decide whether to go forward. If plaintiffs do not seek to depose Ira, our preliminary decision is to continue to resist plaintiff's efforts to obtain release of the documents.

cc: Lloyd Cutler
Ira Magaziner
George Stephanopoulos
Pat Griffin

In setting forth standards to be applied in addressing the working group issue, the Court of Appeals noted that FACA was never intended "to cover every instance when the President (or an agency) informally seeks advice from two or more private citizens." Id., slip op. at 32. See also Public Citizen v. Department of Justice, 491 U.S. 440, 452-53 (1989) ("we cannot believe that [FACA] was intended to cover every formal and informal consultation between the President or an Executive agency and a group rendering advice"). The Court of Appeals also ~~noted~~ observed that "it is a rare case when a court holds that a particular group is a FACA advisory committee over the objection of the executive branch." Id., slip op. at 32.

In this context, the Court of Appeals ~~[illegible]~~ instructed that the relevant factors for determining whether the working group was subject to FACA are the group's (i) purpose, (ii) ~~person~~ structure and (iii) personnel. Id., slip op. at 33. See also slip op. at 30 ("[i]n order to implicate FACA, the President, or his subordinates, must create an advisory group that has, in large measure, an organized structure, a fixed membership, and a specific purpose"). The Court also explained that "a range of variations exist in terms of the purpose, structure, and personnel of ~~the~~ [a] group," id., slip op. at 33. ~~and that~~

The Court made clear that the FACA does not apply to ~~relatively informal and~~ relatively informal and unstructured bodies that present advice more as a disparate collection of individuals than as a clearly defined group. Id. at 29-30. See also id. at

~~arrangement~~ in which the government seek advice from what is only a collection of individual who do not significantly interact with each other"). By contrast, the paradigm FACA committee is ~~the~~ a "formal group of a limited number of private citizens who are brought together to give publicized advice as a group." Id. The question, then, is where on this "continuum" do we locate ~~does~~ the independent working group ~~that~~ is at issue here.

~~The Court of Appeals also offered the following relevant guidance:~~

~~With respect to the structure of the working group, the Court of Appeals also offered the following guidance:~~

~~"a group is a FACA advisor~~

The Court of Appeals' decision thus suggests the following relevant issues for discovery:

-- how was the working group structure and how formal was that structure and the operation of the group, ~~stp op~~ id. at 29-30;

-- was the group asked to render advice or recommendations as a group, or as a collection of individuals, id. at 29;

-- how large and ~~anon~~ anonymous was the group -- i.e., was it more like a "horde" that a committee, id. at 30, 33;

-- did the group operated with a specific purpose, id. at 30;

-- did the President or an agency head intend to use the group as an advisory committee, id. at 30;

-- what were the roles of special government employees and "consultants" [illegible] "consulta[illegible]

-- to what extent did working group members interact with each other;

5

and how "episodic" or "intermittent" was the consultants' participation ~~by consultants~~ in the groups' proceedings; and

-- what was the ~~pur~~ purpose of the ~~creating~~ working group, or any cluster groups subgroups ~~and~~

~~-- was the working grou~~

Defendants are prepared to cooperate fully in expedited discovery on these relevant issues. Defendants believe that through this discovery, ~~the~~ additional evidence will confirm what this Court already ~~has~~ determined: that the interdepartmental working group, ~~whose members were not selected by the President, and with a larger~~ as well as any cluster groups or subgroups, are not subject to FACA.

the At the same time, however, ~~defendants~~ the government respectfully submits that discovery must be limited to the relevant issues identified by the Court of Appeals -- that is, structure, purpose and personnel. ~~The~~ A need for Discovery on these structural and administrative issues does not justify a "fishing expedition" that will allow plaintiffs to explore the substantive documents and work product ~~working group product~~ of the working group ~~-- that is, the very work product that plaintiffs~~ ~~Plaintiffs must first pre would first be requ must first prevail~~ Plaintiffs cannot ~~prop~~ properly claim to be entitled to such substantive documents ~~work product~~ unless ~~tha~~ they have first ~~substantive~~ ~~the~~ established ~~which defendants will show they cannot~~ that the working group, or any cluster groups or subgroup, is ~~not~~ indeed subject to FACA and, ~~moreover that~~ such documents are not exempt from disclosure pursuant to any constitutional, statutory or regulatory provision. For plaintiffs to gain access to substantive working group documents at this time would ~~moot the very~~ moot the very question now before the Court -- namely, whether the ~~working gr~~ working group is subject to FACA.

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In this regard, the ~~pro~~ rules governing discovery in ~~FOIA~~ Freedom of Information Act cases is instructive. A plaintiff in such cases cannot obtain through <u>discovery</u> ~~what~~ the very documents to which he or she claims entitlement on the <u>merits</u>. <u>See</u>, <u>e.g.</u>, <u>Local 3, Int'l Bhd. of Elec. Workers v. NLRB</u>, 845 F.2d 1177, 1179 (2d Cir. 1988) (plaintiff not entitled to discovery ~~as~~ that would be tantamount to disclosure of content of exempt documents); [add better cites, from district court, if necessary; let's avoid suggestion of index].

So, too, plaintiffs here should not be permitted to use discovery to obtain substantive documents to which plaintiffs -- and only might --

~~to demonstrate that~~ prevail on the merits of whether FACA applies. The Court of Appeals certainly ~~reached no predetermination on this issue, or even~~ and did not suggest ~~at all~~ that plaintiffs should prevail. The case was remanded ~~for the creation of an evidentiary record upon which this Court can could~~ allow ~~can determine~~ ~~can determine~~ ~~can determine whether it can confirm or reject its earlier con which this Court can determine~~ so that this Court can determine whether ~~evidentiary support~~ evidences beyond the ~~first Mag Ird~~ first Declaration of Ira Magaziner, supports this Court's ~~concl~~ earlier conclusion that the working group is ~~was~~ not ~~subject to~~ subject to the Advisory Committee Act.

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Defendants are prepared to work with plaintiffs and this Court to identify the parameters of, and establish a schedule for, relevant discovery. ~~Defens~~ ~~document producti~~ ~~and dep~~ In this regard, defendants respectfully propose that this Court ask ~~the~~ counsel for the parties to ~~meet and~~ ~~for the purpose of reaching agreement on~~ discuss discovery issues, and, if possible, submit a proposed discovery schedule to the Court at a second status ~~confer~~ conference to be scheduled for ~~during~~ the afternoon of Wednesday, June 30, or at such other time as is ~~as soon thereafter as~~ convenient for the Court and plaintiffs' counsel.

expedited

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Photocopy. Talking Points on the Health Care Task Force and the "Tollgate" Policy Development Process. (3 pages)	n.d.	P5 390
002. memo	Photocopy. Revised talking points on the Health Care Decision. (1 page)	10/10/1993	P5 391
003. memo	Photocopy. Q and A's on Health Care Task Force Appeal. (3 pages)	n.d.	P5 392
004. memo	Photocopy. Health Care Task Force and Interest Groups: Talking Points. (3 pages)	n.d	P5 393
005. memo	Photocopy. Memorandum from Meeghan K. Prunty, Office of Communications to George Stephanopoulos, Riki Seidman and David Dreyer. Subject: Health Task Force, Talking Points: To Replace Ones From [truncated]. (3 pages)	03/05/1993	P5 394
006. memo	Photocopy. To Vince, Steve, George, Dee Dee, Lisa, Melanne, Boorstin. From Maggie. Re: Health Care Task Force Talking Points. (5 pages)	02/03/1993	P5 395
007. memo	Photocopy. Memorandum for: Jeff Eller, Boob Boorstin, and Lisa Caputo. From Carolyn Gatz. Subject: Conclusion of Task Force on Health Reform and Working Group. (3 pages)	05/28/1993	P5 396
008. memo	Photocopy. Memorandum for George Stephanopolus and Lisa 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 397
009. memo	Photocopy. Settlement Talking Points 8/12/94 - 9:00 AM. (1 page)	08/12/1994	P5 398

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Counsel's Office
Nemetz, Miriam
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Van Zbinden
2006-0223-F
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RESTRICTION CODES

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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]

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

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

Withdrawal/Redaction Sheet
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
010. memo	Photocopy. Q&As 8/12/94 - 9:00 AM. (2 pages)	08/12/1994	P5 399
011. draft	Photocopy. Talking Points on Settlement Disucssions. (1 page)	08/04/1994	P5 400
012. memo	Photocopy. Openess of the Task Force Process. (2 pages)	n.d.	P5 401
013. memo	Photocopy. Q&As. (2 pages)	n.d.	P5 402
014. draft	Photocopy. Background: Litigation Involving the Health Care Task Force and the Interdepartmental Working Group. (4 pages)	n.d.	P5 403
015. draft	Photocopy. Background: Litigation Involving the Health Care Task Force and the Interdepartmental Working Group. (7 pages)	n.d.	P5 404 Dup (1st 4 pg of 403
016. draft	Photocopy. From Steve Neuwirth and Jason Solomon. Talking Points on Health Care Task Force Court Order. (1 page)	06/15/1993	P5 405
017. memo	Photocopy. Talking Points on Health Care Task Force Case. (1 page)	n.d.	P5 406
018. memo	Photocopy. Memorandum for Howard Pastor. From Vincent W. Foster and Stephen R. Neuwirth. Re: Health Care Task Force. (6 pages)	02/03/1993	P5 407
019. memo	Photocopy. Memorandum to Lisa Caputo. From Vincent W. Foster. Re: Health Care Task Force - FACA. (1 page)	02/05/1993	P5 408

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TALKING POINTS ON HEALTH CARE TASK FORCE AND THE "TOLLGATE" POLICY DEVELOPMENT PROCESS

THE TASK FORCE . . .

President Clinton established the Task Force on National Health Care Reform on January 25, 1993 to develop a proposal to fundamentally reform America's health care system. Their charge: prepare health care reform legislation to give American families the security they need and bring spiralling health care costs under control. President Clinton set a 100-day schedule for this policy development, emphasizing in his "Joint Address to Congress" that there is urgent need for action: "*... all of our efforts to strengthen the economy will fail unless we also take this year, not next year, not five years from now, but this year, bold steps to reform our health care system.*"

Demonstrating his level of commitment to solving this complex problem, the President appointed First Lady Hillary Rodham Clinton to chair the Task Force. As President Clinton said, the First Lady is both experienced and able to "bring people together around complex and difficult issues to hammer out consensus and get things done."

The President's health care reform process has two tiers: the first is the Task Force itself, which includes representation from the highest levels of the government -- including the Secretaries of Health and Human Services, Labor, Treasury, Commerce, Defense, and Veterans Affairs -- as well as senior White House officials. The second level is comprised of 34 working groups -- including federal employees, outside experts and health-care professionals -- which have been set up to advise the Task Force and develop health care policy within the "Tollgate" system.

POLICY DEVELOPMENT: THE "TOLLGATE" PROCESS . . .

The policy evaluation effort of the Task Force is being coordinated by the President's Senior Adviser for Policy Development, Ira Magaziner, and is based on the "Tollgate" system -- a research and evaluation process commonly used in the business world for large-scale projects that need to be completed quickly. To advise the Task Force, Mr. Magaziner has formed 34 working groups -- involving health professionals, Congressional staff, health care experts, officials from various agencies, and White House personnel. These working groups, which are divided into health policy subject areas, will guide their research efforts through a series of tests, or "tollgates", before a comprehensive set of options is presented to the Task Force for consideration.

In the first series of tollgates -- the broadening phase -- each working group was asked to put all options "on the table" -- ensuring that all issues were considered, all questions discussed, and that correct methodology was used. In the current phase, this broad group of options is being narrowed, after which the working groups will make draft recommendations which will be synthesized into a comprehensive set of proposals. At that point, outside auditors will check to ensure that all cost and savings projections are sound, and that all legal concerns have been addressed.

TALKING POINTS ON HEALTH CARE TASK FORCE (Page 2)

AN INCLUSIVE PROCESS . . .

To ensure that this process is open and inclusive, the President has structured the system to encourage participation from the American people, all categories of health care providers, the business community, and all levels of government. **In the most open policymaking process in history**, more than 500 people from all over the country are directly involved in developing policy within the working groups.

. . . HEALTH CARE PROVIDERS AND CONSUMERS CLOSELY INVOLVED . . .

In an attempt to make health care reform respond to the concerns both of those who receive health care and those who provide health care, there are **more than 100 health care professionals** -- including 60 doctors, 20 nurses and 6 social workers -- developing policy options for the Task Force. A Health Professionals Review Group of more than 40 people has begun to meet regularly to assess the policy options that are being discussed in light of their real-world applications. In addition, **diverse panels of consumers** -- many selected from letters they sent to the Task Force -- are brought in regularly to advise the working groups as they develop their recommendations.

. . . EXHAUSTIVE OUTREACH PROCESS . . .

The White House is actively reaching out for advice from the American people, members of Congress, representatives from small and large businesses, state and local officials, and organized health care interest groups. All groups have been encouraged to submit written proposals and **more than 400 groups** have been brought into the White House to meet personally with the First Lady, Ira Magaziner and other working group members. In turn, their written proposals have been distributed to each applicable working group and have formed the basis for debate and policy development.

The Task Force operates an intake room to receive the thousands of speaking requests, policy papers, letters and phone calls from Americans concerned about the health care crisis. Since the Task Force was formed in January, **more than 50,000 letters** have been received and read. From a hospital administrator's treatise on malpractice reforms to a widow's handwritten letter expressing outrage at her skyrocketing prescription drug costs, each inquiry is taken seriously and channeled to the appropriate officials or working groups.

The First Lady, Health and Human Services Secretary Donna Shalala and Tipper Gore -- who has been advising the Task Force on mental health issues -- have been travelling throughout the nation talking to the American people about their health care concerns. In the past month, they have attended several roundtable discussions across the country to listen to the recommendations of all those eager to contribute to health care reform.

The Task Force met for the first time on Monday, March 29. Over the course of 13 hours, the Task Force members listened to more than 65 organizations -- representing diverse groups of consumers, health care providers, and businesses -- present their ideas on health care reform. These groups will continue to be closely involved as policy options are narrowed and recommendations are prepared for the Task Force in May.

TALKING POINTS ON HEALTH CARE TASK FORCE (Page 3)

. . . CONGRESSIONAL CONSULTATION

In developing its health care reform proposal, the Health Care Task Force has based its research and policy options on the significant foundation of work that many Members of Congress have laid in the last 20 years. In order to benefit from this experience and expertise -- and build strong, bipartisan support -- the Task Force has **regular, broad-based, and substantive consultation** with Members of Congress, including an **extensive bipartisan outreach** effort.

- Senate Majority Leader Mitchell, House Majority Leader Gephardt, Senate Republican Leader Dole, and House Republican Leader Michel have been appointed Congressional Liaisons to the Health Care Task Force;

- There have been weekly meetings with the House and Senate Leadership, Committee Chairmen, and other Members of Congress. The First Lady herself has discussed health care reform with more than **60 Senate Democrats and Republicans**, and well over **100 House Democrats and Republicans** -- including meetings with the members of the Black, Hispanic, and Women's Caucuses;

- The First Lady, Ira Magaziner, and Judy Feder, of the Department of Health and Human Services, have established a close cooperative relationship with the Committees that have primary legislative jurisdiction over health care -- holding numerous one-on-one and group meetings with the House Ways and Means Committee, the Senate Finance Committee, the House Energy and Commerce Committee, the Senate Labor and Human Resources Committee, and the House Education and Labor Committee;

- Working group leaders have briefed Members and Congressional staff from both parties on specific components of the health care options currently being proposed and analyzed;

- In an unprecedented attempt to draft legislation in consultation with Congress, **more than 150 Congressional staff members** are actively involved in the day-to-day development of policy options taking place within the working groups.

10/10/93

REVISED TALKING POINTS ON HEALTH CARE DECISION

1. Yesterday's court decision is merely an order that the government produce additional information in response to the plaintiffs' discovery requests.

2. Discovery disputes of this type are not uncommon in civil litigation.

3. This decision does not require the government to turn over substantive working group documents; it merely instructs the government to provide additional information on the employment status of the working group members.

4. The Court has reached no determination on the ultimate question of whether the interdepartmental health care working group is subject to the Advisory Committee Act.

5. **The Court gave the government 20 days to produce additional information. The government intends to comply fully with the Court's order.**

6. Nothing in the Court's decision suggests that the government did not properly maintain documents or that the government failed to comply with any court orders relating to the preservation of documents. The Court only held that the government failed to provide enough information in response to the plaintiffs' discovery requests. **[FYI: This means that nothing in this decision relates to questions raised in the recent letter to us from Reps. Conyers and Clinger concerning maintenance of health care documents. We have previously responded fully to that inquiry.]**

7. **If pressed on requirement of paying plaintiffs' attorneys' fees:** The defendants have worked with the Justice Department in good faith to provide a complete response to plaintiffs' discovery requests on relevant issues in the case. We are hopeful that over the full course of this litigation, our position concerning the working group will be fully vindicated -- as was our position that the Health Care Task Force was not subject to the Advisory Committee Act.

8. **If pressed further on attorneys' fees:** The only fees covered by the court's order are those related to plaintiffs' motion to compel responses to discovery requests. This represents a very small portion -- a single motion -- in this litigation, which has been active since the start of the year.

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 appealling 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 appealling. 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 "impractability" 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 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 <u>advice given</u> 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 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.

HEALTH CARE TASK FORCE AND INTEREST GROUPS:
Talking Points

ATTACK: **INTEREST GROUPS ARE BEING LIMITED TO A PERIPHERAL ROLE.**

FACT: Mrs. Clinton, Ira Magaziner and other White House officials have met with over 300 groups in more than 100 meetings since the Task Force was formed five weeks ago. This number does not include meetings held with officials at HHS and other departments or the more than 100 meetings held during the transition.

In addition, groups have been strongly urged to send in their specific policy proposals to the Health Care Intake Room. Over 500 policy proposals have been received and channelled to the appropriate working group.

ATTACK: **... UNUSUAL, HIGHLY SECRETIVE DECISION MAKING PROCESS ...**

FACT: Let's put this in context. Decisions in government have traditionally been made by a few people sitting in a room, without any input from the outside and sometimes dominated by a single special interest. In contrast, we have brought together the real-world expertise of more than 400 people from all over the country. These are people -- doctors, nurses, social workers, administrators and consumers -- who know firsthand the problems in our health care system.

However, given the possibility of conflict of interest, we cannot let interest groups make policy. For example, if we were to give the AMA a permanent role, we would have to do the same for every drug company or insurance firm that wanted in. That is just not workable given our time frame and the tremendous task we have undertaken -- and it also wouldn't be fair to those who don't have representatives in Washington.

ATTACK: **... [OUR ADVISORS] STATUS IN THE GOVERNMENT IS MURKY ... HOW MANY PEOPLE WORKING ON THE PRESIDENT'S PLAN WERE FULL-TIME GOVERNMENT EMPLOYEES, SPECIAL GOVERNMENT EMPLOYEES, PAID CONSULTANTS?**

FACT: In accordance with legal requirements, the more than 400 people who are working with the working groups fall into the following three categories: full time government employees, special government employees and consultants.

- **Full-time Government Employees:** **362 Total**
including 98 Congressional
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.

- **Special Government Employees:** **48 Total**
Individuals who are employed by any agency or the Executive Office of the President for less than 130 days in a 365 day period. These employees must abide by the ethical standards of federal employees and can receive compensation from other entities such as universities and nonprofit foundations.

- **Consultants:** **18 Total**
Including 8 from State Governments
Individuals who attend working group meetings on an intermittent basis with or without compensation from the federal government. They 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 are not considered members of the working groups: they may not serve as working group leaders and have other limitations on their participation.

<u>NOTE ON LIST WE ARE RELEASING AND ALL NUMBERS</u>: This is a snapshot as of March 5, 1993. (It differs from numbers included in the court papers submitted Wednesday). These numbers are constantly in flux because people (from all 3 categories) are constantly joining groups and leaving groups as informational needs of the working groups change.

ATTACK: **OUR CONSULTANTS HAVE NO EXPERIENCE MANAGING HEALTH PROGRAMS OR CARING FOR PATIENTS.**

FACT: Not true. In fact, we have over 100 health care professionals including 60 doctors, 20 nurses, 6 social workers. [If pressed on doctors, almost half of them were practicing medicine before they took a leave to help the Task Force.]

In addition, the Task Force is working with the Secretary of HHS to set up diverse panels of health care professionals will be brought in regularly from around the country to advise the working groups as they develop their recommendations.

ATTACK: CONSUMER GROUPS HAVE BEEN EXCLUDED

FACT: Many groups representing consumers have been brought in for meetings with the Public Liaison's Office and members of the working groups including: Citizen Action, Consumer Federation of America, Consumers Union, Public Citizen, Consumer League, National Council of Senior Citizens, AARP, National Council on Aging, and the National Association of Community Health Centers.

ATTACK: THE ADMINISTRATION IS NOT LISTENING CAREFULLY TO ORDINARY CONSUMERS.

FACT: In addition to consulting with the Consumer Organizations, diverse panels of 10-12 consumers -- drawn from the membership of these Consumer Organizations and from letters written to the Task Force -- will be brought in regularly from around the country to advise the working groups as they develop their recommendations. The first of these consultations will be on March 11.

Mrs Clinton has also been traveling around the country meeting with the American people to listen to their concerns about rising health care costs. She has accepted the invitation of the Robert Wood Johnson Foundation to participate in roundtable discussions that will be held throughout the country in the next month -- where she can listen to the recommendations of all the people -- consumers, providers, and special interests -- who are eager to contribute to the Task Force as it develops its proposal for comprehensive health care reform.

E X E C U T I V E   O F F I C E   O F   T H E   P R E S I D

05-Mar-1993 04:31pm

TO: (See Below)

FROM: Meeghan E. Prunty
Office of Communications

SUBJECT: Health Task Force, Tlking Pts: TO REPLACE ONES FR

TALKING POINTS ON HEALTH CARE TASK FORCE
AND THE "TOLLGATE" POLICY DEVELOPMENT PROCESS

WHAT THE TASK FORCE IS . . .

President Clinton established the Task Force on National Health Care Reform to develop a proposal that would bring spiralling health care costs under control and give American families the peace of mind and security they deserve. The President gave his Task Force a clear charge: by building on the work of the campaign and the transition, and incorporating suggestions and advice from all corners, prepare health care reform legislation that he can submit to Congress within 100 days. President Clinton's Joint Address to Congress emphasized that Washington can delay no longer: the American people demand health care reform now.

Demonstrating his level of commitment to solving this complex problem, the President appointed First Lady Hillary Rodham Clinton to chair the Task Force. As President Clinton said, the First Lady is not only experienced but is capable and effective at bringing people together around complex and difficult issues to hammer out consensus and get things done.

The Task Force also includes representation from the highest levels of the government --including the Secretaries of Health and Human Services, Labor, Treasury, Commerce, Defense, and Veterans Affairs -- as well as senior White House officials.

POLICY DEVELOPMENT: THE "TOLLGATE" PROCESS . . .

The overall policy evaluation effort of the Task Force is being coordinated by the President's Senior Adviser for Policy Development, Ira Magaziner, and is based on the "Tollgate" system -- a research and evaluation process commonly used in the business world for large-scale projects that need to be completed quickly.

To advise the Task Force, Mr. Magaziner has formed over 25 working groups. These working groups, which are divided into health policy subject areas, will guide their research efforts through a series of tests, or "tollgates", before a comprehensive set of options is presented to the Task Force for consideration.

The first series of tollgates -- the broadening phase -- require the working groups to put all serious options "on the table" -- ensuring that all issues are considered, all questions are discussed, and that the correct methodology is being used. The next phase of the tollgate process narrows this broad group of options and makes draft recommendations, which will later be synthesized into a comprehensive set of proposals. At that point, auditors will check to ensure that all cost and savings projections are sound, and that all legal concerns are addressed.

AN INCLUSIVE PROCESS . . .

The President feels strongly that this be an open and inclusive process, and has structured the system to encourage participation from all levels of government, all segments of the health care industry and the business community, and the American people.

Hundreds of people -- including officials from various agencies, Congressional staff, health care experts, and White House personnel -- are directly involved in developing policy within the working groups.

In an attempt to make health care reform respond to the concerns of both those who receive health care and those who provide health care, there are doctors, nurses, social workers, and hospital administrators working on and contributing to many of the working groups. In addition, diverse panels of consumers and health care professionals will be brought in regularly from around the country to advise the working groups as they develop their recommendations.

Representatives from several White House departments -- including Congressional Relations, Inter-Governmental Affairs, and the Public Liaison's Office -- are actively reaching out for advice from members of Congress, state and local governments, organized health care interest groups, representatives from small and large businesses, and the American people. All groups have been encouraged to submit written proposals and many are being brought into the White House to meet personally with Ira Magaziner and other working group members.

In addition, the Task Force operates a round-the-clock "War Room" -- which receives the thousands of speaking requests, policy papers, letters and phone calls from Americans concerned about solving our health care problems. And whether it be a hospital administrator's treatise on malpractice reforms or a widow's handwritten letter expressing outrage at her skyrocketing prescription drug costs, each inquiry is taken seriously, channeled to the appropriate working group, and given immediate consideration.

The First Lady has been travelling throughout the nation talking to the American people about their health care concerns and their suggestions on how to reform the system. She has accepted several invitations to participate in roundtable discussions that will be held throughout the country in the next month -- where she can listen to the recommendations of all the people -- consumers, providers, and special interests -- who are eager to contribute to the Task Force as it develops its proposal for comprehensive health care reform.

DISTRIBUTION:

TO: George Stephanopoulos
TO: Ricki Seidman
TO: David Dreyer

2-3-93

To: Vince
Steve
George
Dee Dee
Lisa
Melanne
Boorstin

From: Maggie

Re: Health Task Force Talking Points

Attached are talking points with HRC revisions and the draft which was prepared based on our meeting yesterday. George and Melanne have raised some issues which need to be addressed before the afternoon briefing. We should caucus with Hillary this morning to resolve outstanding issues.

2-3-93

Talking Points on Health Care Task Force

(Prepared by Lisa, Maggie, Vince and Steve)
WITH HRC REVISIONS

- Hillary Clinton is the chair of the President's Health Care Task Force. The task force consists of Cabinet members from the Departments of Defense, Commerce, Labor, HHS, and Veterans Affairs as well as the OMB Director, the President's Domestic and Economic Policy advisors, the Chair of the Council of Economic Advisors and the President's Senior Advisor for Policy Development, White House Staff and other government officials.

-Ira Magaziner is leading a working group which will provide information to the Health Care Task Force. The task force will review information from the working group and make recommendations to the President.

-The working group will be consists of government employees.

-The working group will consult with a wide range of citizens, representing the public and private sectors.

-On January 25, the President announced the formation of the Health Care Task Force and defined its mission. It has not yet held a meeting.

-The task force is planning to hold some public meetings. Those meetings have not been scheduled.

Note: In response to the question: Does FACA apply to the Task Force? In the opinion of the Counsel to the President, it does not.

In response to the question: Did the Task Force violate FACA?
1. In the opinion of the Counsel to the President FACA does not apply.

2. The Task Force has not met, nor taken any action to date.

Note: ONLY USE POINT THREE IF PRESSED.

3. The participation of the first Lady, does not create "a presidential advisory committee" subject to the Act.

In response to the question: Does FACA apply to the working group? No.

Note: TRY TO AVOID QUESTIONS ON FOIA.

In response to any questions on FOIA: Any reques
will be reviewed by the White House Counsel at the time tha
are made.

* Mrs. Clinton is a consultant to the working group and is coordinating the activities of the working group.

* Issue here is we want to reform health care let's not lose sight of that.

* HRC is not a member of the working group, she will be a consultant to the working group.

** As a member of the Task Force, she will be interacting with the working group and the other members of the Task Force.

2-2-93

Talking Points on Health Care Task Force

(Prepared by Lisa, Maggie, Vince and Steve)

- Hillary Clinton is the chair of the President's Health Care Task Force. The Task Force consists of Cabinet members from the Departments of Defense, Commerce, Labor, HHS, and Veterans Affairs as well as the OMB Director, the President's Domestic and Economic Policy advisors, the Chair of the Council of Economic Advisors and the President's Senior Advisor for Policy Development.

-Ira Magaziner will lead a working group which will provide information to the Health Care Task Force. The Task Force in turn will review information from the working group and make recommendations to the President.

-The working group will be consist of fulltime government employees, most of whom have been selected to serve on the working group by members of the Task Force.

-The working group will consult with a wide range of citizens, representing the public and private sectors.

-On January 25, the President announced the formation of his National Health Care Task Force and defined its mission.

-The President's National Health Care Task Force is planning to hold public meetings. Those meetings have not been scheduled.

<u>Note:</u> In response to the question: Does FACA apply to the Task Force? In the opinion of the Counsel to the President, it does not.

In response to the question: Did the Task Force violate FACA?
1. In the opinion of the Counsel to the President FACA does not apply.

2. The Task Force has not met, nor taken any action to date.

<u>Note:</u> ONLY USE POINT THREE IF PRESSED.

3. The participation of the first Lady, does not create "a presidential advisory committee" subject to the Act.

In response to the question: Does FACA apply to the working group? The working group may choose to conduct some of its wo

will be made ...
in public but that determination will be made as ... progresses.

<u>Note:</u> TRY TO AVOID QUESTIONS ON FOIA.

In response to any questions on FOIA: Any requests under FOIA will be reviewed at the time that they are made.

May 28, 1993

MEMORANDUM FOR: JEFF ELLER, BOB BOORSTIN, LISA CAPUTO

FROM: CAROLYN GATZ

SUBJECT: CONCLUSION OF TASK FORCE ON HEALTH REFORM AND WORKING GROUP

Because the task force on health reform is ending, it is important that the White House signal that its work was valued and meaningful. A statement delivered by the President or First Lady in an appropriate forum touching on the following points would draw this process to a close on a positive note:

> By dent of enormous effort and commitment, the working group under the Task Force on Health Reform has accomplished two years' worth of work in a little over three months. The amount and quality of work produced represent the most thorough and thoughtful re-examination of the health care system ever undertaken.
>
> On a number of topics, as the American people will see when the President unveils his final proposal on health reform, the working group broke new ground in its analysis of health care issues and their implications.
>
> The working group on health reform broke precedents about how policy development occurs in the executive branch. It brought together more than 500 people from all across the country with expertise in a wide range of occupations -- combining policy experts with people who have real-world experience in more than two dozen work groups focused on various topics under health care.
>
> Many of the people who participated made great personal sacrifice to be part of this historic effort. They left families and friends to come to Washington for many weeks, in many cases at their own expense.

Ira Magaziner, the President's senior adviser for policy development, led what must have been one of the most difficult jobs in Washington this year. Working against the clock, Mr. Magaziner pulled together an enormous and complex organization. Starting with no supplies, no administrative support, no offices, no staff, Ira put together an impressive organization, gathering people with long experience in all aspects of health care from every federal agency affected, as well as outside practitioners and experts.

A lot of people said a thorough proposal for health care reform could not be produced in this brief time. A lot of them probably will still say that.

But the working groups applied enormous focus and intensity to their difficult task. They undertook nothing less than a re-examination of how the health care system in America really works -- and why it fails to provide security and quality care for all Americans.

Members of the working group ranged from practicing physicians, nurses, social workers, rural health experts, directors of community clinics, hospital administrators, financial experts and auditors, members of Congressional staffs and state and local government officials. Representatives from within the federal government included virtually every agency involved in health care. A number of Governors sent aides to live in Washington temporarily to participate. We thank them all.

During this process, two babies were born -- youngsters who, when they get a little older, will hear stories about how Mom stayed up late for many nights to finish making a major contribution to ensuring health security for them and all Americans.

The working groups also pushed the limits on stress and intensity of work making it inevitable that not everyone would come out happy in the end. Ultimately, probably not everyone's ideas will come out in the President's plan for comprehensive health reform just as they might have liked. But we could not undertake such a major initiative without probing assumptions and asking people with long experience to think in new ways -- which is what the working groups were asked to do.

They came through brilliantly. Their briefings for the President, the development of a wide range of options, analysis and papers laid a solid foundation upon which the President is constructing the comprehensive proposal he will present to the American people.

In addition to what we will see in the President's proposal, however, the working groups have been responsible for a wide range of work that no one will ever see: In some cases, they spent long hours heading down what turned out to be blind alleys -- or developing options that had to be eliminated. As we engage in discussions with members of Congress, interest groups and the American public, however, we will draw upon that work enormously, demonstrating the seriousness with which the working groups weighed every option and the depth of knowledge that produced the President's ultimate plan.

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
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.

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 "focka" 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 Physicians and Surgeons, the American Council for Health Care Reform 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.

GS & Lisa copy of 31 USC 1053a & OLC opinion Lorraine

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, will Janet Reno be willing to do the same for this President?

SETTLEMENT TALKING POINTS
8/12/94 - 9:00AM

Today, the Justice Department entered into an agreement to settle the litigation relating to the release of documents generated by the Health Care Working Group. The frivolous charges by the plaintiffs alleging contempt of court by Ira Magaziner have been dismissed.

The Justice Department is confident that, had this matter proceeded to trial, we would have prevailed. In particular, the Justice Department is confident that the Administration would have prevailed on any of the baseless allegations of contempt against Ira Magaziner. However, because Judge Lamberth had ordered a trial on the merits, we believe that the public interest is better served if administration officials spend their time working for health reform.

We are taking this step because it is so important that we complete the task of enacting health care reform this year. Nothing extraneous should be allowed to get in the way of this vital task.

The Health Care Working Group was a remarkably open process -- far more open than similar efforts by previous administrations to draft major proposals. Over 500 practitioners and experts from both within and outside Washington were brought together to discuss and develop policy options. The working group actively reached out for advice from the American people, members of Congress, representatives from small and large businesses, state and local officials and organized health care interests. Within 21 days, a reading room with the working group's documents, including briefing books and policy papers among other documents, will be opened to the public.

Q&As
8/12/94 – 9:00AM

Q: **Doesn't today's settlement indicate that the plaintiffs were right?**

A: No. The plaintiffs' first and most important contention, that the First Lady's Health Care Task Force was subject to the Federal Advisory Committee Act, was found to be without merit by the Court of Appeals. This settlement today deals with a much narrower issue, whether the working group was subject to the FACA. The Justice Department does not believe that the plaintiffs were right – – none of their claims were established. What happened here is what often happens in civil litigation – – because the judge decided that a trial would be necessary, it simply became more economical to settle the litigation. But, in that settlement, both sides agreed that the plaintiffs allegations had not been proven. Once the judge ordered the trial, a settlement was the best way to ensure that Administration officials could focus all of their energies on the real business of passing health care reform legislation.

Q: **Was this so that the First Lady wouldn't have to testify?**

A: No. We had no reason to expect that the First Lady would have to testify – – this lawsuit related to the working group. The First Lady was not a member of the working group. If the plaintiffs had asked her to testify, obviously we would have relied on the judgment of the Justice Department.

Q: **Wasn't this settlement made so that Ira Magaziner wouldn't be held in contempt of court?**

A: No – – that charge was baseless and was withdrawn today as part of the settlement. The settlement was made so that Ira Magaziner and other administration officials would be able to devote themselves full time to the important business of passing health care.

Q: **Why did the Administration use taxpayers' money to defend secrecy? Isn't today's settlement a blow against secrecy?**

A: Throughout the litigation, the Justice Department acted out of concern that internal discussions and deliberations should be protected to encourage uninhibited and robust debate during the decision–making process. Congress wrote this principle into law in the Freedom of Information Act by generally exempting materials relating to such deliberations from disclosure. However, on August 4, after the district court ordered a trial to resolve factual issues in the litigation, we entered into settlement discussions so that the Administration officials involved could focus on the important business of passing health care reform instead of a politically–motivated lawsuit.

8/12/94–9:00 am

Q: **Doesn't this prove that the Task Force/Working Group process was deeply flawed? Was it really necessary to work in secrecy?**

A: The Health Care Working Group was a remarkably open process – – far more open than similar efforts by previous administrations to draft major proposals. Over 500 practitioners and experts were brought together to discuss and develop policy options. The working group actively reached out for advice from the American people, members of Congress, representatives from small and large businesses, state and local officials and organized health care interests. The release of these documents will show that the process heard from a wide array of interests and individuals, and drew on the best talents within and outside of the government.

Q: **The plaintiffs claim that the working group was dominated by managed care interests, specifically representatives of the Robert Wood Johnson and Kaiser Foundations. What's your response?**

A: To claim that the working group or its recommendations favored managed care interests is absurd on its face. The membership of the working group incorporated views as diverse as single payer to those that called for a completely market–oriented system and everything in between. The only working group participants with any connection to the RWJ Foundation were six individuals – – out of over 500 – – five of whom were actually members of Congressional staffs. And, the President has always been committed to preserving and increasing families' choice of health plans and doctors – – that's why the Health Security Act included a requirement that everyone had to have the choice of enrolling in a fee–for–service plan. And why every managed care plan had to offer a point–of–service option. A group dominated by managed care interests would not have come up with these kinds of proposals.

Q: **The government has spent a lot of money on this case – – $229,000 is a lot of money to settle a case, not to mention the millions of dollars you spent on the working group itself. How can you defend taxpayer money paying for all of this?**

A: The payment of some fees and costs by the government as part of a settlement is not unusual. The amount is well within the normal range in this type of case. Tying it up now would be cheaper than if we proceeded with a lengthy, costly trial. And, the numbers that the plaintiffs are throwing around the newspapers about how much the working group cost are ridiculous.

Draft Thurs. 12:00 PM 8/4/94

TALKING POINTS ON SETTLEMENT DISCUSSIONS

* Today the administration advised U.S. District Court Judge Royce Lambert that it is prepared to settle the litigation relating to the release of documents generated by the Health Care Working Group.

* We are confident that, had this matter proceeded to trial and the court of appeals, we would have prevailed -- as we did last year, in the Appeals Court, on the twelve member task force chaired by the First Lady. Now that Judge Lambert has called for a trial, we believe that the public interest is better served if administration officials spend their time working for health reform, rather than fighting obstructionist lawsuits.

* We are taking this step because it is so important that we complete the task of enacting health care reform this year. Nothing extraneous should be allowed to get in the way of this vital task.

* The Health Care Task Force was a remarkably open process -- far more open than similar efforts by previous administrations to draft major proposals. It was always understood that the health bill would be taken up by the Congress, in a very open process, and that is exactly what has taken place. We heard from all sides, and the plans now being considered in the Congress are the better for it.

* The plaintiffs had other, frivolous charges -- e.g., that Ira Magaziner was in contempt of court. That is utterly untrue, and any settlement will not include any concession by us on these ancillary points.

(Note: see Chuck Lewis)

OPENNESS OF THE TASK FORCE PROCESS

On January 25, 1993, President Clinton announced the formation of a task force to assist him in developing health reform legislation. One of the first actions of the task force was to establish working groups of health care experts and practitioners to examine our complex health care system and to prepare policy options that would guarantee private insurance to all Americans and would bring spiralling health care costs under control.

Drawing from a wide breadth of experience, both inside and outside Washington, over 500 people were brought in to participate in the working group and to develop policy options for consideration by the Taskforce. The working group encompassed federal government employees from the Departments of Treasury, Health and Human Services, Labor, Commerce, Veterans Affairs, Defense, and the White House. It reached out to include Congressional staff, staff from state and local governments and other experts in the health care arena -- doctors, nurses, health policy experts, and others. The working group brought together the opinions and expertise of people supporting a Canadian-like single payer system and those supporting a more market-oriented approach. Some working group members brought expertise in designing insurance and market reforms; others were knowledgeable in how to improve health care quality and information flow, designing benefits packages, developing long term care home- and community-based programs; still others with knowledge in the areas of antitrust, malpractice and ways to control the burgeoning growth of health care costs.

The working groups expanded over time, as Congress asked that their staff be included and as the scope of the research encompassed areas requiring additional input. In total, the working groups held over 1,000 meetings on a whole range of subject areas.

To challenge the assumptions and the recommendations of the working group, people outside the working group process were brought in:

- 14 panels of consumers came in to share their concerns and insights and ask questions of the working group members.

- A health professional review group and outreach groups of doctors, nurses, public health officials, hospital administrators, pharmacists and others reviewed and commented on policy options developed by the working group.

- Audit teams who critiqued and questioned assumptions and options, including a group of actuaries who reviewed the validity and assumptions behind the numbers, a group of administrators and health plan executives who critiqued whether the recommendations would meet the test of those who would have to implement them, a group of attorneys who reviewed the legal ramifications, a group who reviewed the impact on minority populations.

The Task force and the working group actively reached out for advice from the American people, members of Congress, representatives from small and large businesses, state and local officials and organized health care interests. While representatives of special interest groups were formally excluded from the working group and task force, working group members met with over 1,100 interest groups over the course of the development of the Health Security Act.

> "Based on meetings and accessibility, it is difficult to imagine a more open, inclusive, decision-making process for a major public policy issue in Washington." ("Well-Healed: Inside Lobbying for Health Care Reform", The Center for Public Integrity, 1994, p. 26)

> "Members fell they have been kept abreast of the work of the president's Task Force on National Health Reform...in February, just after the task force had formed, it made a concerted effort to keep members of both parties informed...there are luncheons, there are breakfasts, there are other meetings in different settings – in committees, in the caucus. Several times a week you have that opportunity to meet with someone from the administration..." ("Clinton Task Force all Ears On the Subject of Overhaul," Congressional Quarterly, May 22, 1993)

Q&As

Q: *Why weren't there any doctors involved in the process? Why wasn't the AMA consulted?*

A: In fact, doctors were involved both as members of the working group and as part of the Health Professionals Review Group and other outreach groups that critiqued the working group's policy options. The AMA, along with other physician groups such as the American College of Physicians, the American Academy of Pediatricians, the American Academy of Family Physicians and other physician groups met with members of the task force and the working group several times:

"Contrary to recent press reports, the American Medical Association is pleased to have received several opportunities for input on the health system reform plan being developed by the White House Task Force." (Letter from the AMA to Hillary Rodham Clinton, March 30, 1993)

Q: *The American Association of Physicians and Surgeons claims that the working group was dominated by managed care interests, specifically representatives of the Robert Woods Johnson and the Kaiser Foundation. What's your response?*

A: First of all, to claim that the working group or any of its recommendations showed a leaning toward managed care interests is absurd. The membership of the working incorporated views as diverse as single payer to those that called for a completely market-oriented system and everything in between. And, the President has always been commited to preserving and increasing families' choice of health plans and doctors -- that's why the Health Security Act included a requirement that everyone had to have the choice of enrolling in a fee-for-service plan. And why every plan had to offer a point-of-service option which enabled consumers to see doctors outside of the network. A group dominated by managed care interests would not have come up with these kinds of proposals.

Q: *What about the Robert Woods Johnson Foundation fellows - they clearly represent special interests, yet you classified them as government employees?*

A: It's true that there were a handful of RWJ fellows on the working group who were employed by Members of Congress. Congressional fellows are bound by the Senate Code of Official Conduct and are treated as employees of the Senate as a result.

Q: *Ira Magaziner claimed that every member of the working group was a full-time government employee, a special government employee or a consultant that went through appropriate ethics procedures. Why, then, do the minutes from the meetings of the working group list people that were clearly representing special interests like the NFIB, the HIAA and the Federation of American Health Systems?*

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Q: Ira Magaziner claimed that every member of the working group was a full-time government employee, a special government employee or a consultant that went through appropriate ethics procedures. Why, then, do the minutes from the meetings of the working group list people that were clearly representing special interests like the NFIB, the HIAA and the Federation of American Health Systems?

The plaintiffs allege that every person that ever met with a working group member is automatically part of the working group. To assert that someone who comes in for a single meeting or a couple of meetings at the White House is automatically part of a working group is ridiculous. That's like asserting that everyone who testified in the task force hearings were part of the task force. Dr. Jane Orient, President of the AAPS testified before the Task Force. We don't suppose Dr. Orient considered herself part of the Task Force.

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 group 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

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.

Q: What did the Court rule today?

A: The Court denied the plaintiffs' motion for a ruling that the 500-plus member interdepartmental working group was subject to the Federal Advisory Committee Act. The court concluded that further fact-finding would be necessary before any decision could be rendered on the merits of the plaintiffs' claims.

The Court also refused to rule in favor of plaintiffs on several collateral motions, including motions that government officials had made misrepresentations to the Court. The Court said that the record was insufficient at the present time to rule in plaintiffs' favor on those motions.

Q: But the plaintiffs are characterizing this as a victory.

A: The court denied plaintiffs' motion for summary judgment on the merits, and refused to grant plaintiffs' collateral motions. The plaintiffs obtained no relief. We are aware of no theory under which today's proceedings could be characterized as a victory for the plaintiffs.

Q: But won't the plaintiffs now get to take depositions and have a trial?

A: The Court has made no final determinations at the present time about the exact nature of any further proceedings in this case. We are confident, however, that any further fact-finding will confirm that the government is properly entitled to judgment in its favor.

Q: Won't the plaintiffs now have an opportunity to call the First Lady as a trial witness?

A: No. Last year, the Court of Appeals resolved all issues relating to the First Lady and the Health Care Task Force in the government's favor, when the Court held that the Task Force was not subject to the Advisory Committee Act.

The sole issues in this case now involve the separate interdepartmental working group, and the First Lady has nothing to do with this stage of the litigation. There is absolutely no legitimate basis for any involvement of the First Lady at this time.

Q: Didn't the court today also deny the government's motion for summary judgment?

A: Yes. But the court merely held that further fact finding was needed on the issues raised in the case. It is the plaintiffs who are seeking relief, and no relief has been granted to them.

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Q: Didn't the Court suggest that it might hold Ira Magaziner in contempt?

A: The court only stated that the record was insufficient at the present time to support plaintiffs' request for a contempt order. The Justice Department made clear in its oral argument today and in its written court papers that Mr. Magaziner's representations to the court have been entirely accurate, and we are confident that any further fact-finding will only confirm the accuracy of his statements in this case.

Judge determined relevant issues of fact that he couldn't rule on → proposed issues.

Shannon [illegible] that plaintiffs may call HRC as witness. Very unlikely [illegible] able to establish that HRC a relevant witness.

WH cannot create impression that it would preclude HRC giving relevant testimony.

"This matter in hands of Justice Dept & I will follow any advice they given me." = suggested HRC statement.

10. If asked about special government employees or consultants, you can respond (a) that as the Court of Appeals noted, it is the <u>function</u> of the working group that is the principal issue, and it did not act as an advisory committee to the President; (b) if asked by the district court, we will be prepared to make a showing that the membership of the working group was structured to be consistent with all applicable laws.

June 15, 1993
Fr: Steve Neuwirth/Jason Solomon

DRAFT FOR DISCUSSION

DRAFT FOR DISCUSSION

TALKING POINTS ON HEALTH CARE TASK FORCE COURT ORDER

- The court today ordered that all documents from the Task Force be preserved. But the Task Force has been preserving all documents from the beginning. The court acknowledged this in its order and essentially affirmed the status quo.

Q: What about the documents that have allegedly been shredded as reported in the Washington Times?

A: There was an unsubstantiated story in the Washington Times which is being investigated. The court made no findings regarding the shredding of documents.

Q: Has the Task Force really ended? The plaintiff's lawyer showed a letter dated June 5 that talked about the Task Force.

A: The Task Force completed its work at the end of May. The letter contained an erroneous reference to the Task Force.

TALKING POINTS ON HEALTH CARE TASK FORCE CASE

1. The Court of Appeals ruled that the Health Care Task Force was not subject to the Federal Advisory Committee Act.

2. In so ruling, the Court of Appeals found that First Lady Hillary Rodham Clinton is a "full time officer or employee of the federal government" for purposes of the Act, and therefore her role as Chair of the Task Force did not trigger application of the Act.

3. The ruling means that the Task Force was never subject to requirements that its meetings be open to the public or that its documents be publicly disclosed.

4. The Court of Appeals also sent a separate part of the case back to the district court to determine the status of the interdepartmental working group that provided information and options to the Task Force.

5. However, the Court of Appeals did not hold in any way that the working group was subject to the Advisory Committee Act. Indeed, the district court found that the working group is not subject to the Act. The Court of Appeals merely held that insufficient evidence had been presented for the district court to have reached a final determination on that issue.

6. In its original holding, the district court found that the interdepartmental working group is not subject to FACA because it was the Task Force, and not the working group, that advised the President.

7. At this point, the district court will determine what additional factual information is needed before a final decision can be rendered on the interdepartmental working group.

8. We believe that under the standards articulated by the Court of Appeals, the government will be able to demonstrate that the working group, in fact, is not subject to FACA. The Court of Appeals noted that "it is a rare case when a court holds that a particular group is a FACA advisory committee over the objection of the executive branch."

9. The working group -- which, like the Task Force itself, has now ceased operation -- was a disparate group of several hundred persons. The Court of Appeals has stated that in any further proceedings regarding the working group, the district court should evaluate its purpose, structure and the nature of its composition.

February 3, 1993

MEMORANDUM FOR HOWARD PASTOR
Assistant to the President
and Director for Legislative Affairs

FROM: VINCENT W. FOSTER
Deputy Counsel to the President

STEPHEN R. NEUWIRTH
Associate Counsel to the President

RE: Health Care Task Force

President Clinton has received a letter from Representative Clinger of the House Committee on Government Operations, in which Representative Clinger asserts that the Federal Advisory Committee Act applies to the President's health care task force.

The Counsel's office has prepared the attached draft letters in response to Representative Clinger's inquiry. We understand that the President wishes to respond personally to all correspondence from members of Congress. Therefore, we have prepared a brief response from the President, as well as a separate letter from the White House Counsel responding to the legal issues Representative Clinger has raised.

A copy of Representative Clinger's letter is also attached.

Mrs. Clinton has suggested that the Chairman of the Government Operations Committee be contacted to inform him of Representative Clinger's letter and our response. Mrs. Clinton proposed that her chief of staff, Maggie Williams, might be an appropriate person to make such contact.

DRAFT

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:

Thank you for your letter of February 1 concerning my health care task force. I appreciate your support of my efforts to formulate a national health care policy. It is my intention to develop a plan for high quality, affordable health care for all Americans, and I have asked the health care task force to help me develop legislation for comprehensive health care reform.

I have referred your questions concerning the Federal Advisory Committee Act to Bernard Nussbaum, the White House Counsel. Mr. Nussbaum has prepared a letter addressing your concerns, which he will deliver to you under separate cover. I have also asked Mr. Nussbaum and his staff to be available to answer any further questions you may have on legal issues relating to the health care task force.

Sincerely,

William J. Clinton

DRAFT

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.

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

ONE HUNDRED THIRD CONGRESS

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 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

William F. Clinger, Jr.
Republican Chairman

THE WHITE HOUSE

WASHINGTON

FEBRUARY 5, 1993

MEMORANDUM TO: LISA CAPUTO
DEPUTY ASSISTANT TO THE PRESIDENT
AND PRESS SECRETARY

FROM: VINCENT W. FOSTER
DEPUTY COUNSEL TO THE PRESIDENT

RE: HEALTH CARE TASK FORCE - FACA

Following your interview by the New York Times, I received a call from Julian Epstein, Majority Staff Director of the Committee of Government Operations, relating his interviews with the New York Times and the Washington Post. His response is that the staff was "very skeptical" whether FACA applies. In any event, they consider it a minor technical matter, not a substantive one, which can be worked out by White House counsel.

He further volunteered the willingness of the Committee to propose clarifying language, and indicated he felt it could be pushed through in a couple of weeks.

cc: Hillary Rodham Clinton
George Stephanopoulos
Dee Dee Myers
Bernard W. Nussbaum

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. form	White House Office Supplimental Information Sheet for Personnel Action. WHP2(3/87). [Annotated]. (1 page)	n.d.	P5 409
002. form	Attachment 2. EOPOA-92-09. Restrictions Against Disclosure Statement. [Annotated]. (1 page)	n.d.	P5 410
003. report	[Partial outline for unknown project]. (2 pages)	n.d.	P5 411
004. memo	~~Memorandum for Tom Pyle. From Beth Nolan and Richard~~ Werksman. Subject: Participation as Consultant in Tollgate Review. (1 page)	~~04/02/1993~~	~~P5, b(6) 412~~
005. note	[Handwritten notes concerning the memo of April 2, 1993]. (1 page)	n.d.	P5 413
006. note	[Handwritten note regarding Working Group Organization]. (1 page)	n.d.	P5 414
~~007. note~~	~~[Whalen's handwritten notes regarding Tom Pyle]. (1 page)~~	~~n.d.~~	~~P5, P6/b(6)~~
008. note	[Handwritten notes regarding health care working groups]. (5 pages)	n.d.	P5 415
009. memo	Memorandum for Steve Pigeon. From: Marjorie Tarmey. Subject: Tom Pyle. (1 page)	04/06/1993	P5, b(6) 416
~~010. resume~~	~~Curriculum vitae for Tom Pyle. [Annotated by staff]. (5 pages)~~	~~n.d.~~	~~P5, P6/b(6)~~
011. note	[Handwritten notes from meeting with Marjorie Tarmey re: health care working groups]. (1 page)	04/02/1993	P5 417

COLLECTION:

Clinton Presidential Records
Counsel's Office
Whalen
OA/Box Number: CF818

FOLDER TITLE:

Health Care Task Force

2006-0223-F
vz71

RESTRICTION CODES

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

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

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

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

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

Withdrawal/Redaction Sheet
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
0~~12. note~~	~~Legal Audit List. (1 page)~~	~~n.d.~~	~~P5, P6/b(6)~~
0~~13. note~~	~~Administrative Simplification Audit. Suggested Names. (1 page)~~	~~n.d.~~	~~P5, P6/b(6)~~
014. photocopy	Photocopy. Federal Personnel Manual. [pages 304-A-2 and 304-A-3]. (2 pages)	n.d.	P5 418
015. photocopy	Photocopy. Federal Personnel Manual. [pages 304-A-2 and 304-A-3]. [Second copy] (2 pages)	n.d.	P5 419 Dup 418
016. letter	From Charles A. Samuels, esquire To: Anne Hall, Office of the Special Counsel for Ethics and Al Cutino, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services. [Re: employment forms for Tom Pyle]. (1 page)	05/17/1993	P5, b(6) 420
017. memo	Memorandum. To: Peter Pappas, Gary Ginsberg, and Liz Fine. From: William H. Kennedy, III. Re: Vetting. (2 pages)	03/24/1993	P5 421
018. list	Tollgate 5. Schedule. Saturday April 3rd. [Annotated]. (1 page)	04/02/1993	P5 422
019. list	[Partial outline for unknown project. Revised 3/7]. (1 page)	[unknown]	P5 423
~~020. resume~~	~~Curriculum Vitae for Thomas Pyle. [Annotated]. (5 pages)~~	n.d.	P5, P6/b(6)
021. folio	[Packet of Information for Richard Werksman regarding the Health Care Task Force]. [partial]. (54 pages)	[none]	P5, b(6) 424

COLLECTION:
Clinton Presidential Records
Counsel's Office
Whalen
OA/Box Number: CF818

FOLDER TITLE:
Health Care Task Force

2006-0223-F
vz71

RESTRICTION CODES

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

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

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

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

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

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
022. memo	To: All Health Care Task Force and Working Group Personnel. From: John D. Podesta and Stephen R. Neuwirth. Re: Task Force and Working Group Records. (2 pages)	04/29/1993	P5 425

COLLECTION:

Clinton Presidential Records
Counsel's Office
Whalen
OA/Box Number: CF818

FOLDER TITLE:

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FORWARD TO ROOM 6, OEO

THE WHITE HOUSE OFFICE
SUPPLEMENTAL INFORMATION SHEET FOR PERSONNEL ACTION
(TO BE ATTACHED TO FORM WHP-1)

Date ________

PERSONAL INFORMATION

Name (Ms., Miss, Mrs., Mr.) ________ (Last) (First) (Middle) (Maiden) Birth Date ________

Local Address ________ Birth Place ________

SSN ________

Last Perm. Address ________

Tel. No. ________ Office ________ Emergency ________ Name ________ Tel. No.

Marital Status: ☐ Single ☐ Married ☐ Widowed ☐ Separated ☐ Divorced

Name of Spouse ________

ASSIGNMENT

Office of CARE WORKING GROUP

Reporting to ________ Ext. ________ Room ________

Status: ☐ White House Employee ☐ Detailee ☐ Volunteer ☐ SBA (Contact)

☒ Other HEALTH TASK FORCE - SPECIAL GOVT EMPLOYEE

Desired Effective Date ________ Ending Date ________

PRIOR EMPLOYMENT DATA

Military Service: ☐ No ☐ Yes Branch ________ Date of Service

Prior Federal Govt. Service as Civilian: ☐ No ☐ Yes Ending Date ________

Current or Last Place of Govt. Service or Civilian Employment: ________ Name

________ Address ________ Tel. No.

Personnel Contact in Current/Last Govt. Agency ________ Name ________ Tel. No.

Prior W. H. Service: ☐ None ☐ Employee ☐ Volunteer ☐ SBA ________

ACCESS/PASS

TO BE COMPLETED BY REQUESTING OFFICIAL

☐ WH Access List ☐ WH Pass ________ Signature of Requesting Official

☐ EOB Access List ☐ EOB Pass ________ Signature of Approving Official

☐ Volunteer Pass

VOLUNTEERS

TO BE COMPLETED BY VOLUNTEER

I acknowledge that the personnel data above is correct and that I am volunteering my services without compensation or promise of such.

________ Signature of Volunteer ________ Date

FOR USE BY WHITE HOUSE PERSONNEL OFFICE ONLY:

Preliminary copy to Security ________ Date

Approved copy to Security ________ Date

WHP-2(8/87)

Attachment 2
EOPOA-92-09
1 Page

RESTRICTION AGAINST DISCLOSURE STATEMENT

COMPANY NAME: ______________________________

EMPLOYEE NAME: ______________________________

DATE: ______________________________

[CONTRACT NUMBER:] ______________________________

I, ______________________________, hereby agree [in the performance of this contract] to keep the information furnished by the government in the strictest confidence.* I further agree not to publish, reproduce or otherwise divulge such information in whole or in part, in any manner or form, not authorize or permit others to do so, taking such reasonable measures as are necessary to restrict access to the information while in my possession.

____
Employee Signature

* I agree not to use, or to permit others to use, the provided government information and related work generated from this information for any commercial purpose.

VI. TRANSITION TO THE NEW SYSTEM / SHORT-TERM COST CONTAINMENT

18. ACCELERATING NEW SYSTEM DEVELOPMENT

19. SHORT-TERM STEPS TOWARD ADMINISTRATIVE SIMPLIFICATION

20. INTERIM COST CONTAINMENT

VII. FINANCING

21.

VIII. HEALTH POLICY INITIATIVES FOR UNDERSERVED POPULATIONS

22A. HIGH RISK
22B. WOMEN AND CHILDREN
22C. URBAN/RURAL

IX. MENTAL HEALTH

23. BENEFIT PACKAGE: BASIC AND/OR SUPPLEMENTAL

24. SUBSTANCE ABUSE

25. CHILDREN SERVICES

26. PUBLIC SYSTEM IMPACT

X. LONG TERM CARE

27. BACKGROUND

28. PUBLIC

29. PRIVATE

30. COST AND REVENUE

XI. ECONOMIC IMPACT

31.

XII. QUANTITATIVE ANALYSIS

32.

XIII. LEGAL AUDIT

33.

XIV. NUMBERS AUDIT

34.

At what point do the deliberations of the Working Groups crystallize so that participation, in the manner described in Section 208, (advice recommendation, etc) is in a "particular matter".

The guidance in 5 CFR 2635.401(b)(3) is not dispositive. The broad nature of each Group's work covers a variety of professions, patients and providers, so that invariably one discrete and identifiable class of persons is never identified but there is constant mention of various segments of the population;

* Assignment - Write memo on why the memo of 4/2/93 was written.

Jeanne Walker
456 X5112

4:30 Facilitating Professional Development -
- educational

5:30 Working Families -

6:30 DOD

Working Group Organization

2

Jackson Hole - (c)(4) advocacy group
- support came from contributors pharmaceuticals + insurers

- imputed - under 18 USC 208 -

Broad policy options that are directed to the interests of a large & diverse group of persons.

Matter may include such governmental action as legislation or policy-making that is narrowly focussed on the interests of a discrete and identifiable class of persons.

Patients	Providers (Institutions)	Professions

	RELATION		TASK/ACTIVITY FORCE	POPULATION or ~~DISPOSITION~~ IDENTIFIABLE CLASS OF PERSONS	- WAIVER - RECUSAL DISPOSITION
onsulting ~~[illegible]~~ Group	Consultant	A			
o problem)		B			
mmunity Health # HMO	Consultant member/ Corporation	C			
thcare In negotiation Corp.	Stockholder + Consultant	D			
anaged Care Corp	Director				
ole Group	Director	E			
roup nt health insurance)	Shareholder				

so
f at start
ties are over

Let his lawyer inform us

8) Lahey Clinic multi specialty Group Practice	Trustee	
9) Controlled Risk Insurance medical malpractice	Director	

Magaziner

What did we tell the Working Groups about the process?

What meetings occurred at which the process was explained to the Group

Working Group
Cluster
Magaziner Staff
Other staff
Task force
President
Congress

Background
New Phase—
President being debriefed
He will meet with Task force members
The Plan will be presented in May.
Ira— Direction but no decisions
CONSUMER voice — Every American will get Health Guaranty Card
National Health Benefits Package—
Both Guarantee + Requirement to be covered.
Options will be available to card holder.
Information user friendly will be available, as will ombudsman

STRUCTURE W. Zelman
Cost control will be important.

Feder -Guaranteed plan means creating plans.

States will decide on the # of "health alliance" or "Purchasing cooperative"
"National Guarantees" —

401-7067

4/2/93

Meeting with Margery Tarmey

1) Pyle's immediate assignment

Toll Gate for Saturday

Focus on "particular matter" —

Proposals for health care reform:
elements in the plan —
what services will be provided
to whom
by whom
how financed

(9) Cluster Group
(35) working groups

Obstacle

Saturday

Harvard
(3)
(5)
(7)
(8)

8:30 (1) Options that affect the undeserved
TARGET POPULATION
OF HEALTH CARE RECEIVERS
Underserved = low income working families
unemployed, rural

10:30 (2) Options on how system will be
organized for the entire
population

12 (3) FEHB

A-2. INTERNAL REVIEW DURING EMPLOYMENT

a. **Quarterly review.** Agencies are required to maintain effective controls over use of appointees during employment. Control measures must include frequent reviews, generally quarterly, to assure that in each case the:

(1) duties performed are still those of an expert or consultant;

(2) time limits are being observed;

(3) documentation is kept current; and

(4) duties of record are actually being performed.

b. **Exclusion from quarterly review.** An agency may exclude from a quarterly review experts and consultants who have worked for 10 days or less during the quarter covered.

c. **Documentation of review.** Each quarterly review is to be appropriately documented and the record retained for OPM examination, which usually will be performed at the time of the next onsite evaluation. The record of review, signed by the director of personnel or his superior, should describe the conduct of the review, summarize the findings, and describe the actions taken to correct any deficiencies noted in the review. If, in a quarterly review, an agency decides to use all or some part of the exclusion in paragraph b, it should include in the record of review a statement describing the extent of the exclusion. Records of reviews are to be retained until examined by OPM.

A-3. INTERNAL COMMUNICATIONS

Each agency is required to communicate at least annually to its appointing officials relevant highlights of this chapter. Communications may be in such forms as written issuances, orientation sessions for new managers, executive staff meetings, and training modules. They should include:

(1) An explanation of what is permitted under law and instruction and what is not;

(2) Advice on the importance of careful work force planning;

(3) Assurance that agency personnel officials will be available to provide advice and assistance on appropriate staffing methods;

(4) A description of alternative appointing authorities, which, depending upon circumstances, could be more appropriate than the expert and consultant authority for meeting the agency's needs;

(5) A reminder that improper appointment under the expert and consultant authority is a violation of law, representing an illegal exception from civil service appointment and classification laws.

A-4. DOCUMENTING EMPLOYMENT

a. For each expert or consultant employed, full-time or part-time or intermittently, whether employed by appointment or by contract, paid or unpaid, and under any authority employed, each agency must establish an Official Personnel Folder. The folder must contain the following, filed in accordance with chapter 293:

(1) A description of the position in enough detail to show that the position actually requires an expert's or consultant's services;

(2) A Standard Form 171 or a description of the appointee's background and qualifications in enough detail to show that they fit him (her) for the position;

(3) A description of any regularly scheduled tour of duty for a less than full-time employee;

(4) A Standard Form 50, Notification of Personnel Action, showing the employment;

(5) A Standard Form 50 showing termination of the employment;

(6) Certification that a statement of employment and financial interests has been obtained and it has been determined that no conflict of interest exists;

(7) For all appointments, reappointments, and extensions of appointments for experts and consultants, certification that requirements concerning the appointee's qualifications, pay documentation, and use of the appointing authority have been met.

(8) For all reappointments of intermittent experts and consultants, the number of days worked in the previous service year.

(9) Certifications required by sections 1-3c(3) and A-1 of this chapter.

b. The agency should obtain from each expert, consultant, or adviser a Statement of Employment and Financial Interests at the time of formal employment (see section 1-9). Those who have executed this statement, and who are reappointed immediately following separation, may, at the agency's option, be required to execute a new statement or to certify that the original statement is currently correct. In any case, the statement should be kept current as long as the employee is on the agency's rolls. New entrant, annual, and termination SF 278 public financial disclosure forms should be obtained from each individual meeting the reporting requirements of 5 USC app. 201.

(1) Agencies will be responsible for safeguarding the contents of the Statement of Employment and Financial Interests. Only those employees using the state-

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ment in connection with their official duties should be allowed access to it. SF 278 public financial disclosure forms should be maintained in accordance with the requirements of 5 USC app. 205.

(2) Agencies should retain the Statement of Employment and Financial Interests for no less than five years following the employee's separation from the agency. SF 278 public financial disclosure forms should be retained and made available to the public for a period of six years after receipt of the forms.

A-5. REPORTING DATA TO OPM

For each expert or consultant employed, the agency must report all personnel actions required to be documented on SF 50 by FPM Supplement 296-33 to OPM's Central Personnel Data File (CPDF). Submissions should be in accordance with the instructions in FPM Supplement 298-1 using the appropriate data element codes, especially the pay plan, contained in FPM Supplement 292-1.

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MEMORANDUM

TO: PETER PAPPAS
GARY GINSBERG
LIZ FINE

FROM: WILLIAM H. KENNEDY III

RE: VETTING

DATE: MARCH 24, 1993

As you do your vets, be sure to note for further inquiry before the "intent to nominate" announcement any information revealed on the PDS or revealed in the interview that indicates the nominee was either registered as a lobbyist or has done any work for foreign interests, such as governments, corporations, individuals or the like. In this area, get as much detail as you can and come to me for followup.

I attach a WSJ newpaper article on a nominee that indicated on his PDS he had represented the principals indicated in the article; we did not catch it from a conflict of interest standpoint.

Please concentrate on this; let me know if you have any questions.

whk/s
cc: Everyone

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Lobbyist for Ahbus

Tarullo, Mexican Adviser on Nafta, Is Expected to Run U.S. Trade Office

By ASRA Q. NOMANI
Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON – President Clinton is expected to choose Daniel Tarullo, a lawyer who worked for Mexico in its trade talks with the U.S., ~~as a top~~ official overseeing the State Department's trade office.

The appointment would come at a delicate time as U.S., Mexican and Canadian negotiators try to hash out side deals for the North American Free Trade Agreement, which would dismantle many trade barriers between the three countries. U.S. activists concerned about various aspects of the trade act said privately that Mr. Tarullo's past work presented a potential conflict of interest.

Lori Walach, director of international programs at Public Citizen, an environmental advocacy group critical of the North American trade agreement, said, "It's absolutely disquieting when the whole U.S. national interest is in the purview of someone who just days before was representing the whole national interest of a foreign government."

Mr. Tarullo's law firm, Shearman & Sterling, has been advising Mexico's Ministry of Commerce and Industrial Development since early 1991 on negotiations for the trade pact. The ministry has an office here that works with Shearman & Sterling lawyers, including Mr. Tarullo.

The 40-year-old Mr. Tarullo is expected to be named the State Department's assistant secretary for economic and business affairs, which would include responsibility for its trade office. In that post, he would also deal with the world trade talks and other issues related to the General Agreement on Tariffs and Trade. While U.S. Trade Representative Mickey Kantor and his office take the lead in trade negotiations, the State Department and other agencies weigh in with their own analyses and talking points.

A State Department official said Mr. Tarullo indicated that he wasn't one of the firm's chief lawyers working on the free trade pact, but handled specific legal issues as they arose. The official said that Mr. Tarullo offered to recuse himself from all further talks on the North American agreement, but said that the length of time for the recusal hadn't been determined.

The expected appointment of Mr. Tarullo could cause some discomfort for the Clinton administration, following campaign statements by Mr. Clinton criticizing the revolving door through which lawyers and lobbyists for foreign interests take U.S. government posts that involve their former clients. Those criticisms, echoing statements by independent presidential candidate Ross Perot, haven't stopped the appointment, however, of other lawyers and lobbyists to key posts in the administration.

U.S. unions may consider Mr. Tarullo an asset in their battle for labor protections to accompany the free trade agreement. He is considered a strong proponent of linking free trade negotiations to job creation and retraining.

He received trade experience in the Carter administration, where he helped revamp antidumping regulations as an assistant to Robert Herzstein, who is now Shearman & Sterling's chief lawyer for Mexico. Mr. Tarullo also worked with Labor Secretary Robert Reich in advising Michael Dukakis's 1988 presidential campaign.

Mr. Herzstein defended Mr. Tarullo's work at Shearman & Sterling, saying, "Dan's legal work was part of a legitimate process inherent in our government system and consistent with our national interest."

Mr. Tarullo declined to comment on the matter.

White House Gives Lower-Ranking Post To Health Adviser

By a WALL STREET JOURNAL *Staff Reporter*

WASHINGTON – The White House demoted a health industry executive leading one of the administration's advisory health groups over concerns that his business ties posed conflict-of-interest problems.

Meanwhile, Clinton health advisers met nearly around the clock from Friday through Sunday, in an effort to begin formulating recommendations to the president on what should go into the health plan he will present to Congress in May.

Each of the 30-plus working groups outlined options to White House adviser Ira Magaziner in more than 35 hours at the Old Executive Office Building. No final decisions were made, according to participants.

A health task force spokesman said that Thomas Pyle had been downgraded to "consultant" status after administration officials determined that his stock holdings and other business affiliations violated ethics rules. Mr. Pyle is a senior adviser to the Boston Consulting Group and director of Millipore Corp., a high technology firm that sells its products to hospitals and other medical facilities.

Officials said that Mr. Pyle, who has been in Washington working with the health group for more than a month, had listed his business ties when he was asked to join the administration's health working group. But the officials said they had only recently completed their ethics review.

They said they asked him to take a lower "consultant" position, which means he won't be paid and will attend meetings only intermittently. Originally, Mr. Pyle had been asked to become a temporary government employee, and he was made leader of one of the sub-groups advising the health task force.

Pyle +2/5/98

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REVISED 4/2/93

PLEASE NOTE --- SUNDAY'S TOLLGATE HAS BEEN CANCELLED
GROUPS WILL BE RESCHEDULED THROUGHOUT THE WEEK OF 4/5/93

TOLLGATE 5. SCHEDULE
Saturday, April 3rd

OK because its universal	8:30		Cross Cutting Group
		22	Health Policy Initiatives for the Underserved
		2	Special Issues
		8	Coverage for Low-Income/Non-working families
universal	10:30	1a.	Health Plans, providers and patients
		9	Quality Measurement
OK	12:00	16	FEHB
ok	1:00	19	Administrative Simplification
		10	Information Systems
ok	2:30	6	Benefits Package
ok	3:30	11	Malpractice & Tort Reform
ok	4:30	12	Facilitating Professional Development
ok	5:30	7	Coverage for Working Families
ok	6:30	14-16a.	DOD Veterans Other government programs

REVISED:3/7

I. NEW SYSTEM ORGANIZATION

1. PRINCIPLES AND OPERATION OF PURCHASING COOPERATIVES

1A. HEALTH PLANS, PROVIDERS AND PATIENTS IN THE NEW SYSTEM

2. SPECIAL ISSUES IN PURCHASING COOPERATIVES TOWARD AND BEYOND

3. GOVERNANCE ISSUES

4. A GLOBAL BUDGET

5. INSURANCE REFORM

II. NEW SYSTEM COVERAGE

6. BENEFITS PACKAGE

7. COVERAGE FOR WORKING FAMILIES

8. COVERAGE FOR LOW-INCOME AND NON-WORKING FAMILIES

III. INFRASTRUCTURE - INTEGRATED HEALTH PLANS

9. QUALITY MEASUREMENT

10. INFORMATION SYSTEMS

11. MALPRACTICE AND TORT REFORM

12. HEALTH CARE WORKFORCE DEVELOPMENT

IV. INTEGRATION OF HEALTH PROGRAMS INTO NEW SYSTEM

13. MEDICARE

14. DoD

15. VETERANS

16. FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

16A. OTHER GOVERNMENT HEALTH PROGRAMS

V. ETHICAL FOUNDATIONS OF NEW SYSTEM

17.

TASK FORCE

Mr. Richard Werksman
Old Executive Office Building
Room 126
Washington, DC 20503

Office of Counsel to the President

Marks.

Volunteers

Access to documents not available to the public

No oath of office, but they are being considered as special G.E.

Are they taking documents off premises?

Phyllis Dorn
Kim Porter
John Burths
Dick Helms
Brent Greenwood

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Office of the General Counsel
Washington, D.C. 20201

March 25, 1993

Note to Charlotte Hays

Re: Health Care Working Group Members

As you know, under 18 U.S.C. § 208(a), an employee of the executive branch, including a special Government employee, is prohibited from participating personally and substantially as a Government employee in any particular matter which will have a direct and predictable effect on a financial interest of the employee or any person whose interests are imputed to him. The Office of Government Ethics (OGE) has defined "particular matter" as encompassing those matters involving "deliberation, decision, or action that is focused upon the interests of specific persons or a discrete and identifiable class of persons." 5 C.F.R. § 2635.402(b)(3). A "particular matter" includes governmental action such as legislation or policy-making that is narrowly focused on the interests of a discrete and identifiable class of persons, but does not extend to the consideration or adoption of broad policy options that are directed to the interests of a large and diverse group of persons.[1] Id.

The Department of Justice has interpreted section 208 to apply to "rule-making proceedings or advisory committee deliberations of general applicability where the outcome may have a direct and predictable effect on a firm with which the Government employee is affiliated, even though all other firms similarly situated will be affected in a like manner." OGE Informal Opinion 87 x 6, citing 2 Op. Off. of Legal Counsel 151, 155 (1978). As an example, the regulations restricting the use of silicon breast implants would be a "particular matter" even though the impact of the regulations would be on all manufacturers of breast implants.

As we discussed this afternoon, I have been struggling with how to apply the term "particular matter" to what the Working Groups are doing. How broadly or narrowly the "matter" in which the members are participating is construed will determine, to a certain extent, whether members are actually participating in a

---

[1] Compare 5 C.F.R. § 2635.402(b)(3) Examples 1 and 2. (Amendment by the Internal Revenue Service of its regulations to change the manner in which depreciation is calculated is not a particular matter; consideration by Interstate Commerce Commission of regulations establishing safety standards for trucks on interstate highways is a particular matter.) See also 57 Fed. Reg. 35,006, 35,024 (1992) (matters affecting a "particular industry" usually are particular matters, whereas matters "of broader applicability" usually are not particular matters).

"particular matter" within the meaning of section 208, and if so, whether those members will require a waiver of the provisions of that section. It could be argued that the members are involved in preliminary fact-finding and formulation of general policy in preparation for national health care reform legislation. Such sweeping legislation would affect such a large and diverse range of interests -- including medical consultants, physicians, trial attorneys, small businesses, hospitals, HMOs, insurance providers, pharmaceutical companies, states, and patients of various income groups -- that the legislation would not be considered a "particular matter" under section 208. Accordingly, even if a Working Group member's employer or a group with whom the member has a professional affiliation will be affected financially by the rules and policies which the member had a role in developing, section 208 would not apply.[2]

An alternative approach is to focus on the specific portion of the legislative proposal in which the Working Group member is participating. Under this approach, each of the cluster groups (or subgroups) would constitute separate and distinct "particular matters." To avoid the restrictions of section 208, no Working Group member should serve on a cluster group or subgroup which focuses on issues which may directly and predictably affect that member's financial affiliations. To the extent that most Working Group members would not be participating in a particular matter which will have a direct and predictable effect on their financial interest or the financial interest of any person whose interests are imputed to the member, most Working Group members would not be subject to section 208.[3]

However, those Working Group members who are participating in a cluster group or subgroup whose subject matter is directly and predictably related to their financial interests -- such as Linda Bergthold who is serving on the new system cluster group and has an arrangement to return to William Mercer, a company which, in part, designs health benefits coverage packages for

---

[2] While this interpretation of "particular matter" has certain advantages, OGE usually has taken the position that section 208 is to be construed very broadly and may not agree that the Working Groups are not participating in any "particular matter." If we decide to adopt this view, we should get confirmation from the White House Counsel and/or OGE. In addition, it is important that the interpretation of "particular matter" be used consistently for all working group members -- from HHS as well as from other Agencies.

[3] I would add that, even if section 208 is determined not to apply to the Working Group members, the members still would be subject to the appearance of impartiality requirements in the Standards of Ethical Conduct, 5 C.F.R. § 2635.502.

employers -- would be determined to have a disqualifying financial interest under section 208. Such members would require a waiver under section 208(b)(1). In accordance with this interpretation of section 208, Working Group members who will be required to seek waivers under section 208(b)(1) are: Linda Bergthold and Carol Miller (consulting interests); Lois Quam (HMOs); David Satcher and Farrah Walters (hospitals and medical services interests); and Sally Richardson (state interests). In my opinion, waivers for some of these members -- particularly Bergthold, Miller and Walters -- may be difficult to obtain.

A waiver under section 208(b)(1) is granted by the appointing official (Secretary Shalala) after a determination that the employee's financial interest in the particular matter is "not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such employee." 5 C.F.R. § 2635.402(d)(2)(B)(ii). The standard for a waiver focuses on two lines of inquiry: (1) the financial interest involved, and (2) the services expected of the employee. See OGE Opinion Letter 85 x 10. OGE has suggested that a personal interest in maintaining continued employment may create stronger and more personal ties than purely investment interests. Therefore, the tenure, salary and nature of the employment relationship should be considered as significant factors in making a waiver determination. Id. The services expected of the employee include a consideration of the likelihood that the integrity of the employee's services may be compromised and the nature and significance of the services themselves. Reliance on the employee's personal integrity is discouraged and is not to be taken into account as it involves a subjective determination and detracts from the public acceptance of the waiver process. Id.

As an example of the type of analysis which must be done under section 208(b)(1), Lois Quam is serving on the new system cluster group; was a Vice-President of (with stock options in) United Healthcare -- an HMO holding company which will be greatly affected financially by a new health care system; has an arrangement to return to her employer at the conclusion of the Working Group; and has received from her employer a generous salary and compensation package. For Quam, it may not be easy to argue that her financial interest is "not so substantial." However, her financial interest must be weighed against the likelihood that her services may be compromised, and the nature and significance of those services. This may be done by showing that: (1) steps have been to taken to ensure that there is no participation on behalf of or communication between the (former) employer and the Working Group member during the member's tenure on the Working Group (e.g., Prior to coming to Washington, Quam had a memo drafted to United Healthcare explaining that, while serving on the Working Group, she would be severing her professional relationship with her former employer); (2) the services the member is expected to perform for the Government are limited in nature and do not present a significant risk that the integrity of the member's services and the integrity of the overall decision-making process will be compromised (e.g., if Quam will be serving on the Working Group for a limited time, her role will be limited to fact-finding, and she will not have significant authority to shape the ultimate proposal). Obviously, in order to draft such waivers, I will need full cooperation from the Working Group members who may be affected.

I understand that, as the deadline for completion of the Working Group's task nears, the nature of the members' activities will evolve. Therefore, it is important that we discuss not only how section 208 should be interpreted in relation to the members' current assignments, but also how that interpretation may change given the members' future assignments. Thank you for your help in facilitating a discussion of these issues.

Anne Hall
Assistant Special Counsel for
Ethics

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Office of the General Counsel
Washington, D.C. 20201

March 25, 1993

Note to Charlotte Hays

Re: Health Care Working Group Members

As you know, under 18 U.S.C. § 208(a), an employee of the executive branch, including a special Government employee, is prohibited from participating personally and substantially as a Government employee in any particular matter which will have a direct and predictable effect on a financial interest of the employee or any person whose interests are imputed to him. The Office of Government Ethics (OGE) has defined "particular matter" as encompassing those matters involving "deliberation, decision, or action that is focused upon the interests of specific persons or a discrete and identifiable class of persons." 5 C.F.R. § 2635.402(b)(3). A "particular matter" includes governmental action such as legislation or policy-making that is narrowly focused on the interests of a discrete and identifiable class of persons, but does not extend to the consideration or adoption of broad policy options that are directed to the interests of a large and diverse group of persons.[1] Id.

The Department of Justice has interpreted section 208 to apply to "rule-making proceedings or advisory committee deliberations of general applicability where the outcome may have a direct and predictable effect on a firm with which the Government employee is affiliated, even though all other firms similarly situated will be affected in a like manner." OGE Informal Opinion 87 x 6, citing 2 Op. Off. of Legal Counsel 151, 155 (1978). As an example, the regulations restricting the use of silicon breast implants would be a "particular matter" even though the impact of the regulations would be on all manufacturers of breast implants.

As we discussed this afternoon, I have been struggling with how to apply the term "particular matter" to what the Working Groups are doing. How broadly or narrowly the "matter" in which the members are participating is construed will determine, to a certain extent, whether members are actually participating in a

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[1] Compare 5 C.F.R. § 2635.402(b)(3) Examples 1 and 2. (Amendment by the Internal Revenue Service of its regulations to change the manner in which depreciation is calculated is not a particular matter; consideration by Interstate Commerce Commission of regulations establishing safety standards for trucks on interstate highways is a particular matter.) See also 57 Fed. Reg. 35,006, 35,024 (1992) (matters affecting a "particular industry" usually are particular matters, whereas matters "of broader applicability" usually are not particular matters).

"particular matter" within the meaning of section 208, and if so, whether those members will require a waiver of the provisions of that section. It could be argued that the members are involved in preliminary fact-finding and formulation of general policy in preparation for national health care reform legislation. Such sweeping legislation would affect such a large and diverse range of interests -- including medical consultants, physicians, trial attorneys, small businesses, hospitals, HMOs, insurance providers, pharmaceutical companies, states, and patients of various income groups -- that the legislation would not be considered a "particular matter" under section 208. Accordingly, even if a Working Group member's employer or a group with whom the member has a professional affiliation will be affected financially by the rules and policies which the member had a role in developing, section 208 would not apply.[2]

An alternative approach is to focus on the specific portion of the legislative proposal in which the Working Group member is participating. Under this approach, each of the cluster groups (or subgroups) would constitute separate and distinct "particular matters." To avoid the restrictions of section 208, no Working Group member should serve on a cluster group or subgroup which focuses on issues which may directly and predictably affect that member's financial affiliations. To the extent that most Working Group members would not be participating in a particular matter which will have a direct and predictable effect on their financial interest or the financial interest of any person whose interests are imputed to the member, most Working Group members would not be subject to section 208.[3]

However, those Working Group members who are participating in a cluster group or subgroup whose subject matter is directly and predictably related to their financial interests -- such as Linda Bergthold who is serving on the new system cluster group and has an arrangement to return to William Mercer, a company which, in part, designs health benefits coverage packages for

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[2] While this interpretation of "particular matter" has certain advantages, OGE usually has taken the position that section 208 is to be construed very broadly and may not agree that the Working Groups are not participating in any "particular matter." If we decide to adopt this view, we should get confirmation from the White House Counsel and/or OGE. In addition, it is important that the interpretation of "particular matter" be used consistently for all working group members -- from HHS as well as from other Agencies.

[3] I would add that, even if section 208 is determined not to apply to the Working Group members, the members still would be subject to the appearance of impartiality requirements in the Standards of Ethical Conduct, 5 C.F.R. § 2635.502.

employers -- would be determined to have a disqualifying financial interest under section 208. Such members would require a waiver under section 208(b)(1). In accordance with this interpretation of section 208, Working Group members who will be required to seek waivers under section 208(b)(1) are: Linda Bergthold and Carol Miller (consulting interests); Lois Quam (HMOs); David Satcher and Farrah Walters (hospitals and medical services interests); and Sally Richardson (state interests). In my opinion, waivers for some of these members -- particularly Bergthold, Miller and Walters -- may be difficult to obtain.

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Anne Hall
Assistant Special Counsel for Ethics

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF ADMINISTRATION
Washington, D.C. 20503

March 12, 1993

MEMORANDUM FOR JENNIFER O'CONNOR
SPECIAL ASSISTANT
WHITE HOUSE OFFICE

FROM: BRUCE L. OVERTON BLO
GENERAL COUNSEL

SUBJECT: Funding Options Regarding the Health Task Force

This memorandum responds to your request for funding options available to the Health Task Force[1].

BACKGROUND

As a result of the decision by Federal District Court Judge Lamberth on March 10, 1993, the provisions of the Federal Advisory Committee Act (FACA)[2] have been made applicable to the Health Task Force.[3] This includes a provision covering the administrative support of advisory committees:

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[1]Health Task Force is a shorten reference to the President's Task Force on National Health Care Reform, created January 25, 1993, and comprising an advisory body of the following officials and individuals:

Hillary Rodham Clinton, Chairperson
Senior White House Policy Advisors
Secretary of Health and Human Services
Secretary of the Treasury
Secretary of Defense
Secretary of Veterans' Affairs
Secretary of Commerce
Secretary of Labor
Director, Office of Management and Budget

[2]5 U.S.C. App. 2 Sections 1-15

[3]Association of American Physicians and Surgeons v. Hillary Rodham Clinton, Civil Action No. 93-0399, D.C. D.C. March 10, 1993. The District Court ruled that only certain provisions of the FACA, (i.e., Sections 10(a)(1), 10(a)(3) and 10(c)), primarily covering the requirement for open meetings were found unconstitutional as applied to the President.

> Each agency shall be responsible for providing support services for each advisory committee established by or reporting to it unless the establishing authority provides otherwise. Where any such advisory committee reports to more than one agency, only one agency shall be responsible for support services at any one time. In the case of Presidential advisory committees, such services may be provided by the General Services Administration. Section 12(b), FACA.

In addition to the above provision limiting support services, Congress has placed a further limitation on the funding of advisory committees in the appropriations for fiscal year 1993:

> No part of any appropriation contained in this or any other Act shall be available for interagency financing of boards, commissions, councils, committees, or similar groups (whether or not they are interagency entities) which do not have a prior and specific statutory approval to receive financial support from more than one agency or instrumentality. Section 612, Pub. L. 102-393 (1992).

This funding restriction actually predates the FACA and first appeared as a limitation on appropriations expenditures in 1968. The Comptroller General has expressly interpreted it to countermand a statutory provision that had allowed interagency funding, 31 U.S.C. 1346(b).[4]

FUNDING OPTIONS

1. The Health Task Force may be assigned to the General Services Administration (GSA) because it is a Presidential advisory committee. Pursuant to FACA Section 12(b), cited above, the GSA would provide support services.

2. The Health Task Force could be assigned to any of the agencies listed in footnote one (herein). Such agency would provide the entire administrative support for the Health Task Force. The fact that the working groups primarily meet in the Old Executive Office Building is not significant in determining which agency provides support. Supplies, travel expenses, and costs for such matters as report production, consultants and experts, and conference facilities for regional hearings would all be covered by the agency providing support services. Members of the working groups who are federal employees may continue to receive their salaries from their employing agencies.

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[4] 65 Comp. Gen. 689, 691 (1986), citing 49 Comp. Gen. 305 (1969).

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3. There is precedent for assigning the support services to the Office of Administration within the Executive Office of the President. This was done in 1986 with the "Tower Commission" which was formally designated as the President's Special Review Board on the National Security Council. In this case, however, the appropriation tapped for funding was the "unanticipated needs" account. 3 U.S.C. 108.

cc: Patsy Thomasson
Special Assistant to the President and
Director of the Office of Administration

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF ADMINISTRATION
Washington, D.C. 20503

March 12, 1993

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cc: Patsy Thomasson
Special Assistant to the President and
Director of the Office of Administration

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Towers Perrin

Washington Consulting Office
1001 19th Street North, Suite 1500
Rosslyn, VA 22209-1722
703 351-4700
Fax: 703 351-4934

CONFIDENTIAL

March 23, 1993

Mr. Ira C. Magaziner
Senior Advisor for Policy Development
The White House
Old Executive Office Building
Room 216
Washington, D.C. 20500

Dear Ira:

Mike Langan and I appreciate the time you spent yesterday briefing us on the planned auditing process of the work undertaken by the interagency Health Care Task Force. Towers Perrin is excited and honored to have the opportunity to assist the administration to develop its national health reform proposal. The purpose of this letter is to confirm our understanding of Towers Perrin's role in the auditing process, and to provide the background information requested by Charlotte Hayes.

Our Role

You referred to our role as an "intermittent consultant" participating in the "costing" phase of the audit of the health care reform proposals. In this role we envision our focus to be the review and testing of the reasonableness of the methodologies employed to:

- Value the standard benefit package under consideration.
- Increase Medicare and Medicaid benefits to the level of the standard benefit package.
- Accomplish the phase-in scenarios proposed for introduction of the standard benefit package.
- Accomplish the transition to a community-rated environment.

Towers Perrin

You indicated that by serving in the intermittent consultant role we will not be permitted to:

- Divulge the details of the Task Force's proposals, as well as Towers Perrin's role in the audit process, to sources outside Towers Perrin prior to the public announcement of the Health Care Reform Plan in early May 1993. If experts outside Towers Perrin were to participate in portions of the audit, they would be responsible for maintaining the confidentiality of this information.

- Lobbying the Federal government on issues specifically related to the health care reform program for a period of six months following completion of our work.

While we understand there is no written documentation setting forth details of the confidentiality restrictions, we are nonetheless comfortable with the guidelines as restated above.

We expect the results of our audit to be a brief written report presented to you. This report will summarize analysis and conclusions, and identify areas for further consideration by your Task Force. We would expect to present this report shortly before the start of the 6th "Toll Gate" session currently scheduled for the week of April 19, 1993.

Finally, we acknowledge that time and expenses incurred by Towers Perrin staff for this audit will be assumed by Towers Perrin.

<u>Background Information</u>

Based on Charlotte Hayes' request of Mike Langan, we have enclosed biographical information on the core team of consultants who would be primarily responsible for this project. Co-project managers for the audit, and for the day-to-day contact with your staff, would be Richard Ostuw and Howard Veit. My role in this endeavor would be as manager of the overall relationship with you, as well as assuring the timely and effective completion of this undertaking.

In reviewing these resumes please note the following:

- Ms. Abernethy, as well as Messrs. Abernethy, Martingale, Langan and Ostuw consult with U.S. employers on the design, financing and administration of their employee benefit programs. Most of these assignments involve strategies to gain control over rising health benefit costs for active and retired employees. In recent years many assignments have led to the implementation of managed health care programs to replace or supplement employers' indemnity benefit programs.

- Messrs. Veit and Greenwood consult with commercial insurance companies, Blue Cross and Blue Shield Plans, managed care organizations (HMOs and PPOs) and health provider groups. Their services include assistance in developing health insurance products, pricing, rate development, reserve analysis, mergers and acquisitions, joint ventures, strategic planning, and operational reviews. In recent years they have concentrated on assisting insurance industry and health provider clients to develop and provide managed care products to government and private sector purchasers of health coverage.

Finally, enclosed is a partial list of Towers Perrin clients for whom our consulting work could be categorized as currently assisting the Federal government or its agencies in addressing a variety of issues, some of which may relate indirectly to health care reform. We are still doing our due diligence on this request, and will send you a final list as soon as possible.

<u>Next Steps</u>

We recognize your sense of urgency in completing the proposed audit. We also recognize the importance of the due diligence by you and your staff on the "ethics" questions you discussed. However, we are concerned that this ethics review might unnecessarily delay the start of this assignment. Therefore, we propose that an initial meeting of our key consultants and your key staff members take place in Washington this Friday, March 26, or as soon thereafter as possible. That meeting would serve as a basis for familiarizing our staff with the work completed so far in the areas in which we will be auditing, and will serve as the basis for us to:

- Fine tune with you the scope of the project as described in this letter.

- Develop a detailed work plan for completion of the project within the allotted time frame.

If after the completion of the proposed preliminary meeting it is determined by your staff that some or all of our core consulting team members are not acceptable for this audit, then we would cease our activities at that point, and would also agree not to divulge outside Towers Perrin any of the information we gathered from your staff prior to the public announcement of the proposed program.

* * * * *

Ira, we recognize the enormity of the task that you are currently involved in, as well as your need for checks and balances in the development of recommendations. We feel confident that we can provide a meaningful audit in the areas that you have identified, and we appreciate your giving us the opportunity to respond. I'm hopeful that we can resolve the open issues promptly so work can commence on this important undertaking.

I will plan to call you on Thursday, March 25, to discuss the status of this project.

Best regards,

Alan

Alan H. Dugan
Managing Director

ADH:aof

cc: Ms. Charlotte Hayes

IAN B. ABERNETHY

Ian Abernethy is a Vice President and Principal in Towers Perrin's Washington consulting office. Since joining the firm in 1982, Mr. Abernethy has worked in the firm's national health care practice and group benefits practice. Prior to joining the Washington Consulting Office, Mr. Abernethy founded and managed the Towers Perrin Health and Welfare Practice in Chicago.

Mr. Abernethy's client work includes developing cost management approaches in health care, assisting clients in effectively managing their investment in benefit programs and developing strategies to accomplish change in both union and non-union environments. Mr. Abernethy was among the first consultants in Towers Perrin to pioneer flexible benefits programs in the 1980s and "managed flex" programs in the 1990s.

Clients served by Mr. Abernethy include:

- Ameritech
- Argonne National Laboratory
- CBI Industries
- Coldwell Banker
- Clark Equipment Company
- Eaton Corporation
- Liquid Carbonic Industries
- Navistar
- Robert Bosch Corporation
- Sears, Roebuck & Company
- United Parcel Service (UPS)
- Zenith Electronics

Mr. Abernethy has a bachelor's degree from Ripon College and has done graduate work at Northwestern University.

KATHRYN KELLY ABERNETHY

Kathryn Abernethy is a Vice President and Towers Perrin's National Business Leader for Health Care. Ms. Abernethy is also the Health and Welfare Practice Leader in the firm's Washington office. An epidemiologist by training, Ms. Abernethy has more than 15 years of experience in health care. The majority of her consulting assignments, conducted for large employers, are in the area of health care cost management.

Ms. Abernethy's client work includes developing comprehensive human resources and health care strategies, designing and marketing managed care and flexible benefits plans, analyzing large and complex sets of data on claims cost and utilization experience, and developing benefits incentives for lowering employee health risks and health care use.

Clients Ms. Abernethy has recently served include:

- Ameritech
- ARA Services
- The Coca-Cola Company
- Eaton Corporation
- Federal Reserve Board
- Gannett
- GEICO
- Harris Corporation
- Hyatt Hotels
- IBM
- Marriott
- SunTrust
- Sears, Roebuck & Company
- USF&G Corporation
- United Parcel Service (UPS)
- US Bancorp
- Wachovia Corporation

Before joining Towers Perrin in 1988, Ms. Abernethy was the Vice President of a health risk management consulting firm. In 1985, she served as Staff Director of the U.S. Preventive Services Task Force, whose recommendations appeared in the Journal of the American Medical Association. From 1982 to 1985, she was responsible for overseeing extramural research on private-sector cost management initiatives funded by the U.S. Department of Health and Human Services. Ms. Abernethy served on the staff of the President's Commission for Medical Ethics from 1980 to 1982, and in 1978, evaluated primary care practices in the United States for the Robert Wood Johnson Foundation.

Ms. Abernethy holds dual master's degrees in community medicine and in biostatistics from the University of Washington. She completed her doctoral studies in behavioral epidemiology at the Johns Hopkins University School of Public Health.

ALAN H. DUGAN

Alan H. Dugan is the Managing Director of Towers Perrin's health and welfare line of business. He is also a member of the Towers Perrin Management Committee.

Mr. Dugan is an experienced employee benefits and compensation consultant who has worked with clients in Towers Perrin offices in New York, Washington, D.C. and Minneapolis. He opened the Minneapolis office in 1977 and, as manager, was responsible for integrating the employee benefits practice of Stennes Associates into Towers Perrin. He also managed the Washington office from 1985-1988. From 1988 to 1990, he was responsible for corporate planning and development activities throughout Towers Perrin.

In his current role since 1990, Mr. Dugan is responsible for the profitable growth and high quality of Towers Perrin's health and welfare consulting and administrative services to employers. These service areas include managed care, flexible benefits, retiree welfare, traditional group benefit issues, and emerging issues like long-term care and workers compensation cost management. In addition, he plays an active role in organizing Towers Perrin's resources relative to emerging health care reform legislation.

Mr. Dugan received a B.S. from Lehigh University. He has completed the Advanced Management Program (AMP) at the University of Pennsylvania's Wharton School. He is located in New York.

BRENT L. GREENWOOD, A.S.A., M.A.A.A.

Brent L. Greenwood is a Principal in the Minneapolis Consulting Office of Tillinghast.

Mr. Greenwood specializes in HMO/PPO related engagements. He has extensive experience with prepaid healthcare benefit design, pricing, product development, as well as general financial analysis. He has consulted with a substantial number of prepaid health plans across the country. Mr. Greenwood has special expertise in actuarial analysis, rate setting and operations strategy for both HMOs and PPOs. In addition, he has worked with insurance companies on organizational and product development projects relating to managed care.

Other areas of expertise include Medicare (supplement, risk and cost), Medicaid, prepaid dental programs, employer cost containment strategy and provider contract evaluation.

A list of Mr. Greenwood's clients include:

- AV-MED Health Plans
- Greater New York Hospital Association
- Harvard Community Health Plan
- John Hopkins Health System
- Kaiser Foundation Health Plan
- PCA Health Plans
- Physicians Health Services
- Preferred Care HMO and Preferred Assurance Company
- TakeCare
- US Health Care

Mr. Greenwood has been a frequent speaker at programs sponsored by the Society of Actuaries, GHAA, AMCRA and State HMO Associations. The subjects have related to rate setting and financial analysis of prepaid programs.

Prior to joining Tillinghast in September 1978, Mr. Greenwood was employed with Kemper Life Insurance Company as a Group Health Claims Adjuster.

Mr. Greenwood received a Bachelor of Science in Actuarial Science from Drake University and is an Associate of the Society of Actuaries and a Member of the American Academy of Actuaries.

MICHAEL J. LANGAN

Mr. Langan is a Vice President and a Principal with the employee benefits consulting firm Towers Perrin. He is an attorney in the firm's Technical Services unit, where he has provided legal support on health and welfare benefit issues to the firm's consultants throughout the United States since 1984.

Mr. Langan's experience includes advising on a variety of health and welfare benefit issues including managed care, flexible benefits, and life insurance.

Mr. Langan has lectured for the Practicing Law Institute, and the New York and American Bar Associations and numerous other organizations. He is a columnist for the Benefits Law Journal. He is co-chair of the American Bar Association's National Institute on Health & Welfare Benefit Plans. Before joining Towers Perrin, Mr. Langan was assistant counsel in the Corporate Law Department of the Prudential Insurance Company of America. Previously, he was a consultant with Prudential's group insurance operation and the HMO subsidiary, PruCare.

Mr. Langan is a graduate of King's College and Seton Hall University Law School. He is a member of the New Jersey and American Bar Associations.

JOSEPH J. MARTINGALE

Mr. Martingale is a Towers Perrin Vice President and the Manager of the health and welfare consulting practice in the eastern region. He specializes in the design and implementation of cost-effective benefit programs.

Before joining Towers Perrin, Mr. Martingale was Corporate Manager of Benefits Development at J.C. Penney. Before that he practiced law, primarily corporate, tax, and real estate law, with Cadwalader, Wickersham & Taft.

Mr. Martingale has been actively involved with the following clients:

- Associated Press
- AT&T
- Columbia University
- DuPont
- Nabisco
- National Railway Labor Conference
- Paramount Communications
- Planned Parenthood Federation of America
- Time Warner

Mr. Martingale received a B.A. from St. Francis College and a J.D. from Columbia University School of Law. He is Chairman of the New York Business Group on Health, former Chairman of the Conference Board Council on Employee Benefits, and former director of the Employers Council on Flexible Compensation. He is located in the New York consulting office.

RICHARD OSTUW, F.S.A.

Mr. Ostuw is a vice president of Towers Perrin and the firm's chief actuary for health and welfare plans. As a consultant, he assists employers in all aspects of employee benefits with emphasis on the design and financing of health care and flexible benefits. Before becoming a consultant, he was group insurance actuary for a major insurance company.

As a member of the Heath & Welfare Line of Business, Mr. Ostuw provides technical leadership for the U.S. health and welfare consulting practice. He serves as a resource to other consultants and assists in the development of new systems and the continuing training of consultants.

Because of the importance of retiree welfare benefit issues, Mr. Ostuw has concentrated his attention in this area for the past four years. In addition to direct consulting with employers and support to Towers Perrin's consulting staff, he has served on FASB's Advisory Committee and conducted research for the FASB and the U.S. Congress.

Mr. Ostuw's clients include:

- Bank One
- Cleveland Clinic Foundation
- Columbus, N.A.
- Digital Equipment
- Eastman Kodak
- Eaton Corporation
- Rockwell
- TRW Inc.

Mr. Ostuw has a B.A. degree in mathematics from Rutgers University and a M.S. degree in actuarial science from Northeastern University. Mr. Ostuw is a Fellow of the Society of Actuaries and a Member of the American Academy of Actuaries. He has been active in both groups, having served on several committees. In addition, he has written several articles on employee benefits and has taught Certified Employee Benefits Specialist and actuarial courses.

ALLEN J. SORBO, F.S.A., M.A.A.A.

Allen J. Sorbo is a Principal in the Minneapolis office of Tillinghast, a Towers Perrin company.

Mr. Sorbo consults with insurance companies, Blue Cross and Blue Shield plans, HMOs and healthcare providers on the following aspects of managed healthcare programs: product design, pricing, underwriting, risk absorption models, financial reporting and experience analysis. His experience includes work in the above areas for group, individual, Medicare and Medicaid product lines.

HOWARD R. VEIT

Mr. Veit is Vice President and Managing Principal of the Health Practice for Tillinghast, a Towers Perrin company. Tillinghast is an international organization of management and actuarial consultants. The Health Practice specializes in serving health insurance companies, managed care organizations, Blue Cross/Blue Shield plan organizations, health provider organizations, and related enterprises.

Since joining Towers Perrin in 1988, Mr. Veit has provided consulting services to a broad range of clients including, insurance companies, Blue Cross/Blue Shield plans, health maintenance organizations (HMOs), hospitals and other health provider organizations. He has extensive experience in the operation of managed health care organizations, the design of managed health insurance products, managed care pricing, employee health benefits, health cost management programs and health strategy. Before becoming the Managing Principal of the Tillinghast Health Practice, Mr. Veit was Eastern Regional Managed Care Practice Coordinator for Towers Perrin.

Mr. Veit's health care background spans both the private and public sectors. He has served in the public sector as Assistant Commissioner of Public Health for the Commonwealth of Massachusetts, Director of the Office of Health Systems Management in the New York State Department of Health, and as Director of the Office of Health Maintenance Organizations (OHMO) in the U.S. Department of Health and Human Services. As OHMO Director from 1978 to 1981, Mr. Veit was in the forefront of federal efforts to promote the development of health maintenance organizations to Congress, business and labor. Prior to joining Towers Perrin, Mr. Veit was President of John Hancock Healthplans, the health care management subsidiary of the John Hancock Mutual Life Insurance Company.

Clients served by Mr. Veit are:

- American Express Quattro
- Blue Cross and Blue Shield of Michigan
- Bull HN Information System, Inc.
- Danbury Health Systems
- Digital Equipment Corporation
- Group Health Association, Inc.
- Group Health Cooperative of Puget Sound
- Harvard Community Health Plan
- Health Insurance Plan of Greater New York
- Heritage Health Systems
- Kaiser Permanente Medical Care Program
- Mutual of Omaha
- Sagamore Health Systems
- Southland Corporation
- The HMO Group
- University of Missouri

Mr. Veit received a Bachelor of Arts from the University of Rochester and a Master of Arts in hospital administration from Duke University. He is Adjunct Associate Professor at the Wharton School, of the University of Pennsylvania, Graduate Program in Health Care Management. Mr. Veit is located in the Stamford consulting office.

Name	Towers Perrin Stockholder		Direct Financial Holdings in Healthcare Organizations	Directorships
	Yes	No		
[redacted]				

(b)(6)

PARTIAL LIST OF TOWERS PERRIN ASSIGNMENTS FOR THE FEDERAL GOVERNMENT OR ITS AGENCIES	
Name of Client	**Description of Services**
Central Intelligence Agency (CIA)	■ Provided consulting on benefit programs sponsored for their employees
Federal Home Loan Mortgage Corporation (Freddie Mac)	■ Provided consulting on benefit programs sponsored for their employees
Federal National Mortgage Association (Fannie Mae)	■ Provided consulting on benefit programs sponsored for their employees
Government Accounting Office	■ Provided costing advice on medical malpractice issues for federally-funded medical centers
Pension Benefit Guarantee Corporation	■ Re-calculation of retirement termination benefits
U.S. Army Non-Appropriated Fund Retirement Plan	■ Actuarial work
U.S. Postal Service	■ Provided consulting on benefit programs sponsored for their employees
U.S. State Department	■ International benefits and compensation design work

Washington Consulting Office
1001 19th Street North, Suite 1500
Rosslyn, VA 22209-1722
703 351-4700
Fax: 703 351-4934

Towers Perrin

CONFIDENTIAL

March 25, 1993

Mr. Ira C. Magaziner
Senior Advisor for Policy Development
The White House
Old Executive Office Building
Room 216
Washington, D.C. 20500

Dear Ira:

I'm enclosing an updated list of client assignments reflecting five additional entries. Again, these assignments have been conducted for organizations related to the Federal Government.

I am copying Charlotte Hayes with this information so that she can expedite the review process.

Ira, I look forward to speaking with you soon on the cost audit project we've discussed.

Sincerely,

Alan

Alan H. Dugan
Managing Director

cc: Ms. Charlotte Hayes

PARTIAL LIST OF TOWERS PERRIN ASSIGNMENTS FOR THE FEDERAL GOVERNMENT OR ITS AGENCIES	
Name of Client	**Description of Services**
AS OF 03/23/93	
Central Intelligence Agency (CIA)	■ Provided consulting on benefit programs sponsored for their employees
Federal Home Loan Mortgage Corporation (Freddie Mac)	■ Provided consulting on benefit programs sponsored for their employees
Federal National Mortgage Association (Fannie Mae)	■ Provided consulting on benefit programs sponsored for their employees
Government Accounting Office	■ Provided costing advice on medical malpractice issues for federally-funded medical centers
Pension Benefit Guarantee Corporation	■ Re-calculation of retirement termination benefits
U.S. Army Non-Appropriated Fund Retirement Plan	■ Actuarial work for voluntary employee retirement plan
U.S. Postal Service	■ Provided consulting on benefit programs sponsored for their employees
U.S. State Department	■ International benefits and compensation design work

PARTIAL LIST OF TOWERS PERRIN ASSIGNMENTS FOR THE FEDERAL GOVERNMENT OR ITS AGENCIES

Name of Client	Description of Services
AS OF 03/25/93	
Blue Cross/Blue Shield Federal Employee Health Benefits Program	■ Provided market research to determine employee satisfaction with health care benefits offered
Department of Transportation	■ Produce annual employee statement of benefits offered by D.O.T.
Federal Reserve Bank of Cleveland	■ Design and communications work for their managed care benefit program
Federal Reserve Bank of New York	■ Managed care design, administrator selection and communication to employees
U.S. Army Central Insurance Fund	■ Actuarial analysis of funding for workers compensation fund covering civilian employees

INTERNAL MEMO
(Not for Distribution)

DRAFT

TO: Hillary Rodham Clinton
Ira Magaziner
Bob Boorstin
Mike Lux
Judy Feder
FROM: Steve Gleason
DATE: March 23, 1993
RE: White House Health Professions Advisory Committee (HPAC) and Briefing Teams

==

(A) HPAC is a forty-member advisory group. Through HPAC, the task force staff will have an opportunity to "test" ideas and receive provider feedback. The advisory group will be briefed on general principals (options) within the Clinton plan but will not be privy to detail.

This reinforces "no particular matter" position.

HPAC demographics -- 40 members:

- States: 22
- **Gender:** F: 19 M: 21
- **Occupation**
  - physicians: 20 (12 primary care, 8 specialists)
  - nurses: 10
  - hospital & clinic administrators: 6
  - psychologists: 1
  - social worker: 1
  - dentist: 1
  - pharmacist: 1
- **Job Class**
  - academia: 23
  - practicing: 17

HPAC will meet or hold events on the following dates. Please note requests for appearance:

Friday, March 26th - Room 450 - 10:30 am - 12:00 pm and 12:30 p.m. - 2:30 pm

Orientation meeting. Need Mike Lux and Bob Boorstin in a.m. session, Ira Magaziner and Judy Feder in afternoon session. This is a non-public, non-press event. If **Hillary Rodham Clinton** is in town, a stop-by would be good to kick off the group. Charlotte Hayes and General Counsel will give SGE orientation in the first hour.

<u>**Tuesday, March 30th**</u> -

If group performed admirably on 3/26, plan release of HPAC names to the press. (Message and messengers selected by Bob Boorstin, MIke Lux and Ira Magaziner).

<u>**Monday, April 12th**</u> - Room ? - 9:00 am to 1:00 pm

Non-public general working session with selected work group leaders.

<u>**Tuesday, April 13th**</u> - Room ? - 9:00 am to 1:00 pm

HPAC

Non-public working session with Ira (2 hours), stop-by by Hillary Rodham Clinton, followed by two hour discussion, provider recommendations and implementation strategy.

<u>**Friday, April 23rd**</u> - Room ? - 8:00 am to 1:00 pm

Consider public provider group hearing.

<u>**Monday, April 26th**</u> - Room ? Time ?

Deliver statement of support to the President (in Rose Garden?). Photos. Press conference in support of the President ?. Social events. White House tours ?. Visit to Congressional leaders ? .

<u>**Monday, May 3rd**</u> -

Work at White House by HPAC completed. See follow up memo on options after May 3rd.

(B) **Briefing Teams** are made up of prominent, supportive health professionals who wish to meet with Hillary Rodham Clinton and/or Ira Magaziner and/or others for discussion of a <u>**single topic on a single occasion**</u>.

Each of five briefing teams will have 20 members. Briefing teams will "brief" the work groups in an area of interest or expertise. These are non-public events and the names will not be released.

Briefing team (B.T.) schedule and topics:

April 6th - 10:00 am - 12:00 pm - B.T. I - Finance & Budget

April 13th ? - 8:00 am - 10:00 am - B.T. II - Bureaucracy Reduction

10:00 am - 12:00 pm - B.T. III - Fraud, Anti-trust, Torts

April 26th - 3:00 pm - 5:00 pm - B.T. IV - Choice of Provider

April 27th - 10:00 am - 12:00 pm - B.T. V - Underserved Population

Both of these projects will be completed by HPAC staff. A current listing includes:

Steve Gleason, Chair
Susannah Wellford, Policy Assistant
Irwin Redlener, Vice Chair
Pat Ford-Roegner, Vice Chair
Larry Jindra, - White House Fellow and Ass't. to the Chair
Elena Rios, - Briefing Team Coordinator

We would also like to request a desk, a phone, one person with White House access (for brief but timely tours), a clerical assistant, and the part-time assistance of Judy Whang from HHS.

Any suggested changes are welcome. Thanks.

att: HPAC List

Susanna Wellford

Orientation for Professional Health Care People

3/26/93

Doctors, Nurses, Technicians

1) Thanks for Serving

ICM would like to bring in people from outside the working group process without compensation with appropriate expertise to assess our current thinking on the various options.

The initial plan called for groups that would do a Numbers Audit, Legal Audit and a Consumer Audit.

They would question:

1. the current underlying assumptions;
2. our data;
3. working group members;
4. our numbers;
5. our legal situation.
6. the simplicity of the new system and how it impacts on people

We need to set up the group that will perform the numbers audit immediately. There would be a variety of people from a variety of entities to do this work, they would be working on this for 3–4 weeks, in teams, not necessarily at OEOB.

They would peel back the actuarial models we are working on for projections, look at practice patterns and give an independent check on assumptions.

The important point is that these people should be independent and from outside the working group since they will be examining the work product of the Working Groups.

An issue that needs to be considered is that we are now at the point the work product will be narrowing the options. The outline of the plan will be firmer and will be closer to final form.

Stuart Binder

Non disclosure agreement

FAR

March 24, 1993

MEMORANDUM TO ~~STEVE NEUWIRTH~~ IRA MAGAZINER

FROM: BETH NOLAN

SUBJECT: OUTSIDE AUDITORS ON HEALTH CARE OPTIONS

This is in response to your request for advice on the most appropriate way to bring in people from outside the existing working group process without compensation with particular expertise to assess the current thinking of the Health ~~Costs~~ Care Task Force on various options.

You are planning to set up "audit groups" in the Numbers (X), Legal and Consumer areas, consisting of a variety of people from a variety of entities to perform the work, over a 3-4 week period. All the work would not necessarily be done at OEOB.

A primary concern is that the Task Force work has reached a stage where access to the options could provide the auditor with potentially valuable information about the ultimate Task Force work product. Thus, for example, an auditor whose non-Government work, either as an individual entrepreneur or as an employee of a firm, involves health care systems could be (conveniently) commercially advantaged by knowing before ~~he~~ his or her competitors what the Clinton health care plan entails and does not entail.

Two possible mechanisms have been considered for bringing these people in, by a contract or by personal "appointment."

CONTRACT

Since we are talking about this job being done without compensation, there are two types of no-cost contract that could be awarded, one being to a firm, the other to the individual. Such a contract would contain non-disclosure, non-use, and non-advertising clauses of the type attached. Since no federal appropriations would be expended on the contract with a firm, it could be awarded without regard to federal requirements for competition. And a contract could explicitly cover the authorization to use the contractor's data processing equipment. If two or three firms are being utilized, this would spread the benefits of participation and reduce the appearance of any one firm having an inside track on data or Plan content.* Independent contracts with the auditors could be an administrative problem, but not insurmountable. Each contractor, individual, or a firm, would have to deliver a written product, which probably would not be available to the public under FOIA. Proper clauses in the contract would assure its not being available under FOIA.

PERSONAL APPOINTMENT

We could also bring these auditors on as Special Government Employees (SGEs) who would be subject to an array of requirements about the non-disclosure and no-use of the materials; however, off-premises handling of the materials could be a problem for these federal employees, especially if the "crunching" of numbers or dissection[ ] of options is to be done with private sector colleagues or on equipment at the regular place of business.

Under either approach, the "product" would be recommendations, suggestions and reactions, but the auditor would not know, or should not know, what use the Task Force will be making of their input. That uncertainty, together with the pledges of confidentially, non-disclosure and non-use should provide considerable protection against premature disclosure. In any event, if we do decide to go "outside" the existing process for audits, we may indeed have to pay a price in the way of leaks or allegations that certain firms or people got an unfair

Insert *(whether we can accept this "gift" from a firm may depends upon which federal agency "administers" the competitive advantage. By taking the steps suggested above and by providing public access at the earliest possible time, we can reduce the chance of a serious problem.

BUREAU OF BROADCASTING

FACSIMILE DOCUMENT COVER

Page 1 of 2

DATE: Mar 17

TO: Richard Werksman

FACSIMILE NUMBER: 202 - ~~[illegible]~~ 456 - 6229

FROM: Marie Skiba

OFFICE NUMBER: 202 - 619 - 3685

COMMENTS: Personnel & Betty Thompson in audience mail & have OK'd attached draft agreement. Before we go ahead, pls review, edit, comment etc.. Thanks.
(Call me if questions or fax me back.)

SENDER: Admin Operations Division (B/AO)
330 Independence Ave. SW, Rm 1657C
Washington, D.C. 20547

Phone: (202) 619-3683
Facsimile: (202) 619-2788

MAR-18-93 THU 9:31

P.02

R
Betty Thompson
3-16-93

DRAFT 424

Letter of Agreement

This agreement is entered into between the Bureau of Broadcasting (B) and _______________ in conjunction with ______________________ contribution of her services to assist in mailing out 1993 VOA calendars. Specific terms of this agreement follow:

____________________ agrees:

- That all services provided to the Bureau of Broadcasting relating to the mailing of VOA calendars will be provided gratuitously and without compensation;

- To waive any and all claims against the Bureau of Broadcasting as a result of these services;

- To assume responsibility against damage or loss for any Bureau of Broadcasting equipment used in conjuction with the provision of the mailing services; and

- That all expenses (e.g., transportation costs to and from the Cohen Building) associated with provision these services will be _________________ personal responsibility.

The Bureau of Broadcasting agrees:

- To provide office space, supplies and equipment necessary to complete the assignment, and

- To take reasonable and necessary steps to protect ____________________ from personal injury or loss while in Bureau of Broadcasting space.

This agreement shall not extend beyond 60-days from its effective date, and is terminable at will, by either party, without notice, and for any reason whatsoever.

Agreed to this _________________ day of _________________________ 1993.

___________________________ ___________________________

Betty Thompson

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change
For Material Change Only:
year ______ quarter ______
date of last report ______

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known*:

Congressional District, *if known*:

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

Congressional District, *if known*:

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, *if applicable*: ______

8. Federal Action Number, *if known*:

9. Award Amount, *if known*:
$

10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI)*:

b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI)*:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply)*:
$ ______ ☐ actual ☐ planned

12. Form of Payment *(check all that apply)*:
☐ a. cash
☐ b. in-kind; specify: nature ______
value ______

13. Type of Payment *(check all that apply)*:
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: ______

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: ______
Print Name: ______
Title: ______
Telephone No.: ______ Date: ______

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB 0348-0046

Reporting Entity: ______________________ Page _____ of _____

Authorized for Local Reproduction
Standard Form - LLL-A

(552.232-8—Prompt Payment Discount (Nov 1987) (Deviation FAR 52.232-8)).

(b) When a "substantially the same as" clause is used that varies from a FAR or GSAR clause, the word "(Variation)," must be included as a part of the title of the clause, along with the FAR or GSAR citation (552.215-70 Examination of Records by GSA (Apr 1984) (Variation I)). If there is more than one variation of a provision or :lause, the variations are titled (Varia- :ion I), (Variation II), (Variation III), etc. Variations of clauses which result 'rom negotiations do not need to be dentified unless an amendment to the olicitation is issued.

(c) Variations of FAR or GSAR lauses should generally be used for ndividual cases. A copy of clause variations developed for repeated use iust be furnished to the Office of ;SA Acquisition Policy (VP) for po- :ntial inclusion in the GSAR.

:2.105 Procedures for using alternates.

The procedures in FAR 52.105 apply GSAR Part 552.

2.107 Provisions and clauses prescribed in Subpart 552.1.

a) The contracting officer shall ;ert the provision at 552.252-5, Au- ɔrized Deviations or Variations in ɔvisions, in solicitations that include ý FAR or GSAR clause with an au- ›rized deviation or variation. This ›vision must be used in lieu of the R provision at 52.252-5.

)) The contracting officer shall ɜrt the clause at 552.252-6, Author- l Deviations or Variations in uses, in solicitations and contracts t include any FAR or GSAR clause ı an authorized deviation or varia- . This clause must be used in lieu ıe FAR clause at 52.252-6.

ıbpart 552.2—Text of Provisions and Clauses

00 Scope of subpart.

.is subpart sets forth the text of ;SAR provisions and clauses, and ach provision and clause, provides ss-reference to the location in the R that prescribes its use.

552.203-4 Contingent Fee Representation and Agreement.

As prescribed in 503.404(a), insert the following provision:

CONTINGENT FEE REPRESENTATION AND AGREEMENT (MAY 1989)

(a) *Representation.* The Offeror represents that, except for full-time bona fide employees working solely for the offeror or bona fide established real estate agents or brokers maintained by the Offeror for the purpose of securing business, the Offeror—

NOTE: The Offeror must check the appropriate boxes. For interpretation of the term "bona fide employee or agency," see paragraph (b) of the Covenant Against Contingent Fees clause.

(1) ______ has, ______ has not employed or retained any person or company to solicit or obtain this contract; and

(2) ______ has, ______ has not paid or agreed to pay to any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

(b) *Agreement.* The Offeror agrees to provide information relating to the above Representation as requested by the Contracting Officer and, when subparagraph (a)(1) or (a)(2) is answered affirmatively, to promptly submit to the Contracting Officer—

(1) A completed Standard Form 119, Statement of Contingent or Other Fees, (SF 119); or

(2) A signed statement indicating that the SF 119 was previously submitted to the same contracting office, including the date and applicable solicitation or contract number, and representing that the prior SF 119 applies to this offer or quotation.

(End of provision)

552.203-5 Covenant Against Contingent Fees.

As prescribed in 503.404(b), insert the following clause:

COVENANT AGAINST CONTINGENT FEES (MAY 1989)

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of the contingent fee.

(b) "Bona fide agency," as used in this clause, means an established commercial or selling agency (including licensed real estate agents or brokers), maintained by a Contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by a Contractor and subject to the Contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

(End of clause)

[54 FR 26558, June 23, 1989, as amended at 55 FR 6256, Feb. 22, 1990]

§ 552.203-70 Restriction on advertising.

As prescribed in 503.570-2, insert the following clause:

RESTRICTION ON ADVERTISING (DEC 1990)

The Contractor shall not refer to this contract in commercial advertising or similar promotions in such a manner as to state or imply that the product or service provided is endorsed or preferred by the White House, the Executive Office of the President, or any other element of the Federal Government, or is considered by these entities to be superior to other products or services. Any advertisement by the Contractor, including price-off coupons, that refers to a military resale activity shall contain the following statement: "This advertisement is neither paid for nor sponsored, in whole or in part, by any element of the United States Government."

(End of clause)

[56 FR 965, Jan. 10, 1991]

FORWARD TO ROOM 6, OEO

THE WHITE HOUSE OFFICE
SUPPLEMENTAL INFORMATION SHEET FOR PERSONNEL ACTION
(TO BE ATTACHED TO FORM WHP-1)

______________ Date

PERSONAL INFORMATION

Name (Ms., Miss, Mrs., Mr.) ______ (Last) (First) (Middle) (Maiden) Birth Date ______

Local Address ______ Birth Place ______

SSN ______

Last Perm. Address ______

Tel. No. ______ ______ Office Emergency ______ Name ______ Tel. No.

Marital Status: ☐ Single ☐ Married ☐ Widowed ☐ Separated ☐ Divorced

Name of Spouse ______

ASSIGNMENT

Office of ______

Reporting to ______ Ext. ______ Room ______

Status: ☐ White House Employee ☐ Detailee ☐ Volunteer ☐ SBA (Contact)

☐ Other ______

Desired Effective Date ______ Ending Date ______

PRIOR EMPLOYMENT DATA

Military Service: ☐ No ☐ Yes Branch ______ ______ Date of Service

Prior Federal Govt. Service as Civilian: ☐ No ☐ Yes Ending Date ______

Current or Last Place of Govt. Service or Civilian Employment: ______ Name

______ Address ______ Tel. No.

Personnel Contact in Current/Last Govt. Agency ______ Name ______ Tel. No.

Prior W. H. Service: ☐ None ☐ Employee ☐ Volunteer ☐ SBA ______

ACCESS/PASS

TO BE COMPLETED BY REQUESTING OFFICIAL

☐ WH Access List ☐ WH Pass ______ Signature of Requesting Official

☐ EOB Access List ☐ EOB Pass ______ Signature of Approving Official

☐ Volunteer Pass

VOLUNTEERS

TO BE COMPLETED BY VOLUNTEER

I acknowledge that the personnel data above is correct and that I am volunteering my services without compensation or promise of such.

______ Signature of Volunteer ______ Date

FOR USE BY WHITE HOUSE PERSONNEL OFFICE ONLY: WHP-2(8/87)

Preliminary copy to Security ______ Date Approved copy to Security ______ Date

FORWARD TO ROOM 6, OEO

THE WHITE HOUSE OFFICE
SUPPLEMENTAL INFORMATION SHEET
FOR PERSONNEL ACTION
(TO BE ATTACHED TO FORM WHP-1)

BOO 724

Date

PERSONAL INFORMATION

Name (Ms., Miss, Mrs., Mr.) (Last) (First) (Middle) (Maiden) Birth Date

Local Address Birth Place

SSN

Last Perm. Address

Tel. No. Office Emergency Name Tel. No.

Marital Status: ☐ Single ☐ Married ☐ Widowed ☐ Separated ☐ Divorced

Name of Spouse

ASSIGNMENT

Office of

Reporting to Ext. Room

Status: ☐ White House Employee ☐ Detailee ☐ Volunteer ☐ SBA (Contact)

☐ Other

Desired Effective Date Ending Date

PRIOR EMPLOYMENT DATA

Military Service: ☐ No ☐ Yes Branch Date of Service

Prior Federal Govt. Service as Civilian: ☐ No ☐ Yes Ending Date

Current or Last Place of Govt. Service or Civilian Employment: Name

Address Tel. No.

Personnel Contact in Current/Last Govt. Agency Name Tel. No.

Prior W. H. Service: ☐ None ☐ Employee ☐ Volunteer ☐ SBA

ACCESS/PASS

TO BE COMPLETED BY REQUESTING OFFICIAL

☐ WH Access List ☐ WH Pass

Signature of Requesting Official

☐ EOB Access List ☐ EOB Pass

Signature of Approving Official

☐ Volunteer Pass

VOLUNTEERS

TO BE COMPLETED BY VOLUNTEER

I acknowledge that the personnel data above is correct and that I am volunteering my services without compensation or promise of such.

Signature of Volunteer Date

FOR USE BY WHITE HOUSE PERSONNEL OFFICE ONLY: WHP-2(2/87)

Preliminary copy to Security Date Approved copy to Security Date

FORWARD TO ROOM 6, OEO

THE WHITE HOUSE OFFICE
SUPPLEMENTAL INFORMATION SHEET
FOR PERSONNEL ACTION
(TO BE ATTACHED TO FORM WHP-1)

_______________ Date

PERSONAL INFORMATION

Name (Ms., Miss, Mrs., Mr.) ______ (Last) (First) (Middle) (Maiden) Birth Date ______

Local Address ______ Birth Place ______

SSN ______

Last Perm. Address ______

Tel. No. ______ ______ Office Emergency ______ Name ______ Tel. No.

Marital Status: ☐ Single ☐ Married ☐ Widowed ☐ Separated ☐ Divorced

Name of Spouse ______

ASSIGNMENT

Office of ______

Reporting to ______ Ext. ______ Room ______

Status: ☐ White House Employee ☐ Detailee ☐ Volunteer ☐ SBA (Contact)

☐ Other ______

Desired Effective Date ______ Ending Date ______

PRIOR EMPLOYMENT DATA

Military Service: ☐ No ☐ Yes Branch ______ ______ Date of Service

Prior Federal Govt. Service as Civilian: ☐ No ☐ Yes Ending Date ______

Current or Last Place of Govt. Service or Civilian Employment ______ Name

______ Address ______ Tel. No.

Personnel Contact in Current/Last Govt. Agency ______ Name ______ Tel. No.

Prior W. H. Service: ☐ None ☐ Employee ☐ Volunteer ☐ SBA ______

ACCESS/PASS

TO BE COMPLETED BY REQUESTING OFFICIAL

☐ WH Access List ☐ WH Pass ______ Signature of Requesting Official

☐ EOB Access List ☐ EOB Pass ______ Signature of Approving Official

☐ Volunteer Pass

VOLUNTEERS

TO BE COMPLETED BY VOLUNTEER

I acknowledge that the personnel data above is correct and that I am volunteering my services without compensation or promise of such.

______ Signature of Volunteer ______ Date

FOR USE BY WHITE HOUSE PERSONNEL OFFICE ONLY: WHP-2(3/87)

Preliminary copy to Security ______ Date Approved copy to Security ______ Date

3/24/93

Charlotte Hays

Professional health people
| Doctors
| Nurses
| Technicians
will review papers sent to us.

Reality check.

Access to working papers, option papers –

One day a week – for a month
Steve Gleason – in charge
Christine Heenan

March 23, 1993

MEMORANDUM TO CHARLOTTE HAYES, OFFICE OF THE VICE PRESIDENT

FROM: BETH NOLAN

SUBJECT: WHETHER THIRD PARTIES CAN PAY COMPENSATION AND EXPENSES FOR WORK GROUP MEMBERS

The Office of Counsel raises no legal or ethical objection to the participants accepting expense payments or ordinary compensation from their regular employer, in connection with Work Group service. If anybody other than the regular employer is compensating them or paying their expenses, we need to review it. We are concerned about any obligation the participant may have to report back to any organization about the specifics of their work on the Review Group. Payment of regular compensation or travel expenses with no strings attached is not a legal or ethical problem. We are picking their individual brains not seeking the news of any organization.

March 26, 1993

MEMORANDUM FOR BERNARD NUSSBAUM

FROM: Beth Nolan

SUBJECT: Support for International Ethics in Government Conferences

For about two years, the Office of Government Ethics and the United States Information Agency have been planning an International Government Ethics Conference, to bring together government ethics practitioners from a number of countries, mostly at their own expense but with some underwriting of the conference from appropriate private sources.

The thrust of the conference is that if democratic governments are to succeed, they must have the confidence of the public that officials are living up to certain standards expected of them in their own cultures. An international conference will help both our Administration and the new democratic republics understand better how to develop such standards and to meet them.

Steve Potts has been heading the OGE effort and Richard Werksman has been representing USIA as its DAEO. The project is on hold pending the appointment for a new Director at USIA.

White House support (mostly moral (?)) for such a conference would ensure support from the new USIA leadership.

Steve Potts would appreciate the opportunity to discuss the conference with you. Shall I call him and arrange a meeting?

THE WHITE HOUSE

WASHINGTON

April 29, 1993

TO: ALL HEALTH CARE TASK FORCE AND WORKING GROUP PERSONNEL

FROM: JOHN D. PODESTA
Assistant to the President
and Staff Secretary

STEPHEN R. NEUWIRTH
Associate Counsel to the President

RE: Task Force and Working Group Records

The following instructions govern the proper handling of records created or received by the President's Task Force on Health Care Reform or the interdepartmental working group, clusters or subgroups:

1. Any documents you create or receive as part of your work with the Task Force or its working group must be preserved. You may not dispose of such documents, even after your work with the Task Force or working group is completed. This rule applies to, among other things, notes, drafts, working papers, charts, graphs, books, publications and incomplete documents. You may dispose of unneeded duplicate copies of existing documents that are not annotated or otherwise marked.

2. You may not delete records created in connection with your work with the Task Force or its working group and stored in computer equipment or any other electronic media. This rule applies to, among other things, e-mail messages you sent or received. Purely personal e-mail messages may be deleted.

3. All Task Force and working group documents are property of the White House Office regardless of whether they are, or have been, transmitted or maintained outside of the White House and Old Executive Office Building. Task Force and working group documents include all documents that you have created or received in your capacity as a Task Force or working group member. These documents include materials received from any source -- e.g., a member of the Task Force, another working group member, a government employee, or a private citizen or group. Be aware that the White House Office retains control over all such documents and that their confidentiality is to be maintained accordingly. **Moreover, you may not take copies of any Task Force**

or working group materials for any personal use or retention, without express prior consent of Marjorie Tarmey.

4. Working group members employed by a federal department or agency should be sure to segregate Task Force and working group documents from department or agency documents you use in your other work. In all instances, Task Force or working group documents should be maintained in separate files and should not be placed in departmental or agency files.

5. When your work with the Task Force or working group is completed, please (a) return all documents that have been forwarded to you by the Task Force's intake center (including any cover routing sheets) to Mary Schuneman, OEOB Room 287; (b) place all other Task Force or working group documents in boxes; (c) mark the boxes to identify the documents as Task Force or working group documents; and (d) identify the general category or categories of documents in each box.

Thank you for your assistance.