COPY

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Retrospectives on Health Reform: Update (5 pages)	04/17/1995	P5 1450

COLLECTION:
Clinton Presidential Records
First Lady's Office
Melanne Verveer
OA/Box Number: 17607

FOLDER TITLE:
[Background on Healthcare Reform] [1]

Adam Bergfeld
2006-0223-F
ab858

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]
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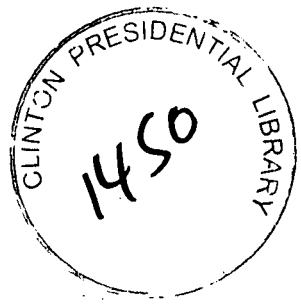
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

THE WHITE HOUSE

WASHINGTON

April 17, 1995



MEMORANDUM FOR HILLARY RODHAM CLINTON

FROM: IRA C. MAGAZINER

SUBJ: RETROSPECTIVES ON HEALTH REFORM: UPDATE

Enclosed is a packet of materials which will bring you up to date on retrospectives on health reform.

1. Over the past few weeks, I have spent about 20 hours going over 1993 materials with Elyse Veron, David Broder and Haynes Johnson's assistant. I also had another 2-hour session with Broder and Johnson. I don't yet have the transcripts from these discussions, but I have enclosed final transcripts from my other discussions with them plus a letter which I sent them responding to a few specific questions they asked.

   They are now finishing their drafts of chapters relating to 1993. I will meet them again to discuss 1994 within the next few weeks.

   Although I seethe inside when I think of how disloyal some Administration officials have been to you and the President and how hurtful they have been to me in their private discussions with the press, I decided to stick to the principle of not being critical of other Administration officials and I withheld materials which would cast our colleagues in a bad light. Although it is tempting, I just don't feel it's right to do and it could sew discord in 1996 when the book appears, which would not be helpful to the campaign.

   As you will see from the transcripts, the only exception is when I am asked a question where others are reinventing history and I had to defend decisions you or the President made. I can be more specific about these instances, if you wish, when we talk next.

   Though I don't know how Broder and Johnson will represent events in their book, I believe that they will be more balanced than previous accounts. They appear to understand that:

   - This was an incredibly difficult undertaking in the best of circumstances.

- Delay was fatal.

- The task force was not responsible for the delay; factors beyond our control caused it and we understood and warned everyone about the consequences of the delay.

- Diversions on NAFTA, Haiti, Somalia, etc.; were in part responsible for our inability to communicate effectively in the fall of 1993.

- The power and sophistication of opposing interest groups reached new heights with health reform and this played a major role in our defeat.

However, as of a few weeks ago, they also appeared to believe that:

- We overreached by proposing too big a package against the advice of some senior Administration officials. It was too much for a President with a 43 percent mandate and slight congressional majorities (compared to the Roosevelt and Johnson majorities when Social Security, Medicare/Medicaid and Civil Rights were passed) to pass major deficit reduction and health care in his first two years.

- We did not successfully build an interest group coalition because we did not negotiate well.

I have tried to respond to these two points in my discussions with them over the past weeks and in the enclosed letter I sent them. I may have made some progress.

The main points I have made which they seem to understand are:

1. The President was fulfilling a campaign commitment. Almost all Democrats and moderate Republicans favored comprehensive reform and our approach was a moderate one.

2. Most political advice we received supported a bold, comprehensive package.

3. The policies we proposed had precedents in bills sponsored by moderates and some of the regulatory language was necessary for CBO scoring.

4. All senior officials in the Administration favored the structure we were proposing; employer mandates, premium caps, mandatory alliances, etc; disagreements were only

about scope of benefits, speed of phase-in and tightness of cost containment.

5. We had had extensive discussions with conservative Democrats and moderate Republicans which led us to believe that a watered down version of our bill would ultimately be acceptable.

6. We were willing to be flexible.

7. Nobody to this day has come up with an alternative approach which addresses the goals of health reform and would have worked better politically than our approach.

8. We negotiated in good faith with interest groups. Many made commitments which they backed away from. Delay and our loss of momentum made it impossible to "close the deal" with many interest groups.

9. Despite all the difficulties, mistakes and delays and the battering we took in the fall, we still entered 1994 in better shape than most had predicted.

- We introduced a comprehensive bill whose financing was validated by Lewin & Company, which was backed by the Congressional Leadership and which was under serious consideration in all relevant committees.

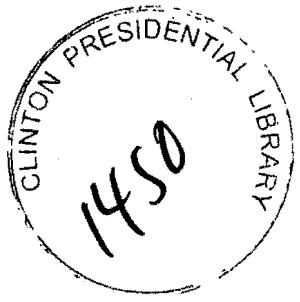
- All the pundits were saying that while our bill would be changed significantly (which we knew and the President invited from the beginning), a universal coverage health care bill was highly likely to pass.

- Polls indicated our bill was favored by a 17 point margin overall and by 30 to 50 point margins when matched up against the Cooper, Chafee or single-payer bills.

- Polls were saying that introducing health reform was the President's greatest achievement of 1993.

2. I am continuing to work with Theda Skopcol, Lawrence Jacobs, Darrel West, James Carville and others who are writing on the subject. Theda is turning her paper into a book. I will get you a draft as soon as I have one. Enclosed is the latest Darrel West article. As you know, ~~James is writing~~ a book. I will give him suggestions for a health care chapter next week.

3. I have enclosed my responses to the Woodward and Drew books. Both authors are



very defensive and we will not likely make progress in getting them to change anything. You asked who in the Administration was responsible for the harmful accounts in their books. The Drew book has been especially harmful. Her accounts are mainly derived from extensive discussions she had with Donna Shalala which were very damaging to you, me and the President. These are the source of her negative comments on pages 189-192, 194, 305-307 and 396. These were backed up by comments from Sara Rosenbaum. Her other main sources were Marina Weiss who is responsible for comments on pages 193, 194 and 308 and David Gergen who played a roll on pages 305-307 and 309. Bob Boorstin and George Stephanopoulous also provided some input (195 and 305-307.) She feels that she is well sourced and won't change her views just based on my letter.

Woodward's accounts come mainly from Gene Sperling, with Marina Weiss and Bob Boorstin playing a role as well. He may change some of his inaccuracies in his paperback edition, but I am not optimistic. Again, he had extensive quotes from meetings with these others to bolster his claims.

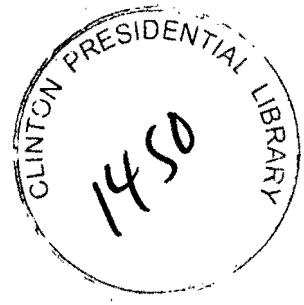
Unless we are prepared to show Woodward or Drew documents and respond in kind to other Administration officials who trashed us, there is little we can do to make their accounts more accurate.

I have shared my responses to Woodward and Drew with Broder and Johnson so that they will not accept as uncontested, the gossip, false descriptions and false accusations in those books.

4. I have enclosed a recent Washington Monthly article which you may not have seen on lobbying and health reform.

5. I have enclosed a DLC editorial critical of the Fallows piece. I have tried to figure out why the DLC feels it necessary to continue to hammer us on health care. They are of course frustrated at the lack of success of many DLC candidates and blaming health care for everything lets all other causes be masked. I also think they raise their money in part by convincing corporate contributors that they will save the Democratic party from liberals and they need examples of enemies who they are fighting. At least they are now limiting their attacks to me instead of also going after you.

It is difficult to hear their attacks on our "failed proposal" since their opposition helped contribute to the defeat of health reform. Ironically, it is their attacks and those of Moynihan which allowed Republicans to commit what Paul Starr called the



"perfect crime," killing health reform without getting any blame. For many pundits, the issue became a dispute among Democrats.

Despite my frustration, I have remained completely silent in the face of their attacks and will continue to do so. It will do the President no good to have any debate between the DLC and any of us on health care now. At some point, I will try to improve my relations with them through other issues.

6. I am continuing to meet with different Washington "insiders" to try to amend their perceptions of what occurred. It is a grind, but I believe that it may be doing some good with some of them.

7. I have enclosed an analysis of our bill to answer the questions you raised about the Forbes quote. In my view, which you may remember I expressed repeatedly in the summer and fall of 1993, our bill was too regulatory in many of its specifics, particularly in its enforcement provisions.

I originally rejected a great deal of this material. At a meeting in your west wing office requested by Sara Rosenbaum, she got authority to put an "enforcement and remedy" section in and to work with HHS and Justice lawyers on an extended set of consumer protection, anti-fraud and enforcement provisions.

I questioned this again at our meeting in early October 1993 in your OEOB conference room when we went over potential policy changes, but dropped my objections out of exhaustion after Sara and others insisted.

8. I am continuing work on our own recounting of what occurred. As the problems get worse on health care, as Congress confronts Medicare and Medicaid cost growth, and as the optimistic predictions about how the corporate sector is solving the cost problem by itself or how Tennessee-type Medicaid revisions can solve the problem prove to be false hopes, I believe people may have a greater appreciation for what we proposed and what we tried to do.

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. statement	Declaration of Marjorie Tarmey. (4 pages)	n.d.	P5 1451

COLLECTION:
Clinton Presidential Records
First Lady's Office
Maggie Williams
OA/Box Number: 10813

FOLDER TITLE:
FACA Documents [1]

Adam Bergfeld
2006-0223-F
ab862

RESTRICTION CODES

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

P1 National Security Classified Information [(a)(1) of the PRA]
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RR. Document will be reviewed upon request.

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Health Care Task Force FACA

DRAFT 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ASSOCIATION OF AMERICAN PHYSICIANS AND SURGEONS, INC, AMERICAN COUNCIL FOR HEALTH CARE REFORM AND NATIONAL LEGAL & POLICY CENTER, Plaintiffs, v. HILLARY RODHAM CLINTON, DONNA E. SHALALA, Secretary of Health and Human Services, LLOYD E. BENTSEN, Secretary of the Treasury, LES ASPIN, Secretary of Defense, JESSE BROWN, Secretary of Veterans Affairs, RONALD H. BROWN, Secretary of Commerce, ROBERT B. REICH, Secretary of Labor, LEON E. PANETTA, Director of the Office of Management and Budget, ALICE RIVLIN, Deputy Director of the Office of Management and Budget, CAROL RASCO, IRA MAGAZINER and JUDITH FEDER, White House Advisors and THE PRESIDENT'S TASK FORCE ON NATIONAL HEALTH CARE REFORM, Defendants.	Civil Action No. 93-399 (Judge Lamberth)

DECLARATION OF MARJORIE TARMEY

I, MARJORIE TARMEY, declare and state as follows:

1. I am the [title] SPECIAL ASSISTANT to Ira Magaziner, Senior Advisor to the President for Policy Development. Mr. Magaziner is a member of the President's Task Force on National Health Care Reform and is head of the Task Force's interdepartmental working group.

2. As [ ] SPECIAL ASSISTANT to Mr. Magaziner, I assist Mr. Magaziner with scheduling matters for the working group, maintain the working

group's administrative files and am generally familiar with the documents that have been made available to the Task Force or any of its members. This declaration is based upon my personal knowledge and information provided to me by members of my staff and other White House staff members involved in administering the work of the Task Force and working group.

3. I have reviewed the document requests submitted by the plaintiffs to this action.

4. I understand that the Task Force's Charter (Request 1) has been made publicly available in the Task Force's reading room and in the Library of Congress. A copy of the Task Force's Charter is attached hereto as Exhibit 1.

5. I understand that the Task Force's schedule or agenda for the one public meeting that it has conducted to date, which occurred on March 29, 1993 (Request 3), has been made publicly available in the Task Force's reading room.

6. My staff and I maintain a master schedule of meetings of members of the working group. (Request 5). This master schedule is not prepared for or by the Task Force itself, but is, instead, designed for the internal operational purposes of the working group. The master schedule has not been made available, furnished or circulated to the Task Force as a whole. No agenda are prepared for the meetings listed in the master schedule.

7. A list of the names of the members of the working group members and consultants to the working group were made publicly available on or about [illegible] Request 6. A revised and

updated list is currently being prepared and will be released to the public in the near future. My staff and I maintain copies of resumes of the members of the working group and its consultants. These resumes have not been made available, circulated or provided to the Task Force.

8. During the course of its work, members of the working group, including Mr. Magaziner, have produced briefing papers and preliminary issues and options papers. My staff and I have not generally circulated most of these materials to the Task Force as a whole. Some of them have been made available to particular Task Force members.

9. These materials share several basic characteristics. With respect to particular areas of health care, these papers typically identify and analyze current practices and conditions, note problems with or benefits of them, provide factual information that illustrate the issue, suggest options for reform and the advantages and disadvantages of them with relevant data, raise additional considerations and issues for further study and ask questions that will require answers. Other documents more generally outline issues and questions for review, offer overviews of potential reform packages and note problems and potential solutions.

10. In addition, a preliminary work plan for the Task Force was prepared for the Task Force when it was created. The plan provides background on the health care crisis and possible solutions offered by the President during the Presidential

campaign, specific areas of analysis and inquiry, an explanation of the process by which the Task Force and its working group would conduct its work and a description of organizational and staffing matters.

I declare under penalty of perjury that the foregoing is true and correct to the best of my ability and belief.

MARJORIE TARMEY

Dated: _____

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Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. fax	Declaration of Mary Schuneman. (4 pages)	04/20/1993	P5

1452

COLLECTION:
Clinton Presidential Records
First Lady's Office
Maggie Williams
OA/Box Number: 10813

FOLDER TITLE:
FACA Documents [2]

Adam Bergfeld
2006-0223-F
ab859

RESTRICTION CODES

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

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U.S. Department of Justice

Washington, D.C. 20530

CIVIL DIVISION

FEDERAL PROGRAMS BRANCH

FAX TRANSMITTAL COVER SHEET

DATE: 4/20/93

TO: Mary Schneiman

Steve Neuwirth

FAX NUMBER: 456-6241 456-6279

FROM: Jeff Gutman

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

THERE ARE A TOTAL OF 4 PAGES INCLUDING THIS COVER PAGE IN THIS TRANSMISSION.

Mary:

We think it makes most sense for you to sign the attached declaration. Read it over; if you have additions or changes, call me (514-4775) or Sarah Wilson (514-3486). If it's OK, we'll come by and have you sign it. Consistent with what we have drafted, we think that you should send over the letter campaign stuff to the reading room. I know there is some Bates stamping to do on part of it. Send over what you can now w/o stamping and we'll deal with the rest later.

Steve:

I'm preparing a separate declaration for Marjorie. OLP, Dave + Elie are reviewing the memo incorporating your changes. Once they've OKed it, I'll send it off to you.

COPY

10:30 am - 4 Maggie

DRAFT 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ASSOCIATION OF AMERICAN PHYSICIANS AND SURGEONS, INC, AMERICAN COUNCIL FOR HEALTH CARE REFORM AND NATIONAL LEGAL & POLICY CENTER, Plaintiffs, v. HILLARY RODHAM CLINTON, DONNA E. SHALALA, Secretary of Health and Human Services, LLOYD E. BENTSEN, Secretary of the Treasury, LES ASPIN, Secretary of Defense, JESSE BROWN, Secretary of Veterans Affairs, RONALD H. BROWN, Secretary of Commerce, ROBERT B. REICH, Secretary of Labor, LEON E. PANETTA, Director of the Office of Management and Budget, ALICE RIVLIN, Deputy Director of the Office of Management and Budget, CAROL RASCO, IRA MAGAZINER and JUDITH FEDER, White House Advisors and THE PRESIDENT'S TASK FORCE ON NATIONAL HEALTH CARE REFORM, Defendants.	Civil Action No. 93-399 (Judge Lamberth)

DECLARATION OF MARY SCHUNEMAN

I, MARY SCHUNEMAN, declare and state as follows:

1. I am the [title] of the intake center for the President's Task Force on National Health Care Reform.

2. This declaration is based upon my personal knowledge and information provided to me by members of my staff.

3. The intake center processes all correspondence addressed to the Task Force ~~and to the~~ First Lady as Chairperson

of the Task Force. The intake center also receives and processes mail addressed to other components of the federal government that relate to the work of the Task Force.

4. To date, the intake center has received approximately 150,000 pieces of correspondence from private citizens, public officials, and organizations.

5. Upon receipt, a "Health Care Task Force Sorting Sheet" is attached to each piece of correspondence, with the exception of form letters. A blank copy of the Sorting Sheet in Attached as Exhibit A. The sorting sheet identifies the sort of correspondence received, and the type of acknowledgement the correspondent should receive in response.

6. Correspondence is sorted into one of the following categories: a) letters from individuals describing personal health problems and experiences with the medical system; b) letters requesting employment or offering to help the Task Force; c) letters from physicians or other health care providers expressing views about health care reform; d) letters from health care and other types of organizations, on organizational letterhead, expressing views about health care reform; e) multiple letters or postcards using identical language to advocate or oppose a particular reform (letter campaign); f) substantive policy proposals and studies; g) general mail.

7. Invitations to speak, other scheduling requests, letters addressed to the President, ~~and letters~~ requiring further follow-up are rerouted to the appropriate officials.

COPY

8. Letterhead materials (category d above), letter campaign materials (category e above) and policy proposals and studies (category f above) have been and will be forwarded to the reading room after review.

9. We have withheld from the reading room documents falling within categories a-d and g, above. As noted, these include letters from individuals, many of which contain personal medical and financial information addressed to the First Lady, and offers to help the Task Force, many of which include resumes.

10. We have also withheld the sorting sheets, many of which contain supplemental notes from the reader regarding appropriate processing.

I declare under penalty of perjury that the foregoing is true and correct to the best of my ability and belief.

MARY SCHUNEMAN

Dated:

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION	
001. letter	Bernard Nussbaum to John Conyers and William F. Clinger. Status of FACA Litigation. (7 pages)	10/25/1993	P5	1453
002. memo	Vince Foster to Maggie Williams. Re: Attached Memo. (5 pages)	03/23/1993	P5	1454
003. fax	Jeff Gutman to Marjorie Tarney. File FACA. (15 pages)	11/10/1993	P5	1455

COLLECTION:
Clinton Presidential Records
First Lady's Office
Maggie Williams
OA/Box Number: 10813

FOLDER TITLE:
FACA Documents [4]

Adam Bergfeld
2006-0223-F
ab860

RESTRICTION CODES

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COPY

File FACA

DRAFT
PRIVILEGED AND CONFIDENTIAL
ATTORNEY-CLIENT/WORK PRODUCT

October 25, 1993

Honorable John Conyers, Jr.
Chairman
William F. Clinger, Jr.
Ranking Minority Member
Committee on Government Relations
House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515

Gentlemen:

We have received your letter, dated October 21, 1993, concerning records of the President's Task Force on Health Care Reform.

As stated in your letter, your inquiry to us arises from "recent press reports" -- specifically, we understand, an article, dated October 21, in the Washington Times. Your letter also asserts that "troubling questions" may exist "about the failure to comply with the instructions of Federal District Judge Royce C. Lamberth to maintain these records."

We are providing this response to eliminate the misunderstandings that the Washington Times story has apparently generated. As shown below, the government has maintained the records that are the subject of your inquiry. Indeed, as discussed below, Judge Lamberth already determined that, in light of the extraordinary steps taken by the government to maintain these records, no court intervention was necessary to ensure their maintenance.

* * *

STATUS OF THE FACA LITIGATION

The United States Court of Appeals for the District of Columbia held on June 22, 1993, that the President's Health Care Task Force -- the ___ member committee composed of the First Lady, ___ cabinet secretaries and ___ senior White House officials -- is not subject to the Federal Advisory Committee Act ("FACA"). This unambiguous ruling meant that none of the FACA's requirements -- including requirements for open meetings and public dissemination of documents -- apply to the Task Force.

The United States District Court for the District of Columbia had previously determined that the separate interdepartmental working group -- composed of over 500

individuals who gathered information for, and provided information to, the Task Force -- was similarly not subject to the FACA. In its June 22 opinion, however, the Court of Appeals found there had not been a sufficient record before the district court upon which to make a determination as to whether FACA applied to this working group.

The Court of Appeals therefore remanded to the district court the limited question of whether the interdepartmental working group -- as opposed to the Task Force itself -- was subject to the FACA. In remanding the case to the district court, the Court of Appeals made no findings on whether the working group is, indeed, subject to the FACA. The Court of Appeals noted, though, 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." The Court of Appeals also observed, among other things, that "[t]he working groups, as a whole, seem more like a horde than a committee" of the type that is subject to the FACA.

The Court of Appeals stated that to resolve the issue of whether the FACA applies to the interdepartmental working group, the district court should permit expedited discovery to determine the working group's "purpose, structure, and personnel." Proceedings related to this discovery are currently pending before the district court (and are discussed more fully below).

THE DISTRICT COURT ALREADY DETERMINED
THAT THE GOVERNMENT WAS TAKING SUFFICIENT
STEPS TO PRESERVE HEALTH CARE MATERIALS

On June 15, 1993, the plaintiffs in the pending Task Force litigation asked Judge Lamberth to enter an order requiring the government to maintain documents of the Health Care Task Force and the interdepartmental working group. The plaintiffs' motion was based principally on an unsubstantiated reported in the Washington Times suggesting that the government was shredding certain Task Force documents.

Although Judge Lamberth did enter a preliminary order that day in response to the Washington Times story, the government was soon thereafter able to demonstrate that the Washington Times' report of shredding was totally baseless.

Moreover, the government explained to Judge Lamberth that long before plaintiffs' June 15 motion, the Task Force and interdepartmental working group had already taken extraordinary steps -- including a lengthy oral presentation to all working group members and special written instructions for all Task Force and working group members -- to ensure that all Task Force and working group documents would be preserved. The government

recognized its continuing obligation to maintain records under the terms of the Presidential Records Act.

In addition, the government showed that the White House Office of Records Management had already been accountable for, and taken steps to preserve, Task Force and working group materials as they were delivered to that Office for long-term storage and preservation. The government noted that the Director of the White House Office of Records Management serves as the custodian of all Presidential records and has been, and remains, the appropriate custodian of Task Force and working group documents.

Based on the government's showing, Judge Lamberth entered a written order on June 22, 1993, confirming his satisfaction with the steps taken by the government to maintain materials received and created by the Task Force and interdepartmental working group. Judge Lamberth's June 22 order effectively rescinded his June 15 order concerning records preservation, and stated that no further Court intervention was required to ensure maintenance of the records at issue. Specifically, the Court stated:

> [D]efendants have satisfied the court that every document is being preserved. Defendants have nominated one White House official -- [the Director of Records Management] -- as the custodian of all the documents relevant to this case. Defendants have also committed themselves to preserving all documents, and to that end have instituted procedures for ensuring that all documents are maintained and documented.
>
> Thus, the court is satisfied that there is no basis for issuing a preservation order at this time. . . . It is hereby ORDERED that the court's order of June 15, 1993, is RESCINDED.
>
> -- Memorandum opinion and order, July 22, 1993

THE GOVERNMENT HAS CONTINUED TO PRESERVE THE RECORDS OF THE TASK FORCE AND WORKING GROUP

At no time has the government terminated its practice of preserving all records of the Task Force and working group. Nor has the Judge Lamberth or any other Court made any findings even suggesting that the government has failed to fulfill any legal obligation to maintain these records. Indeed, since Judge Lamberth ruled on July 22 that he would take no action to compel the preservation of documents, the plaintiffs in the pending

litigation have never again moved the Court for any order to compel the preservation of any materials.

The government has retained, among other things, all records relating to membership on the Task Force and working group; personnel and payrolls; expense vouchers; ethics or other conflict of interest statements; and procurement. The government has also preserved any meeting minutes or agendas that were created by the Task Force or interdepartmental working group.

As you know, membership on the interdepartmental working group included employees of the White House and several federal agencies (including the Departments of Health and Human Services, the Treasury, Commerce, Justice, Defense and Veterans Affairs) **[any others?]**. Records relating to personnel, payrolls and expenses of these members have been maintained at the Old Executive Office Building or at the departments where working group members were employed. Records relating to ethics and conflict of interest matters have similarly been retained at the Old Executive Office Building or at the departments where working group members were employed. Substantive working group documents are, for the most part, stored at the White House Office of Records Management or other locations in the Old Executive Office Building. The Records Management Office delivered formal written requests to all working group members for the return of documents, which the Office continues to receive.

We are not aware of any "inventories" of records of the Health Care Task Force or the interdepartmental working group.

THE WASHINGTON TIMES REPORT
ON OCTOBER 21 MISCHARACTERIZED
THE PENDING DISCOVERY PROCEEDINGS
BEFORE THE FEDERAL DISTRICT COURT

As discussed above, the Court of Appeals for the District of Columbia has remanded to the District Court the question of whether the interdepartmental working group (as opposed to the Health Care Task Force itself) is subject to the Federal Advisory Committee Act. As also discussed above, the Court of Appeals directed the District Court to permit discovery concerning the "purpose, structure and personnel of the group."

The plaintiffs in the pending suit have therefore promulgated certain discovery requests. Contrary to assertions in the October 21 Washington Times story, the government has produced the information that is responsive to the plaintiffs' requests and relevant to the working group's "purpose, structure and personnel." Thus, in over ___ pages of information, the government has, among other things:

-- produced lists of the participants on the interdepartmental working group, each subgroup or "cluster group," each audit group, and each consumer and health professional "outreach" group;

-- identified which of the special government employees and consultants retained in connection with the working group effort were paid, and identified any contractual relationships that were entered into by the government with those special government employees and consultants;

-- listed the names of all working group members who completed financial disclosure forms (SF 278 or SF 450), and explained that special government employees and consultants were required to attend ethics briefings and consultations; and

-- identified those HHS special government employees who were reimbursed for travel expenses, and listed each White House Office special government employee who received reimbursement for travel and the dates of that travel.

At the same time, the government has objected to a number of plaintiffs' discovery requests on grounds that they seek information not relevant to the working group's "purpose, structure and personnel." Thus, for example, the government has argued that contents of financial disclosure forms, records showing the amounts that working group members were paid, expense reimbursement forms, and substantive agendas and minutes of working group meetings are not probative of any issues that the district court must now determine. The district court has yet to rule that any such information must be produced by the government.

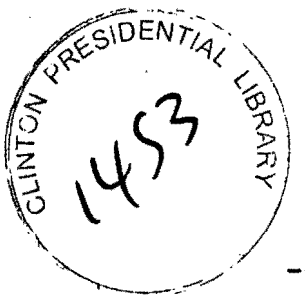
On the other hand, the government has never suggested that its records are "inaccurate" or that any records that were created are now "lacking." Nor has Judge Lamberth or any other Court entered an order, or made any findings, to that effect. The question of whether records exist is not even presently pending before the district court; the only issue now being considered by the court is whether the government has adequately responded to plaintiffs' discovery request, and whether certain categories of documents requested by the plaintiffs are even relevant to the suit.

Thus, there is simply no basis for the Washington Times' assertion that "records are so incomplete that the administration can't even determine who served on the task force." The membership of the Task Force -- composed of the First Lady, cabinet secretaries and senior White House staff --

has been a matter of public record since January 25, 1993. With respect to the interdepartmental working group, the government has, as noted, already produced in litigation a full listing of the over 500 working group members and their affiliations. Justice Department attorneys and White House staff devoted substantial effort to ensuring the accuracy of these lists. It is merely a reflection of the government's candor that the discovery response in the pending litigation acknowledges that these lists may not account for every instance of attendance by particular individuals at each of the over 1000 meetings of the various "cluster" groups, subgroups, audit groups or outreach groups.

Similarly:

-- No basis exists for the Washington Times' assertion that the government did not "know how much consultants were paid." The government has disclosed which consultants were paid; has argued that the amount of such payment is irrelevant to the pending litigation; and has disclosed that most consultants and other special government employees were not paid in any event.



-- No basis exists for the Washington Times' assertion that the government "shrugged off the need" to comply with ethics rules and does not know who filled out ethics forms. The government has disclosed the names of those working group members who completed financial disclosure forms, and has explained that special government employees and consultants were required to attend special ethics briefings. The government has argued that the ethics forms and their contents are irrelevant to the issues to be decided by the Court, but has never suggested that compliance with applicable ethics regulations was either not required or unimportant.

-- No basis exists for the Washington Times' assertion that the government failed to maintain expense and travel vouchers and does not know "if travel expenses were reimbursed." The government has argued that this information is not relevant in the pending suit, but has nonetheless provided the plaintiffs with detailed information on reimbursement of travel expenses. To date, the plaintiffs have not actively sought production of any expense materials unrelated to travel.

Nor, finally, does any basis exist for the Washington Times' suggestion that the government failed to fulfill any

obligations to preserve substantive minutes or agendas of working group meetings. The government has argued that these documents are not only irrelevant to the narrow issues in the pending litigation, but that plaintiffs would only be entitled to obtain such documents if plaintiffs were to prevail on the merits of their FACA claim. The government has also explained that, given the nature of the working group and its structure, such agendas and minutes were not typically created at each of the over 1000 working group meetings. The government has, however, never suggested that any existing agendas and minutes have not been properly maintained, and has identified certain of those minutes and agendas in response to the plaintiffs' discovery requests.

Very truly yours,

Bernard W. Nussbaum
Counsel to the President

COPY

March 23, 1993

MEMORANDUM

TO: Maggie Williams
Melanne Verveer

FROM: Vince Foster VF/ds

RE: Attached Memo

Our office believes the First Lady should be covered in principle and consistent with FACA position she is "functional equivalent". Agreed?

THE WHITE HOUSE

WASHINGTON

March 22, 1993

MEMORANDUM FOR VINCE FOSTER

FROM: DONSIA STRONG

SUBJECT: LOBBYING DISCLOSURE ACT OF 1993

The question has arisen as to whether Mrs. Clinton would be a covered person under the proposed Lobbying Disclosure Act of 1993. Under the proposed statute lobbyists who contact certain executive branch officials, Members of Congress or their staff will be required to register with the new Department of Justice Office of Lobbying Registration and Public Disclosure.

Because Mrs. Clinton is not an officer or employee of the White House or executive branch department or agency, it would seem that a "lobbying contact" with her would not trigger registration. However, this line of reasoning is probably in direct contradiction with the arguments made in connection with the recent lawsuit.

Under current law any lobbyist paid for the "principal purpose" of influencing the passage or defeat of legislation in Congress must register. Contact with executive branch officials creates no obligation on behalf of a lobbyist to register. Therefore, under current law a "lobbying contact" with Mrs. Clinton does not trigger registration, irrespective of her status.

This has become an issue because the House Subcommittee on [illegible] Relations is scheduled to hold

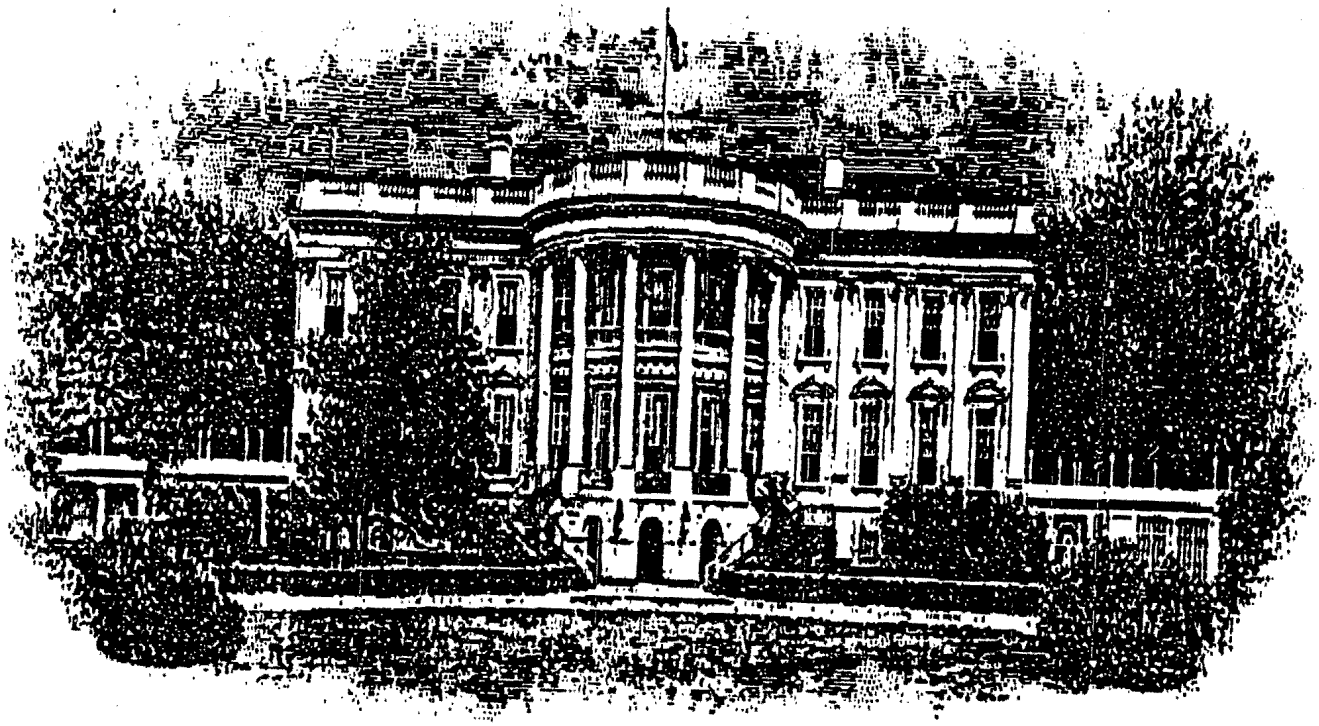
Administrative Law and Government Relations -- COPY -- Extended Page

a hearing on the Lobbying Disclosure Act of 1993 on March 31, 1993 and the Administration will supply a witness to testify. There is always the possibility that questions could be asked solely to embarrass the Administration with respect to the First Lady's role.

In the wake of the Lamberth decision, should there be any special provision made in the statute or report language regarding whether or not a "lobbying contact" with Mrs. Clinton triggers registration?

COPY

The White House



DATE: 3/23/93

COUNSEL'S OFFICE

FACSIMILE TRANSMISSION COVER SHEET

TO: Maggie, Melanne

FAX NUMBER: 6244

TELEPHONE NUMBER: COPY

FROM: Vince Foster

Extended Page

TELEPHONE NUMBER: COPY 456-6611

PAGES (INCLUDING COVER): 3

COMMENTS:

COPY

U.S. Department of Justice

File FAX

Washington, D.C. 20530

CIVIL DIVISION

FEDERAL PROGRAMS BRANCH

FAX TRANSMITTAL COVER SHEET

DATE: 11/10/93

TO: Marjorie Tarney

FAX NUMBER: 456-7739

FROM: Jeff Gutman
Fax No. (202) 616-8202 (LOCAL) -- 369-8202 (FTS)
9th FLOOR

THERE ARE A TOTAL OF 8 **PAGES INCLUDING THIS COVER PAGE IN THIS TRANSMISSION.**

DELIVER IMMEDIATELY

ATTORNEY-CLIENT AND ATTORNEY WORK PRODUCT
PRIVILEGED MATERIAL

Marjorie:

We need to get information on two categories of people:

1. The White House Office SGEs and consultants
2. Members of the audit and other groups.

To help you on #1, I've attached the lists of the SGEs and consultants and crossed off the ones that the White House did not bring on. You'll see that the WH SGEs/consultants fell into 4 categories:

1. Intergovernmental people
2. People who worked on the ethics group (#17)
3. People who worked on other groups (labelled "not 17")
4. Policy analysts and assistants (circled)

We need to get documentation, or confirm that no such documentation exists, for each of these 4 categories of people. Keep in mind that the policy analysts (eg Klein, Lawler) and assistants (eg Gehan, Kelley) are included. We need:

1) Any time and attendance reports. [Confirm that there are none.]

2) Records of salary or payment. [Confirm that the WH did not pay any of these people, incl. the analysts and assistants.]

3) Records of travel or other expenses reimbursed by the WH. [I am working with Andrea Rutledge on this one.]

4) Ethics forms [I have verified with Charlotte and Beth that no such forms were completed. Confirm that this was true for the policy analysts and assistants too]

For the audit groups (numbers, legal, minorities, admin. simplification and HPRG), we need the following:

Perhaps the best source for this information are the WH contacts with each (Lynn, Charlotte, Jennifer)

1) Any time and attendance reports. [Confirm that there are none.]

2) Records of salary or payment. [Confirm that the WH did not pay any of these people]

3) Records of travel or other expenses reimbursed by the WH. [Confirm that no travel expenses were paid.]

4) Ethics forms [Confirm that none of the audit group members did ethics forms]

5) All written agendas, or even meeting schedules, prepared for any audit group.

If you determine that any audit group meetings occurred without a written agenda, please tell me.

6) All "sign-in" lists for each audit group meeting.

7) All written minutes for any audit group meeting.

For the "consumer" and physician "outreach" groups, we need the following:

1) Any time and attendance reports. [Confirm that there are none.]

2) Records of salary or payment. [Confirm that the WH did not pay any of these people]

3) Records of travel or other expenses reimbursed by the WH. [Confirm that no travel expenses were paid.]

4) Ethics forms [Confirm that none of the audit group members did ethics forms]

5) All written agendas, or even meeting schedules, prepared for any "outreach" group meeting.

   If you determine that any outreach group meetings occurred without a written agenda, please tell me.

6) All "sign-in" lists for each outreach group meeting.

7) All written minutes for any outreach group meeting.

For the "drafting" group, we need the same 7 categories of information, plus:

1) A list of names of members of the "drafting" group;

2) Employment affiliations.

Finally, we indicated that William Welch from the Urban Institute was an unpaid OMB SGE. OMB now tells me that it did not bring him on. Is he a WHO SGE? Do you have a phone number for him?

All of this must be done quickly. If you have any questions, let me know.

Jeff
514-4775

William Welch

The Court has ordered defendants to produce the following categories of

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ASSOCIATION OF AMERICAN PHYSICIANS AND SURGEONS, INC., et al.,

Plaintiffs,

v.

HILLARY RODHAM CLINTON, et al.,

Defendants.

Civil Action No. 93-0399 (RCL)

MEMORANDUM AND ORDER

This matter comes before the court on plaintiffs' motion to compel answers to interrogatories and production of documents. The Court has carefully read each of defendants' responses, along with all memoranda in support of and in opposition to plaintiffs' motion. On October 20, 1993, counsel also presented oral arguments to the court.

The exception to the Federal Advisory Committee Act applying to each working group body must be on the basis that the group is composed wholly of full-time government employees. (Court of Appeals' slip op., p.26). When the body (be it a sub-group or whatever) is asked to render advice or recommendations as a group, it is a Federal Advisory Committee Act advisory committee unless it is composed wholly of full-time government employees. (Id., p. 29). This court's task is to inquire into:

> 1. The formality and structure of the working group and its sub-groups to determine if there are advisory committees within the working group, even if the working group itself is not an advisory committee.

> 2. The truth of the government's claim that all members of the working groups are full-time officers or employees of the government.
>
> 3. The status of the special government employees, where they came from, how many hours they worked, and whether they were full-time.
>
> 4. The status of the consultants-did each only come to a one-time meeting, or is his or her role functionally indistinguishable from other members of the group or sub-group. Any consultant who regularly attended and fully participated in meetings should be regarded as a member of that group or sub-group, and the consultant's status as a private citizen would then disqualify that group or sub-group from exempt status under the Federal Advisory Committee Act.

The Court of Appeals specifically cautioned that the Federal Advisory Committee Act cannot be avoided by simply appointing, for example, "10 private citizens as special government employees for two days, and then have the committee receive the section 3(2) exemption as a body composed of full-time government employees." (Id., pp. 31-32).

Importantly, Circuit Judge Buckley, in his concurring opinion, noted the importance of the government's argument regarding compliance with ethics laws:

> "Mr. Magaziner . . . took pains to stress the fact that every member of and consultant to the group -- whether a regular or special government employee, whether working full time or part, for pay or without -- was required to file a financial disclosure statement and to comply with other requirements of these laws."

(Court of Appeals slip op., Buckley, J. Concurring, at 11-12.) Discovery into the truth of Mr. Magaziner's affidavit on this point, then, also appears to be warranted.

Rule 26 must be liberally construed to allow discovery into any factual matter that is germane to any of the remaining legal

issues in this case, and that may lead to the discovery of admissible evidence or may relate to circumstantial evidence.

Defendants have submitted meritless relevancy objections in almost all instances, and incomplete and inadequate responses in most instances, and plaintiffs' motion to compel shall be granted as set forth herein.

The court rejects defendants' objection that because the current complaint has no specific allegation that "the interdepartmental working group, its cluster groups or subgroup or any other groups were subject to the FACA" plaintiffs are not entitled to seek discovery on these issues. The complaint can be amended to conform to the evidence discovered, and there is no basis at this late stage - on remand, after full briefing - to now raise an archaic technical pleading objection. After full discovery, the court will require an amended complaint to be filed that conforms to the evidence and frames the issues for deciding dispositive motions or, if necessary, trial.

The court also rejects defendants' interpretation of their obligations to respond to outstanding discovery on an on-going basis. For example, in defendants' response to discovery request No.2 (at p.8), defendants noted that "there are a few additional individuals listed who may have maintained expert or consultancy agreements . . . [who] are not designated as having been retained by a particular governmental entity pending the results of a continuing search for pertinent documentation." The proper response by the government would have been to file its incomplete

information and move to enlarge time for filing its complete answer, with an estimate of how much time would be needed. Instead, the government decided it would file an incomplete answer and then supplement it whenever it pleased, effectively divesting this court of control over the discovery process and ensuring that during the briefing process on the motion to compel the government would continue to produce dribbles and drabs of information at its convenience. This has unnecessarily complicated judicial review by providing a constantly changing target. The court condemns this litigation tactic and will not tolerate it in future responses in this case.

Defendants initially submitted a preposterous response to plaintiffs' request for lists of individuals who participated with each working group, saying that for Groups 1A and 22A-D "no such list was ever created." The lack of a formal, pre-existing list obviously did not excuse defendants from complying with plaintiffs' request. Apparently even defendants now recognize that, since they have now filed supplemental responses regarding the individuals in Groups 1A and 22A-D. Again, the court rejects this improper litigation tactic.

Even more egregious, however, is the defendants' response that the lists of meeting participants they created "should not be understood as fully exhaustive or completely accurate lists . . . ." Defendants go on to say that given "the fluidity and informality of the process by which individuals participated in the interdepartmental working group[,] the lists] contain the names

of some individuals who did not attend any meetings or who only attended one or two. Similarly, some individuals who attended some working group meetings are undoubtedly not listed." Defendants admitted at oral argument that no effort was made to check the records of each working group for agendas, meeting minutes, and lists of participants, because such documents were not "routinely" prepared. This does not justify the government's refusal to find and produce those documents that were prepared - albeit perhaps pursuant to a protective order.[1] Defendants also admitted at oral argument that they made no effort to check Secret Service records of meeting participants. Again, while such records would not be complete - since some people with appropriate passes would not be listed - they would be probative, since the names plaintiffs are most likely seeking are those most likely to need special clearances for meetings. Defendants cannot simply check the records that happen to be in Mr. Magaziner's office, a "sampling" of other records, and then claim to have properly responded. Defendants have again improperly thwarted plaintiffs' legitimate

---

[1]The court understands the defendants' concerns about production of substantive working group documents which will be publicly released only if plaintiffs ultimately prevail. The court does not understand, but is willing to consider, any argument defendants might make for a protective order for agendas or minutes, to preclude use except in connection with this litigation. The court is doubtful that a protective order is warranted for participant lists. What the court has no doubt whatsoever about, however, is plaintiffs' entitlement to have an appropriate search conducted to locate all such agendas, minutes, and lists. To the extent that plaintiffs' original wording was overbroad, it has now been refined. Plaintiffs are entitled to try to gather evidence to show that "consultants" are the functional equivalents of fully participating members of groups and sub-groups.

discovery requests.[2]

Defendants have refused to provide full information on what they call "audit groups" that were outside the interdepartmental working group, and have provided no information whatsoever on the "drafting group." The court rejects the argument that plaintiffs are not entitled to all germane information about all of the groups and sub-groups at the White House that dealt with health care reform issues. It matters not what label or title the group or sub-group had. Plaintiffs are entitled to inquire into the formality and structure of all these groups and sub-groups, and defendants are again improperly withholding the germane information.

Time and attendance records and records of payments made (for per diem or other work or for travel and other expenses) are clearly germane evidence since they may provide circumstantial evidence that plaintiffs can use to argue that the government's labels as special government employees as well as consultants are a sham. The same is true for financial disclosure or ethics forms - the signature and date and fact the form was or was not completed is germane to plaintiffs' contentions. The court will allow redaction of those other parts of the forms that are not already publicly available. Defendants have, however, even refused to provide to plaintiffs forms that are already publicly available.

---

[2]Defendants' burdensome argument is categorically rejected. This court does not accept such arguments without specific estimates of staff hours needed to comply, and defendants submitted no such estimates.

Defendants have no even arguable basis for such improper withholding.

Plaintiffs' Motion to Compel is GRANTED as set forth herein. Defendants shall, within 20 days of this date, file their final supplemental discovery responses.

Plaintiffs are entitled to their attorney's fees, having prevailed on their motion to compel, and such an award of fees is not unjust under Rule 37 of the Federal Rules of Civil Procedure. Plaintiffs' detailed statement of fees and costs shall be filed within 10 days. Defendants may comment thereon within 5 days thereafter.

SO ORDERED.

Royce C. Lamberth

Royce C. Lamberth
United States District Judge

DATE: NOV 1993

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. resume	Kelly F. O'Connor. [partial] (3 pages)	05/24/1993	P6/b(6)
002a. map	The Old Executive Office Building (5 pages)	[none]	b(2), b(7)(E)
002b. map	The Old Executive Office Building (1 page)	[none]	b(2), b(7)(E)
003. fax	Letter from Collin Peterson to Charles Bowsher. [partial] (1 page)	05/14/1993	P5 1456

COLLECTION:
Clinton Presidential Records
First Lady's Office
Maggie Williams
OA/Box Number: 10813

FOLDER TITLE:
Interagency Health Team Binder

Adam Bergfeld
2006-0223-F
ab621

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]

Health Care - Notebook NAFTA yellow

MAY 14 '93 12:59 202 225 4960 PAGE.002

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

May 14, 1993

Maggie -
Let's continue to insulate Hillary from this type of thing
Steve

Charles Bowsher
Comptroller General
U.S. General Accounting Office
441 G St., N.W.
Washington, D.C. 20548

Dear Mr. Bowsher:

On May 12, 1993, Ambassador Mickey Kantor, the U.S. Trade Representative, announced in a press release on the letterhead of the Office of the United States Trade Representative (USTR) the "formation of the leadership group of Elected Officials for NAFTA, a bipartisan group of highly respected state and local leaders . . . [who] will work to generate support for the NATFA [North American Free Trade Agreement]. The Coalition's membership will continue to expand." It was accompanied by statements from several officials on why they favored NAFTA. (See attached press release entitled "Ambassador Mickey Kantor Announces Formation of Leadership Group of Elected Officials for NAFTA," OTR, May 12, 1993).

The press release listed three USTR employees as contact persons and provided an USTR telephone number. A call by my Subcommittee staff to that number was referred to an employee in USTR's intergovernmental section. That call elicited the information that the coalition had been organized because state and local elected officials had called USTR and asked what they could do to support NAFTA. It would be expanded by the addition of other elected officials who might contact USTR and "would be put on the list" and also by those who might join upon the personal request by Ambassador Kantor. Members would be encouraged to write editorial articles for local media and take other steps to encourage support of NAFTA.

Based on this preliminary inquiry by the Subcommittee, it appears that the pro-NAFTA leadership group will be run out of USTR's offices. The level of government support to be provided to this grassroots lobbying group is as yet unclear.

These activities raise serious questions about potential ethical violations and possible criminal activities on the part of

COPY

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Edmund J. Hull to Martin S. Indyk. Subject: USISTC: Legal Issues. (2 pages)	04/14/1993	P5 1457
002. email	Earl A. Wayne to Brenda I. Hilliard. Subject: Briefing Materials for the First Lady and Brundtland. (1 page)	01/28/1993	P1/b(1)
003. email	Cathy Millison to Barry F. Lowenkron. Subject: First: Lady's Correspndence. (1 page)	08/20/1993	P1/b(1)

COLLECTION:
Clinton Presidential Records
NSC Emails
A1-Record (Jan 93-Sept 94) ([First Lady; Health Care])
OA/Box Number: 570000

FOLDER TITLE:
[01/27/1993 - 08/20/1993]

Adam Bergfeld
2006-0223-F
ab627

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]
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NATIONAL SECURITY COUNCIL

14-Apr-1993 14:32 EDT

UNCLASSIFIED

MEMORANDUM FOR: Martin S. Indyk (INDYK)

FROM: Edmund J. Hull
(HULL)

SUBJECT: USISTC: Legal Issues

Following from Allen Kreczko after reviewing USISTC draft:

1) Congressional participation.

Better that they participate on advisory panel than on commission. Problems with commission role as follows:

a) Separation of powers. Congressmen could not participate if commission exercised any executive powers. As currently drafted, commission only hears reports and recommends, so it might be ok, but any expansion of commission's role would be prejudiced.

b) Precedent. Allen et. al. know of no precedent for Congressmen being appointed to executive-branch commissions hence this could set a major precedent -- and even if desirable here -- could make it difficult in other undesirable cases.

c) Authority. Brown obviously would not have authority over Congressional reps.

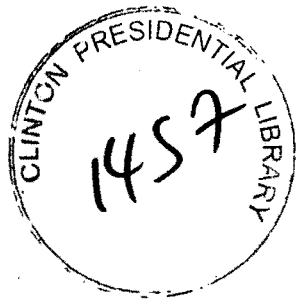
None of the above is necessarily insurmountable, but it would take in depth study by White House counsel and perhaps policy decision (on precedent) before go ahead.

No problem with Congressmen as members of advisory panel.

FACA. Enormous attention now being accorded to Health Panel and First Lady means that final agreement will have to be checked with White House counsel to make sure it abides by FACA. They are fighting suit on Health Care largely on grounds that it should be exception to the law, and White House counsel is very sensitive to any action at this sensitive time that suggests we are making another exception. Allen's first impression is that current structure with Advisory Panel will be okay.

CC: Records (RECORDS)

CC: Bruce O. Riedel (RIEDEL)



Additional Header Information Follows

Date Created: 14-Apr-1993 14:18
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VMS Filename: OA$SHARE51:ZUQEKS1FL.WPL
A1 Folder: APR93
Message Format:
Message Status: READ
Date Modified: 14-Apr-1993 14:18
Forward Flag: YES
Read-Receipt Requested: NO
Delivery-Receipt Requested: NO
Message Priority: FIRST_CLASS

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Memorandum to File. From Christopher D. Cerf. Re: Magaziner Document Review and Production. (3 pages)	03/15/1995	P5 6050
002. fax	From: Eric H. Holder, United States Attorney. To: Christopher D. Cerf, Associate Counsel. [February 28, 1995 letter from Eric H. Holder to Charles F. C. Ruff regarding Ira Magziner.] (6 pages)	02/28/1995	P5

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

FOLDER TITLE:
Healthcare Task Force Documents Gibson Potentially Privileged Copies [1] Ira Magaziner

Van Zbinden
2006-0223-F
vz54

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]

BCC Ab Mikva
Jane Sherburne

THE WHITE HOUSE

WASHINGTON

3/15/95

COPY 6050

MEMORANDUM TO FILE

FROM: **CHRISTOPHER D. CERF**

RE: **Magaziner Document Review and Production**

Document review and production will proceed as follows:

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

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

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

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

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

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

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

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

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

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

a) Documents for which the only basis for non-production is that they are work product;

b) Draft pleadings and affidavits, including those with attorneys' annotations on them;

c) Correspondence to and from DOJ or another executive branch department and a member of the White House Counsel's office;

d) documents memorializing internal deliberations pertaining to ethics issues, e.g., whether to allow a particular individual to participate in the Working Group and under what conditions.

e) Draft responses to inquiries from the GAO

f) Documents memorializing administrative matters, e.g., membership lists, paperwork associated with bringing people on board, etc.

g) Draft and final "Talking Points."

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

a) He would be permitted to review all of the documents with the exception of those culled pursuant to Paragraph 1 above

b) on the express condition that that, by making these documents available, the White House would not be waiving any privilege it might have.

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

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

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