

WITHDRAWAL SHEET

Clinton Library

Collection: Domestic Policy Council-Reed, Bruce
OA/Box: OA 18945
File Folder: Privatization [3]

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Date: 4/26/04

DOCUMENT NO. & TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. note	POTUS meeting with labor union leaders, 2p	3/28/97	P5 4003

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P1 National security classified information [(a)(1) of the PRA].
P2 Relating to appointment to Federal office [(a)(2) of the PRA].

P3 Release would violate a Federal statute [(a)(3) of the PRA].
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PRM Personal records misfile defined in accordance with 44 USC 2201 (3).

RESTRICTIONS

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B9 Release would disclose geological or geophysical information

LABOR / WR 3.28.97

Sweeney: Staff accessible. VP very good. TY for CPI.

BC: If we want to fight off privatiz of Soc Sec, labor shd oppose ~~privatiz~~ ^{too much}
- Greenspan OK on 20-40% in mutual funds, but not too much, b/c increasing
returns to Soc Sec will reduce returns to fed retirement funds.
- Magulira is right that CPI long term is best way to head off
I don't want to leave office w/ other shoe to drop here. Lotsa
people

We'll create new progress majority when we take away m-c props
of GOP agenda - crime, W's econ report. GOP only have soc agenda,
focus on future. Take legit concerns - deal w/ it so GOPs can't
pander to them. How can we create prog majority for 30 yrs. ^{Control terms}
1) What do you want to do for your members
2) Progress majority - educ, training ^{of debate,}
^{you almost always win.}
^{displaying skill, not}
^{them}
My long obj. is to turn polit focus away from where it's
been since '66 midterm

McEntee: We opposed WR bill. Apprec. \$3B

BC: GOPs favor ^{\$ to} gov's, we favor \$ to mayors.
Govs rolling in dough right now. Our best chance to actually get this
done is to negot w/ part of welf package, rather than nuclear opt.
We need it to make targets.

McEntee: One area we never felt threatened on is privatiz. of medicare
250-300k elig. workers in med. - FS. Most people → good system.

All-of-a-sudden, we're dealing w/ 2m new workers + privatiz.

TX - could mean layoff of 10,000 immid., 14k later.

Bad public policy. Honor stories.

Bush turning up the heat. Dems - 3-4 pieces of legis.

Dems are opposed.

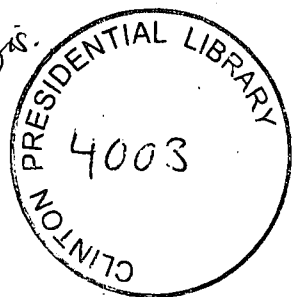
NY Dem caucus voted yesterday not to permit privatiz.

Lake poll. Your core constituency. Politics a bad deal.

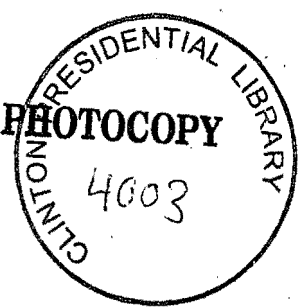
Seniors see this as 1st step

Draft report

FLSA - 3 steps up the ladder.



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ATTACHMENTS

A.) UNION ARGUMENTS AGAINST PRIVATIZATION

Letter to Bruce Reed from AFL-CIO, March 20, 1997

B.) CONGRESSIONAL FACT SHEET

BC: You could flip this. States will have no choice.
Sweeney: Going back on TV on some of these issues. Comp time.

C.) HORROR STORIES/SUMMARIES OF PRIVATIZERS

Lockheed
Andersen Consulting
Maximus
EDS
America Works

BC: Lost labelling. GM: BSA BC: no race.
McEntee: Shelly is trying that in NY.
BC: We could create a public const. for those knowing the GOP has aversion to mayor's \$.
FLSA create pressure for priv-sector jobs.
Denise: in some states universal access to child care, sliding scale. It's like a GOP thing to do. Instead of creating public answer, which is what shd be done.

D.) PRESS CLIPS ON PRIVATIZATION

Bahr: I could place 12,000 ^{customer service} people reps. in telephone cos. I could jointly go w/ CEO. Eg Colorado/apprentice rate.

E.) LEGISLATION PROPOSED BY DEMOCRATS IN NEW YORK TO PROHIBIT PRIVATIZATION

BC: Good thing for labor generally. My guy + your guy to go to each state still need cash in areas of high unemployment. NEXTEN.

F.) POLL RESULTS

BAHR: TX has no appeal to denial of eligibility. Dean-DGA ntg.

BC: Anderson in Canada

McEntee: Senate struck FS ment language, but can't put it back in

Stem: Columbia/ICA.

BC: I did - I know anything about this. I'll find out about it. I'll get back to you.

Damn Sphinx. Immigrants progress

FLSA - BR

never any doubt - FLSA right & ethical. Only thing that your union figure out ways to hire + train. Bothers me, is all jobs have to come in private sector. Hire + train + take jobs.

[Can they ??]

C. Bid - to trade.

* BC: Get states to include single men. We have such a windfall, we could create a nat. day care center, by making employ of 1st option c. care [→ Arkansas program?]

Withdrawal/Redaction Sheet

Clinton Library

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001 note

Reed's Notes of POTUS and Education Sec. Riley Meeting (1 page)

03/25/96

P5

4004

COLLECTION:

Domestic Policy Council
Bruce Reed (Education)
OA/Box Number: 20166

FOLDER TITLE:

Clinton Record

Rob Seibert

rs32

RESTRICTION CODES

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

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

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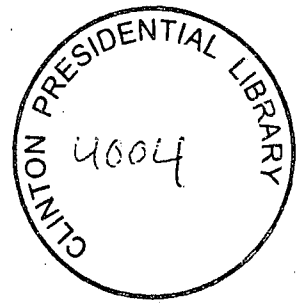
C. Closed in accordance with restrictions contained in donor's deed of gift.

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

RR. Document will be reviewed upon request.

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POTUS - Educ. - 3.25.96



BC: What evidence ~~that~~ since 83

Didn't we waste our money on nat. stds?

Should have bet on History stds

Did we ^{call for} ~~set~~ nat stds in Charlotteville? (later - no, that was later)

→ Memo on nat. stds, what's new.

Any progress at all on assessment?

8th grade - right thing to do

* 89 - purpose of summit was to say what are we shooting for? How well we know whether we're succeeding?

- 1) what we're shooting for - content given to the goals
- 2) what fed role was & was not

* These goals can't be achieved unless every st has content-driven stds & assessment
what kind of stds do we need for teachers & principals?
- meanwhile, what's been happening to the kids?
all these forces descended on our lives
Acknowl. that nat std was a mixed bag.

→ Find out everything he did in Arkansas

Riley: 40% to 12% in dropout rate since '50 (Goal is 10%)

BC: In this whole deal, there's a sea of lost words ~~and~~ that can never be recovered
(If I were a Pharaoh)

Give credit back to people who care most about the at-home, so you can assess & hold accountable

Riley: Reading

Withdrawal/Redaction Sheet

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. letter	Evelyn R. Miller to POTUS re: Service Summit (partial) (1 page)	1/27/97	P6/b(6)
002. memo	Harris Wofford to POTUS re: National Service and Educational Opportunity (partial) (7 pages)	11/14/96	P2, P5, b(6) 4314
003. note	[National Service Summit] (1 page)	ca. 1/97	P5
004. memo	Reed to POTUS re: Summit on Service (2 pages)	1/22/97	P5 4315

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Bruce Reed (Subject File)
OA/Box Number: 21206

FOLDER TITLE:

National Service-Summit [4]

rs62

RESTRICTION CODES

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

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EB/Leon/Bleed/Dalton

Time full of great ideas
could really give a lift
to 18y, 19y, 20y, getting

November 14, 1996

Bob Woodward - Please
carefully let discuss

BC

① Rebuttal/SPN/Penn
② cc: Steve W. File:
③ Service Summit ① Phil's seen
② Nat. Serv.
THE PRESIDENT HAS SEEN
12-19-96

'96 NOV 14 PM 7:13

CORPORATION
FOR NATIONAL
★ SERVICE

MEMORANDUM TO THE PRESIDENT

From: Harris Wofford

Subject: National Service and Educational Opportunity

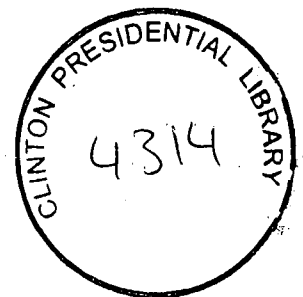
Congratulations!

The second most frustrating thing for me during this election – the first being the required non-partisanship of being CEO of the Corporation for National Service – was reading the continual complaint that your proposals were puny. It is baffling how people could think it is insignificant to mobilize one million tutors to help every child to read, hook up every classroom to the internet so every child can enter the information highway or help pay for two years of college education for every American. I am convinced that one of the reasons people haven't viewed these efforts as sufficiently grand is they haven't seen the two connecting threads: each improves education and each has government help citizens solve problems for themselves.

Therefore I propose an overarching theme for your second term: Americans solving problems and expanding educational opportunity through citizen service.

I am convinced this can be done in a way that earns broad bipartisan support. In fact, as I heard both you and the congressional leadership talk about working together it seemed rather obvious that a prime area for such bipartisanship is national service. As you know, the National and Community Service Trust Act must be reauthorized this year. Few issues typify the "vital center" better than the idea that Americans should have the opportunity to earn educational aid by doing service to community and country. Don't you want to add this to budget deficit reduction and campaign finance reform as a top issue around which to form a bipartisan coalition?

Below I will offer some additional proposals to expand national service programs, each with the dual mission of expanding educational opportunity and service. This will enable you to return to the ethic exemplified by the GI Bill – and create a legacy that will survive for generations.



1201 New York Avenue, NW
Washington, DC 20525
Telephone 202-606-5000

Getting Things Done.
AmeriCorps, National Service
Learn and Serve America
National Senior Service Corps

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Where we are

During your first term, you proved that national service works – that it can “get things done.” AmeriCorps has provided an impressive model for how to strengthen community, allow Americans to earn educational opportunity and, at the same time, ask for a greater sense of responsibility. Through national service, you have shown how to be activist and anti-bureaucratic at the same time.

Yet we have not yet met several important goals you set out in the 1992 campaign.

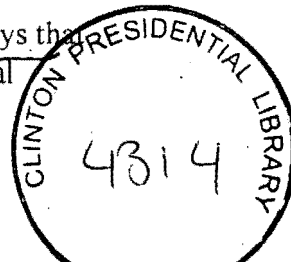
First, AmeriCorps has not yet become a major way for Americans to serve their way through college. At 25,000 members per year, we are reaching about one percent of the college bound population. You have taken major steps in expanding these opportunities with your recent proposals to add 11,000 new AmeriCorps members as part of the America Reads Initiative and your plan to make the nearly one million college work-study jobs more geared toward service. But we are still not where we should be.

✓ Second, because of AmeriCorps' size, we have not yet conveyed the idea that national service can be a major force to unite our country. As you sensed during your visit to City Year back in 1993, national service is possibly the most successful approach yet invented to bring people of different backgrounds together to work in a common mission. Young Americans schooled in the politics of separatism on college campuses come to AmeriCorps and learn something else: teamwork. Indeed, as an old civil rights hand I believe that national service can be far more effective than affirmative action at providing opportunity while bridging the racial divide. It can be a powerful tool to carry through your theme of working together.

We need only look at recent American history. The greatest class-mixing institution of our time was the World War II draft. The current U.S. military services are perhaps the most effective institution at dealing with race relations. Each year there are at least 100,000 fewer opportunities for the young to serve with the armed forces than during the Cold War. We need to compensate by expanding civilian service opportunities that can help mix - and unite - Americans.

{ Third, we have not yet made national service a rite of passage - a common expectation - for a large portion of young Americans. Although larger than the Peace Corps, AmeriCorps is still a fraction of the size of the CCC, which reached 300,000 in its first year and 500,000 at its peak. Consequently, we have not yet established firmly the principle of reciprocity, the idea that government benefits ought to be tied to service. Nor have we established the principle that individuals serving their community in a concerted fashion can be part of a larger movement called national service.

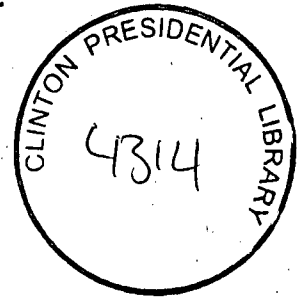
Finally, we have not gotten policymakers or the people to routinely think of the ways that service and citizen action can actually help solve some of our country's most critical problems.



An Agenda for National Service and Educational Opportunity

In your second term, I urge you to establish these broad goals:

- Every young person who wants to perform significant full-time service in exchange for educational aid should have the opportunity to do so.
- Service should be viewed as a way of solving many of our social problems.
- Efforts to serve young people should also ask young people to serve.
- National service should be a way of uniting Americans.



To achieve these goals, I suggest these possibilities.

✓ Expand AmeriCorps to 100,000. This was your original proposal in 1993. We will keep working to get there. The 10,000 new AmeriCorps members you've called for are to be dedicated to seeing that all American children learn to read. Why not have each successive proposed increase tied to solving a particular problem? The next 10,000 could be dedicated to helping people make the transition from welfare to work; the next 10,000 focused on crime or housing (in collaboration with Habitat). This would provide a compelling justification for the increased funding and would strengthen the connection between service and solving problems.

* Expand work-study's emphasis on service. You have already taken a big step in this direction by calling for at least 100,000 of the new 250,000 work-study jobs to be committed to the reading initiative. I urge you to continue to use the bully pulpit to get schools to put the rest of the new money (another 150,000 slots) into service. Perhaps you could propose a new initiative to give bonus work-study slots to those campuses that put half their total work study slots into service. We should set a goal of getting at least 500,000 of the million work-study jobs into service.

✓ Encourage Faith-Based Service. As I mentioned in my last memo, there are low-cost ways to stimulate the nation's great religious groups to do more with full-time service. Make them a basic offer: if you multiply the opportunities for full-time service through your own resources and initiative, we will give all these committed young men and women a National Service educational award.

✓ Create summer service opportunities for another 100,000. These programs could be intense experiences for the corps members and accomplish a great deal. In the past, our summer programs have offered \$1,000 scholarship at the completion of

service. Imagine the combined impact if these young men and women also worked on school preparedness for disadvantaged children.

Help Military Recruitment through a Smart Partnership with Civilian Service.

When it comes to service, a rising tide would lift all boats. If we can stimulate a greater readiness for service to the nation, both AmeriCorps and the military would benefit. Here's one idea to start us down that road: if ROTCs or Jr. ROTCs added significant non-military service hours to their curricula, they could become eligible for the \$4,725 AmeriCorps education award. This would be a way of encouraging more volunteer work, increasing college aid – and making ROTC more attractive. We have already entered into a promising partnership with Selective Service, in which they will be encouraging all young men who register to consider serving America today through the U.S. Armed Forces or AmeriCorps.

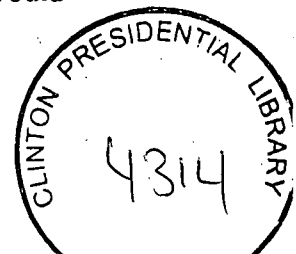
Expand National Service Scholars. Last Spring you proposed a scholarship program to reward high school students who have done outstanding volunteer service. If communities put up \$500, the government will match it. This spring local communities will announce the first few thousand winners. But we'd like to grow that number ultimately to 100,000. It is also a good way to get the idea of service by young people recognized in every high school in the country.

Mobilize the young to serve the young. If we could get the great youth serving organizations, such as the 2.5 million-strong Boys and Girls Clubs, to put service by youth as a major part of their program, we would be bringing the idea of service to a new level. As part of the America Reads initiative, I would suggest a special partnership between the teachers and the country's great "youth serving institutions." One of the most effective tutoring models involves high school juniors or seniors tutoring young children.

Expand Senior Service. As I proposed in the last memo, we could create a new senior corps charged with the twin missions of helping children read independently and seniors live independently. This could be paid for through the savings generated to Medicaid and Medicare by helping seniors stay out of nursing home. This would expand educational opportunity in a most poignant way: seniors who do significant service could earn a college scholarship they could give as a gift to their children or grandchildren. We'd also like a partnership on this with the AARP, some major corporations and the media.

Add up these numbers and you have about 500,000 new opportunities for Americans to earn college aid by doing civilian service. If we succeed in our effort to get half the one-million work-study into service, we will have created one million opportunities for young people to serve their way through school. The cost of all these initiatives together would be about \$3 billion per year, the AmeriCorps expansion being the most costly part.

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To counter the argument that this is a new spending program, I suggest you pay for this by cutting government functions that can be better done by national service or through savings to government generated by service, as with Medicaid and the senior corps expansions. There are other variations on this theme. For instance, the AmeriCorps Habitat for Humanity projects produce affordable sweat-equity housing at a fraction of the cost of HUD housing because they harness the good-will of unpaid volunteers. The money allocated to the school renovation initiative could be stretched to go a lot farther if national service participants were enlisted. For example, The National Civilian Community Corps, the AmeriCorps program based on downsized military bases, did an outstanding job renovating a middle school here in the district this past summer using a team of national service corps members.

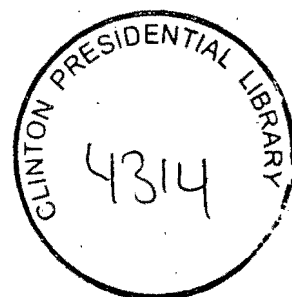
Other service programs generate tremendous long-term savings to the government. Programs that teach immigrants English and job skills save money by keeping them off government aid. Those that help young mothers make the transition from welfare to work will save society far more. These are just a few examples.

All of this adds up to something bigger than the sum of these ideas. It makes service a recurring thread through much that you do. As you did with America Reads, I urge you to include a service component in each major proposal you make in the next four years. If you're renovating public schools, have national service volunteers help – along with parents and students. If you're revitalizing public housing, place an emphasis on sweat equity approaches. If you're designing ways of helping get people off welfare, include a component for AmeriCorps. If you're trying to improve race relations without resorting to quotas, look to national service as a way of uniting races around a common mission. And wherever possible, national service participants should be able to earn aid for college.

Making Service a Permanent Legacy

To make national service an enduring legacy, it must become bipartisan – or better yet, non partisan.

As you think about possibly bringing Republicans into an administration, consider particularly having them work on service-related initiatives. It is one area around which Democrats and Republicans can really unite. A simple bold way for you to do that would be to name prominent bipartisan group of distinguished Americans to the Board of Directors of the Corporation for National Service. Or, we are considering creating a new advisory council of outstanding leaders.



Here are some possibilities that would be dramatic and would get you a lot of credit for
~~being above politics - and would help cement America's future.~~

(b)(6)

A major, historic opportunity to make service non-partisan will be the Citizen Service Summit now scheduled for April 27-29 in Philadelphia. President Bush has committed to joining you in the call for service, and we are working on getting Nancy Reagan and Presidents Carter and Ford. We have reason to hope that Colin Powell will agree to some

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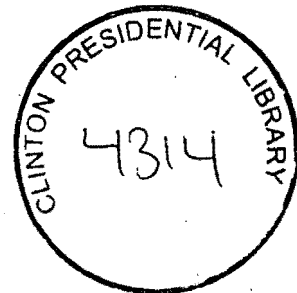
4314

high-profile role at the summit. Organizations and institutions invited to the Summit will be asked to come with tangible commitments to new action that will help create the conditions for the success of American youth.

Together, these proposals provide a grand theme for your presidency – government helping citizens to solve problems through service, and in the process expanding educational opportunity. By emphasizing local, volunteer-oriented solutions, you recognize that while the era of big government is over – the era of big citizens – and big citizen action – had better begin. It would demonstrate that you have far-reaching, far-sighted and effective ideas for addressing the problems facing America's families.

By reaching out to Republicans, you will be showing yourself to be above partisan politics, using common sense to find the common good.

As of now, national service is like the Peace Corps, a small but worthy program. You have an opportunity to make national service be more like the G.I. Bill – something can that transform the country.



THE WHITE HOUSE

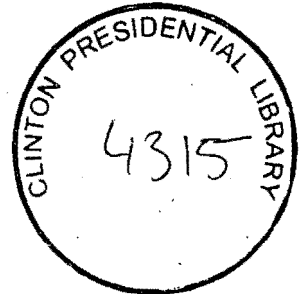
WASHINGTON

January 22, 1997

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed

SUBJECT: Summit on Service



Before we agree to hold a White House event to announce the Philadelphia summit on citizen service, you should review the attached memo from Harris Wofford, which spells out what the summit is designed to accomplish and what will follow from it. Recent developments in Wofford's negotiations with Ray Chambers, the co-organizer who represents Bush's interests, have caused some concern. In particular, concerns have been raised about the long-term effort that will come out of the summit, and Colin Powell's role in it. The summit may still be the right thing to do for the country, but we should go into it with our eyes wide open.

I. Background

The Wofford memo outlines the basic purpose of the summit -- to raise the profile of volunteer service -- and its potential benefits to Americorps and to the Administration. He believes the summit will restore bipartisan support for service, give you another platform to advance the ethic of service, and produce tangible commitments from corporations and service organizations to expand their efforts.

The structure and content of the summit have changed repeatedly in recent weeks, and remain under negotiation. Erskine and Wofford had a conference call this morning with Ray Chambers, who informed us that he intends to raise \$100 million for a non-profit to oversee the summit and follow-up, and that Powell has agreed to be general chairman of the whole enterprise. Chambers had Bill Bradley in mind as vice-chair, but was open to other names instead. (Erskine suggested Henry Cisneros). Chambers said that Powell plans to make service and the follow-up to the summit the central focus of his life over the next few years. Because the magnitude of the effort was news to us (and apparently, to Wofford), Erskine told Chambers that he needed to think about it before committing to any announcement.

II. Options

There is general agreement that the summit, and Powell's involvement, could be a boost for the idea of service. The question is whether we can define the summit and Powell's role in a way that does not inadvertently hand Powell a well-funded political platform or bless something that might go on to eclipse Americorps.

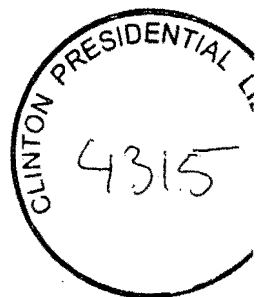
One option is to downplay our involvement, and let Wofford and Chambers announce the summit themselves, with no guarantee that we'll participate. That would reduce press interest in the event, and let us play it by ear over the next three months. If the effort catches on, we could align ourselves with it, but we would not rush into a project that could eclipse our own efforts. The risk of this course is that Powell-- and Bush -- might drop out entirely, and make it more difficult for the summit to succeed in raising the profile of service. The alternate risk is that Powell and Bush might go forward without us, and get all the credit.

A second option is to insist on giving Cisneros a strong, though not necessarily equal, role in the project (e.g., vice-chair). Cisneros would vigorously protect the Administration's interests, and together, Powell and Cisneros would send a powerful signal about service as a way to strengthen community. We could also insist that you and Bush serve as honorary co-chairs, that the summit be called "The Presidents' Summit on Service," and that the CEO of the non-profit be someone we can trust. With the right launch, either in a White House event or the State of the Union, you could make it clear that Powell and Cisneros were both part of a broader, Administration-backed effort. We might still run the risk that Powell might use this as a launching pad, or that this effort would detract attention from Americorps.

A third, high-risk option is to play hardball, and insist that Cisneros have an equal role to Powell's. Having an equal counterweight to Powell clearly would serve the Administration's interests. If this effort is as ambitious as Chambers makes it sound, and Powell plans to make it the major focus of his public life, he might decide not to walk away. But Powell no doubt has a host of other offers to choose from, and Chambers believes he would walk (and Bush might go with him).

The Vice President's office has no strong preference among these options. Ron Klain says that from their standpoint, the question is not so much about Powell -- who will be part of the landscape in any case -- as it is about whether this enterprise will help Americorps or subsume it.

If we do proceed with an announcement, we would envision an East Room ceremony Friday afternoon, with you, the Vice President, President Bush, Powell, and Cisneros speaking to an audience of service enthusiasts. Bush is available Friday, but would also be willing to reschedule for another day.



Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001 memo	Phil Caplan to POTUS re: Service Summit Names (1 page)	3/25/97	P2, P5 4316
002 memo	Reed et al. to POTUS re: Names for Consideration for Service Summit Involvement (1 page)	3/24/97	P2, P5 4317
003. list	Proposed Board of Directors (1 page)	3/97	P2, P5
004. list	Task Force Membership for the Presidents' Summit (1 page)	3/97	P2, P5
005. list	Proposed Task Force Leadership for the Presidents' Summit (5 pages)	3/97	P2, P5
006. memo	Steve Silverman et al. to Various Senior Staffers re: Task Force Membership for the Service Summit (1 page)	3/21/97	P2, P5
007. list	Task Force Membership for the Presidents' Summit (1 page)	3/21/97	P2, P5
008. list	Proposed Task Force Leadership for the Presidents' Summit (6 pages)	3/97	P2, P5
009. list	Service Summit Board Members (1 page)	3/21/97	P2, P5

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Bruce Reed (Subject File)
OA/Box Number: 21206

FOLDER TITLE:

National Service-Summit [2]

Rob Seibert

rs60

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 advise 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]
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- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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Service Summit

THE WHITE HOUSE
WASHINGTON

March 25, 1997

THE PRESIDENT HAS SEEN
4114197

MR. PRESIDENT:

This memo lists names that a) White House staff will suggest to serve on the Board of Directors and the five Task Forces for the upcoming Service Summit in Philadelphia, and b) those names already proposed by the organizers of the Summit.

While Counsel advises that you cannot appoint people to these entities, the White House is able to suggest names for consideration.

Before making our suggestions, Sylvia, Bruce Reed and Steve Silverman are interested to see if you have any thoughts about the names.

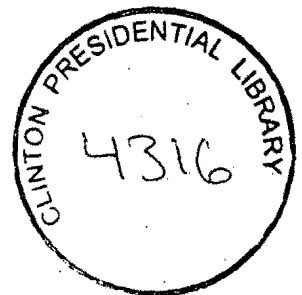
It is possible that the organizers may announce these names tomorrow.

Phil Caplan *Phil*

copied

*Matthews
Reed
Silverman
Samford
COS*

*Real meeting for my notes
Barton (Barton to leave our
space for meeting on 4/1
12/1)*



THE WHITE HOUSE
WASHINGTON

March 24, 1997

THE PRESIDENT HAS SEEN

4/14/97

MEMORANDUM FOR THE PRESIDENT

THROUGH: SYLVIA MATHEWS *SM*FROM: BRUCE REED *BR*
STEVE SILVERMAN *SS*
STEFANIE SANFORD *SS*

SUBJECT: Names for Consideration for Service Summit Involvement

As you know, planning for the Presidents' Summit for America's Future is well underway. The goals of the summit will be implemented by a 501(c)3 corporation known as "The Partnership" and five advisory task forces, reflecting the five key objectives of the summit: Mentoring, Safe Spaces, Health, Marketable Skills and Youth Service. White House Counsel advises that while you cannot appoint people to the board of directors or the task forces, it is appropriate to suggest names for consideration for these entities.

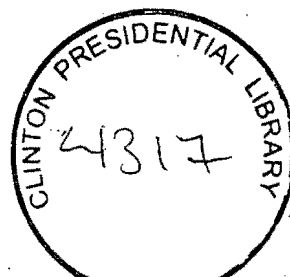
Attached for your review are names collected from numerous White House sources for the Partnership to consider. We will forward suggested names in an appropriate manner.

Documents attached:

- A list of suggested names for potential board membership;
- A summary chart of White House recommendations by task force;
- Task force rosters, divided into two parts -- the names with bullets are those already elected by Summit organizers outside the White House; names without are those to be suggested by the White House.

cc: ERSKINE BOWLES
KITTY HIGGINS
DAWN CHIRWA

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Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
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001-memo

Charles Ruff to POTUS re: Proposition 209 Litigation (3 pages)

9/24/97

P5

4318

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Bruce Reed (Subject File)
OA/Box Number: 21208

FOLDER TITLE:

Race-Education

Rob Seibert

rs71

RESTRICTION CODES

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

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

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
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PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

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

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THE WHITE HOUSE
WASHINGTON

September 24, 1997

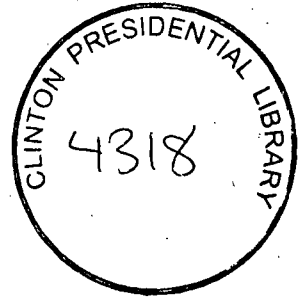
cc: Bruce

RACE-
EDUC.

Right recommendation.
I like the stuff in
the last paragraph.

MEMORANDUM FOR THE PRESIDENT

FROM: CHARLES F.C. RUFFIN 
SUBJECT: PROPOSITION 209 LITIGATION



As you are aware, a three-judge panel of the Court of Appeals for the Ninth Circuit has ruled that Proposition 209 is constitutional, overturning the ruling of the District Court. The Justice Department filed an amicus brief in the District Court and in the Court of Appeals, arguing forcefully that Proposition 209 is unconstitutional. After being denied a rehearing en banc, the plaintiffs in the litigation have asked the Supreme Court to review the case. The Court denied the plaintiffs' request for a stay pending its review.

The Department argued in the Ninth Circuit that Prop 209 violates the Equal Protection Clause by placing a special burden on minorities and women by requiring them to seek a constitutional amendment, rather than merely legislation, in order to pursue their interest in affirmative action. Its brief relied largely on the Supreme Court's 1982 ruling in Washington v. Seattle, a 5-4 decision holding that a Seattle ordinance banning busing to achieve school desegregation was unconstitutional.

The Department has given serious consideration to the question whether it should take the unusual step of filing an amicus brief in support of plaintiffs' petition for certiorari without being invited to do so by the Supreme Court. Such a brief would be due September 29. The Solicitor General (Walter Dellinger before he left and now Seth Waxman) has recommended strongly to the Attorney General that the government not file such a brief, but instead wait to see whether the Court agrees to hear the case. I concur in that recommendation.

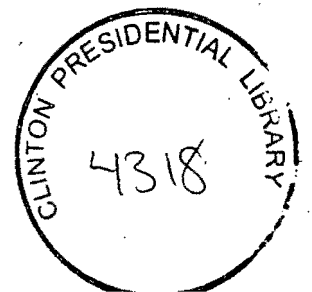
The Solicitor General only rarely files an uninvited brief at the petition stage, and he advises that to do so in this case would, in all likelihood, be seen by the Court as a political rather than a legal statement. He believes that there is almost no prospect that this Court would hold Prop 209 invalid on its face and, thus, that we should do nothing to encourage it to take this case. He is convinced that the Court would use this opportunity to overrule its Seattle decision and that the case would invite the kind of sweeping rejection of affirmative action that we have sought to avoid in Piscataway. A government brief in favor of review would increase the chance that the Court will grant certiorari, at least to the extent that it undercuts the arguments of the justices who would otherwise oppose bringing this issue before the Court. Further, the SG is concerned

that filing a brief in which we emphasize (as we would have to) the disastrous implications of the Ninth Circuit's decision would seriously hamper our efforts to litigate individual "as applied" cases. That was the result in Hopwood, the Fifth Circuit's decision striking down affirmative action in admissions to Texas universities, where we filed an uninvited (and unsuccessful) brief at the petition stage making arguments about the potential impact of the decision that, in effect, have made it impossible for the government to argue for any form of non-remedial affirmative action in the Fifth Circuit.

Of course, if the Supreme Court grants certiorari, or seeks our views concerning the petition, we will argue strongly that Proposition 209 is unconstitutional. I am convinced, however, that the decision not to file an uninvited brief in support of the petition for certiorari is correct as a matter of litigation strategy. There is virtually no chance that the Court would overrule the Ninth Circuit, particularly in light of its failure to grant plaintiffs a stay. A formal blessing of Prop 209 by the Court will encourage similar referenda in other states, and will adversely affect future efforts to limit its scope as applied to specific programs in California. Moreover, filing an uninvited brief solely in order to make a public statement risks not only an adverse reaction by the Court but the creation of a temporary sideshow, as conservatives once again argue that we are seeking to overturn the popular will, rather than fighting in the democratic arena.

We recognize that the decision not to file will be read by some (both supporters and opponents of Prop 209) as a retreat from the position taken in the Ninth Circuit. To the audience of civil rights litigators, as well as the broader civil rights constituency, it is important that the Administration be seen as maintaining a consistent litigation position. Because the Administration filed amicus briefs in the lower courts in the 209 litigation, and because we have made public statements as to our intention to remain in the case, we must make it clear that we have not changed our position on the merits of the case. It is important, therefore, that we communicate to our supporters the distinction between our position on the merits -- which remains the same -- and the procedural decision not to file an extraordinary, uninvited brief in support of certiorari, including the lessons learned as the result of our filing in Hopwood.

To address that issue, both the Solicitor General and we have met with representatives of the interest groups most involved in the Prop 209 litigation, including counsel for the plaintiffs. It is fair to say that the latter feel strongly that the government should file, while most of the others (e.g., NAACP Legal Defense Fund, Lawyers' Committee for Civil Rights, Women's Legal Defense Fund, National Women's Law Center) appreciate the serious litigation risks. A few would support the SG's decision, and the rest are prepared to accept it, if we are prepared to demonstrate our continuing commitment to affirmative action and our opposition to Prop 209. To that end, we must not only ensure that our public statements regarding the case reflect our vigorous support of affirmative action, but also take concrete steps to demonstrate that support.

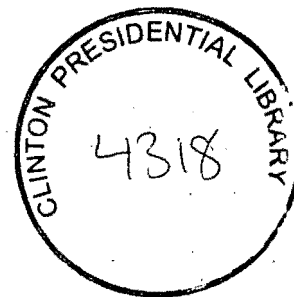


Members of your senior staff (Sylvia Mathews, Maria Echaveste, Elena Kagan, Paul Begala, and I) have considered at some length how the Administration can convey concretely -- and implement -- its commitment to affirmative action if the Justice Department does not file a brief at this stage. We will be in touch with the civil rights constituency over the next few days to ensure that they understand our continuing commitment and the reasons for the decision not to file. In addition, although discussions are ongoing, two ideas have emerged from our preliminary meetings with the interest groups and our internal deliberations:

First, we believe that the Administration should devote time and resources to defeating the anti-affirmative action referendum in Houston scheduled for November 4. Not only would our efforts visibly reaffirm our commitment to affirmative action, but victory in Houston will help stem the tide of similar referenda scheduled to be on state ballots in 1998. We have been in touch with Congresswoman Sheila Jackson Lee and Mayor Lanier, both of whom agree that it would help galvanize their campaign against the referendum if you were to address the issue in your speech in Houston on Friday, and language is being drafted for that purpose. In addition, we have discussed, and they favor, the idea of having Cabinet members (perhaps Secretaries Slater, Herman, Pena and Daley) visit Houston in the next six weeks. And lastly, we will urge the interest groups to help get out the vote on election day.

Second, we have discussed how the Administration can best transform the public debate by articulating the need and justification for affirmative action, particularly in higher education. The interest group members we met with are enthusiastic about pursuing that idea. In particular, we have focused on how institutions of higher education assess the qualifications of applicants for admission -- that is, what constitutes "merit" and how can they best measure the potential success of all students. To that end, we are planning to meet with educators to discuss ways to increase minority admissions in the near term, including admissions to California and Texas universities, where, as you know, they have dropped off so sharply.

If you would like to discuss these or other affirmative action initiatives, we are prepared to do so at your convenience.



Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
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0011 memo

Reed to POTUS re: Needle Exchange (2 pages)

4/6/98

P5

4319

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Bruce Reed (Subject File)
OA/Box Number: 21207

FOLDER TITLE:

Needle Exchange [2]

Rob Seibert

rs64

RESTRICTION CODES

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

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

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

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

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

RR. Document will be reviewed upon request.

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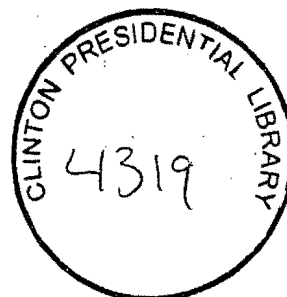
Needle
Exchange

April 6, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed

SUBJECT: Needle Exchange



Attached is a memorandum from Secretary Shalala stating that she intends to (1) certify that needle exchange decreases HIV transmission and does not increase drug use, and (2) to release federal prevention funds to local needle exchange programs meeting certain designated criteria. Shalala will discuss this memo with you at a meeting on Monday afternoon. She requested this meeting after Erskine informed her of your decision to allow the certification to go forward, but not to release federal funds to needle exchange programs. Shalala believes strongly that there is no justification for declining to release federal funds.

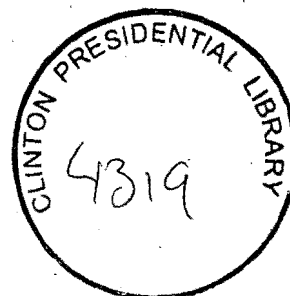
Shalala's memo states that HHS scientists have determined, on the basis of an "ongoing, exhaustive examination of the peer-reviewed published data on needle exchange programs," that such programs are "an effective public health intervention to reduce the spread of HIV and are wholly consistent with our national strategy to reduce the use of illegal drugs." With respect to the effect of needle exchange on drug use, Shalala states: "(1) There is no empirical evidence that the presence of needle exchange programs results in an increase of drug use at the community level. (2) There is no known scientific data to support the concern that needle exchange programs confound our message to young people that drug use is harmful." Shalala notes that needle exchange programs may provide a doorway into drug treatment, and that participants in these programs are overwhelmingly older, chronically addicted individuals.

At a meeting while you were in Africa, Erskine told Shalala that you believed we should go forward with a certification, but decline to release any federal funds. Under this approach, which is favored by most of your White House advisors, you would argue that such a significant change of policy requires the building of a public consensus, and you would set up a process -- perhaps involving both Shalala and General McCaffrey -- designed to increase understanding about needle exchange programs. Supporters of this option contend that it will give a scientific imprimatur to needle exchange programs (thus encouraging local communities to fund such programs themselves), while minimizing the chance that Congress will respond to administrative action on the issue by further limiting these programs (either by banning the use of federal funds for needle exchange or, more broadly, by banning the distribution of any federal funds to an entity that engages in this activity).

Secretary Shalala vehemently disagrees with this approach. She argues that because needle exchange is a local choice, there is no need to reach a national consensus on the issue.

She also doubts that it is possible to educate the American public about needle exchange -- and particularly doubts that General McCaffrey could play any useful role in this effort. She claims that the approach, although concededly legal, violates Congressional intent. Finally, she believes (although she may not say so outright) that the approach is morally bankrupt, because it declines to give any effect to a determination that needle exchange saves lives.

You should note that Secretary Shalala has not offered, or indicated a preference for, any alternative compromise approach; she is just as vehemently opposed to a proposal to condition the release of federal funds for needle exchange on the approval of law enforcement authorities. She believes (or at least purports to believe) that the concern about Congressional backlash is much overstated, and that the Administration should not try to avert a negative reaction by developing a compromise position.



Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Secretary of Education [Riley] and Stephanopoulos to POTUS re: Options for addressing Religion/School Prayer (6 pages)	5/26/95	P5 4320
002. memo	Walter Dellinger to POTUS re: School Prayer Legislation (3 pages)	5/26/95	P5 4321
003. report	Section-by-Section Analysis (2 pages)	ca. 1995	P5
004. draft	Draft of "Equal Access Act Amendments of 1995" (5 pages)	ca. 1995	P5

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Bruce Reed (Subject File)
OA/Box Number: 21209

FOLDER TITLE:

School Prayer

Rob Seibert

rs77

RESTRICTION CODES

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

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

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
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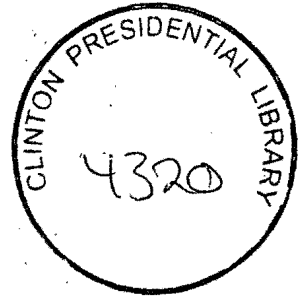
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

CLINTON LIBRARY PHOTOCOPY

THE WHITE HOUSE
WASHINGTON
May 26, 1995

School Prayer



MEMORANDUM FOR THE PRESIDENT

THROUGH: HAROLD ICKES 

FROM: THE SECRETARY OF EDUCATION
GEORGE STEPHANOPOULOS

SUBJECT: OPTIONS FOR ADDRESSING RELIGION/SCHOOL PRAYER

ISSUES

1. Should you set forth your position on religion/school prayer issues before the June 21 White House conference (tentatively titled Healing, Civility and Common Good)?
2. As part of this or any future effort, should the Administration propose legislation addressing religious expression in schools?

BACKGROUND

We believe you now have a window of opportunity to position yourself on the issues of religious expression and school prayer. While we believe your personal entry into this debate should proceed with extreme caution, the next several weeks may be the best opportunity for you to influence the debate in a manner that does not appear either overtly political or simply responsive to Republican proposals. We are also concerned that the June 21 conference on healing, civility and common good could be dominated -- in terms of discussion and press coverage -- by religion and school prayer issues unless the Administration clarifies its position on those issues before the event.

The Office of Legal Counsel at the Justice Department has completed a draft, begun last year, of legislation that would clarify the extent to which the First Amendment already permits religious expression in schools. (As you know, a broad spectrum of religious groups has recognized the extent to which such expression is permitted.) The draft legislation is in the form of proposed amendments to the Equal Access Act, a statute designed to guarantee student religious groups the same right of access to public school facilities as is enjoyed by other comparable student groups. The draft legislation is described in detail in the attached memorandum from Walter Dellinger. Among other things, the legislation would permit elementary and secondary schools to provide a neutral "moment of silence" for personal contemplation by students.

As you will see, the current draft legislative proposal does not address religious expression at graduation ceremonies or other school events. You have previously criticized

the Supreme Court's holding in Lee v. Weisman (1992) that the Establishment Clause prohibits school officials from determining that prayer will be included in a graduation ceremony. Although the lower courts have been divided on the question of whether student-initiated prayer is similarly prohibited at a graduation ceremony, the Justice Department has concluded that the principles underlying Weisman would similarly prohibit student-initiated prayer. Walter Dellinger's attached memorandum does, however, discuss a possible amendment to the Equal Access Act that would expressly authorize a neutral moment of silence at graduation ceremonies and other school events.

OPTIONS

1. **Announce your position on school prayer prior to the June 21 conference.**
In one or more speeches, you could articulate the broad themes that flow from your long-held views, including: religion and religious institutions are central to the history of this nation and to our future; religion draws our communities together, and helps us heal together in times of tragedy; for most Americans, religion is the primary source of values and personal morality. Nothing in the current debate, however, justifies tampering, for the first time in over 200 years, with the First Amendment and the core principles upon which this nation was founded. The First Amendment embodies a careful balance that protects all forms of religious expression as long as the government is not sponsoring religion and people are not compelled or coerced to participate.

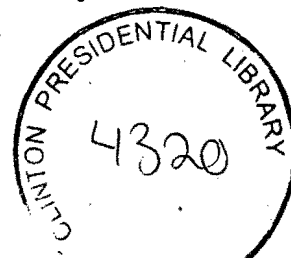
You could also reiterate your concern about incidents where school teachers or administrators believe -- incorrectly -- that our schools must be religion-free. You might announce that you have instructed Secretary Riley and the Attorney General to undertake an initiative to inform school administrators, teachers and parents about the extent to which religious expression in schools is permitted under current law.

Pros: Regain the initiative and present an alternative to the Christian Coalition; establish yourself as the true defender of the Constitution and the protection it affords religion; support government and private initiatives to educate school officials about the extent to which the First Amendment already permits religious expression in schools; reduce likelihood that religion and prayer issues will dominate the scheduled June 21 conference.

Cons: Might be perceived as politically-motivated reaction to Christian Coalition.

2. **Propose legislation addressing religious expression in schools.**
The attached Dellinger memorandum sets forth a series of possible amendments to the Equal Access Act. We believe that any such legislation should be proposed only after you have articulated a set of general principles that define your position.

Pros: A clear alternative to a Constitutional amendment; a concrete step that demonstrates your commitment to religious expression; could clarify the extent



to which the First Amendment currently permits religious expression in schools; might be attractive to moderate Republicans; gives Members of Congress something to vote for.

Cons: Will not satisfy supporters of Constitutional amendment, and may not be of much interest to others; legitimizes Congress as the forum for addressing religion/prayer issues; could be characterized as a mere political gimmick; proposing legislation now would limit our ability to solicit sponsorship from Members of Congress at a later time when such sponsorship might be attractive to them.

3. Issue a Presidential directive on religious expression in schools.

If you choose not to propose legislation at this time, you could direct -- by means of a memorandum or, if appropriate, an executive order -- that the Secretary of Education and the Attorney General utilize the existing Equal Access Act and more general constitutional principles to seek the fullest possible, non-discriminatory access for religious expression in public schools. You could direct the Secretary of Education to distribute widely an explanation of the extent to which the First Amendment currently permits religious expression in public schools. You could also direct the filing of amicus briefs, where appropriate, to support moments of silence during the school day and at school-sponsored activities such as graduation ceremonies; access for religious groups to public address systems; and other activities beyond those expressly covered in the existing Equal Access Act.

Issuing a directive in the coming weeks would not preclude the opportunity to propose legislation in the future.

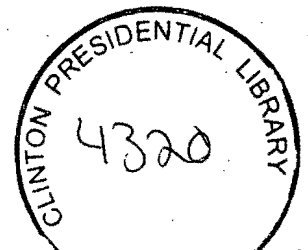
Pros: A way to demonstrate leadership; you maintain control and do not have to submit proposals to a Republican Congress; less controversial than legislation; allows the possibility that legislation could be introduced on a bipartisan basis at a later time.

Cons: Not as strong as legislation, particularly as an alternative to Constitutional amendment; does not give Members of Congress an alternative to vote for.

4. Legislation to address religious expression related to graduation ceremonies.

As noted above, it is the view of the Justice Department that the Supreme Court's analysis in Weisman would prohibit both school-sponsored and student-initiated prayer at graduation ceremonies -- although the Supreme Court has not yet addressed the issue of student-initiated prayer and the lower courts are divided on that subject.

One option would be an amendment to the Equal Access Act to clarify that a neutral moment of silence would be permissible at graduation ceremonies, sporting events or



other extra-curricular events. Legislation might also clarify that "equal access" applies to privately-sponsored baccalaureate services or other graduation-related ceremonies.

Pros: You would be taking a step, permitted by the First Amendment, to promote religious expression in connection with graduations and school events.

Cons: Would not permit prayer at ceremonies, and could appear to legitimize efforts to amend the Constitution; could become an invitation for schools or students to circumvent Weisman.

5. Make a statement on religious expression at graduation ceremonies.

As another alternative to legislation, you could reiterate your view that the First Amendment does permit some religious expression at graduation ceremonies and other school events. You could explain that while you disagree with Weisman, you do not believe it is appropriate to tamper with the First Amendment. You could then explain that you are prepared to continue to advocate your views, with the hope that the Supreme Court will ultimately correct or narrow its Weisman holding. You might call upon the Supreme Court to lend clarity to this area as appropriate cases arise, or state that the Administration will look for suitable cases in which to intervene on "unsettled" issues. We believe it is critical that any such statements be coordinated with, and reviewed in advance by, the Education Department and the Justice Department, including the Solicitor General.

Pros: An opportunity to reiterate and pursue your longstanding views on this issue.

Cons: Your appointees to the Supreme Court are understood to have views consistent with the Weisman majority; creates unnecessary conflict with the Supreme Court, which could undercut the strategy of supporting the First Amendment; problematic to call for Court action outside the context of a particular case.

RECOMMENDATIONS

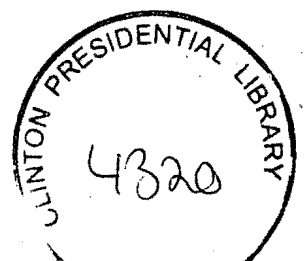
Option 1: Announcing your position before the June 21 conference

It is our recommendation that you present your position on religious expression and school prayer prior to the June 21 conference. A commencement address at an appropriate institution might be a particularly fitting platform. Such an address might also be presented to the National Youth Summit on June 6.

Announce before June 21 _____

Do not announce before June 21 _____

Discuss _____



Option 2: Proposed legislation to amend Equal Access Act

We believe that if the Administration is to have a key role in the upcoming debate about a Constitutional amendment, it is critical for the Administration to take a leadership position before a Constitutional amendment is formally introduced. Secretary Riley supports the proposed Equal Access Act legislation set forth in the attached memorandum from Walter Dellinger and believes that proposing such legislation would allow the Administration to take a leadership role. The White House staff working on these issues, while concerned about the risks inherent in a legislative strategy -- including the possibility that such legislation could be unattractive both to Constitutional amendment supporters and to advocates of church/state separation -- generally concurs with Secretary Riley's views. We all recommend that any legislative proposal be introduced only after you have articulated the general principles that define your position. We also feel strongly that if you choose to pursue a legislative alternative, the Administration should first consult on specifics with appropriate representatives of the religious community.

Propose legislation before June 21 _____

Consider legislation later _____

Do not propose legislation _____

Discuss _____

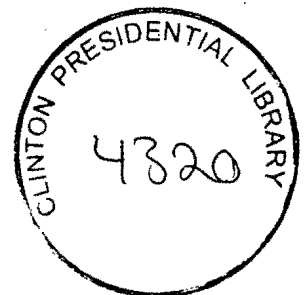
Option 3: Presidential directive on religious expression in schools.

If you do not pursue legislation at this time, we believe a Presidential directive could establish your leadership role and help clarify the extent to which current law permits religious expression in schools. Such a directive could demonstrate the Administration's commitment to support the full Constitutional protection accorded religious expression. The directive could also initiate a national effort to inform teachers, parents and community leaders of the broad protection afforded by the First Amendment. Secretary Riley notes that this alternative allows you to take the initiative but avoid subjecting your proposals to a Republican Congress.

Prepare Presidential directive before June 21 _____

Do not pursue Presidential directive _____

Discuss _____



Option 4: Proposed legislation on expression at graduation ceremonies

We recommend that any amendments to the Equal Access Act include a provision recognizing that neutral moments of silence are appropriate at graduation ceremonies and perhaps at other school events.

Include Equal Access amendment on graduation ceremonies _____

Do not include amendment on graduation ceremonies _____

Discuss _____

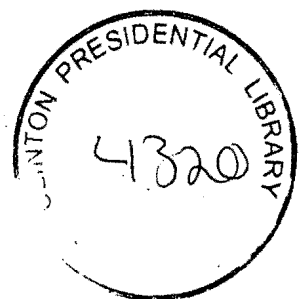
Option 5: Statement on religious expression at graduation ceremonies

As another alternative to legislation, you could reiterate your view that the First Amendment permits religious expression at graduation ceremonies and other school events. You could affirm your commitment to pursue this view in the courts. We believe it is critical to consult with the Justice Department and the Education Department before making any public statements in this regard.

Pursue a statement on graduation ceremonies _____

Do not pursue a statement on graduation ceremonies _____

Discuss _____





U. S. Department of Justice

Office of Legal Counsel

Office of the
Assistant Attorney General

Washington, D.C. 20530

May 26, 1995

MEMORANDUM FOR THE PRESIDENT

From: Walter Dellinger *WD*

Re: School Prayer Legislation

In the near future, there will be major efforts in Congress to propose a constitutional amendment permitting a broad range of religious activities in the public schools. As an alternative to amending the Constitution, the Administration could propose legislation, drafted by the Office of Legal Counsel, that would amend the Equal Access Act (i) to provide for a moment of silence, and (ii) to provide additional protection for student religious expression. We also consider below whether some religious observance might be made part of high school graduations.

I.

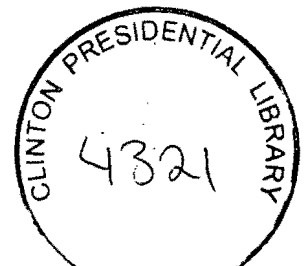
The Equal Access Act, passed in 1984, guarantees student religious groups at public secondary schools the same right of access to school facilities as is enjoyed by other comparable student groups: a school that generally allows student extracurricular clubs to meet on its premises may not refuse access to student religious groups. The proposed legislation would extend the Act to cover moments of silence, as well:

- Both elementary and secondary schools may provide for a moment of silence. Schools themselves must remain neutral and may not attempt to influence the form of student contemplation.

The proposed amendments also would expand and clarify the protection now afforded student-initiated religious expression as follows:

- Students are permitted to engage in private prayer and religious discussion during noninstructional time to the same extent as they are permitted to engage in other comparable activities.
- Student-initiated distribution of literature is protected against discrimination based on the religious content of the literature.

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- The "equal access" guaranteed by the Act includes access to the means of publicizing meetings, as by use of a school's public address system.
- Protected student meetings may include prayer and worship exercises, and may be held during free periods, as well as before or after the school day.

By making these additions to the Equal Access Act, we would be reaffirming and bringing to renewed public attention the important principle that students may indeed pray in public schools, and that they may do so in a collective or communal fashion, with groups of students giving full expression to their own religious beliefs by joining with others on a voluntary, student-initiated basis at school. Sponsoring this legislation would make clear our strong belief that public schools should not be hostile to religion.

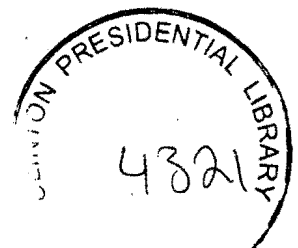
Attached to this memorandum are draft legislation, accompanied by a copy of the current Equal Access Act, and a more complete summary of the proposed amendments to the Act.

II.

We understand that you would be interested in exploring whether communities may in some manner include prayer at high school graduations. As you know, the Supreme Court held in Lee v. Weisman (1992) that the Establishment Clause prohibits school officials from determining that prayer will be included in a graduation ceremony. It is most unlikely that the Supreme Court as currently constituted would reconsider Weisman. As a result, legislation allowing for official graduation prayer is not possible. Moreover, although one of the circuit courts that has considered the question has ruled otherwise, we believe that the principles of Weisman apply to "student-initiated" graduation prayer, as well. The fact that school officials themselves are involved, at a minimum, by delegating the prayer decision to a collective student referendum in our view makes such prayers sufficiently "official" that they violate the Establishment Clause under the Weisman analysis.

At the same time, we believe that it is permissible for a community to provide a moment of silence at a graduation, offering students and their families an opportunity to engage in personal prayer if they so choose. As with a moment of silence in the classroom, the Establishment Clause requires that a moment of silence at graduation be implemented in a truly neutral manner, with school or other government officials conveying neither endorsement nor disparagement of prayer or religion. To achieve this result, our statutory language on a moment of silence might be modified to read as follows:

Any public elementary or secondary school receiving Federal financial assistance may provide for the observance of a short period of silent and personal contemplation or introspection during the school day or at a graduation ceremony or any other school-sponsored event.



Minor adjustments to the remainder of the statutory language would be made to accommodate this change.

We also have considered other options for allowing religious recognition in conjunction with graduation. We have looked for guidance to a recent "Joint Statement of Current Law" regarding religion in the public schools, drafted and endorsed by groups ranging from the Christian Legal Society and the National Association of Evangelicals to the American Civil Liberties Union and People for the American Way. While acknowledging that "[s]chool officials may not mandate or organize prayer at graduation, nor may they organize a religious baccalaureate ceremony," those groups conclude that:

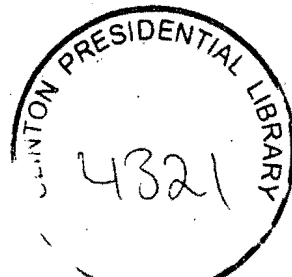
If the school generally rents out its facilities to private groups, it must rent them out on the same terms . . . to organizers of privately sponsored religious baccalaureate services, provided that the school does not extend preferential treatment to the baccalaureate ceremony and the school disclaims official endorsement of the program.

We agree that current law should be interpreted to permit privately sponsored religious baccalaureate services and, moreover, to permit such ceremonies to be held on school premises if the school generally is opened to privately sponsored events. To reflect this understanding, the Equal Access Act could be amended by expanding its definition of "meeting" to include baccalaureate or other graduation-related ceremonies. Specifically, a sentence like the following might be added to the Act's current definition:

A meeting may include a prayer service, Bible reading, or other worship or contemplative exercise, or a baccalaureate or other graduation-related ceremony.

This would guarantee equal access to school facilities for students who wish to organize and participate in baccalaureate ceremonies. Like other meetings, such ceremonies would be subject to the Act's general guidelines, among them provisions stating that meetings should be student-initiated and that "nonschool persons" should not direct, conduct or control meetings. (Though it might be possible to draft a different amendment that avoided application of these guidelines to baccalaureate ceremonies, such an amendment would mark a significant departure from the Act's current approach and might provoke questions or controversy regarding the Act.)

We do not believe that legislation concerning baccalaureate ceremonies necessarily is desirable. On the one hand, Weisman prevents us from going as far in authorizing prayers at the actual graduation service as some would desire; on the other, baccalaureate legislation may be perceived by some on the other side as an invitation to schools or students to circumvent Weisman's principles. If legislation covering graduation is deemed advisable, we think the "moment of silence" alternative is the better approach.



Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001-note	Phil Caplan to POTUS re: Liver Transplant Issue (1 page)	2/12/97	P5 4322

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Bruce Reed (Subject File)
OA/Box Number: 21204

FOLDER TITLE:

Health Care-Organ Transplants [1]

Rob Seibert

rs83

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 advise 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 [(b)(9) of the FOIA]

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THE WHITE HOUSE
WASHINGTON

Mr. President,

You should know that this is in formal rule-making process and any substantive comments you may have must be on the record. Bruce

THE WHITE HOUSE
WASHINGTON

February 12, 1997
THE PRESIDENT'S SECRET
2-11-97

Mr. President:

The attached letter from Day
Matter concerns the liver transplant issue.

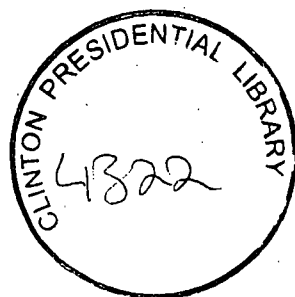
Bruce Lindsey advises that this is in the formal rulemaking process. You should know that any comments -- written or oral -- to HHS would have to be made a part of the record of the proceeding.

Phil Caplan

You should not make any written or oral comments because it is in the rulemaking process. There is not supposed

to be any political pressure.

Presidents usually do not get involved in rulemaking processes.



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*Bruce L
uses a note
on the subject
should be given to
Clinton's lawyer
BS*

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001-memo	Sean Maloney to POTUS re: Religious Liberty Protection Act (1 page)	7/13/97	P5 4323
002-memo	Charles Ruff to POTUS re: Religious Liberty Protection Act (4 pages)	7/12/99	P5 4324
003-memo	Ruff to POTUS re: Religious Expression in the Federal Workplace (4 pages)	5/1/97	P5 4325

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Bruce Reed (Subject File)
OA/Box Number: 21208

FOLDER TITLE:

Religious Freedom

Rob Seibert

rs75

RESTRICTION CODES

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

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

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
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C. Closed in accordance with restrictions contained in donor's deed of gift.

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

RR. Document will be reviewed upon request.

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THE PRESIDENT
7-14-99

THE WHITE HOUSE

WASHINGTON

July 13, 1999

2 Copied
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TRAMONTANO
RUFF
REEO
CAHILL
SOCARIDES
CORREIA
JOHNSON, J.

MEMORANDUM FOR THE PRESIDENT

FROM: SEAN MALONEY *SM*

SUBJECT: The Religious Liberty Protection Act

This Chuck Ruff memo seeks your guidance on whether to support Rep. Nadler's amendment in the House to limit the scope of the proposed Religious Liberty Protection Act (RLPA). *The rule approved late today in committee will permit a vote on the amendment as early as Wednesday.*

Background. The RLPA seeks to revive the constitutionally defective Religious Freedom Restoration Act of 1993, which you signed. It would require federal, state and local governments to demonstrate a compelling interest when seeking to enforce laws against those who claim a significant burden on their religious beliefs. Unlike in 1993, however, it is now apparent that such legislation will conflict with certain civil rights laws, especially those protecting gays and lesbians (*e.g.*, a fair housing law that prohibits discrimination on the basis of marital status or sexual orientation). The bill is less likely to affect laws barring discrimination based on gender or race, because, unlike in the gay/lesbian context, courts have widely held that race/gender measures further a compelling interest. Nadler's amendment, which is unlikely to pass, would limit the bill's religious protections to small employers, in the case of employment claims, and small landlords, in the case of housing claims. The amendment has divided civil rights and religious groups, but it's largely symbolic because state and local laws often exempt small businesses, and courts rarely find a burden on religion in large-business cases. A deal may be possible in the Senate, where Hatch has urged compromise and Kennedy wants a resolution.

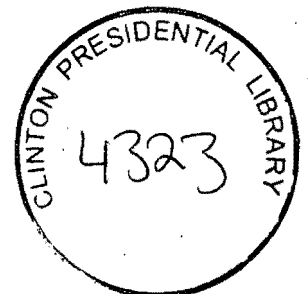
Views. *DPC/OPL* think it's best to support Nadler's goals as the bill moves to the Senate without explicitly supporting Nadler's amendment. *DPC* would express support for the underlying bill, while urging clarification of civil rights protections. *OPL* reports that religious groups would consider support for Nadler's amendment a betrayal, while gays and lesbians would strongly applaud it. *LegAffs* and *Counsel* think you should support the Nadler amendment. *Chuck* thinks that greater certainty about the bill's impact on civil rights laws is needed and resolving the issue in the House would aid Senate passage. While recognizing the strong feelings of religious groups, *Chuck* thinks silence on Nadler would undermine nascent protections for gays and lesbians and send the wrong message.

Options. Chuck presents these 4 options, but only options 2 and 3 have real support:

- Option 1 (Oppose Nadler -- no one recommends): ____
Option 2 (Support Nadler; support compromise -- LegAff/Counsel recommend): ____
Option 3 (Silence on Nadler; support compromise -- DPC/OPL recommend): ☒ ____
Option 4 (Support Nadler; raise possibility of a veto -- no one recommends): ____

Discuss Further: ____

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THE WHITE HOUSE

WASHINGTON

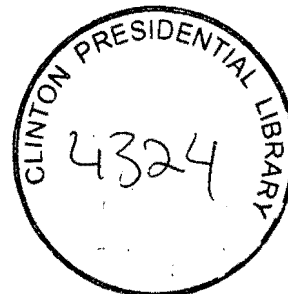
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July 12, 1999

MEMORANDUM FOR THE PRESIDENT

FROM: CHARLES F.C. RUFFE

SUBJECT: RELIGIOUS LIBERTY PROTECTION ACT



We seek your guidance regarding the position that the Administration should take on the Religious Liberty Protection Act (RLPA), which is expected to come to the House floor on Wednesday. In particular, the question is whether we should support an amendment to be offered by Congressman Nadler to exempt certain civil rights claims from the bill.

I. Background

You were a strong supporter of the Religious Freedom Restoration Act (RFRA) when it became law in 1993. RFRA provided that the federal, state and local governments must have a compelling interest when they seek to enforce any law against an individual that substantially burdens his or her religious beliefs. RFRA became necessary in 1990 when the Supreme Court, in Employment Division v. Smith, abandoned the compelling interest test in applying the Free Exercise Clause. There was broad bipartisan support for RFRA, and it was applauded by all members of the religious community. However, the Supreme Court struck down most portions of RFRA in City of Boerne v. Flores on the grounds that Congress was improperly attempting to enact its own interpretation of the Fourteenth Amendment. RLPA is an effort to re-enact RFRA in a constitutional form.

II. The Civil Rights Controversy

There was little controversy surrounding the passage of RFRA. Since its passage, however, there have been a number of cases involving conflicts between religious freedom and the civil rights laws. These cases have arisen under state constitutions or RFRA itself before it was struck down. For example, a number of courts have held that a landlord can assert a religious claim as a defense to a fair housing law that prohibits discrimination against unmarried couples.

While we cannot be certain how courts would rule if RLPA is enacted in its current form, a fair prediction is the following: 1) religious claims would not be a defense to state and local civil rights laws barring discrimination based on race or gender; the

courts have recognized that these laws further a compelling interest; 2) courts would sometimes recognize religious claims as a defense to fair housing and fair employment laws that bar discrimination based on marital status, sexual orientation, and pregnancy; the courts are divided on whether these laws further a compelling interest; and 3) courts are less likely to recognize any defense if the employer or landlord is a large business; courts generally do not view restrictions on the actions of large businesses as a burden on religious freedom.

Gay and lesbian groups are particularly concerned about the possibility that RLPA could negate their limited success to date in persuading states and cities to ban discrimination based on sexual orientation in employment and housing. Their fear is reinforced by the express statements of some groups on the religious right who are seeking this very result. In fact, we can assume that some of these groups would use a newly enacted RLPA in a public campaign to limit the effectiveness of gay rights laws and ordinances.

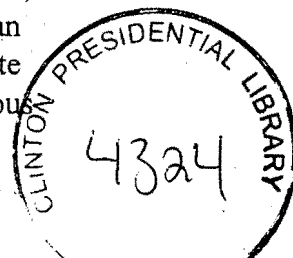
The religious coalition argues that there should be no exception for any category of laws or individuals. At least some in the coalition feel deeply that small landlords and employers should be able to discriminate against gays, lesbians and unmarried persons. On the other hand, people in the civil rights community as well as some members of the religious community take the position that a person who has decided to engage in a business activity must be willing to accept some limitations on their freedom to choose with whom they will deal.

III. A Possible Resolution

This difficult conflict between religious liberty and civil rights claims is not easy to resolve. The religious coalition is somewhat split on the issue. More conservative members, such as the Christian Legal Society, are flatly opposed to an exception. Others, such as the Catholic Conference, are open to one. White House staff have met with groups on both sides to encourage them to find some kind of resolution. So far, the religious coalition has formally maintained a unified position in opposition to an exception.

The Texas legislature recently enacted its own RFRA, signed by Governor Bush, which exempted most civil rights claims. However, Texas has no laws protecting gay rights, and the exemption was less controversial.

Congressman Nadler, whose district includes many constituents on both sides of the issue, tried to reach a compromise in the House by proposing that the protections of the bill would be limited to small employers, in the case of employment claims, and small landlords, in the case of housing claims. His amendment was rejected by voice vote, but it was clear most Democrats supported it and the Republicans, led by Congressman Canady, opposed it. On the other hand, Senator Hatch, who will sponsor the Senate version of RLPA, has publicly encouraged the civil rights coalition and the religious



coalition to find a way to resolve their differences. Senator Kennedy, who cosponsored the bill last year, has signaled that he will not support the bill without some resolution.

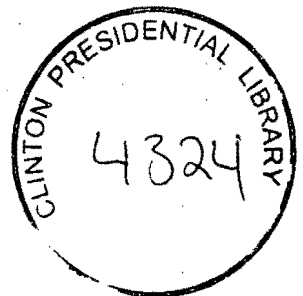
We remain hopeful that a compromise will be reached at some point. However, it is likely that a compromise, if one occurs at all, will happen in the Senate. Consequently, we may be faced with the question of whether to support Nadler's amendment on the House floor and whether to express support for the bill in the likely event that the Nadler amendment is defeated. As a practical matter, the Nadler amendment will change the result in only a few cases. It exempts large employers and landlords, but courts usually do not find there is a burden on religion in those situations. It could allow a small landlord or employer to discriminate, e.g., on the basis of sexual orientation, but state and local laws usually exempt very small businesses in any event. Nevertheless, the issue is important symbolically, and we can expect that some members of the religious right will portray the amendment as a choice between religious freedom and rights for gays and lesbians.

You and the religious groups opposed exceptions to the RFRA in 1993. For example, one of the few controversial issues at that time was an effort by Senator Reid to exempt prisoners from the bill's coverage. You and the religious coalition opposed Reid's amendment on the grounds that everyone should be entitled to protection of his or her religious liberty. White House staff in the past have also suggested that we would not support any exceptions. Consequently, the religious coalition is likely to view your support for a civil rights exception as abandoning your position. On the other hand, since the enactment of RFRA there have been a number of court cases that show there is a real threat to civil rights laws protecting gays and lesbians. These legal developments provide some justification for a change in your position.

IV. Options and Recommendations

Our options are the following:

- 1) oppose the Nadler amendment;
- 2) support the Nadler amendment, if it is made in order by the Rules Committee, but indicate support for the goals of the bill in the likely event that the Nadler amendment is defeated; we would also state that we want to work with all parties to ensure Senate passage;
- 3) remain silent on the Nadler amendment but express a desire to reach a compromise eventually to ensure passage;
- 4) support the Nadler amendment and leave open the possibility of a veto if no civil rights exception is eventually included in the bill.



DPC recommends that the Administration wait until after Rep. Nadler's amendment is made in order by the Rules Committee before making any statement. In the event that the amendment is made in order, DPC suggests that the Statement of Administration policy sent on the day of the vote include language such as the following: "The Administration supports the Religious Liberty Protection Act. In addition, the Administration also supports efforts to clarify civil rights protections and looks forward to working with Congress to resolve this important issue."

OPL's position is as follows: Two important constituencies within OPL are strongly divided on this issue. The religious coalition is as broad based as it is possible to get within that community and is united in opposition to a civil rights carve out. They have made it clear that they will view your support of a carve out as betrayal. Gay rights groups and the ACLU, however, equally strongly support a carve out which Rep. Nadler hopes to offer. Senator Hatch is already working on a compromise in the Senate. It is a battle that will be characterized as "religious rights" versus "gay rights." The best outcome at this point would be for the Nadler amendment or its equivalent to fail in the Rules Committee. Absent that, OPL would recommend supporting the bill, remaining silent on the amendment, and working for a compromise in the Senate.

Legislative Affairs recommends that we support the Nadler amendment if he gets to offer it. Otherwise, we should indicate in the SAP that we have some concerns about unintended consequences but that we expect them to be resolved before the legislation comes to the President.

White House Counsel recommends that we adopt Option 2: support the Nadler amendment if Rules permits it to be offered and work to secure a compromise in the Senate. Support for the amendment would rest on two grounds: 1) recent developments in the courts lead us to conclude that greater certainty about the impact of the bill on the civil rights laws is needed; and 2) resolving this issue will facilitate speedy passage in the Senate. Recognizing the strong feelings of the religious community, Counsel is more concerned that silence on the Nadler amendment will send a message that this Administration does not support the efforts of the gay and lesbian community to secure protection under the civil rights laws and will undermine those efforts in the states.

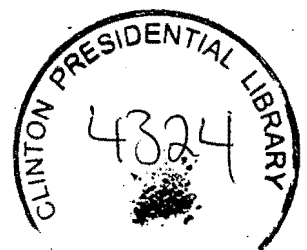
_____ Option 1: Oppose Nadler Amendment

_____ Option 2: Support Nadler Amendment; work for compromise in Senate

_____ Option 3: Remain silent on Nadler Amendment but express a desire to reach a compromise to assure passage

_____ Option 4: Support the Nadler amendment; leave open the possibility of a veto if there is no civil rights exception

_____ Option 5: Discuss further with staff before decision



'97 MAY 1 PM 5:24

THE WHITE HOUSE
WASHINGTON

May 1, 1997

MEMORANDUM FOR THE PRESIDENT

FROM: CHARLES F.C. RUFF
Counsel to the President

SUBJECT: RELIGIOUS EXPRESSION IN THE FEDERAL WORKPLACE

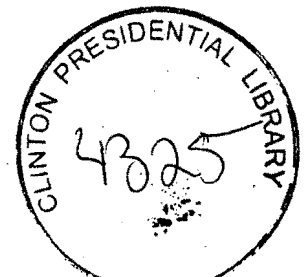
We are preparing to put into final form a Presidential Memorandum and accompanying Guidelines addressing the issue of religious expression in the federal workplace. These documents reflect the principles that led to your issuance of guidelines on religious expression in the public schools two years ago. Before the documents are presented to you for approval, however, we wanted to solicit your reactions on the substance of the proposal and the process we have followed.

BACKGROUND

For the past year the Counsel's Office, in conjunction with representatives from the Christian Legal Society, People for the American Way, the American Jewish Congress and the Department of Justice, has worked on developing guidelines governing religious expression in the federal workplace. Representatives from the National Catholic Conference, the National Council of Churches, the Baptist Joint Committee on Public Affairs, the Union of American Hebrew Congregations, the National Association of Evangelicals, the Equal Opportunity Commission, and the Office of Personnel Management have also, from time to time, been involved in these discussions.

The idea for this project originated with the Steve MacFarlane of the Christian Legal Society, Marc Stern of the American Jewish Congress, and Eliot Minberg of People for the American Way in response to the 1995 proposed EEOC guidelines addressing harassment in the workplace. The sections of the proposed EEOC guidelines addressing religious harassment were controversial and generated wide-ranging opposition from religious groups who believed that the EEOC guidelines might be construed by employers as prohibiting all religious activity in the workplace. MacFarlane, Stern, and Minberg believed that a set of guidelines dealing with religious expression in the workplace could be drafted which would be acceptable to most, if not all, religious organizations.

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Accordingly, MacFarlane, Stern, and Mincberg drafted a set of proposed guidelines which they circulated to various religious groups in the hopes that these guidelines could be issued as the product of a broad alliance of religious organizations. The Counsel's Office, however, suggested that it might be possible to issue the guidelines as a joint project of the White House and the religious groups if the guidelines were modified to meet certain objections and if they were narrowed to apply only to the federal workplace. The religious groups agreed and a draft entitled "Guidelines on Religious Exercise and Religious Expression in the Federal Workplace" was completed earlier this month. In its final form, the draft sets forth general principles and offers hypothetical examples illustrating the appropriate application of the principle involved.

The federal agencies that have been involved in the process, the Department of Justice, the Office of Personnel Management and the Equal Employment Opportunity Commission have signed off as to the basic propriety of issuing of the Guidelines. DOJ has also signed off on the constitutionality and legal validity of the principles and hypotheticals set forth in the Guidelines. DOJ and OPM, however, have raised policy objections to the Guidelines. These objections are discussed in Section V. below.

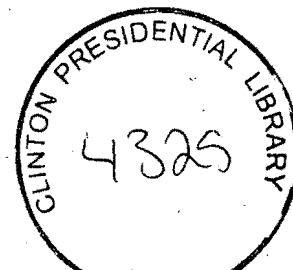
RELIGIOUS EXPRESSION IN THE WORKPLACE - GENERAL PRINCIPLES

The basic principle underlying the guidelines is that religious expression in the federal workplace should be entitled to the same level of protection accorded non-religious expression. For example, if a federal employee is allowed to display a poster with a non-religious message in her office, she should be allowed to display a poster with a religious message. Similarly, if employees are allowed to use space for non-religious meetings they should be allowed to use the same space for religious meetings.

The Guidelines also reflect that special restriction upon religious speech may be required in some circumstances. This would occur when an employee's private speech is perceived as an official endorsement of religion, thus violating Establishment Clause prescriptions, or when the religious speech in question constitutes religious harassment or is coercive. The Guidelines also make clear that religious speech, like non-religious speech, can be restricted when it unduly interferes with workplace efficiency.

RESOLUTION OF ISSUES ARISING UNDER THE GUIDELINES

The Guidelines state that they are not intended to create any new right, benefit, or responsibility enforceable by any party against the United States, its agencies, its officers, or any person. Rather persons with questions regarding interpretations of the Guidelines are directed to bring those questions to the Office of the General Counsel in their department or agency. There are no other enforcement provisions.



PROPOSED ISSUANCE OF THE GUIDELINES

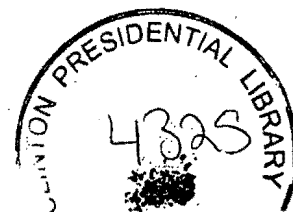
The Guidelines would be distributed by OPM as an attachment to a Presidential Memorandum announcing your support for the principles contained in the Guidelines and directing the heads of all agencies to comply with its provisions. The religious groups envision an announcement ceremony similar to the one surrounding the issuance of guidelines addressing religious expression in the public schools.

AGENCY OBJECTIONS

As noted previously, DOJ and OPM have raised policy objections to the Guidelines. Specifically, both agencies have questioned the need for the issuance of the Guidelines on grounds that accommodating religious expression has not been a significant problem in the federal workplace and issuing the Guidelines, accordingly may raise more problems than it solves. OPM is additionally concerned with the potential impact of some of the hypotheticals contained in the document. Of particular concern to OPM is the Guidelines' use of controversial and potentially divisive examples of expression, such as religious proselytization or the advocacy of pro-life positions, as illustrations of what is legally permissible. The agency argues that these illustrations may be read by federal personnel, including supervisors, as an active invitation to engage in the potentially divisive conduct (rather than as a mere illustration of their rights to engage in that conduct) with the result being a dramatic increase in divisive expression in the federal workplace and a subsequent harm to federal workplace morale. For similar reasons, OPM also objects to the hypothetical which indicates that an applicant for federal employment can not be compelled to take a religiously objectionable oath as a condition of employment. OPM asserts that this example may actively encourage persons to avoid the oath requirement.

There are, however, strong counter arguments to DOJ's and OPM's positions. First, while it may be true that accommodation of religious expression in the federal workplace has not yet been a significant problem, these issues will likely become more common as religious organizations direct their attention to workplace issues. As noted in Section I, guidelines on religious expression in the workplace would have been issued and disseminated by religious organizations with, or without, our participation. The process leading to the development of these Guidelines thus has arguably only allowed us to get out front on a difficult issue.

Second, OPM's objection to the use of hypotheticals involving controversial religious expression may be descriptively accurate but it misses the fundamental point that examples involving controversial expression are absolutely necessary to illustrate the first amendment principle at stake. The principle that is at the heart of the Guidelines is that speech may not proscribed simply because it might be found offensive. This principle, by definition, can not be demonstrated by examples using non-controversial speech. OPM is correct that offensive speech or proselytization by supervisors raises a special set of concerns, particularly when the



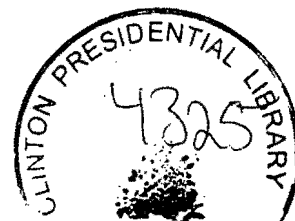
activity approaches coercion or harassment, but the Guidelines recognize the specific problems associated with the speech of supervisors and address them directly.

Finally, OPM's objection to the loyalty oath hypothetical may be addressed on a number of counts. First, the conclusion that this hypothetical will encourage persons to avoid the oath requirement seems unlikely as a practical matter. Second, the right to forego loyalty oaths on religious grounds is protected under the Religious Freedom Restoration Act if not the constitution and the argument as to why people should not be informed of their rights is not readily apparent. Third, the religious groups have made clear that any changes in the existing document could easily lead to an unraveling of the agreement as a whole.

RECOMMENDATIONS

Given your support for the policies and principles contained in the Presidential Memorandum and Guidelines, we recommend that we finalize the documents and prepare them for your execution. Draft copies of the documents are attached for your reference.

- _____ Prepare Presidential Memorandum and Guidelines for Execution
- _____ Explore agency objections further
- _____ Discuss



Withdrawal/Redaction Sheet

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. briefing paper	[POTUS] Meeting with the Senators Kennedy and Rockefeller and Representative Dingell (4 pages)	3/3/99	P5
002. talking points	POTUS TPs with Senators Kennedy & Rockefeller and Rep. Dingell (1 page)	3/3/99	P5
003. memo	Ricchetti et al. to POTUS re: Recommended telephone call to Senator John Breaux (2 pages)	2/24/99	P5 4326
004. talking points	POTUS TPs for telephone call to Senator Breaux (1 page)	2/24/99	P5

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Bruce Reed (Subject File)
OA/Box Number: 21204

FOLDER TITLE:

Health Care-Medicare Commission

Rob Seibert

rs43

RESTRICTION CODES

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

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

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

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

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

RR. Document will be reviewed upon request.

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THE WHITE HOUSE
WASHINGTON

February 24, 1999

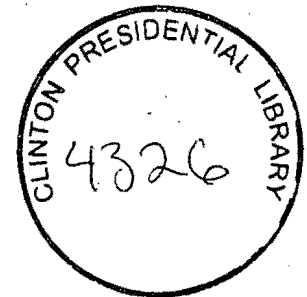
RECOMMENDED TELEPHONE CALL

TO: Senator John Breaux

DATE: February 24, 1999

RECOMMENDED BY: Steve Ricchetti, Gene Sperling, Larry Stein, Chris Jennings

PURPOSE: Return call to Senator Breaux to discuss the Medicare Commission



BACKGROUND:

Senator Breaux has requested that you call him to give your reaction to his Medicare reform proposal and, most likely, to seek your help in encouraging Laura Tyson and Stuart Altman to support the work of the Commission and help him achieve the 11 votes he needs to report out a recommendation. (The Senator is assuming he already has Senator Kerrey and, as such, has 10 votes -- 8 Republicans plus Senator Breaux and Senator Kerrey.)

Senator Breaux will no doubt continue to say he is very open to changes to appease Laura and Stuart. However, no proposal he has released to date comes close to reflecting the views of Laura, Stuart or -- for that matter -- meets the basic principles you outlined in your AARP speech. To the contrary, his proposal has so many serious shortcomings and major omissions that all of your base Democrats (the Vice President, Daschle, Gephardt, Dingell, Rockefeller) are urging us to avoid sending any positive signal about the Commission's work. Highlights of the problems include: no use of the surplus for Medicare, no acceptable prescription drug benefit, the inclusion of the age eligibility increase (without any policy to prevent the number of uninsured from rising OR any 55-65 buy in), and an income related premium that begins at \$24,000 for single beneficiaries. (Attached is a more detailed summary of the current Breaux proposal.)

Although Senator Breaux's proposal contains some positive aspects (e.g., new market-oriented tools for the fee-for-service program, rationalizing its cost sharing, and at least the start of a potentially viable premium support program), we have concluded that the Commission's work product is both politically and substantively unsalvageable. Senator Breaux has not yet reached this conclusion and continues to court your appointees. In fact, as recently as this evening, he met with Laura and Stuart to solicit their ideas on what changes would be needed to obtain their votes. While Laura and Stuart do not believe that the Commission will be sufficiently responsive, they feel uncomfortable rejecting this request for assistance.

We believe the time has come to have an honest, direct conversation with Senator Breaux about why we do not believe we cannot support the Commission's proposal at this time. We believe it can be done in a way that illustrates why it would be beneficial to him and the prospects for reform to conclude the work of the Commission with the ten votes he has.

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We believe you can have the most constructive conversation by telling him it would be completely counterproductive to the prospects for reform if you get in the middle of the debate and strong-arm the Democratic appointees. At this point, you can tell him, it would only divide the party and make it more difficult to pass legislation down the road. A better approach in which you can still show action and leadership is for the Senator to come forward with the best possible report and you can tell him you will: (1) praise the report for strongly advancing the issue and (2) assure him that you will commit to coming forward in the weeks that follow with your own constructive ideas for moving bipartisan legislation forward. Attached are some suggested talking points.

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Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Interested Parties [Westmoorland Memo] re: Grijalva and Medicaid (2 pages)	2/8/99	P5
002. memo	Seth Waxman to Dan Marcus re: [Grijalva] (1 page)	2/9/99	P5
003. brief	[Ninth Circuit ruling re: Medicare & HMOs] (7 pages)	2/99	P5
004. memo	Reed et al. to POTUS re: Grijalva v. Shalala (4 pages)	2/4/99	P5

4327

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Bruce Reed (Subject File)
OA/Box Number: 21204

FOLDER TITLE:

Health Care-Grijalva

Rob Seibert

rs41

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]

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

RR. Document will be reviewed upon request.

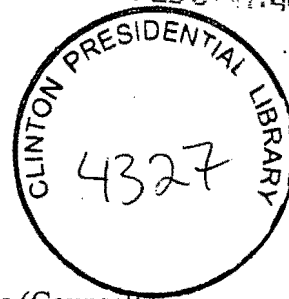
Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
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AUG 1999
THE WHITE HOUSE
WASHINGTON

February 4, 1999



MEMORANDUM TO THE PRESIDENT

FROM: Bruce Reed, Chris Jennings, Elena Kagan, Dan Marcus (Counsel's Office)

SUBJECT: Grijalva v. Shalala

John Podesta held a meeting last night with staff from the DPC, Counsel's office, OLA, OVP, OMB, and HHS to discuss whether the Solicitor General and HHS should petition the Supreme Court for a writ of certiorari in Grijalva v Shalala. The cert petition, which is due on Wednesday, would seek to vacate a decision (1) holding that Medicare HMOs are "state actors" and, as such, required to provide enrollees with constitutional due process and (2) requiring the Secretary of HHS to ensure that all Medicare HMOs comply with specific notice and hearing requirements when seeking to deny or reduce medical benefits.

You previously noted (on a copy of a New York Times article attached to this memo) that this is a "tricky issue," and your comment, if anything, understates the difficulty and political sensitivity of the decision. HHS objects to the administrative burdens that the district court's injunction imposes and worries that these onerous requirements -- as well as the fear of being subject to other constitutional standards -- will drive some HMOs from the Medicare program. Many Congressional Democrats and health advocates, however, believe that contesting the ruling below will undermine our effort to enact patients' rights legislation and perhaps threaten federal enforcement of Medicaid requirements.

Background

In Grijalva, a nationwide class of individuals enrolled in Medicare HMOs alleged that the HMOs were failing to provide the notice and appeal rights guaranteed by the Due Process Clause of the Constitution. The district court (Judge Alfredo Marquez) agreed that Medicare HMOs were state actors and, as such, required to provide constitutional due process; he also found that the notice and appeal procedures then in existence failed to meet constitutional requirements. The judge issued an injunction specifying precise notice, hearing, and appeal procedures, including a requirement that review of an HMO's decision to deny, terminate, or reduce services take place prior to implementing that decision. The injunction also commanded the Secretary to terminate contracts with any Medicare HMO failing to comply with these requirements. The District Court stayed this injunction pending completion of the appeals process, so the injunction has not yet gone into effect.

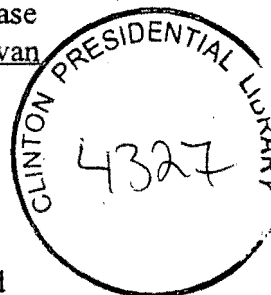
While the Secretary's appeal of the District Court's decision was pending, Congress (in the Balanced Budget Act) overhauled the Medicare HMO program and the Secretary issued a new set of regulations governing Medicare HMOs. Although the new statutory and regulatory scheme provided Medicare enrollees with far greater protections than the original scheme, a panel of the Ninth Circuit upheld the District Court's decision. The Ninth Circuit panel agreed with the District Court that Medicare HMOs were state actors, required to provide constitutional due process, and that the procedural rules in effect at the time of the District Court's decision failed to meet constitutional standards. The panel declined to consider whether the new procedural rules met constitutional requirements and thus rendered the injunction unnecessary, noting that the Secretary could petition the District Court for a ruling on this issue. Concerned about the basic state action issue, the Secretary chose instead to seek a rehearing en banc (which the full Ninth Circuit denied) and now seeks a writ of certiorari.

The Solicitor General's draft cert petition (which we can give you if you want it) notes first that the principal legal issue in Grijalva (whether Medicare HMOs are state actors) is very similar to an issue now before the Court in American Mutual Insurance Co. v. Sullivan (whether workers' compensation insurers are state actors); hence, the SG says, the Court should hold the petition in Grijalva pending the Court's decision in Sullivan. Although this point could be made very simply, the SG's draft uses it as a launching pad to argue the merits of the state action issue; the petition argues for almost 10 pages that Medicare HMOs are not state actors. The SG apparently believes that this extended discussion is desirable to ensure that the Supreme Court appreciates the importance of this case (and therefore holds the petition for Sullivan) and to influence the Court's writing of the Sullivan opinion (so that the decision there effectively forces the district court to lift the injunction).

The draft petition argues next that the new statutory and regulatory scheme governing Medicare HMOs -- which, as noted, provides greater protections than the original regulatory scheme, although some lesser protections than the injunction -- effectively moots the legal challenge adjudicated by the lower courts in this case. The SG thus asks that after holding the petition for Sullivan, the Court vacate the judgment below and remand the case for consideration of any challenge to the new statute and regulations in light of the Sullivan decision.

Discussion and Options

HHS believes that the District Court's injunction imposes a burdensome set of notice and hearing requirements, inconsistent with the Department's current policies and unnecessary to protect Medicare enrollees. HHS notes especially the obligation on health plans under the injunction to give extensive notice to enrollees of changes in service and to continue providing services during the appeals process (effectively forcing HMOs to eat the

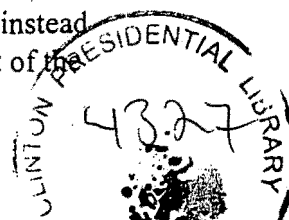


cost of these services even if the HMO's initial decision was proper). HHS believes that these additional notice and hearing requirements will increase costs to Medicare HMOs and perhaps drive some out of the Medicare program; in addition, HHS worries that Medicare HMOs will incur other additional costs in the future if they continue to be viewed as state actors. Finally, HHS notes that the injunction imposes considerable administrative burdens on the Department itself, because the district court ordered it to monitor Medicare HMOs' compliance with the injunction and to terminate the contracts of non-complying HMOs.

But this position -- and these arguments -- place the Administration in an awkward position when it comes to pushing Congress to enact a Patients' Bill of Rights. Although the patient protections at issue are different, the Department is making the same kind of arguments against the injunction that private health plans routinely make against the Bill of Rights: that the added protections are excessively burdensome and would raise medical costs without improving the quality of patient care. Of course, the requirements in the one case were imposed by a court, whereas in the other they would be imposed by Congress. But this difference is unlikely to make much of a difference to our critics. In insisting on Supreme Court review of the judgment below, we would be giving credence to the health plans' view of regulation, while making ourselves vulnerable to the charge of hypocrisy.

Perhaps more important, many advocates and some Hill Democrats are worried that our arguments on state action will undermine the Medicaid entitlement. If Medicare HMOs are not state actors, then Medicaid HMOs probably are not either. Although it is possible to make distinctions between the Medicare and Medicaid programs with respect to state action, even HHS admits that these distinctions are strained and may not be convincing. What is more, the enforcement of Medicaid guarantees depends on whether participants in the system (such as HMOs) are state actors in a way that the enforcement of Medicare guarantees does not. Whereas the Medicare statute has built-in enforcement mechanisms that are unaffected by the state action issue, the Medicaid statute has no such mechanisms: federal enforcement relies largely on Section 1983 suits, which can only be brought against state actors. We fought hard, in the Medicaid block grant debate of 1995, to maintain this right of action for Medicaid violations, and we should be reluctant to start down a road that could make it less effective.

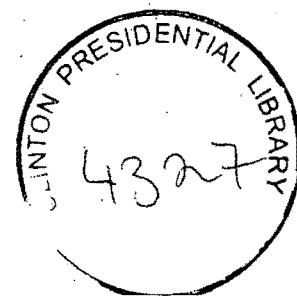
We are now considering three options. The first option is to file the cert petition drafted by the SG's office. The second option is to file a stripped-down version of the cert petition, simply making the point that Grijalva and Sullivan are related and asking the Supreme Court to hold the former for the latter. Because this kind of petition would not explicitly argue that Medicare HMOs are private actors or that the district court erred in issuing its injunction, it would inflame advocates less and insulate us somewhat from the charge of hypocrisy. As noted above, however, it might also be less effective in getting the Court to dispose of both this case and Sullivan in the way that stands the best chance of overturning the injunction. The third option is to decline to file any cert petition and instead return to the district court to argue that it should lift (or modify) its injunction in light of the



new statute and regulation. Under this approach, we would say nothing now about the state action issue -- although if the Supreme Court later decides Sullivan in a way that is relevant, we could ask the District Court to reconsider its injunction in light of the decision. This approach best protects our position on the Patients' Bill of Rights and poses the least threat to the Medicaid entitlement, but it is probably the least effective way of helping HHS to escape from the district court's injunction.

Secretary Shalala favors the first option, but she recognizes that this is a difficult decision. We are almost sure that Shalala would prefer the second option to the third, although she has not yet considered this issue. The Solicitor General believes that the first option best protects the government's broad interest in entering into contracts with private parties, but our sense is that the SG is largely taking its direction in this case from HHS. We have not yet discussed with the SG whether he would prefer the second or third options and cannot guess how he would come out on this issue. The DPC and Counsel's Office believe strongly that we should not choose the first option. All of us think that either the second or third options would be acceptable, with Bruce and Dan leaning slightly to the second and Chris and Elena slightly to the third. We expect that John will talk to you about this matter after you have had a chance to read this memo.

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Withdrawal/Redaction Sheet

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001: memo	Beth Nolan et al. to POTUS re: Carhart v. Stenberg (3 pages)	03/13/2005	P5 4328
002: memo	John Hilley et al. to POTUS re: "Partial-Birth" Abortion (6 pages)	4/10/1997	P5 4329

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Bruce Reed (Subject File)
OA/Box Number: 21199

FOLDER TITLE:

Abortion

Rob Seibert

rs34

RESTRICTION CODES

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

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

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
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THE WHITE HOUSE

WASHINGTON

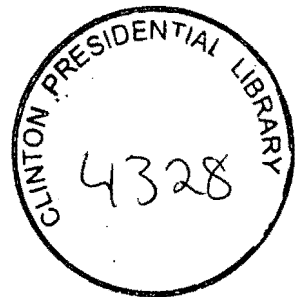
March 13, 2000

MEMORANDUM TO THE PRESIDENT

FROM: BETH NOLAN^{or}
COUNSEL
BILL MARSHALL^{BM}
DEPUTY COUNSEL

CC: JOHN PODESTA
CHIEF OF STAFF
MARIA ECHAVESTE
DEPUTY CHIEF OF STAFF

SUBJECT: CARHART V. STENBERG



This is a follow-up to our previous memorandum to you regarding whether you should instruct the Solicitor General to file an amicus curiae brief in *Carhart v. Stenberg*, the case addressing the constitutionality of the Nebraska law proscribing dilation and extraction (D & X) abortions commonly known as "partial-birth" abortions. Our original memorandum to you recommended that we not file because the grounds of the lower court decision invalidating the Nebraska law were not the same as the grounds of our opposition to proposed parallel federal legislation. Recent developments, however, suggest that there may be some need to reassess our initial recommendation.

As our earlier memorandum indicated, the Eighth Circuit invalidated the Nebraska statute on the grounds that it imposed an undue burden on a woman's right to choose by prohibiting a procedure used in second trimester abortions. Our legislative position, on the other hand, has been that we would support a bill if it contained an exception for a serious threat to a woman's health. The implication of our legislative stance is that we would support restrictions on partial-birth (D & X) abortions even if performed in the second trimester.¹ We were, therefore, concerned that if we filed a brief supporting the Eighth Circuit's holding, we would undercut our legislative position. Conversely, if we filed a brief consistent with our legislative position, we would undercut the decision of the Eighth Circuit and the legal arguments of the groups opposing the statute.

¹ Because the D & X procedure is used in both second and third trimester operations, our legislative position, as currently maintained, is not properly described as an objection to only so-called "late-term" abortions.

Since the time of our original communication to you, HHS has submitted a memorandum to the Solicitor General recommending that a brief be filed, and we have been informed that Secretary Shalala is strongly committed to this action. At the same time, the groups have actively lobbied the White House, including the Offices of the Chief of Staff, Vice President, First Lady, Public Liaison, and Counsel, to become involved in the case. The groups have made clear that they would consider our not filing a serious breach of our commitment to freedom of choice. In this respect they note that the Reagan and Bush Justice Departments participated on the other side in every abortion case heard by the Supreme Court during their tenure.

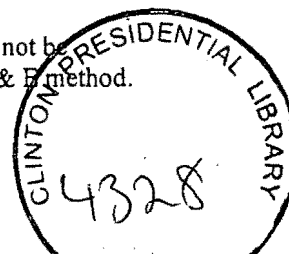
HHS and the groups have also argued that participation in this case is important because of vagueness/overbreadth problems in the statutory language describing the partial-birth (D & X) restriction. Recent cases striking down partial-birth (D & X) restrictions (including *Carhart*) have found, in part, that the statutory language used to describe the procedure is vague and overbroad. Specifically, the cases hold that language aimed at prohibiting the D & X procedure may also cover certain dilation and evacuation (D & E) procedures— the procedures most widely used in second trimester abortions. On this basis, the groups argue that if the Court were to uphold the Nebraska statute, it would result in limiting the availability of a broad range of abortion services for pregnant women and would not merely prohibit one arguably objectionable procedure.²

In light of these developments, there has been a growing consensus among key staff that we should revisit the question of whether or not to file a brief in this case. We do not believe it advisable to file a brief that tracks our legislative position and argues only that the Nebraska statute is unconstitutional solely because it does not have a health exception. Submitting a brief along these lines would clearly weaken the legal case against the Nebraska statute and would not serve any other interest. Three other options, however, are available.

First, we could submit a brief that raises both the woman's health claim and the vagueness/overbreadth claim. This position has the advantage of allowing us to file without moving us from our legislative position (other than suggesting that, in light of intervening cases, we now believe that the language to which we initially ascribed is unconstitutionally overbroad).³ The advantage of not abandoning our legislative stance, however, is also potentially its weakness. If we suggest (either implicitly or explicitly) that a narrowly tailored restriction would be permissible, we risk weakening the broader legal case against the Nebraska statute by not adopting the obvious position that the law is unconstitutional simply because it intrudes into the second trimester. Raising the vagueness/overbreadth argument, however, may allow us to finesse this issue in a way that raising the health claim alone would not. A well-constructed argument that the law is unconstitutional because it would prohibit D & E procedures in the second trimester may not show our hand that we would find a second trimester restriction on a pure D & X procedure permissible. Whether a brief can be successfully crafted along these lines, however, is not clear. We may need to review a completed draft to determine whether threading the needle in this manner is possible.

² Some of the groups contend that drafting language distinguishing D & X from D & E procedures may not be possible. Under this theory, any ban on the D & X procedure would also limit the availability of the D & E method.

³ The language of the Nebraska statute was patterned after the federal bill.



Second, we could follow the Eighth Circuit and argue that the law is unconstitutional because any intrusion into the second trimester (including even a narrowly tailored restriction on the D & X procedure) would be impermissible.⁴ This is the strongest and probably soundest legal argument. Moreover, if D & X cannot be statutorily distinguished from D & E procedures,⁵ this approach may be the most necessary to protect the woman's right to choose. The problem is that this approach differs from the implicit position in our legislative stance. Again, however, there may be some room to maneuver. None of our veto messages actually stated that we would sign a law that restricted second trimester abortions. The statements stated only that we would not sign a law that did not have the woman's health exception.

Third, we could stay the course and not file a brief.

The viability of any of these options depends upon the interrelationship between a number of legal, policy and political factors. The option of submitting a brief that raises both health and vagueness/overbreadth arguments could provide some of the political benefits of participation and, if properly crafted, could also provide helpful legal guidance to the Court. It also, however, could be risky both legally and politically if not artfully crafted and the full evaluation of this option may not be possible until a draft is completed. The option of filing a brief arguing that the law is unconstitutional because it restricts second trimester abortions is, from a purely legal standpoint, clearly the best course because it advances the strongest and cleanest legal argument. This approach, however, suggests some movement from our legislative stance. The option of not filing a brief allows us to remain the most consistent with our previous position. It may, however, expose us to considerable criticism from our allies and would, of course, preclude our ability to influence what may become an important precedent.

DECISION:

_____ **Ask the Solicitor General to draft a brief raising only the health and vagueness arguments and postpone final decision until the draft is reviewed.**

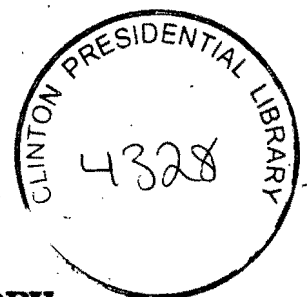
_____ **File a brief, which argues the law is unconstitutional because it intrudes into the second trimester.**

_____ **Do not file a brief.**

_____ **Meet to discuss.**

⁴ This option, of course, does not preclude also raising the vagueness and woman's health claims.

⁵ There is conflicting medical opinion on this point.



THE PRESIDENT HAS SEEN

4114197

THE WHITE HOUSE

WASHINGTON

Copy to Bruce
Then file - Abortion - partial birth -
notes + memos

'97 APR 11 PM 4:03

copied
Hilley
Kagan
Thornton
COS

April 10, 1997

Re: Abortion

MEMORANDUM FOR THE PRESIDENT

FROM:

John Hilley
Elena Kagan
Tracey Thornton

SUBJECT:

"Partial-Birth" Abortion

Any possibility
we can go any
distance to support
the Bushes bill in
its ~~most~~ nature for
work pointing out
would reduce abortion in many
partial birth abortions -

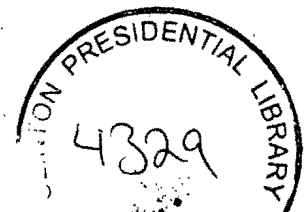
ALTERNATIVES TO THIS PROCEDURE

You have asked whether the so-called partial-birth procedure is ever necessary to save the life of a woman or avert serious harm to her health. Considerable medical uncertainty surrounds this question. The doctors of the women you met with believed the procedure was necessary to prevent serious injury, and other doctors have said that the procedure, in certain circumstances, is or may be the safest one to use. Still other doctors have disputed that health considerations ever demand use of the procedure.

Perhaps the most reliable opinion is from the American College of Obstetricians and Gynecologists (ACOG), which issued a statement in January addressing the procedure. (ACOG, like most other medical groups, calls the procedure an intact dilatation and extraction or intact D&X.) According to the statement, "A select panel convened by ACOG could identify no circumstances under which this procedure would be the only option to save the life or preserve the health of the woman." (Emphasis in original.) The statement then went on: "An intact D&X, however, may be the best or most appropriate procedure in a particular circumstance to save the life or preserve the health of a woman, and only the doctor, in consultation with the patient, based upon the woman's particular circumstances can make this decision." In sum, doctors have other options, but those other options may be more risky or otherwise more undesirable from a medical standpoint.

Other groups of doctors, with a greater stake in the abortion controversy, have taken more definitive positions. The Society of Physicians for Reproductive Choice and Health issued a statement last month saying that "in complex obstetrical situations, dilatation and extraction is the safest procedure to use. It carries the least risk of bleeding, perforation, infection or trauma to the birth canal." On the other hand, a group of mostly pro-life physicians called PHACT has written that "there are absolutely no obstetrical situations requiring the destruction of a partially delivered

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fetus," and indeed that the procedure involves serious risks of maternal hemorrhage, uterine rupture, and infection.

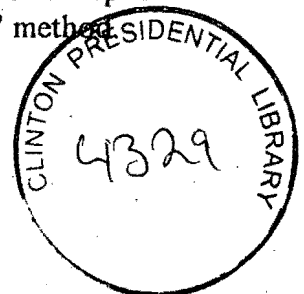
A recent article in the "New York Times" noted that the partial-birth procedure is only one of three procedures (all of them "pretty gruesome," as one doctor quoted in the article said) that can be used to end pregnancies after 20 weeks. The article reported that three of the twelve abortion specialists interviewed generally prefer the procedure on the ground that it poses less risk of uterine perforation. The article also noted that one doctor who does not usually use the procedure has done so on particular occasions because "the woman's anatomy or the fetus's size demanded it."

Given the state of medical evidence on this subject, an exception for women who need the procedure to prevent serious harm is appropriate. Such an exception would enable the attending doctor -- the person with the most relevant knowledge -- to make the complex decision whether the procedure is in fact medically necessary in a given set of circumstances. The uncertainties surrounding this issue, however, caution against your making any estimates of the number of women whose health, without this procedure, would be at risk of serious harm. Any such estimates, however large or small, would be difficult to support.

HOUSE CONSIDERATION

On March 20 the House passed a bill identical to the one you vetoed last year (H.R. 1122) by a vote of 295-136, five (5) votes more than the two-thirds necessary to override a veto when all Members are present and voting. Since the September 1996 veto override vote in the House, only three Members -- all Republicans -- switched their votes from supporting your veto to supporting the legislation (Representatives Shays (R-CT), Freylinghausen (R-NJ) and Sue Kelly (R-NY). They all indicated that an abortion rights advocate's recent statement that he lied about the number and circumstances of late-term abortions influenced their switch. All 73 Republican freshmen voted for the bill, and 22 of the 42 freshmen Democrats voted against it.

Two different alternatives were offered during the House debate on the floor. The first was a Hoyer (D-MD)/Greenwood (R-PA) substitute which would ban all post-viability abortion procedures with an exception if the woman's life were in jeopardy or if she faced "serious adverse health consequences" without the procedure. The Hoyer/Greenwood substitute was ruled non-germane by the House parliamentarian and a motion to appeal that ruling failed by a vote of 265-165. A second motion to recommit, offered by Congressman Frank (D-MA), would have amended the underlying bill to provide a health exception where the procedure is performed to spare a woman "serious adverse long-term physical health consequences." This health exception would have applied to both pre- and post-viability abortions using the "partial birth" method. That motion failed 149-282.



Opponents of these two alternatives argued that both health exceptions were either overly broad, and therefore would not prevent any procedures, or unnecessary, because there is no instance where this specific procedure is medically necessary to protect the health of the mother. House Judiciary Committee Chairman Henry Hyde, one of the leading proponents of the legislation, has gone even further in publicly stating that, while he will trade "a life for a life," he will "never trade life for health." Given Mr. Hyde's position, which has broad support in the Republican caucus, it is extremely unlikely that any late-term abortion measure that contains even a very narrow health exception will pass the House.

SENATE CONSIDERATION

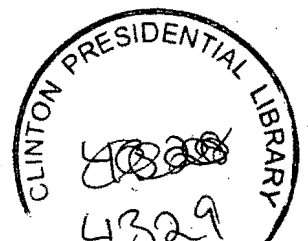
You will recall that last September the Senate failed by nine (9) votes to override your veto of this legislation (57-41). Senator Lott has indicated that "partial birth" will be on the floor when he has the votes to override a veto, but Senator Daschle is preparing for consideration at any time this month.

The Senate dynamic is somewhat different from the House. First, in his leadership role, Senator Daschle has taken a personal interest in trying to find a compromise that will pass and is also consistent with Roe vs. Wade. Both Senators Daschle and Mikulski recently spoke out strongly in a Democratic caucus meeting that Members should not make up their minds about this issue until after they have considered an alternative being crafted by Senator Daschle (discussed below).

To date, only one Senator who voted against the "partial birth" abortion ban last year has publicly announced that he intends to switch his vote to support the ban -- Senator Hollings, who is up for reelection in '98 and whose state of South Carolina recently enacted a "partial birth" ban (March 1997). Other states that have recently enacted similar bans are listed below.

For his part, Senator Daschle thoroughly understands this area and intends to cast a wide net to try to capture what he regards as the center here. He has held a number of meetings with his colleagues on both sides of the aisle and they have encouraged him to continue his efforts. His aim is to try to construct language that gets the votes to pass the Senate and he is talking to Senators personally to see what it will take to secure those votes. Senator Daschle also recognizes, though, that if he is unsuccessful in getting a majority vote, he still must get a strong vote on his alternative in order to keep enough Members voting to sustain the veto.

The Daschle alternative would ban all abortions after fetal viability unless the mother's life or health is truly endangered. The health exception is being drafted to cover three categories of medically diagnosable conditions based on their severity: (1) disease or illness related to the pregnancy itself, such as serious heart damage or severe hypertension; (2) inability to treat aggressive cancers or life-threatening conditions such as non-Hodgkin's lymphoma, breast cancer, leukemia or diabetes complications; and (3) injury or loss of function such as paralysis, uterine rupture or future fertility. These categories set parameters to cover circumstances connected

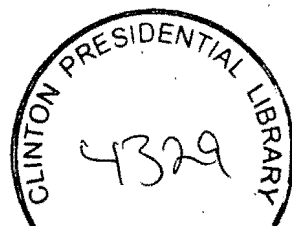


rupture or future fertility. These categories set parameters to cover circumstances connected directly to continuation of the pregnancy but the ultimate decision of which conditions fit within these categories is left to the physician's best judgement. In terms of the sanctions, like the Republican bill, Daschle's alternative also provides for criminal penalties where the ban is violated. [Daschle one-pager attached]

There may be a series of targeted amendments offered as well that will be designed to focus attention on the health issue. For example, amendments could list specific health conditions that would be excepted like breast cancer or diabetes. Another approach would be an amendment that would require that the procedure most protective of a woman's health be used. These would be constructed as message-type amendments to be used only if necessary.

Basically, there are six (6) pro-choice Republicans very much in play for Daschle to pick-up on his compromise: Campbell, Chafee, Collins (ME), Jeffords, Snowe and Specter. Senator Snowe, who has been working closely with Daschle, has indicated that Hutchison (TX), Roth and Stevens are also possible pick-ups but they are long-shots. Daschle has asked Snowe to continue to work her Republican colleagues. With these Republican numbers, Daschle will have to get almost all 45 Democrats in order for his alternative to pass. During the last Congress, four (4) Democrats currently serving voted against a Boxer amendment (Hoyer/Greenwood-type language) which would have applied the ban post-viability only with a health exception: Breaux, Ford, Reid (NV) all three (3) pro-life and Conrad (mixed voting record on abortion). The pro-life Democrats will be the most difficult for Daschle to convince to vote for his alternative because of the strongly held pro-life view that there should be no exception for a woman's health. Both Reid and Breaux are up for reelection in '98. New Senators Landrieu and Cleland will require some work to get their support. In terms of pro-choice and mixed-voting-record Democrats who supported overriding your veto -- Biden, Conrad, Dorgan, Leahy, and Moynihan -- most, if not all, of them will vote for the Daschle alternative. Biden, Dorgan and Leahy voted for the Boxer amendment and Moynihan was absent the day of the vote.

Much of the outcome here depends on the procedural posture under which this compromise arises. While we do not know what that situation will be when the Senate takes this matter up, we can be sure that if the Republicans believe that the Daschle alternative actually has a chance of passing, they will demand at least a separate up or down vote on the underlying Republican bill and there would also be an up or down vote on Daschle. If both pass, both would go into conference with the House-passed bill that you vetoed last year, and we certainly cannot predict what the outcome would be of this conference which would be under the exclusive control of the Republicans. It is likely that they would simply come back with the bill you previously vetoed since most House Republicans, lead by Messrs. Hyde and Canady, are unlikely to accept any measure which contains a health exception. Another possibility is that they would keep both Daschle and the vetoed bill together but further narrow the health exception in the Daschle alternative. Keep in mind though that the Daschle health exception only applies to abortions after viability. This means that, if they combine the Daschle alternative with the Republican bill, the Republican bill would control in cases where the "partial birth"



procedure is performed before viability and therefore, in such instances, there would only be an exception for the life of the mother but not her health.

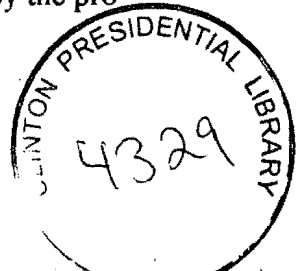
Procedurally, Daschle's vote count will be higher if Members are able to cast votes on both his alternative and on the underlying Republican bill -- there will be a lot of folks who would vote for both. Members like those who voted for the Boxer amendment and also supported an override would fit into this category. Leahy, Biden, Specter, Campbell and Dorgan are examples. In addition, both Cleland and Landrieu are candidates for voting for both versions. Hollings is obviously in this category now as is freshman Senator Tim Johnson (D-SD) who voted to override your veto when he was in the House. A measure which contained both the Daschle alternative and the underlying Republican bill would probably have the votes to pass the Senate.

Another component of this mix is the strong, unabashed pro-choice wing which includes Members like Boxer, Feinstein and Moseley-Braun. Bolstered by the pro-choice lobby, this group has warned Senator Daschle that they will not support his alternative if the health exception is too narrowly drawn. While this group is not a large one, the vote situation is so tenuous that Daschle does not have a vote to spare on his alternative. For now, he is continuing to canvas other Members and when he has a better idea of his vote count, he will be able to determine the best course of action to take with regard to this group. The language in the alternative is still fairly fluid and changes can be made to accommodate these Members; but in the end, this group will have to come back into the fold. Of course, there is absolutely no danger of any Senators in this group voting to override a veto.

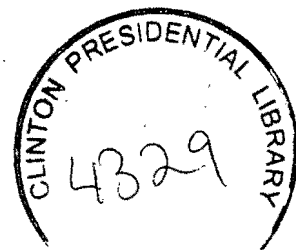
Mention should also be made of Members who are up for re-election in 1998. Senator Harkin has painted for a number of these Democrats -- most notably Senators Murray, Dodd, and Feingold -- a very dire description of how his vote to sustain your veto played in his '96 race. As for Dodd, and to some degree Lieberman, another concern is the fact that moderate House Republican Chris Shays (CT) switched and voted to support the measure. The pro-life community is spending a substantial amount of money running TV ads in certain key states. But countering the Harkin experience is Senator Durbin's '96 race; Durbin has told a number of Members that what matters most is how they talk about this issue.

If the Daschle alternative does not pass, the question becomes which supporters of his alternative will vote for final passage of the Republican bill? As previously pointed out, a strong Daschle vote just shy of passing will likely help in much the same way the Boxer vote happened last year -- 47 Senators voted for her amendment and 41 voted to sustain the veto.

Finally, the ultimate success of Daschle's effort either in passing or getting veto override strength depends a great deal on the rhetorical battle that will become much more intense as this bill goes to the floor. So far, unlike the House, Senate Republicans have not been able to publicly unnerve the Daschle bloc. This is due more than anything to the hard work being put into this effort by Senator Daschle and his team. The fact that the effort has become a Leadership driven initiative is also critical. So the proponents' argument that the recent exposure of the "lies" told by the pro-



X { choice lobby should cause Senators to reevaluate their position is being countered by the Daschle camp with the fact that, unlike the Daschle alternative, the Republican bill would not stop a single abortion; it would merely result in abortion by other methods, all of which pose a greater risk to the woman's health. By contrast, the alternative would outlaw these late-term abortions entirely no matter what the method and thereby actually reduce the number of abortions in this country without putting women at unacceptable risk. Finally, the Daschle approach permits the argument that even if Congress overrides your veto, the Republican bill will be struck down because its pre-viability restrictions significantly intrude upon the essential holding of the Roe vs. Wade decision. Enactment of the Daschle alternative allows Congress to pass a comprehensive, constitutional ban to stop unnecessary abortions of viable fetuses and is a ban that you would sign.



Withdrawal/Redaction Sheet

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Reed to POTUS re: Reinventing Government Announcement on Wednesday (2 pages)	3/1/93	P5 4330
002. notes	Reed's notes at Reinventing Government Meeting, March 3, 1993 (3 pages)	3/3/93	P5
003. memo	Reed to Marla Romash re: REGO Ideas for Houston (partial) (1 page)	9/3/93	P6/b(6)
004. memo	Administrative Conference of the United States (ACUS) council members (1 page)	ca. 1993	P2, P5, P6/b(6)

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Bruce Reed (Subject File)
OA/Box Number: 21208

FOLDER TITLE:

Reinventing Government [1]

Rob Seibert

rs73

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 advise 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]

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BC: Announce what Phil's role is
that wasn't there before (M in OMB)
→ Inclusive Cong. list, including GOPs

AG: Emphasis on customer service March 1, 1993

BC: ① Tam, ② Measure what you say, ③ Collapse layers &
empower people in more free-spirited
environment - change the culture
of bureaucracy

INFORMATION

MEMORANDUM FOR THE PRESIDENT

FROM: *AG: Can-You-Top-This w/ Cabinet*
Bruce Reed

SUBJECT: Reinventing Government Announcement on Wednesday

BC: Procurement in WH
→ Change way govt works on daily business

Per our conversation last night, we are preparing for Wednesday's announcement of a Texas-style "National Performance Review," headed by the Vice President. We are looking either at a visit to a specific agency (HUD or HHS) or an event that brings employees from across the government to the Old Executive Office Building.

We expect this announcement to include:

1. Official designation of the Vice President to head the Administration's Campaign to Reinvent Government, and announcement of Phil Lader's role at OMB. We would also like to name Al From, David Osborne, and John Sharp as unpaid senior advisers on reinventing government.

2. Formation of a government-wide National Performance Review to examine every federal program and service. Each Cabinet Secretary will be asked to assign 5 to 10 people -- managers, auditors, and front-line workers -- to devote a portion of their time to the project for up to six months. The goal of the Review is not to produce another report, but to make specific recommendations for action, agency by agency.

The Review teams will look at existing analyses by GAO, CFOs, and Inspectors General for immediate action; evaluate the efficiency of every federal department; ask federal workers and the American people to make specific suggestions on how to improve services and cut bureaucratic waste, by calling an 800-number (every agency already has one) or writing the Vice President; recommend ways to streamline the bureaucracy by eliminating unnecessary layers of management and reducing duplication of effort; look for ways to improve services through better use of technology and by making government programs more responsive to the customers they serve; suggest changes that would reward performance, give managers more flexibility, and put more decision-making power in the hands of front-line workers; and identify top priorities for performance-based management decisions.

BC: Rule of thumb: 1 financial/savings issue for every
customer friendly issue
→ Figure out how to market this

AG: One-stop shopping system for minor disabilities (Rasco)
- ATM cards

AG: customer-friendly - summit of virtues of govt

BC: 1. Less & w/o eroding services
2. R. Govt - TAM, user friendly, technical
3. What govt should do?
- Fed govt doesn't do things well -
look at states: partnerships w
private sector
- block grants to states

AG: change dynamic of fed employees & waste
- 200,000 jobs → pay raise/cost

BC: Can a dept reorganize itself? 60 days
- Why did it lapse? (→ legal advice)

→ More moderate GOPs, Kerney etc.
- Clinger?

AG: This is going to take awhile -
don't set sights too low - give us time to
do it right

change the way govt does business -
welfare reform, community policy, etc

AG: quality revolution swept up
by passed govt. - doing things
in new way -
cutting costs

BC: Not 93 Carter reorg.
- Don't think; not good govt.

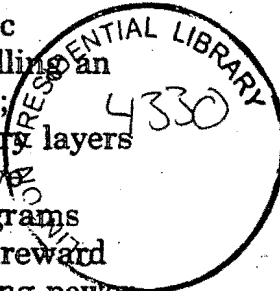
* 4-yr effort, 8, 12, 16

Contrast improve this specific
report to you every step of way

OVAL
OFFICE
3/1/93

→ Look for
successful
hist labors

→ Innovation
w successes
so far



This will not be another study -- Washington has had too many studies. The Review will act on existing wisdom and recommendations by real people to produce real results. We don't intend to create new jobs, spend new money, or generate new paperwork in the process.

3. Statements by John Sharp on how the Performance Review worked in Texas, and by David Osborne on what reinventing government can accomplish.

4. Recognition of congressional efforts to join in the President's war on waste. Several members of Congress have proposed legislation to create either a Performance Review or a Reinventing Government Commission. We are currently planning to invite Senators Glenn, Lieberman, Krueger, and Roth, and Reps. Conyers and Gordon.

5. Expression of support for legislation to begin performance measurements -- including the Roth bill on performance-based budgeting.

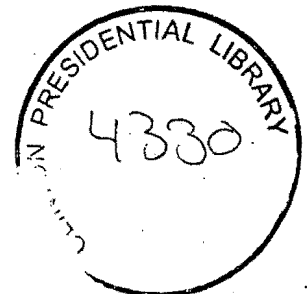
A few questions remain for Wednesday:

1. What precise role can we give outsiders like Sharp, Osborne, and From?
We want to create a broad circle of advisers -- perhaps including the members of Congress listed above -- without triggering the open-meeting laws under the Federal Advisory Committee Act. Texas made extensive use of free help from private consultants and auditors; we should too, if we can.

2. Are we planning to submit legislation asking Congress for broader powers through reorganization authority? If we're serious about reinventing government, we'll need it, but Howard Paster suggests that we wait as long as possible, so we don't raise jurisdictional issues in Congress that could jeopardize the economic plan. We don't need to decide anytime soon.

3. How should we proceed in developing a strategy for the campaign to reinvent government? The key areas include:

- a) Devolution of responsibilities to the states;
- b) Reorganization of departments and agencies;
- c) Sunset laws;
- d) Incentives to reward performance, productivity, and innovation, including an Innovation Fund;
- e) Regular Presidential visits to agencies to meet with managers and policymakers and hold town meetings with employees;
- f) Truth in spending laws;
- g) Regulatory reform;
- h) Civil service reform;
- i) Procurement changes; and
- j) Pilot restructuring of departments.



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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Michael Waldman to Leon Panetta re: Foreign Lobbying-A First Cut (1 page)	6/6/95	P5, P6/b(6)
002. memo	John Podesta and Todd Stern to POTUS re: Waldman/Reed Memo on Lobbying Reform (1 page)	4/11/95	P5 4331
003. memo	Michael Waldman & Reed to POTUS re: Lobby Reform Initiative (6 pages)	4/10/95	P5 4332
004. memo	Waldman & Reed to POTUS re: Lobby Reform Initiative (5 pages)	3/20/05	P5 4333

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Bruce Reed (Subject File)
OA/Box Number: 8428

FOLDER TITLE:

Lobbying Reform-Memos

Rob Seibert

rs53

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 advise 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]

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

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- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
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- b(9) Release would disclose geological or geophysical information [(b)(9) of the FOIA]

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

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

RR. Document will be reviewed upon request.

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THE WHITE HOUSE
WASHINGTON

THE PRESIDENT HAS SEEN

5/7/95

April 11, 1995

MR. PRESIDENT:

Attached is a Waldman/Reed memo on political reform cleared by Leon and Harold that addresses initiatives on lobby reform, campaign reform and foreign lobbyists. The memo is an outgrowth of discussions with key staff including Harold, Leon, George, Pat Griffin, Bill Curry and Doug Sosnik.

There is staff consensus on four items: renewing your call to ban lobbyist gifts; pushing for lobby disclosure; spelling out your free TV time proposal; unilaterally refusing to accept PAC contributions for your reelection campaign.

They also raise for argument and unanimously reject the idea of a ban on your officials meeting with foreign lobbyists.

There is no staff consensus on four remaining items: unilaterally rejecting lobbyist contributions; unilaterally rejecting lobbyist contributions and fundraising; challenging the DNC and RNC to agree not to raise soft money; or proposing a bipartisan commission on campaign reform and pledging to introduce its recommendations.

On these last four points, you may wish to meet with relevant staff.

John Podesta
Todd Stern

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Leon/Hicks

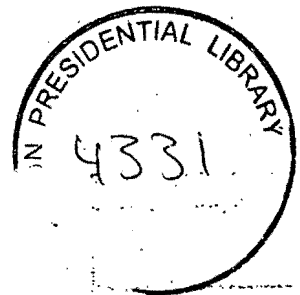
Leon need to discuss

when I get home
from Russia -

Copies sent
to Leon & Harold
5/8

ALSO

Waldman &
REED!



THE WHITE HOUSE
WASHINGTON

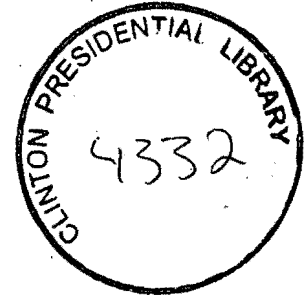
THE PRESIDENT HAS SEEN
5/7/95

April 10, 1995

95 APR 10 P 1:30

MEMORANDUM FOR THE PRESIDENT

THROUGH: THE CHIEF-OF-STAFF 
FROM: MICHAEL WALDMAN *MW*
BRUCE REED *BR*
SUBJECT: LOBBY REFORM INITIATIVE



At your request, we have prepared a set of initiatives that would put you out front on the lobby reform and political reform issue.

We believe that this issue cuts to the core of why people have lost faith in government and are angry at politics. The middle class truly believes that powerful interests hold sway, and that their voice is too often ignored. At a time when Congress' unpopularity is rising, even as the GOP's overall popularity is holding steady, this issue allows you to position yourself against the part of Washington the public hates most.

However, this very cynicism makes it hard to persuade people that we are serious, and risks bruising us if we are perceived not to be. Therefore, we believe that this issue is worth pressing only if it is done in a sharp and sustained way -- if it can become and remain a central theme over the next 18 months -- or it may not be worth doing at all. Therefore, we need a clear direction from you on how to proceed.

I. BACKGROUND

Political reform continues to be a core issue for the Perot voters and independents. (Public opinion research is under separate cover.) It also has the potential to be a wedge issue between you and potential Republican opponents -- who tend to favor wealthy special interests at the expense of the middle class. In fact, this is one of the few major areas where the Republicans have completely ceded the field to us, if we choose to enter it. At the same time, if we approach 1996 with few political reform achievements, we will be vulnerable to attack from Perot or some other independent candidate from outside Washington.

If a decision is made to engage on political reform, now is the time to do so, for several reasons.

- Congress' First 100 Days is ending, with a sense that it has not reformed itself. In particular, the defeat of term limits will mean that Congress passed no major reform of

itself. In addition, the press is finally beginning to paint the GOP Congress as a tool of wealthy special interests -- as *Time* has put it, the GOP has granted "unprecedented access" to lobbyists. (For example, the *Washington Post* reported that lobbyists wrote the regulatory moratorium bill, and were even given a room off the House floor from which to operate; the *New York Times* reported that GOP members were refusing to talk to lobbyists who had contributed to Democrats; and it was widely reported that the GOP used lobbyists to conduct the official briefing on their regulatory reform bill.)

- The GOP presidential race is being heavily defined by the so-called \$20 million fundraising entrance fee.

- Your announcement of your own organizational plans will force the issue of what restrictions you are willing to put on your own fundraising. Next year, the need to raise tens of millions of dollars will bring into higher relief the question of campaign financing.

- Democrats in Congress are starting to become active on the matter once again, albeit in a guerilla fashion. Rep. Bryant (with the support of the Democratic leadership) is filing a discharge petition to bring up the ban on lobbyist gifts; Sen. Wellstone plans to seek to attach the gift ban to legislation sometime before the Easter recess.

- A bipartisan group of moderate lawmakers is becoming visibly active. A group led by Rep. Chris Shays has put forward a package of lobbying and other political reforms, and will be pressuring the leadership to act.

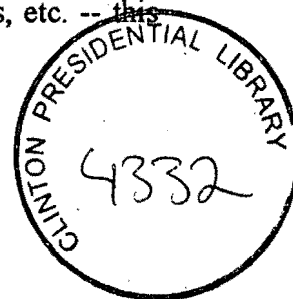
- You led the State of the Union with a call to act, but your Administration has not yet fleshed out those proposals in public.

II. OPTIONS

Here is a set of initiatives that could be announced immediately. They could be announced in one major speech, or could be broken out (unilateral steps, legislative proposals, a speech on democracy and citizenship) for maximum effect.

Lobby reform

1. Renew the call for a ban on lobbyist gifts, meals and travel to Members of Congress. This is being pushed by Democrats in both chambers. During the State-of-the-Union, you called for Members of Congress to voluntarily give up lobbyist gifts. Because of its stark simplicity -- lawmakers being treated to tropical vacations by lobbyists, etc. -- this has the greatest resonance of any political reform proposal.



2. Renew the call for reform of the lobby disclosure laws. The current lobby disclosure laws, passed in 1946 and basically untouched since, are more loophole than law. Lobby reform legislation would require all lobbyists, for the first time, to fully disclose for whom they work, what they are paid, and what legislation they are trying to pass or kill. This measure is more complex than the gift ban, and conservative grass-roots groups (such as the Christian Coalition) may succeed in bogging it down; nonetheless, it is good policy and resonates somewhat with the public.

Campaign reform

3. Spell out your free TV time proposal. Apart from your brief mention of it during the State of the Union speech, we have never fleshed out your proposal to provide free TV time for candidates. Senator Dole and House Commerce Committee chairman Bliley have proposed strong free TV bills, and the concept is supported by Ross Perot, the DLC and Common Cause. This proposal could be laid out in a speech on democracy that could be high-toned and would not necessitate a subsequent crusade.

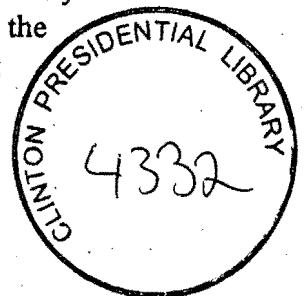
4. Alternately, propose a bipartisan commission to "cut the Gordian knot" on campaign reform -- and pledge to introduce its recommendations. Former FEC Chair Trevor Potter has proposed that the campaign finance reform conundrum be solved by legislation creating a base closing commission-style panel that would make recommendations for reform. The President would be required to propose the reforms unchanged, or reject them, and Congress would agree to vote on them without amendment. Senator Dole has endorsed this proposal. This commission itself would require legislation to be launched. (Alternately, you could appoint your own bipartisan commission to make recommendations, but it would not have the teeth of a base closing-type panel.)

Pro: This would actually bring us the closest to enacting some form of reform. It would also be a way to have the issue taken "off the table" for a time, and to enable us to refrain from making proposals that we do not live under.

Con: It eliminates this issue as an effective club to use against Dole, unless he is unwilling to embrace the panel's proposals. In addition, we won't know in advance what the proposal would look like -- it could be weak, or it could include proposals that are hard for Democrats to swallow.

Unilateral steps on campaign reform

5. Lead by example. To reengage in this debate, you will need to show that you are willing to act by restricting your own campaign committee. When you announce the beginning of campaign activities on your behalf, you have the following options:



a. *Direct the reelection campaign not to take PAC money (you did not take PAC money during the 1992 primaries either), but impose no further restrictions on your own fundraising. (Dole, Gramm, etc. are all taking PAC funds.)*

b. *Direct the reelection campaign not to take contributions from registered lobbyists. (This is now the standard followed by the Presidential Legal Expense Trust.) This would go beyond what you did in 1992.*

Pro: You have already legislatively proposed that lobbyist campaign contributions be banned. In addition, the decision to refuse such gifts by the Presidential Legal Expense Trust has established a difficult-to-ignore precedent. (Indeed, even if we say nothing, reporters will hone in on this inconsistency); Given the small number of lobbyists who actually register (about 7000), it may not directly cost the campaign that much money.

Con: It would raise a standard that the DNC will not be able to meet (i.e., "You won't take \$1000 from a lobbyist, but the DNC will take \$50,000 from the lobbyist's client."). Moreover, it might anger some Democratic supporters and fundraisers based in D.C. We can discuss potential fundraising consequences with you further if you desire.

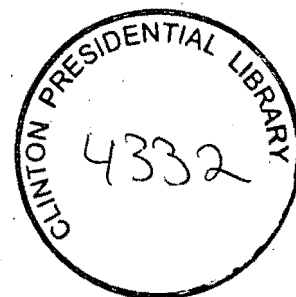
Note: If the decision is made to refuse lobbyist contributions for the reelection campaign, we recommend that the Presidential Legal Expense Trust return the approximately \$12,000 that was received from registered lobbyists.

c. *Direct the reelection campaign not to take contributions donated by registered lobbyists, or raised by registered lobbyists.*

Pro: This option would make sense if you wanted to refuse campaign contributions from lobbyists, but believed that the press would regard that step alone as phony or hypocritical.

Con: This would cost more money, and would raise the next question: what about lobbyists raising soft money? There may be no end to the "what next" questions.

d. *In addition to, or instead of, b. and c., publicly ask the DNC not to raise soft money for the general election campaign, if the RNC will agree to refrain from doing so as well. In effect, this would challenge the RNC to a "mutually verifiable freeze" without "unilateral disarmament." The GOP is highly unlikely to rise to the bait. This is similar to the pledge you signed in New Hampshire in 1992.*



Foreign lobbyists

6. Take new action against foreign lobbyists by barring your officials from meeting with lobbyists for foreign governments or corporations. Your executive order imposing post-employment restrictions has already barred senior officials from ever lobbying for foreign governments, barred senior trade officials from lobbying for foreign firms, and barred all officials from lobbying their own agency on behalf of any client for five years. A further restriction would be to actually bar your officials from meeting with foreign lobbyists.

Pro: This is sharp, clear, and understandable; the foreign lobbying issue plays to concerns over economic nationalism as well as political reform.

Con: The argument against it is that it would be unduly harsh, is unnecessary from a reform perspective and possibly counterproductive from a policy perspective, and would focus attention on those issues where we have worked with foreign lobbyists (e.g., NAFTA) and on former foreign lobbyists in your administration (e.g., Sandy Berger, Ron Brown, Charlene Barshevsky).

III. RECOMMENDATIONS

1. Renew the push for a ban on lobbyist gifts

☐ Agree ☐ Agree as amended ☐ Reject ☐ No action

2. Renew the push for lobby disclosure legislation

☐ Agree ☐ Agree as amended ☐ Reject ☐ No action

3. Spell out the details of your free TV campaign finance proposal

☐ Agree ☐ Agree as amended ☐ Reject ☐ No action

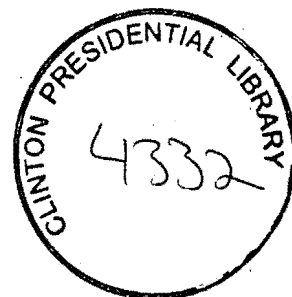
4. In terms of unilateral steps:

a. Refuse to accept PAC contributions, as you did in 1992.

☐ Agree ☐ Agree as amended ☐ Reject ☐ No action

b. Challenge the RNC to join with the DNC in not accepting soft money, as you did in 1992.

☐ Agree ☐ Agree as amended ☐ Reject ☐ No action



c. Refuse to accept contributions from registered lobbyists for your reelection campaign (the standard used by the Presidential Legal Expense Trust).

☐ Agree ☐ Agree as amended ☐ Reject ☐ No action

d. Refusing to allow registered lobbyists to fundraise for your reelection campaign.

☐ Agree ☐ Agree as amended ☐ Reject ☐ No action

5. Barring your officials from meeting with foreign lobbyists

☐ Agree ☐ Agree as amended ☐ Reject ☐ No action

The staff unanimously recommends that you:

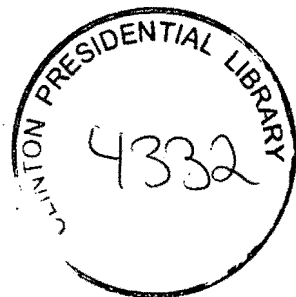
- renew call for ban on lobbyist gifts
- push for lobby disclosure
- discuss free TV time proposal
- unilaterally refuse to accept PAC contributions for your reelection campaign

The staff unanimously recommends against:

- barring your officials from meeting with foreign lobbyists

The staff does not have a consensus recommendation on:

- unilaterally rejecting lobbyist contributions
- unilaterally rejecting lobbyist contributions and fundraising
- challenging the DNC and RNC to agree not to raise soft money
- proposing a bipartisan commission on campaign reform



THE WHITE HOUSE
WASHINGTON

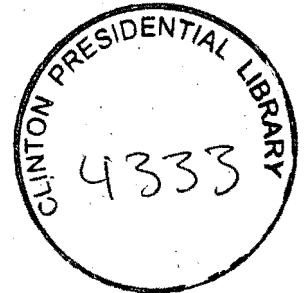
March 20, 1995

MEMORANDUM FOR THE PRESIDENT

THROUGH: THE CHIEF-OF-STAFF

FROM: MICHAEL WALDMAN *MW*
BRUCE REED *BR*

SUBJECT: LOBBY REFORM INITIATIVE



At your request, we have prepared a set of initiatives that would put you out front on the lobby reform and political reform issue.

We believe that this issue cuts to the core of why people have lost faith in government and are angry at politics. The middle class truly believes that powerful interests hold sway, and that their voice is too often ignored. However, this very cynicism makes it hard to persuade people that we are serious, and risks bruising us if we are perceived not to be. Therefore, we believe that this issue is worth pressing only if it is done in a sharp and sustained way -- if it can become and remain a central theme over the next 18 months -- or it may not be worth doing at all. Therefore, we need a clear direction from you on how to proceed.

I. BACKGROUND

Political reform continues to be a core issue for the Perot voters and independents. (Public opinion research is under separate cover.) It also has the potential to be a wedge issue between you and potential Republican opponents -- who tend to favor wealthy special interests at the expense of the middle class. In fact, this is one of the few major areas where the Republicans have completely ceded the field for us, if we choose to enter it. At the same time, if we approach 1996 with few political reform achievements, we will be vulnerable to attack from Perot or some other independent candidate from outside Washington.

If a decision is made to engage on political reform, now is the time to do so, for several reasons.

- Congress' First 100 Days is ending, with a sense that not much has changed; in particular, the probable defeat of term limits will mean that Congress passed no major reform of itself. In addition, the press is finally beginning to paint the GOP Congress as a tool of the special interests. (See, for example, the *Washington Post* story detailing how lobbyists wrote the regulatory moratorium bill, and were even given a

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room off the House floor from which to operate.)

- The GOP race is being heavily defined by the so-called \$20 million fundraising entrance fee.
- Your announcement of your own organizational plans will force the issue of what restrictions you are willing to put on your own fundraising. Next year, the need to raise tens of millions of dollars will bring into higher relief the question of campaign financing.
- Democrats in Congress are starting to become active on the matter once again, albeit in a guerilla fashion. Rep. Bryant (with the support of the Democratic leadership) is filing a discharge petition to bring up the ban on lobbyist gifts; Sen. Wellstone plans to seek to attach the gift ban to legislation sometime before the Easter recess.
- A bipartisan group of moderate lawmakers is becoming visibly active. A group led by Rep. Chris Shays has put forward a package of lobbying and other political reforms, and will be pressuring the leadership to act.
- You led the State of the Union with a call to act, but your Administration has not yet fleshed out those proposals in public.

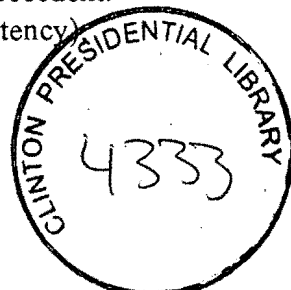
II. OPTIONS

Here is a set of initiatives that could be announced immediately. They could be announced in one major speech, or could be broken out (unilateral steps, legislative proposals, a speech on democracy and citizenship) for maximum effect.

1. Lead by example. To reengage in this debate, you will need to show that you are willing to act by restricting your own campaign committee. When you announce the beginning of campaign activities on your behalf, you can:

- *Direct the reelection campaign not to take PAC money* (you did not take PAC money during the 1992 primaries either). (We believe that Dole, Gramm, etc. are all taking PAC funds.)
- *Direct the reelection campaign not to take contributions from registered lobbyists,* or allowing them to fundraise from their clients. (This is now the standard followed by the Presidential Legal Expense Trust.) This would go beyond what you did in 1992.

Pro: You have already legislatively proposed that lobbyist campaign contributions be banned. In addition, the decision to refuse such gifts by the Presidential Legal Expense Trust has established a difficult-to-ignore precedent. (Indeed, even if we say nothing, reporters will hone in on this inconsistency.)



Given the small number of lobbyists who actually register (about 7000), it may not directly cost the campaign that much money.

Con: It would raise a standard that the DNC will not be able to meet (i.e., "You won't take \$1000 from a lobbyist, but the DNC will take \$50,000 from the lobbyist's client."). Moreover, it might anger some Democratic supporters and fundraisers based in D.C. Pat Griffin suggests that this could cost as much as \$1 million.

Note: If the decision is made to refuse lobbyist contributions for the reelection campaign, we recommend that the Presidential Legal Expense Trust return the approximately \$12,000 that was received from registered lobbyists.

- *Asking the DNC not to raise soft money for the general election campaign, if the RNC will agree to refrain from doing so as well.* In effect, this would challenge the RNC to a "mutually verifiable freeze" without "unilateral disarmament." The GOP is highly unlikely to rise to the bait. This is similar to the pledge you signed in New Hampshire in 1992.

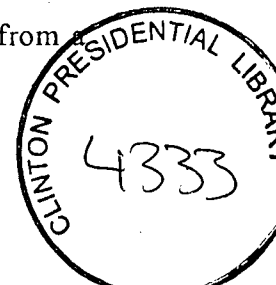
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3. Renew the call for reform of the lobby disclosure laws. The current lobby disclosure laws, passed in 1946 and basically untouched since, are more loophole than law. Lobby reform legislation would require all lobbyists, for the first time, to fully disclose for whom they work, what they are paid, and what legislation they are trying to pass or kill. This measure is more complex than the gift ban, and conservative grass-roots groups (such as the Christian Coalition) may succeed in bogging it down; nonetheless, it is good policy and resonates somewhat with the public.

4. Take new action against foreign lobbyists by barring your officials from meeting with lobbyists for foreign governments or corporations. Your executive order imposing post-employment restrictions has already barred senior officials from ever lobbying for foreign governments, barred senior trade officials from lobbying for foreign firms, and barred all officials from lobbying their own agency on behalf of any client for five years. A further restriction would be to actually bar your officials from meeting with foreign lobbyists.

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Con: The argument against it is that it would be unduly harsh, is unnecessary from



reform perspective and possibly counterproductive from a policy perspective, and would focus attention on those issues where we have worked with foreign lobbyists (e.g., NAFTA) and on former foreign lobbyists in your administration (e.g., Sandy Berger, Ron Brown, Charlene Barshevsky).

5. Spell out your free TV time proposal. Apart from your brief mention of it during the State of the Union speech, we have never fleshed out your proposal to provide free TV time for candidates. Senator Dole and House Commerce Committee chairman Bliley have proposed strong free TV bills, and the concept is supported by Ross Perot, the DLC and Common Cause. This proposal could be laid out in a speech on democracy that could be high-toned and would not necessitate a subsequent crusade.

Pro: Elite opinionmakers (such as editorial boards) will not take the other political reform measures seriously if there is not a campaign finance reform component.

Con: Since legislative success is highly unlikely, to raise this issue would potentially open us to charges of only pushing for reform when we know it won't happen -- without much payoff in return. Moreover, raising the issue will heighten scrutiny of our own fundraising.

III. RECOMMENDATIONS

We recommend that you:

- take the unilateral steps (refusing to take PAC money or lobbyist contributions for the reelection campaign, and ask the DNC and RNC to agree jointly not to raise soft money).

☐ Agree ☐ Agree as amended ☐ Reject ☐ No action

- renew the push for a ban on lobbyist gifts

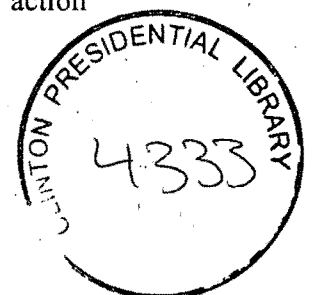
☐ Agree ☐ Agree as amended ☐ Reject ☐ No action

- renew the push for lobby disclosure legislation

☐ Agree ☐ Agree as amended ☐ Reject ☐ No action

- spell out the details of your free TV campaign finance proposal

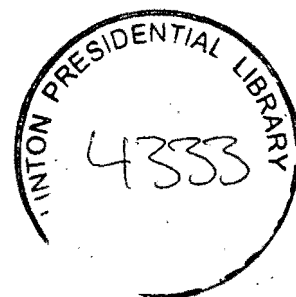
☐ Agree ☐ Agree as amended ☐ Reject ☐ No action



We recommend against:

- barring your officials from meeting with foreign lobbyists

_____ Agree _____ Agree as amended _____ Reject _____ No action



Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Jami Floyd to Reed re: Partners for America (1 page)	03/08/94	P5
002. memo	VPOTUS to POTUS re: Partners for America (7 pages)	03/08/94	P5 4334

COLLECTION:

Clinton Presidential records
Domestic Policy Council
Bruce Reed (Crime)
OA/Box Number: 8414

FOLDER TITLE:

Vice President

Rob Seibert

rs18

RESTRICTION CODES

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

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

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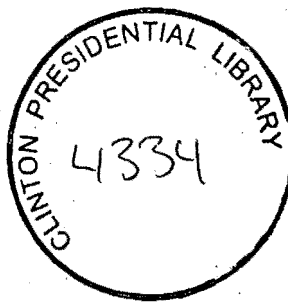
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RR. Document will be reviewed upon request.

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DRAFT

~~CONFIDENTIAL~~

March 8, 1994

MEMORANDUM TO THE PRESIDENT

FROM: THE VICE PRESIDENT

SUBJECT: PARTNERS FOR AMERICA: A WHITE HOUSE ROUNDTABLE
ON AMERICA'S CRIME AND VIOLENCE PROBLEM

① Not working
② Heat/light
New ideas
What works
Not in DC
Topics:
Community
Involvement

I have just read the Report of the Interdepartmental Working Group on Violence. As I read this excellent exposition, it occurred to me that we should respond to its findings and conclusions through an in-depth, probing dialogue on the many factors that contribute to America's violence crisis. This memorandum sets forth a proposal for such a dialogue -- that is, an on-going "White House Roundtable on Violence."

I. BACKGROUND

Violence has reached the point where public health experts consider it to be an epidemic. Deaths from gunshots have surpassed traffic deaths in six states and in the District of Columbia, and this trend is spreading nationally. The crime and violence problem has heightened fear across our nation and dramatically altered the quality of life for many Americans. Gang-related violence, killings over drug turf, and hate crimes have reached suburbs, smaller cities, and small towns all over the nation. Guns are infiltrating our schools. And, children are killing children.

Not surprisingly, the Interdepartmental Working Group determined that the violence in this country is "pervasive" and that "[p]eople believe this is a time of crisis." It found that the increase in violence can be attributed to a number of factors, such as the breakdown of the family; "poverty and discrimination, lack of education, lack of jobs, and lack of hope"; drug abuse and trafficking; the "flood of guns" in our communities; and violence in the media. The Group recommends that we promote, among other things, both tougher law enforcement and prevention, both national policy and local action, both public policy and private initiatives, and both short-range and long-range strategies. ✓

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ADMINISTRATIVE MARKING
INITIALS: MM DATE: 9/01

I agree with the Group's recommendations. I believe that a White House Roundtable, like the one I suggest, would contribute to several of these objectives. Specifically, we should convene a series of meetings that focus on the root causes of violence: (1) the economic underpinnings of crime, (2) the breakdown of the family, (3) violence in entertainment, (4) drugs, (5) firearms, (6) racial tension and hate crimes, and (7) the failure of the criminal justice system. ✓

II. GOALS OF THE ROUNDTABLE

The Roundtable would serve several purposes. First, it would provide us with the opportunity to move beyond the programmatic and legislative arenas in our expressions on crime and violence. Specifically, a high-profile dialogue would allow us to discuss (publicly) the roles of family, community, education, and religion in shaping the moral values necessary to create a non-violent society. It would enable us to reach out to these institutions, and to American businesses, in order to enlist them in a joint effort to address the problem. In short, the forums would assist us in providing leadership in this area. ✓

Second, these forums would help us broaden our own thinking on the problems underlying this crisis. As set forth below, the Roundtable would bring together Administration policy-makers and outside experts, thinkers, and community leaders to grapple with the difficult issues related to crime and violence.

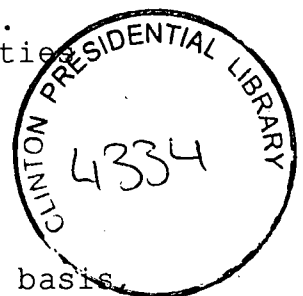
Third, the Roundtable would serve as a mechanism (not simply a one-time event) for in-depth deliberations with all segments of our society -- facilitating communications among diverse (and oftentimes feuding) groups and healing wounds of the past. The suggested forum on racial tensions and hate crimes (discussed below) would thus satisfy Jesse Jackson's call for a White House Conference of Racial Justice. I doubt it

Finally, this approach would serve as a (partial) response to the Report of the Interdepartmental Working Group on Violence -- particularly, the Group's recommendation that we actively promote the idea of shared responsibility and that we work aggressively to inspire and renew our national values. These discussions would provide the bully pulpit opportunities for that sort of leadership. ✓

III. STRUCTURE OF THE FORUMS

A. In General

We would convene, on either a monthly or a bi-monthly basis, a roundtable discussion on the various topics related to crime and violence. The forums would include the policy advisors at the White House, the appropriate policy-makers from the agencies,



and interested members of the public (including victims of crime) and relevant experts (including, where appropriate, law enforcement officers, psychologists, sociologists, economists, social scientists, community organizers, educators, members of the medical professions, and business representatives).

B. Specific Forums

By way of examples of the kinds of topics we could discuss at these sessions -- in addition to a kick-off event addressing broadly the issue of violence in America -- I offer the following:

1. Economic ^{Empowerment} Underpinnings of Crime

→ Controversial

In his book, The Truly Disadvantaged, William Julius Wilson chronicles the decline of our urban centers and the effects of this disappearing job market. He makes clear that poverty and unemployment are directly related to crime, violence, and other anti-social behavior. It is therefore critical that our Roundtable include a discussion of the economic dislocation that causes many of our youth to choose lives of crime in an attempt to achieve the American dream. ✓

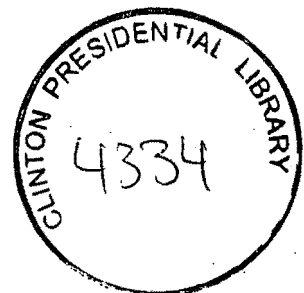
I propose that we discuss the following issues at this forum:

- incentives to businesses to locate in the central cities; ✓
- racism and classism and their effects on the distribution of capital and employment opportunity; and
- job training and other labor programs.

Participants might include: Thomas F. Schrader, President of Wisconsin Gas Co. and Chairman of New Hope; Toby Herr, Director, Project Match; and Wanda White, Community Workshop on Economic Development.

2. Breakdown of the Family

Strong families -- those that provide moral guidance, leadership, and emotional support to their children -- form strong communities that serve as the foundation for a great nation. However, the American family, the bedrock of our strong nation, is crumbling. We must accept the shared responsibility to rebuild and restore our families.



We may want to use this forum to discuss the following issues:

- reasons for the disintegration of moral values;
- reasons for the breakdown of the family unit;
- domestic violence and child abuse;
- the role of churches and other community institutions in addressing this issue; and
- the role of the Federal government in addressing this issue.

We could consider inviting to this forum some or all of the following individuals: Ann Lewin, President, National Learning Center; Carole Hall, Director of Programs, Community Workshop on Economic Development; Dr. Alvin Poussaint, psychiatrist, Harvard Medical School; Bill Cosby, entertainer and speaker; and Reverend Anthony Bennett, St. Paul's Community Church and Director, Nehemiah Housing Project. *Moyisha*

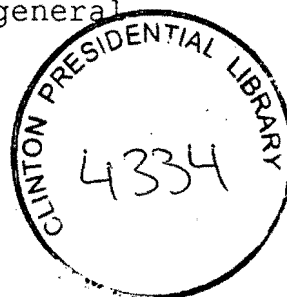
3. Violence in Entertainment

According to a 1993 report by the American Psychological Association ("APA"), 98% of American homes have at least one television, and teenagers watch an average of 24 hours a week. Not surprisingly, children from low-income families are the heaviest viewers. The incidence of violence on television is overwhelming: The APA has found that the average American child watches 8,000 murders and 100,000 acts of violence on television before finishing elementary school. In addition, our youth are subjected to other forms of media violence -- including movies, music, and video games.

We would, of course, use the Roundtable to continue our discussions regarding violence in the media with those in the Administration and in the industry who have begun work on this important issue.

4. Drugs

Drug use, abuse, and trafficking are linked -- directly and indirectly -- to a disproportionate amount of crime and violence in this country, especially in our central cities. One study found that more than 50% of hard-core drug users were engaged in illegal activity, and another revealed that the incidence of violence among drug abusers is 16 times higher than the general population.



In this forum, we would discuss:

- the Administration's 1994 National Drug Strategy
- the treatment of addicts;
- the costs of drug treatment to our health care system;
- the legalization of certain drugs; and
- the role of law enforcement in drug sales and use.

5. Firearms

Firearms play a large role in our epidemic of violence and crime. In 1991, firearms were used to kill 17,746 individuals and to assault 102,000 people. Furthermore, firearms were used in over 18,500 suicides and in approximately 1,440 unintentional deaths.

At this forum, we should discuss the following issues:

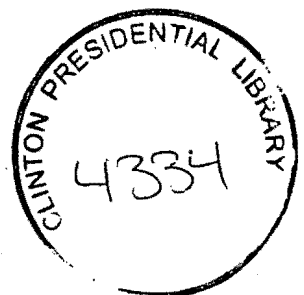
- gun control;
- how firearms are stored, carried, and used;
- reducing the lethality of firearms;
- technological innovations that can promote firearm safety; and
- non-lethal alternatives for self-protection.

new ideas

We could invite to this forum Mark Rosenberg, Center for Disease Control; Jim Pascoe, Alcohol, Tobacco & Firearms; Raymond Kelley, Former Chief of Police, New York City Police Department; Louis Freeh, Director of the FBI; and Eric Larsen, author of Lethal Passage; and Kevin Jett, Community Police Officer, NYPD.

6. Racial Tension and Hate Crimes

This Administration has condemned -- and must continue to condemn -- all forms of bigotry, including bigotry expressed through the use of violence. The growing problems of inter-ethnic tension and racial hate crimes present us with a great challenge (and a great opportunity) to begin to address these sensitive issues.



Needless to say, our discussion must start with a reaffirmation of our belief that America is made great by its racial and ethnic diversity and should address the following issues:

- the development of race awareness and acceptance in children;
- racial tensions between groups; and
- education for all Americans on tolerance and non-violent conflict resolution.

The participants could include some or all of the following individuals: Jesse Jackson; Brian Levin, Anti-Defamation League; Joe Roy, Klanwatch, Southern Poverty Law Clinic; Louise Howe, American Leadership Coalition; Ron Yokabayashi, Los Angeles Human Relations Commission; Scott Sherman, Martin Luther King Non-Violence Coalition; Jack McDevitt, Center for Applied Social Research, Northeastern University; Joyce Rayzer, Community Health Care, Inc.; and William Julius Wilson, professor of sociology and public policy at the University of Chicago.

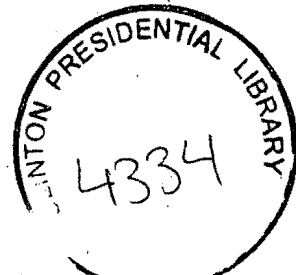
7. Failure of the Criminal Justice System

The current criminal justice system also exacerbates the crime and violence problem in this country. The court systems (federal and state) are backed-up; jails and prisons are overcrowded; and incarceration fails to rehabilitate convicted criminals.

Accordingly, we should address the following issues during this forum:

- courtroom overload;
- prison overcrowding;
- reform of the criminal correctional systems;
- sentencing and parole; and
- privatization of prisons.

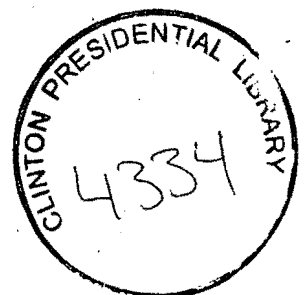
I would recommend that we consider inviting some or all of the following individuals to this forum: Charles Ogletree, professor, Harvard University (and former public defender); Vincent Bugliosi, author and former U.S. Attorney; Kim Taylor, Professor of Criminal Law, Stanford University; Eric Holder, U.S. Attorney for the District of Columbia (and former D.C. Superior Court judge); a social worker; a probation officer; and a prison official.



* * *

In sum, I believe a White House Roundtable on Violence -- a public/private dialogue involving the people like those suggested above who might work together as "Partners for America" -- could provide the White House with a mechanism for in-depth deliberations on crime and violence. Through this Roundtable, we would be able to provide leadership during this crisis, facilitate communication between and among America's communities, and promote the Administration's view that all Americans have a shared responsibility to address the violence and causes of violence that plague our communities.

I look forward to hearing your thoughts on this idea.



Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Rahm Emanuel, Pat Griffin, Reed et al. to McLarty re: Crime Bill-- Legislative Strategy Issues (partial) (1 page)	06/14/94	P5
002. memo	Emanuel, Griffin and Ron Klain to POTUS re: General Update on Crime Bill Conference, Rule, and Final Passage (partial) (2 pages)	07/08/94	P5 4336

COLLECTION:

Clinton Presidential records
Domestic Policy Council
Bruce Reed (Crime)
OA/Box Number: 8413

FOLDER TITLE:

Strategy

Rob Seibert

rs17

RESTRICTION CODES

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

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

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

- b(1) National security classified information [(b)(1) of the FOIA]
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- b(9) Release would disclose geological or geophysical information [(b)(9) of the FOIA]

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

RR. Document will be reviewed upon request.

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responds to the urgency that the American people feel about the issue of crime and violence. We need a strong bill that puts more police on the streets; gets kids and guns off the streets; puts three-time violent offenders away for life; and gives kids something to say yes to.

You will also say in this letter that RJA should not be included in this Crime Bill.

- **Calls to CBC members and other leaders in the Black Community**

Although Wednesday is technically a day off for you, it would be helpful if you made a few calls to leaders in the black community, in particular the CBC Leadership and Ben Chavis, to prepare them for your statement on RJA. This statement will come in the form of a letter to conferees (see above).

If your schedule allows, these calls could begin on Tuesday, but only after Mitchell has made his calls. The call to Ben Chavis should occur after the Vice President has spoken to the NAACP conference in Chicago.

The Vice President and Leon will also make calls to CBC members on Tuesday and Wednesday.

Friday, July 15

- **Conference Report Completed**

The conferees anticipate being able to complete work on the conference report on Friday afternoon.

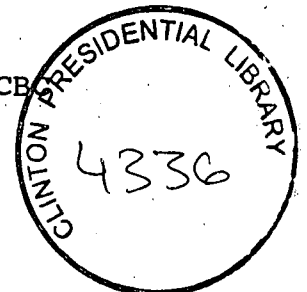
II. INDIVIDUAL ISSUES

The support of Congressmen Conyers and Edwards is critical to getting a Conference report without RJA. Both Conyers and Edwards have reservations, and need certain assurances from the administration in order for them to sign onto a Conference report without RJA.

- **Conyers**

Attorney General Reno has been reaching out to Conyers all week. In Reno's conversations with Conyers, the Congressman has indicated that he will be with us on the rule and final passage, but he needs political cover. As you know, Conyers is in a tough primary race. He knows he needs a Crime Bill to win his race. At the same time, he needs to explain his support for a Crime Bill without RJA.

Conyers has asked for three things from the White House: (1) that the Vice President campaign with him in his



district; (2) that the Justice Department review the federal application of the death penalty; and (3) that nothing happens to the Local Partnership Act, his pet legislation in the Crime Bill.

Although we have agreed to all three requests, Conyers is still nervous. We need to continue to show him that a Crime Bill is crucial for his campaign; and that a Crime Bill with RJA will be defeated. To this end, calls from Senator Mitchell and CBC colleagues who support the Crime Bill without RJA will be helpful. It is our hope that your call to Conyers will cement his support.

- Edwards

Unlike Conyers, Edwards' concerns are not political: he is retiring. In contrast, Edwards wants to see the Administration stand up for RJA on principle.

In a recent *L.A. Times* article, Edwards indicated that he would not push forward on RJA if it meant the defeat of the Crime Bill. It therefore appears that Edwards has finally come to the conclusion that a Crime Bill with RJA is not viable. Nonetheless, he wants the administration to take a stand in favor of RJA, and fight for it publicly.

Leon has spoken to Edwards this week. Your phone call to him, as well as Mitchell's, will be very helpful. He needs to be convinced that we have fought for RJA, but could not move the opposition.

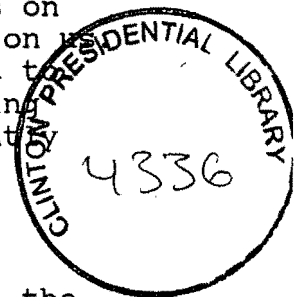
While we anticipate being able to bring Conyers and Edwards on board, there is always the possibility that they will walk on us. In that case, we need to make a decision on whether we want to push beyond them by being more public in our fight, and using their colleagues to exert pressure on them, which is currently not happening.

III. RULE AND FINAL PASSAGE

Assuming that we get a Conference report that excludes RJA, the next phase is to secure votes for the Rule and final passage. Assuming also that no Republicans will vote for the Rule, we need to focus on members of the CBC who may be willing to vote for a Crime Bill without RJA.

In addition to Conyers and Edwards, there are approximately 20 members of the CBC who have indicated in past votes or statements that they will support a Crime Bill that does not include RJA. We will try to enlist the help of some of the deans of the caucus, in particular Reps. Rangel, Waters, Dellums, and Stokes, who may be able to neutralize some of the opposition that exists.

cc: Leon Panetta



Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001 memo	POTUS to the Attorney General re: Directive on Fairness in the Implementation of the Federal Death Penalty (2 pages)	08/94	P5 4337

COLLECTION:

Clinton Presidential records
Domestic Policy Council
Bruce Reed (Crime)
OA/Box Number: 21553

FOLDER TITLE:

1994 Crime Bill-Conference

Rob Seibert

rs28

RESTRICTION CODES

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

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

- P1 National Security Classified Information [(a)(1) of the PRA]
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DRAFT

AG → Be

August X, 1994

MEMORANDUM FOR THE ATTORNEY GENERAL

FROM: THE PRESIDENT

SUBJECT: DIRECTIVE ON FAIRNESS IN THE IMPLEMENTATION
OF THE FEDERAL DEATH PENALTY

As the branch of government charged with enforcing federal law, the Executive Branch has a responsibility to ensure that our pursuit of a safer society is not at odds with our pursuit of equal justice for all Americans. Historically, our criminal justice system has not treated all persons equally; in particular, racial discrimination in the application and enforcement of our laws has undermined the confidence that many Americans have in their fair administration.

154
As a State Attorney General, Governor, and now President, I have always believed that there is no tension between stiff enforcement of our criminal laws, and strong safeguards against discrimination. Freedom from crime is among the most important civil rights of all Americans -- and it can be achieved without sacrificing the civil rights of any American.

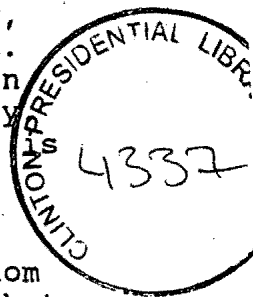
The legitimate doubts of some Americans in the fairness of our system is an unacceptable injustice in and of itself; in addition, it is worth remembering that such doubts also undermine law enforcement's effectiveness: when people lack confidence in the criminal justice system, they are much less likely to aid that system, or to work with police and prosecutors to apprehend and convict criminals who merit punishment.

Thus, all Americans share a common interest in enhancing public confidence in the fairness of our criminal justice system. And there is no aspect of our system where such guarantees of fairness are more important than in capital sentencing.

Because of the severity and finality of the death penalty, discrimination in the application of that penalty is abhorrent. We must candidly admit that there have been times and places in our country where this penalty has not been administered fairly. We must insure that our federal system, in this critical time, free from this defect.

Fairness can be achieved without quotas, which I find repugnant, and without leniency. Fairness does not mean freedom from punishment, only freedom from discrimination. It means that defendants who commit similar acts, and who are similarly culpable, are equally likely to receive the death penalty -- ~~not~~ ^{every convicted criminal} ~~that anyone is excused from the sentence they deserve.~~ ^{not everyone shall get} And it means that victims from all background and all races see their victimizers punished to the full extent proper under the law.

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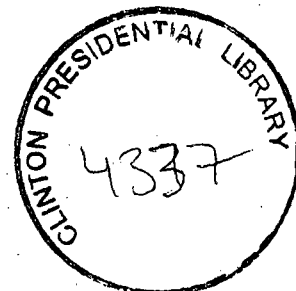
This is particularly true now that Congress has passed our Crime Bill, with its substantial expansion of the federal death penalty. The Department of Justice, which has already taken steps to insure that its existing prosecutions proceed without regard to improper factors, must redouble those efforts in light of the new weapons at its disposal.

To further the Department's past endeavors in this area and to maintain the confidence of the American people, I hereby direct you to take the necessary steps to assure that the Department of Justice seeks imposition of the death penalty in an impartial and non-discriminatory fashion. Among the steps I direct you to take are the promulgation of:

- Have opp. effectively enforce the death penalty without regard to race of victim or defendant.*
- (1) Additional internal procedures to insure that decisions to seek the death penalty are made in a non-discriminatory manner;
 - (2) Internal review mechanisms to insure that capital defendants who commit similar acts and who have similar degrees of culpability are treated similarly by the Department;
 - (3) An appropriate mechanism for post-conviction release of the Department's capital prosecution decisions, so that the public can review and understand the basis for such decisions;
 - (4) Improved training and support for prosecutors who seek this penalty, so as to insure that their actions are consistent with Departmental policies; and
 - (5) Any other steps you believe appropriate to enforce this Directive, so long as those actions do not contradict the principle that each individual's case is to be judged on its own merits, without regard to any improper factors.

I further direct you to report to me a description of the steps you have taken within 30 days.

With our joint commitment to assuring fairness, I believe we can develop a process that will meet the needs of the criminal justice system while guaranteeing the equal protection of the laws to all people.



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Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001	Ron Klain to POTUS re: Habeas Corpus Reform (4 pages)	06/25/93	P5 4338

COLLECTION:

Clinton Presidential records
Domestic Policy Council
Bruce Reed (Crime)
OA/Box Number: 8413

FOLDER TITLE:

Habeas Reform

Rob Seibert

rs11

RESTRICTION CODES

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

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
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PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

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

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Crime-Habeas

THE WHITE HOUSE

WASHINGTON

June 25, 1993

MEMORANDUM FOR THE PRESIDENT

FROM: RON KLAIN ~~for~~

SUBJECT: HABEAS CORPUS REFORM

This memorandum outlines the major issues in the habeas reform debate and our options for resolving them.

I. BACKGROUND ON HABEAS REFORM

Prosecutors have been urging reform of federal habeas corpus proceedings for three decades. The reforms are of two sorts: substantive reforms, that limit the scope of federal court review of state death sentences; and procedural reforms, aimed at making these cases move more quickly and towards greater finality.

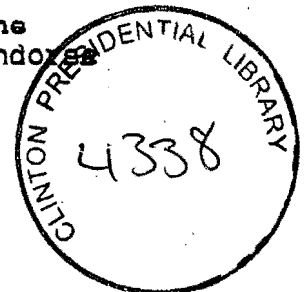
Until 1990, the defense bar resisted any reforms. For example, they rebuffed Justice Powell's reform plan, which would have provided free lawyers for habeas petitioners in exchange for procedural limits on such appeals (e.g., time limits on filing, and a strict "one-bite-at-the-apple" rule). Reform proposals from Senate moderates, like Bob Graham, were also rejected.

In 1989-90, a series of conservative Supreme Court rulings altered the dynamic on habeas reform. By making it harder for death row inmates to win habeas relief, the Court lessened pressure on the right to compromise to win legislative habeas reform -- and created interest on the left in seeing reform debated, as a vehicle for reversing the adverse Court decisions.

The 1991 Crime Bill Conference Report included a sweeping habeas reform provision, drafted by Democrats (Biden and Brooks). It limited the time for filing petitions to one year, and limited death row inmates to a single petition (with few exceptions), in exchange for free lawyers to prepare these petitions. It also gave death row inmates some relief from the adverse Supreme Court decisions. Largely because of this final provision, state and local prosecutors bitterly opposed the Conference Report.

II. CAMPAIGN STATEMENTS

During the campaign, you said you would have signed the Crime Bill Conference Report, but you did not separately endorse the habeas reform language in it.



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On the habeas issue specifically, you called for "reforms on death row appeals," expressing interest in a range of proposals. In one statement on the issue, you spoke positively of several reform plans, "such as the ABA proposal and the Powell Report."

Because these proposals, while alike at a general level, have differences that are significant to practitioners in the field, there has been confusion over your position on habeas reform. This has fueled expectations, on the part of both the left and the right, that you would alter the Conference Report in a manner that either side would find more to its liking.

III. MAJOR HABEAS REFORM ISSUES

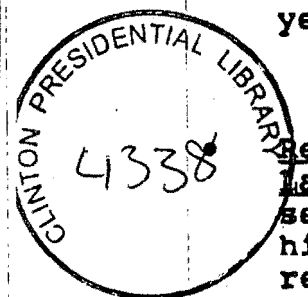
Most of the major reform plans being considered are of a like design at an abstract level: some limits are placed on the filing of habeas petitions in exchange for death row inmates getting free lawyers to file those petitions. Within this broad construct, five major issues are in dispute. They are:

A. Procedural Issues

- Time Limit: How much time will a prisoner have to file his petition? Current law has no time limit whatsoever. The ABA proposed a limit of 18 months; Justice Powell put it at 6 months; the Conference Report set the time at 12 months.
- Repeat Petitions: The current habeas statute sets no limit on multiple filings by death row inmates -- though Supreme Court case law makes repeat filings difficult. All reform proposals limit prisoners to a single petition, but all also contain some exceptions. The issue is: How broad are the exceptions? The ABA Report had a broad exception; the Powell Report had a narrow exception. The Conference Report tilted more towards the ABA approach.
- Counsel Standards: The reform plans all required states to provide lawyers to death row inmates for the preparation of habeas petitions; they differed on whether such lawyers must meet minimum competency standards. The Powell plan had no standards; the ABA plan had extensive standards. The Conference Report had modest competency standards, keyed on years of experience.

B. Substantive Issues

Retroactivity: Before a 1989 Supreme Court case (Teague v. Lane) held otherwise, a prisoner could challenge his death sentence based on a favorable court ruling that post-dated his trial and appeal. The defense bar wants this right restored; prosecutors oppose a reversal of the this line of cases. The Conference Report sided with the defense bar, to some extent; this was its most controversial provision.



- "Full and Fair:" The cornerstone of the Bush habeas reform plan was a rule that death sentences could not be challenged if the defendant had a "full and fair" hearing in state court. This is the prosecutors' ultimate goal -- it effectively ends federal habeas review of state death sentences -- and passed the Senate in 1991.

IV. CURRENT OPTIONS

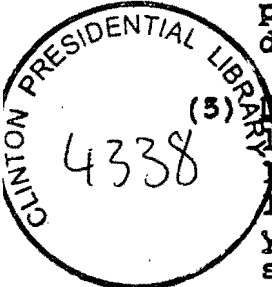
Though I have not been involved in this issue since the Transition, as I see it, you have six options:

- (1) Crime Bill Without Habeas Reform: You could propose a Comprehensive Crime Bill without any habeas reform provision. It would still have a Brady Bill, a death penalty, and a policing plan.
- (2) Adopt Conference Report Habeas Language: You could adopt the language of last year's Conference Report as "your" proposal. There is a logical reason for adopting this text (it is long-standing and well-known), but it is bitterly opposed by State Attorneys General and local DAs.
- (3) Back a "Biden-Prosecutor" Deal: Lengthy negotiations between Senator Biden and the Attorneys General are about to come to fruition; District Attorneys will be neutral, and at least some defense bar leaders will grudgingly accept the agreement. Our prompt endorsement of any agreement will help make it a consensus view.

The substance of this plan would be a six-month statute of limitations; a tough rule against multiple petitions; counsel standards akin to those in the Conference Report; and some relief (though not much) for the defense bar on the retroactivity issue.

- (4) Convene our Own Negotiations: You could direct the Attorney General to summon the parties to an administration-sponsored negotiation. This, however, is only likely to drag out the process of resolution, and is unlikely to produce results different from those in the Biden-Prosecutor talks.

- (5) Draft a Limited Reform Proposal: We could assemble our own, limited reform proposal -- one that would only address the least controversial habeas reform issues -- but would at least be some reform. For example, we could package a one-year limit on filing, linked with a moderate version of the single-petition rule -- in exchange for free lawyers with very minimal counsel standards. While no one would be excited about such a limited reform plan, no one would strongly oppose it.



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(6) Draft a Comprehensive Reform Proposal: Finally, and most ambitiously, we could draft a comprehensive reform proposal that would address all the major issues. If we go this route, I would recommend a proposal positioned slightly to the right of last year's Conference Report text; namely:

- A one-year limit on filing petitions;
- Limit petitioners to a single filing, except where they have new evidence of innocence, or new evidence that their death sentence is unconstitutional;
- Provide counsel for filing habeas petitions, subject to experience-based competency standards;
- Have a very limited relief provision on the "retroactivity" question.

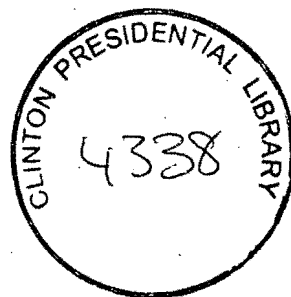
Such a "Clinton proposal" would anger both the left and the right, but could probably win support among neutral observers in this area (i.e., bar groups, editorialists, and the like).

V. RECOMMENDATION

I favor the third option above; i.e., getting behind the emerging agreement between Senate Democrats and the prosecutors. I do not think it is worth the effort or the expenditure of political capital to fashion our own reform plan, when we can more easily get behind a compromise plan assembled by others.

Why? Habeas corpus reform will never be the touchstone of a Clinton Crime Bill; our goal should be to get a fast and plausible resolution of this troublesome issue, and move ahead on a Crime Bill that advances those matters that are at the heart of your anti-crime agenda: passing a Brady Bill, putting 100,000 more police on the streets, restoring an enforceable death penalty, and launching innovative, new programs to prevent crime.

Thus, we should be looking for the resolution that gets us out of this issue as quickly and simply as possible -- and adopting a settlement negotiated by others is the option that best fits this objective.



Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Attorney General to POTUS re: Sentencing Commission Appointments (partial) (7 pages)	01/94	P2, P5, b(6) 4335
002. note	Reed note re: Sentencing Commission Candidates (1 page)	ca. 1993	P2, P5, b(6)

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Bruce Reed (Crime Series)
OA/Box Number: 8413

FOLDER TITLE:

Sentencing Commission

rs16

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]

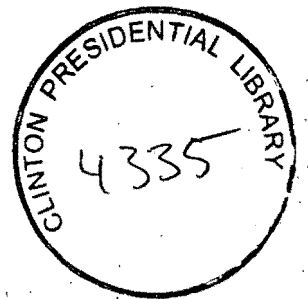


Office of the Attorney General
Washington, D. C. 20530

MEMORANDUM TO THE PRESIDENT

FROM: THE ATTORNEY GENERAL

SUBJECT: Sentencing Commission Appointments



I. Introduction

The United States Sentencing Commission, a pivotal agency in the development, promulgation and implementation of federal sentencing policy, is made up of seven voting members. There are now four vacancies. It is imperative that these vacancies be filled and that nominations be submitted to the Senate by the time the Senate returns in January 1994. For your consideration, recommendations for the four Sentencing Commission vacancies, including that of the Chairman, are presented below.

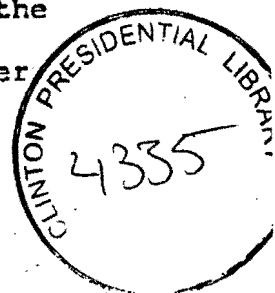
The Sentencing Commission and the federal sentencing guidelines stand at a significant crossroads. The Commission's guidelines, process and posture have come under continuous, sharp and well-articulated criticism from a large number of federal judges, probation officers, assistant U.S. Attorneys, defense lawyers, and scholars. There is concern in the field about the workability and fairness of the guidelines, as well as their effectiveness in achieving the purposes spelled out in the Sentencing Reform Act. The future stature and viability -- really the credibility -- of the federal guidelines system rest on creating a Commission which is responsive to legitimate concerns of those who work daily with the guidelines. A commitment to a guidelines system and to its smooth functioning is essential on the part of any new Commission appointees.

There are a number of critical law enforcement issues, such as the use of mandatory minimums, where the Sentencing Commission will be a pivotal player. Congress is unlikely to return unfettered sentencing power to federal judges but it is important that sentencing decisions -- which cumulatively have significant law enforcement and budgetary importance -- not be set in the highly-charged political arena of the Congress itself. The forum which makes sense and which is likely to be acceptable to the

Congress is the Sentencing Commission through the vehicle of the guidelines. Accordingly, the composition of the Commission will be very important in the years ahead.

II. Background on the Structure and Membership of the United States Sentencing Commission

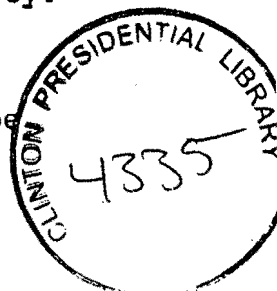
- The Sentencing Commission is an independent agency in the judicial branch of government created by the Sentencing Reform Act of 1984 to promulgate guidelines for federal judges to apply when sentencing criminal offenders. Charged with a lead role in the development of criminal justice policy, the Commission also has a research and support staff of approximately 100 persons.
- The seven voting members on the Commission serve fixed terms, staggered from between two and six years for the first appointments, and for six years thereafter. Commissioners are subject to removal "only for neglect of duty or malfeasance in office or for other good cause shown."
- At least three (3) members of the Commission must be judges, and no more than four (4) members may be from a given political party. Judges need not resign their appointment as a judge to serve on the Commission; none has. (The Attorney General, or her designee, is a non-voting, ex officio member of the Commission).
- Commissioners are compensated at the same rate as federal court of appeals judges (\$141,700). The statute provides that as of November 1, 1993, the Chairman is the only full-time position on the Commission, with the other voting members serving part-time. (All Commissioners served full-time during the development, and for six years after promulgation, of the first set of guidelines.) However, a provision in the Senate crime bill would provide for an extension of full-time status for all the Commissioners for one more year (i.e., through October 31, 1994).
- The President is directed to consult "with representatives of judges, prosecuting attorneys, defense attorneys, law enforcement officials, senior citizens, victims of crime, and others interested in the criminal justice process" in appointing, with the advice and consent of the Senate, the seven voting members. The Department of Justice drafted a letter which was sent by the White House, to the aforementioned groups seeking input.



- Once identified, candidates were interviewed by the Attorney General, and, in most cases, by a panel consisting of the Deputy Attorney General and members of his staff, and Thomasina Rogers of the White House Personnel Office.
- Beyond assembling a Commission of the highest quality, the overall goal in this process was to establish a Commission which is diverse and representative. In this regard, it should be noted that there are no minorities serving on the present Commission.
- For a helpful guide to the Membership of the Commission, please see Exhibit A, attached.
- There are currently four vacancies. Two of the vacancies have existed since October 31, 1991, and have remained unfilled. Two more vacancies were created on November 1, 1993, when the terms of the Chairman and another Commissioner expired. Of these four upcoming appointments, only one may be a Democrat; at least two must be judges.
- Statute provides that the "Federal judges [shall be] selected after considering a list of six judges recommended to the President by the Judicial Conference of the United States." In March 1993, and September 1993, Chief Justice Rehnquist submitted on behalf of the Judicial Conference two lists with the names of a total of 14 judges to fill the two judicial vacancies. While there is no requirement that the judges be chosen from the Chief Justice's lists, interviews have been conducted with 8 of the 14 judges submitted by the Judicial Conference.
- With respect to the two non-judicial vacancies, interviews have been held with candidates from the spheres of academia, probation administration, and the private bar.

III. Criteria for Sentencing Commission Appointments

As set forth in the introduction, it is critical that nominations made by the President reflect the importance - and independence -- of the Sentencing Commission. One vital criterion in appointments is system experience and familiarity. The trial level perspective is key to insuring that the guidelines are practical and workable. It is, therefore, recommended that new judge-commissioners with extensive sentencing experience before and after the 1987 guidelines be



sought, who can bring to the Sentencing Commission a better understanding of the system for which it makes rules, and who can generate rules which will be respected by those whose compliance gives them effect.

In addition, respect for the guidelines can be enhanced by appointment of non-judge commissioners who have extensive experience in federal criminal law practice, or whose policy in this area is highly regarded by judges, prosecutors and defense attorneys. In order to make the guidelines system an effective one, we need to insure that all participants in the federal criminal justice system are involved in the development and implementation of the guidelines.

It should be noted that the Commission at present lacks diversity. Since the departure of Helen Corrothers last year, all Commissioners are white. In light of the fact that the majority of federal defendants are persons of color, it is important for the credibility of the Commission that at least one minority appointment be made among the four openings in 1993.

IV. Recommendations: Chairman of the Commission

In March 1993, the Judicial Conference of the United States passed a resolution urging that the President appoint a federal judge as Chairman of the Sentencing Commission, when that vacancy arose at the end of October. Because the Sentencing Commission and the federal sentencing guidelines stand at a critical crossroads, and because the judiciary plays such an important role in the implementation and interpretation of the guidelines, I concur with the Judicial Conference's recommendation that the Chairman be a judge. Accordingly, I submit for your consideration the following alternatives for Chairman:

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Members of the U.S. Sentencing Commission as of March 1993

<u>Judge Members</u>	<u>Term Expiration</u>	<u>Political Party Identification¹</u>
William W. Wilkins, Jr., Chairman, ² of South Carolina U.S. Court of Appeals, Fourth Circuit	October 31, 1993	Republican
A. David Mazzone ² of Massachusetts U.S. District Court, District of Massachusetts	October 31, 1995	Democrat
Vacancy ² [vice George E. MacKinnon, term expired October 31, 1991]	October 31, 1997	_____

<u>Other Members</u>		
Irene H. Nagel of Maryland	October 31, 1993	Republican
Julie E. Carnes ³ of Georgia U.S. District Court, Northern District of Georgia	October 31, 1995	Democrat
Michael S. Gelacak of Virginia	October 31, 1997	Democrat
Vacancy [vice Helen G. Carruthers, term expired October 31, 1991]	October 31, 1997	_____

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¹The statute, 28 U.S.C. § 991(a), requires that no more than four members may be of the same political party.

²Appointed to the Commission upon recommendation of the Judicial Conference.

³Judge Carnes was appointed an Article III judge in 1992 subsequent to her appointment to the Sentencing Commission in July 1990 as a non-judge member. Although she continues to serve on the Commission, because she was not appointed to the Commission as a judge upon recommendation of the Judicial Conference, her service on the Commission may not be considered in satisfaction of the requirement of 28 U.S.C. § 991(a) that the Commission consist of at least three judges "selected after considering a list of six judges recommended to the President by the Judicial Conference

