Withdrawal/Redaction Sheet
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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

COLLECTION:

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

FOLDER TITLE:

Strategy

rs17

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]

Remaining Potential Pitfalls

There are five potential pitfalls, listed in escalating significance, that could derail a final agreement:

(1) **Schumer.** Right now, because we have dealt so exclusively with Brooks, Schumer is miffed. He needs to be stroked, particularly if we want his help in selling compromises on RJA and Assaults. Also, he wants us to modify our Community Policing program, to allow funds to be used for purposes other than hiring cops, so long as the expenditures result in more police being on the streets (e.g., hiring secretaries so police officers do not do clerical work).

(2) **YES.** The House and Senate Labor Committees want us to abandon this as a distinct program, and consolidate it with existing job training efforts. We need to boost Kennedy and Ford's support for our program if we want to see it included as a separate initiative.

(3) **Prisons.** We have yet to achieve an agreement on a grant program that satisfies all the major House and Senate players. To win passage of the Bill, the result on this issue must satisfy House moderates (led by Rep. Chapman) and Senate moderates (led by Sens. Dorgan and Conrad) -- but the two groups themselves are at odds.

(4) **Assault Weapons.** Unless we compromise with ban opponents, the inclusion of this in the Crime Bill may cost us 35-45 Democratic votes, and 40-50 Republican votes in the House -- enough to prevent final passage. We believe we can achieve an agreement with Chairman Brooks on a ban that is more sweeping than Sen. DeConcini's original proposal, but more narrow than the House-passed bill. It would ban 18 (of 19) listed guns, "copy cats" of those guns, and magazines holding 15 or more rounds; it would not ban additional guns based on their characteristics. We will be blasted by Sens. Metzenbaum and Feinstein, and perhaps Rep. Schumer (see above) for "caving" to Chairman Brooks.

(5) **Racial Justice Act.** This is clearly the most difficult. Brooks says he cannot get the House Democratic Conferees to support a bill that drops it; Biden says he cannot win Senate passage of a bill that includes it. We continue to work around the clock with prosecutors and RJA proponents on potential compromise texts -- but if no compromise can be achieved (a substantial prospect), we will have to take a great gamble by either including or dropping this provision.

Notwithstanding these difficulties, Chairmen Biden and Brooks have agreed to work towards a June 21 deadline, so as to permit enactment of the Crime Bill before the July 4th recess.

WITHDRAWAL SHEET
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Collection: Domestic Policy Council-Reed, Bruce
OA/Box: OA 18944
File Folder: Polls [1]

Archivist: RDS

Date: 4/26/04

DOCUMENT NO. & TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. poll	DNC questionnaire, April 27-28, 1994, 7p	ca. April, 1994	P5

RESTRICTIONS

P1 National security classified information [(a)(1) of the PRA].
P2 Relating to appointment to Federal office [(a)(2) of the PRA].
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PRM Personal records misfile defined in accordance with 44 USC 2201 (3).

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WR-POLLS

Now for something different. President Clinton and the Republicans and Democrats in Congress are considering ways to change the welfare system. I'm going to mention a few things that may be included in a new welfare reform bill, and I'd like to find out how high a priority you think each one should receive from the President and Congress this year. For each welfare reform measure I mention, tell me if you think it should be (a) the single highest priority, (b) one of the top few priorities, but not the highest, (c) near the top of the list, (d) in the middle of the list, or (e) toward the bottom of the list of priorities for the President and Congress?

[READ EACH ITEM AND ASK] Where would you rank that -- the single highest priority, one of the top few priorities, near the top of the list, in the middle of the list, or toward the bottom of the list of priorities?

[ROTATE Q49-Q55]	Single Highest	Top Few	Near Top	Mid List	Toward Bottom	(Don't know)	**Single Highest/ Top Few**	
49. Aggressive child support enforcement that requires fathers to work off the child support money they owe.	17	47	20	9	4	2	**65**	High All
50. Expand job training and day care but cut off welfare benefits after two years and require people to work, either in the private sector or community service.	19	44	21	10	4	2	**63**	Hi Perot 7?
51. Strict measures like fingerprinting to make sure that people don't receive welfare benefits in more than one state or county	14	37	20	15	11	2	**51**	Mod. Dems
52. A national campaign against teen pregnancy to make sure that women and children don't have to get on welfare in the first place	15	32	24	19	6	2	**48**	Blacks 22% Highest
53. Stop additional benefits to women who have new children while on welfare.	13	36	18	16	14	4	**48**	Good Perot
54. Day care subsidies for low income working families who are <u>not</u> on welfare so that workers are better off than people on welfare.	10	39	25	17	6	3	**48**	2nd blacks
55. Requiring teen-age parents on welfare to finish school and live at home with a parent or responsible adult	8	37	23	18	10	COPY	5	

Hispanics + whites - same

[SPLIT SAMPLE A]
501 Respondents

56. President Clinton has proposed a welfare reform program that would expand job training and day care for people who receive welfare but that cuts off welfare benefits after two years and requires that people go to work. Do you favor or oppose this proposal?

[FOLLOW UP] Is that strongly or somewhat (favor/oppose)?

		Combined
Strongly favor	61	
Somewhat favor	27	89
Somewhat oppose	4	
Strongly oppose	3	7
(Don't know)	4	

[END OF SPLIT SAMPLE A--GO TO Q58]

Hisp 90
White 88
Black 82

[SPLIT SAMPLE B]
499 Respondents

57. There is a welfare proposal before Congress that would expand job training and day care for people who receive welfare but that cuts off welfare benefits after two years and requires that people go to work. Do you favor or oppose this proposal?

[FOLLOW UP] Is that strongly or somewhat (favor/oppose)?

		Combined
Strongly favor	61	
Somewhat favor	27	88
Somewhat oppose	5	
Strongly oppose	3	8
(Don't know)	3	

[END OF SPLIT SAMPLE B--GO TO Q58]

COPY

[ALL RESPONDENTS]

58. Let me describe two approaches being considered in Congress to address the welfare problem in America. Please tell me which approach you tend to favor.

[ROTATE STATEMENTS]

The Democrats support welfare reform legislation that limits welfare to 2 years, to move people from welfare to work. They support tax credits for low wage, full-time workers and universal health coverage so that work pays better than welfare. They support increased job training and child care, but then require that people go to work	48
The Republicans support welfare reform legislation that limits welfare to 2 years, to move people from welfare to work. They would also bar increased welfare payments to women who have children while on welfare. They support some additional job training and child care to help people go to work	36
(Both)	10
(Neither)	3
(Don't know)	3

Partisan divide
Homemakers, older men, non-college, srs. go for GOP
Hispanics 56% Dem

The welfare reform proposals under consideration will create new short term costs as a result of additional training, education and child-care programs and subsidized community jobs. I am going to read you a number of proposals to pay for welfare reform. Please tell me whether you favor or oppose each one.

[PROMPT] Do you favor or oppose <u>that specific proposal</u> to pay for welfare reform?

[FOLLOW UP] Is that strongly or somewhat (favor/oppose)?

[ROTATE Q59-Q65]	Str Favor	Some what Favor	Some what Oppose	Str Oppose	(Don't know)	**Total Favor**	**Total Oppose**	
59. Require gamblers to pay a with-holding tax on winnings over 50 thousand dollars.	55	28	8	6	3	**83**	**14**	
60. Require families who sponsor new immigrants to take responsibility for those immigrants for at least 5 years	41	36	14	6	3	**77**	**20**	Hispanics OK
61. Deny welfare benefits to new immigrants until they become U.S. citizens	42	31	15	9	4	**73**	**24**	Hispanics drop
62. Limit welfare benefits to individuals who have abused alcohol or drugs	44	27	16	10	4	**71**	**25**	
63. Eliminate welfare benefits like Medicaid and food stamps for legal immigrants who are not American citizens.	37	27	21	12	3	**64**	**32**	Hispanics drop
64. Eliminate tax breaks for retirement annuities that pay more than 100 thousand dollars a year.	28	33	18	15	5	**62**	**33**	Dems > GOP
65. Cut farm subsidies for farmers and ranchers with more than 100 thousand dollars in annual non-farm income	30	30	20	11	8	**61**	**32**	Dems > GOP

COPY

[SPLIT SAMPLE A]
501 Respondents

66. Both the Democrats and the Republicans in Congress support reforms that limit welfare to two years. But they differ on how to pay for these reforms and job training:
[ROTATE STATEMENTS]

The Democrats pay for their reforms by cutting welfare for the wealthy in the form of tax breaks andsubsidies, and reducing the welfare roles by making work pay with more tax breaks for the working poor.

The Republicans pay for their reforms by barring further welfare benefits to legal immigrants who are not American citizens.

Which financing proposal do you prefer?

Cut welfare for wealthy/ make work pay (Democrats)	51
Bar payments to non citizens/(Republicans)	34
(Neither)	5
(Don't know)	9

[END OF SPLIT SAMPLE A--GO TO Q68]

Perot 50-38

[SPLIT SAMPLE B]
499 Respondents

67. Both the Democrats and the Republicans in Congress support reforms that limit welfare to two years. But they differ on how to pay for these reforms and job training:
[ROTATE STATEMENTS]

The Democrats pay for their reforms with spending cuts in other programs, by cracking down on welfare fraud and with strict enforcement of child support payments from deadbeat dads. (Add welf. for the wealthy)

The Republicans pay for their reforms by barring further welfare benefits to legal immigrants who are not American citizens.

Which financing proposal do you prefer?

Spending cuts/fraud (Democrats)	61
Bar payments to non citizens (Republicans)	27
(Neither)	4
(Don't know)	8

COPY ♀

[END OF SPLIT SAMPLE B--GO TO Q68]

Perot 62-24
GOP ♀ go from 27→53%.
Plurality of GOPs

- Helps w/our non-college ♀ problem

[ALL RESPONDENTS]
President Clinton has opposed funding welfare reform by barring welfare payments to legal immigrants who are not American citizens. Let me read you a number of his arguments against the Republican funding proposal and for each one tell me if it raises very serious doubts, serious doubts, minor doubts or no real doubts in your mind about funding welfare reform by barring welfare payments to non-American citizens.
[FOLLOW UP]Does that statement raise very serious doubts, serious doubts, minor doubts or no real doubts in your own mind about funding welfare reform by barring payments to non-citizens?

[ROTATE Q68 - Q71]	Very Serious doubts	Serious doubts	Minor doubts	No real doubts	**[DON'T KNOW]**	**Total Serious Doubts**	**Minor/ No Real Doubts**
68. The Republicans want to deny all welfare and health benefits, including Medicaid, to legal immigrants. But when these people get sick or injured, they are still going to go to the hospital, and states, counties and local taxpayers will end up paying the bill	22	40	19	13	6	**62**	**32**
69. The Republicans want to deny all welfare benefits, including food stamps, to legal immigrants. This will result in more hungry and homeless people in our communities.	22	39	19	16	5	**60**	**35**
70. Courts have ruled that the constitution guarantees benefits to the U.S. born children of legal immigrants. Republicans would deny benefits to these families, and the matter will be tied up for years in the courts -- delaying meaningful welfare reform	16	39	24	15	6	55	39
71. The Republican proposal denies benefits to legal immigrants who have a green card and are trying to find work -- just like millions of other immigrants who have come here to pursue the American dream. These are not illegal aliens, these are people who are trying to achieve U.S. citizenship	16	34	25	18	7	50	43

COPY

→Their approach creates more problems than it solves.

72. Let me ask you one more time about how to pay for welfare reform.

[ROTATE STATEMENTS]

> The Democrats pay for their reforms with a combination of spending cuts, eliminating some tax breaks for the wealthy and cracking down on welfare fraud.
>
> The Republicans pay for their reforms by barring further welfare benefits to legal immigrants who are not American citizens.

Which financing proposal do you prefer?

Spending cuts, eliminating tax breaks, crack down on fraud, (Democrat proposal)	64
Barring benefits to non American citizens, (Republican proposal)	25
(Neither)	5
(Don't know)	6

Moves mostly weak GOP, ♀, non-college

WITHDRAWAL SHEET
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Collection: Domestic Policy Council-Reed, Bruce **Archivist:** RDS
OA/Box: OA 19842
File Folder: Wisconsin [1] **Date:** 5/12/04

DOCUMENT NO. & TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. memo	Elena Kagan to Jack Quinn and Kathy Wallman re: Wisconsin Waiver Application, 5p	6/10/96	P5 See folder 2
2. memo	Reed and Ken Apfel to Chief of Staff [Panetta] re: Wisconsin Waiver, 2p (partial)	7/8/96	P5
3. & 4. memo	Wisconsin Waiver, 3p (partial)	7/11/96	P5

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certain post-termination opportunities for review,

full evidentiary

~~review/~~ but argues that requiring a hearing before terminating benefits would make it easier for recipients to get around work requirements, and would keep the system still looking like a welfare program instead of the real world of work.

instead of an "entitlement"

and the consequent due process safeguards,

There is no having it both ways on this question: any outright guarantee will maintain the individual entitlement, even if we call it an "assurance" or ~~something else~~. HHS would like to do just that, and impose due process procedures that go much further than the state proposed. That would have the advantage of protecting recipients if the state runs out of money. On the other hand, it might prompt Thompson to reject the terms of the waiver, claim that we had vetoed welfare reform a third time in order to preserve the current system, and lobby Congress to pass a full Wisconsin waiver.

how? if no $?

probably would

Another approach would be to require the state to "make best efforts to ensure that those eligible receive services and benefits." Holding Wisconsin to a "best efforts" standard would make it easier for courts and the Administration to review the waiver if Wisconsin fails to provide jobs, but it ~~could~~ not be interpreted as an individual entitlement; therefore, the full panoply of due process protections would not apply. Recipients would get the notice and review proposed by the state, but they could not go to court ~~every time they were sanctioned.~~ and demand a full evidentiary hearing prior to any sanction.

A third approach would be to simply give Wisc what it wants?

Regardless of which approach we adopt,

White House Counsel suggests that ~~instead of HHS outlining its own detailed due process procedures for the state,~~ we ~~could~~ ~~grant~~ allow the state ~~the right to~~ ~~go forward with its~~ adopt procedures ~~provisions~~ "insofar as and to the extent that they comport with applicable consistitutional requirements." Since these issues are bound to be litigated no matter what we say, it probably makes sense to leave them to the courts to decide.

III. Legal Issues

~~Assuming~~ Should if we allow the state to proceed with something short of an individual entitlement (which clearly demands the full range of due process protections),

On two of labor's main concerns (worker displacement and the minimum wage), we lack the legal authority to grant exactly what the state wanted. The provision that requires workfare participants to be placed in new (not existing) job vacancies is in a section of the Social Security Act that cannot be waived under current law. But every major welfare bill would remove that provision, so Wisconsin will be free to do what it wants once welfare reform becomes law. On the minimum wage, we can essentially grant the state's request to pay participants the minimum wage for 30 hours a week of work but not additional hours of education and training. But the state will have to reduce hours or raise benefits once an increase in the mininum wage goes into effect.

Two constitutional issues will require a White House decision. First, the state asked for a 60-day residency requirement before ~~applying for~~ applicants could seek assistance. HHS has refused to grant even 30-day requirements in the past, based on a 19~~70 <ck>~~ 69 Supreme Court decision, *Shapiro v. Thompson* (~~no relation~~) (not Gov. Thompson), that a one-year residency requirement violated the constitutional right to travel. HHS is now willing to go along with a 30-day requirement for Wisconsin (and Minnesota, which has had a waiver pending for several months), on the ~~grounds that 30~~ days represents a reasonable ~~administrative~~ period for states to require but 60 days does not. White House to . . .

COPY

Bruce: do you not want to say that still a third approach is to [illegible] language (without adding a best-efforts requiremen

although this argument is substantial
believes that the constitutional issue is not crystal clear, noting that the current Court may wish to confine Shapiro to its facts and that Wisconsin (like many other states) has

Counsel ~~argues that many states have~~ residency requirements of 60 days or longer for other benefits -- ~~Wisconsin requires~~ university students ~~to~~ live in the state for a full year before they can qualify for resident tuition, ~~-- and that~~ we ~~could~~ grant the state a residency requirement for "the period up to 60 days for which the state can demonstrate a ~~compelling administrative interest.~~" interest satisfying constit. stds constitution That would allow us to grant the state's request, but put the burden on Wisconsin to defend its provision in court. ~~under the strictest possible standard. An approach still more favorable to the state, reflecting the constitutional uncertain~~

...aining, for example, that

Then [The second constitutional issue involves is the denial of benefits to U.S.-born ~~citizen~~ children of illegal immigrants. HHS argues that ~~because the children are born here, they~~ have ~~a~~ the same right to ~~get~~ welfare, even though their parents are not eligible and cannot be required to work. White House Counsel argues that if welfare is turned into a jobs program and eligibility ~~is based~~ on work, the children of illegal immigrants might well have no constitutional claim, any more than the children of parents who refuse to work. This is not a big issue in Wisconsin, where there are very few child-only cases, but it is an enormous concern in California, where most of the caseload growth in the past decade has been child-only cases involving children of illegal immigrants.]

these citizen

benefits as any others,

themselves

who are citizens by virtue of having been born here.

?

and also suggested by Counsel

The counsel's office thus suggests that ~~that consistent with Shapiro,~~

in this area, would ~~often generally, to~~ require the state to demonstrate an interest ~~satisfying~~ for the residency period satisfying constitutional standards, ~~requirements~~ without stating precisely what those standards are

again thinks the constitutional issue is more difficult than this analysis suggests. It

~~Another approach~~

COPY

always want an appeal. The question is whether the appeal to the state is mandatory or discretionary.

to State only on matters of financial fact. They could not appeal the denial or termination of a job opportunity.

Could I see them? Is the way these bills are "much stronger" in providing mandatory review? Are there other differences?

The Administration has sought much stronger due process provisions in welfare bills. Both Castle-Tanner and Chafee-Breaux are much stronger than Wisconsin; the Republican bills are not much stronger. States would have to set specific rules for providing assistance, and follow them. Applicants and beneficiaries could appeal to the State who wrote the rules, not just to a contractor that has incentives to deny assistance. HHS ~~appears to want~~ to go further, proposing that the State develop written procedures for offering job slots that are consistent with Goldberg v. Kelly.

I have to say that it seems to me the — This is the key question: whether the decision-maker has to provide a pre-termination evidentiary hearing.

The basic options are:

- Waive the requirement that families have the opportunity to apply for assistance and, if they meet written eligibility requirements, receive assistance timely. (This is the entitlement to welfare on which Goldberg v. Kelly due process standards are based.)
- Waive the entitlement to welfare, but substitute for it an entitlement to an opportunity to work. Apply Goldberg v. Kelly to only the more serious adverse actions.
- Maintain the entitlement and subject all adverse actions to Goldberg v. Kelly standards.

The opportunity to apply for assistance and, if one meets written eligibility standards, receive timely cash assistance is the heart of the "entitlement" to welfare. Without this guarantee, the due process standards of Goldberg v. Kelly do not apply. The State says it intends to provide timely assistance to all who are eligible. Therefore, HHS believes waiving their responsibility to do so is not necessary for Wisconsin to accomplish its goals. Moreover, HHS is concerned how contractors would implement the State's intentions absent due process protections. The contractors will be paid based on how many people they remove from the welfare rolls, so their incentive would be to deny assistance whenever possible.

On the other hand, Wisconsin will object strongly if any significant due process requirements are maintained. If the requirements are waived, Wisconsin could be warned that the waivers would be revoked if close monitoring shows that families are being treated arbitrarily.

see below — this should be the middle position in a somewhat tougher form

The second option -- substituting an opportunity to work for the welfare entitlement -- does end welfare as we know it. Done right, the State would have to provide a fair hearing before denying assistance or terminating assistance -- but could summarily reduce benefits for failure to work. This would substantially reduce the burden of fair hearings while providing assurances that a job would be available. This is simply not true. The entitlement would be to a job + a paycheck. If ~~[illegible]~~ a person were deprived of them, the state would need to provide the full panoply due process protection.

Under option three, a fair hearing would be available for any adverse action the State took -- including reducing assistance for failing to work. While many commenters support maintaining all current protections -- and HHS would like to maintain as many as possible -- option three is not likely to be perceived as ending welfare as we know it. Am I missing something

insofar as + to the extent that they comport w/ applicable constitutional standards

Regardless of what approach is taken, White House Counsel suggests that instead of HHS outlining its own detailed due process procedures for the State, the waiver allow the State to adopt procedures ~~that meet certain general criteria~~. No, not the old language

COPY

This does not seem to me the correct middle position. It keeps ~~the~~ an entitlement, which means by definition that G v K will apply. The [illegible] to be along the lines in Bruce's memo

provide health insurance to current Medicaid eligibles and expand Medicaid eligibility for all families and children under 165% of poverty, subject to payment of premiums. Although the plan would expand coverage to some populations, the plan is predicated on a block grant financing structure and would eliminate the federal entitlement to Medicaid for the AFDC population (although if passed under current law, the waiver would not be structured as a block grant, despite such rhetoric). If the Administration approves the Medicaid proposal, the waiver would set a precedent for waiving mandatory eligibility and services that states could potentially use to restrict eligibility when expenditures exceed revenues. Approval of the Wisconsin plan would also undermine the Administration's objection to Republican proposals that deny the federal guarantee of Medicaid eligibility. The Administration could also be criticized for approving a plan that, similar to the Republican reconciliation package, would link a generally acceptable welfare reform proposal to unacceptable Medicaid changes.

In addition to the above concerns, HHS has specifically objected to the following eligibility restrictions that would compromise the guarantee of Medicaid coverage. Recipients would lose Medicaid eligibility due to non-payment of premiums, or if they have access to any employer-sponsored health insurance after 12 months of employment. In addition, recipients would not be eligible for Medicaid if they had employer-subsidized insurance (at 50% or greater) for any one month during the past 18 months or currently. The Wisconsin plan would also limit several mandatory services, including treatment services for children under the EPSDT requirements, and skilled nursing and home care services.

If the Wisconsin health plan is approved without the above restrictions on eligibility, budget neutrality requirements will be harder for the state to achieve.

OTHER ISSUES

Residency Requirement

Can I rewrite this section to make sure Counsel's position (as well as DOJ's) is rendered as accurately as possible? Thanks. See attached.

One constitutional issue will require a White House decision. The state asked for a 60-day limit residency requirement before applying for assistance. DOJ does not believe that any residency requirement is permissible under a 1969 Supreme Court decision, *Shapiro v. Thompson* (no relation). In that case, the court ruled that a one-year residency requirement violated the constitutional right to travel. White House Counsel believes that although this argument is substantial, the constitutional issue is not crystal clear. ~~It believes that while the State's current stated reasons for desiring the waiver (keeping poor families from moving to the State for higher benefits or a guaranteed job) would not pass muster, the State may be able to develop other reasons that do pass muster.~~ The two basic options are:

- Deny the waiver since DOJ believes it does not pass muster
- Allow the waiver on the condition that the State has motives for using it that it can convince the courts do not violate *Shapiro v. Thompson*.

COPY

HHS opposes passing to the courts what currently is an Executive Branch prerogative. The Counsel's office thus suggests that we grant the state a residency requirement of "the period up to 60 days for which the state can demonstrate an in interest satisfying constitutional standards."

Insert A

One constitutional issue will require a White House decision. The State asked for a 60-day residency requirement before any person could apply for assistance. DOJ believes that under Shapiro v. Thompson, a 1969 decision in which the Supreme Court held a one-year residency requirement to violate the constitutional "right to travel," any residency requirement must meet the most stringent kind of Supreme Court review, requiring assertion of a "compelling state interest." DOJ also notes that so far, the State has failed to advance such an interest.

There are two options here -- one advocated by HHS, the other by the White House Counsel's office. The HHS option is simply to deny the request for a residency requirement. The Counsel option is to grant the request for "the period up to sixty days for which the state can demonstrate an interest satisfying constitutional standards." This approach, approved in full by DOJ, authorizes the State to do what it wants if such action is constitutional, leaving the issue of constitutionality to the courts. The approach thus effectively allows the Administration to grant the State's request, but places the burden on the State to defend its provision in court.

HHS objects to the Counsel's approach on the ground that it abdicates to the courts a decision that properly should be made by the Administration. HHS also argues that this approach sets a dangerous precedent for the future. Counsel's Office replies that the approach is fully legal (DOJ concurs) and that it allows us to get rid of a tricky issue by at once giving the state what it wants and not approving anything we think improper. Counsel's Office also notes that a decision to hand the question to the courts may be especially appropriate in this context because the law here is very uncertain: a great many constitutional commentators believe that the current Court is looking for an opportunity to reverse or severely curtail Shapiro.

To Ken Apfel:

Substitute Residency Requirement Section

Elena

WITHDRAWAL SHEET
Clinton Library

Collection: Domestic Policy Council-Reed, Bruce
OA/Box: OA 19842
File Folder: Wisconsin [2]

Archivist: RDS
Date: 5/12/04

DOCUMENT NO. & TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. memo	Reed and Ken Apfel to Chief of Staff [Panetta] re: Wisconsin Waiver, 2p (partial)	7/9/96	P5
2. memo	Wisconsin Waiver, 2p (partial)	7/11/96	P5

RESTRICTIONS

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].
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].

B1 National security classified information [(b) (1) of the FOIA].
B2 Release could disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA].
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B9 Release would disclose geological or geophysical information

opportunity to submit evidence, cross-examine opposing witnesses, and retain a lawyer) before terminating any benefits to which the recipient has a statutory entitlement. Wisconsin is willing to provide certain post-termination opportunities for review, but argues that requiring a full evidentiary hearing before terminating benefits would make it easier for recipients to get around work requirements, and would keep the system looking more like a welfare program than the real world of work.

There is no having it both ways on this question: any outright guarantee will maintain the individual entitlement and the consequent due process safeguards, even if we call it an assurance or something else. HHS would like to do just that, and impose due process procedures that go much further than the state proposed. That would have the advantage of protecting recipients if the state runs out of money. On the other hand, it might prompt Thompson to reject the terms of the waiver, claim that we had vetoed welfare reform a third time in order to preserve the current system, and lobby Congress to pass a full Wisconsin waiver.

A second approach would be to go along with the request to waive the entitlement, but require the state to "make best efforts to ensure that those eligible receive services and benefits." Holding Wisconsin to a "best efforts" standard would make it easier for courts and the Administration to review the waiver if Wisconsin fails to provide jobs, and probably would not be interpreted as an individual entitlement. Recipients would get the notice and review proposed by the state, but could not go to court and demand a full evidentiary hearing prior to any sanction. We can make clear that if the state fails to meet this best efforts standard, we have the authority to revoke its waiver.

A third approach would be to simply give Wisconsin what it wants, by waiving the entitlement without imposing a best-efforts standard. That would quiet Thompson, but alarm advocates (who will be upset no matter what we do).

Regardless of which approach we take, White House Counsel suggests that instead of HHS outlining its own detailed due process procedures for the state, we allow the state to adopt procedures "insofar as and to the extent that they comport with applicable constitutional requirements." Since these issues are bound to be litigated no matter what we say, it probably makes sense to leave them to the courts to decide.

III. Legal Issues

On two of labor's main concerns (worker displacement and the minimum wage), we lack the legal authority to grant exactly what the state wanted. The provision that requires workfare participants to be placed in new (not existing) job vacancies is in a section of the Social Security Act that cannot be waived under current law. But every major welfare bill would remove that provision, so Wisconsin will be free to do what it wants once welfare reform becomes law. On the minimum wage, we can essentially grant the state's request to pay participants the minimum wage for 30 hours a week of work but not additional hours of education and training. But the state will have to reduce hours or raise benefits once an increase in the minimum wage goes into effect.

One constitutional issue will require a White House decision. The state asked for a 60-day residency requirement before applying for assistance. HHS has refused to grant even 30-day requirements in the past, based on a 1969 Supreme Court decision, *Shapiro v. Thompson* (no relation) that a one-year residency requirement violated the constitutional right to travel. HHS is now willing to go along with a 30-day requirement for Wisconsin (and Minnesota, which has had a waiver pending for several months), on the grounds that 30 days represents a reasonable administrative period but 60 days does not. White House Counsel believes that although this argument is substantial, the constitutional issue is not crystal clear. The current Court may wish to confine *Shapiro* to its facts, and Wisconsin (like many other states) has residency requirements of 60 days or longer for other benefits -- requiring, for example, that university students live in the state for a full year before they can qualify for resident tuition. The Counsel's office thus suggests that we grant the state a residency requirement for "the period up to 60 days for which the state can demonstrate an interest satisfying constitutional standards." That would allow us to grant the state's request, but put the burden on Wisconsin to defend its provision in court.

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Medicaid

Wisconsin has submitted a welfare waiver with significant Medicaid financial and programmatic implications. In connection with the work-based system, the Wisconsin waiver proposes to provide health insurance to current Medicaid eligibles and expand Medicaid eligibility for all families and children under 165% of poverty, subject to payment of premiums. Although the plan would expand coverage to some populations, the plan is predicated on a block grant financing structure and would eliminate the federal entitlement to Medicaid for the AFDC population (although if passed under current law, the waiver would not be structured as a block grant, despite such rhetoric). If the Administration approves the Medicaid proposal, the waiver would set a precedent for waiving mandatory eligibility and services that states could potentially use to restrict eligibility when expenditures exceed revenues. Approval of the Wisconsin plan would also undermine the Administration's objection to Republican proposals that deny the federal guarantee of Medicaid eligibility. The Administration could also be criticized for approving a plan that, similar to the Republican reconciliation package, would link a generally acceptable welfare reform proposal to unacceptable Medicaid changes.

In addition to the above concerns, the following eligibility restrictions could compromise the guarantee of Medicaid coverage. Recipients would lose Medicaid eligibility due to non-payment of premiums, or if they have access to any employer- sponsored health insurance after 12 months of employment. In addition, recipients would not be eligible for Medicaid if they had employer-subsidized insurance (at 50% or greater) for any one month during the past 18 months or currently. The Wisconsin plan would also limit several mandatory services, including treatment services for children under the EPSDT requirements, and skilled nursing and home care services.

If the Wisconsin health plan is approved without the above restrictions on eligibility, budget neutrality requirements will be harder for the state to achieve.

OTHER ISSUES
Residency Requirement

One constitutional issue will require a White House decision. The State asked for a 60-day residency requirement before any person could apply for assistance. DOJ believes that under Shapiro v. Thompson, a 1969 decision in which the Supreme Court held a one-year residency requirement to violate the constitutional "right to travel," any residency requirement must meet the most stringent kind of Supreme Court review, requiring assertion of a "compelling state interest." DOJ also notes that, so far, the State has failed to advance such an interest.

Lawyers have explored whether a 30-day residency requirement could be substituted in place of the longer period requested by Wisconsin, but they have determined that the length of the residency requirement is not the issue. Demonstration of a "compelling state interest" is the determining factor.

There are two options here. The first is to deny the request on the basis that Wisconsin's stated reason for instituting a residency requirement -- to deter people from moving into the State to receive welfare benefits -- does not meet the constitutional standards.

The second option is to grant the request for a period up to sixty days for which the state can demonstrate an interest satisfying constitutional standards. This approach would authorize the State to institute a 60-day residency requirement if such action is constitutional, leaving the issue of constitutionality to the courts. This would allow the Administration to grant the State's request, but it would place the burden on the State to defend its provision in court. DOJ does not see any problems with this approach. (It should be noted that many constitutional commentators believe the current court is looking for an opportunity to reverse or curtail Shapiro.) This option, however, may be viewed as passing to the courts what should be an Executive Branch decision. Some might see this as a precedent reducing the authority of the Executive Branch.

Labor Issues

Labor organizations, including the AFL-CIO, AFSCME, and SEIU at the international and state levels, have expressed deep concerns about W-2. In addition to supporting retention of the entitlement, due process standards, and time limit extension protections, unions have raised three labor-specific issues, two of which can be worked out favorably:

First, they have opposed Wisconsin's proposal to waive anti-displacement language in the current AFDC statute which protects public employees from losing their positions to welfare recipients serving work assignments. This issue can be worked out favorably for the unions. After public criticism, Governor Thompson withdrew all but one of his requests to waive anti-displacement provisions. Since HHS does not have the legal authority to waive any anti-displacement language and has taken that position in denying states' requests for similar waivers, labor organizations will expect the Administration to deny Wisconsin's remaining wavier request relating to displacement.

Second, they have expressed concerns that W-2 wage levels will violate federal minimum wage protections. HHS proposes to require Wisconsin to pay the equivalent of the minimum wage (including any future increases) to W-2 participants for time spent at work. Labor organizations will appreciate this proposed minimum wage protection (which HHS has insisted upon for other states). They will continue to be concerned, however, that the Administration is allowing Wisconsin to require W-2 recipients to engage in non-work activities (such as job search, education, and training) as a condition of participation in W-2 for which they will receive no remuneration.

Third, they oppose Wisconsin's proposal to permit private entities to compete for and operate W-2 agencies. While the W-2 proposal does provide a right of first refusal for counties which meet the state's contract performance criteria, labor organizations will perceive the contracting process as stacked against them. In supporting their position, unions have argued that public sector accountability and civil service protections are important to maintain in the operating of any public assistance program. Wisconsin currently runs a county-based AFDC program, and AFSCME represents the workers in every county agency in the state. We propose to grant the program.

Benefit Reductions

WITHDRAWAL SHEET
Clinton Library

Collection: **Domestic Policy Council-Reed, Bruce** **Archivist: RDS**
OA/Box: OA 19842
File Folder: **Wisconsin [6]** **Date:** 5/12/04

DOCUMENT NO. & TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. memo	Reed and Ken Apfel to Chief of Staff [Panetta] re: Wisconsin Waiver, 2p (partial)	7/8/96	P5

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PRM Personal records misfile defined in accordance with 44 USC 2201 (3).

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Another approach would be to require the state to "make best efforts to ensure that those eligible receive services and benefits." Holding Wisconsin to a "best efforts" standard would make it easier for courts and the Administration to review the waiver if Wisconsin fails to provide jobs, but it could not be interpreted as an individual entitlement. Recipients would get the notice and review proposed by the state, but they could not go to court every time they were sanctioned.

White House Counsel suggests that instead of HHS outlining its own detailed due process procedures for the state, we could grant the state the right to go forward with its procedural provisions "insofar as and to the extent that they comport with applicable consistitutional requirements." Since these issues are bound to be litigated no matter what we say, it probably makes sense to leave them to the courts to decide.

III. Legal Issues

On two of labor's main concerns (worker displacement and the minimum wage), we lack the legal authority to grant exactly what the state wanted. The provision that requires workfare participants to be placed in new (not existing) job vacancies is in a section of the Social Security Act that cannot be waived under current law. But every major welfare bill would remove that provision, so Wisconsin will be free to do what it wants once welfare reform becomes law. On the minimum wage, we can essentially grant the state's request to pay participants the minimum wage for 30 hours a week of work but not additional hours of education and training. But the state will have to reduce hours or raise benefits once an increase in the mininum wage goes into effect.

Two constitutional issues will require a White House decision. First, the state asked for a 60-day residency requirement before applying for assistance. HHS has refused to grant even 30-day requirements in the past, based on a 1970<ck> Supreme Court decision, *Shapiro v. Thompson* (no relation) that a one-year residency requirement violated the constitutional right to travel. HHS is now willing to go along with a 30-day requirement for Wisconsin (and Minnesota, which has had a waiver pending for several months), on the grounds that 30 days represents a reasonable administrative period but 60 days does not. White House

Counsel argues that many states have residency requirements of 60 days or longer for other benefits -- Wisconsin requires university students to live in the state for a full year before they can qualify for resident tuition -- and that we could grant the state a residency requirement for "the period up to 60 days for which the state can demonstrate a compelling administrative interest." That would allow us to grant the state's request, but put the burden on Wisconsin to defend its provision in court.

[The second constitutional issue involves the denial of benefits to U.S.-born citizen children of illegal immigrants. HHS argues that because the children are born here, they have a right to get welfare, even though their parents are not eligible and cannot be required to work. White House Counsel argues that if welfare is turned into a jobs program and eligibility is based on work, the children of illegal immigrants might well have no constitutional claim, any more than the children of parents who refuse to work. This is not a big issue in Wisconsin, where there are very few child-only cases, but it is an enormous concern in California, where most of the caseload growth in the past decade has been child-only cases involving children of illegal immigrants.]

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Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Negotiations with Schumer on 100,000 Cops (1 page)	07/08/94	P5

COLLECTION:

Clinton Presidential records
Domestic Policy Council
Bruce Reed (Crime)
OA/Box Number: 8412

FOLDER TITLE:

Crime Bill-100,000 Cops [1]

Rob Seibert

rs5

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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- 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]
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- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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risk -- if cities abuse the program by using federal dollars to pay the same police to do the same thing they're already doing and simply call it "community policing", we won't end up with more police or less crime; 3) It opens the program to attack from the Republicans, who wrote their bill to ensure that 100% (not 85%) of the money goes for new hires, not new equipment or new secretaries, because they want to criticize our policing and prevention programs as pork-laden payoffs to big-city mayors; and 4) Brooks says that if we set anything aside to help cities like New York and Buffalo pay for equipment and civilians, he'll insist that we let cities like Houston and Beaumont be able to use it for police overtime, which Schumer will agree is an enormous waste of our money.

With that in mind, we have gone back and forth with Schumer, Brooks, and Biden on a number of possible compromises. We suggested allowing the Schumer approach on a demonstration basis in up to 30 cities; that was acceptable to Schumer but not to Biden, who says he can't offer 30 demos to 100 Senators. We suggested increasing the up to 15% non-hire money to up to 20 or 25%; this was acceptable to Brooks and Biden but not to Schumer, who wants his own provision and recognizes that the "up to 15%" is totally discretionary while the "at least 85%" is real money.

Finally, we suggested testing Schumer's provision -- 25% of the 85% -- for the first two years of the six-year program to see whether it can work. This was acceptable to Schumer's staff (Schumer himself is "on vacation"), but still a little too generous for Brooks and Biden. They came back with what is close to a final offer: Schumer's approach for the first two years, but with lower percentages -- up to 20% in FY95 and 10% in FY96. The provision would be Schumer's language, with overtime added for Brooks.

This is definitely a good deal for us. The mayors will be thrilled -- especially Bob Lanier in Houston, who has nagged the President for months on the need on the overtime issue. We get more flexibility while only putting around 5,000 of our 100,000 cops at risk -- and if the idea works, we can still claim credit for those 5,000. And we can counter any Republican attacks by pointing out that this provision will enable us to take immediate action to deal with America's crime crisis and get more cops on the street faster in the first two years of the program.

It's a pretty good deal for Schumer, too, but he won't think so. We have not communicated this final offer to Schumer or his staff. But we know that he has made an extraordinarily big deal out of this whole dispute, even for him. He thinks his provision is better than ours on the merits -- he authored a cops-on-the-beat provision in the 1991 crime bill. Pride and politics are also on the line. He wants to bring home the bacon for New York and Buffalo, and perhaps more important, he wants to outmaneuver Giuliani, who has criticized the crime bill for not including such a provision. (There is even speculation that he hopes Giuliani will take advantage of the provision, hire secretaries instead of new cops, and be vulnerable to attack from Schumer down the road for not putting more police on the street.) He will complain that we have asked him to carry our water on Racial Justice and other issues, and we won't give him this one little thing in return.

But we think Schumer will swallow this provision in the end, once he is convinced it's

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Follow-up on Crime Initiative (1 page)	09/13/93	P5

COLLECTION:

Clinton Presidential records
Domestic Policy Council
Bruce Reed (Crime)
OA/Box Number: 8412

FOLDER TITLE:

Crime Bill-100,000 Cops [2]

Rob Seibert

rs6

RESTRICTION CODES

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

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
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C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

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

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File:
Crime - 100,000 Cops
Bill

September 13, 1993

NOTE TO BILLY WEBSTER

FROM: BRUCE REED

SUBJECT: FOLLOW-UP ON CRIME INITIATIVE

Billy, since the estimate of 2,100 officers was based on the Safe Schools draft that limited policing and other security-related expenditures to 25% -- not the current 33% -- we made a late-night, spur-of-the-moment decision to round the number up to 4,000. As you may know, DPC has supported using as much as 50% of Safe School funds for security purposes, and such a higher percentage may be included in the Safe Schools title of the crime bill. (Although we have told both Judiciary Committees that the Administration favors its own Safe Schools legislation over Rep. Schumers version, both committees insist on including the Schumer Safe Schools provision in the crime bill anyway).

Also, I am aware of the role played by Reps. Owens, Engel and Serrano, but would point out to you that Rep. Schumer -- who drafted the original Safe Schools -- has been absolutely livid over the Administration's support for a Safe Schools bill that he believes was stolen from him. Some months ago, Howard Paster contacted us -- as well as the relevant cabinet secretaries -- to ensure that Rep. Schumer was given proper credit, attention, etc., in regards to the Safe Schools issue. Moreover, because of Safe Schools and other issues, Rep. Schumer was threatening to oppose our crime bill, and we found ourselves in a terribly sticky position the day before the President's crime event.

Billy, I hope this explains the mix-up, and that we haven't unduly complicated things for you at the Dept. of Education. But if its any consolation, we won't hold you to the 4,000 number -- unless we're absolutely desperate.

Thanks,

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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

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)]

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COPY

Crime -
VP

DATE: MARCH 8, 1994

MEMORANDUM TO BRUCE REED
DEPUTY ASSISTANT FOR DOMESTIC POLICY

FROM: JAMI FLOYD
OFFICE OF THE VICE PRESIDENT
DOMESTIC POLICY

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

As you may know, the President and Vice President have discussed convening a series of White House Roundtable discussions with our nation's leaders to address the problem of crime and violence in America. Last week, the Vice President asked us to draft a proposal for the President. Attached you will find the most recent draft of this proposal. The Vice President has seen earlier drafts and made revisions. He expressly asked that we have you review this draft for your thoughts/comments. **We need to hear from you as soon a possible so that we may incorporate your comments this afternoon,** as the Vice President wants to receive a final draft this evening.

Finally, the President and Vice President want to keep this strictly confidential.

I can be reached at 6-7871.

Thank you.

COPY

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. draft agreement	[Gun Dealers and Distributors Code of Conduct] (10 pages)	04/10/00	P5

COLLECTION:

Clinton Presidential records
Domestic Policy Council
Bruce Reed (Crime)
OA/Box Number: 21552

FOLDER TITLE:

Guns-Gun Dealers

Rob Seibert

rs19

RESTRICTION CODES

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

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Guns- Dealers

DRAFT
Term Sheet

April 10, 2000
Privileged & ~~Confidential~~

1. Authorized dealers and distributors must:

    1. Maintain requisite licenses and certify compliance with law

    2. For all transfers to purchasers that are not federal firearms licensees, execute Brady Act and Gun Control Act requirements in the presence of the purchaser

    3. Carry liability insurance of at least $1 million for each incident of damage, injury or death.

    4. Make no sales at gun shows unless all sales by any seller at the gun show are conducted only upon completion of a background check.

    5. Maintain an inventory tracking plan that includes at a minimum:

        1. Electronic acquisition and disposition records. Monthly backups in a secure container.

        2. Monthly electronic inventory check.

        3. Protection of all ATF Form 4473 firearm transaction records from loss by fire, theft, or other mishap. This may be accomplished by (a) storing all these records in a secure container designed to prevent loss by fire, theft, or other mishap, (b) storing copies of these records at a separate site, or (c) computerizing these records and storing a back-up of the computer files in a manner than ensures its protection from loss by fire, theft, or other mishap.

        4. If an audit of a distributor's or dealer's inventory reveals any firearms not accounted for, the distributor or dealer shall be subject to sanctions in accordance with the procedure set forth in Section 2, below, including termination as an authorized distributor or dealer.

    6. Implement a security plan for securing firearms, including firearms in shipment. The plan must satisfy at least the following requirements:

        1. Display cases shall be locked at all times except when removing a single firearm to show a customer, and customers shall handle firearms only under the direct supervision of an employee;

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2. All firearms shall be secured, other than during business hours, in a locked fireproof safe or vault in the licensee's business premises or in another secure and locked area; and

3. All ammunition except [limited category of ammunition] shall be stored separately from the firearms and out of reach of the customers. [Limited category of ammunition] may be stored in reach of customers only if it is in shrink-wrapped packages of at least [minimum size that will prevent shop-lifting].

4. In addition, as required in Cal. Penal Code Section 12071(b)(14), all firearms must be stored in one of the following ways:

   (1) in a "secure facility" that is part of, or that constitutes, the dealer's business premises (see definition below);

   (2) secured with a hardened steel rod or cable of at least one-eighth inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a bolt cutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises; or

   (3) in a locked fireproof safe or vault in the licensee's business premises.

7. Require persons under 18 years of age to be accompanied by a parent or guardian when they are in portions of the premises where firearms or ammunition are stocked or sold. [To be discussed.]

8. Agree to the following sales restrictions:

   1. Not to sell ammunition magazines that are able to accept more than 10 rounds regardless of the date of manufacture; [to be discussed]

   2. Not to sell any semi-automatic assault weapon as defined in 18 U.S.C. 921(a)(30) regardless of the date of manufacture; [to be discussed]

   3. To provide safety locks and warnings with firearms; and

4. To sell only firearms that comport with the design criteria of the Agreement of March 17, 2000 between Smith & Wesson, the Department of the Treasury, the Department of Housing and Urban Development, and other parties ("Agreement of March 17, 2000").

9. Provide law enforcement, ATF and similar state and local officials conducting compliance inspections, and the Oversight Commission, for purposes of determining compliance with conditions imposed as a result of this Agreement, or for any other authorized purpose, full access to any documents, including those related to the acquisition and disposition of firearms, deemed necessary by one of those parties.

10. Participate in and comply with all monitoring of firearms distribution by manufacturers, ATF or law enforcement.

11. Maintain an electronic record of all trace requests initiated by ATF, and report those trace requests by make, model and serial number of firearm, date of trace, and date of sale to the manufacturer of the firearm within 48 hours, unless ATF, for investigative reasons, directs the licensee not to report certain traces. This reporting may be accomplished by sending the manufacturer a copy of the dealer's or distributor's response to ATF's trace request.

12. Agree to cooperate fully in the oversight mechanism established in Section 6 of this Agreement, including providing access to all necessary documents, and to be subject to the jurisdiction of the court enforcing this Agreement.

13. Require all employees who handle firearms to attend annual training developed by manufacturers in consultation with ATF and approved by the Oversight Commission. Dealer and distributor organizations may also work with ATF to develop a training program that can be used with the approval of the Oversight Commission. Such training may be delivered by electronic medium. All employees who handle firearms must be trained in the safe handling and storage of firearms and the security procedures of the dealer or distributor for which they work. All employees involved in the sale of firearms must be trained in the law governing firearms transfers and the specific safety features of the firearms that they sell. All employees involved in the sale of firearms to purchasers who are not federal firearms licensees must be trained how to recognize straw purchasers and other attempts to purchase firearms, how to recognize indicators that firearms may be diverted for later sale or transfer to those not legally entitled to purchase them, and how to respond to those attempts. Within 12 months of the date of

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execution of this Agreement and annually thereafter, the dealer and distributor parties to this Agreement will provide to the Oversight Commission and the manufacturers by which they are authorized certifications that such training has been completed, with a list of the names of all trained employees. Employees who do not complete this training may not participate in any way in the sale of firearms.

14. Require all employees who handle firearms to pass a comprehensive written exam, which shall be developed by the manufacturers and dealer and distributor organizations in consultation with ATF and approved by the Oversight Commission, on the material covered in the training before being allowed to sell or handle firearms. The material covered in the tests will be the same as the material covered in the training and will vary depending on the employee's responsibilities, as specified in 1.m above. Any employee who fails to pass the exam shall be prohibited from selling or handling firearms on behalf of the distributor or dealer. The annual certification discussed in 1.m, above, will include certification that all employees have passed the exam.

15. Not complete any transfer of a firearm to a transferee who is not a federal firearms licensee prior to receiving notice from the NICS that the transferee is not a prohibited person under the Gun Control Act.

16. Verify the validity of a licensee's federal firearms license against an ATF database and verify that the licensee is an authorized dealer or distributor before transferring a firearm to that licensee

17. Forgo any transfer of a firearm to a licensee if the dealer or distributor knows the licensee to be under indictment for violations of the Gun Control Act or any violent felony or serious drug offense as defined in 18 U.S.C. § 924(e)(2).

18. Transfer firearms only:

    1. To individuals who have demonstrated that they can safely handle and store firearms through completion of a certified firearms safety training course or by having passed a certified firearms safety examination. The Oversight Commission will determine the standards necessary to qualify as a certified course or examination and will determine which courses meet these standards. [Specifics to be discussed. State-approved training courses such as the California Basic Firearms Safety course, which requires 2-4 hours of training, would qualify. See Cal. Penal. Code §§

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12072(c)(5), 12083.]

2. After demonstrating to the purchaser how to load, unload, and safely store the firearm, and how to engage and disengage all safety devices on the firearm. This shall include an explanation of the circumstances for which the safety devices are designed to prevent the firing of the handgun.

3. After providing the purchaser with a copy of the ATF Disposition of Firearms Notice.

4. After obtaining the purchaser's signature on a form certifying that the purchaser has received the instruction described in subparagraph (ii) and the notice described in subparagraph (iii) and maintaining that form in its files.

5. After providing the purchaser with a written record of the make, model, caliber or gauge, and serial number of each firearm transferred to enable the purchaser to accurately describe the firearm to law enforcement in the event that it is subsequently lost or stolen.

19. Consent to up to three unannounced ATF inspections each year.

20. Provide manufacturers, ATF and the Oversight Commission quarterly reports on their volume of sales by make and model.

21. Provide ATF with monthly reports of the make, model, and serial number of all used guns taken into inventory.

22. Perform background checks, including criminal history checks, on their employees.

2. Enforcement: Distributors and dealers agree that if they are found in violation of any of the requirements of this Agreement, the manufacturers by which they are authorized shall impose sanctions. Under the sanction process, the manufacturer will notify authorized dealers and distributors of any violations of which the manufacturer receives notice. The dealers and distributors will have fifteen (15) days to respond. If the manufacturer determines that the dealer or distributor is in violation of any of the requirements of the Agreement, the manufacturer will provide no further product to the distributor or dealer until the manufacturer determine that the distributor or dealer is in compliance with the Agreement. The manufacturers may also impose additional sanctions to ensure that

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dealers comply with the Agreement. The manufacturers shall notify the Oversight Commission of their actions, and the Oversight Commission may order sanctions that were not initially imposed by the manufacturer.

[Additional enforcement mechanism for dealers and distributors that are party to this Agreement, but not acting as authorized dealers for any manufacturers that have entered into a similar agreement.]

3. **Authorized distributors - additional provision.**

Authorized distributors must agree to sell firearm products only to other distributors or dealers who have signed this Agreement or directly to government purchasers.

4. **Authorized dealers -- additional provisions.**

In addition to the requirements in section 1, authorized dealers must agree:

1. Not to sell any firearm products to any federal firearms licensee that has not signed this Agreement.

2. To operate from a storefront and maintain a minimum inventory of [ ].

3. Not to engage in sales that the dealer knows or has reason to know are being made to straw purchasers. Furthermore, no sales or transfers of any firearm or ammunition shall be made to anyone whom the dealer knows or has reason to believe will divert firearms, intentionally or otherwise, for later sale or transfer to those not legally entitled to purchase handguns or other firearms under federal, state, or local laws.

4. To adhere to the following procedure for multiple handgun sales. If a purchaser wants to purchase more than one handgun, the purchaser may take from the dealer only two handguns on the day of sale. The dealer at that point will file a Multiple Sales Report with ATF. The purchaser may take two additional handguns each thirty days thereafter.

   Exceptions. This provision shall not apply to:

   1. Sales to qualified private security companies licensed to do business within the State where the transfer occurs for use by the company in its security operations;

2. Sales of curios and relics, [as defined in _______];

3. Sales of a complete collection of guns made available for sale by reason of the owner's death;

4. Interstate transfers of firearms by their owner, where ownership does not change hands.

5. **Corporate responsibility.**

If authorized dealers or distributors have a disproportionate number of crime guns traced to them within three years of the gun's sale, the manufacturer(s) that have authorized the dealer or distributor to sell guns will either immediately terminate sales to the dealer or distributor or take the following actions. The manufacturers will, individually or collectively, notify the dealer or distributor of the disproportionate number within seven (7) days and demand an explanation and proposal to avoid a disproportionate number of traces in the future. The dealer or distributor will have fifteen (15) days to provide the explanation and proposal. If the manufacturer(s) determine that the explanation and proposal are not satisfactory, the manufacturer(s) will terminate supplies to the dealer or distributor. If the manufacturer(s) determine that the explanation and proposal are satisfactory, the manufacturer will continue supplies, but will closely monitor traces to the dealer or distributor in question. If disproportionate traces continue, the manufacturer(s) will terminate supplies to the dealer or distributor. The manufacturer will also have authority to impose additional sanctions.

The manufacturer(s) shall inform the Oversight Commission and ATF of its/their notifications and decisions and provide them with the information provided by the dealer or distributor. If the Oversight Commission determines that suspension or termination of the dealer or distributor is warranted, and the manufacturer(s) did not take this action, the Oversight Commission shall direct the manufacturer(s) to do so.

Disproportionate number of crime guns: Upon execution of this Agreement, the Oversight Commission will convene to determine a formula to identify what constitutes a disproportionate number of crime guns. In determining the formula, the Oversight Commission shall consider the available data and establish procedures to ensure that the relevant data is obtained. This provision will not take effect until the Oversight Commission sets the formula and a mechanism for its implementation.

[Additional enforcement mechanism for dealers and distributors that are party to this Agreement but not acting as authorized dealers for any manufacturers that have entered into a similar agreement.]

6. **Oversight**

1. **Oversight Commission.**

1. **Composition.** As set forth in the Agreement of March 17, 2000, an Oversight Commission comprised of five members shall be formed. The Commission members shall serve five-year terms except for first terms as noted and shall be appointed as follows: **[adjust composition to include dealer/distributor representation]**

(1) Two members by the city and county parties to the Agreement. First appointees to serve two- and three-year terms, respectively.

(2) One by the State parties to the Agreement. First appointee to serve a three-year term.

(3) One member by the manufacturer parties to the Agreement. First appointee to serve a four-year term.

(4) One selected by ATF. First appointee to serve a five-year term.

2. **Authority.** -- The Oversight Commission, which will operate by majority vote, will be empowered to oversee the implementation of this Agreement as well as the Agreement of March 17, 2000. Its authorities will include but not be limited to those specified in the Agreement of March 17, 2000 as well as the authority to: (1) set standards for employee training and testing, (2) set standards for purchaser safety training and testing, (3) sanction dealers and distributors, and (4) obtain access to dealers' and distributors' documents.

The Oversight Commission shall have a staff, which will be entitled to inspect participating manufacturers and their authorized dealers and distributors to ensure compliance with this Agreement and the Agreement of March 17, 2000. The costs of the Commission shall be funded by the parties to the Agreements. The dealers and distributors shall con[illegible]

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2. **Role of ATF.** -- ATF will continue to issue, regulate and inspect federal firearms licensees, collect multiple sales forms, conduct firearms traces, investigate firearms traffickers and straw purchasers, enforce the Gun Control Act and the National Firearms Act and fulfill its other statutory responsibilities. To the extent consistent with law and the effective accomplishment of its law enforcement responsibilities, ATF will work with authorized dealers and distributors and the Oversight Commission to assist them in meeting their obligations under the Agreement. In particular, to the extent that ATF uncovers violations of the following provisions in its inspections or other contacts with federal firearms licensees, it will inform the Oversight Commission: 1(a), (b), (e), (h), (I), (j), (k), (o), (p), and (q), and 3(b).

7. **Cooperation with Law Enforcement.**

The dealer and distributor parties to this Agreement reaffirm their commitment to cooperate fully with law enforcement and regulators to eliminate illegal firearms sales and possession.

8. **Education trust fund.**

The dealer and distributor parties to this Agreement shall dedicate ___ to a trust fund to implement a public service campaign to inform the public about the risk of firearms misuse, safe storage, and the need to dispose of firearms responsibly.

9. **Most favored entity.**

If the dealer and distributor parties to this Agreement enter into an agreement with any other entity wherein they commit to institute reforms that are more expansive than any of the above-enumerated items, such reforms will become a part of this Agreement as well.

10. **Enforcement.**

The Agreement will be entered and is enforceable as a Court order and as a contract.

11. **Definitions**

1. **Secure Facility.** A secure facility means a building that meets all of the following specifications:

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1. All perimeter doorways shall meet one of the following:

   (1) A windowless steel security door equipped with both a dead bolt and a doorknob lock.

   (2) A windowed metal door that is equipped with both a dead bolt and a doorknob lock. If the window has an opening of five inches or more measured in any direction, the window shall be covered with steel bars of at least one-half inch diameter or metal grating of at least nine gauge affixed to the exterior or interior of the door.

   (3) A metal grate that is padlocked and affixed to the licensee's premises independent of the door and doorframe.

2. All windows are covered with steel bars.

3. Heating, ventilating, air-conditioning, and service openings are secured with steel bars, metal grating, or an alarm system.

4. Any metal grates have spaces no larger than six inches wide measured in any direction.

5. Any metal screens have spaces no larger than three inches wide measured in any direction.

6. All steel bars shall be no further than six inches apart.

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. note	Reed's Notes of Meeting with Elena Kagan re: Ed-Flex, ca. 1999 (partial) (1 page)		P5

COLLECTION:

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

FOLDER TITLE:
Ed-Flex

Rob Seibert

rs33

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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Tom + Ted —
- get 36 senators to sign
- what parents really want

DAVID BEIER

EMK: We'll lose all of these amdts.
- Any $
- GOP amdts.
- Ed/Flex w/IDEA

- My suggestion is golden opport. for a veto-repealing
- Armey quotes
- Event next wk.
- Let it play out
- Disability groups are ripshit
- If preempting '99, Dems will oppose overall bill
- If not

ultimate is approps.

- Class size - this is the time - not practical - high stakes - Tomorrow is the vote. Don't pit one against another.

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Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Paul Weinstein to Gene Sperling and Reed re: Community Development Bank & Financial Institutions (CDFI) (3 pages)	7/25/94	P5
002. memo	Weinstein to Reed et al. re: Discussion Draft-Next Steps on Community Development Financial Institutions (CDFI) Legislation (3 pages)	9/24/93	P5

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Bruce Reed (Subject File)
OA/Box Number: 21202

FOLDER TITLE:

Community Development Banks [1]

Rob Seibert

rs40

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

CD Banks

THE WHITE HOUSE

WASHINGTON

July 25, 1994

MEMORANDUM FOR GENE SPERLING
BRUCE REED

FROM: Paul Weinstein

CC: Paul Dimond
Sheryll Cashin

SUBJECT: Community Development Bank & Financial Institutions (CDBFI)

Background

The Senate Appropriations Subcommittee on VA, HUD, and Independent Agencies has provided $25 million in budget authority (BA) and approximately $6 million in outlays for the CDBFI program. The House Appropriations Subcommittee on VA, HUD, and Independent Agencies has provided nothing in BA and outlays for CDBFIs. However, Chairman Stokes has indicated that he will agree to some amount in Conference.

The Senate number for CDBFIs is considerably lower than what the Administration sought ($144 million). This Wednesday, the HUD, VA, Independent Appropriations bill is scheduled for floor action in the Senate. Senator Reigle is threatening to offer an amendment to the appropriations bill to increase funding for CDBFI. Senator Reigle believes that Senator Mikulski violated an agreement they had to fully fund CDBFI, get a good appropriations number for the HOME program, and fund several special projects in Michigan, in return for not raising a point-of-order on authorization language included in the VA, HUD appropriations bill.

Conference Strategy

Because (1) the House has not included CDBFI funding in its appropriations bill language; and (2) since it is usually difficult to increase appropriations levels for particular programs in House-Senate Conferences because it is a zero sum game; we need to develop a conference strategy on CDBFI appropriations.

Step 1 -- Senate Colloquy Between Sens. Reigle and Mikulski

It is important that we convince Senator Reigle to hold off on his amendment to the appropriations bill to increase CDBFI funding and instead have him and Mikulski do a colloquy during deliberations on the Senate Floor. The colloquy should include an explicit agreement by Mikulski to work with Senator Reigle and the Administration in fully funding CDBFIs. In order to get to the Administration's proposed funding level for CDBFI's ($144 million), we need to increase outlays from the $6 million proposed in the Senate bill to $36 million. (This assumes the CBO outlay rate of 25%).

If Senator Reigle does not agree to withdraw his amendment, the Administration will be in the difficult position of having to oppose a proposal that would fully fund a presidential initiative. Therefore, it may be necessary for Bob Rubin, Pat Griffin, or Leon Panetta to call Senator Reigle and convince him not to offer his CDBFI amendment. Reigle does not trust Mikulski, and his staff advised me that they have done colloquies with Senator Mikulski before only to have her not fulfill her commitments. Therefore, it is important that Reigle be convinced that the White House is committed to increasing the appropriations for CDBFI in conference and that this can be stated publicly during the colloquy.

In terms of putting together the colloquy, Chris Edley should continue to take the lead. The bill is expected to go to the Senate Floor this Wednesday.

Step 2 -- POTUS Call to Mikulski and Stokes

When he met with Senator Mikulski and Representative Stokes to discuss appropriations, POTUS did not mention CDBFI funding. As a result, neither Mikulski nor Stokes viewed CDBFI as a Presidential priority. It is therefore essential that during the Conference POTUS call both chairman to state his strong desire to see CDBFI fully funded.

Step 3 -- Designating Offsets

Chris Edley and OMB will need to continue to provide possible offsets for CDBFI that do not cut into the Administration's other priorities within the VA, HUD, Independent Agencies Subcommittee's jurisdiction -- e.g. National Service, Space Station, etc.

Step 4 -- Targeting Members of the Appropriations Committees

Several members of both appropriations committees (see list below) need to be targeted during the conference. On the Senate side, Patrick Leahy has indicated some interest in the CDBFI program. The Ad Hoc Coalition of CDFIs has talked with Senator Leahy who has expressed his willingness to be supportive. However, we need the Senator to be more proactive.

Senator Bill Bradley has been a proponent of CDBFIs. He included a CDBFI proposal similar to the President's in his well-received urban agenda issued last year. We may want to approach Bradley and see if he would be willing to talk to his fellow New Jersey Senator, Frank Lautenberg, about increasing CDBFI funding. It is my understanding that Jack Quinn is close to Bradley, maybe he could call the Senator.

The second largest number of CDBFIs is in California, Senator Dianne Feinstein's home state. In addition, the nation's fourth Community Development Bank is scheduled to open in San Diego this fall. Feinstein should be aggressively pursued on this issue.

There are a large number of successful CDBFIs in Baltimore. The Ad Hoc Coalition has provided Barbara Mikulski's staff with a listing of the Maryland CDBFIs. We should work with Senator Sarbane's staff to see if they will continue to put pressure on Mikulski. A more aggressive approach would be to have POTUS and VPOTUS sign the CDBFI bill in Baltimore in return for Mikulski's commitment to seek more funding for the program.

Senator Al D'Amato comes from the state with the most CDBFIs in the country. We should make certain he is aware of that fact.

The House will be more difficult to effectively target. Marcy Kaptur is a former member of the House Banking Committee who is very pro-credit union. We should emphasize to her that our bill would provide needed capital to the over 100 community development credit unions currently in existence across the country.

Esteban Torres is from Los Angeles and should have a strong interest in supporting the CDBFI legislation.

Ray Thornton is from Arkansas. Elk Horn Bank & Trust/Southern Development Bancorporation -- one of the nation's only three community development banks -- is in his home state.

Senate VA, HUD, Independent Agencies Appropriations Committee

Barbara Mikulski (Chairman)	Phil Gramm (Ranking Republican)
Patrick Leahy	Alfonse D'Amato
J. Bennett Johnston	Don Nickles
Frank Lautenberg	Christopher Bond
Robert Kerrey	Conrad Burns
Diane Feinstein	

House VA, HUD, Independent Agencies Appropriations Committee

Louis Stokes (Chairman)	Frank Wolf (Ranking Republican)
Alan Mollohan	Tom DeLay
Jim Chapman	Dean Gallo
Marcy Kaptur	
Esteban Torres	
Ray Thornton	

CD Banks

THE WHITE HOUSE

WASHINGTON

September 24, 1993

MEMORANDUM FOR BRUCE REED
GENE SPERLING
FRANK NEWMAN
GENE LUDWIG
CHRIS EDLEY
MICHAEL LEVY
PAUL CAREY
BRUCE KATZ
PAUL DIMOND

FROM: Paul Weinstein

SUBJECT: Discussion Draft -- Next Steps On Community Development Financial Institutions (CDFI) Legislation

The passage of the President's CDFI bill in the Senate Banking Committee was a major first step in getting the legislation signed into law this year. However, our real fight now is in the House, where we face some problems in getting action on the bill this fall. First, Chairman Gonzalez has packed the schedule of the Full Committee with four hearings on his bill to make the Federal Reserve more politically accountable (a terrible bill in my view). Second, Gonzalez is clearly nervous about moving forward on the Administration's bill. Both Kelsey Meek and Rick Maruano have indicated in the past that the Chairman fears the CDFI bill will become a vehicle of massive regulatory relief, much of which he believes will adversely affect the safety and soundness of the industry (Gonzalez was one of the few members, along with Reps. Schumer and Leach, who opposed the deregulation of the S&L industry in the '80s). My own feeling is that Gonzalez has always been lukewarm to the idea of creating a network of CD banks. He'll back the proposal, but only as long as it remains relatively clean.

While we are facing major hurdles in the House, passing legislation before the year ends is an achievable goal. <u>First</u>, Gonzalez has agreed to markup the Administration's bill in the Full Committee, thus avoiding time consuming and potentially destructive markups in three different subcommittees. <u>Second</u>, because of comments by Frank Newman and Gene Ludwig that the Administration is willing to look at interstate branching later this year or early next, it appears more likely that we can keep Rep. Neal and others from amending the CDFI bill with an interstate provision. Promising to act on interstate has given the Administration some credibility with members of both the Senate and House Banking Committee, and we should use that credibility as leverage for the Administration's CDFI bill. <u>Third</u>, we have a strong base of support for action on some version of the President's CD bank bill among urban members of the House Banking Committee (Flake excluded). Fourth, Gonzalez has a history of being deferential to Democratic Presidents.

Regarding Rep. Flake, I believe we need to take a new approach. We need to directly seek out Republican support in the House and decouple Flake from his Republican base. Remember, with a few exceptions, Flake's bill lacks any real support among Democrats. Most of his Democratic cosponsors joined unaware of many of the provisions in the bill. I recommend that we approach the Republicans directly, not as a way to punish Flake for breaking his agreement with us, but because I do not believe he is can effectively broker a deal. The Administration will have to reach an agreement with Leach, Roukema, Ridge, and Bereuter in consultation with Gonzalez's staff -- much as we did with D'Amato in the Senate -- if we are to get the bill moving.

The key to the Republicans in my view is Ridge. Ridge is seen as the leader on this issue and I don't think Leach can bring Ridge or other Committee Republicans into line. Leach isn't a Republican's Republican. Most of the Republicans on the Committee are more conservative than Leach. We will have to deal with all four -- Leach, Roukema, Ridge, and Bereuter -- but will need to cut the deal with Ridge. This means some kind of regulatory relief package similar to the one in the Senate, and if necessary using some of the Empowerment Zone Title XX money for a Bank Enterprise Act demonstration in the nine zones ($9 million, one for each zone). It is important to keep in mind that Ridge is running for Governor in Pennsylvania, so he is more likely to cut a deal so he can appeal to his state's urban constituencies. I think Kanjorski and Mike Radway of his staff could be helpful in brokering a deal with Ridge.

On the Democratic side, will need to do some followup work with Kennedy, Schumer, Neal, and LaFalce. We need to sit down with Neal and make it clear, if we can, that we will focus on interstate after the CD bank bill is moved -- interstate is in his subcommittee's jurisdiction. An earnest Administration commitment to moving on interstate should be enough leverage to get Neal to agree not to attach interstate to the CDFI bill. Neal may even be willing to combine interstate and regulatory relief into one bill and keep CDFI clean, although I don't know if we want regulatory relief in the interstate bill anymore than we want it in the CDFI bill. Whatever the approach, we must also keep in mind the President's decision to proceed in a two-step process on community reinvestment: The CDFI bill and Community Reinvestment Act (CRA) reform by regulation first; then additional support for community reinvestment as part of major financial reform.

Possible Next Steps

- Treasury discussions with Neal on delaying interstate until after CDFI bill is at least of Committee.

- Staff should make calls to Schumer, Frank, Kennedy, Kanjorski, Neal, Rush, and Waters and ask them to request that Gonzalez hold a markup of the legislation as soon as possible.

- Treasury staff meet with Meek and Maruano and discuss timetable for consideration of the CDFI bill and strategy. It is important to get feedback on when Gonzalez is going to act on the legislation. If he is hesitant, we need to consider option of Vice President or President calling him.

- Frank Newman and staff should meet simultaneously with Leach, Roukema, Ridge, and Bereuter. Followup meetings with Ridge to discuss what kind of agreement can be reached. Meetings should be done in consultation with Gonzalez staff, understanding that Gonzalez will play much less of a broker role than Reigle did in the Senate. May want to use Kanjorski to help with Ridge.

- Maintain regular contacts with the staffs of Schumer, Frank, Kennedy, Neal, Kanjorski, Waters, Flake, and Rush.

- Continue contacts with Mahlon Martin about getting a commitment of funds by private foundations to match the Administration's proposal.

cc: Sheryll Cashin
Kumiki Gibson
Rick Carnell
Jamir Couch
Brian Mathis

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. draft report	Possible Issues-Section 202 (6 pages)	4/11/00	P5

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Bruce Reed (Subject File)
OA/Box Number: 21203

FOLDER TITLE:

Faith-Based Organizations

Rob Seibert

rs82

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]

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

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

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

Possible Issues – Section 202 (Internal/Annotated)

04/11/00 DRAFT

Faith-Based organizations

Ensure Government Funds Aren't Used for Religious Worship

1) Section 582(f)(5)(B) allows federally-funded programs to require participants who elect the program to participate in religious practice, worship, and instruction or to follow rules of behavior that are religious in content or origin. In addition, Section 583(b) allows federal funds to be used for sectarian worship or instruction if the beneficiary may choose where such assistance is redeemed or allocated.

The welfare reform law and the Senate-passed Frist substance abuse bill and House-passed Homeownership Act prohibit funds from being used for sectarian worship, instruction, or proselytization, with no exceptions. Welfare reform and Frist prohibit discrimination against beneficiaries for refusal to actively participate in religious practice as well as on the basis of religion or religious belief; Homeownership Act does not.

Last June, during debate on a House-passed resolution on community renewal (in support of faith-based efforts, including reference to section 202), Rep. Scott (D-VA), Edwards (D-TX) and Lewis (D-GA) strongly opposed section 582(f)(5)(B) requiring religious practice or allowing funds to be used for proselytization. Rep. Scott submitted for the record a letter from the Working Group for Religious Freedom in Social Services (a coalition of 31 groups representing professional, civil liberties, and various religious interests) opposing federally funded substance abuse treatment allowing evangelism or proselytization. Members supporting the House-passed resolution on community renewal, including Reps. Souder (R-IN), Davis (D-IL) and Meek (D-FL), argued that participants aren't required to participate in religious practice as long as there is a choice among providers.

RESPONSE #1: *Resolved* -- Agrees to silence.

KEY POINTS:
- ✓ Silence is best option.
- ✓ Do not even provide same anti-discrimination protections as Frist and welfare reform.
- ✓ We have very little latitude on this point.
- ✓ Our lawyers believe there are serious constitutional issues with going down this path
- ✓ The Vice President said "must continue to prohibit direct proselytizing as part of any publicly funded efforts."
- ✓ Providing individual choice does not address use of federal funds issue.
- ✓ The controversy caused by pushing the envelope on this issue could detract from our shared goal of enacting New Markets initiatives this year.

Make Clear Programs Must Adhere to Establishment Clause

2) Section 582(c) makes clear that the program cannot discriminate against religious organizations, but does not state that the program must be implemented consistent with the Establishment Clause; also includes Congressional findings regarding the meaning of the Establishment Clause.

The welfare reform law, Senate-passed Frist substance abuse bill, and House-passed Homeownership Act require programs to be implemented consistent with the Establishment Clause. This language was added to the welfare reform law as a result of a 59-41 floor vote which had the support of 14 Republicans, including Campbell, Domenici, Jeffords, Lugar, Snowe, Specter, Stevens and Thomas (Cohen was the amendment's sponsor). Neither welfare reform nor Frist has Congressional findings regarding the meaning of Establishment Clause, instead properly leaving constitutional interpretation to the courts. Homeownership Act also added "consistent with the Free Exercise Clause" based on Barney Frank amendment by U.C.

RESPONSE #3: *Resolved* -- Agree to add Establishment Clause language and to drop findings on the Establishment Clause. They want to add free exercise language, which we agreed to. *Need to see language.*

3) Section 581(c)(9) definition of "religious organization" does not make clear it means religious organizations eligible to receive federal funding consistent with the Establishment Clause.

Both the welfare reform law and the Senate-passed Frist substance abuse bill have language saying overall programs must be implemented consistent with Establishment Clause; neither bill attempts to define "religious organization." Since this bill includes a definition of "religious organization" it provides an opportunity to clarify that these organizations should be eligible to receive federal funding consistent with the Establishment Clause. Such a change in the definition section would also therefore apply when the term "religious organization" is used elsewhere in the statute, such as Section 582(a)(1) related to subawards and Section 582(d)(2) related to religious character and freedom.

A related issue was debated on the House floor last November when Rep. Chet Edwards (D-TX) offered an amendment to the Fathers Count Act of 1999 to prohibit federal funds to pervasively sectarian organizations. The amendment was defeated 183-238, with 176 Democrats and 7 Republicans supporting the measure, including: the Democratic leadership; members of the Black Caucus such as Conyers, Clyburn, Meek, Rangel, Waters; Commerce Committee members Dingell, Waxman, Markey, and Boucher; Ways and Means Committee members Rangel, Stark, Matsui, Cardin, Coyne, and Levin. Thirty-four Democrats, including Roemer, Stenholm and a few Hispanic Caucus members such as Hinojosa, Ortiz and Pastor, opposed the prohibition on funds to pervasively sectarian organizations. Rep. Nancy Johnson, the bill manager, opposed the Edwards amendment, arguing that the Congress should not put in the statute the term "pervasively sectarian" since the court would likely continue to more clearly define the Establishment Clause in future decisions. Rep. Scott also raised this issue in June during the debate on the House-passed resolution on community renewal.

RESPONSE: It doesn't appear that they responded specifically to this point, though they did agree to work with House legislative Counsel to streamline definitions (see Response #6 in our Issue #5 below). *Tentatively resolved: we'll need to see language and consult with HHS.*

4) Section 584(a) defines what kind of financial assistance is aid to beneficiaries versus aid to institutions.

Neither the welfare reform law nor the Senate-passed Frist substance abuse bill has this language which in effect makes a constitutional interpretation, instead properly leaving such interpretation to the courts.

RESPONSE #2: *Unresolved*—Reject proposal to be silent, but would clarify that the funds are aid to the individual, not the institution. This would protect institutions from Constitutional cases, and address the employment discrimination concerns in issue #7 below [unclear -- how?]. They had previously agreed to silence so we need to revisit this issue.

Treat Religious and Non-Religious Organizations Equally

5) Section 582(g)(2) provides special audit procedures for religious organizations; in addition, certain other program changes (certain definitions – Section 581(c); grant award and subaward authority – Section 582(a); and educational requirements – Section 585) apply only to religious organizations.

Neither the welfare reform law, the Senate-passed Frist substance abuse bill, or House-passed Homeownership Act provides special program rules for religious organizations, but all three, like this bill, include special audit provisions for religious organizations. The special audit provision in effect provides an exception to the Single Audit Act, enacted July 5, 1996, which subjects all federal government grantees to identical audit rules including examining organizations' federal and non-federal funds during audits.

RESPONSE #5: *Unresolved* -- Reject proposal to be silent on audit procedures.

KEY POINT:
✓ We're not in a position to oppose audit language consistent with welfare reform and Frist

RESPONSE #6: Agree to work with House legislative Counsel to streamline definitions and consider Frist definitions. *Tentatively resolved: we'll need to see language and consult with HHS.*

KEY POINT:
- ✓ Does this just apply to 581(c)?; what about grant award and subaward authority? [Do we know why these are even necessary? SAMHSA doesn't use these terms]
- ✓ See RESPONSE #8 for educational requirements.

Other Possible Issues

6) Section 582(f) makes clear individuals can receive services through an alternative provider but may not include certain desired safeguards.

Both the welfare reform law and the Senate-passed Frist substance abuse bill include certain specific safeguards, including requiring a government agency to provide equivalent services from an accessible alternate provider that is not a religious organization within a reasonable period of time. The House-passed Homeownership Act does not contain these safeguards; specifically, it does not require alternative services to be provided nor does it prohibit discrimination against the recipient based on their religion. During debate on the House-passed resolution on community renewal, Rep. Scott submitted letters from the National Association of Alcohol and Drug Abuse Counselors (NAADAC) and the Working Group for Religious Freedom in Social Services (a coalition of 31 groups representing professional, civil liberties, and various religious interests) expressing concerns that section 582(f) does not require that alternative services be accessible nor require states to notify individuals in religious programs of their right to receive alternative services.

RESPONSE #9: *Tentatively Resolved* – Agree to: (a) streamline language to welfare law so the state or other entity must arrange for alternative placements, (b) require non-elected organizations to refer individuals back to the state or other entity for new placement, (c) ensure that individuals receive a list of accessible options, including secular placements. *Need to see language.*

KEY POINTS:
- ✓ First, clarify whether they've substituted list for arranging alternative services.
- ✓ Does not go as far as safeguards in Frist and welfare reform. Providing a list may not be as helpful as actually arranging for the service. Does not reference "within a reasonable period of time" and "in the region" does not necessarily mean "accessible"
- ✓ Alternatives should be provided by a government agency – as in Frist and welfare reform. Having the religious organization provide the list or arrange alternatives does not provide comfort. NOTE: this may be more of an issue for direct awards since 582(f) says that for sub-awardees, the non-Federal entity that made the sub-award shall arrange for alternative services.
- ✓ VP says must provide secular alternative for anyone who wants one.
- ✓ NOTE: 582(f) generally follows welfare reform language in saying "If individual objects to a program participant on the basis that participant is a religious organization..." which seems to imply the alternative would be non-religious. Does also say should be of comparable monetary value.

7) Section 582(e)(2)(A) says religious organizations receiving federal funds can require employees to adhere to the religious beliefs and practices of their organizations.

The welfare reform law, Senate-passed Frist substance abuse bill,, and House-passed Homeownership Act state that the Civil Rights Act exemption allowing religious organizations to hire on the basis of religion will not be affected by organizations' receipt of federal funds, in essence, keeping in place current law. The language in this bill potentially expands the current law Civil Rights exemption to new organizations.

Concerns have recently been expressed about the welfare reform law and Frist provisions, as well the language in this bill. During the Frist Senate debate last November, Senator Kennedy called "barring many trained, qualified professionals from providing services for faith-based organizations" seriously flawed. Last November in the House, Rep. Bobby Scott (D-VA) made a motion to recommit the Fathers Count Act of 1999 to prohibit religious organizations receiving federal funds from hiring on the basis of religion. The motion was defeated 175-246 with 173 Democrats and 2 Republicans supporting the measure. Voting patterns were similar to the Edwards amendment (see #3 above) except that Hispanic Caucus members Hinojosa, Ortiz and Pastor supported this restriction on charitable choice. In last June's debate on the House-passed resolution on community renewal, Reps. Scott, Edwards (D-TX) and Lewis (D-GA) voiced strong opposition to section 582(e)(2)(A) to "allow faith-based organizations to engage in employment discrimination based on religion with public funds," submitting a letter of support from the Working Group for Religious Freedom in Social Services (a coalition of 31 groups representing professional, civil liberties, and various religious interests).

RESPONSE #10: *Resolved* – Agree to adopt welfare language. They note that courts are interpreting the welfare "type" language as meaning the provision applies to the whole institution and not just the program. However, if agree to proposal under issue #4, then this is not a problem in court interpretation *[not clear on this connection]*.

KEY POINTS:
- ✓ Anything other than silence or welfare reform/Frist language is problematic (and even that is problematic for many Democrats). Need to stick with current standard.
- ✓ Organizations that impose a religious qualification for hiring are more likely to be viewed as pervasively sectarian by a court since this is one of the factors that courts consider in making that determination. A statute that encourages organizations to impose that requirement on employees could have the unfortunate effect of making them vulnerable to court challenges.
- ✓ With or without TANF language, a religious organization could still argue they are exempt.
- ✓ Courts have interpreted 'religious organization' under Title VII exemption as where "primary mission is religious". A Baptist hospital would not be covered by the exemption. Adding new language would allow a potentially broader group of faith-based organizations receiving substance abuse funding to self-define as religious organizations for purposes of exemption.
- ✓ [checking on whether employers can create a sub that would qualify for the exemption – *Counsel*: what is status??.]

8) Section 581(c)(5) explicitly authorizes substance abuse treatment and prevention funds to be distributed via vouchers.

The Senate-passed Frist substance abuse bill does not authorize vouchers; funds are provided only in form of grants, contracts or cooperative agreements.

RESPONSE #7: *Unresolved* -- (referring to section 582(a)(1)(C)) Reject proposal to drop term "voucher" on basis that welfare law explicitly authorizes use of vouchers. *We'll need to consult with HHS re: SAMHSA implications, but also raises broader policy concerns.*

KEY POINTS:
- ✓ Policy concerns if vouchers used for religious organizations.
- ✓ We can't address at this time without broader discussions with agencies.

9) Section 584(b) allows federal law to preempt state laws or constitutions, and 585(b) overrides state or local educational or certification requirements of providers.

The welfare reform law includes a provision saying nothing shall be construed to preempt state constitutions or statutes prohibiting or restricting expenditure of state funds in or by religious organizations. The Senate-passed Frist substance abuse bill and House-passed Homeownership Act is silent (has no provision allowing federal preemption).

During the June debate on the House-passed resolution on community renewal, Rep. Scott and the Working Group for Religious Freedom in Social Services (a coalition of 31 groups representing professional, civil liberties, and various religious interests) objected to section 584(b) which "undercuts states constitutional and statutory provisions, including civil rights laws." Reps. Scott, Edwards, and Waxman also noted serious policy concerns with section 585(b) to treat religious education as credit toward drug treatment coursework. Rep. Scott submitted letters signed by professional, religious and civil liberties groups stating that section 585(b) would undermine treatment effectiveness and that alcohol and drug treatment is a medical services requiring scientific knowledge that is not comparable to religious education. In response, Rep. Davis (D-IL) and Souder (R-IN) argued that section 584(b) rewards programs proven to be effective rather than simply credentials.

RESPONSE #4: *Resolved* -- Agree to be silent on preemption of state law provision (section 584(b)).

RESPONSE #8: *Tentatively resolved* -- Reject proposal to specify equal treatment of "religious drug and alcohol treatment education and training" and to apply waiver for other non-religious programs with a 3-year track record of success but don't meet state requirements. Need to work to find appropriate definition of "religious education." They will look at state requirements. *We should consult with HHS.*

KEY POINTS:
- ✓ Language preempts state law in licensing -- an area where states have traditionally had responsibility. This raises particular federalism concerns.
- ✓ A test that favors religious organizations over non-religious organizations (by only preempting state licensing requirements for religious organizations) makes this provision particularly vulnerable to a legal challenge.
- ✓ Concern about equal treatment stands – no similar provisions for non-religious organizations.
- ✓ Why reject 3 year track record?

OTHER ISSUES FOR HOMEOWNERSHIP ACT—FOR INTERNAL DISCUSSION

- Allows HUD or a state or local government to fund a religious organization on the same basis as other non-governmental organizations. NOTE: This means direct federal funding, whereas other block grant programs where charitable choice exists or has been proposed leave it to states or local governments to choose to fund religious organizations. Does this raise any issues?

- Provides that if an eligible entity or other organization (referred to in this subsection as an `intermediate organization'), acting under a contract, or grant or other agreement, with the Federal Government or a State or local government, is given the authority under the contract or agreement to select nongovernmental organizations to provide assistance under the programs described in subsection (a), the intermediate organization shall have the same duties under this section as the government. NOTE: Since they also have authority to select non-governmental organizations, this does not appear to violate equal treatment principle. Does it raise any other issues?

Withdrawal/Redaction Sheet
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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

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Health Care-Grijalva

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RESTRICTION CODES

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Westmoorland memo

HC - Grijalva

To Interested Parties
Re: Grijalva and Medicaid
February 8, 1999

While the Grijalva v. Shalala case involves *Medicare* HMO's, potential appeals of the case to the Supreme Court could have significant implications for patient protection in *Medicaid*. In filing any appeal of Grijalva, the Administration should be cautious that it not undermine the existing private right of action that allows Medicaid beneficiaries access to Federal court to enforce the guarantees of Federal law.

Background

Despite HHS's arguments to the contrary, the Ninth Circuit Court of Appeals ruled in Grijalva that actions taken by an HMO in the administration of the Medicare program constitute government action and, therefore, must be provided with due process. The Court went on to say that HHS's standards for patients' rights were inadequate under a due process review (e.g., because the HMO's notices were illegible and HHS did not require notices to be legible). In a potential appeal of the case to the Supreme Court, HHS appears to be preparing to argue again that HMO's are not government actors.

It should be noted that due process claims (which rely on a finding of government action) are not the only route for Medicare beneficiaries to gain Federal review. The Medicare statute (Title 18 of the Social Security Act) provides for grievance and appeals procedures that guarantee beneficiaries some form of Federal oversight and examination.

By contrast, the Medicaid statute (Title 19 of the Social Security Act) does ***not*** provide a direct route for Medicaid beneficiaries to gain Federal review of any disputes. Rather, the ***only*** route to Federal review is through a private right of action created by 42 U.S.C. 1983 (commonly known as Section 1983).[1] Section 1983, however, provides access to Federal review ***only*** of actions by the State government or someone acting in lieu of State government; private actions may not be addressed in Federal court through Section 1983.

[1]Section 1983 was created in 1870 to address the constitutional issues posed by States discriminating against African-Americans. Since that time, however, it has been broadly interpreted by the courts to allow citizens to address other Federal rights, including statutory rights such as those provided by the Federal Medicaid law. Section 1983 actions have been brought against State Medicaid authorities for such varied problems as a State arbitrarily denying services because of the patient's type of illness, a State refusing to provide essential transportation services, and a State's refusal to provide access to AZT for people with AIDS.

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As part of the 1995 Congressional attempt to turn Medicaid into a block grant, the Republicans in Congress and the Governors argued vigorously that Medicaid beneficiaries should be limited to State causes of action in State courts. Replying that the opportunity for Federal review was an essential element of preserving a Federal entitlement, the Clinton Administration and the Democrats defeated this proposal.

Problem

If the Supreme Court were to agree with HHS's arguments that a Medicare HMO is not a government actor, there will remain other ways for Medicare beneficiaries to get Federal review of disputed HMO actions.

However, if a precedent were established that a *Medicare* HMO is not a government actor, it will be difficult to make a distinction and argue that a *Medicaid* HMO is a State actor. If that distinction cannot be successfully drawn, Medicaid beneficiaries would be able to enforce their rights only in HMO-granted or State-granted venues, which may be less sympathetic or less procedurally protective than Federal courts. It bears noting also that Medicaid beneficiaries are vulnerable people who are poor (in both senses of the word) advocates for themselves.

There would, admittedly, remain a possibility of suing the State directly to force it to enforce patient protections within Medicaid HMO's, but it is easy to imagine many possibilities of vagueness in State protections and inattention to the need for ongoing oversight. Finally, there remains the possibility of HCFA enforcing its standards directly, but such enforcement has been at best intermittent in the past.

In sum, whatever the effect of the HHS argument on Medicare, it could result in at least a partial reversal of the successes of the 1995 battle to preserve a Federal private right of action to enforce the Federal guarantee of rights under Medicaid. Rather than appealing the "State action" rulings of the Ninth Circuit, the Administration should, at most, petition for the case to be remanded in light of later Medicare quality rules that might have made this case substantively moot.

ROUTING AND TRANSMITTAL SLIP	DATE February 9, 1999	
TO: (Name, office symbol, room number, Agency/Post)	Initials	Date
1. Dan Marcus (via fax) *confidential attorney-client and attorney work-product communication*		

REMARKS:

Enclosed is an alternative version of the state action section. In addition to being significantly shorter, it also makes a point that should be important to those who want to distinguish Medicaid – that under Medicare enrollment in an HMO is voluntary.

It is possible, but in my view not desirable, to file an even more truncated version along the lines of what is footnote 11 in the penultimate draft. Of course, we would still need to say that the 9th Circuit's decision is incorrect, and why. Filing a version of this sort will make the distinction mentioned above more awkward, and it will, I think, provoke a brief in opposition that will require us to present our arguments in a reply anyway. There are also other reasons why it would be less desirable to file that sort of petition. Still, it would be better than not filing anything.

I want to reemphasize the point I made when I called you last evening -- that not filing a petition challenging this 9th Circuit ruling will likely have serious consequences well beyond HHS/HCFA. Given the governmental interests at stake here, it would be stunning if we did not file.

I hope the President will bear in mind that the arguments advanced here are **the same as those we have already made** in the district court, in our merits brief in the court of appeals, and in our rehearing papers. And we are not soliciting plenary review. We are simply trying to get this case back to the district court – absent a damaging state-action precedent -- so that the new statute and regulations can be evaluated on their merits, and the President's program can proceed unhindered.

DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions

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Seth Waxman Solicitor General Department of Justice	Phone No. 202-514-220

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1. The Due Process Clause does not apply to purely private conduct; it applies only where the actor is governmental, or the conduct can be fairly attributed to the government. NCAA v. Tarkanian, 488 U.S. 179, 191 (1988). The Ninth Circuit held that medical treatment decisions of private HMOs are properly attributed to the federal government in this case because the "Secretary extensively regulates the provision of Medicare services by HMOs" and pays HMOs "for each enrolled Medicare beneficiary (regardless of the services provided)"; HMOs must "comply with all federal laws and regulations"; and the "federal government has created the legal framework -- the standards and enforcement mechanisms -- within which HMOs" operate. App. 9a-10a. The Ninth Circuit's analysis departs from this Court's usual approach in this area, which focuses on three factors:

a. The first factor is whether the government "has exercised coercive power or has provided such significant encouragement * * * that the choice must in law be deemed to be that of the [government]." Blum v. Yaretsky, 457 U.S. 991, 1004 (1982). When an HMO makes an initial determination whether to provide a requested service, it does so without governmental participation or assistance. Indeed, the first section of the Medicare statute prohibits the "exercise [of] any" governmental "supervision or control over the practice of medicine or the manner in which medical services are provided." 42 U.S.C. 1395.[1]

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[1] In Blum v. Yaretsky, 477 U.S. 991 (1982), this Court held that the exercise of ordinary medical judgment is not state action, even where it may affect eligibility for government benefits. The Ninth Circuit sought to distinguish Blum by characterizing HMO determinations as more in the nature of interpretations of the Medicare Act, rather than medical judgments, see App. 11a, but the primary criterion employed by HMOs in this context -- whether the medical services are "reasonable

b. The second factor is whether the otherwise private actor exercises some power "traditionally exclusively reserved to the State." Jackson v. Metropolitan Edison Co., 419 U.S. 345, 352 (1974). Significantly here, the relationship between an HMO and its Medicare-beneficiary members is the product of a private choice by those members. Medicare beneficiaries may choose among providers and forms of coverage, and the government neither requires them to enroll in an HMO nor precludes them from dis-enrolling. In this respect, the HMO's relationship with its Medicare-beneficiary members resembles its relationship with members who elect HMO coverage under employer-sponsored or other private health plans. Moreover, when an HMO decides whether to provide particular medical services requested by a member who has enrolled through Medicare, it does not act as an agent of the government or distribute government resources or funds. The HMO responds as it would to a similar request by a privately-enrolled member. The HMO exercises its own judgment as to whether the services are reasonable and necessary, and thus within the scope of its professional and contractual obligations. Although money is paid out of the Medicare Trust Funds to cover the flat monthly cost of the Medicare beneficiary's enrollment in the HMO, the

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and necessary," 42 U.S.C. 1395y(a) -- requires essentially medical, not legal, judgment. The complaint in this case, moreover, demonstrates that respondents seek to challenge medical judgments. One named plaintiff, for example, alleged that she was denied physical therapy because she could not follow therapeutic instructions. C.A. E.R. 10-11, ¶ 29. Another plaintiff alleged that treating physicians failed to prescribe adequate pain medication or to order physical therapy. C.A. E.R. 12-13, ¶¶ 40-41. Another plaintiff, much like the plaintiffs in Blum, alleged that the HMO erroneously concluded that skilled nursing care was not medically necessary. C.A. E.R. 13-15, ¶¶ 48-54. And yet another named plaintiff alleged that the HMO denied speech therapy services on the ground that the therapy would not be effective. C.A. E.R. 16, ¶ 62.

financial consequences of a determination by the HMO to furnish or deny particular services to that enrollee are borne by the HMO alone.[2]

Nor does an HMO exercise traditionally-governmental adjudicatory powers with respect to its members who choose to enroll through Medicare. See App. 10a-11a. The HMO's medical treatment decisions regarding such a member represent its own judgment about what is medically appropriate. A Medicare beneficiary who disputes an HMO denial may request an ALJ hearing in HHS, and the HMO then becomes a formal party, adverse to the beneficiary. See pp. , supra. The adjudication, of course, is government action, and the Secretary may order the HMO to provide the requested service, but that does not convert the HMO's otherwise-private initial determination into government conduct.[3] Indeed, the HMO's role is little different than that of a private defendant confronting potential liability in a civil suit. The defendant would always make an initial determination

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[2] See Blum, 457 U.S. at 1011 (rejecting contention that decisions made by physicians and nursing homes are attributable to the State, despite "state subsidization of the operating and capital costs of the facilities" and coverage for "the medical expenses of more than 90% of the patients"). That the government pays for coverage neither encourages HMOs to deny requests for treatment, nor prevents the financial impact of HMO decisions from being visited exclusively on the HMO. If the fact that the government pays for coverage were a sufficient basis for attributing HMO conduct to the government, HMOs providing services to government employees under the Federal Employees Health Benefits Act of 1959, 5 U.S.C. 8901 et seq., would also all be government actors.

[3] Administrative appeal statistics indicate that, in 1996 and 1997, the Secretary reversed HMO determinations in whole or in part in nearly 30% of all cases. Center for Health Dispute Resolution, Medicare HMO/CMP Reconsideration Data 1996-1997 (1998). In some instances, the HMO and the Secretary may be adverse parties in contested legal proceedings. If the HMO wishes to challenge one of Secretary's decisions, it may sue the Secretary in an action for judicial review, 42 U.S.C. 1395mm(c)(5)(B); and if the Secretary believes that the HMO is not meeting its legal obligations, she could impose civil money penalties or other sanctions, see 42 U.S.C. 1395mm(i)(6)(A)(i); accord 111 Stat. 323-325 (Sections 1857(g) and (h), to be codified at 42 U.S.C. 1395w-27(g) and (h)).

as to whether it considers itself liable and thus whether to satisfy the asserted obligation voluntarily. If it declines to do so and the plaintiff files suit, that decision may effectively be "reversed" -- and a contrary course compelled -- by the court. But that does not convert the initial private decision whether to meet the obligation voluntarily, or instead to dispute it, into government action. See Edmonson, 500 U.S. at 627 (decisions "whether to sue at all, the selection of counsel, and any number of ensuing tactical choices in the course of discovery and trial may be without the requisite governmental character").

c. Finally, there can be no argument that "the injury caused is aggravated in a unique way by the incidents of governmental authority." Edmonson, 500 U.S. at 622. This is not a case, like Edmonson, in which a dignitary injury or stigma of the sort caused by racial discrimination might be exacerbated by an appearance of governmental endorsement. See id. at 628. The government simply provides adjudicatory mechanisms through which HMO decisions may be challenged.

d. At bottom, the Ninth Circuit's decision to attribute to the federal government an HMO's medical treatment decisions about its members who have enrolled through Medicare appears to have rested primarily on the "rather vague generalization," Blum, 457 U.S. at 1010, that there was a "high degree of interdependence" and a "symbiotic relationship," App. 9a, that made the government "a joint participant in the challenged activity." Burton v. Wilmington Parking Auth., 365 U.S. 715, 725 (1961). The facts the Ninth Circuit relied upon for that conclusion, however, are largely common to heavily regulated industries. See App. 10a; pp. , supra. Even the most intensive governmental regulation of an industry is an insufficient basis for attributing otherwise private decisions and conduct to the government "where the initiative comes from" the private party "and not from the [government]" itself. Jackson, 419 U.S. at 357; see id. at 350.

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errs is to "remand to the agency").[9]

3. Government action and due process questions very similar to those raised in this case are currently before the Court in American Manufacturers Mutual Insurance Co., et al. v. Sullivan, et al., No. 97-2000 (argued Jan. 19, 1999). There, the court of appeals held that payment decisions made by workers' compensation insurers, as permitted by state law, were both attributable to the State and inconsistent with due process. See Sullivan v. Barnett, 139 F.3d 158 (3d Cir. 1998). Not only are the court of appeals decisions in Sullivan and in this case remarkably similar,[10] but the precise arguments that the Sullivan petitioners made in support of reversal there apply with equal force in this case as well.[11]

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[9] The district court also exceeded its authority in ordering the Secretary to terminate contracts with HMOs that fail to comply with the procedures it imposed. See Blessing v. Freestone, 520 U.S. 329, 343-344 (1997).

[10] Neither court of appeals decision examines the three state-action "principles" identified in Edmonson, 500 U.S. at 622, and traditionally relied upon by this Court, see pp. __-__, supra, and both predicate a finding of government action largely on the government's regulatory role. Compare Sullivan, 139 F.3d at 168, with App. 9a-10a.

[11] The state action arguments raised by the Sullivan petitioners precisely mirror those raised in this petition. See 97-2000 Pet. Br. at 20-21 (arguing that State does not influence insurer's non-payment decision), 17-22 (arguing that insurer decisions are not governmental benefits determinations), 22-25 (no unique aggravation of injury by government), 26-32 (regulated nature of industry does not render private action attributable to State). And there are clear similarities between the due process arguments as well. For example, in this case the lower courts implicitly concluded that respondents could have a constitutionally-protected property interest in receiving medical services before their legal entitlement to those services was established, and that pre-deprivation processes were required in certain contexts, App. 63a. Petitioners in Sullivan challenge similar conclusions reached by the court of appeals there. See 97-2000 Pet. Br. at 35-38 (arguing that due process does not apply to disputed applications for treatment where the legal entitlement to the treatment, and thus a property interest therein, has not been established), 42-44 (arguing that pre-deprivation process is not

Indeed, so closely related are the cases that lead counsel in this case filed an amicus brief in Sullivan, emphasizing the potential impact of the Court's decision there on the Medicare program at issue here.[12] Accordingly, we suggest that the petition be held pending the decision in Sullivan.

B. The Judgments Below Should Be Vacated And The Matter Remanded To District Court For Consideration Of Intervening Statutory and Regulatory Changes

Absent the obvious similarities between this case and Sullivan, the Ninth Circuit's decision in this case would warrant this Court's plenary review at the present time. It declares unconstitutional the Secretary's implementation of a major federal statutory program; it affirms a detailed nationwide injunction requiring the Secretary to impose certain procedures on participating HMOs; and it constitutionalizes on a nationwide basis the conduct of thousands of private healthcare organizations offering services to hundreds of thousands of private individuals.

On August 5, 1997, however, Congress comprehensively reformed this area of law -- enacting the new Medicare Part C and establishing the new "Medicare+Choice" program. See Balanced Budget Act of 1997, Pub. L. No. 105-33, §§ 4001-4002, 111 Stat. 275. At the time the district court ruled, the governing statute merely required that HMOs provide "meaningful procedures for hearing and resolving grievances." 42 U.S.C. 1395mm(c)(5)(A). Neither that statutory provision nor the regulations promulgated

required); see also Lyng v. Payne, 476 U.S. 926, 942 (1986) (noting that the Court has not resolved whether "applicants for benefits, as distinct from those already receiving them, have a legitimate claim of entitlement protected by the Due Process Clause").

[12] See Amici Curiae American Association of Retired Persons, The Center For Medicare Advocacy, Inc., et al., Br. at 4, 7.

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	John Hilley & Chris Jennings to POTUS re: Suggested telephone call to Congressman Bill Thomas (2 pages)	5/5/97	P5, P6/b(6)
002. talking points	POTUS conversation with Congressman Thomas (2 pages)	5/97	P5

COLLECTION:

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

FOLDER TITLE:

Health Care-Medicare [1]

Rob Seibert

rs42

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]

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PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
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Freedom of Information Act - [5 U.S.C. 552(b)]

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

Talking Points for Conversation with Congressman Bill Thomas:

- I want to thank you for your willingness to discuss Medicare policy options with us during the budget discussions. Although I know the process has been sometimes frustrating, you and your staff have been constructive from the beginning and I sincerely appreciate that.

- From what I am told, your influence can be clearly seen in the Medicare portions of the budget agreement. (See attached memo on the influence of Thomas on the final agreement.)

- We have a great deal of work to do to complete the budget agreement and I want to continue our positive working relationship to assure there are no surprises on either side. I also want to make clear that I well understand that the budget agreement did not and should not overly micromanage the normal Committee policy development process.

- I do want you to know that, to the extent it is helpful to you, I will make certain the experts within the Administration will be available to respond to any technical assistance you and your staff may have. I know you have met with Chris Jennings and Nancy Ann Min, and I will make sure that they as well as HHS are at your disposal.

- I have heard you have a number of ideas on the managed care front that are creative and thoughtful. I know you are also working on home health payment options. I am told that your work is promising and I look forward to hearing more.

- I am aware of your desire and commitment to add a medical malpractice provision and, perhaps, a Medical Savings Account (MSA) demo. I know you understand that these two provisions cause my Democratic caucus and myself heartburn. Having said that, I do appreciate your being up front with me on your intentions.

- I must tell you, though, that any movement on an MSA demo will create problems. Already the Democrats want me to write a letter suggesting I will veto anything with any type of a MSA in it. I would be willing to review suggestions about a MSA demo, but I cannot even consider anything until I can make sure it is extremely limited.

- I am directing John Hilley and the rest of the White House staff to keep in close touch with you. Please call John if you feel we are being unconstructive in any way. I look forward to working with you in the weeks to come.

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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
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

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THE WHITE HOUSE

WASHINGTON

March 3, 1999

MEETING WITH THE SENATORS KENNEDY AND ROCKEFELLER AND REPRESENTATIVE DINGELL

DATE: Thursday, March 4, 1999
LOCATION: Oval Office
TIME: 3:45 pm - 4:15 pm
FROM: Larry Stein
Gene Sperling
Bruce Reed
Chris Jennings

I. PURPOSE

To meet with Senators Kennedy and Rockefeller and Representative Dingell at their request.

II. BACKGROUND

Tomorrow, you are scheduled to meet with Senator Kennedy, Senator Rockefeller and Congressman Dingell to discuss their concerns with proposals being developed by the Medicare Commission. Their concerns have been heightened most recently by two developments. First, they believe that the latest version of the Commission's recommendations contains significantly flawed provisions and notable omissions which would harm the program and the beneficiaries it serves. Second, they are extremely disturbed by recent, intensive efforts by Senator Breaux and Congressman Thomas to persuade Laura Tyson and Stuart Altman to engage in an effort to find a compromise that they can support.

In short, these Members have concluded that nothing good can come out of this Commission. They believe that it is time to develop an exit strategy that helps ensure that the Commission's recommendations do not provide momentum for flawed policy to be passed by the Congress.

Last week, Senator Breaux presented his latest Medicare reform plan. It contains several important, innovative provisions, including policies to modernize fee-for-service and rationalize Medicare's cost sharing. Its premium support proposal -- while not fully developed and currently flawed -- maintains the Medicare entitlement and achieves needed savings for the program. However, the proposal also includes major shortcomings and serious omissions, including: (1) no reference to any sort of financing proposal or the dedication of the surplus, despite the Commission mandate to do so; (2) no prescription drug benefit; (3) an income-related premium that begins at $24,000 for single beneficiaries; and (4) a premium support model that has the potential to leave rural beneficiaries with higher premiums and no additional choices.

All of your appointees publicly and privately expressed their concerns about these elements of the plan. In response, Senator Breaux asked Laura Tyson and Stuart Altman to write down their concerns. They did so and passed back this document to the Senator two days ago. Their recommendations are generally consistent with the principles for reform that you outlined. For example, they suggest including the surplus or an analogous proposal, adding an optional prescription drug benefit accessible and affordable to all beneficiaries, ensuring guaranteed benefits, and allowing 62 to 64 year olds to buy into Medicare. However, the list also includes controversial elements such as raising the age eligibility from 65 to 67 so long as there is a subsidized Medicare buy-in and adding an income-related premium beginning at $50,000 (which is twice as high as recommended by the Commission but much lower than most of the Democratic base would contemplate). Although consistent with their past statements, the document reiterates their openness to premium support that meets the goals that they outline (e.g., adequate government payment, defined benefits).

Since Laura and Stuart forwarded their recommended changes, there have been numerous conversations about whether and how there can be a compromise. Senator Breaux is now saying that he is committed to making a number of changes to be responsive, including a prescription drug benefit and that there will be some reference to financing in the plan. However, Laura and Stuart believe that his changes, including his drug benefit, will fall short. Despite the Senator's verbal commitments, our Commission Members have not yet received anything in writing that reflects any of these changes. Most importantly, it is becoming more clear that Senator Breaux will be unable and potentially unwilling to push the Republican Members to support an explicit commitment to dedicating the surplus to the Medicare program.

DEMOCRATS' CONCERNS

We expect that Senator Kennedy, Senator Rockefeller, and Congressman Dingell will uniformly critique the plan. Inevitably, they will raise their serious objections to supporting an untried, untested premium support program; a weak prescription drug benefit; beneficiary payment increases (e.g., home health copay, income-related premium set at $24,000, and the age eligibility increase) and the complete lack of discussion or commitment to add new revenues to Medicare. Each of the three also have their own additional concerns.

Senator Kennedy will make a political case for avoiding any positive statements towards the work of the Commission in general and premium support in particular. He may also raise his pet concern about the Commission's proposal to pull out a portion of medical education from the Medicare Trust Fund; he believes it will leave academic health centers extremely vulnerable to future budget cuts.

Senator Rockefeller will express his frustrations with how Senator Breaux has run the Commission. As a former commission chair, he believes that Senator Breaux has not exhibited leadership and has left Democrats with no alternative other than to oppose his recommendations. He can also be expected to critique the Breaux plan's effects on beneficiaries who live in rural areas. These beneficiaries would pay more for fee-for-service, probably not have any new plan choices, and, depending on its design, not have access to an affordable drug benefit.

Congressman Dingell will also likely emphasize his disappointment in the process. He will underscore that he kept an open mind to the Commission work until last week, when he concluded that he did not have sufficient information to make an informed decision on the plan -- and the information that he did have led him to conclude that this plan is a simple cost shift to beneficiaries.

All three Members will urge you to not send any positive signals about the Commission's work. They may also suggest that you do everything possible to advise Laura and Stuart that their continued discussions represent a political and substantive gamble that is unjustified given the lack of likelihood of a positive outcome.

III. **PARTICIPANTS**

Pre-Brief
President
John Podesta
Steve Ricchetti
Doug Sosnik
Larry Stein
Gene Sperling
Bruce Reed
Chris Jennings

Event
The President
John Podesta
Senator Ted Kennedy (D-MA)
Senator John D. Rockefeller, IV (D-WV)
Representative John Dingell (D-MI)

IV. **PRESS PLAN**

Closed Press.

V. **SEQUENCE OF EVENTS**

As usual.

VI. **REMARKS**

None.

VII. **ATTACHMENTS**

I. Talking Points.

TALKING POINTS

- I understand and share your concerns about the Commission's proposal to date.

- As you know, my budget, my policies, and my economic and political strategy are reliant upon the extent to which we succeed in dedicating 15 percent of the surplus to Medicare. I strongly believe that this is the right policy for the nation and for the program, but it is becoming increasingly clear that the Republicans on the Commission will not accept it.

- I recognize the frustration that you have about the ongoing discussions that Laura and Stuart are having. I do believe that they are raising many of the same concerns that you are raising with me today. For example, I know that they have expressed their opposition to a plan that doesn't address financing, that does not provide for a viable and affordable prescription drug benefit for all beneficiaries, that increases the age eligibility without recognizing the impact that this would have on the uninsured, that sets an income-related premium at $24,000, and whose premium support proposal is not fully developed.

- Laura and Stuart have informed us that they do not believe that the Republicans will be adequately responsive to their suggested improvements. They do feel uncomfortable, however, pulling out of the process until it becomes clear that this is the case. They fear that it would look too political to do so.

- Although I share your concerns, I believe that it would be imprudent of me to instruct any of my appointees to reject Senator Breaux's request for assistance until it becomes clear that he and the rest of the Commission are not being responsive.

- I value your wisdom and suggestions on this critically important issue. But I want to assure you of one thing: I will not sanction any proposal that does not dedicate the surplus to Medicare, guarantee a defined set of benefits without excessive new costs to beneficiaries, and use savings from reform to help fund a prescription drug benefit.

- I do believe, though, that it is untenable for us, over a period of time, to only oppose flawed reforms. We are going to have to define what we stand for, and to come up with real savings to help fund a long-overdue prescription drug benefit. To that end, we will need to keep in extremely close touch with you on any issue related to Medicare reform.

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.

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.

TALKING POINTS

- John, I believe your Commission is performing a constructive function. It is floating important ideas that have real potential and that may well lay the groundwork for the type of reforms we both want.

- Having said this, my Commission members -- even those who are supportive of the premium support concept (Laura Tyson and Stuart Altman) -- have raised a number of very legitimate concerns. I am sure you can tell from your conversations with them that their beliefs are their own. I also want to assure you that the only message the White House has given to Laura and Stuart is to be constructive and to help you produce the best possible package.

- More important, though, we are facing a real "melt-down" from the base Democrats. While you may want to still try, I am not at all confident that you can produce the changes that they want, let alone the alterations Laura and Stuart want, without losing all or most of your Republican support.

- And, because of the strong feelings the Democrats have against your package, I don't think it would be advisable or productive for me to jump in this debate at this time and try to jam it down their throats. Therefore, recognizing the situation you face, it may well be best for you to move your package out with 10 votes out of the Commission.

- Doing so would avoid giving Democrats more time to analyze, criticize and undermine your work, since the only way you could even hope to attract Laura or Stuart would be through a prolonged discussion about important details. If you do this, I will say very positive things about your work, underscoring my belief that it provides an important contribution toward addressing the complicated and numerous challenges facing the Medicare program.

- I will then work with you in trying to develop a proposal that takes your best ideas without totally driving away some of the key Democrats we will need to get the reform we both want.

Withdrawal/Redaction Sheet
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Reed et al. to VPOTUS re: Seizing the Outsider's Agenda (6 pages)	5/23/94	P5
002. memo	Stephanie Mathews O'Keefe to Cathy Mays re: Community Compact meeting with Reed, 3/14 at 11:30 (partial) (1 page)	3/12/97	P6/b(6)

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Bruce Reed (Subject File)
OA/Box Number: 21205

FOLDER TITLE:

Ideas [1]

Rob Seibert

rs47

RESTRICTION CODES

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

P1 National Security Classified Information [(a)(1) of the PRA]
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JQ Comments

File: IDEAS

THE WHITE HOUSE

WASHINGTON

May ~~19~~ 23, 1994

MEMORANDUM FOR THE VICE PRESIDENT

FROM: ~~JACK QUINN~~
BRUCE REED
PAUL WEINSTEIN

(these are your ideas; you're kind to put my name on, but don't need to do so – thanks)

SUBJECT: SEIZING THE OUTSIDER'S AGENDA

~~We believe~~ It is important that the President ~~take the offensive on a series of issues and~~ put forward a reform agenda ~~for the rest of the decade~~ that will enable him to remain the agent of change and political reform in 1996 and beyond.

Lamar Alexander's opening salvos suggest that the President's Republican opponents will try to capitalize on the American people's continued disenchantment with Washington, and accuse the President of ~~abandoning his agenda for change and letting~~ Congress ~~go on~~ with business as usual. Such attacks will always find a receptive audience among Perot voters -- the 19 percent of the electorate most hungry for change and most hostile to the status quo. This is borne out by the survey of Perot voters reported in today's Washington Post (attached), which reports, among other things, that dissatisfaction and anger with the federal government has actually increased ten points (to 68 percent) in the last two years.

breaking faith with reformist campaign promises and

The President can already make a strong case that he has fought for change, and defeated many special interests in the process. ~~But~~ But, as the Post story makes clear, many voters draw a blank, or discount the President's role, when asked about his legislative accomplishments (NAFTA being an exception). So, we need to keep pressing in a more visible way for more sweeping change in how government works and the way Washington does business.

Here are a few ~~innovative~~ proposals for the President to consider after the 1994 legislative session is concluded:

GOVERNMENT REFORMS (REGO II)

1. Children's Tax Credit Paid for by Cutting Government Subsidies

The President's most prominent remaining campaign promise and the Republican's last hope for a wedge issue is the middle class tax cut. The version he always favored was the one you proposed in Gore–Downey: a children's tax credit. We recommend that the Administration propose establishing a trust fund to pay for a Children's Tax Allowance targeted towards middle–class families. It would be paid for by savings from eliminating unnecessary government subsidies. This cut and invest strategy would reward hard–working middle–class families who play by the rules and eliminate subsidies for industries that should be able to compete in the marketplace on their own.

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Rob Shapiro has proposed a series of corporate subsidies and government programs that could be cut for this purpose. None of these cuts would be easy, but all would pit the President against established interests in Washington. ~~Even the most entrenched special interests would be hard-pressed to defeat middle-class tax relief. You could direct~~ This effort would be characterized as the second phase of Reinventing Government, or ~~and~~ stress the theme that parents can do more for their children with this money than government can. It would

Obviously, we would have to choose carefully which fights to make on spending cuts. Without recommending them, we note that

Some of Shapiro's examples include requiring polluting firms to pay more of the costs of cleaning up their toxic wastes ($1.1 billion); allowing Federal agencies to buy goods and services directly from private firms at market rates ($16.8 billion); ending subsidy payments for wealthy farmers and companies ($1 billion); charging market rates for water from Bureau of Reclamation projects and water used to irrigate surplus crops ($4.3 billion); charging market rates to mine on public lands ($1.2 billion); charging firms using the inland waterways to cover government's costs ($2.2 billion); charging utilities the government's costs to enrich their uranium ($1.6 billion); ending extractive industries' special right to fully deduct their intangible drilling, exploration, and development costs, instead of depreciating them ($5.9 billion). We presumably would also revisit the question of cutting back highway demonstration program spending.

If, as we hope, OMB could find adequate money for this purpose, The savings from the proposed cuts could go into a trust fund earmarked to provide tax relief for families with young children -- and nobody would get their tax cut until Congress agreed with the proposed savings.

· We asked the Treasury Department to provide us with some preliminary estimates of the cost of increasing the personal exemption for dependent children by $3,000. Because the costs of raising children decline as children grow older, we propose to phase down the increased exemption or credit for children above age 5. Above age 9, the exemption would return to the current level. Only middle-class families who earn up to $60,000 Adjusted Gross Income (combined income) would qualify. We also would exclude families who will receive the expanded Earned Income Tax Credit. For families in the 15% tax bracket, the allowance would be worth an additional $600 per child. For families in the 28% tax bracket, the exemption would be worth $840 per child. Treasury estimates that this proposal would cost $6.6 billion in FY96 and $33 billion over five years.

3. ~~2.~~ *National Referendum*

One of the biggest complaints about Washington is that it is disconnected from the pulse of America. One way to give government back to the people would be to experiment with a national referendum that would allow people to express their views on issues of importance.

· National referenda ~~ums~~ are commonplace in Europe. Citizens in France and Denmark voted on whether or not to stay in the European union. In Italy, voters rearranged the representative system. Even Russia's new democracy has a public referendum system.

COPY

3

In the United States, the use of referenda is limited to the State and local levels. Twenty-three States have some form of voter initiatives where an issue can be placed on the ballot if a petition has enough signatures. Most of these States are west of the Mississippi.

Establishing a binding national referendum system would require a Constitutional Amendment. ~~Since~~ Because passage of an Amendment ~~might~~ would take awhile, the President could institute a temporary, non-binding referendum system while pressing for a Constitutional Amendment. Or the President could ask Congress to experiment with non-binding referendum votes on a limited number of issues to see if the idea works before proposing a Constitutional Amendment.

by Executive order? or, would Congress have to go along? If by E.O., how would it be paid for?

The advance of information technology makes the prospect of some kind of national referendum increasingly inevitable. Done right, with appropriate Constitutional safeguards, such an idea could bypass gridlock on important issues and enfranchise voters who have lost faith in Washington. It wouldn't have to be as shallow as Ross Perot's "electronic town meeting"; it could be an Information Age version of LaFollette and the Progressives' idea -- a tool to give citizens more say when their representatives will not listen.

For example, a referendum could be placed on the ballot at the time of a general election if at least 1% of the population of each State indicate that they want a vote. During a transitional period, signatures could be collected electronically by E-Mail or Snail Mail (postal service) by the Federal Elections Commission. Electronically, the validity of the signatures could be verified using the new digital signature standard recently established by the National Institute of Standards and Technology (NIST). Participation would be limited to registered voters. (Over time, national referenda would probably lead to increased voter registration.)

2. ~~3.~~ *Tax Simplification For Business*

-- together costing

10 The tax code is littered with special preferences for certain types of businesses -- pharmaceutical, advertising, dairy, life and casualty insurance (~~savings~~ approximately $49 billion) ~~-- that cost billions in higher prices for taxpayers and~~ lost revenues for the Treasury. During his second term, Reagan made tax reform his number one priority: eliminating loopholes and lowering income tax rates for all levels of income. We suggest a similar approach for the business code. Simplify the tax code by eliminating special tax incentives for a few businesses and use the savings to implement an across-the-board long-term capital gains reduction and a ten percent worker training tax incentive for all employer spending on employee education and training programs. This would level the playing field for all business. Together these proposals would cost approximately $24 billion per year ($17 billion for capital gains reduction and $7 billion for training tax credit).

(why higher prices?)

Some examples of the special tax preferences we would eliminate include: repealing the special tax credit exempting income earned by U.S. firms on operations in U.S. possessions ($21.5 billion); ending firms' right to fully deduct advertising costs by amortizing

COPY

(advertising deductions? for cigarettes + alcohol? in general?)

20 percent as a capital cost of building name recognition ($17.5 billion); ending the ability of firms to exclude 15 percent of their income from exports sold through special foreign subsidiaries set up as paper corporations ($7.9 billion); ending farm firms' special right to defer tax on income from crops delivered the following year ($1.2 billion); ending special tax exclusion for costs of raising dairy and breeding cattle ($0.6 billion); taxing small property and casualty insurers on same basis as their larger counterparts ($0.2 billion); ending small life insurers' special right to be taxed on invested income instead of gross adjusted income ($0.6 billion).

Proposing a reduction in the long-term capital gains rate will promote investment and productivity. It will signal that the President is pro-business and also will take away an issue long dominated by Republicans. Coupling the reduction in the long-term capital gains rate with a training tax incentive should help win broader support.

CONGRESSIONAL REFORMS

I'm most skeptical about our willingness to take these proposals on. I think they'll see them as "sticks in the eye." On the other hand, you might cast this as the only way to counter the Alexander message.

To achieve his reform agenda, the President may have to turn up the heat on Congress. He doesn't have to point fingers at anybody, but he needs to enlist support for popular reform in order to overcome lingering resistance. We can't reinvent the Executive branch unless we get some help in reinventing Congress.

1. Require Congress and the Executive branch to abide by all the laws they pass, and challenge Congress to reduce <u>its</u> operating costs by 20%

The President has long maintained that one way to put government back in touch with the American people is to have Congress abide by the same laws it imposes on the rest of America. The President also challenged Congress to follow his lead in reducing its cost of doing business -- Congress operates at a price tag of up to $2.8 billion a year, or some $5 million a Member. The budget battles of last year suggest that there is a great deal more support for these ideas than the leadership might like us to believe. This isn't a cheap shot at Congress; it's asking the same of them that we asked of ourselves. And in the current atmosphere, we would actually be doing most Members a favor by giving them a chance to vote for something that will play well back home.

2. Reduce the Number of Congressional Committees and Subcommittees

There are 239 committees and subcommittees in the House and Senate and 37,000 employees on Capitol Hill, many of them committee staff members. The proliferation of committees has led to the proliferation of redundant, duplicative, and ineffective Federal programs. These programs often exist not because they serve the interest of the American people but exist because so many committees want a piece of the action. We recommend legislation or a process that would reduce the number of Congressional committees by half.

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3. Term Limits on Congressional Chairmanships

Committee chairmen, protected by a system that typically defers to seniority, resist reform. Most chairmen view their missions as expanding the scope and power of their committees rather than promoting change. Limiting chairmanships to six years would decrease the incentive to empire-build and encourage legislators to place the national interest above the narrow interest of their committees. Unlike Constitutional term limits, which would deprive Congress of many of its most talented Members, this proposal would simply require them to apply their experience and expertise in other legislative areas.

BUDGET REFORMS

1. Line Item Veto/Enhanced Rescission Authority

and

The House earlier this year passed expedited rescission authority, but the proposal is still sitting ~~un-acted-upon~~ in the Senate because of the opposition of Senator Robert Byrd. The President has always supported some type of line-item veto authority, we believe this should be made a legislative priority next year. Only with the President's full support can we expect to pass this legislation next year. Unlike the Balanced Budget Amendment, the Line-Item Veto would actually help reduce the budget deficit, and its passage would help the President deflect criticism that he did not support the Balanced Budget Amendment. In addition, the President ought to be able to rescind a portion of an agency's appropriation as a way to enforce performance.

2. Sunset All New Programs

Nothing in government should last forever unless it works. You've called for sunsetting the federal personnel regulations as part of the National Performance Review; you should go further, and require a sunset for all new initiatives. One example of where the Administration has already done this is the Empowerment Zone/Enterprise Community Initiative, in which the tax incentives expire after ten years.

OTHER IDEAS

1. U.S.-South Africa Free Trade Agreement

On the trade front we've made great strides in defining the Administration as pro-business/new Democrat, but everything we've done so far was initiated in previous administrations. We recommend proposing a free-trade agreement with South Africa that would further cement our relationship with their new democracy and make it clear that ~~the~~ United States is not retrenching from the world community. At home, an FTA with South

Africa would be supported by members of the Black Caucus and Republicans, therefore making it one of the few trade agreements that could pass easily in Congress next year.

2. Public School Choice and Charter Schools

The Goals 2000 legislation put the Administration on record for innovation in education, but it will take a concerted national effort for these reforms to take root. Lamar Alexander will try to make the mediocrity of American education a defining theme -- it's his strongest suit. The President should build on his own remarkable record here and in Arkansas by launching a national crusade for higher standards and values. Two reforms he would surely like to push harder on a national scale are public school choice and charter schools. He should not leave this work to the Department of Education, even though Riley is doing a terrific job. Alexander will try to paint us as a prisoner of the education establishment unless the President is out front pushing for daring reforms.

cc: Jack Quinn

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Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Michael Waldman to Sally Katzen re: Revolving Door and Ethics Issues (1 page)	ca. 1994	P5

COLLECTION:

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

FOLDER TITLE:

Lobbying Reform [2]

Rob Seibert

rs50

RESTRICTION CODES

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

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
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C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

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

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LOBBYING REFORM

MEMORANDUM FOR SALLY KATZEN

FROM: MICHAEL WALDMAN

SUBJECT: REVOLVING DOOR AND ETHICS ISSUES

Attached is a draft memorandum on the Boren bill. Bruce Reed and I have reviewed the issue, and he is reviewing this draft this AM. As you will see, my views on what we should do have hardened. I believe that, post-Howard and Roy, it would be dangerous for us to intercede -- for the first time ever on any such ethics bill -- on the revolving door issue, of all issues.

As for the draft OGE letter on the Conyers bill: I do not object to OGE sending some letter of this sort. But it seems to me that they miss the major argument against the Conyers bill, which is that the conduct that Conyers is seeking to affect is covered by the Levin-Bryant bill. Levin-Bryant requires disclosure of a wider array of activities than current law. It does so for all lobbyists -- not just former government employees. Levin-Bryant strikes the better balance than Conyers. Our comments on Conyers should be couched in that context.

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Withdrawal/Redaction Sheet
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. letter	March 31, 1993 letter re: Lobbying Reform (2 pages)	3/31/93	P5

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

FOLDER TITLE:
Lobbying Reform [4]

Rob Seibert

rs51

RESTRICTION CODES

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

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THE WHITE HOUSE
WASHINGTON

March 31, 1993

Dear Mr. Chairman:

We in public service have an opportunity to reconnect the bonds of trust with the American people. As I have made clear from the beginning of my Administration, I believe that political reform must be a top priority. As part of that effort, I strongly support the Lobbying Disclosure Act of 1993.

Too often in recent years, our government has not served the interests of average citizens. One major reason for this is the disproportionate impact of lobbyists on the governmental process. Today, by some estimates, as many as 80,000 people work in Washington directly or indirectly as lobbyists, representing organized interests before Congress and the executive branch. To be sure, lobbying is a constitutionally protected right, and we do not propose to limit that right. But we cannot allow the clamor of organized interests -- who too often seek to preserve the status quo -- to drown out the voice of the broad middle class.

Despite the enormous impact of lobbying, and the huge sums spent for those purposes, current laws do not begin to address the public's questions about what forces influence policy. Only a small fraction of individuals who should register under current law even do so. Disclosure forms are weak, loophole-ridden and provide meaningless information. Data regarding lobbying on behalf of foreign interests is particularly inadequate. And the definitions of lobbying in current law have not kept up with the realities of the labyrinthine regulatory state.

To restore public confidence, then, we must ensure at a bare minimum that lobbying is fully

Dunsia —

THE GOV'T MAY NOT INFINGE A FIRST AMDT. RIGHT IN ORDER TO EQUALIZE THE RELATIVE VOLUME OF DIFFERENT VOICES IN POL. DEBATE. THE CT. SO SAID IN BUCKLEY V. VALEO. I'D AVOID THIS RATIONALE. I'D FOCUS ON RT. OF PUBLIC TO KNOW WHAT FORCES ARE BEING BROUGHT TO BEAR ON CONG./EXEC. IN ORDER TO AVOID BOTH CORRUPTION & APP. OF CORRUPTION. J.R.

COPY

disclosed, so the full range of activities of lobbyists is open to public scrutiny. Toward that end, I strongly endorse the passage of legislation that would strengthen and streamline lobbying disclosure, and that effectively provides the public, the media and competing interests access to information about the extent of lobbying.

This legislation would create a comprehensive, uniform statute covering all professional lobbyists without regard to which branch of the federal government they lobby. The bill provides, for the first time, a broad definition of who is a lobbyist. It requires that lobbyists identify their clients, specify on which issues they lobby, and disclose how much they spent or were paid. At the same time, it streamlines existing law to make the rules more comprehensible for individuals who must comply.

In addition, I believe the subcommittee may want to take steps to strengthen and clarify the bill. My Administration looks forward to working with the subcommittee on such improvements.

We cannot settle for business as usual in Washington; this legislation must be only the beginning of large scale political reform. My Administration has already implemented the toughest-ever restrictions on post-employment lobbying by senior officials, banning them from lobbying their agency for five years, and from ever serving as a registered agent for a foreign government. We have proposed the elimination of the deductibility of lobbying expenses. This deduction inappropriately subsidizes organized interests who seek to influence the legislative process. Finally, we will shortly propose campaign finance reform legislation that will further reduce the role of organized interests in the political system.

after they leave gov't service

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Withdrawal/Redaction Sheet
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Steve Waldman to Reed re: Republicans and National Service (1 page)	11/96	P2, P5
002. memo	Waldman to Harris [Wofford] and Deb re: The Board (6 pages)	11/2/96	P2, P5, b(6)

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

FOLDER TITLE:
National Service [2]

rs58

RESTRICTION CODES

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

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
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RR. Document will be reviewed upon request.

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

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NAT. SERVICE

MEMORANDUM

TO: Bruce Reed

FROM: Steve Waldman

RE: Republicans and National Service

As you are mulling over some bold steps towards bipartisanship, please consider some dramatic, high-profile Republican appointments to the Corporation for National Service's Board of Directors.

National service, as you know, is one area where we already have strong Republican support. There are several appointments you could make that would send a strong statement that the President is serious about working with Republicans where possible. And I think it is the sort of job that you could actually get some prominent Republicans. They can be helpful without sullying themselves by being *too* inside.

Take a look at this memo I prepared for Harris on some possibilities.

Also, we'll be sending a memo to Clinton soon about why he should make national service a central theme of second agenda.

Thanks again.

COPY

Withdrawal/Redaction Sheet
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. briefing paper	General Strategy (1 page)	4/23/97	P5

COLLECTION:

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

FOLDER TITLE:

National Service-Summit [1]

Rob Seibert

rs59

RESTRICTION CODES

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

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
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V. General Strategy

We have beaten back the notion that this is a White House engulfed in answering charges. And the proof in this has been our maintenance of high ratings. The press cannot understand how we have continued to show leadership under their assault.

This means that we continue the posture of being the central force for accomplishment in the face of a Republican Congress that is again creating gridlock.

If we win CWC, then that becomes an inside the beltway example of Clinton's leadership. If we lose CWC, it is an example of gridlock in Congress – the failure to act on it when they had the chance to do something the world needs.

After CWC, the Republicans will turn to late-term abortion or to comp time. Late-term cannot be a win for us – even if we win it, as it really affects Democrats in Congress, not us.

Comp Time is our preference – to work out a comp time solution that gets rid of the bills discriminatory effects (all workers of a class must be offered it) and makes employers produce on the time.

Rahm believes we can bait the Republicans into comp time by opposing it strongly. But if there is no budget deal, then the Republicans will be the ones who need an accomplishment, as most will blame the Republicans for a lack of a deal.

Kick Butts – Here's my job / Here's our job.
Here's your job.
If you don't do your job...
2-3 big ideas to help you do your job...

Educ focus
Pell Grant
Interest free
Mentors – work study
Challenge communities to provide mentors.
Challenge business
states to do HS service

→ RILEY

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Withdrawal/Redaction Sheet
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Steve Silverman et al. to Sylvia Mathews re: Task Force Membership for the Service Summit (1 page)	3/17/97	P2, P5, b(6)
002. list	Task Force Membership for the Presidents' Summit (1 page)	3/17/97	P2, P5, b(6)
003. list	Proposed Task Force Leadership for the Presidents' Summit (6 pages)	3/97	P2, P5, b(6)
004. agenda	Presidents' Summit, March 13, 1997, Roosevelt Room, Agenda (1 page)	3/13/97	P5
005. memo	Diana Fortuna to Reed et al. re: Service Summit Names (1 page)	2/28/97	P2, P5
006. list	Proposed Task Force Leadership (1 page)	2/28/97	P2, P5, b(6)
007. list	Proposed Task Force [Members] for Goal 5 (1 page)	2/28/97	P2, P5, b(6)
008. list	Possible Candidates [for Service Summit Task Force/Board] (1 page)	2/28/97	P2, P5, b(6)
009. list	Additional Possible Candidates for Task Forces by Sector (2 pages)	2/28/97	P2, P5, b(6)

COLLECTION:

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

FOLDER TITLE:

National Service-Summit [3]

rs61

RESTRICTION CODES

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

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Service Summit

THE PRESIDENTS' SUMMIT FOR AMERICA'S FUTURE
MARCH 13, 1997 - ROOSEVELT ROOM
AGENDA

I. Welcome - Erskine Bowles : More is better.

II. Goals for the Presidents' Summit for America's Future - General Powell and Henry Cisneros
we can debate govt's role
Powell: 1) inspiration 2) for youth 3) not to govt's exclusion – partnerships 4) not FR effort. Real challenge = what's after
Not summit every yr, but something. Not seminar for C-SPAN. No long speeches, lots of visuals. Gotta keep the animals fed.

III. Vision of the Summit - Ray Chambers 5 goals to 2m children, cut teen probs by 1/2 in that group

IV. Summit Program, Attendance and Commitments - Stuart Shapiro 140 comms, 1400 indivs. 50 govs + 5 each.
Corps + nonprofits matching up activities 500-600
3500 rms, 2900 seats.

V. National/Community Organizations - Outreach - Marian Heard
CP: J. Jackson + Urban League

VI. Post-Summit and Task Forces- Rick Little – Truly neutral non-partisan c-3. EB: "great list" of TFs

VII. View from the Host City - Mayor Rendell → 1st day very important. Zero tolerance graffiti zone forever (BFI)
McDonalds will feed. POTUS shd attend. Eagles build a playground. Military operation.
unless you give kids hope, nothing else we do matters. Not an excuse for govt failing a like – govt + service together

VIII. Next Steps - Erskine Bowles
Followup summits in indiv. comms. $ is needed.
Caveat – Jobs summit, w/ [illegible] from AFLCIO + Nader

CP: Alma 9 yr old: "What's married?"

EB: Goals - Homework - Followup

COPY

TO: Bruce Reed
Elena Kagan
Steve Silverman

Service Summit

FROM: Diana Fortuna

DATE: February 28, 1997

Attached is a scary paper I just got from the Corporation, with lots of names attached to task forces. I am trying to find out how far along in the process these names are, but I will yell at them if they are anything other than the Corporation's own ideas.

COPY

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 (7 pages)	11/14/96	P2, P5
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

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)]

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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① Cisneros as only vice-chair

Mikulski mother of Americorps

② BC + Bush as honorary co-chair

③ The Presidents' Summit on Citizen Service

④ CEO agreeable to us

⑤ Powell no sell-out on Americorps
- Bush: don't trick me into endorsing Americorps

LIST FOR FRIDAY

CONGRESS NOTIFICATION & LensCrafters notification

Q+A

PRESS HANDOUT

COPY

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Sandra Thurman to Reed re: Senate Democrats Up in 1998 (2 pages)	ca. 1998	P5

COLLECTION:

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

FOLDER TITLE:

Needle Exchange [1]

Rob Seibert

rs63

RESTRICTION CODES

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

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MEMORANDUM FOR BRUCE REED

FROM: Sandra L. Thurman
Director, Office of National AIDS Policy
(202)456-2437

Re: **Senate Democrats up in 1998**

It has come to my attention that you have raised concerns about the impact of our needle exchange policy on the re-election of Senators Boxer, Murray, and Mosley-Braun. Here are a few things to consider in that regard.

Oppostion to needle exchange has been largely driven by the House, not the Senate. While opponents tried to gin this issue up during the Satcher confirmation hearings (before the Labor Committee on which Sen. Murray sits), the issue was never raised during the hearings or in the pages and pages of follow-up questions. While Senator Ashcroft raised needle exchange on the floor, he quickly realized that it was not an issue that resonated with people and moved on.

Senator Specter has been a leader on this issue. He pushed the Appropriations Conference Committee last year to maintain the Secretary's authority and has a positive track record on AIDS. If this issue rises again, it will once again fall to him. He is up in 1998, has met with the Philadelphia needle exchange program, and promised to continue his help. Other Republican moderates in both the Senate and the House have been supportive and could be organized.

Senator Hatch created the scientific trigger for use of federal funding for needle exchange along with Senator Kennedy nearly a decade ago. Helms was trying to ban funding of needle exchange and Hatch-Kennedy offered a substitute that provided for the scientific determination. It is likely that with Varmus and Fauci solidly on the program we can get support from people like Hatch, Frist, and others with a solid public health background and a healthy respect for the NIH.

As for the three women Senators you mentioned in particular:

<u>Boxer</u>: Given the visibility of this issue in California, it seems likely that Boxer stands to gain more if the AIDS and health communities are happy with the Administration's action than if they are disgruntled. California currently operates twenty needle exchange programs, including a very large program in LA supported by Republican Mayor Riordan. In addition, much of the research on the effectiveness of needle exchange programs has been done by the Univeristy of CA. Finally, while Rep. Riggs did not oppose the House amendment to ban funding for needle exchange, other CA Republicans such as Reps Campbell, Horn, and Thomas did. Now that Riggs is trying to demonstrate his active interest in the lives of women, children, and families, we may just get his vote should this issue come around again.

COPY

Mosley-Braun: Illinois too operates six needle exchange programs, including two very large and successful programs in Chicago. The Chicago Tribune has editorialized twice on this issue, including a very harsh criticism of the Administration's inaction and its deadly effect on children in Chicago and elsewhere. Given the broad based support for needle exchange among mainstream health organizations located in Chicago, it would be easy to help Senator Mosley Braun put together a Chicago event designed to give her plenty of cover. Both the AMA and the Academy of Pediatrics are headquartered in Chicago and are ardent supporters of needle exchange. In addition, the support, of the Congressional Black Caucus, the NAACP, the National Council of Negro Women, and the National Black Police Association give her added cover in the black community.

Murray: The eleven needle exchange programs currently operating in WA are very popular among both Democrats and Republicans. During debate on Ryan White, Helms offered a needle exchange amendment and Senator Gorton came to floor to vigorously defend the effective program in Tacoma, WA. Sen. Gorton again demonstrated his support for needle exchange by backstopping Senator Specter's efforts to maintain the Secretary's authority in the Appropriations Conference this past year.

Again, I feel strongly that this issue can be effectively managed in the Congress once Varmus, Fauci, et al. officially say that science is in. Those whose help we want should NOT hear about this on the television or read about it in the paper. They should receive information from HHS or the White House as soon as it is available for release. [See attached congressional outreach list of friends on the Hill that should be informed as part of the roll-out.]

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. minutes	New Covenant (1 page)	ca. 1995	P5

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

FOLDER TITLE:
New Covenant

Rob Seibert

rs65

RESTRICTION CODES

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

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

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COPY

New Covenant

NEW COVENANT

A. BULLY PULPIT > policy

1. Voters are demanding it: Govt should not try to solve problems that indivs can solve for themselves.

2. GOP Congress leaves us no other choice: If all we have is the bully pulpit, **we had better get our sermons straight.**

B. WHAT IS THIS NEW COVENANT? Where did it come from? McBOR?

-- announcement speech; acceptance speech; this year's SOTU.

-- basic bargain: more opp. in return for more resp.

-- or: We shouldn't ask govt to do what we can do for ourselves. We should rely on govt to help us do more for ourselves and one another.

C. OUR CONTRACT (FLOTUS):

-- A fancy word for contract, but it goes back a long, long way

-- Irony -- We get our words from the Bible; GOP gets theirs from TV Guide. May explain their short-term success, but we're in this for the long haul.

D. WHAT SETS N.C. APART IS CHALLENGE TO TAKE RESPONS.

-- A Two-Way Street

-- Basic difference b/w their Contract and our Covenant is that we don't pretend that you can sit back in your chair, watch TV, and tick off items in your TV Guide as the new Rep Congress solves all your problems.

-- We want to treat people as citizens, not just consumers. The old lib myth that govt can solve every problem was wrong, and so is the new conserv myth that getting rid of govt will solve every problem.

-- we'll only turn this country around if individuals take resp & do their part, too.

E. HOW TO MAKE THE MOST OF BULLY PULPIT

-- It's harder, b/c you can't just pass a program -- you have to engage people and challenge them to do more.

1. MANY OF YOU have been promoting indiv respons. as the core of your efforts:

   Shalala -- WR
   Cisneros -- Empowerment
   Reno -- Community Policing
   Riley -- Parental Respons in Education -- the ultimate covenant.
   Eli - Nat. Service

2. Bill will talk more about direct engagement of the citizenry. I have these suggestions:

   1. Go into the lion's den -- Counterschedule. (Baseball players, Hollywood, Corp leaders)

   2. Be a model of responsibility/practice what you preach -- CSE E.O.

   3. Put individual respons at the core of your new initiatives: Your bully pulpit is the most imp tool you will have for next 2 yrs. **They can't rescind your bully pulpit.**

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Katzen et al. to Chief of Staff [McLarty] re: Sen. Boren's Revolving-Door Proposal (2 pages)	12/20/93	P5
002. notes	Bruce Reed Campaign Finance Reform meeting notes, February 2, 1993 [POTUS with Congressional members] (4 pages)	2/3/93	P5

COLLECTION:

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

FOLDER TITLE:

Political Reform [1]

Rob Seibert

rs67

RESTRICTION CODES

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

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COPY

~~Jack Quinn~~

CAMPAIGN FINANCE 2/3/93 BC, AG, Foley, Mitchell et al

Fazio, Gephardt, Rose, Bonior, Gejdenson, Fazio Glenn, Levin, Boren, Ford, Kerry, Graham

BC: Demos share a triumph
Move bill quickly
Not hung up on effective date

FOLEY: ① Sen. could pass bill next wk; we cannot
Not just timing - early schedule won't guarantee
② Don't join lobbying + campaign reform bills together
- Linking w/ lobbying reform will risk job + future employment at the same time
- CF bill will only pass by 10 votes - don't load new stuff on
- Won't commit suicide
③ Let House + Senate write their own bills for themselves, link in same bill (That's what

MITCHELL: 1) Commend you for doing this. Process is demeaning + corrupting
2) Will help Dems
3) GOP will oppose bill if it's diff. in substantial respects
4) Apply in succeeding election - we'll abide voluntarily

BOREN: Chance for early success - not starting from scratch - victory w/i 1st 100 Days
Set timetable for ourselves - momentum now, - worse later
Perot volunteers asked many Q's about this
Take these up indiv. - not together
March markup in Senate Rules - could get bill [illegible] by 4/20
- Assign WH staffer to help draft

CAMPAIGN, p. 2

FOLEY: We're ready to pass line-item veto in a wk - prob is Senate
- We have same situati in reverse
- Decide when we have the votes, not some artif. deadline, which only sets std. for public failure

GEJDENSON: Staffs meet rapidly; put together bill for BC intro
We have Southerners who won't support public funding at all
① Fund for Democracy - tax deductibility, $5 checkoff, 1/10% advertisin tax
② PAC limits: 1/3 PAC $
③ Runoffs + primaries
④ Spending limits: millionaires + indpt. expenditures
Senate should go 1st

FAZIO: PACs > to House > Senate
$1000 limit on PACs
- allow larger PAC contribs for small-donor PACs
Cost of raising $: more leeway
Bundling limits: should it include LCU + EmilysList

GEJDENSON: This is a party war. They want limits on indistrict $

SWIFT: PAC $ is the most acctable kind of private $. Banning PACs won't drive $ out of system - just be harder to follow.

LEVIN: If CF is going to take time, LR can move fast
1) Lobbying disclosure: bipartisan, approved in comm

COPY

- would cover Exec Branch for 1st time
- 2/3 of lobbyists who should disclose but don't
- working w/VP on intro

Lobbying comm. is not 100% supportive but largely supportive

2) Indt Counsel

These are 2 bills we could move quickly, give us feathers in your cap

GEPHARDT: 11th Commandment: don't criticize each other's proposals
- We'll define success
- Heart = limiting spending in campaign + limiting PACs influence

MITCHELL: Limiting spending will limit length of campaign

GRAHAM: Req. debates in return for $. Improve quality of debate

BOREN: You should say today that we've agreed to limit spending + limit PAC influence
- You must keep the heat on us. It's a test of whether you're giving into Estab.
- We have to pass bill that will stand light of day
- If you get in bed w/Cong Estab, won't serve your ints or party's or even ours

CF, p. 4

GLENN: Don't write off idea of public financing (a la Pres. race)
- Small proposals do not stir men's souls

KERRY: Q is where do you begin. Message to nation.
You're after reform
Last effort to ask for pub. financing was in 1974
Raise check-off to \$3/indiv., \$6/couple
- We have 43 votes (15 Dems who didn't) (4 GOPs → broadcast media)
Do you want to begin there or not?

Mitchell: I'm for public funding - but you don't have the votes

BC: Move quickly
2 pts: 1) PACs 2) Spending
No specific date
It will help your members to run on fact that they did it

Roll Levin out early

COPY

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. footnote	S.3 Campaign Finance Addendum footnote re: Independent Expenditures (partial) (1 page)	2/3/93	P5

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

FOLDER TITLE:
Political Reform [2]

Rob Seibert

rs68

RESTRICTION CODES

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

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COPY

federal race would be brought under federal spending and contribution limits. (This repeals the "party building" exemptions in the 1979 law and the allocation formulae that are used to implement them.)

• National party committees, federal officeholders and federal candidates would be barred from soliciting contributions on behalf of state parties unless they are exclusively used for state parties.

• National political parties would be required to itemize and disclose to the FEC all receipts and disbursements above $200.

Campaign commitment: In February, in New Hampshire, you promised to support the soft money language of S.3. Common Cause: "Will you make a public commitment now to support the legislative provisions passed by the U.S. Senate last year to end the use of huge Watergate-style 'soft money' contributions to support presidential campaigns?" Answer: "Yes, provided that upon enactment the Republican Party is held to the same rules."

6. INDEPENDENT EXPENDITURES[1]

Current law: Individuals, corporations or PACs that make independent expenditures must disclose them to the FEC, and must have a disclaimer stating their sponsorship.

S.3: The legislation seeks to blunt the impact of independent expenditures rather than prohibiting them (which is constitutionally barred).

• Requires faster and fuller disclosure, and bars independent expenditures where the spender has communicated with the candidate about the campaign.

• Participating House candidates may waive the spending limits and receive extra matching funds to compensate for independent ads.

---

[1] This is particularly important if S.3's soft money restrictions are adopted. Without effective discouragement of independent expenditures, soft money expenditures will effectively be taken up by 501(c)(3)s such as the Christian Coalition. (With respect to the Christian Coalition, whose activities seem to me to be flagrantly illegal, we should remember that we now control the IRS.)

Withdrawal/Redaction Sheet
Clinton Library

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
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]

rs73

RESTRICTION CODES

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

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Reinvent Govt 3/3/93 VP, Sharp, Laden, From, Kamarck, Romash
Quinn, Hartman, T. Wilson, Neel

F for fiefdom
Cockroaches
Q of Naysaying
+ Budget

AG: Task Force

- WH + VP staff + OMB + staff designated by us
  - Sharp: They may want us to designate, so they don't have to
  - Kamarck: Start w/career experts
  - Sharp: 12 teams - people didn't know what other teams were doing
    - 1st thing they did was read 2 decades of existing reports
  - Include indt. agencies as targets + ask for employees

→ Thurs. 3:30

- 1st phase: keep public attn to a minimum
  → AG sit down w/employees at lower rungs - no cameras
* → Give AG a broad overview
- Manhattan Project model - few people know whole thing
- Sharp had 2 teams: 1) Reinventers + 2) Slash + burners
  → Print 800-# on payroll envelopes
  - Keep things close so lobbyists don't find out
  - Panetta will testify 3/11 on Lieberman, Roth bills
* → Prepare Q+A for Panetta → schedule for 3/10
  → Ongoing effort to require mgmt to meet publicly w/customers (incl. states)
    (public quality control process)
    - states are one of our customers
* → ACIR on devolution: find out for AG
    → Daley study on what it costs to do business w/fed govt
* → Get Mike Nelson + Gibbons + tech people to think of ways to use info tech to do:
    - electronic funds transfer consolidation (eliminate transaction costs)
* → Think of info. tech ways ($ in supercomputer bill? technology initiatives)
      - Sharp: that's single most popular ~~aspect~~
        - Tx had to fight couriers, printing, timber cos.
* → Come to LA mtg. w/Carter

RG out, 3/3/, p. 2

Sharp: organize by functional areas, not agencies
- AG: you've got to look at DOD
  - lots of polit. tough reforms we can inherit
  - "All right, damn it, let's do it"
- Sharp: The more we get screamed at inside Beltway, the better

AG: Report ~~publicly~~ privately to Pres. on Sept. 1, do week of backgrounders w/agencies, public release on 9/7 or so
- selected leaks along the way, to protect self against attacks - mostly at the end
- other internal private deadlines
- don't leak too early, b/c it will mobilize constituencies
- town mtgs., radio shows, high public profile

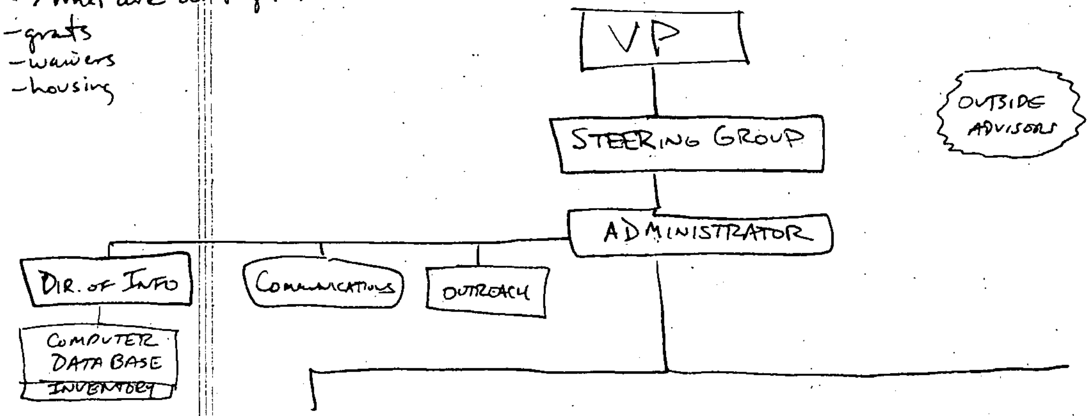
x → Organizational chart, possible names
- Al's ceremonial office
→ Get Silicon Graphics + Intel to donate state of art info mgmt system to graphically display challenges

→ Try to get endorsements from AFSCME/AFGE + US Chamber same day
x → Endorsement strategy
→ Conservation w/Perot
x → Create Issues Docket of good ideas from Reports
→ Cabinet mtg.: what do we say at next mtg?
→ Congress + other mtgs.
→ Separate effort on Devolution, ~~Sunset, Bounty~~
→ Talk to Katie re enviro effic.
→ New investments + stimulus package

→ Look for billing mistakes, downsizers
→ Design Outreach program

COPY

→ What are our targets?
- grants
- waivers
- housing



1. Can we improve govt service?
2. ~~Shd~~ Can we give it directly to states? Grants

TARGETS

① CUSTOMER SERVICE

COPY

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Steve Warnath to Vince Foster re: OMB Input re-Perks Executive Orders (4 pages)	1/28/93	P5

COLLECTION:

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

FOLDER TITLE:

Reinventing Government-Executive Orders

Rob Seibert

rs74

RESTRICTION CODES

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MEMORANDUM

To: Vince Foster

From: Steve Warnath

Date: January 28, 1993

Re: OMB Input Re: Perks Executive Orders

==

Bob Damus at OMB has provided comments on the present drafts of proposed executive orders ("EOs") involving perks as follows:

I. General Recommendations

A. Bob recommended generally that the Agencies should be consulted or notified prior to cutting their perks. He indicated in particular that the Defense Department will be interested in an opportunity to comment on any changes since it receives or owns the bulk of these perks, such as government owned golf courses and vehicles.

Decision or Action Required: Prior to issuing an executive order changing the status of perks, it is recommended that some consultation process with the Agencies, particularly the Department of Defense, be initiated.

B. Bob also underscored the need to think through carefully how each of these actions would effect the White House. For example, in the present version of the EO, the executive dining facility section probably would apply to the President's meals in the White House and might apply to the White House mess. The Fitness Facilities section arguably could apply to the White House tennis court and whatever recreational facilities might be out at Camp David. The issue is: should the President be charged for these items as we propose to do in the Agencies, and if not, how do you avoid the politically awkward circumstance of having the White House impose these restrictions on all of the Executive Departments and Agencies while exempting itself.

Decision or Action Required: A decision is needed concerning whether the White House is to be included in the new policy cutting perks. The draft EO will need to be adapted to conform to that decision.

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II. Use of Government Vehicles

The Departments of Defense, Justice, and State have armored vehicles in their fleets. Bob recommends excluding armored vehicles, which have a unique security justification, from the required cuts.

Bob recommends deleting language to reduce the number of drivers. Although the idea would be to have these drivers reassigned, not fired, President Clinton should not be in a position of having forced these drivers to lose their jobs. Moreover, the reduction of vehicles is likely to result in an eventual decline in the number of drivers.

Decision or Action Required: A decision is needed whether 1) to exempt armored vehicles from reduction requirements and 2) to delete requirement to cut drivers.

III. Use Of Government Airplanes

Bob thought that the present draft looked very good. However, there remains many policy questions that the policy people need to resolve such as whether to include the President and Vice-President in the EO's requirements. The present draft would not apply to the President and Vice-President.

Decision or Action Required: There are many policy decisions that must be made before this EO is finalized.

IV. Executive Dining Facilities

The present version would charge for meals at a price equivalent to what would be charged at a comparable commercial facility. Bob indicated that this formulation may not be the way to go. Charging for more than the cost of meals raises the issue of what to do with the extra money. Having said that, it is necessary to determine which cost standard to use. The alternatives are: 1) full cost recovery (rent, utilities, operating costs, etc.); 2) recovery of operating costs; or 3) recovery of food costs. Recovery of full costs would probably be prohibitive and may force the dining rooms to close down completely. Assuming that we do not want to make it impossible for a Secretary to have a lunch meeting in a private dining room by charging for the full costs of the meal, then the options are between charging to recover operating costs or ensuring that the Agencies are actually recovering the full cost of the food.

Decision or Action Required: A decision is needed to change the price charged for meals in executive dining facilities to 1) recover operating costs or 2) require Agencies to recover the costs of the food. Because the Agencies' claim that they presently recover the cost of food appears dubious in some instances, making this requirement explicit in the EO has more merit that it might appear at first.

V. Golf Courses

Because Defense owns most of these, Bob suggested that they should have an opportunity to comment. One of their justifications for having golf courses is apparently to retain their people.

Bob flagged a possible issue: There might be something out at Camp David that could be defined as a golf course and, if so, this section would require that it be opened to the public.

Decision or Action Required: Consult with the Defense Department prior to issuance. Consider any unintended consequences of opening all courses to the public -- are there any appropriate exemptions (e.g. is there a golf facility of some sort at Camp David)?

VI. Conferences

This section calls upon the Agencies to make cost-effective decisions when selecting their conference locations, but it does not contain a more precise definition of what factors to consider because I wasn't sure what would be an appropriate or workable cost standard or formula upon which to base decisions. Bob suggested that perhaps we should direct GSA to write regulations or a directive on this and have them come up with a standard. For example, it could require a decision based upon the lowest cost consistent with the agency's mission or require the agency give additional weight in its deliberations to the city where most of the employees work are located.

Decision or Action Required: Should this section be revised to direct GSA to would provide more specific instructions on how to consider costs when making a conference location decision?

VII. Medical Services

Bob said this looks fine.

Decision or Action Required: None based upon Bob's comments.

VIII. Agency Souvenirs

Bob didn't have anything for this one. Obviously, there will need to be a definition of what is considered an agency souvenir, but this is to be left to the OMB and generally is inappropriate to include in the Executive Order.

Decision or Action Required: None based upon Bob's comments.

IX. Parking

At the moment subsidized parking is not addressed in the EO. Bob agreed that doing something about this could get very messy. He mentioned the problem that President Carter had over this issue and suggested that if the decision is made to end subsidized parking that it should only be terminated for senior people, perhaps level 5 and above.

Decision or Action Required: Parking is not in EO now. Do you want to reduce the subsidy or pass on it for now?

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo/email	Elizabeth Dyre to Reed and Elena Kagan re: Status of Policy Ideas (partial) (1 page)	3/25/97	P5

COLLECTION:

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

FOLDER TITLE:

Safety-Ideas
Safety-Ideas

Rob Seibert

rs76

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]
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we didn't send this in July. It may be because we prepared it BEFORE we sent the legislation to the Hill in September. I just found out John Angell worked on it and will call him at DOE. Per our discussion this morning, I will ask OMB to circulate to agencies and WH offices for comment. Barring any unforeseen objections, we should be able to do soon.

5. Tobacco / Medicaid. HHS and Justice vetted this earlier. Here's a brief overview. HHS argued strongly against bringing a suit against the industry to recover Medicaid and/or Medicare costs for the following reasons. First, under Medicaid, states -- not the feds -- are responsible for seeking recovery of Medicaid expenditures from liable third parties. However, the feds do share in the recovery (after deducting state litigation costs), so feds will be eligible for some of (the limited) funds recovered from Liggett. **We could raise the profile of this result of the suit, but AGs are extremely sensitive about it, and the dollar amounts are likely to be very small.** Let me know if you want me to explore this. HHS decided earlier not to go after Medicare costs because, roughly speaking, (1) the litigation and analysis needed to support it would be extremely costly and (2) an analysis may indicate that smokers save the government money (by dying before their eligible for Medicare). Let me know if you want me to explore in greater depth and with more precision.

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
002. memo	Walter Dellinger to POTUS re: School Prayer Legislation (3 pages)	5/26/95	P5
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

rs77

RESTRICTION CODES

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

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SECTION-BY-SECTION ANALYSIS

- Purpose. The express purpose of the bill is to "prevent discrimination against religious and other types of student speech and expression." This language tracks that used by the Supreme Court in sustaining the Equal Access Act against an Establishment Clause challenge: "Congress' avowed purpose -- to prevent discrimination against religious and other types of speech -- is undeniably secular." Westside Community Bd. of Educ. v. Mergens, 496 U.S. 226, 249 (1990) (opinion of O'Connor, J.).

- Sec. 1: Title. The bill is in the form of amendments to the Equal Access Act, and so titled. The Equal Access Act and the nondiscrimination principle upon which it rests have been approved already by the Supreme Court in Mergens. Further legislation dealing with religion in public schools is safest from constitutional challenge if it builds upon the foundation laid by that Act.

- Sec. 2: Findings. In Mergens, the Court relied on the Act's legislative history for evidence that Congress intended to address "perceived widespread discrimination against religious speech in public schools." Id. A similar record should be created here, and might usefully take the form of statutory findings.

- Sec. 3: Religious literature permitted in otherwise available forum. Courts have held that distribution of religious literature does not constitute a "meeting" protected against discriminatory treatment under the Act. So that student-initiated distribution of literature will receive the same protection as student-initiated meetings, § 3 adds to the Act new provisions for literature distribution that closely parallel those governing meetings.

  Under § 3, a school that otherwise permits students to distribute literature unrelated to school curriculum or activities may not prevent the distribution of literature based on its religious or other content. New §§ 802(f)(3) and 802B(b) expressly preserve the authority of schools to prohibit distribution of literature that is inconsistent with the school's "basic educational mission," invoking the First Amendment standard under which the Supreme Court has accorded schools broad authority to restrict vulgar student speech. See Bethel Sch. Dist. No. 403 v. Fraser, 478 U.S. 675, 685 (1986).

- Sec. 4: Silent prayer, religious discussion, and moment of silence permitted. Section 4 responds in part to recent reports that some students have been prevented from engaging in nondisruptive prayer or religious discussion at school. New §§ 802A(a) and (b) clarify the right of students at both elementary and secondary schools 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.

  New § 802A(c) permits, but does not require, elementary and secondary schools to provide for a short period of silent and personal contemplation by students. Schools may avail themselves of this option only if they refrain from any effort to influence the form of student contemplation, leaving to each student (and his or her family) the decision as to how the period of silence is used. This requirement of strict neutrality by school officials is both consistent with the nondiscrimination principle applied elsewhere in the Act and a necessary condition of the constitutionality of this section. Compare Wallace v. Jaffree, 472 U.S. 38 (1985) (state moment of silence law violates Establishment Clause because it "express[es] the State's endorsement of prayer activities").

- Sec. 5: Individual rights and school authority protected. New § 802B contains substantially the same qualifiers as were formerly a part of § 802, moved and set out separately so that they will apply to all of the amended Act's substantive provisions.

- Sec. 6: Equal access includes means of publicizing meetings. Section 6 responds to reports that schools sometimes deny student religious groups the same access as other groups to the means of publicizing their meetings, as by use of the school public address system. The bill amends the "fair opportunity" criteria of § 802(c) to clarify that equal access extends to the means of publicizing meetings.

- Sec. 7: Prayer services and worship exercises covered. Some school districts may have concluded that the Act permits religious groups to hold "meetings," but not to engage in prayer readings or worship exercises at such meetings. The bill amends the definition of "meeting" to clarify that such religious exercises may be protected by the Act.

- Sec. 8: Lunch-time and recess covered. The question has arisen under the Act whether a school creates a limited open forum, triggering equal access rights, when it allows students to meet during their lunch period. The proposed bill amends the definition of "noninstructional time" to clarify that a limited open forum for meetings or literature distribution may be created during lunch or recess periods.

- Sec. 9: Remedies. The Act currently contains no express enforcement provision, though courts routinely have held or assumed that the Act creates an implied right of action. The bill adds an express private cause of action for injunctive or monetary relief. At the same time, the bill maintains the provision now in § 802(e), clarifying that the Act does not authorize denial of federal assistance to any school.

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A BILL

To prevent discrimination against religious and other types of student speech and expression, and for other purposes.

SHORT TITLE; REFERENCES

Sec. 1. (a) SHORT TITLE.--This Act may be cited as the "Equal Access Act Amendments of 1995".

(b) REFERENCES TO EQUAL ACCESS ACT.--Except as otherwise specifically provided, wherever in this Act an amendment is expressed in terms of an amendment to or repeal of a section or other provision, the reference shall be considered to be made to that section or other provision of the Equal Access Act (20 U.S.C. 4071-4074).

FINDINGS

Sec. 2. The Congress finds that--

[Findings regarding current discrimination against students' personal religious speech and confusion on the part of school officials as to the requirements of the Establishment Clause would be advisable. In the absence of formal statutory findings, legislative history must reflect purpose to address perceived discrimination against religious speech in public schools.]

DENIAL OF EQUAL ACCESS FOR DISTRIBUTION OF LITERATURE PROHIBITED

Sec. 3. (a) DENIAL OF EQUAL ACCESS FOR DISTRIBUTION OF LITERATURE PROHIBITED.--Section 802 (20 U.S.C. 4071) is amended by striking paragraphs (d), (e) and (f) and adding in their place the following new paragraphs:

"(d) It shall be unlawful for any public secondary school which receives Federal financial assistance and which has a limited open forum for distribution of printed or other expressive material to deny equal access or a fair opportunity to, or discriminate against, any student who wishes to distribute material within that limited open forum on the basis of the religious, political, philosophical, or other content of the material in question.

"(e) For purposes of this section, a school has a limited open forum for distribution of printed or other expressive material if it grants students the opportunity for distribution on school premises during noninstructional time of material that is unrelated to the school curriculum or to school activities.

"(f) Schools shall be deemed to offer a fair opportunity to students who wish to distribute printed or other expressive material within its limited open forum for such distribution if such school uniformly provides that--

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"(1) the distribution is student-initiated and the receipt of such material is voluntary;

"(2) there is no sponsorship of the distribution by the school, the government, or its agents or employees;

"(3) the distribution does not materially and substantially interfere with the orderly conduct of educational activities within the school, or undermine the school's basic educational mission; and

"(4) nonschool persons may not direct, conduct, control, or participate in the distribution.

"(g) Nothing in this section shall preclude a school from adopting reasonable time, place and manner restrictions that are applicable without regard to the content of the material being distributed."

(b) CLARIFYING AMENDMENTS.--The Act is further amended--

(1) in section 802(a) (20 U.S.C. 4071(a)), by inserting after "limited open forum" the following: "for student meetings"; and

(2) in section 802(b) (20 U.S.C. 4071(b)), by inserting after "limited open forum" the following: "for student meetings"; and

(3) in section 803(2) (20 U.S.C. 4072(2)), by inserting after "participating in a meeting" and before the period the following: "or the distribution of literature".

DENIAL OF EQUAL TREATMENT OF CERTAIN ACTIVITY AND DISCUSSION BY STUDENTS PROHIBITED

Sec. 4. (a) The Equal Access Act is further amended by adding after section 802 the following new section:

"DENIAL OF EQUAL TREATMENT OF CERTAIN ACTIVITY AND DISCUSSION BY STUDENTS PROHIBITED

"Sec. 802A. (a) SILENT AND NONDISRUPTIVE ACTIVITY--It shall be unlawful for any public elementary or secondary school which receives Federal financial assistance to punish a student for, or otherwise prevent a student from, engaging in silent and nondisruptive activity during noninstructional time on the basis of the religious, political, or philosophical nature of such activity.

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"(b) DISCUSSION AMONG STUDENTS--It shall be unlawful for any public elementary or secondary school which receives Federal financial assistance to punish a student for, or otherwise prevent a student from, engaging in nondisruptive discussion with other students who voluntarily participate in such discussion during noninstructional time on the basis of the religious, political, philosophical or other content of such discussion.

"(c) NEUTRAL MOMENT OF SILENCE--

"(1) Any public elementary or secondary school receiving Federal financial assistance may provide for the observance by its students of a short period of silent and personal contemplation or introspection during the school day.

"(2) If a school described in paragraph (1) provides for a short period of silent and personal contemplation, then the school may not:

"(i) punish a student for, or otherwise prevent a student from, using the period at his or her discretion to engage in the silent and personal contemplation or introspection of his or her choice; or

"(ii) direct, control, conduct, or otherwise seek to influence the form or content of silent and personal student contemplation or introspection."

(b) CONFORMING AMENDMENT.--Section 803(1) of the Act (20 U.S.C. 4072(1) is amended by inserting at the end the following new sentence: "The term 'elementary school' means a public school which provides elementary education as determined by State law."

CONSTRUCTION OF SUBCHAPTER WITH RESPECT TO INDIVIDUAL RIGHTS AND SCHOOL AUTHORITY

Sec. 5. The Equal Access Act is further amended by adding after section 802A the following new section:

"CONSTRUCTION OF SUBCHAPTER WITH RESPECT TO INDIVIDUAL RIGHTS AND SCHOOL AUTHORITY

"Sec. 802B. (a) Nothing in this subchapter shall be construed to authorize the United States or any State or political subdivision thereof--

"(1) to influence the form or content of any prayer or other religious activity;

"(2) to require any person to participate in prayer or other religious activity;

"(3) to expend public funds beyond the incidental cost of providing the space for student-initiated meetings or distribution of literature;

"(4) to compel any school agent or employee to attend a school meeting if the content of the speech at the meeting is contrary to the beliefs of the agent or employee;

"(5) to sanction meetings or distributions of literature that are otherwise unlawful;

"(6) to limit the rights of groups of students which are not of a specified numerical size; or

"(7) to abridge the constitutional rights of any person.

"(b) Nothing in this subchapter shall be construed to limit the authority of the school, its agents or employees, to maintain order and discipline on school premises, to protect the well-being of students and faculty, to prohibit conduct inconsistent with the school's basic educational mission, and to assure that attendance of students at meetings and participation by students in any religious activity is voluntary."

EQUAL ACCESS TO MEANS OF PUBLICIZING MEETINGS

Sec. 6. Section 802(c) (20 U.S.C. 4071(c)) is amended by--

(1) in paragraph (4), striking "; and" and replacing it with a comma;

(2) in paragraph (5), striking the period and replacing it with a "; and"; and

(3) adding after paragraph (5) the following new paragraph:

"(6) students initiating meetings covered under this section are not denied access to means of publicizing their meetings on the basis of the religious, political, philosophical or other content of the speech at such meetings."

PRAYER SERVICES AND WORSHIP EXERCISES INCLUDED

Sec. 7. Section 803(3) of the Act (20 U.S.C. 4072(3)) is amended by adding at the end the following new sentence: "A meeting may include a prayer service, Bible reading, or other worship or contemplative exercise."

LUNCH-TIME AND RECESS MEETINGS INCLUDED

Sec. 8. Section 803(4) of the Act (20 U.S.C. 4072(4)) is amended by striking all that follows after "before actual classroom instruction begins" and inserting in its place the following: ", after actual classroom instruction ends, or between periods of actual classroom instruction."

REMEDIES

Sec. 9. The Equal Access Act is further amended by adding after section 805 (20 U.S.C. 4074) the following new section:

"JUDICIAL RELIEF

"Sec. 806. (a) PRIVATE RIGHT OF ACTION--Any person aggrieved by a violation of this subchapter may commence a civil action for appropriate relief, including, but not limited to, an action for injunctive relief or monetary damages. The United States district courts shall have jurisdiction of actions under this paragraph without regard to the amount in controversy.

"(b) FEDERAL FINANCIAL ASSISTANCE TO SCHOOLS UNAFFECTED--Notwithstanding the availability of any other remedy under the Constitution or laws of the United States, nothing in this subchapter shall be construed to require or authorize the United States to deny or withhold Federal financial assistance to any school."

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	James Jukes to Legislative Liaison Officer re: Transportation Proposed Draft Bill: Transportation Terrorism Prevention Act of 1996 (partial, CIA Act) (1 page)	7/26/96	P3/b(3)
002. memo	Jukes to Legislative Liaison Officer re: Final Signing Statement RE: S735, Antiterrorism and Effective Death Penalty Act (partial, CIA Act) (1 page)	4/25/96	P3/b(3)
003. memo	Jukes to Legislative Liaison Officer re: Copy Reports RE: S735, Comprehensive Terrorism Prevention Act of 1995 (partial, CIA Act) (1 page)	4/10/96	P3/b(3)
004. memo	Jukes to Legislative Liaison Officer re: Proposed Signing Statement RE: S735, Antiterrorism and Effective Death Penalty Act (partial, CIA Act) (1 page)	4/22/96	P3/b(3)
005. draft statement	Draft Statement by POTUS re: S.735 Antiterrorism and Effective Death Penalty Act of 1996 (6 pages)	4/23/96	P5
006. memo	Jukes to Legislative Liaison Officer re: Justice Proposed Statement of Administration Policy RE: HR2703, Comprehensive Antiterrorism Act (partial, CIA Act) (1 page)	3/8/96	P3/b(3)

COLLECTION:

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

FOLDER TITLE:

Terrorism
Terrorism

Rob Seibert

rs78

RESTRICTION CODES

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P1 National Security Classified Information [(a)(1) of the PRA]
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STATEMENT BY THE PRESIDENT

I have today approved S. 735, the "Antiterrorism and Effective Death Penalty Act of 1996." This legislation is a significant step forward in the Federal Government's continuing efforts to combat terrorism.

I first transmitted antiterrorism legislation to the Congress in February 1995. Most of the proposals in that legislation, the "Omnibus Counterterrorism Act of 1995," were aimed at fighting international terrorism. After the tragedy in Oklahoma City, I asked Federal law enforcement agencies to reassess their needs and determine which tools would help them meet the new challenge of domestic terrorism. They produced, and I transmitted to the Congress, the "Antiterrorism Amendments of 1995" in May 1995.

Together, these two proposals took a comprehensive approach to fighting terrorism both abroad and at home. I am pleased that Congress included most of their provisions in this legislation. The Nation now has the ability to stop fundraising in the United States that supports terrorism; to prosecute those who might commit a state crime as part of a terrorist plot hatched overseas; and to deport terrorists from our midst without compromising national security interests.

In enacting this legislation, the United States is in the forefront of an effort among many countries to strengthen their antiterrorism laws, especially to curb terrorists' fundraising. S. 735 will also enable the United States to deposit its instrument of ratification for the international convention

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requiring the placement of chemical markers for detection purposes in plastic explosives. This will help us detect plastic explosives of the type used to blow up Pan Am flight 103 in 1988.

The legislation will also enable the Government to issue regulations requiring the addition of taggants to certain other types of explosives for tracing purposes, if a study suggests that this is feasible. It increases controls over biological weapons, and it provides important enhancements to the penalties for a range of criminal terrorist activities.

This legislation provides important new authority to deny entry to the United States to aliens who are representatives or members of certain terrorist groups. The Secretary of State will deny visas, and the Attorney General will deny admission, to any such alien, absent convincing evidence that the alien is no longer associated in any way with the terrorist group.

Section 330 of the legislation provides that defense articles and services may not be sold under the Arms Export Control Act for countries that I determine are not "cooperating fully" with United States antiterrorism efforts. I understand that making such a determination will require a review of a country's overall level of cooperation in our efforts to fight terrorism, taking into account our counterterrorism objectives with that country and a realistic assessment of its capabilities.

I am disappointed that the Congress failed to provide Federal law enforcement with the electronic surveillance capacity to keep up with advances in telecommunications technology.

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asked the Congress for the power to seek multi-point wiretaps, to enable law enforcement to follow a suspected terrorist from phone to phone, but this authority was denied. Congress also failed to grant authority for emergency wiretaps in terrorism cases, even though it is available in organized crime cases.

This bill also fails to extend the statute of limitations for prosecuting offenses relating to possession of particularly dangerous weapons such as machineguns, sawed-off shotguns, silencers, and explosive devices. These offenses have a three-year limitation compared to the five-year statutory limitation on virtually every other Federal felonies.

I am advised that one provision of this important bill could be interpreted in a manner that would undercut meaningful federal habeas corpus review and raise profoundly troubling constitutional issues. I am signing the bill because I am confident that the federal courts will interpret this provision to preserve independent review of federal legal claims and the bedrock constitutional principle of an independent judiciary.

Section 104 provides that a federal district court may not issue a writ of habeas corpus with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States. Some have suggested that this provision will limit the authority of the federal courts to bring their own independent judgment to bear on questions of law and mixed questions of law and fact that come before them on habeas corpus. In the great 1803 case of Marbury v. Madison, Chief Justice John Marshall explained for the Supreme Court that "[i]t is emphatically the province and duty of the judicial department to say what the law is." Section 104 would be subject to serious constitutional challenge if it were read to preclude the federal courts from making an independent determination about "what the law is" in cases within their jurisdiction. Section 104 permits relief when a State court decision was contrary to well-established federal law as determined by the Supreme Court. I expect that the courts, following their usual practice of construing ambiguous statutes so as to avoid constitutional problems, will read section 104 to permit independent federal court review of constitutional claims based on the Supreme Court's interpretation of the Constitution and federal laws. A

NO

Section 104 limits evidentiary hearings in federal habeas corpus cases when "the applicant has failed to develop the factual basis of a claim in State court proceedings." Opponents of the bill have suggested that this provision might apply to evidence that the applicant did not and could not reasonably have known about during the state court proceedings. Denying litigants a meaningful opportunity to prove the facts necessary to vindicate federal rights would raise serious constitutional questions. I do not read this language to have this effect. The provision applies to situations in which "*the applicant* has failed to develop the factual basis" of his or her claim.

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Therefore, section 104 is not triggered when some factor that is not fairly attributable to the applicant prevented evidence from being developed in state court.

Preserving the federal courts' authority to hear evidence and decide questions of law has implications that go far beyond the important use of prisoners' rights. Our constitutional ideal of a limited government that must respect individual freedom has been a practical realty because independent federal courts have the power "to say what the law is" and to apply the law to the cases before them. I sign this bill on the understanding that the courts can and will interpret section 104 in accordance with this ideal.

No

A number of provisions were added to S. 735 that make major and, I believe, ill-advised changes in immigration procedures. These provisions deny due process and eliminate most remedial relief for long term legal resident aliens. They have nothing to do with fighting terrorism and will produce extraordinary administrative burdens on the Immigration and Naturalization Service. The Administration will urge the Congress to correct these provisions in the pending immigration reform legislation.

I also regret that the Congress included in this legislation a commission to study Federal law enforcement that was inspired by special interests who are no friends of law enforcement. The Congress has responsibility to oversee the operation of Federal law enforcement; to cede this power to an unelected and unaccountable commission is a mistake. Our Nation's resourc

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would be better spent supporting the men and women in law enforcement, not creating a commission that will only get in their way.

I hope that there will be an opportunity to revisit these and other issues, as well as some of the other proposals this Administration has made, but upon which Congress refused to act as part of S. 735.

This legislation is an important step forward. Even though it does not contain everything I believe is needed to combat terrorism, it is a tribute to the victims of terrorism and, on balance, to the men and women in law enforcement who dedicate their lives to investigating, deterring, and prosecuting terrorist activity.

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Jeffrey L. Bleich to White House Personnel re: National Campaign to Prevent Youth Violence: Four-Week Status Report (partial) (8 pages)	9/15/99	P2, P5, b(6)

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Bruce Reed (Subject File)
OA/Box Number: 21554

FOLDER TITLE:

Violence-National Campaign to Reduce Youth Violence

rs81

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]

Cc: ~~Eric + Tom~~
+ file: Violence - Nat Campaign

NATIONAL CAMPAIGN AGAINST YOUTH VIOLENCE

MEMORANDUM

TO: White House Personnel

FROM: Jeffrey L. Bleich

DATE: September 15, 1999

RE: National Campaign To Prevent Youth Violence: Four-Week Status Report

Pretty good, on the whole

This memo provides a brief description of the Campaign's status to-date and describes the major initiatives that we have in development. Although the Campaign is at a preliminary stage, the report indicates that we have made substantial progress in getting the Campaign underway and establishing a vision for the campaign.

I. Administrative Efforts

Incorporation: The Campaign has retained Munger, Tolles & Olson LLP to incorporate the firm as a California Non-Profit and to obtain 501(c)(3) status for the Campaign. These services have been donated as pro bono work. We expect the work to be completed by September 17.

Office Space: The Campaign has received donated office space in San Francisco where it will be headquartered. In addition, Eli Segal is in the process of arranging for space to be donated in Washington, D.C.

Personnel: The Campaign has hired a Chief Operating Officer, Mark Abbott, who was the Chief Operating Officer of Major League Soccer. We are currently interviewing people for the positions of Programs and Outreach Director, Communications Director, Development Director, and secretarial support. We have retained an accounting and human resources person to assist in setting payroll, benefits, and accounts.

Fundraising: We have received firm commitments of $100,000 each in start-up funds from the Department of Justice, the Kaiser Family Foundation, and a Managing Director of Deutschebank, Neal Neilinger. In addition, we have made preliminary inquiries to the AOL Foundation, the California Wellness Foundation, and the Packard Foundation seeking more significant financial support. We have meetings scheduled over the next few weeks with each of these potential funders. In addition, a private philanthropist, Maurice Paprin, has offered to raise $5 million for the Campaign, and Neilinger has stated that he will raise $10 million for the Campaign. We will also be approaching in the next two weeks the following private individuals

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and businesses seeking significant donations: Christina Kiehl (S.F.), Bob Friedman (S.F.), Chuck Geschke (S.F.), Annie Casey Foundation, Soros Foundation, John Doerr, Rob Reiner, Mattel — Bill Galnick/TLC, and Ben & Jerry's.

<u>Business Plan and Budget</u>: A draft business plan and budget has been prepared for approval by the Board of Directors once the Board is formed. A copy is attached to this summary.

[redacted]

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<u>Internet Site</u>: We are meeting with AOL on September 16 to discuss establishing an internet site which will set forth the objectives of the Campaign and will eventually se[illegible] link to various clearinghouses that provide services in the youth violence area.

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Marketing: The Ad Council has offered to provide assistance in developing campaign themes, program names, and a logo for the organization.

[redacted] (b)(6)

Affiliate Outreach: We have contacted over 90 organizations and established formal affiliations with approximately 47. With respect to the larger organizations such as the American Psychological Association, the Youth Law Center, America's Promise — Alliance for Youth, the National Funder's Collaborative to Prevent Violence, and other groups, we have had extensive meetings in person to assure cooperation in our efforts. Next week we will complete our database listing contacts and affiliations.

II. Substantive Programs

The Campaign has three substantive objectives: (1) to launch a national media campaign that educates the general public, caretakers, and youths about what they can do to reduce youth violence and to inspire them to take responsibility for reducing youth violence; (2) to assist local communities in developing effective coordinated efforts to reduce violence; and (3) to assist in developing a more accessible, and accessed, base to link individuals and communities with violence reducing resources.

In order to unify these efforts under a common theme, we propose launching a Year 2000 initiative under the banner: 2000 Lives Per Day. That is the number of victims of youth violence every day in America. We would hope to have the President announce this initiative on October 21, 1999 as part of the Nationwide Day Of Youth Violence Awareness. The Campaign will be devoted to having all Americans work to stop youth violence every day. Each of the three initiatives will be focused on advancing these objectives. stupid

A. Media Campaign

I would put a little more emphasis on What Works, and a little less on media campaigns (which are good, but unlikely to make a difference until we have a clearer product line).

We have met with the President and COO of the Ad Council and are in negotiations to launch seven to nine major nationwide campaigns over the next six months. These campaigns will also intensified in markets where we have active Ceasefire programs. The Campaigns' principal messages will likely focus

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on the following topics, but are subject to revision based upon our research about public attitudes.

Parents: (1) Preventing violence by teaching peaceful ways to resolve disputes and forming closer connections to kids. We will partner with Americas Promise and the Boys & Girls Clubs of America.

(2) Identifying when your kids are at risk, and what you can do.

(3) Controlling what your child learns about violence in the home by learning to use the v-chip, installing cyber-patrol on your computer, and sitting down with your child when he or she is watching t.v., working on the computer, or listening to music, and talking about what they are hearing and seeing.

(4) Making clear that most youth homicides involve guns and that federal law prohibits anyone under 21 from owning, operating, or possessing a handgun or semi-automatic weapon.

Youth: (1) Break down cultural messages to girls and younger boys that violent males are attractive and instead empower them to discourage violence.

(2) Emphasize to boys the consequences of violence (impact on victims and their families, impact on their own families, prison) and opportunities for positive ways to deal with anger, aggressiveness, and frustration through local resources. We have already agreed to partner with the APA on a set of advertisements that are already in development. The APA has already completed its research and raised $100,000 for its Reason to Hope campaign with the Ad Council. An additional $300,000 will probably be enough to produce these spots.

(3) Media literacy. We will partner with mediascope on these ads.

General Public:(1) Demonstrate to the general public that youth violence is not like the weather, in that it can be predicted, its consequences can be muted, but that it will always exist at current or higher levels. Get the message out that America has been training kids to be violent, and that there is something every citizen can do to reduce youth violence.

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(2) Advertise programs that work, and how individuals and private businesses can make a difference in reducing youth violence.

The key to this campaign will be in developing media messages that resonate in the same way as "friends don't let friends drive drunk," "buckle up," "every litter bit hurts," "only you can prevent forest fires," etc. The message will need to be one that youth in particular own. We hope to use t.v., radio, print, movie trailers, the internet, school video, concerts, and "guerilla" youth-oriented marketing to deliver the message.

In addition to the media campaign, we are developing the following major events:

Athletes for Non-Violence: Building on the San Francisco Giants' "Resolve to Stop the Violence" Day, we hope to enlist every major league sports franchise in America to host a Stop the Violence Day with 3 dollars from each ticket going to that City's anti-violence program. As part of this campaign, we would have every professional athlete renounce violence off the field. We have already received offers from numerous professional athletes to do appearances on behalf of this cause. The working theme for this program is "Violence: Its Not A Game"

Concerts and Events: Working with MTV, WB, Nick, Discover, SHINE, Do Something, and other organizations that have enlisted popular performers and trend-setters we would expand the MTV, Fight for Your Rights concept of anti-violence concerts and events to raise funds and raise consciousness.

Media Non-Violence Day: Working with all of the networks, major cable channels, and major studios we will try to organize a day of media non-violence on April 20 (the anniversary of Columbine) in honor of those youths who were injured or died from violence. The working title for this program is "Give Peace A Chance." We would hope to obtain rights to John Lennon's song as part of the advertising promoting this day.

School Programs: Working with SHINE, The Learning Company and Broderbund (software divisions of Mattel), Zap Me (an on-line school based program), the Justice and Education Departments, as well as other providers of non-violence and esteem-building curricula in the schools, we will help ensure that every school in America is using up-to-date techniques for preventing violence, building dispute resolution skills, identifying at-risk youth, and drawing on community resources to treat at risk youth.

B. Youth Ceasefire

The objective of the youth ceasefire is to help local communities develop effective, multi-disciplinary approaches to violence prevention. The California Wellness Foundation, National Funding Collaborative for Violence Prevention, YouthBuild, AmeriCorps, Boston Violence

Prevention Project, and California State Violence Prevention Authority, and other organizations have already started this approach of organizing and funding model programs in individual communities that draw upon law enforcement, social workers, public health officials, grassroots organizations, religious and recreational organizations, parents, schools, private companies, victims groups, and youths themselves to address the causes and effects of youth violence. The key to this sort of approach is to get all groups to buy into the coordinated strategy and not interfere with effective initiatives. For example, in Boston, the police and community groups reached an understanding. The police would not be criticized for focusing enforcement on violent youth gangs and predatory youths, in exchange for an agreement that greater resources would be devoted to effective treatment programs for these youths and that the police would consider the advice of churches and community groups about using positive diversion for at-risk youth who were not yet dangerous. The objective is to take the 6% of juvenile offenders who are responsible for 70% of violent crime out of circulation early, but get them the treatment they need, while at the same time preventing other at-risk youth from becoming violent.

We have initiated research to identify the 20 cities in America which have the worst youth violence problem measured in terms of absolute numbers, proportion of violent youth, and or trends in increasing youth violence. We have also started discussions with the Wellness Foundation, Kaiser, the National Collaborative, America's Promise, Alliance for Justice, LISC, AmeriCorps, and YouthBuild to cooperate in expanding their existing programs. Our next step will be to work with the National Conference of Mayors and the National Association of Attorneys General to begin working in each targeted community. We have already arranged to partner with the APA to establish a model program for the worst community in San Francisco Bay Area under a Packard/Kaiser/Mott/Wellness Foundation grant that has already been awarded. good

C. Clearinghouse

There is a perceived need within the various communities that wok on youth violence issues that better communication and access to effective programs is needed. We hope to build upon existing databases and clearinghouses to link these groups effectively. We will rely largely upon technical experts at AOL and other computer companies and our advisory panels to develop ideas for improving and building upon existing websites and 1-800 numbers.

Preliminary Ideas For Advisory Board Panel Members to Discuss

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NATIONAL CAMPAIGN AGAINST YOUTH VIOLENCE

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Industry

Kathy Bushkin (AOL)
????? (Yahoo) (ask Mark)
????? (Excite) (ask Alan Rambam)
Lou Platt's replacement at (Hewlett-Packard)
????? (Sun Microsystems) (ask Tom Freedman)
Deutschebank

Grass Roots

Child Family and Law Consortium Members
May 10 invitees
August 17 invitees
Others

Media/Sports

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MTV
WB
Nickelodeon
SHINE
Do Something
Mediascope
All Networks
Relevant Cable
Ad Council
NAB

Academics/Researchers:

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APA Researcher
CDC National Center for Injury Prevention and Control
CDC Foundation
California Wellness Foundation
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