[redacted]

Re health care
Commission

THE NEW YORK TIMES,
WEDNESDAY, SEPTEMBER 11, 1996

A Watershed Agreement

The formal agreement announced yesterday to clean up the 2,000-square-mile watershed that supplies New York City with its drinking water is a triumph of good sense over seemingly insurmountable grievances. The agreement ends years of upstate-downstate hostility, and if all goes well it will spare the city the need to build a $6 billion filtration system it can ill afford.

Under the plan, the city will spend about $275 million to acquire thousands of acres of land from willing sellers to serve as buffer zones around its reservoirs. It will spend an additional $1.2 billion to upgrade or build sewage treatment plants near streams that feed the reservoirs, repair many of the region's 128,000 septic tanks and underwrite innovative conservation programs.

To appreciate the importance of the agreement — and why it took so long to achieve — it is necessary to recall some complicated history. New York City has long had the power to regulate development around its 19 upstate reservoirs. But the city did not exercise that power for many years, and local residents naturally got the idea that they could do whatever they wanted. Commercial development proceeded rapidly, water quality declined, and in 1989 the Federal Environmental Protection Agency ordered the city to clean up the watershed or build a filtration plant.

When the city then decided to use its powers to control land use, outraged upstate residents filed a series of lawsuits that effectively blocked any efforts to improve water quality. Enter Gov. George Pataki, who convened all the players — city officials, environmentalists and representatives of the Coalition of Watershed Towns, which deeply resented what it regarded as the city's highhanded ways. Seven months of hard bargaining were required to reach a conceptual framework, 10 months more to iron out the details.

The agreement, which will be administered by essentially the same coalition of forces, is not wholly satisfactory to some environmentalists, who complain that it allows for too many new sewage treatment plants, thus inviting harmful new development. On balance, however, it is hard to see a serious downside to this deal. The city's huge investment in pollution control will give upstaters an economic transfusion. New Yorkers will continue to receive inexpensive, high-quality drinking water. Water rates might rise a bit, but the ultimate cost to consumers and taxpayers will be far less than the cost of building a filtration plant.

Governor Pataki deserves a lot of credit, as do various environmental groups, city officials and the E.P.A., which kept the pressure on. The watershed residents themselves merit a special bow for sacrificing local commercial ambitions to the larger goal of environmental quality.

The New Clinton Health Panel

President Clinton had a transparent political motive in announcing that he would appoint a commission to examine how well modern health-care plans treat patients. Florida, where he made the announcement, is full of elderly voters nervous about what health-care reforms mean for them. But whatever the President's motive, the commission is a constructive idea.

The spread of health maintenance organizations, which now cover more than 60 million Americans, has slowed the increase in health-care costs. But the growth of the managed-care approach has created anxiety about whether patients are being denied treatments in order to lower the costs of health-care companies. By riveting attention on quality of care, an impartial commission can calm needless fears and weed out bad practices.

Managed care, by charging a fixed fee no matter how much or how little is done for the patient, builds a wedge of distrust because the plan profits, in the short term, by doing less for its patients. So far, studies show that typical managed-care programs have not compromised on quality of care, and in fact have brought forth quality-improving innovations. But some plans have fueled distrust by devoting more attention to managing costs than care. Indeed, there have been cases of egregious shortcuts. State legislatures in turn have overreacted by shackling managed-care plans, driven by potent lobbying by physicians and insurers who profit from traditional systems.

A properly organized commission can prevent the rush to needless legislation and unnecessary regulation, and can help eliminate abuses. Equally important, it can help educate citizens about changes in the health-care system already made or needed in the future. One lesson of the failed Clinton effort at health-care reform was that constructive change cannot take place without wider public awareness and involvement.

Some opponents of the commission have argued that there are already responsible organizations monitoring quality. But most are controlled by the very industry they purport to monitor. Besides, quality assessment is in its infancy. The commission can bring impartial judgment to the task and propel both industry and government to make faster headway. It could also prod all health plans, whether traditional or managed-care, to assume the responsibility of collecting easy-to-compare data on their treatment practices and health outcomes.

The President was thinking about Nov. 5 and Florida's electoral votes when he decided to appoint a panel. But if he appoints the commission judiciously, it could help renew the chances of building an effective and economical health-care system.

THE NEW YORK TIMES,
WEDNESDAY, SEPTEMBER 11, 1996

In Mr. Yeltsin's Absence

After all the dodging and deception about Boris Yeltsin's health, it is refreshing to get some candor from the Russian leader. He announced last week that he needs heart surgery and plans an operation later this month. Yesterday Mr. Yeltsin applied some of the same openness and decisiveness to the question of how Russia will be ruled in his absence, whether that turns out to be a brief or extended period. But too much still remains unclear.

Mr. Yeltsin has temporarily placed most national security and law enforcement authority under the direct control of Prime Minister Viktor Chernomyrdin. That leaves a troubling degree of ambiguity over precisely how much presidential power will be transferred and for how long. Mr. Yeltsin's spokesman, for instance, made a point of noting yesterday that his boss was not relinquishing nuclear command authority.

The Russian Constitution provides for the Prime Minister to fill in for three months if the President is incapacitated or dies. After that, if the President cannot serve, a new election must be held. But there are no formal guidelines or mechanisms for determining when a president is sufficiently infirm to warrant a transfer of power. In the turbulent inner councils of the Kremlin, where Mr. Chernomyrdin, chief of staff Anatoly Chubais and the national security adviser, Aleksandr Lebed, are vying for influence, that kind of latitude is an invitation to instability.

Though Mr. Yeltsin and his doctors have not specified the nature of his heart ailment or the type of operation he will have, the most likely procedure is bypass surgery. If all goes well, Mr. Yeltsin should eventually be able to enjoy a more active life than he has in recent months, but the recovery period after such a major operation can last several months.

Mr. Yeltsin and his aides should settle on a clearer, more comprehensive plan for transferring power in advance of the surgery. In a newly democratic society, there is no more important or potentially volatile moment than a shift of power, especially when a leader is incapacitated or dies. Mr. Yeltsin and his Government owe Russians no less than an orderly transfer.

Stalling on Ethics

Crowning two years of partisan gridlock, the House Ethics Committee seems determined to sacrifice whatever little is left of its credibility by letting Congress adjourn without resolving any of the pending ethics complaints against Speaker Newt Gingrich. The committee's present plans do not even call for making public the lengthy report filed last month by James Cole, the special counsel belatedly hired by the committee to look into tax law charges against the Speaker.

By stalling so long to shield him, the committee's Republican chairwoman, Nancy Johnson of Connecticut, has left the panel little time to resolve all allegations against Mr. Gingrich. But the two weeks or so before Congress adjourns is surely ample time to bring at least this phase of the case to an honorable conclusion.

Mrs. Johnson and her G.O.P. colleagues succumbed to public pressure last December and finally agreed to retain an outside counsel, Mr. Cole. They gave him a limited mandate to examine whether Mr. Gingrich had violated tax laws by using tax-deductible donations to finance a college course he taught in Georgia in 1993. It intentionally omitted a range of questions involving Gopac, Mr. Gingrich's aggressively partisan political action committee, which helped to develop the course. These questions, which are the subject of a complaint filed by the House minority whip, David Bonior, also need review by an outside counsel, but Republicans on the committee are resisting.

It is not known whether the evidence gathered by Mr. Cole exonerates the Speaker on the tax charges, or suggests he behaved either improperly or unethically. Committee members have said the report simply lays out the facts while failing to make any recommendations. But the issue at this point is not just Mr. Gingrich's conduct, or the thoroughness of Mr. Cole's work, but the efficacy of the committee itself.

The Ethics Committee is scheduled to meet today. If, after all this time Mrs. Johnson and her colleagues cannot rise above partisanship to act promptly on Mr. Cole's findings and make them public, they will demonstrate that this supposedly principled panel is little more than a charade.

The New York Times

Founded in 1851

ADOLPH S. OCHS, *Publisher 1896-1935*
ARTHUR HAYS SULZBERGER, *Publisher 1935-1961*
ORVIL E. DRYFOOS, *Publisher 1961-1963*
ARTHUR OCHS SULZBERGER, *Publisher 1963-1992*

[Sunday, March 7, 1993]

Opening Up on Health Care

People, get ready. The health care debate is about to go public. That means life will get more complicated for the President's Task Force on National Health Care Reform. The White House's effort to keep secret the deliberations of Hillary Rodham Clinton and 400 others involved in the task force is unseemly, possibly illegal and wrong. Secrecy is contrary to the spirit of the public forums planned by President and Mrs. Clinton later this month on the gritty questions awaiting the voters and Congress.

Two of these questions are:

- How much freedom of choice in doctors and medical tests will most consumers have to give up in order to make universal health care affordable?
- When it comes to money, who will be the big winners — the insurance companies, the health care industry or consumers?

The interesting thing about these questions is that they have been known to experts since the outset. But they have been masked from public view by the generalized proposals of the election campaign and the antiseptic language of the think-tank seminar. At its most basic, Mrs. Clinton's task force is a mechanism for setting policy before the public gets stirred up about the difficulty of these choices.

The most explosive issue has to do with freedom of choice in selecting physicians. The next most sensitive is which tests and treatments will be ruled out on statistical grounds. This is where medicine and economics can collide. If you or your child were among a tiny minority with atypical symptoms, a long-shot test that saved your life would hardly seem uneconomical or unnecessary.

Confronted with these conflicting demands, the Clinton Administration has settled on managed competition as the preferred model for a national health care system. This page has argued for it, too. But political prudence and intellectual honesty require full public disclosure of the limitations of this or any other system.

Since health care absorbs one-eighth of the nation's income, the White House, Congress and the voters also have to decide in public view how big the profits will be and whose pocket they wind up in — for this being America, profits there will be.

One editorial cannot cover these questions. Indeed, the quarterly journal Health Affairs has just taken a stab at explaining managed competition in a special issue, and it ran to 299 pages. The report devotes only a handful of pages to the question of consumer choice, but those pages clearly point out the trade-off many will face under managed competition or other national schemes.

"Managed competition occurs at the level of integrated financing and delivery plans, not at the individual provider level," writes Alain C. Enthoven, the formulator of managed competition. "For economical behavior to occur, doctors must be motivated to prescribe economically."

In other words, medicine at the individual level — single practitioners or small groups of physicians seeing patients who sought them out specially — could gradually become a thing of the past or an add-on luxury to be purchased at a premium by the affluent. "To prescribe economically" means to forgo tests, drugs, surgery or office visits that might occur under the present system whereby doctor and patient do as they choose and an insurance company or government program like Medicaid bears the cost.

After serious study, hundreds of experts and the President and First Lady of the United States think this has to be the way of the future. The American Medical Association has belatedly come to the same conclusion, hence its unsuccessful effort last week, as the physicians' bargaining agent, to shoulder its way into Mrs. Clinton's task force.

But some medical experts and politicians worry about the financial advantage that could accrue to insurance companies and health care providers large enough to service the new consumer cooperatives envisioned under managed competition. For better or worse, the folks meeting behind closed doors at the White House are talking about creating a new health care economy that could force many existing insurance companies and hospitals out of business and change the way most doctors practice. Is Congress ready to endorse any system that brings such radical change, but has never been tested on a national scale? It will make for an interesting floor debate.

The Clintons' opponents sniff opportunity in the touchy issue of physician choice. In the Republican response to Mr. Clinton's speech to Congress on Feb. 17, the House leader, Bob Michel, said, "Republicans believe in your right to select the doctor of your choice and your right to immediate care without long waiting lines, and preserving the best of what health care has to offer."

The Administration says its plan will feature physician choice, too. But there are few details. That's just the point. Details — public details — are what is needed. Mrs. Clinton should open the curtains and let the sun shine in on her task force and let its deliberations be exposed to the invigorating discipline of public scrutiny and political debate. On this issue of surmounting importance, it is time for the New Democrats to behave democratically.

The Value of Cigarette Taxes

Elected officials, from Bill Clinton on down, are pondering an increase in cigarette taxes. Such taxes would be doubly welcome. [illegible]

further reducing smoking, his prediction is no doubt an overestimate. Even so, his [illegible]

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The Value of Cigarette Taxes

Elected officials, from Bill Clinton on down, are pondering an increase in cigarette taxes. Such taxes would be doubly welcome. Any increase is likely to discourage smoking. And the money raised from those who won't quit can help pay for vital services.

Because smoking is declining, cigarette taxes will raise less money now than they might have a few years ago. But that is no reason to give up on this "sin tax." The health gains alone are worth the price. The American Lung Association says every 10 percent increase in the cost of cigarettes cuts smoking by 4 percent. Young people may never start smoking if the cost is high.

Gov. Mario Cuomo of New York says his proposed 21-cent cigarette tax increase will raise $180 million. But if Washington raises Federal taxes, further reducing smoking, his prediction is no doubt an overestimate. Even so, his proposed increase merits legislative approval. His administration predicts that the 21-cent increase will reduce the number of New Yorkers who smoke by 85,000.

There is a danger that higher state taxes will cause an increase in bootlegging, with people bringing cigarettes from states with lower taxes to states with higher taxes. But in New York, budget officials say they've factored that into their forecasts. And bootlegging might lose its appeal if Washington raised cigarette taxes substantially nationwide.

The tobacco industry says cigarette taxes will fall mostly on blue-collar workers and the poor. But no matter what their income, those who stop smoking will be better off.

Editorial Notebook

[The New York Times · Sunday, March 7, 1993]

THE WHITE HOUSE

WASHINGTON

May 6, 1993

MEMORANDUM FOR HILLARY RODHAM CLINTON

FROM: STEPHEN R. NEUWIRTH
Associate Counsel to the President

SUBJECT: Amendment to FACA

Senator Levin is prepared to introduce an amendment to his proposed lobbying disclosure reform legislation that would clarify that the spouses of the President and Vice President are "full time federal officers or employees" for purposes of the Federal Advisory Committee Act -- that is, that those spouses do not trigger the Act. A member of Senator Levin's staff told me that if we concur, Senator Levin will introduce the amendment if (a) Senator Dole agrees that the Republicans will not oppose or debate the amendment and (b) no other amendments to the FACA are proposed.

Maggie, Melanne, Vince and I all believe that we should thank Senator Levin and express our interest in such an amendment, but also state that we do not believe this is the proper time for such an amendment to be introduced. We are concerned that opponents of our health care reform proposals might seize upon the introduction of the amendment as yet another opportunity to challenge your role and the purported "secrecy" of the task force and working group. We are also concerned that introducing such an amendment at this time might be interpreted as a concession that we expect to lose our pending appeal in the FACA lawsuit. Finally, and perhaps most importantly, Senator Levin's lobbying disclosure reform bill, already a subject of substantial dissent on the Hill, would appear a poor vehicle, in any event, for introducing an important amendment to FACA.

House leaders oppose secrecy

Bipartisan brief to defy first lady

By Paul Bedard
THE WASHINGTON TIMES

A1

Bipartisan House leaders yesterday broke with the White House and sided with 12 public interest groups suing to compel the first lady's health care reform task force to meet in public.

In a surprise letter to the U.S. Court of Appeals, House attorneys said they plan to file a detailed brief tomorrow opposing the administration's appeal of a lower court's ruling that Hillary Rodham Clinton must hold fact-finding meetings of the task force in public.

House General Counsel Steven R. Ross said Speaker Thomas Foley and the Bipartisan Leadership Group will defend the 21-year-old Federal Advisory Committee Act, which Justice wants declared unconstitutional so Mrs. Clinton can hold the meetings in secret.

"Such a brief would perform the function of providing an official defense of the facial constitutionality of the Federal Advisory Committee Act [FACA]," he said in the letter, which was provided to The Washington Times.

"We will be opposing the Justice Department," Mr. Ross said later.

A lawyer involved in the case said the House leadership's decision to oppose the White House and the Justice Department's legal defense team creates a "government at war" over the issue of secrecy and so-called sunshine laws governing presidential task forces such as the one headed by Mrs. Clinton.

U.S. District Judge Royce C. Lamberth ruled against Mrs. Clinton on March 10, finding the law largely constitutional.

He also ruled that the task force must make public the documents and other working papers used in developing the health care reform legislation that President Clinton is expected to unveil May 17.

The law, approved by the Democratic Congress in 1972, said that only presidentially appointed task forces composed "wholly" of federal workers could meet in secret.

see **SECRECY**, *page A10*

The Washington Times
WEDNESDAY, APRIL 14, 1993

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

ASSOCIATION OF AMERICAN PHYSICIANS AND SURGEONS, et al.,
Plaintiff-Appellees,
v.
HILLARY RODMAN CLINTON, et al.,
Defendants-Appellants.

Nos. 93-5086 & 93-5092

MOTION FOR LEAVE TO FILE A BRIEF AMICUS CURIAE

By letter dated April 5, 1993, the Attorney General formally notified the Speaker of the House of Representatives of the position taken in this case by the Department of Justice regarding the possible unconstitutionality of the Federal Advisory Committee Act. The notification followed the long-standing practice that when the constitutionality of an Act of Congress such as the Federal Advisory Committee Act is questioned and the Depart[illegible]

With this document, the House bipartisan leadership set in motion its opposition to secret meetings by the first lady's health reform task force.

SECRECY

From page A1

The judge agreed with three groups that sued the White House for access to the task force that Mrs. Clinton isn't a federal employee and that her group must meet in public.

The Justice Department appealed that decision, claiming Mrs. Clinton is essentially a federal employee because she has an office in the White House and because of her relationship with the president.

Justice Department lawyers also claimed that the law is unconstitutional because it interferes with the president's ability to draft legislation.

The lawyers said public scrutiny of staff activity would impair the president's "access to candid and unfettered advice" because aides would be afraid to "share their knowledge and expertise."

Judge Lamberth, however, ruled that task force meetings in which policy is developed can be secret.

This ruling prompted a counter-appeal by three groups that brought the original suit — the Association of American Physicians and Surgeons Inc., the American Council for Health Care Reform, and the National Legal & Policy Center.

Mr. Ross, the House lawyer, said in a telephone interview that the House brief would not discuss the issue of whether Mrs. Clinton is a federal employee. It will argue, however, that if the appeals court finds she isn't a federal worker, then her task force must meet FACA rules.

He said the House will also claim that all task force sessions — including policy-making meetings — must be public. "That statute deserves an official defense," he said.

The task force has held only one public meeting, although the huge working group holds dozens of meetings daily. Mrs. Clinton recently said that her group will hold public meetings only if ordered by the court.

White House and task force spokesmen had no comment on the House decision to oppose its appeal.

Kent Masterson Brown, lead attorney for the groups that sued for access to the task force, said the House decision to join the appeal and oppose the Justice Department is a major blow to the White House and its efforts to wrap up work on health care reform without holding another public meeting.

"What you have is two branches of the government at war," he said. "The thrust of [the House brief] is to support the thrust of our appeal."

Mr. Brown added that the "whole complexion of the case has changed" because the House leadership broke with the White House to defend the law, originally written to prevent special interests from influencing presidential task forces.

Nine other groups have joined Mr. Brown's original three in opposing the White House appeal. Oral arguments will be held April 30.

In a related event, Justice Department lawyers assured Mr. Brown that the task force won't destroy paperwork developed by the working group for the task force.

In a hearing late yesterday in Judge Lamberth's court, Mr. Brown raised concerns that the White House would destroy the documents before he succeeds in getting administration approval of his Freedom of Information Act request for records classified by the White House.

Judge Lamberth asked the Justice Department to detail which documents it would protect.

1-G

The Washington Times
WEDNESDAY, APRIL 14, 1993

POW numbers disputed

But senator says he's convinced

By Bill Gertz
THE WASHINGTON TIMES

A1

The Defense Intelligence Agency is questioning the accuracy of a secret Soviet report stating that North Vietnam held 1,205 American POWs in September 1972, some 700 more than it returned in 1973.

But Sen. Robert C. Smith, vice chairman of a Senate panel that investigated reports of servicemen missing from the Vietnam War, said he is convinced the document from the GRU, the Soviet military intelligence agency, is authentic.

At a news conference yesterday, Mr. Smith noted that the report says some U.S. prisoners would be released by North Vietnam as a goodwill gesture, which corresponds with the secret release of three POWs several days after the Sept. 15, 1972, report was made in Hanoi.

"It is an authentic document, there is no question about that," Mr. Smith said, adding that the United States should not normalize relations with Vietnam until the POW issue is resolved.

The leaders of veterans and POW activist groups at the news conference echoed the New Hampshire Republican's call for maintaining the 17-year-old U.S. trade embargo against Vietnam.

Harvard researcher Stephen J. Morris uncovered the document in January while examining Soviet archives in Moscow and has said he told U.S. officials about it in February.

see POW, page A8

POW

From page A1

Administration officials have said they received a copy of the report Thursday from Moscow.

The GRU document is a translated report by a Vietnamese army general to the North Vietnamese Communist Party and dated Sept. 15, 1972. It states the total number of American POWs held captive was 1,205, but only 368 were acknowledged officially.

Only 591 American POWs were returned after the U.S. withdrawal from the war. According to Pentagon records, 457 of those came from North Vietnam.

The Pentagon's lead agency in investigating reports of missing servicemen, the DIA stated in an April 12 analysis of the document that Gen. Tran Van Quang's report to the North Vietnamese politburo "implies" Hanoi held 1,205 Americans.

Gen. Quang, then deputy chief of staff, stated clearly in the report that "1,205 American POWs are kept in the prison of North Vietnam — that is a large number."

"DIA believes the number 1,205 could be an accurate accounting of total prisoners held, including American, ARVN [South Vietnamese military] and Thai POWs," said Robert R. Sheetz, director of the DIA's POW office.

"Numbers in this document cannot be an accurate accounting if discussing only U.S. POWs," he added.

The GRU document, translated from Vietnamese to Russian, refers to "American POWs" throughout and never mentions non-American POWs, Mr. Smith said.

Mr. Smith said the report's veracity is bolstered by its statement: "Soon we will free several POWs in order to put pressure on Nixon's government, observe his reactions and those of the American public, as well as demonstrate our good intentions in this matter."

According to U.S. officials, three American prisoners were released at the end of September 1972.

The DIA questions the accuracy of the document because it states that 16 American colonels were held when only 10 were ever reported missing.

But a Pentagon official speaking on the condition of anonymity said American prisoners often lied about their rank in order to receive special treatment.

Pentagon spokesman Bob Hall said yesterday that "the conclusion has been drawn that we need to discuss [the report] with the Vietnamese, which is what we're going to do."

Retired Army Gen. John W. Vessey will hold talks with Vietnamese officials in Hanoi next week, and the new document will be a top priority, U.S. officials said.

AP

Harvard researcher Stephen J. Morris found the POW document in January.

The DIA is "still evaluating the document," Mr. Hall said.

Several POW activists and families have long accused the DIA of ignoring, mishandling and concealing data about missing servicemen. Mr. Smith's POW committee, which was headed by Democratic Sen. John Kerry of Massachusetts, concluded in a January report that the DIA had been "plagued by a lack of resources . . . [and] slow to follow up on live sighting reports."

According to the GRU document, the North Vietnamese broke down the captured Americans as follows:

- Pilots captured in North Vietnam — 624.
- Pilots captured in South Vietnam — 143.
- Special Forces soldiers captured in North Vietnam — 47.
- Other troops captured in South Vietnam — 283.
- Other troops captured in Cambodia — 65.
- Other troops captured in Laos — 43.

"I feel very strongly that the issue of the numbers and the essential accuracy of the document is unchallenged," Mr. Smith said. "I mean, there is no way you can fake such a document. It's impossible."

He was supported yesterday by members of the American Legion, Vietnam Veterans of America, Disabled American Veterans, the National League of Families and the National Alliance of Families.

Mr. Smith said it was "an outrage" that the document was stamped secret by the Clinton administration since he had planned to release it to the public yesterday.

"We think that it is a forgery document," Le Bang, Vietnam's ambassador to the United Nations, said on CNN. "It's totally false."

Mr. Le confirmed that Gen. Quang was a Vietnamese officer but said he held a lesser rank than deputy chief of staff in 1972. The retire[d] currently is head of th[e] War veterans associati[on]

MC -
This has been okied by Bob B. & Lawyers -

Q and A's on Health Care Task Force Appeal

Q: Last week you told us that the President was happy with the district court's decision. Why are you now appealling the decision?

A: As we told you last week, the President was pleased with the district court's decision because the court held that everything that has happened to date is legal, and that everything planned to take place in the coming weeks -- including the long-planned public meeting of the task force that is scheduled for next Monday in Washington -- is also legal.

For this reason, we believe that the Task Force and the working group should be able to continue their work unaffected by the court's decision. However, our lawyers at the Justice Department felt strongly that the court had made substantial errors both in interpreting the Advisory Committee Act and in applying principles of constitutional law. This case has implications beyond the health care task force for the President's ability to seek advice and we were advised by the Justice Department that an appeal was important to ensure that these issues be properly resolved.

Q: But you are not just appealling. You are asking for an expedited appeal. Doesn't that mean that you are really concerned about the impact of the district court's decision on the Task Force?

A: Again, we are seeking an expedited appeal based on the advice of our attorneys at the Justice Department. The Justice Department advised us that because of the short time frame within which the Task Force will complete its work, it is important to proceed with an expedited appeal if the issues raised in the case are to receive the full attention of the appellate court.

Q: Don't your papers make reference to the "impractability" of the judge's decision -- that he has made the FACA unworkable?

A: I am not a lawyer, and I suggest that you read the papers that the Justice Department has filed with the Court today. I can tell you, however, that our Justice Department attorneys, as well as our attorneys in the White House, concluded that the district court had created a framework that was unworkable from a constitutional perspective, and that made it difficult in the long run to know exactly what

it is that the Advisory Committee Act will now be construed to require.

Q: Aren't you just using this appeal as a means to maintain the secrecy of the Task Force's work?

A: Not at all. We had been planning all along to hold a public meeting, and we would do that even if the district court's decision were withdrawn today. This has been an open process in which thousands of individuals and groups have had an opportunity to give their input, both in person and in writing.

Q: What exactly was wrong with the district court's decision?

A: As our brief filed with the Court of Appeals sets forth, the district court failed to follow Supreme Court precedent when it held that the Advisory Committee Act could be interpreted to apply to a task force made up of cabinet secretaries, senior White House officials and the First Lady. The Court's decision raised significant constitutional questions, and held FACA could not apply at all under certain circumstances and that only part of FACA could apply under other circumstances. Again, our Justice Department lawyers have told us that this application of FACA does not work as a legal matter.

Q: Are you going to continue to maintain the position that the Advisory Committee Act is unconstitutional?

A: Again, I am not a lawyer, but I do know that our position in this case was not to attack the constitutionality of FACA. Rather, our position has been, and remains, that under Supreme Court precedent, FACA must be interpreted consistent with Congressional intent, and in a manner that does not create constitutional problems. The district court itself found that FACA is unconstitutional if applied to <u>advice given</u> to the President by a Task Force composed of Cabinet secretaries, senior White House officials, and the First Lady.

Q: FACA requires 15-days advance notice of public meetings of the Task Force. Why did you wait until this past Friday to publish notice of next Monday's meeting, and doesn't this mean that you have violated FACA?

A: In this instance, we delivered notice of the public meeting to the Federal Register as soon as the Task Force had determined a date and location for its public meeting. Our lawyers advised us that although FACA normally requires 15-days prior notice of a public meeting, the statute also

allows shorter notice to be given if there are "extraordinary circumstances." In this case the short time frame within which the President has asked the Task Force to complete its work is an "extraordinary circumstance" justifying a shorter notice period -- in this case, 10 days.

In addition, this is a situation where it has been widely reported for many weeks that the task force would hold a public meeting, and the date of this meeting has already been widely reported. This is far more publicity than mere publication in the Federal Register normally provides. And each of the plaintiffs in the lawsuit will be invited to attend the public hearings.

Health Care: Covert Operation

As Clinton's reformers get to work, rumors are rife—giving special interests a case of the jitters

Every day, a small army of health-care experts streams into the Old Executive Office Building next to the White House. Some are government employees, some are consultants from the private sector and almost a hundred are Democratic congressional aides. Their mission, conducted under a rigorous code of secrecy, is to create a new health-care system for the nation. It is potentially the biggest piece of social engineering ever attempted in America, a task so complicated, according to staff director Ira Magaziner, that it will require 720 separate decisions by Bill Clinton. And every single one of those policy choices is likely to make somebody angry.

LARRY DOWNING—NEWSWEEK

MICHAEL CARROLL

Social engineers: *Hillary Rodham Clinton and Ira Magaziner*

But the health-reform team's secretive style of operation is what seems to be making people angry now. Although it is directed by Hillary Rodham Clinton and includes six members of the cabinet, the team has closed its working sessions to the public and to the many lobbyists who would like to affect its product. Last week the all-powerful American Medical Association appealed to be included—and was rebuffed, with only minimal courtesy, by the administration. "That would be like opening the White House at every staff meeting we have," the president said, explaining that the team "would never . . . get anything done." Clinton had a point—and since his plan must ultimately be debated by Congress, the AMA and every other interest group will have ample opportunity to influence the outcome on Capitol Hill.

Still, lobbyists all over Washington are complaining that their views are being ignored, and three interest groups have tried to force the issue by filing suit. This lawsuit, by the Association of American Physicians and Surgeons, the American Council for Health Care Reform and the National Legal & Policy Center, contends that the administration is violating a 1972 law that says advisory-committee meetings must be open to the public. The health task force must comply with this law, these groups argue, because Hillary Clinton and Tipper Gore, who is also on the health team, are not federal employees—which forced White House spokesman George Stephanopoulos to reply that Hillary and Tipper "clearly are not 'outside advisers' in any reasonable interpretation of the law."

Like the lobbyists' grumbling, this controversy is probably only a symptom of the fact that everyone in Washington is anxious about health-care reform. The administration plans to release its proposals during the first week of May. But rumors are already rife, and lobbying groups representing virtually every sector of American society feel at risk. One trial balloon involves the possibility of increasing the federal tax on cigarettes by as much as $1 a pack—and that, according to one administration insider, has tobacco-state senators "going nuts." NEWSWEEK has learned the Clinton team is considering new taxes on guns and ammunition, on the rationale that gun owners should help to pay for the health-care costs these weapons cause, particularly in inner-city emergency rooms. Contemplating the addition of the politically potent gun lobby to the array of groups already pitted against the plan, a White House aide quips darkly, "We'll have to build a moat around the Old EOB."

Despite the covert nature of the operation, some details have begun to emerge. Administration sources say the Clinton plan will allow patients to choose their own doctors, provide the states with some flexibility, include cost controls and spread the pain of new taxation as fairly as possible. They say that the plan will prohibit insurance companies from denying coverage to people with pre-existing conditions, and that reform will be phased in over six or eight years to lessen the up-front costs. In the first year or two, says one White House aide, the only difference anyone will notice is the reduced paperwork, a benefit that may rally the public for other changes.

The plan will be built around a core package of benefits, but key questions, such as whether dental care or abortions will be included, are still unresolved. If mental health is covered, as expected, where will Clinton draw the line? Full-blown psychoses are one thing, but how about garden-variety neuroses? How should long-term nursing care be defined? Will it include only the elderly, or will younger people with diseases like multiple sclerosis be eligible? If long-term care were offered to everyone who needs it, says an aide, it could cost as much as $150 billion a year.

Tactically, Clinton must decide whether to ask Congress to vote on his economic package and health reform at the same time, or whether it's smarter to separate the two. House leaders don't want to vote on that many taxes at once, but Senate leaders prefer a combined vote. They worry they can't get a filibuster-proof 60 votes on Clinton's economic plan but think they can pull it off if health care is included. Either way, the political risks are vast.

Clinton clearly prefers to have it all if he can. "If it doesn't happen this year, there's a huge political price to pay for Congress. That's our message to them," says an aide. Indeed, the Clinton PR machine is cranking up a series of hearings across the country beginning March 12 in Florida. These hearings are designed to build consensus and a sense of urgency—and they will pose a formidable test of Hillary Clinton's ability to sell the public on a complex, costly and controversial program of reform.

ELEANOR CLIFT *and* MARY HAGER *in Washington*

Thorns in Their Side

In the revenue fight ahead, expect a face-off between Clinton and powerful special interests.

Sinners: Because their products promote bad health, tobacco and gun lobbies may face a "sin tax."

Doctors: Clinton targeted pharmaceuticals first. Insurers, doctors and hospitals expect to be next.

Seniors: Retirees are waiting to see what the plan does to Medicare.

Mom-and-Pop Shops: Small businesses fear they won't be able to afford mandated employer coverage.

AAPS

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Association of American Physicians and Surgeons, Inc.

February 9, 1993

Hillary Rodham Clinton
Chairperson
President's Task Force on National Health Care Reform
The White House
Washington, DC 20500

Dear Ms. Clinton:

On behalf of the Association of American Physicians and Surgeons, Inc., a national association of private, practicing physicians, please be advised that I and its members desire to attend the next and all subsequent meetings of the President's Task Force on National Health Care Reform.

This request is made pursuant to Section 10 of the Federal Advisory Committee Act, which mandates that all such advisory committees be open to the public. Advance notice of the next meeting and any and all subsequent meetings would be appreciated so that I and other members may make plans to travel to Washington to be in attendance.

I will appreciate a reply at the earliest possible date.

Sincerely,

Jane M Orient

Jane M. Orient, MD
Executive Director

KMB/jmo

cc: Bernard W. Nussbaum
Counsel to the President
The White House

Washington Post 2/10/93

GOP Congressman Questions Hillary Clinton's Closed-Door Meetings

By Dana Priest
Washington Post Staff Writer

Hillary Rodham Clinton's new policy-making role on the presidential health care task force is being questioned by a Republican lawmaker who believes she may be violating federal rules governing advisory commissions.

Rep. William F. Clinger Jr. (R-Pa.), ranking minority member on the House Government Operations Committee, this week asked the General Accounting Office to review whether Hillary Clinton, who was appointed by her husband to head the President's Task Force on Health Care Reform, is allowed to conduct any of the group's meetings in private. The GAO is the investigative arm of Congress.

White House general counsel Bernard Nussbaum has told Clinger he believes Hillary Clinton's participation does not violate the Federal Advisory Committee Act, which says that task force meetings must be conducted in public if any members of the task force are not employees of the federal government.

Hillary Clinton is not a government employee. But the White House contends that she also is not the type of "outside influence" the statute was enacted to guard against.

According to Leonard Weiss, staff director of the Senate Governmental Affairs Committee, the legislation was intended to protect the president from appointing someone outside the government to a task force who might, unbeknownst to the president, advocate the interests of private groups over that of the government.

Weiss, who consulted with the Senate's legal counsel on the matter, said Hillary Clinton does not appear to be the type of outside participant the law seeks to protect the president against.

The federal act requires that advisory committee meetings be held in public unless the committee "is composed wholly of full-time officers or employees of the federal government."

A 1988 Supreme Court decision, in *Public Citizen v. Department of Justice*, said, in part, that the statute should not be literally interpreted because to do so would prohibit the president from getting advice from any group of two or more persons whose deliberations are not public.

A literal interpretation of the statute in this case would mean that Hillary Clinton's chief of staff, as a federal employee, would be able to serve on a task force that did not hold public meetings, but not the First Lady.

A Clinger aide said the congressman agrees the statute probably does not apply to Hillary Clinton but believes the law should be amended to reflect that.

Separately, Clinger and others have raised concerns about the status of outside consultants working with the task force and whether their participation would trigger the provisions under the act for public meetings.

The White House has said that the only members on the task force are Hillary Clinton, six Cabinet secretaries, the director of the Office of Management and Budget and several senior White House advisers.

Another group of high-ranking federal employees is managing the operation of 20 working groups, some of which include outside consultants. Their job is to provide the task force with information—much of it detailed and technical in nature—on various aspects of health care reform.

It is the task force that will take the information from the working groups to make policy recommendations to the president. The administration believes that because the working groups' participants are not part of the decision-making process, they are not subject to provisions that govern advisory committees.

The task force, which has not met in full since it was appointed two weeks ago, plans to hold many or all of its meetings in public, said administration sources. Members of the task force, including Hillary Clinton, have held numerous meetings since then on matters dealing with the development of a national health care reform proposal.

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APPLICATION OF

THE STATE OF NEW MEXICO

TO THE

ROBERT WOOD JOHNSON FOUNDATION'S

PROGRAM IN

STATE INITIATIVES IN HEALTH CARE FINANCING REFORM

SUBMITTED BY
THE NEW MEXICO HEALTH POLICY COMMISSION
FEBRUARY 27, 1992

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. letter	Janet Rose to Melanne (3 pages)	01/25/1993	b(6)

COLLECTION:
Clinton Presidential Records
First Lady's Office
Melanne Verveer
OA/Box Number: 10255

FOLDER TITLE:
Healthcare Commission [1]

2013-0534-S
rc1617

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]
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