

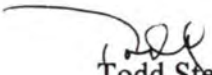
THE WHITE HOUSE
WASHINGTON

June 9, 1997

MR. PRESIDENT:

Diane Blair has forwarded to you a proposal by Tom Patterson of the Kennedy School to write a book on the press and the presidency from the perspective of inside the White House. He would need extensive access to high-level internal meetings, etc.

Ersine is against this. Sylvia thinks it's a good idea in principle, but questions whether it is worth the risk. McCurry is against it because he doesn't think Patterson has the credibility with the press (i.e., he's seen as too pro-Administration) to make it worthwhile. Rahm would accept it only if it didn't conflict with day-to-day operations. In short there is no great enthusiasm among relevant senior staff for this idea. **I will have letters to Patterson and to Diane Blair prepared declining his offer unless you indicate otherwise.**


Todd Stern

'97 JUN 2 AM 10:47

Diane D. Blair
1011 Tanglebriar
Fayetteville, Arkansas 72701

through Sec.
Info
asap -
Pres. must see
but if Committee
asap

May 31, 1997

Dear President Bill:

Tom Patterson asked if I would forward to you the attached letter outlining his proposed project which I recently mentioned to you. Looks like a winner to me - for you as well as for the country. He can be reached either at Harvard or at his home in Syracuse (315-488-2486).

Jim and I very much enjoyed our recent evening with you and Hillary and friends. And we were very proud of your NATO achievements in Europe this past week.

Early tomorrow we head out west for our rafting adventure down the Colorado River through the Grand Canyon. We have got to come through or you can imagine the headlines: White Water Rapids Claim Two More Clinton Intimates As Victims.

Love,



05-31-97 03:03PM P002 #34

HARVARD UNIVERSITY
JOHN F. KENNEDY SCHOOL OF GOVERNMENT
THE JOAN SHORNSTEIN CENTER
ON THE PRESS, POLITICS AND PUBLIC POLICY

THOMAS E. PATTERSON
BRADLEE PROFESSOR
OF GOVERNMENT AND THE PRESS



79 JOHN F. KENNEDY STREET
CAMBRIDGE, MASSACHUSETTS 02138
(617) 495-8269
FAX: (617) 495-8696

May 31, 1997

President Bill Clinton
The White House
Washington DC

Dear Mr. President:

I respectfully request your permission to observe White House activities for the purpose of studying the relationship between the presidency and the press.

The press's adversarial stance in recent years has weakened the presidency's ability to meet its objectives. Some degree of conflict is inevitable and constructive, but the press has gone way beyond that point. It is my view that much of the problem stems from journalists' failure to comprehend the complexity of political motives and policy actions. The news, to a large degree, is built around conflict, strategy, and exposé because journalists find it easy to tell such stories and to believe these stories accurately characterize the presidency.

A new book that looks at the press from inside the White House, yet written by someone who is not an insider and whose arguments cannot be dismissed as self-serving, could stimulate a dialogue that would force the media to face up to questions about the accuracy and impact of its presidential coverage. The book would also serve as a historical document on press relations during the Clinton presidency.

To write such a book, I would need access to White House press conferences, communications operations, and top-level meetings. During the period of observation, I would also closely monitor the news media's activities, so that I could compare what journalists were reporting with what was actually taking place at the White House. It is understood that my White House role would be that of observer, not participant. It is also understood that any politically sensitive material that I acquired would be handled as privileged and confidential.

Thank you for your consideration.

Sincerely,

Thomas E. Patterson
Bradlee Professor of
Government & the Press

DIANE D. BLAIR

Phone: (o) 501-575-3356
(h) 501-521-1066

Fax: (o) 501-575-2642
(h) 501-521-8373

To:

President Bill Clinton

Number of pages including this page

3

FAX RE: professor's request to observe
White House - Press Relations

THE WHITE HOUSE
WASHINGTON

Date 6-2

Erskine
To: John P. Mike McGarry
Sylvia ^{concur w/Ted}
Rahn ^{concur w/Ted} Ron Klein
From: The Staff Secretary

What do you think
about this? Please
let me know ASAP.

Ted

THE WHITE HOUSE
WASHINGTON

Date 6-2

To: Erskine
John P. Mike McEnery
Sylvia Ron Klein
Rahn

From: The Staff Secretary

What do you think
about this? Please
let me know ASAP.

Red

To DA
I'm ^{not} for this
EBM

97 JUN 2 AM 10:47

Diane D. Blair
1011 Tanglebriar
Fayetteville, Arkansas 72701

*through sec.
8:50
asap -
Pres. must see
but if comment
asap*

May 31, 1997

Dear President Bill:

Tom Patterson asked if I would forward to you the attached letter outlining his proposed project which I recently mentioned to you. Looks like a winner to me - for you as well as for the country. He can be reached either at Harvard or at his home in Syracuse (315-488-2486).

Jim and I very much enjoyed our recent evening with you and Hillary and friends. And we were very proud of your NATO achievements in Europe this past week.

Early tomorrow we head out west for our rafting adventure down the Colorado River through the Grand Canyon. We have got to come through or you can imagine the headlines: White Water Rapids Claim Two More Clinton Intimates As Victims.

Love,

Diane

Todd -

Given the volume on the credenza and Kostinen's timeline, I think we can send this to Oval tomorrow. I added a sentence in first of from previous version you signed. Phil

b-6

McClung
13 August -
thanks Patterson
12:12:12 b.b. hty.

T

HARVARD UNIVERSITY
JOHN F. KENNEDY SCHOOL OF GOVERNMENT
THE JOAN SHORENSTEIN CENTER
ON THE PRESS, POLITICS AND PUBLIC POLICY

THOMAS E. PATTERSON
BRADLEE PROFESSOR
OF GOVERNMENT AND THE PRESS



79 JOHN F. KENNEDY STREET
CAMBRIDGE, MASSACHUSETTS 02138
(617) 495-8269
FAX: (617) 495-8696

May 31, 1997

President Bill Clinton
The White House
Washington DC

Dear Mr. President:

I respectfully request your permission to observe White House activities for the purpose of studying the relationship between the presidency and the press.

The press's adversarial stance in recent years has weakened the presidency's ability to meet its objectives. Some degree of conflict is inevitable and constructive, but the press has gone way beyond that point. It is my view that much of the problem stems from journalists' failure to comprehend the complexity of political motives and policy actions. The news, to a large degree, is built around conflict, strategy, and exposé because journalists find it easy to tell such stories and to believe these stories accurately characterize the presidency.

A new book that looks at the press from inside the White House, yet written by someone who is not an insider and whose arguments cannot be dismissed as self-serving, could stimulate a dialogue that would force the media to face up to questions about the accuracy and impact of its presidential coverage. The book would also serve as a historical document on press relations during the Clinton presidency.

To write such a book, I would need access to White House press conferences, communications operations, and top-level meetings. During the period of observation, I would also closely monitor the news media's activities, so that I could compare what journalists were reporting with what was actually taking place at the White House. It is understood that my White House role would be that of observer, not participant. It is also understood that any politically sensitive material that I acquired would be handled as privileged and confidential.

Thank you for your consideration.

Sincerely,

Thomas E. Patterson
Bradlee Professor of
Government & the Press

'97 JUN 3 PM 1:29

THE WHITE HOUSE
WASHINGTON

To: ^{Erskine} John P. ^{Mike McGarry}
^{Sylvia} ^{Ron Klein}
From: The Staff Secretary

Date 6-2

What do you think
about this? Please
let me know ASAP.

Todd

Todd,

6/3/97

Great idea, however,
I don't know that
we want to take on
the risk.

Smart

15 JUN 2 10:47

Diane D. Blair
1011 Tanglebriar
Fayetteville, Arkansas 72701

through sec.
info
asap -
Pres. must see
but if commit
asap

May 31, 1997

Dear President Bill:

Tom Patterson asked if I would forward to you the attached letter outlining his proposed project which I recently mentioned to you. Looks like a winner to me - for you as well as for the country. He can be reached either at Harvard or at his home in Syracuse (315-488-2486).

Jim and I very much enjoyed our recent evening with you and Hillary and friends. And we were very proud of your NATO achievements in Europe this past week.

Early tomorrow we head out west for our rafting adventure down the Colorado River through the Grand Canyon. We have got to come through or you can imagine the headlines: White Water Rapids Claim Two More Clinton Intimates As Victims.

Love,



HARVARD UNIVERSITY
JOHN F. KENNEDY SCHOOL OF GOVERNMENT
THE JOAN SHURENSTEIN CENTER
ON THE PRESS, POLITICS AND PUBLIC POLICY

THOMAS E. PATTERSON
BRADLEE PROFESSOR
OF GOVERNMENT AND THE PRESS



79 JOHN F. KENNEDY STREET
CAMBRIDGE, MASSACHUSETTS 02138
(617) 495-8269
FAX: (617) 495-8696

May 31, 1997

President Bill Clinton
The White House
Washington DC

Dear Mr. President:

I respectfully request your permission to observe White House activities for the purpose of studying the relationship between the presidency and the press.

The press's adversarial stance in recent years has weakened the presidency's ability to meet its objectives. Some degree of conflict is inevitable and constructive, but the press has gone way beyond that point. It is my view that much of the problem stems from journalists' failure to comprehend the complexity of political motives and policy actions. The news, to a large degree, is built around conflict, strategy, and exposé because journalists find it easy to tell such stories and to believe these stories accurately characterize the presidency.

A new book that looks at the press from inside the White House, yet written by someone who is not an insider and whose arguments cannot be dismissed as self-serving, could stimulate a dialogue that would force the media to face up to questions about the accuracy and impact of its presidential coverage. The book would also serve as a historical document on press relations during the Clinton presidency.

To write such a book, I would need access to White House press conferences, communications operations, and top-level meetings. During the period of observation, I would also closely monitor the news media's activities, so that I could compare what journalists were reporting with what was actually taking place at the White House. It is understood that my White House role would be that of observer, not participant. It is also understood that any politically sensitive material that I acquired would be handled as privileged and confidential.

Thank you for your consideration.

Sincerely,

Thomas E. Patterson
Bradlee Professor of
Government & the Press

Todd -

Rahm wrote - yes

"if it does not conflict
with day to day
operations"

-Rahm

'97 JUN 3 PM12:10

THE WHITE HOUSE
WASHINGTON

Erskine
To: John P. Mike McGarry
Sylvia Ron Klein
Rahm
From: The Staff Secretary

Date 6-2

What do you think
about this? Please
let me know ASAP.

Todd

If it does not conflict
w- day to day operations

15:01 JUN 2 1997

Diane D. Blair
1011 Tanglebriar
Fayetteville, Arkansas 72701

May 31, 1997

through sec.
info
asap
Pres. must see
but if Communist
asap

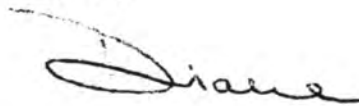
Dear President Bill:

Tom Patterson asked if I would forward to you the attached letter outlining his proposed project which I recently mentioned to you. Looks like a winner to me - for you as well as for the country. He can be reached either at Harvard or at his home in Syracuse (315-488-2486).

Jim and I very much enjoyed our recent evening with you and Hillary and friends. And we were very proud of your NATO achievements in Europe this past week.

Early tomorrow we head out west for our rafting adventure down the Colorado River through the Grand Canyon. We have got to come through or you can imagine the headlines: White Water Rapids Claim Two More Clinton Intimates As Victims.

Love,



HARVARD UNIVERSITY
JOHN F. KENNEDY SCHOOL OF GOVERNMENT
 THE JOAN SHORNSTEIN CENTER
 ON THE PRESS, POLITICS AND PUBLIC POLICY

THOMAS E. PATTERSON
 BRADLEE PROFESSOR
 OF GOVERNMENT AND THE PRESS



79 JOHN F. KENNEDY STREET
 CAMBRIDGE, MASSACHUSETTS 02138
 (617) 495-8269
 FAX: (617) 495-8696

May 31, 1997

President Bill Clinton
 The White House
 Washington DC

Dear Mr. President:

I respectfully request your permission to observe White House activities for the purpose of studying the relationship between the presidency and the press.

The press's adversarial stance in recent years has weakened the presidency's ability to meet its objectives. Some degree of conflict is inevitable and constructive, but the press has gone way beyond that point. It is my view that much of the problem stems from journalists' failure to comprehend the complexity of political motives and policy actions. The news, to a large degree, is built around conflict, strategy, and exposé because journalists find it easy to tell such stories and to believe these stories accurately characterize the presidency.

A new book that looks at the press from inside the White House, yet written by someone who is not an insider and whose arguments cannot be dismissed as self-serving, could stimulate a dialogue that would force the media to face up to questions about the accuracy and impact of its presidential coverage. The book would also serve as a historical document on press relations during the Clinton presidency.

To write such a book, I would need access to White House press conferences, communications operations, and top-level meetings. During the period of observation, I would also closely monitor the news media's activities, so that I could compare what journalists were reporting with what was actually taking place at the White House. It is understood that my White House role would be that of observer, not participant. It is also understood that any politically sensitive material that I acquired would be handled as privileged and confidential.

Thank you for your consideration.

Sincerely,

Thomas E. Patterson
 Bradlee Professor of
 Government & the Press

Letter from Prime
 Minister Prodi
 of Italy on UN
 Security Council
 Expansion



THE DIRECTOR

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

June 18, 1997

223372
6/24/97

OK for signature
per Phil Caplan.

sent to Executive
Clerk

MEMORANDUM FOR THE PRESIDENT

FROM:

Franklin D. Raines
Director

SUBJECT:

Proposed Executive Order Entitled "Internal Revenue Service
Management Board"

SUMMARY: This memorandum forwards for your consideration a proposed Executive order that was prepared by the Department of the Treasury. The proposed order would establish within the Department of the Treasury the "Internal Revenue Service Management Board" ("Board").

BACKGROUND: The order would establish a permanent oversight Board to assist the Secretary of the Treasury ("Secretary") in ensuring the effective management of the Internal Revenue Service. The Board would comprise primarily senior Treasury officials including the Deputy Secretary of the Treasury, who would serve as Chair of the Board, and the Assistant Secretary of the Treasury (Management) and Chief Financial Officer, who would serve as Vice Chair. It would include senior Office of Management and Budget personnel, a representative of the Vice President's office, and representatives of other government agencies as determined by the Secretary of the Treasury ("Secretary").

The Board would support directly the Secretary's oversight of the management and operation of the Internal Revenue Service. It would assist the Secretary on the full range of high-level management issues and concerns affecting the Internal Revenue Service, particularly those that would have a significant impact on operations, modernization and consumer service. It would serve as the primary review for strategic decisions concerning modernization of the Internal Revenue Service, including, among other things, modernization direction; strategy; reorganization plans; budgetary issues; and compensation of personnel.

The Board would meet monthly and prepare semi-annual reports, transmitted by the Secretary, to the President and to the Congress. The Department of the Treasury would provide administrative support and funding for the Board.

None of the affected agencies objects to the proposed Executive order.

RECOMMENDATION: I recommend that you sign the proposed Executive order.

Attachments



U. S. Department of Justice

Office of Legal Counsel

Office of the
Assistant Attorney General

Washington, D. C. 20530

June 18, 1997

MEMORANDUM

Re: Proposed Executive Order Entitled
"Internal Revenue Service Management Board"

The attached proposed Executive Order was prepared by the Department of Treasury (Treasury). The Office of Management and Budget, with the approval of the Director, forwarded it to this Department for review with respect to form and legality.

The proposed Executive Order would establish the Internal Revenue Service Management Board (Board), a permanent oversight board that would assist the Secretary of the Treasury (Secretary) in ensuring the effective management of the Internal Revenue Service (IRS). The Board would be comprised primarily of senior Treasury officials, including the Deputy Secretary of the Treasury, who would serve as the Chair of the Board, and the Assistant Secretary of the Treasury (Management) and Chief Financial Officer, who would serve as the Vice-Chair. The Board would also include senior Office of Management and Budget personnel, a representative of the Office of the Vice President, and representatives of other governmental agencies as determined by the Secretary. The Board would assist the Secretary on the full-range of high-level management issues and concerns affecting the IRS and particularly on those issues that would have a significant impact on operations, modernization, and consumer service. The Board would also serve as the primary review for strategic decisions concerning modernization of the IRS. The Board would meet monthly and prepare semi-annual reports, transmitted by the Secretary to the President and Congress. Treasury would provide administrative support and funding for the Board.

The proposed Executive Order is approved with respect to form and legality.

Dawn Johnsen
Acting Assistant Attorney General



U. S. Department of Justice

Office of Legal Counsel

Office of the
Assistant Attorney General

Washington, D.C. 20530

June 18, 1997

The President,

The White House.

My dear Mr. President:

I am herewith transmitting a proposed Executive Order entitled "Internal Revenue Service Management Board." This proposed Executive Order was submitted by the Department of Treasury. The Office of Management and Budget, with the approval of the Director, has forwarded it to this Department for review with respect to form and legality.

The proposed Executive Order is approved with respect to form and legality.

Respectfully,

Dawn Johnson
Acting Assistant Attorney General



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

June 18, 1997

Honorable Janet Reno
United States Attorney General
Washington, D.C. 20530

Dear Madam Attorney General:

Enclosed in accordance with the provisions of Executive Order No. 11030, as amended, is a proposed Executive order entitled "Internal Revenue Service Management Board." The proposed order, which was prepared by the Department of the Treasury, would establish within the Department of the Treasury the "Internal Revenue Service Management Board" ("Board").

The order would establish a permanent oversight Board to assist the Secretary of the Treasury ("Secretary") in ensuring the effective management of the Internal Revenue Service. The Board would comprise primarily senior Treasury officials including the Deputy Secretary of the Treasury, who would serve as Chair of the Board, and the Assistant Secretary of the Treasury (Management) and Chief Financial Officer, who would serve as Vice Chair. It would include senior Office of Management and Budget personnel, a representative of the Vice President's office, and representatives of other government agencies as determined by the Secretary of the Treasury ("Secretary").

The Board would support directly the Secretary's oversight of the management and operation of the Internal Revenue Service. It would assist the Secretary on the full range of high-level management issues and concerns affecting the Internal Revenue Service, particularly those that would have a significant impact on operations, modernization and consumer service. It would serve as the primary review for strategic decisions concerning modernization of the Internal Revenue Service, including, among other things, modernization direction; strategy; reorganization plans; budgetary issues; and compensation of personnel.

The Board would meet monthly and prepare semi-annual reports, transmitted by the Secretary, to the President and to the Congress. The Department of the Treasury would provide administrative support and funding for the Board.

None of the affected agencies objects to the proposed Executive order.

Your staff may direct any questions concerning this proposed Executive order to Mr. Mac Reed of this office (395-3563).

This proposed Executive order has the approval of the Director of the Office of Management and Budget.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert G. Damus", with a long horizontal flourish extending to the right.

Robert G. Damus
General Counsel

Enclosure

Executive Order

INTERNAL REVENUE SERVICE MANAGEMENT BOARD

By the authority vested in me as President by the Constitution and the laws of the United States of America, including 31 U.S.C. §301 and 26 U.S.C. §7801(a), and in order to establish a permanent oversight board to assist the Secretary of the Treasury ("Secretary") in ensuring effective management of the Internal Revenue Service, it is hereby ordered as follows:

Sec. 1. Establishment. (a) There is hereby established within the Department of the Treasury the Internal Revenue Service Management Board ("Board"). (b) The Board shall consist of: (1) the Deputy Secretary of the Treasury, who shall serve as Chair of the Board;

(2) the Assistant Secretary of the Treasury (Management) and Chief Financial Officer, who shall serve as Vice-Chair;

(3) the Assistant Secretary of the Treasury (Tax Policy);

(4) the Deputy Assistant Secretary of the Treasury (Departmental Finance and Management);

(5) the Deputy Assistant Secretary of the Treasury (Information Systems and Chief Information Officer);

(6) the Assistant Secretary of the Treasury (Legislative Affairs and Public Liaison);

(7) the General Counsel of the Treasury;

(8) the Director, Office of Security, Department of the Treasury;

(9) the Treasury Procurement Executive;

(10) the Commissioner of Internal Revenue;

(11) the Deputy Commissioner of Internal Revenue;

(12) the Associate Commissioner of Internal Revenue for Modernization/Chief Information Officer of the Internal Revenue Service;

(13) the Deputy Director for Management of the Office of Management and Budget;

(14) the Administrator, Office of Federal Procurement Policy of the Office of Management and Budget;

(15) a representative of the Office of the Vice President designated by the Vice President;

(16) A representative of the Office of Management and Budget designated by the Director of such office;

(17) a representative of the Office of Personnel Management designated by the Director of such office;

(18) representatives of such other government agencies as may be determined from time to time by the Secretary of the Treasury, designated by the head of such agency, and,

(19) such other officers or employees of the Department of the Treasury as may be designated by the Secretary,

(c) A member of the Board described in paragraphs (15) through (19) of subsections (b) may be removed by the official who designated such member.

Sec. 2. Structure. There shall be an executive committee of the full Board, the members of which shall be appointed by the Secretary.

Sec. 3. Functions. (a) The Board shall support directly the Secretary's oversight of the management and operation of the Internal Revenue Service. This includes:

(1) working through the Deputy Secretary, assisting the Secretary on the full range of high-level management issues and concerns affecting the Internal Revenue Service, particularly those that have a significant impact on operations, modernization and customer service;

(2) acting through the Executive Committee, serving as the primary review for strategic decisions concerning modernization of the Internal Revenue Service, including modernization direction, strategy, significant reorganization plans, performance metrics, budgetary issues, major capital investments, and compensation of personnel.

(b) The Board shall meet at least monthly and shall prescribe such by-laws or procedures as the Board deems appropriate.

(c) The Board shall prepare semi-annual reports to the President and to the Congress, which shall be transmitted by the Secretary of the Treasury.

Sec. 4. Administration. To the extent permitted by law and subject to the availability of appropriations, the Secretary shall provide the Board administrative services, facilities, staff and such other financial support services as may be necessary for the performance of its functions under this order.

Sec. 5. Judicial Review. This order is intended only to improve the internal management of the Internal Revenue Service, and is not intended, and shall not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees.

THE WHITE HOUSE,

JUN 18 1997

MEMORANDUM FOR THE FILE

FROM: Mac Reed
Assistant General Counsel

SUBJECT: Proposed Executive Order Entitled "Internal Revenue Service
Management Board"

The following Executive departments and agencies do not object to the proposed Executive order:

1. Department of the Treasury R. Carro (647-4463)
2. Department of Justice R. Hart (514-2027)
3. Office of Personnel Management J. Woodruff (606-424)
4. White House Office of Domestic Policy B. Reed (456-6515)
5. White House Council of Economic Advisers J. Yellin (395-5042)
6. National Security Council J. Baker (456-9111)
7. White House Council's Office C. Ruff (456-2632)
8. White House Staff Secretary's Office P. Caplan (456-2702)
9. Office of the Vice President R. Klain (456-6605)

DRAFT

The Honorable Franklin D. Raines
Director
Office of Management and Budget
Old Executive Office Building
Washington, D.C. 20503

Dear Mr. Raines:

As you know, over the past year we have been working with renewed effort to improve operations of the Internal Revenue Service to enable that agency to meet the demands of the 21st century. As part of these efforts, on May 20, I announced at a press briefing with the Vice President the Administration's intention to establish by Executive order an Internal Revenue Service Management Board (Board) to assist me and future Secretaries of the Treasury in assuring that our fundamental responsibilities to the IRS and the American people are met. To implement this decision, enclosed for your review is a draft Executive order entitled *IRS Management Board*.

The draft Executive order would establish the Board, to be chaired by the Deputy Secretary of the Treasury with the Assistant Secretary (Management) as Vice-Chair, within the Department of the Treasury. The Board would include as members government officers from the Department of the Treasury, the Office of Management and Budget, the Office of Personnel Management, and other offices chosen by the Secretary of the Treasury.

The primary purpose of the Board would be to support directly the Secretary's oversight of the management and operation of the Internal Revenue Service. In particular, it is envisioned that the Board would focus on those issues that have a significant impact on operations, modernization and customer service. Acting through an Executive Committee, the Board would serve as the primary review and decision making body for strategic decisions concerning modernization of the Internal Revenue Service, including modernization direction; strategy; significant reorganization plans; performance metrics; budgetary issues; major capital investments; and compensation of personnel.

Thank you in advance for your assistance in reviewing this proposed Executive order and presenting it to the President for his signature.

Sincerely,

Robert E. Rubin

Enclosure

Executive Order

INTERNAL REVENUE SERVICE MANAGEMENT BOARD

By the authority vested in me as President by the Constitution and the laws of the United States of America, including 31 U.S.C. §301 and 26 U.S.C. §7801(a), and in order to establish a permanent oversight board to assist the Secretary of the Treasury ("Secretary") in ensuring effective management of the Internal Revenue Service, it is hereby ordered as follows:

Sec. 1. Establishment. There is hereby established within the Department of the Treasury the Internal Revenue Service Management Board ("Board"). The Board shall consist of: (a) the Deputy Secretary of the Treasury as Chair;

(b) the Assistant Secretary (Management), as Vice-Chair;

(c) the following members:

(1) the Assistant Secretary of the Treasury for Tax Policy;

(2) the Deputy Assistant Secretary of the Treasury (Departmental Finance and Management);

(3) the Deputy Assistant Secretary of the Treasury for Information Systems and Chief Information Officer;

(4) the Assistant Secretary of the Treasury (Legislative Affairs and Public Liaison);

(5) the Inspector General of the Treasury;

(6) the General Counsel of the Treasury;

(7) the Director of Security of the Treasury;

(8) the Treasury Procurement Executive;

(9) the Commissioner of Internal Revenue;

(10) the Deputy Commissioner of Internal Revenue;

(11) the Chief Information Officer (IRS) and Associate Commissioner of Internal Revenue for Modernization;

(12) the Deputy Director for Management (Office of Management and Budget);

(13) a representative of the Office of the Vice President;

(14) a representative of the Office of Management and Budget;

(15) the Director, Office of Federal Procurement Policy (Office of Management and Budget);

(16) a representative of the Office of Personnel Management; and

(17) such representatives of other government agencies as the Secretary designates;

(d) The Secretary may appoint additional members who are officers or employees of the Department of the Treasury; and

(e) The Secretary may remove any members who are officers or employees of the Department of the Treasury.

(f) The President, National Treasury Employees Union, may attend Board meetings as an observer.

Sec. 2. Structure. There shall be an executive committee of the full Board, the members of which are appointed by the Secretary.

Sec. 3. Functions. (a) The Board is established to support directly the Secretary's oversight of the management and operation of the Internal Revenue Service. (b) This includes:

(1) working through the Deputy Secretary, assisting the Secretary on the full range of high-level management issues and concerns affecting the Internal Revenue Service, particularly those that have a significant impact on operations, modernization and customer service;

(2) acting through the executive committee, serving as the primary review and for strategic decisions concerning modernization of the Internal Revenue Service, including modernization direction; strategy; significant reorganization plans; performance metrics; budgetary issues; major capital investments; and compensation of personnel; and

(3) meeting monthly and preparing semi-annual reports to Congress, which the Secretary of the Treasury transmits to Congress.

Sec. 4. Administration. To the extent permitted by law, and subject to the availability of appropriations, the Secretary shall provide the Board such administrative services, funds, facilities, staff and other support services as may be necessary for the performance of its functions under this order.

Sec. 5. Judicial Review. This order is intended only to improve the internal management of the Internal Revenue Service, and is not intended, and shall not be construed, to create any right

or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees.

THE WHITE HOUSE,



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

June 4, 1997

MEMORANDUM FOR DESIGNATED AGENCY HEADS
(SEE ATTACHED DISTRIBUTION LIST)

FROM: Robert G. Damus (RGD)
General Counsel

SUBJECT: Proposed Executive Order Entitled "Internal
Revenue Service Management Board"

Attached is a proposed Executive order entitled "Internal
Revenue Service Management Board."

It was prepared by the Department of the Treasury, in
accordance with the provisions of Executive Order No. 11030, as
amended.

On behalf of the Director of the Office of Management and
Budget, I would appreciate receiving any comments you may have
concerning this proposal. If you have any comments or
objections, they should be received no later than close of
business Thursday, June 12, 1997. Please be advised that
agencies that do not respond by the June 12, 1997 deadline will
be recorded as not objecting to the proposal.

Comments or inquiries may be submitted by telephone to Mr.
Mac Reed of this office (Phone: 395-3563; Fax: 395-7294).

Thank you.

Attachments - Distribution List
Proposed Executive Order

cc: Jack Lew
John Koskinen
Gordon Adams
T.J. Glauthier
Joe Minarik
Ken Apfel
Nancy-Ann Min
Sally Katzen
Steve Kelman
Ed DeSeve
Michael Deich
Bill Halter
Rebecca Culberson
Jill Blickstein

DISTRIBUTION LIST

Honorable Robert E. Rubin
Secretary
Department of the Treasury

Honorable Janet Reno
United States Attorney General

Honorable James B. King
Director
Office of Personnel Management

Honorable Bruce Reed
Assistant to the President for
Domestic Policy

Honorable Janet L. Yellen
Chair
Council of Economic Advisers

Honorable Samuel R. Berger
Assistant to the President for
National Security Affairs

Honorable Charles Ruff
Counsel to the President

Honorable Todd Stern
Assistant to the President
and Staff Secretary

Honorable Ron Klain
Chief of Staff to the Vice President

File copy

(X)

THE WHITE HOUSE
WASHINGTON

June 23, 1997

✓ 6-25-97

MEMORANDUM FOR THE PRESIDENT

FROM: TODD STERN

PHIL CAPLAN *plm*

SUBJECT: Recent Information Items

We are forwarding the following recent information items:

- (A) **Executive Order on IRS Management Board.** Secretary Rubin proposed that you establish this permanent board to support his oversight of IRS operations. The board will include primarily senior Treasury officials and representatives from OMB and the Vice President's office. *All relevant senior staff signed-off on the board and we will have the EO executed on your behalf.* Creation of the board will be announced tomorrow, in advance of Sen. Kerrey's IRS commission releasing its recommendations on Wednesday.
- (B) **Ruff/Chirwa/Weiner memo on DOJ filing in Adarand.** This past Friday, DOJ filed a motion for clarification and/or reconsideration of the district court order on remand. *Background:* The Adarand order enjoined DOT from further use of its subcontracting compensation program (SCC) on the grounds that the program is unconstitutional. Further, the court provided the plaintiff with declaratory relief by holding DOT's Disadvantaged Business Enterprise program (DBE) also unconstitutional. The SCC program at issue in the case is distinct from the DBE program, but the court has linked them procedurally. Therefore, it is not entirely clear whether use of the DBE program is enjoined by this decision, or whether the court could properly sweep a program not in controversy before it within the ambit of its order. *Motion:* In its filing, DOJ argued that the district court's order should be confined to the SCC program, and that DOT will continue to award funds to Colorado under the DBE program.
- (C) **Dellinger article on Brown v. Board.** Walter forwards a 1994 piece he wrote for the Washington Post (and reprinted in the Duke Law Magazine) about the impact of the case entitled "A White Southerner Remembers Brown."
- (D) **Letter from Meghan Johnson, 12 yrs old, of Richmond, Kentucky.** Forwarded by Rep. Scotty Baesler. Meghan sends you a copy of a very funny speech she wrote -- "A Fish and a Friend named Bill" -- recounting how she met you last year on the bus trip after the Convention. She also sent you \$7 (which will be returned to her) and the blue ribbon she won in her 4-H speech contest (presumably for the speech about you.) You corresponded with Meghan last year after you met her and invited her to the Inaugural, which she attended.

Clinton Presidential Records Digital Records Marker

This is not a presidential record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

This marker identifies the place of a tabbed divider. Given our digitization capabilities, we are sometimes unable to adequately scan such dividers. The title from the original document is indicated below.

A

Divider Title: _____

INTERNAL REVENUE SERVICE MANAGEMENT BOARD

By the authority vested in me as President by the Constitution and the laws of the United States of America, including 31 U.S.C. §301 and 26 U.S.C. §7801(a), and in order to establish a permanent oversight board to assist the Secretary of the Treasury ("Secretary") in ensuring effective management of the Internal Revenue Service, it is hereby ordered as follows:

- Sec. 1. Establishment. (a) There is hereby established within the Department of the Treasury the Internal Revenue Service Management Board ("Board"). (b) The Board shall consist of:
- (1) the Deputy Secretary of the Treasury, who shall serve as Chair of the Board;
 - (2) the Assistant Secretary of the Treasury (Management) and Chief Financial Officer, who shall serve as Vice-Chair;
 - (3) the Assistant Secretary of the Treasury (Tax Policy);
 - (4) the Deputy Assistant Secretary of the Treasury (Departmental Finance and Management);
 - (5) the Deputy Assistant Secretary of the Treasury (Information Systems and Chief Information Officer);
 - (6) the Assistant Secretary of the Treasury (Legislative Affairs and Public Liaison);
 - (7) the General Counsel of the Treasury;
 - (8) the Director, Office of Security, Department of the Treasury;
 - (9) the Treasury Procurement Executive;
 - (10) the Commissioner of Internal Revenue;
 - (11) the Deputy Commissioner of Internal Revenue;
 - (12) the Associate Commissioner of Internal Revenue for Modernization/Chief Information Officer of the Internal Revenue Service;
 - (13) the Deputy Director for Management of the Office of Management and Budget;
 - (14) the Administrator, Office of Federal Procurement Policy of the Office of Management and Budget;
 - (15) a representative of the Office of the Vice President designated by the Vice President;

(16) A representative of the Office of Management and Budget designated by the Director of such office;

(17) a representative of the Office of Personnel Management designated by the Director of such office;

(18) representatives of such other government agencies as may be determined from time to time by the Secretary of the Treasury, designated by the head of such agency, and,

(19) such other officers or employees of the Department of the Treasury as may be designated by the Secretary,

(c) A member of the Board described in paragraphs (15) through (19) of subsections (b) may be removed by the official who designated such member.

Sec. 2. Structure. There shall be an executive committee of the full Board, the members of which shall be appointed by the Secretary.

Sec. 3. Functions. (a) The Board shall support directly the Secretary's oversight of the management and operation of the Internal Revenue Service. This includes:

(1) working through the Deputy Secretary, assisting the Secretary on the full range of high-level management issues and concerns affecting the Internal Revenue Service, particularly those that have a significant impact on operations, modernization and customer service;

(2) acting through the Executive Committee, serving as the primary review for strategic decisions concerning modernization of the Internal Revenue Service, including modernization direction, strategy, significant reorganization plans, performance metrics, budgetary issues, major capital investments, and compensation of personnel.

(b) The Board shall meet at least monthly and shall prescribe such by-laws or procedures as the Board deems appropriate.

(c) The Board shall prepare semi-annual reports to the President and to the Congress, which shall be transmitted by the Secretary of the Treasury.

Sec. 4. Administration. To the extent permitted by law and subject to the availability of appropriations, the Secretary shall provide the Board administrative services, facilities, staff and such other financial support services as may be necessary for the performance of its functions under this order.

Sec. 5. Judicial Review. This order is intended only to improve the internal management of the Internal Revenue Service, and is not intended, and shall not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees.

THE WHITE HOUSE,

Clinton Presidential Records Digital Records Marker

This is not a presidential record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

This marker identifies the place of a tabbed divider. Given our digitization capabilities, we are sometimes unable to adequately scan such dividers. The title from the original document is indicated below.

B

Divider Title: _____

97 JUN 19 PM 10:11

THE WHITE HOUSE
WASHINGTON

June 19, 1997

✓ 6-25-97

MEMORANDUM FOR THE PRESIDENT

CC: ERSKINE BOWLES
SYLVIA MATHEWS

FROM: CHARLES F. C. RUFF *CR/one*
DAWN CHIRWA *one*
ROBERT WEINER *RW/one*

SUBJECT: DEPARTMENT OF JUSTICE FILING IN
ADARAND CONSTRUCTORS V. PENA

The purpose of this memorandum is to inform you that tomorrow, June 20, 1997, the Department of Justice will file a motion for clarification and/or reconsideration of the district court order on remand in the case of Adarand Constructors v. Pena. Secretary Slater and we were briefed today by Justice concerning this filing.

As you may recall, the Adarand order, entered by Judge Kane of the United States District Court for the District of Colorado, enjoined the Department of Transportation from further use of its subcontracting compensation (SCC) program, a direct procurement affirmative action program, on the grounds that the SCC program is unconstitutional. Further, the court provided the plaintiff with declaratory relief by holding that Transportation's Disadvantaged Business Enterprise (DBE) program is also unconstitutional. Specifically, the court found that statutory provisions underlying both programs which presume that members of certain racial groups are socially and economically disadvantaged did not pass constitutional muster under a strict scrutiny analysis. The court determined that although there was a compelling government interest for such affirmative action programs, the social and economic presumptions failed the narrow-tailoring prong of strict scrutiny.

According to Justice, the posture of the case makes the scope of the order very unclear. When it filed suit, Adarand challenged the fact that it lost a contract which was awarded by a prime contractor through Transportation's SCC program by claiming that it was deprived of its equal protection rights by the race-based presumptions inherent in the use of the SCC program. The SCC program at issue is distinct from the DBE program which is not a direct procurement program but is administered through the states. (Also, the DBE program is much larger and involves much more contracting dollars than the SCC program.) Procedurally, therefore, the DBE program was not at issue before the court even though both programs are part of Transportation's ISTEA authorization. As such, it is not entirely clear whether use of the DBE

program is enjoined by this decision or whether the court could properly sweep a program not in controversy before it within the ambit of its order.

In filing the motion, Justice will argue that the district court's order should be confined to the program at issue before it; namely, the SCC program. In the motion, Justice will also inform the court that the United States reads the order as encompassing only the SCC program and that Transportation will continue to award funds to Colorado under the DBE program.

Of course, Justice will await Judge Kane's ruling on this motion before formally deciding what further steps should be taken. However, in all likelihood Justice will appeal Judge Kane's decision whether or not he narrows the scope of the order. Justice has informed us that it is taking the step of filing this motion because it feels that our position on appeal will be stronger if the court's order is clarified.

Finally, Justice continues to believe that our position in defending the merits of both the DBE program and direct procurement programs is strong and that we have addressed narrow tailoring concerns through our proposed procurement reform.

Clinton Presidential Records Digital Records Marker

This is not a presidential record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

This marker identifies the place of a tabbed divider. Given our digitization capabilities, we are sometimes unable to adequately scan such dividers. The title from the original document is indicated below.

C

Divider Title: _____

6/19/97

Todd,

Walter sent this piece over to
give to President. Can we include
this in your summary material?
Your judgement?

Smart

Phil -

for
info.

Washington Post - May 15, 1994
PAK
Outlooks
Duke Law
Mag.

Phil -

for
info.

Washington Post - May 15, 1994
PAK
Outlooks
Duke Law
Mag.



U.S. Department of Justice
Office of the Solicitor General

Sylvia -

June 6, 1997

Betty:

Mr. Dellinger is traveling today;
however, he asked me to send this article
to you. He felt the President might be
interested in reading his article on
Brown v. Board of Education.

Thanks.

Sheri

Sheri Sweitzer
Special Assistant



THE PRESIDENT HAS SEEN
6-25-97

A WHITE SOUTHERNER REMEMBERS *BROWN*

By Walter Dellinger



I remember nothing of my thirteenth birthday, which was celebrated in some now unrecalable fashion on a May Saturday in 1954. But I will never forget what happened the following Monday.

Still somewhat dazed from the death of my father the previous year, I was stumbling, unfocused, through the seventh grade at Myers Park Junior High in Charlotte, North Carolina. It was just past midday when a knock on the classroom door aroused me from my postlunch slumber. The assistant principal, standing just outside the partially open classroom door, carried on a whispered conversation with our fourth-period teacher.

At conversation's end, our teacher closed the door and turned (in my mind's eye,

SOME SCHOLARS WHO DISPARAGE *BROWN'S* SIGNIFICANCE ARGUE, MOREOVER, THAT THERE IS LITTLE ACTUAL "EVIDENCE" THAT *BROWN* HAD ANY DEMONSTRABLE EFFECT IN INSPIRING OR INFLUENCING THE CIVIL RIGHTS MOVEMENT.

in slow motion) to face the class. Our distracted chatter dropped to a hush as we noted the severity of his ashen face. I believe I remember, forty years later, his exact words. "Children," he said slowly and deliberately, "the Supreme Court has ruled. Next year you will go to school with colored children."

OUR TEACHER'S assumption about the effect of *Brown v. Board of Education* on the racial composition of our public school turned out to be erroneous. We did not "go to school with colored children" the next year as he had quite naturally assumed. Or the year thereafter. In fact, I finished junior high and graduated from a still all-white high school in 1959 without

been through law school, clerked, and become a law professor) that there was finally a meaningful end to the de jure segregation of the public schools of the rural and small town South. To this day, the success or failure of school desegregation itself remains a source of controversy. Inevitably, a growing number of academic critics have begun to ask did *Brown* matter?

Professor Gerald Rosenberg of the University of Michigan, one of those who question the significance of the Supreme Court's decision, argues that *Brown* deserves considerably less than "landmark" status. "The statistics from the southern states are

the University of Virginia suggests that the chain of causation between *Brown* and the great civil rights legislation of the 1960s is "strikingly indirect, and indeed almost perverse." *Brown*, he argues, by temporarily destroying "southern racial moderation," led to extreme forms of massive resistance, which led in turn to the national backlash that finally produced legislative achievement. Even this much "credit" is too much for Rosenberg, who responds that "Klarman's attempt to find some beneficial effect from *Brown* is clever and plausible, but ultimately unpersuasive."

It is true, as Klarman amply demonstrates, that *Brown* did not occur in isolation from the sweep of history. The decades-long strategy that the National Association for the Advancement of Colored People stubbornly pursued eventually eroded the legal doctrine of separate-but-equal because that strategy was ever guided by Thurgood Marshall's extraordinary sense of timing. The migration of African-Americans to the cities of the North, the enormous impact of the Second World War in opening America to the world, and the articulation of an American anti-racist ideology in the fight against Nazism all set the stage for what was to follow. The breaking of the color line in baseball by Jackie Robinson is a symbol of the amelioration of American racism that was occurring in

the late 1940s — outside the South. Thus, some argue, forces of history beyond the Court created the conditions for dismantling segregation; and only acts by Congress and the executive branch, spurred by the civil rights movement, accomplished any significant and identifiable results. In this version of the tale, *Brown* is a bit player.

IN MY VIEW, THIS disparagement of *Brown's* impact is seriously mistaken. Forty years later, I still believe, as Judge J. Harvie Wilkinson put it, that *Brown* "may be the most important political, social, and legal event in America's twentieth-century history." The clarion call of the Court's unanimous condemnation of racial segregation as incompatible with our deepest Constitutional principles was to play an indispensable role in the life of the South and the nation.

The greatness of *Brown* does not lie in the opinion itself but in the power of its concluding judgment. The opinion can be faulted for unnecessarily suggesting that the decision rested in part on academic sociological studies. At the same time, the Court's excessive hesitation about offending the white South led it to avoid describing the full shameful reality of the complex system of racial subordination of which school segregation was but a part. (At places the opinion reads as if southern school boards had simply made an error of philosophical

THUS, SOME ARGUE, FORCES OF HISTORY BEYOND THE COURT CREATED THE CONDITIONS FOR DISMANTLING SEGREGATION; AND ONLY ACTS BY CONGRESS AND THE EXECUTIVE BRANCH, SPURRED BY THE CIVIL RIGHTS MOVEMENT, ACCOMPLISHED ANY SIGNIFICANT AND IDENTIFIABLE RESULTS

ever having attended school with a black child. By the time I finished four years at the state university, the public schools of North Carolina remained almost entirely segregated; more than 99 percent of the state's black children still attended all-black schools. It was not until the 1972-73 school year (I had by then

truly amazing," he notes. "For ten years, 1954-64, virtually nothing happened."

Some scholars who disparage *Brown's* significance argue, moreover, that there is little actual "evidence" that *Brown* had any demonstrable effect in inspiring or influencing the civil rights movement. Professor Michael Klarman of

reasoning about whether "separation" is logically incompatible with "equality.") And the opinion was too cavalier in its apparent lack of concern with the original understanding of the Fourteenth Amendment. (As Michael McConnell of the University of Chicago has powerfully demonstrated, the holding in *Brown* is fully compatible with the text and intention of the Reconstruction Congress.) The Fourteenth Amendment's basic requirement of racial equality before the law had been embedded in the Constitution since Reconstruction. What was required of the *Brown* Court was the courage to demand that the nation actually obey the Constitution's command.

Brown did not by any means terminate the Southern racial regime. Properly understood, what it did was to put a powerful proposition to the American people: that racial segregation was immoral and unconstitutional. It was an act of extraordinary boldness, one with which the Court placed itself as an institution deeply at risk. For a decade, it appeared that the Court's most significant legal ruling would simply never be obeyed. Had the nation declined to accede to the proposition of *Brown*, judicial review as we know it would have come to an end.

Our Supreme Court has no army; it controls no purse. Its power is the power of persuasion. Its strength stands or falls with its capacity to convince a nation that its

CONTROLS NO PURSE. ITS POWER IS THE POWER OF PERSUASION. ITS STRENGTH STANDS OR FALLS WITH ITS CAPACITY TO CONVINCE A NATION THAT ITS MOST CONSEQUENTIAL DECISIONS ARE CORRECT.

most consequential decisions are correct. The Court's decisions condemning racial segregation were destined to prevail if – and only if – the country was ultimately convinced of their correctness.

Thus, the events of May 17, 1954 did not end a national debate but initiated it in earnest. From the day our teacher solemnly announced the Court's decision, my life through high school and college in the South was energized by an endless and fierce argument about whether the Supreme Court was right that segregation was wrong and what one should do about one's answer to that question. I know that the causal link from the Court's ruling in *Brown* to my own personal decision to walk a picket line in front of a segregated movie theater was direct and strong.

I have sometimes been asked whether, as a white child in the South of the late-forties and early-fifties, I thought segregation was wrong. I answer that the question would have not made much sense to me growing up in the years before *Brown*. Segregation was a fact about my universe. It seemed no more "right" or "wrong"

than the placement of the planets in the solar system. It simply "was." *Brown* altered that forever. At least for many young white southerners, the Court turned Jim Crow from a social fact into an inescapable and powerful moral question.

IN JUDGING THE significance of the Supreme Court's decision, it is critically important to recognize that the movement that brought an end to legally enforced racial subordination in the South was first and foremost an indigenous movement of Southern blacks led by Southern blacks. To those heroes of the civil rights movement goes the honor of having liberated the nation — and particularly the South — from the shame of legal apartheid.

But the *Brown* Court, by its declaration in 1954 that racial subordination was wrong and unconstitutional, provided to those who were to demonstrate, march, and risk their lives the powerful moral support that the central covenant of the American nation was on their side and not on the side of the state and local majorities who had enacted the "law" of segregation.

Brown was thus in a real sense a fulfillment of very

basic principles of American constitutionalism. Although the Constitution of 1787 committed the deep original sin of complicity with human slavery — the "curse of heaven" as one delegate called it — the document also created two principles that would one day help sustain the assault on a racist legal regime: nationalism and constitutionalism.

James Madison's vision was of an American republic extended across a continental nation. In such an extended and multifaceted republic, national norms would provide a check on the potential tyranny of local majorities. Thus, those who were oppressed by the laws of the Southern racial regime had available an appeal to the national commitment to the constitutional rule of law.

Brown's embodiment of that commitment and its potential to embolden those who would challenge entrenched racial practices were vividly demonstrated as early as the winter of 1955 in Montgomery, Alabama. Rosa Parks had been arrested for violating the old legal code of segregation by refusing to give

A WHITE SOUTHERNER REMEMBERS BROWN

Continued from page 5

segregation by refusing to give up her bus seat to a white man. The historic Montgomery bus boycott began the next evening with a stirring address by a twenty-six-year-old minister, newly arrived in the city, who had but twenty minutes to prepare his remarks.

What kind of argument does one make to show the wrongness of the rules cast into law by those with majority power and the rightness of the cause of those who are violating those laws? The best of the American constitutional tradition as it culminated in *Brown* provided the young Dr. Martin Luther King, Jr. with an argument of deep principle not available in many of the world's political cultures. This is what he said to thousands packed in and outside of the Holt Street Baptist Church on that December night:

If we are wrong, the Supreme Court of this nation is wrong.

If we are wrong, the Constitution of the United States is wrong.

If we are wrong, God Almighty is wrong.

Walter Dellinger is an Assistant Attorney General and head Legal Counsel at the United States Department of Justice. An earlier version of this article appeared in the Washington Post.

Clinton Presidential Records Digital Records Marker

This is not a presidential record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

This marker identifies the place of a tabbed divider. Given our digitization capabilities, we are sometimes unable to adequately scan such dividers. The title from the original document is indicated below.

D

Divider Title: _____

THE WHITE HOUSE
WASHINGTON

June 18, 1997

OVAL

MEMORANDUM FOR THE PRESIDENT

FROM: SUSAN BROPHY *SB*
SUBJECT: CONGRESSIONAL CORRESPONDENCE

Attached for your review is correspondence from the following Members of Congress that I thought you would like to see.

- 1) Rep. Joe Moakley (D-MA), concerning MFN for China and U.S. policy towards Cuba; and
- 2) Rep. Scotty Baesler (R-KY), forwarding a letter from a young constituent, Ms. Meghan Johnson.

Moakley
letter sent
to NSC
for reply.
Phil Caplan

Baesler letter to Chris
Walker for short
thank you.

Copy of Meghan Johnson
letter to Jim Dorshkind
for reply for BC sig.

Original Meghan Johnson
letter and enclosures
being held in Staff
Secretary's Office for
follow-up to ~~the~~ comments.
POTUS

JOHN JOSEPH MOAKLEY

9TH DISTRICT, MASSACHUSETTS

COMMITTEE ON RULES

RANKING DEMOCRATIC MEMBER

KEVIN RYAN

CHIEF OF STAFF

WASHINGTON

FREDERICK W. CLARK

DISTRICT DIRECTOR

BOSTON

E-mail: jmoakley@hr.house.gov

URL: <http://www.house.gov/moakley/welcome.html>



Congress of the United States

House of Representatives

Washington, DC 20515-2109

June 17, 1997

The Honorable William J. Clinton
President of the United States
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear President Clinton:

I know that the renewal of Most Favored Nation Status for China is a vitally important initiative for your administration. I commend your efforts to pursue an open, strategic dialogue with China that best serves the interests of this nation. Integration, and not isolation, will give the United States the influence necessary to work for respect of human rights, non-proliferation, the rule of law and religious freedom in China. Revoking this trade status, and effectively cutting off dialogue between our nations, will severely undermine our ability to work for positive change. For these and other reasons, I will support you in the extension of MFN for China.

With the strategy of engagement as a tool to achieve the goals of our national interests in mind, I want to respectfully point out the inconsistencies of U.S. policy towards Cuba. As you recall, this is an issue that I discussed with you last year at the White House during the China MFN debate. For 35 years, the United States has pursued a policy of isolationism with Cuba -- and it hasn't worked. Even after losing the patronage of the former Soviet Union, the Castro-regime has remained. The U.S. embargo on Cuba has not forced Castro out of power, it has not improved Cuba's respect for human rights and it certainly has not improved the lives of Cuban citizens. As you know, a recent study by the American Association for World Health reports that the U.S. embargo has had a drastic effect on the health of women and children in Cuba.

In fact, Fidel Castro has frequently used the U.S. embargo to justify and explain the failures of his system. Every time there is a food shortage, economic decline or crackdown on political dissidents, Castro delivers one of his famous speeches blaming the U.S. embargo for the problems. It is time for a change.

Like in China, change in Cuba will come only through open dialogue and engagement. By exposing the island to an infusion of free enterprise, democratic ideals, and people who believe in political freedom, I strongly believe that change will occur in Cuba. And it will occur much quicker in Cuba than in China. Cuba, only 90 miles off our shore, is a much smaller nation, and can embrace democracy and its ideals faster than the massive nation of China. As in the former Soviet Union and across Eastern Europe, the spirit of capitalism will flourish. With open political channels, the United States will have the opportunity to talk to Cuban officials about important issues like human rights and political openness. Such engagement will in fact allow us to increase the pressure for change in human rights and democracy. Currently, we have no avenue to pursue this goal. Additionally, our business leaders will talk about the importance of free speech and market reforms as precursors to the American investment that Cuba so desperately needs. The Cuban government will be forced to accept the change that is inevitable.

PLEASE RESPOND TO:

☐ 235 CANNON BUILDING
WASHINGTON, DC 20515
(202) 225-8273
FAX: (202) 225-3984

☐ WORLD TRADE CENTER
SUITE 220
BOSTON, MA 02210
(617) 565-2920
(617) 439-5460
FAX: (617) 439-5157

☐ 4 COURT STREET
TAUNTON, MA 02780
(508) 824-6676
FAX: (508) 880-3520

☐ BROCKTON FEDERAL BUILDING
166 MAIN STREET
BROCKTON, MA 02401
(508) 586-5555
FAX: (508) 580-4692

*Moakley letter
sent to NSC for
reply pml*

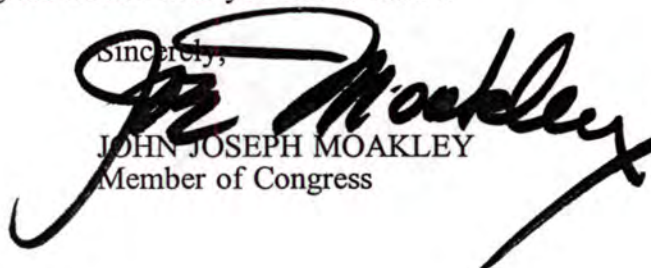
As you stated in your recent letter to me regarding China MFN,

"If we fail to engage China, we will fuel the very forces that trample human rights and flaunt international rules and regimes. Over time, if we engage China -- encouraging the evolution of the rule of law and civil society -- if contacts across borders, among people and between governments grow; if markets expand and information flows; if we make our differences clear; then there is a far greater likelihood that the roots of a more open society will gain strength in China and America's interests will be served."

I would argue that the same logical strategy is true for U.S.-Cuba relations.

Therefore, Mr. President, as we debate the important issue of China's MFN renewal, I hope that you will seriously revisit the U.S. policy toward Cuba. Certainly, if we are pursuing open dialogues with China, North Korea and Vietnam, openness with Cuba makes sense. At a minimum, engagement will force Castro to be more tolerant and will create a climate of reform. And, quite possibly, open engagement might also pave the way for an end to the reign of the Castro dictatorship that has lasted for 38 years. I appreciate your consideration of this important issue, and look forward to discussing the matter with you in the future.

Sincerely,

A large, stylized handwritten signature in black ink, which appears to read "John Moakley". The signature is written over the printed name and title.

JOHN JOSEPH MOAKLEY
Member of Congress

JJM:sl

SCOTTY BAESLER

6TH DISTRICT
KENTUCKY

COMMITTEES:

AGRICULTURE

BUDGET

VETERANS' AFFAIRS
(on leave)



Congress of the United States
House of Representatives
Washington, DC 20515

June 4, 1997

OFFICES:

2463 RAYBURN BUILDING
WASHINGTON, DC 20515
(202) 225-4706

401 WEST MAIN STREET
SUITE 318
LEXINGTON, KY 40507
(606) 253-1124

THE DOCUMENT HAS BEEN
6-25-97

Mr. John Hilley
Asst. to Pres. for Leg. Affairs
The White House
1600 Pennsylvania Avenue
Washington, DC 20500

JUN 5 AM 11:53

Dear Mr. Hilley:

I am writing to bring the enclosed letter to your attention. My constituent, Meghan Johnson, stopped by my office with her family while they were in town visiting this week. She asked if I could give the letter to you. Meghan, an elementary school student, is a big supporter of the President and has actually had the honor of meeting him in Kentucky. She also attended the Inauguration at the invitation of the White House.

I appreciate you forwarding this letter to the appropriate department.

Sincerely,

Scotty Baesler
Member of Congress

SB/cm

*To Chris Walker
for short thank you
to Rep. Baesler.*

THE PRESIDENT HAS SEEN

6-25-97

Phil
Let's discuss
at 10:00
to 10:15

U A

Read this letter

Why should we send him back
should be kept —

Will sign reply? —

o. It's useless!

Meghan Johnson

P. O. Box 967
Richmond, KY 40476
United States
Email kjohnson@iclub.org

June 1, 1997

President Clinton
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

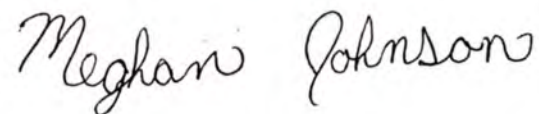
Dear President Clinton,

Thank you for the great tickets to your inauguration. I just knew you would send them, even when Jason said, "fat chance." I am sending you something, too. First, I hope you will take my donation for your defense fund. My money for the campaign was sent back because I was too young. But now I am 12 and think I should be able to do whatever I want with my own money. I don't understand why people are making so many headaches for you on purpose. Maybe they are just jealous or sore losers. They need to go to Time-out like Jason.

I hope this will help and that you won't be too broken up after you aren't President anymore. My papaw in Florida has stocks and makes lots of money from them. Maybe you could get a few tips from him if things don't get better.

The next thing I have for you is my blue ribbon that I won for first place in my district in the 4-H Speech contest. I wrote about the day we met in Ashland, Ky. and how I named my fish, Bill, after you. I want you to have the ribbon and speech for your library. You are the best President for schools and kids and our environment. So, I know you'll get a library. We are going to see the White House this week if my dad can get up early enough to get in line. Do you know what? I heard him tell my mom that life would be easier if Mr. Dole had won! NO WAY!! He just hates long lines. We are staying in One Washington Circle hotel. I hope someday you also have your very own hotel, like President Washington. Good luck with your job.

Sincerely,

A handwritten signature in cursive script that reads "Meghan Johnson". The ink is dark and the handwriting is fluid, with a large, stylized 'M' and 'J'.

Meghan Johnson

A Fish and A Friend Named, Bill

I have never had good luck with fish. I win them, they die. I get them as gifts, they die. I buy them, they die. Except for Bill. You might say that Bill is one extraordinary fish. In this case make that one **lucky** fish. Shakespeare once wrote, "What's in a name?" You too might wonder what's so special about a fish named, Bill? And that's where my story really begins.

On February 21, 1996, Mrs. Hillary Clinton visited Lexington's Jo-Beth Bookstore. I had made a special sweat towel for the President because when I saw him jogging on, CNN he was always sweating so much. When it was my turn to greet Mrs. Clinton I gave her the towel and she laughed and promised she'd give it to the President. Even the serious looking Secret Service agents smiled. Several weeks later when I received a thank you letter from President Clinton, I felt like one **lucky** girl. I had met a first lady **and** got a letter from the President! **Nothing** could **top** that — or so I thought.

On Sunday, August 25, 1996 President Clinton chose me out of a crowd of 15,000 people in Ashland, Ky. to meet him! We had driven to Ashland so I could see the President and Chelsea in person, even if it would be from a far distance. We arrived at 9 am. and went through special metal detectors. **Finally**, at 3 p.m. the 21st Century Express came rolling into Riverfront Park to a cheering crowd. My excitement grew with each cheer! I couldn't believe we were only 30 feet from the President's podium! . As the President reached the stage he spotted my sign. It was a **big red** stop sign and it said, "I'm a kid for Clinton-STOP-here Mr. President, PLEASE." He really laughed when he read the sign, and started motioning for me to come and join him. The people standing around us were shouting, "He's pointing to **you**!" Before we could move anywhere a special aide to the President, Steve Goodin, came and got us and took us behind the podium to wait. *"Am I dreaming this -- is this a heat stroke -- what am I going to say -- will my knees ever stop shaking?"* After the speech we waited with Mr. Goodin and the Secret Service agents for the President. My knees were **really** knocking now! All of a sudden I looked up and there he was! *The President of the United States!*

A Fish and A Friend Named, Bill

Hello, are you, Meghan? (nod yes) It is very nice to meet you. (nod yes) I understand that you live in, Richmond and got up very early to get here today. (nod yes) Did you make that really great sign? (nod yes) Well, thanks for your support and let's get a picutre with that sign, ok? (nod yes) I'm glad we got to meet today, Bye, Meghan. *Bye, Mr. President!* It was the **best day of my life!**

Several weeks later a big envelope came from the White House. I hurried to open it and inside was a letter, from the President!

(*PAUSE*)

THE WHITE HOUSE

September 21, 1996

Dear Meghan,

Thank you for your nice letter and for your continued support and faith in me. I am very honored to serve as your President and hope that the American people will give me the opportunity to continue our work here. If all goes well in November, I would love for you to be able to join us in Washington for the inaugural festivities. I have asked my staff to be sure you are invited. Clearly, you are a very talented young person--I really like the towel you made for me and was impressed by your computer skills. Good luck in school. Learn a lot.

Sincerely, **Your friend,**

Bill Clinton

I'll never forget, August 25, 1996. Every morning when I wake up for school, the first thing I see is my picture with The President. Then I walk over to my dresser and feed my fish. Yes, indeed, you just might say that I am a **lucky** girl to have, **A Fish and a Friend named, Bill!!**

TIME OF TRANSMISSION

TIME OF RECEIPT

**WHITE HOUSE
SITUATION ROOM**

PRECEDENCE: IMMEDIATE
PRIORITY
ROUTINE

RELEASOR:

DTG:

MESSAGE NO.: _____ CLASSIFICATION: Unclassified TOTAL: 10
PAGES INCLUDING COVERS

FROM: Phil Caplan 62702 GF1 WW
(NAME) (PHONE NUMBER) (ROOM NO.)

MESSAGE DESCRIPTION: Action: Rubin/Sperling memo re: Tax Package

<u>TO (AGENCY)</u>	<u>DELIVER TO</u>	<u>DEPT/ROOM NO.</u>	<u>PHONE NUMBER</u>

Sylvia Mathews (FOR THE PRESIDENT)

Please give 2 copies to Sylvia

REMARKS:

Erskine asked us to get this to you ASAP.

Phil Caplan



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

June 26, 1997

SECRETARY OF THE TREASURY

1997 JUN 26 PM 1:20

MEMORANDUM FOR THE PRESIDENT

FROM: Robert Rubin *RR*
Gene Sperling

SUBJECT: An Offer on Your Tax Package

Your budget team met in Erskine's office today to finalize our recommendations for our tax package to be offered on Monday. The following memo summarizes issues and highlights choices that need to be made concerning the package. The side-by-side following the options memo compares the features and five-year costs of the competing Administration, House and Senate choices.

Post-Secondary Education

- o **Option 1** provides a two-year HOPE scholarship of \$1,000 and 50 percent of additional expenses up to \$1000 starting in 1998. It provides a 20 percent credit on allowable out-of-pocket education expenses of \$5,000 through 2000 and \$10,000 thereafter. The package is more generous than the House and Senate packages.
 - This costs roughly \$34.5 billion through 2002 and \$90.6 through 2007 under Treasury's scoring. We expect JCT scoring to be at least \$5 billion higher in the first five years.
- o **Option 2** would give a four year HOPE scholarship of \$1,000 for students attending at least half time in a degree or certificate program, and 20 percent of additional expenses up to \$1000 starting in 1998. Students not eligible for the HOPE scholarship could get a credit for 20 percent of additional expenses up to \$1000 starting in 1998. This package will cost in the neighborhood of \$35 billion under Treasury's scoring.
- o **Option 3** mirrors the proposals offered by the House and Senate Democrats. It gives a HOPE Scholarship of \$1000 and 50 percent of additional expenses up to \$200 through 1999, \$400 in 2000 and \$1,000 thereafter. Students must be attending at least half time in the first two years of a degree or certificate program. If a student is not eligible for the HOPE scholarship, we would give a 20 percent tuition credit on expenses up to \$4,000 through 1999, \$7,500 in 2000 and \$10,000 thereafter.
 - This option costs \$32.3 (\$37.4) billion through 2002 and \$88.6 (\$87.3) through

2007 under Treasury (JCT) scoring.

Your advisers are in general agreement that Option 1 makes the most sense at this time. It stays close to the original proposal in your Budget and allows you to stress how the proposal best advances your goal of making the 13th and 14th grades universal, plus it has a strong lifelong learning component. Furthermore, by including the notion of 50 percent of the second \$1,000, it addresses the tuition inflation argument and shows us being responsive to suggestions by Daschle and Senate Democrats.

Many of your advisers believe that in the end, we may wish to fall back to a single, simpler four-year option -- such as Option 2. Most of your advisers would rather lead with Option 1 and use a version of Option 2 (perhaps with a more generous lifelong learning provision) as a fall-back. Frank Raines, however, would favor moving to this option sooner rather than later as a means of showing our immediate willingness to offer a compromise suggestion on our tax priority.

___ prefer Option 1

___ prefer Option 2

___ prefer Option 3

General Capital Gains Relief

- o **Option 1** would provide a 30 percent exclusion. This holds the top rate at 28 percent, but gives a rate cut to all taxpayers in the 36 percent bracket and lower. Taxpayers in the 28 percent and 15 percent brackets get as much relief as they do under the 20/10 separate rate schedule. The proposal would include the President's home sale provision.
 - Costs \$8.2 billion through 2002 and \$17.5 billion through 2007 (Treasury scoring). We expect the JCT to score this as costing several billion less through 2002.
- o **Option 2** would provide a separate rate schedule approach (using rates of 24/12), retain 28 percent rate for collectibles, depreciation recapture at 26 percent, AMT adjustment to tax gains at 24 percent, President's home sale provision.
 - Treasury estimates that this proposal would raise \$3.6 billion through 2002 and \$4.6 billion through 2007. We expect the JCT to score this as losing roughly \$2 billion through 2002 and roughly \$20 billion through 2007.
- o **Option 3** is the proposal that came out of the Finance Committee, which had a separate rate schedule of 20/10, depreciation recapture at 24 percent and the President's home sales provision. An AMT feature will need to be addressed.
 - JCT estimates that the Senate Finance proposal would lose \$3.3 billion through 2002 and \$23.9 through 2007.

Your advisers recommend Option 1. This proposal provides a broad based capital gains tax cut to all but the people at the very top of the income scale. The Republicans will not like it because it does not provide relief to the roughly half percent of taxpayers who are in the 39.6 percent bracket, but it will put them in an awkward message situation, help with our distribution, and most importantly, give us room to move in exchange for coming our way on the higher education tax cut and the "stacking" on EITC.

☐ prefer Option 1

☐ prefer Option 2

☐ prefer Option 3

Child Credit

The child credit is the piece that moves to fit the rest of the package.

- o **Option 1** would do the following. First, the child credit would be stacked before the EITC, ensuring that working families who pay income taxes receive the benefit of the child credit. Moreover, the child credit would be partially refundable to the extent the employee share of payroll taxes exceeds their EITC. Thus, the child credit will offset income taxes and payroll taxes, to the extent the latter exceeds the EITC. Second, we will cover children under 17, as is the case in the Congressional packages. Third, we would keep the optional Kidsave feature that allows parents to contribute up to the amount of the credit plus \$500 to a nondeductible, backloaded IRA-type savings vehicle. Earnings would be distributed tax free for the child's education and possibly child related events, or for the parent's retirement. Fourth, the income phaseouts will be as in the FY98 budget (\$60,000 to \$75,000) through 2002 and higher thereafter. Fifth, the credit will be phased in (starting at \$300 in 1998 and phasing up to \$500) to fit the \$85 billion budget agreement.
- o **Option 2** would drop refundability, stack the child credit before the EITC and include the optional Kidsave feature. The proposal should first phase-in at a level comparable to the Republican proposal (no credit in 1997, \$400 in 1998 and \$500 thereafter). It should then cover children under 17 (though we could cover 17 year olds) and then use whatever money is remaining to increase the income limits beyond the \$60,000-\$75,000 range in the FY98 Budget (we will increase the income limits after 2002).
- o **Option 3** incorporates a more generous Kidsave feature. It would give a child credit of \$500 for families that do not contribute to a Kidsave account, and a \$600 child credit to families that contribute at least \$600 to the Kidsave account. This proposal would need to be somewhat less generous in some dimension than Option 2 in order to finance the saving subsidy.

Your advisers recommend Option 1. The major issue of the discussion was to what extent out proposal should be refundable. Focusing strictly on stacking would allow us a cleaner message because it would keep the debate on the young police officer you discussed at the press

conference. On the other hand, going with refundability would allow us to stay close to our Democrats, plus leave room to move later.

All of us agree that we did not want to allow the Republicans to be able to frame the message as Democrats for welfare payments at the expense of Republicans for tax credits for teens in middle class families. We reached consensus around a proposal that would give the tax credit to teenagers, and have partial refundability -- but only to the degree that people paid payroll and income taxes beyond what they get in their EITC. In this way, we take away the Republican message on teenagers, keep some element of refundability, but keep our message that this is a tax cut only for people who owe federal payroll and income taxes. While this may not be as strong on refundability as some Democrats will like, it has partial refundability, keeps our message advantage, and can be described as taking characteristics from both the Rangel and Daschle packages. In order to afford all this, however, we have to phase in the \$500 credit -- but that is consistent with your original child credit proposal.

___ prefer Option 1

___ prefer Option 2

___ prefer Option 3

Airport and Airways Trust Fund

- o **Option 1** would follow the President's FY 1998 budget by extending the airline ticket tax through 2007 and wait for the National Civil Aviation Review Commission to propose a more long-term solution to meet the FAA's long-term needs with user fees.
- o **Option 2** would adopt changes from the Finance Committee mark, which raise an additional \$2.9 billion through 2002 and \$8 billion through 2007. While no airline supports increased fees, low-cost carriers prefer the Senate approach versus the "head tax" provisions proposed in the House.

Your advisers recommend that you choose Option 1, which sticks with what was in your budget and keeps you out of this fight.

___ prefer Option 1

___ prefer Option 2

Tobacco Taxes

- o **Option 1** would impose a 20 cents/pack increase in the tobacco excise tax as included in the Finance Committee package, but dedicate the revenue to a trust fund for children's and health expenditures. Under this option tobacco taxes would not displace other raisers needed to finance the tax cuts that are sought.
- o **Option 2** would impose a 20 cent/pack increase in the tobacco tax and use it to fund other measures.

- o **Option 3** would not include a tobacco tax increase.

Your advisers recommend Option 1. We believe we should include a tobacco tax increase but insist that it go to help advance your goals for children. We will discuss with Bruce Reed and others the best tactical strategy for deciding how we should describe what such children's concerns these funds should go to.

___ prefer Option 1

___ prefer Option 2

___ prefer Option 3

Comparison of Major Provisions of Competing Tax Packages, June 24, 1997 (Scoring through 2002)

Item	Suggested Administration Package	Ways and Means Package	Senate Finance Committee Package
Education	<u>HOPE Scholarship</u>: 100 percent of the first \$1,000 and 50 percent of additional expenses up to \$1000 starting in 1998. <u>Tuition credit</u>: 20 percent credit on allowable out-of-pocket education expenses of \$5,000 through 2000 and \$10,000 thereafter. (\$34.5)	Modified HOPE scholarship --50% of expenses up to \$3,000 (phaseout \$40,000-50,000 singles/\$80,000-100,000 joint). (\$22.3) Deduction for undergraduate expenses paid through state-sponsored prepaid tuition program of up to \$10,000/yr., \$40,000 max. per student. (\$0.9)	Modified HOPE scholarship --50% of expenses up to \$3,000; 75% of up to \$2000 for community colleges and technical school students (phaseout \$40,000-50,000 singles/\$80,000-100,000 joint). (\$20.4) No deduction or credit, other than Modified Hope Scholarship.
School construction	Allocable tax credits for K-12 construction. (\$2.5; Rangel spent \$1.7)	None	Raise small issuer arbitrage exemption for education facilities. (\$0.3)
Section 127	Permanent extension of Section 127, for both graduates and undergraduates. (\$3.6)	Six month extension of Section 127 for undergraduates. (\$0.2)	Permanent extension of Section 127, for both graduates and undergraduates. (\$3.5)
Computer technology K-12	Subsidy for Internet access for K-12 schools. (\$0.3)	Enhanced deduction for corporate contributions to schools. (\$0.2)	Exclude certain teacher training (including technology training) expenses from application of 2% floor on miscellaneous itemized deductions. (\$0.1)
Student loans	\$2500 above-the-line student loan interest deduction. (\$1.1)	None	\$2500 above-the-line student loan interest deduction. (\$1.1)

\$150 million bond cap for private colleges and universities	Repeal bond cap. (\$0.3)	Raise by \$10 million per year until it reaches \$200 million. (\$0.13)	Repeal bond cap. (\$0.3)
IRA withdrawals	Penalty-free IRA withdrawals for undergraduate, post-secondary vocational, and graduate education expenses. (\$0.8)	Penalty-free IRA withdrawals for undergraduate, post-secondary vocational, and graduate education expenses. (\$0.8)	Penalty-free IRA withdrawals for undergraduate, post-secondary vocational, and graduate education expenses. (\$0.8)
Education saving incentives	Kidsave accounts (i.e. backloaded IRA for educational saving), with \$1,000 contribution limit. As in the Senate, education expenses financed by Kidsave withdrawals would reduce allowable expenses for the Hope Scholarship.	Education investment accounts for children under 18 (maximum \$5,000 annual contribution, \$50,000 aggregate contributions), private prepaid tuition plans; deduction for undergraduate and post-secondary vocational expenses of up to \$10,000/yr., \$40,000 max. per student. (\$7.0)	Contributions of up to \$2000 (plus \$500 child credit) per year to Education IRA-- tax-free inside buildup and tax-free withdrawals if used for higher education; allow private prepaid tuition plans \$2000 (plus \$500 child credit) per year; tax-free withdrawals for prepaid State-sponsored programs. (\$ 6.2)
Middle-Class Tax Relief	This provision will be adapted to fit the \$85 billion net tax cut target. The credit will be stacked before the EITC and partially refundable. It will cover kids under 17, incorporate an optional Kidsave feature, phases out between \$60,000 and \$75,000 (prior to 2002) and phases in to a \$500 credit, starting at \$300 in 1998.	\$500 (\$400 in 1998) child credit, non-refundable, under 17, stacked <u>after</u> the EITC; 50% offset with dependent care credit for married couple making \$60,000 or more (\$33,000 for other taxpayers), beginning after 2000. (\$71.3) Phased out starting at \$75,000 for singles and \$110,000 for joint	\$500 (\$250 in 1997 only for children under 13) child credit, for children under 17 (18 after 2002); mandatory Kidsave for children age 13 and above; stacked <u>after</u> half of the EITC. (\$83.5) Phased out starting at \$75,000 for singles and \$110,000 for joint

		Index dependent care tax credit expense limit, \$75,000-\$100,000 AGI phaseout. (\$0.1)	
Alternative Minimum Tax	None	Increase individual AMT exemption amount by \$1,000 every other year from 1999 through 2007, index thereafter. (\$1.2)	Increase individual AMT exemption amount by \$600 (joint) for 2001-2002; \$950 (joint) every year thereafter. (\$0.35)
Corporate AMT	None. (Exemption from AMT for small corporations -- included as part of Administration Simplification Proposal)	Exemption from AMT for small corporations. (\$0.6)	None
	None	Prospective repeal of AMT depreciation. (\$11.8)	None
Capital Gains Provisions	30% exclusion; retain 28% for collectibles. \$500,000 exclusion for home sales. Includes the President's home sales provisions. (\$8.4, Treasury estimate).	Separate 20/10 rate schedule, 26% maximum rate on depreciation recapture, <u>indexing starting in 2001</u> ; phase down of top corporate capital gains rate to 30% for assets held at least 8 years. \$500,000 exclusion for home sales. (raises \$2.7)	Separate 20/10 rate schedule, 24% maximum rate on depreciation recapture, <u>no indexing or corporate capital gains</u> . \$500,000 exclusion for home sales. (\$3.3)
Small Business Provisions	Variant of Bumpers-Matsui targeted small business relief. (\$0.4, Treasury)	None	Slightly expanded version of Administration's proposal. (\$0.7)

IRAs	None, but allow penalty-free IRA withdrawals for education and establish new Kidsave accounts	Create backloaded American Dream IRA's, <u>penalty free rollovers</u> from IRA (which raises money), special purpose withdrawals for first time home purchase. (\$.03)	Expand income phaseouts for deductible IRAs; expand availability of spousal IRAs; create backloaded IRA Plus accounts; special purpose withdrawals for first time home purchases. (\$3.3)
Home Office	Increase availability of home office deduction. (\$0.6, Treasury)	Slightly modified version of home office provision (\$1.1)	None
Estate Tax	Daschle qualified family owned business estate tax relief. (\$2.3, Treasury)	Increase unified credit to \$1.0 million by 2007. (\$7.5)	Increase unified credit to \$1m by 2006 (\$3.1). Modified Daschle proposal with \$1m exemption for qualified businesses (\$3.1). Up to \$1m exclusion for conservation easements and other changes (\$0.4)
Urban Initiatives	Expansion of EZs and ECs, Brownfields, CDFI and the welfare-to-work tax credit. (\$2.3)	Modified welfare-to-work provision (\$0.1); no brownfields or EZ/ECs.	Restricted brownfields (\$0.25); no welfare-to-work or EZ/ECs.
Other Presidential Initiatives	Equitable tolling, Puerto Rico, FSC software, and DC. (\$1.3)	Modified D.C. package (\$0.3); no equitable tolling, FSC software, or Puerto Rico	Modified D.C. package (\$0.3); FSC software (\$0.6); no equitable tolling or Puerto Rico.
Extenders	R&E, contributions of appreciated stock to private foundations, WOTC and orphan drug credit. (\$2.8)	1-1/2 year extension of R&E, and contributions of appreciated stock to private foundations; one year extension of modified, two-tier WOTC; and permanent extension of orphan drug credit. (\$4.1).	Two-and-a-half year extension of R&E and contributions of appreciated stock to private foundations; modified two-tier WOTC and permanent extension of orphan drug credit. (\$6.6)
Independent contractors	None	Liberalized independent contractor rules. (\$1.0).	Provision re: classification of securities brokers. (negligible).

Sylvia Mathews (for the President)
Pls make Zegras for Sylvia

Erskine asked us to get this to
you ASAP.

1
~~2~~



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

June 26, 1997

SECRETARY OF THE TREASURY

'97 JUN 26 PM 1:21

MEMORANDUM FOR THE PRESIDENT

FROM: Robert Rubin *RR*
Gene Sperling

SUBJECT: An Offer on Your Tax Package

Rubin/Sperling
memo re:
Tax Package

Your budget team met in Erskine's office today to finalize our recommendations for our tax package to be offered on Monday. The following memo summarizes issues and highlights choices that need to be made concerning the package. The side-by-side following the options memo compares the features and five-year costs of the competing Administration, House and Senate choices.

Post-Secondary Education

- o **Option 1** provides a two-year HOPE scholarship of \$1,000 and 50 percent of additional expenses up to \$1000 starting in 1998. It provides a 20 percent credit on allowable out-of-pocket education expenses of \$5,000 through 2000 and \$10,000 thereafter. The package is more generous than the House and Senate packages.
 - This costs roughly \$34.5 billion through 2002 and \$90.6 through 2007 under Treasury's scoring. We expect JCT scoring to be at least \$5 billion higher in the first five years.
- o **Option 2** would give a four year HOPE scholarship of \$1,000 for students attending at least half time in a degree or certificate program, and 20 percent of additional expenses up to \$1000 starting in 1998. Students not eligible for the HOPE scholarship could get a credit for 20 percent of additional expenses up to \$1000 starting in 1998. This package will cost in the neighborhood of \$35 billion under Treasury's scoring.
- o **Option 3** mirrors the proposals offered by the House and Senate Democrats. It gives a HOPE Scholarship of \$1000 and 50 percent of additional expenses up to \$200 through 1999, \$400 in 2000 and \$1,000 thereafter. Students must be attending at least half time in the first two years of a degree or certificate program. If a student is not eligible for the HOPE scholarship, we would give a 20 percent tuition credit on expenses up to \$4,000 through 1999, \$7,500 in 2000 and \$10,000 thereafter.
 - This option costs \$32.3 (\$37.4) billion through 2002 and \$88.6 (\$87.3) through

2007 under Treasury (JCT) scoring.

Your advisers are in general agreement that Option 1 makes the most sense at this time. It stays close to the original proposal in your Budget and allows you to stress how the proposal best advances your goal of making the 13th and 14th grades universal, plus it has a strong lifelong learning component. Furthermore, by including the notion of 50 percent of the second \$1,000, it addresses the tuition inflation argument and shows us being responsive to suggestions by Daschle and Senate Democrats.

Many of your advisers believe that in the end, we may wish to fall back to a single, simpler four-year option -- such as Option 2. Most of your advisers would rather lead with Option 1 and use a version of Option 2 (perhaps with a more generous lifelong learning provision) as a fall-back. Frank Raines, however, would favor moving to this option sooner rather than later as a means of showing our immediate willingness to offer a compromise suggestion on our tax priority.

☐ prefer Option 1

☐ prefer Option 2

☐ prefer Option 3

General Capital Gains Relief

- o **Option 1** would provide a 30 percent exclusion. This holds the top rate at 28 percent, but gives a rate cut to all taxpayers in the 36 percent bracket and lower. Taxpayers in the 28 percent and 15 percent brackets get as much relief as they do under the 20/10 separate rate schedule. The proposal would include the President's home sale provision.
 - Costs \$8.2 billion through 2002 and \$17.5 billion through 2007 (Treasury scoring). We expect the JCT to score this as costing several billion less through 2002.
- o **Option 2** would provide a separate rate schedule approach (using rates of 24/12), retain 28 percent rate for collectibles, depreciation recapture at 26 percent, AMT adjustment to tax gains at 24 percent, President's home sale provision.
 - Treasury estimates that this proposal would raise \$3.6 billion through 2002 and \$4.6 billion through 2007. We expect the JCT to score this as losing roughly \$2 billion through 2002 and roughly \$20 billion through 2007.
- o **Option 3** is the proposal that came out of the Finance Committee, which had a separate rate schedule of 20/10, depreciation recapture at 24 percent and the President's home sales provision. An AMT feature will need to be addressed.
 - JCT estimates that the Senate Finance proposal would lose \$3.3 billion through 2002 and \$23.9 through 2007.

Your advisers recommend Option 1. This proposal provides a broad based capital gains tax cut to all but the people at the very top of the income scale. The Republicans will not like it because it does not provide relief to the roughly half percent of taxpayers who are in the 39.6 percent bracket, but it will put them in an awkward message situation, help with our distribution, and most importantly, give us room to move in exchange for coming our way on the higher education tax cut and the "stacking" on EITC.

☐ prefer Option 1

☐ prefer Option 2

☐ prefer Option 3

Child Credit

The child credit is the piece that moves to fit the rest of the package.

- o **Option 1** would do the following. First, the child credit would be stacked before the EITC, ensuring that working families who pay income taxes receive the benefit of the child credit. Moreover, the child credit would be partially refundable to the extent the employee share of payroll taxes exceeds their EITC. Thus, the child credit will offset income taxes and payroll taxes, to the extent the latter exceeds the EITC. Second, we will cover children under 17, as is the case in the Congressional packages. Third, we would keep the optional Kidsave feature that allows parents to contribute up to the amount of the credit plus \$500 to a nondeductible, backloaded IRA-type savings vehicle. Earnings would be distributed tax free for the child's education and possibly child related events, or for the parent's retirement. Fourth, the income phaseouts will be as in the FY98 budget (\$60,000 to \$75,000) through 2002 and higher thereafter. Fifth, the credit will be phased in (starting at \$300 in 1998 and phasing up to \$500) to fit the \$85 billion budget agreement.
- o **Option 2** would drop refundability, stack the child credit before the EITC and include the optional Kidsave feature. The proposal should first phase-in at a level comparable to the Republican proposal (no credit in 1997, \$400 in 1998 and \$500 thereafter). It should then cover children under 17 (though we could cover 17 year olds) and then use whatever money is remaining to increase the income limits beyond the \$60,000-\$75,000 range in the FY98 Budget (we will increase the income limits after 2002).
- o **Option 3** incorporates a more generous Kidsave feature. It would give a child credit of \$500 for families that do not contribute to a Kidsave account, and a \$600 child credit to families that contribute at least \$600 to the Kidsave account. This proposal would need to be somewhat less generous in some dimension than Option 2 in order to finance the saving subsidy.

Your advisers recommend Option 1. The major issue of the discussion was to what extent out proposal should be refundable. Focusing strictly on stacking would allow us a cleaner message because it would keep the debate on the young police officer you discussed at the press

conference. On the other hand, going with refundability would allow us to stay close to our Democrats, plus leave room to move later.

All of us agree that we did not want to allow the Republicans to be able to frame the message as Democrats for welfare payments at the expense of Republicans for tax credits for teens in middle class families. We reached consensus around a proposal that would give the tax credit to teenagers, and have partial refundability -- but only to the degree that people paid payroll and income taxes beyond what they get in their EITC. In this way, we take away the Republican message on teenagers, keep some element of refundability, but keep our message that this is a tax cut only for people who owe federal payroll and income taxes. While this may not be as strong on refundability as some Democrats will like, it has partial refundability, keeps our message advantage, and can be described as taking characteristics from both the Rangel and Daschle packages. In order to afford all this, however, we have to phase in the \$500 credit -- but that is consistent with your original child credit proposal.

☐ prefer Option 1

☐ prefer Option 2

☐ prefer Option 3

Airport and Airways Trust Fund

- o **Option 1** would follow the President's FY 1998 budget by extending the airline ticket tax through 2007 and wait for the National Civil Aviation Review Commission to propose a more long-term solution to meet the FAA's long-term needs with user fees.
- o **Option 2** would adopt changes from the Finance Committee mark, which raise an additional \$2.9 billion through 2002 and \$8 billion through 2007. While no airline supports increased fees, low-cost carriers prefer the Senate approach versus the "head tax" provisions proposed in the House.

Your advisers recommend that you choose Option 1, which sticks with what was in your budget and keeps you out of this fight.

☐ prefer Option 1

☐ prefer Option 2

Tobacco Taxes

- o **Option 1** would impose a 20 cents/pack increase in the tobacco excise tax as included in the Finance Committee package, but dedicate the revenue to a trust fund for children's and health expenditures. Under this option tobacco taxes would not displace other raisers needed to finance the tax cuts that are sought.
- o **Option 2** would impose a 20 cent/pack increase in the tobacco tax and use it to fund other measures.

- o **Option 3** would not include a tobacco tax increase.

Your advisers recommend Option 1. We believe we should include a tobacco tax increase but insist that it go to help advance your goals for children. We will discuss with Bruce Reed and others the best tactical strategy for deciding how we should describe what such children's concerns these funds should go to.

___ prefer Option 1

___ prefer Option 2

___ prefer Option 3

Comparison of Major Provisions of Competing Tax Packages, June 24, 1997 (Scoring through 2002)

Item	Suggested Administration Package	Ways and Means Package	Senate Finance Committee Package
Education	<u>HOPE Scholarship</u>: 100 percent of the first \$1,000 and 50 percent of additional expenses up to \$1000 starting in 1998. <u>Tuition credit</u>: 20 percent credit on allowable out-of-pocket education expenses of \$5,000 through 2000 and \$10,000 thereafter. (\$34.5)	Modified HOPE scholarship --50% of expenses up to \$3,000 (phaseout \$40,000-50,000 singles/\$80,000-100,000 joint). (\$22.3) Deduction for undergraduate expenses paid through state-sponsored prepaid tuition program of up to \$10,000/yr., \$40,000 max. per student. (\$0.9)	Modified HOPE scholarship --50% of expenses up to \$3,000; 75% of up to \$2000 for community colleges and technical school students (phaseout \$40,000-50,000 singles/\$80,000-100,000 joint). (\$20.4) No deduction or credit, other than Modified Hope Scholarship.
School construction	Allocable tax credits for K-12 construction. (\$2.5; Rangel spent \$1.7)	None	Raise small issuer arbitrage exemption for education facilities. (\$.03)
Section 127	Permanent extension of Section 127, for both graduates and undergraduates. (\$3.6)	Six month extension of Section 127 for undergraduates. (\$0.2)	Permanent extension of Section 127, for both graduates and undergraduates. (\$3.5)
Computer technology K-12	Subsidy for Internet access for K-12 schools. (\$0.3)	Enhanced deduction for corporate contributions to schools. (\$0.2)	Exclude certain teacher training (including technology training) expenses from application of 2% floor on miscellaneous itemized deductions. (\$0.1)
Student loans	\$2500 above-the-line student loan interest deduction. (\$1.1)	None	\$2500 above-the-line student loan interest deduction. (\$1.1)

\$150 million bond cap for private colleges and universities	Repeal bond cap. (\$0.3)	Raise by \$10 million per year until it reaches \$200 million. (\$0.13)	Repeal bond cap. (\$0.3)
IRA withdrawals	Penalty-free IRA withdrawals for undergraduate, post-secondary vocational, and graduate education expenses. (\$0.8)	Penalty-free IRA withdrawals for undergraduate, post-secondary vocational, and graduate education expenses. (\$0.8)	Penalty-free IRA withdrawals for undergraduate, post-secondary vocational, and graduate education expenses. (\$0.8)
Education saving incentives	Kidsave accounts (i.e. backloaded IRA for educational saving), with \$1,000 contribution limit. As in the Senate, education expenses financed by Kidsave withdrawals would reduce allowable expenses for the Hope Scholarship.	Education investment accounts for children under 18 (maximum \$5,000 annual contribution, \$50,000 aggregate contributions), private prepaid tuition plans; deduction for undergraduate and post-secondary vocational expenses of up to \$10,000/yr., \$40,000 max. per student. (\$7.0)	Contributions of up to \$2000 (plus \$500 child credit) per year to Education IRA-- tax-free inside buildup and tax-free withdrawals if used for higher education; allow private prepaid tuition plans \$2000 (plus \$500 child credit) per year; tax-free withdrawals for prepaid State-sponsored programs. (\$ 6.2)
Middle-Class Tax Relief	This provision will be adapted to fit the \$85 billion net tax cut target. The credit will be stacked before the EITC and partially refundable. It will cover kids under 17, incorporate an optional Kidsave feature, phases out between \$60,000 and \$75,000 (prior to 2002) and phases in to a \$500 credit, starting at \$300 in 1998.	\$500 (\$400 in 1998) child credit, non-refundable, under 17, stacked <u>after</u> the EITC; 50% offset with dependent care credit for married couple making \$60,000 or more (\$33,000 for other taxpayers), beginning after 2000. (\$71.3) Phased out starting at \$75,000 for singles and \$110,000 for joint	\$500 (\$250 in 1997 only for children under 13) child credit, for children under 17 (18 after 2002); mandatory Kidsave for children age 13 and above; stacked <u>after</u> half of the EITC. (\$83.5) Phased out starting at \$75,000 for singles and \$110,000 for joint

		Index dependent care tax credit expense limit, \$75,000-\$100,000 AGI phaseout. (\$0.1)	
Alternative Minimum Tax	None	Increase individual AMT exemption amount by \$1,000 every other year from 1999 through 2007, index thereafter. (\$1.2)	Increase individual AMT exemption amount by \$600 (joint) for 2001-2002; \$950 (joint) every year thereafter. (\$0.35)
Corporate AMT	None. (Exemption from AMT for small corporations -- included as part of Administration Simplification Proposal)	Exemption from AMT for small corporations. (\$0.6)	None
	None	Prospective repeal of AMT depreciation. (\$11.8)	None
Capital Gains Provisions	30% exclusion; retain 28% for collectibles. \$500,000 exclusion for home sales. Includes the President's home sales provisions. (\$8.4, Treasury estimate).	Separate 20/10 rate schedule, 26% maximum rate on depreciation recapture, <u>indexing starting in 2001</u> ; phase down of top corporate capital gains rate to 30% for assets held at least 8 years. \$500,000 exclusion for home sales. (raises \$2.7)	Separate 20/10 rate schedule, 24% maximum rate on depreciation recapture, <u>no indexing or corporate capital gains</u> . \$500,000 exclusion for home sales. (\$3.3)
Small Business Provisions	Variant of Bumpers-Matsui targeted small business relief. (\$0.4, Treasury)	None	Slightly expanded version of Administration's proposal. (\$0.7)

IRAs	None, but allow penalty-free IRA withdrawals for education and establish new Kidsave accounts	Create backloaded American Dream IRA's, <u>penalty free rollovers</u> from IRA (which raises money), special purpose withdrawals for first time home purchase. (\$.03)	Expand income phaseouts for deductible IRAs; expand availability of spousal IRAs; create backloaded IRA Plus accounts; special purpose withdrawals for first time home purchases. (\$3.3)
Home Office	Increase availability of home office deduction. (\$0.6, Treasury)	Slightly modified version of home office provision (\$1.1)	None
Estate Tax	Daschle qualified family owned business estate tax relief. (\$2.3, Treasury)	Increase unified credit to \$1.0 million by 2007. (\$7.5)	Increase unified credit to \$1m by 2006 (\$3.1). Modified Daschle proposal with \$1m exemption for qualified businesses (\$3.1). Up to \$1m exclusion for conservation easements and other changes (\$0.4)
Urban Initiatives	Expansion of EZs and ECs, Brownfields, CDFI and the welfare-to-work tax credit. (\$2.3)	Modified welfare-to-work provision (\$0.1); no brownfields or EZ/ECs.	Restricted brownfields (\$0.25); no welfare-to-work or EZ/ECs.
Other Presidential Initiatives	Equitable tolling, Puerto Rico, FSC software, and DC. (\$1.3)	Modified D.C. package (\$0.3); no equitable tolling, FSC software, or Puerto Rico	Modified D.C. package (\$0.3); FSC software (\$0.6); no equitable tolling or Puerto Rico.
Extenders	R&E, contributions of appreciated stock to private foundations, WOTC and orphan drug credit. (\$2.8)	1-1/2 year extension of R&E, and contributions of appreciated stock to private foundations; one year extension of modified, two-tier WOTC; and permanent extension of orphan drug credit. (\$4.1).	Two-and-a-half year extension of R&E and contributions of appreciated stock to private foundations; modified two-tier WOTC and permanent extension of orphan drug credit. (\$6.6)
Independent contractors	None	Liberalized independent contractor rules. (\$1.0).	Provision re: classification of securities brokers. (negligible).

220217
222819

THE WHITE HOUSE

WASHINGTON

June 26, 1997



✓ 6-27-97

MEMORANDUM FOR THE PRESIDENT

FROM:

TODD STERN *TJS*

SUBJECT:

Senior Military Actions

The Secretary of Defense has recommended and the NSC concurs in the following senior military actions:

- o Major General Lance W. Lord, United States Air Force, for appointment to the grade of lieutenant general and a recommendation for his assignment as Vice Commander, Air Force Space Command.
- o Defer the mandatory retirement of General Ronald H. Griffith, United States Army, from July 1, 1997 to November 1, 1997, under the provisions of title 10, United States Code, section 637(b).

Background information is attached.

Approve _____

Reject _____

97 JUN 18 9 45:30

THE WHITE HOUSE

WASHINGTON

June 12, 1997

MEMORANDUM FOR THE PRESIDENT

THROUGH:

THE EXECUTIVE CLERK *J*

FROM:

ALAN P. SULLIVAN *Alan P. Sullivan*
DEPUTY ASSISTANT TO THE PRESIDENT AND
DIRECTOR, WHITE HOUSE MILITARY OFFICE

SUBJECT:

General Officer Nomination

Forwarded for your approval and signature is the nomination of Major General Lance W. Lord, United States Air Force, for appointment to the grade of lieutenant general and a recommendation for his assignment as Vice Commander, Air Force Space Command.

The Secretary of Defense has attached an evaluation of General Lord's performance in a joint duty assignment from the Acting Chairman of the Joint Chiefs of Staff.

This nomination was staffed by the Secretary of the Air Force and approved by the Secretary of Defense.

Recommendation

That you approve and sign the attached.

Attachment



THE SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

10 JUN 1997

MEMORANDUM FOR THE PRESIDENT

SUBJECT: General Officer Nomination

I recommend Major General Lance W. Lord, United States Air Force, whose name appears on the attached nomination scroll, for assignment as Vice Commander, Air Force Space Command, and for appointment to the grade of lieutenant general. General Lord, age 50, will succeed Lieutenant General Patrick P. Caruana, United States Air Force.

In order to carry out the duties and responsibilities of the proposed assignment, a general officer must have demonstrated highly effective performance in senior leadership positions. He must possess a thorough understanding of the requirements of Space Command's theater of operations, including war plans and the political environment. He must have the ability to work well with senior officials from other Services and other nations. General Lord meets these requirements.

This action is based upon the recommendation of the Secretary of the Air Force and the advice of the Acting Chairman of the Joint Chiefs of Staff. The above action will not result in the Air Force exceeding the number of officers authorized to serve in the grade of lieutenant general. As required by Title 10, United States Code, Section 601(d)(1), I have attached an evaluation from the Acting Chairman of the Joint Chiefs of Staff of General Lord's performance while assigned to a joint duty assignment.

William S. [Signature]

Attachments:

As stated





CHAIRMAN OF THE JOINT CHIEFS OF STAFF

WASHINGTON, D.C. 20318-9999

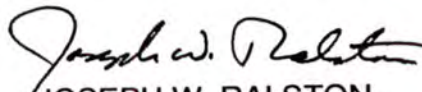
CN-195-97
13 May 1997

MEMORANDUM FOR THE SECRETARY OF DEFENSE

Through: Deputy Secretary of Defense

Subject: General Officer Nomination

1. In accordance with the provisions of title 10, United States Code, and DOD Instruction 1320.4, the Secretary of the Air Force has recommended Major General Lance W. Lord for assignment as Vice Commander, Air Force Space Command, and appointment to the grade of lieutenant general.
2. I have reviewed Major General Lord's performance in one joint assignment. As Military Assistant to the Director of Net Assessment, Office of the Secretary of Defense, his clear cut assessments of the US/Soviet Military Investment Balance corrected many misunderstanding about the "dollar costing" of Soviet defense efforts. His visionary work and innovative ideas on the military potential of space contributed significantly to the DOD space planning process. I am confident he is well qualified for this assignment and advancement.
3. I concur in the Secretary's nomination of Major General Lord for this assignment and appointment to the grade of lieutenant general. I recommend you forward the enclosed nomination to the President for approval.


JOSEPH W. RALSTON
Acting Chairman
of the Joint Chiefs of Staff

Enclosure

The White House

Washington

To the Senate of the United States:

I nominate:

The following named officer for appointment in the United States Air Force to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., Section 601:

To be Lieutenant General
Major General Lance W. Lord, 1026

'97 MAY 28 PM 3:34

THE WHITE HOUSE

WASHINGTON
May 23, 1997

220819

MEMORANDUM FOR THE PRESIDENT

THROUGH: THE EXECUTIVE CLERK *Eg For*
FROM: ALAN P. SULLIVAN *Alan P Sullivan*
DEPUTY ASSISTANT TO THE PRESIDENT AND
DIRECTOR, WHITE HOUSE MILITARY OFFICE
SUBJECT: General Officer Action

Attached is a recommendation from the Secretary of Defense requesting that you defer the mandatory retirement of General Ronald H. Griffith, United States Army, from July 1, 1997 to November 1, 1997, under the provisions of title 10, United States Code, section 637(b).

Your signature on the attached memorandum will constitute your deferral of General Griffith's retirement.

Recommendation

That you approve and sign the attached memorandum.

Attachment



THE SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

21 MAY 1997

MEMORANDUM FOR THE PRESIDENT

SUBJECT: General Officer Nomination

I recommend you defer the mandatory retirement of General Ronald H. Griffith, United States Army, from July 1, 1997, to November 1, 1997, under the provision of Title 10, United States Code, Section 637(b)(2). General Griffith, age 61, is currently serving as the Vice Chief of Staff, United States Army. This deferment will provide continuity and facilitate an appropriate transition for his replacement into this key position.

This action will not cause the Army to exceed the number of officers authorized to be serving in the grade of general. Your signature on this memorandum will constitute approval.

William S. Cohen

APPROVED: _____

President of the United States

DATE: _____



WHITE HOUSE STAFFING MEMORANDUM

DATE: 5/28/97ACTION/CONCURRENCE/COMMENT DUE BY: 6/03/97

1- General Officer Nomination- Brigadier General Warren C. Edwards

2- General Officer Action- General Ronald Griffith

SUBJECT: _____

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	☐	McCURRY	☐	☐
BOWLES	☐	☐	McGINTY	☐	☐
McLARTY	☐	☐	NASH	☐	☐
PODESTA	☐	☐	RUFF	☐	☐
MATHEWS	☐	☐	SMITH	☐	☐
RAINES	☐	☐	REED	☐	☐
BAER	☐	☐	SOSNIK	☐	☐
ECHAVESTE	☐	☐	LEWIS	☐	☐
EMANUEL	☐	☐	YELLEN	☐	☐
GIBBONS	☐	☐	STRETT	☐	☐
HALE	☐	☐	SPERLING	☐	☐
RADD	☐	☐	TARULLO	☐	☐
HIGGINS	☐	☐	VERVEER	☐	☐
HILLEY	☐	☐	Bell <i>5/30 comments attached</i>	☒	☐
KLAIN	☐	☐	Clerk	☐	☒
BERGER	☐	☐		☐	☐
LINDSEY	☐	☐		☐	☐

REMARKS: DO YOU HAVE ANY OBJECTIONS?

RESPONSE: _____

'97 MAY 30 PM 8:57 2-220217

WHITE HOUSE STAFFING MEMORANDUM

DATE: 5/28/97

ACTION/CONCURRENCE/COMMENT DUE BY: 6/03/97

- 1- General Officer Nomination- Brigadier General Warren C. Edward
- 2- General Officer Action- General Ronald Griffith

SUBJECT:

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	☐	McCURRY	☐	☐
BOWLES	☐	☐	McGINTY	☐	☐
McLARTY	☐	☐	NASH	☐	☐
PODESTA	☐	☐	RUFF	☐	☐
MATHEWS	☐	☐	SMITH	☐	☐
RAINES	☐	☐	REED	☐	☐
BAER	☐	☐	SOSNIK	☐	☐
ECHAVESTE	☐	☐	LEWIS	☐	☐
EMANUEL	☐	☐	YELLEN	☐	☐
GIBBONS	☐	☐	STREETT	☐	☐
HALE	☐	☐	SPERTING	☐	☐
RADD	☐	☐	TARULLO	☐	☐
HIGGINS	☐	☐	VERVEER	☐	☐
HILLEY	☐	☐	Bell	☒	☐
KLAIN	☐	☐	Clerk	☐	☒
BERGER	☐	☐		☐	☐
LINDSEY	☐	☐		☐	☐

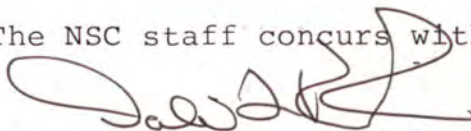
REMARKS: DO YOU HAVE ANY OBJECTIONS?

May 30, 1997

RESPONSE:

'97 MAY 28 PM 4:24

The NSC staff concurs with the attached nominations.



Donald L. Kerrick, Brig Gen, USA

'97 MAY 28 PM 3:34

THE WHITE HOUSE

WASHINGTON
May 27, 1997

MEMORANDUM FOR THE PRESIDENT

THROUGH: THE EXECUTIVE CLERK *28 for*
FROM: ALAN P. SULLIVAN *Alan P. Sullivan*
DEPUTY ASSISTANT TO THE PRESIDENT AND
DIRECTOR, WHITE HOUSE MILITARY OFFICE
SUBJECT: General Officer Nomination

Forwarded for your approval and signature is the nomination of Brigadier General Warren C. Edwards, United States Army, for appointment to the grade of major general in the United States Army.

This nomination was staffed by the Secretary of the Army and approved by the Deputy Secretary of Defense on behalf of the Secretary of Defense.

Recommendation

That you approve and sign the attached.

Attachment



DEPUTY SECRETARY OF DEFENSE

1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010



21 MAY 1997

MEMORANDUM FOR THE PRESIDENT

SUBJECT: General Officer Nomination

On behalf of the Secretary of Defense, I recommend you nominate Brigadier General Warren C. Edwards, United States Army, whose name appears on the attached scroll for appointment to the grade of major general in the United States Army. This nomination is based on the results of a selection board I approved on behalf of the Secretary of Defense.

This action will not result in the Army exceeding the number of officers authorized to be serving in the grade of major general.



John P. White

Attachment:
As stated

THE WHITE HOUSE

WASHINGTON
May 23, 1997

MEMORANDUM FOR THE PRESIDENT

THROUGH: THE EXECUTIVE CLERK *Eg For*
FROM: ALAN P. SULLIVAN *Alan P Sullivan*
DEPUTY ASSISTANT TO THE PRESIDENT AND
DIRECTOR, WHITE HOUSE MILITARY OFFICE
SUBJECT: General Officer Action

Attached is a recommendation from the Secretary of Defense requesting that you defer the mandatory retirement of General Ronald H. Griffith, United States Army, from July 1, 1997 to November 1, 1997, under the provisions of title 10, United States Code, section 637(b).

Your signature on the attached memorandum will constitute your deferral of General Griffith's retirement.

Recommendation

That you approve and sign the attached memorandum.

Attachment



THE SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

21 MAY 1997

MEMORANDUM FOR THE PRESIDENT

SUBJECT: General Officer Nomination

I recommend you defer the mandatory retirement of General Ronald H. Griffith, United States Army, from July 1, 1997, to November 1, 1997, under the provision of Title 10, United States Code, Section 637(b)(2). General Griffith, age 61, is currently serving as the Vice Chief of Staff, United States Army. This deferment will provide continuity and facilitate an appropriate transition for his replacement into this key position.

This action will not cause the Army to exceed the number of officers authorized to be serving in the grade of general. Your signature on this memorandum will constitute approval.

William S. Cohen

APPROVED: _____

President of the United States

DATE: _____



WHITE HOUSE STAFFING MEMORANDUM

DATE: 6/16/97 ACTION/CONCURRENCE/COMMENT DUE BY: 6/20/97

SUBJECT: General Officer Nomination: U.S. Air Force Major General Lance W. Lord to the grade of lieutenant general and for assignment.

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	☐	McCURRY	☐	☐
BOWLES	☐	☐	McGINTY	☐	☐
McLARTY	☐	☐	NASH	☐	☐
PODESTA	☐	☐	RUFF	☐	☐
MATHEWS	☐	☐	SMITH	☐	☐
RAINES	☐	☐	REED	☐	☐
BAER	☐	☐	SOSNIK	☐	☐
ECHAVESTE	☐	☐	LEWIS	☐	☐
EMANUEL	☐	☐	YELLEN	☐	☐
GIBBONS	☐	☐	STREETT	☐	☐
IBARRA	☐	☐	SPERLING	☐	☐
RADD	☐	☐	TARULLO	☐	☐
HIGGINS	☐	☐	VERVEER	☐	☐
HILLEY	☐	☐	BELL <i>Agrees</i>	☒	☐
KLAIN	☐	☐	CLERK	☐	☒
BERGER	☐	☐		☐	☐
LINDSEY	☐	☐		☐	☐

REMARKS: DO YOU HAVE ANY OBJECTIONS?

RESPONSE:

'97 JUN 16 AM 10:15

4161

WHITE HOUSE STAFFING MEMORANDUM

'97 JUN 18 AM 10:25

DATE: 6/16/97 ACTION/CONCURRENCE/COMMENT DUE BY: 6/20/97

SUBJECT: General Officer Nomination: U.S. Air Force Major General Lance W. Lord to the grade of lieutenant general and for assignment.

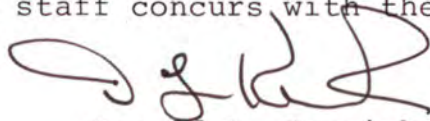
	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	☐	McCURRY	☐	☐
BOWLES	☐	☐	McGINTY	☐	☐
McLARTY	☐	☐	NASH	☐	☐
PODESTA	☐	☐	RUFF	☐	☐
MATHEWS	☐	☐	SMITH	☐	☐
RAINES	☐	☐	REED	☐	☐
BAER	☐	☐	SOSNIK	☐	☐
ECHAVESTE	☐	☐	LEWIS	☐	☐
EMANUEL	☐	☐	YELLEN	☐	☐
GIBBONS	☐	☐	STREETT	☐	☐
IBARRA	☐	☐	SPERTING	☐	☐
RADD	☐	☐	TARULLO	☐	☐
HIGGINS	☐	☐	VERVEER	☐	☐
HILLEY	☐	☐	BELL	☒	☐
KLAIN	☐	☐	CLERK	☐	☒
BERGER	☐	☐		☐	☐
LINDSEY	☐	☐		☐	☐

REMARKS: DO YOU HAVE ANY OBJECTIONS?

RESPONSE:

June 18, 1997

The NSC staff concurs with the attached nomination.



Donald L. Kerrick, Brig Gen, USA

Staff Secretary
Fvt 6-2702

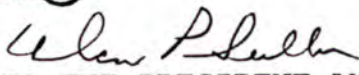
THE WHITE HOUSE

WASHINGTON

June 12, 1997

MEMORANDUM FOR THE PRESIDENT

THROUGH: THE EXECUTIVE CLERK 

FROM: ALAN P. SULLIVAN 
DEPUTY ASSISTANT TO THE PRESIDENT AND
DIRECTOR, WHITE HOUSE MILITARY OFFICE

SUBJECT: General Officer Nomination

Forwarded for your approval and signature is the nomination of Major General Lance W. Lord, United States Air Force, for appointment to the grade of lieutenant general and a recommendation for his assignment as Vice Commander, Air Force Space Command.

The Secretary of Defense has attached an evaluation of General Lord's performance in a joint duty assignment from the Acting Chairman of the Joint Chiefs of Staff.

This nomination was staffed by the Secretary of the Air Force and approved by the Secretary of Defense.

Recommendation

That you approve and sign the attached.

Attachment



THE SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

10 JUN 1997

MEMORANDUM FOR THE PRESIDENT

SUBJECT: General Officer Nomination

I recommend Major General Lance W. Lord, United States Air Force, whose name appears on the attached nomination scroll, for assignment as Vice Commander, Air Force Space Command, and for appointment to the grade of lieutenant general. General Lord, age 50, will succeed Lieutenant General Patrick P. Caruana, United States Air Force.

In order to carry out the duties and responsibilities of the proposed assignment, a general officer must have demonstrated highly effective performance in senior leadership positions. He must possess a thorough understanding of the requirements of Space Command's theater of operations, including war plans and the political environment. He must have the ability to work well with senior officials from other Services and other nations. General Lord meets these requirements.

This action is based upon the recommendation of the Secretary of the Air Force and the advice of the Acting Chairman of the Joint Chiefs of Staff. The above action will not result in the Air Force exceeding the number of officers authorized to serve in the grade of lieutenant general. As required by Title 10, United States Code, Section 601(d)(1), I have attached an evaluation from the Acting Chairman of the Joint Chiefs of Staff of General Lord's performance while assigned to a joint duty assignment.

A handwritten signature in black ink, appearing to read "William S. J. [illegible]", is located in the lower right area of the page.

Attachments:
As stated





CHAIRMAN OF THE JOINT CHIEFS OF STAFF

WASHINGTON, D.C. 20318-9999

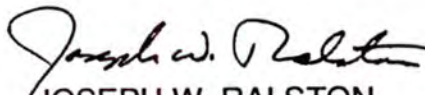
CN-195-97
13 May 1997

MEMORANDUM FOR THE SECRETARY OF DEFENSE

Through: Deputy Secretary of Defense

Subject: General Officer Nomination

1. In accordance with the provisions of title 10, United States Code, and DOD Instruction 1320.4, the Secretary of the Air Force has recommended Major General Lance W. Lord for assignment as Vice Commander, Air Force Space Command, and appointment to the grade of lieutenant general.
2. I have reviewed Major General Lord's performance in one joint assignment. As Military Assistant to the Director of Net Assessment, Office of the Secretary of Defense, his clear cut assessments of the US/Soviet Military Investment Balance corrected many misunderstanding about the "dollar costing" of Soviet defense efforts. His visionary work and innovative ideas on the military potential of space contributed significantly to the DOD space planning process. I am confident he is well qualified for this assignment and advancement.
3. I concur in the Secretary's nomination of Major General Lord for this assignment and appointment to the grade of lieutenant general. I recommend you forward the enclosed nomination to the President for approval.


JOSEPH W. RALSTON
Acting Chairman
of the Joint Chiefs of Staff

Enclosure

The White House

Washington

To the Senate of the United States:

I nominate:

The following named officer for appointment in the United States Air Force to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., Section 601:

To be Lieutenant General
Major General Lance W. Lord, 1026

THE WHITE HOUSE
WASHINGTON

June 27, 1997

MR. PRESIDENT:

Attached for your signature is H.J. Res 32, a bill that provides the consent of the United States to two amendments enacted by the Hawaii State Legislature. The bill is based upon a proposal by the Interior Department.

Background. Under the Hawaiian Homes Commission Act of 1920 (HHCA), more than 200,000 acres of U.S. Public Lands were set aside for homesteading for individuals who were at least 50% Native Hawaiian. The Hawaii Statehood Act of 1959 provided that any State-enacted changes to HHCA required the consent of the U.S.

In 1993 and 1994, the Hawaii Legislature passed two amendments. The first allows homesteaders' grandchildren who are at least 25% Native Hawaiian to be named as successors for leases to Hawaiian Home Lands. The second authorizes the Department of Hawaiian Home Lands to obtain homeowner's insurance for lessees and issue revenue bonds.

H.J. Res. 32 is supported by the Native Hawaiian community. It passed the House by voice vote and the Senate by unanimous consent. **Last day for action is June 30.**

Todd Stern
Phil Caplan

h: data 223400

h: res 32

h: data

h: res 32

6-27-97



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

'97 JUN 24 PM 3:24

June 24, 1997

THE DIRECTOR

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Resolution H.J.Res. 32 - Consent to Hawaiian Homes Commission Act
Amendments
Sponsor - Rep. Abercrombie (D) Hawaii

Last Day for Action

June 30, 1997 - Monday

Purpose

Provides consent of the United States to two amendments enacted by the Hawaii State Legislature to the Hawaiian Homes Commission Act.

Agency Recommendations

Office of Management and Budget	Approval
Department of the Interior	Approval
Department of Justice	No objection
Department of Housing and Urban Development	No objection (Informally)

Discussion

Under the Hawaiian Homes Commission Act of 1920 (HHCA), more than 200,000 acres of U.S. public lands were set aside for a homesteading project for individuals who were at least 50 percent Native Hawaiian. The Hawaii Statehood Act of 1959 shifted the responsibility for the administration of HHCA from the Territory to the State of Hawaii. The Statehood Act, however, also required the "consent of the United States" for certain State-enacted changes to HHCA.

In 1993 and 1994, the Hawaii State Legislature passed two amendments to HHCA. One amendment would allow homesteaders' grandchildren who are at least 25 percent Native Hawaiian to be named as successors for leases to Hawaiian Home Lands. The second amendment would authorize the Department of Hawaiian Home Lands to obtain homeowner's insurance for lessees and issue certain revenue bonds. Interior's enrolled bill views letter provides a detailed history of HHCA and the amendments addressed by H.J.Res. 32.

Bell is here

Conclusion and Recommendations

The Department of the Interior recommends approval of H.J.Res. 32, which is consistent with a previous proposal of the Department. Interior notes that the measure is supported by the Native Hawaiian community.

We join the Department of the Interior in recommending approval of H.J.Res. 32, which passed the House by voice vote and the Senate by unanimous consent.

A handwritten signature in black ink, appearing to read 'Franklin D. Raines', with a stylized flourish at the end.

Franklin D. Raines
Director

Enclosures



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

JUN 23 1997

Honorable Franklin D. Raines
Director, Office of Management and Budget
Attention: Assistant Director for
Legislative Reference
Washington, D.C. 20503

Dear Mr. Raines:

This responds to your request for the views of this Department with respect to an enrolled bill, H.J.Res.32, a Joint Resolution pursuant to the Hawaii Statehood Act of 1959, 73 Stat. 4.

We recommend that the President approve the enrolled bill.

The Joint Resolution would provide the consent of the United States to two enactments of the Legislature of the State of Hawaii amending the Hawaiian Homes Commission Act of 1921. The resolution is identical to an Administration proposal in the last Congress.

By way of background, we will first explain the consent requirement pertaining to amendments to the Hawaiian Homes Commission Act, following which we will discuss the specifics of the proposed Joint Resolution.

The Hawaiian Homes Commission Act, 42 Stat. 108 (HHCA) was enacted in 1921 as a homesteading program to place Native Hawaiians--defined as those of 50 percent or more Hawaiian blood--on land in Hawaii designated for that purpose. Approximately 200,000 acres were defined as "available lands" under the Act. As a result of the recommendations of a 1983 Task Force consisting of representatives of the State of Hawaii and the Department of the Interior, the Department has agreed to serve as the Federal agency generally responsible for Federal matters related to the Hawaiian Homes Commission act.

The Hawaii Statehood Act of 1959 shifted the responsibility for the administration of the Hawaiian Homes Commission Act from the Territory to the State of Hawaii. In accordance with the Statehood Act, title to the available lands was transferred to the new State. The Statehood Act, however, also included certain requirements regarding the State of Hawaii's administration of the Hawaiian Homes Program, and it is these that give rise to the Joint Resolution. Section 4 of the Statehood Act provides that the HHCA is to be included in the constitution of the new state as a "compact" with the United States, and that (with certain exceptions) the HHCA can be amended by the State "only with the consent of the

United States". The exceptions are amendments relating to administration and to the powers and duties of certain State officers. Under Section 4, the qualifications of the lessees cannot be changed, certain encumbrances on the available lands cannot be increased, and the benefits to lessees cannot be diminished without United States consent. There is a bar to the impairment or reduction of certain named funds and to the use of income from the available lands for any purpose other than carrying out the provisions of the HHCA.

Congress has enacted two prior Joint Resolutions consenting to various amendments to the HHCA by the State of Hawaii. The first Resolution, Public Law 99-557 of October 27, 1986, 100 Stat. 3143, provided the consent of the United States to all but one of the amendments enacted by Hawaii from statehood in 1959 through June 30, 1985. The second Resolution, P.L. 100-398 of October 6, 1992, 106 Stat. 1953, provided consent to subsequent amendments. The Department of the Interior took the lead within the Administration in preparing the proposed legislation in accordance with an informal agreement reached with the State of Hawaii and Congress in 1987.

It has generally been our position in connection with State amendments to the HHCA to refrain from second-guessing the Hawaii Legislature and the Governor of Hawaii with respect to the merits of the amendments. The Legislature and the Governor are generally better informed than we are with respect to the problems to which their amendments are directed. Our function has been to determine, in consultation with State officials, which amendments require the consent of the United States.

The Joint Resolution addresses the following two State enactments which the Department and the State of Hawaii both believe require Congressional consent.

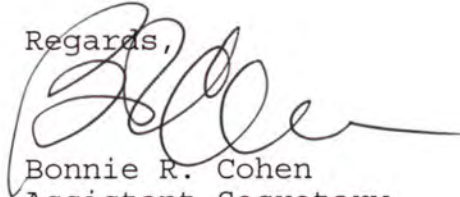
1. Act No. 339 of June 30, 1993, SLH 1993, establishing the Hawaiian Hurricane Relief Fund. This act amends section 219.1 of the HHCA. Section 7 of Act No. 339 authorizes the Department of Hawaiian Home Lands to obtain homeowner's insurance coverage for lessees and to issue revenue bonds. Section 15 of the Act consists of a severability clause which provides that the consent requirement, if any, that applies to the Hawaiian Homelands provisions shall not be deemed to effect the validity of the other provisions of the Act. The Department has in the past taken the position that state enactments involving the HHCA which include a severability clause would, in the exercise of caution, be submitted to Congress for approval.

2. Act No. 37 of April 28, 1994, SLH 1994, amending section 209 of the HHCA. This statute allows homestead lessees to designate as a successor to the lease a grandchild who is at least 25 percent Native Hawaiian. Under the current law, as adopted by Hawaii in

1982, a lessee may designate his or her spouse or children as a successor under the lease if they are 25 percent Native Hawaiian. The bill would allow a similar designation with respect to grandchildren. The Department and the State of Hawaii agree that Congressional consent is required for this legislation in that it amends the 50 percent blood quantum requirement included in the HHCA.

Because the enrolled bill conforms to the determinations of the Department and the State of Hawaii as to the consent requirements under the Hawaii Statehood Act for amendments to the Hawaiian Homes Commission Act, it is consistent with earlier recommendations of the Department to the Administration, and because it is much sought by the Hawaiian delegation and Native Hawaiian community, we recommend that the President approve the enrolled bill.

Regards,

A handwritten signature in black ink, appearing to read 'Bonnie R. Cohen', written over the word 'Regards,'.

Bonnie R. Cohen
Assistant Secretary
Policy, Management, and Budget



U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 23, 1997

The Honorable Franklin D. Raines
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Raines:

This letter responds to your request for the views and recommendation of the Department of Justice on the enrolled bill, H. J. Res. 32, consenting to amendments enacted by the Legislature of the State of Hawaii to the Hawaiian Homes Commission Act of 1920.

H. J. Res. 32 would grant the consent of the United States to amendments already adopted by the State of Hawaii through Acts 339 of 1993 and 37 of 1994. Act 339 would authorize the Department of Hawaiian Home Lands to obtain insurance coverage under the Hawaiian Hurricane Relief Fund for Hawaiian Home lessees. Act 37 would allow homestead lessees to designate grandchildren who are at least 25% Native Hawaiian as successors to their leases.

We have no objection to approval of H. J. Res. 32. Thank you for the opportunity to present our views.

Sincerely,

Andrew Foiss
Assistant Attorney General

Clinton Presidential Records Digital Records Marker

This is not a presidential record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

This marker identifies the place of a publication.

Publications have not been scanned in their entirety for the purpose of digitization. To see the full publication please search online or visit the Clinton Presidential Library's Research Room.

105th Congress, 1st Session, House of Representatives Report 105-16
To Consent to Certain Amendments Enacted by
the Legislature of the State of Hawaii to the
Hawaiian Homes Commission Act, 1920

TO CONSENT TO CERTAIN AMENDMENTS ENACTED BY THE
LEGISLATURE OF THE STATE OF HAWAII TO THE HAWAIIAN
HOMES COMMISSION ACT, 1920

MARCH 11, 1997.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. YOUNG of Alaska, from the Committee on Resources,
submitted the following

REPORT

[To accompany H.J. Res. 32]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the joint resolution (H.J. Res. 32), to consent to certain amendments enacted by the Legislature of the State of Hawaii to the Hawaiian Homes Commission act, 1920 having considered the same, report favorably thereon without amendment and recommend that the joint resolution do pass.

PURPOSE OF THE BILL

The purpose of H.J. Res. 32 is to consent to certain amendments enacted by the Legislature of the State of Hawaii to the Hawaiian Homes Commission Act, 1920.

BACKGROUND AND NEED FOR LEGISLATION

Congress enacted the Hawaiian Homes Commission Act of 1920 to designate approximately 200,000 acres within the islands of the then Territory of Hawaii for the exclusive use of native Hawaiians. The Act defined native Hawaiians as descendants with at least one-half blood quantum of individuals inhabiting the Hawaiian Islands prior to 1778. The primary purpose of the Act was to provide rural homesteads for native Hawaiians. However, this was expanded in 1923 to include residential lots and the demand for parcels for that purpose has continued to the present.

The role of the Federal Government in the Hawaiian Homes Commission became limited at the time of Hawaii Statehood in

Clinton Presidential Records Digital Records Marker

This is not a presidential record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

This marker identifies the place of a publication.

Publications have not been scanned in their entirety for the purpose of digitization. To see the full publication please search online or visit the Clinton Presidential Library's Research Room.

⑤

105th Congress, 1st Session, Senate Report 105-19
Hawaiian Homes Commission Act

HAWAIIAN HOMES COMMISSION ACT

MAY 16, 1997.—Ordered to be printed

Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany H.J. Res. 32]

The Committee on Energy and Natural Resources, to which was referred the joint resolution (H.J. Res. 32) to consent to certain amendments enacted by the Legislature of the State of Hawaii to the Hawaiian Homes Commission Act, 1920, having considered the same, reports favorably thereon without amendment and recommends that the joint resolution do pass.

PURPOSE OF THE MEASURE

The legislation provides the consent of the United States to two amendments to the Hawaiian Homes Commission Act of 1920 made by the State of Hawaii (Act 339 of the Session Laws, 1993, and Act 37 of the Session Laws, 1994) as required by the Admissions Act for the State of Hawaii.

BACKGROUND AND NEED

The Hawaiian Homes Commission Act (HHCA) was enacted by the United States Congress in 1921 as a homesteading program to place native Hawaiians—defined as those of 50 percent or more Hawaiian blood—on lands in Hawaii designated for that purpose. Approximately 200,000 acres were defined as “available lands” under the Act. The Hawaiian Statehood Act in 1959 (Public Law 86-3, 73 Stat. 4) conveyed title to the “available lands” to the new State, and generally placed responsibility for the administration of the Hawaiian Homes Commission Act in the State.

Section 4 of the Statehood Act provides that the HHCA is to be included in the Constitution of the new State as a “compact” with the United States, and that, with certain exceptions, the HHCA

Clinton Presidential Records Digital Records Marker

This is not a presidential record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

This marker identifies the place of a publication.

Publications have not been scanned in their entirety for the purpose of digitization. To see the full publication please search online or visit the Clinton Presidential Library's Research Room.

H.J. Res. 32 - Joint Resolution to consent to
certain amendments enacted by the the
legislature of the State of Hawaii to
the Hawaiian Homes Commission Act, 1920.

One Hundred Fifth Congress
of the
United States of America

AT THE FIRST SESSION

*Begun and held at the City of Washington on Tuesday,
the seventh day of January, one thousand nine hundred and ninety-seven*

Joint Resolution

To consent to certain amendments enacted by the Legislature of the State of
Hawaii to the Hawaiian Homes Commission Act, 1920.

*Resolved by the Senate and House of Representatives of the
United States of America in Congress assembled, That, as required
by section 4 of the Act entitled "An Act to provide for the admission
of the State of Hawaii into the Union", approved March 18, 1959
(73 Stat. 4), the United States consents to the following amendments
to the Hawaiian Homes Commission Act, 1920, adopted by the
State of Hawaii in the manner required for State legislation:*

- (1) Act 339 of the Session Laws of Hawaii, 1993.*
- (2) Act 37 of the Session Laws of Hawaii, 1994.*

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

'97 JUN 24 PM 3:24

June 24, 1997

THE DIRECTOR

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Resolution H.J.Res. 32 - Consent to Hawaiian Homes Commission Act
Amendments
Sponsor - Rep. Abercrombie (D) Hawaii

Bill is here

Last Day for Action

June 30, 1997 - Monday

Purpose

Provides consent of the United States to two amendments enacted by the Hawaii State Legislature to the Hawaiian Homes Commission Act.

Agency Recommendations

Office of Management and Budget	Approval
Department of the Interior	Approval
Department of Justice	No objection
Department of Housing and Urban Development	No objection (Informally)

Discussion

Under the Hawaiian Homes Commission Act of 1920 (HHCA), more than 200,000 acres of U.S. public lands were set aside for a homesteading project for individuals who were at least 50 percent Native Hawaiian. The Hawaii Statehood Act of 1959 shifted the responsibility for the administration of HHCA from the Territory to the State of Hawaii. The Statehood Act, however, also required the "consent of the United States" for certain State-enacted changes to HHCA.

In 1993 and 1994, the Hawaii State Legislature passed two amendments to HHCA. One amendment would allow homesteaders' grandchildren who are at least 25 percent Native Hawaiian to be named as successors for leases to Hawaiian Home Lands. The second amendment would authorize the Department of Hawaiian Home Lands to obtain homeowner's insurance for lessees and issue certain revenue bonds. Interior's enrolled bill views letter provides a detailed history of HHCA and the amendments addressed by H.J.Res. 32.

Conclusion and Recommendations

The Department of the Interior recommends approval of H.J.Res. 32, which is consistent with a previous proposal of the Department. Interior notes that the measure is supported by the Native Hawaiian community.

We join the Department of the Interior in recommending approval of H.J.Res. 32, which passed the House by voice vote and the Senate by unanimous consent.

A handwritten signature in black ink, appearing to read 'Franklin D. Raines', with a stylized, flowing script.

Franklin D. Raines
Director

Enclosures

223790

'97 JUN 26 PM 3:58



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

June 26, 1997

THE DIRECTOR

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 956 - Drug-Free Communities Act of 1997
Sponsors - Rep. Portman (R) Ohio and 55 others

Last Day for Action

July 2, 1997 - Wednesday

Purpose

Authorizes grants to community coalitions to develop and implement programs to prevent and treat substance abuse among youth.

Agency Recommendations

Office of Management and Budget	Approval
Office of National Drug Control Policy	Approval
Department of Housing and Urban Development	No objection (Informally)
Department of Justice	No objection (Informally)
Office of Personnel Management	No objection (Informally)
Department of Agriculture	Defers (Informally)
Department of Education	Defers (Informally)
Department of Health and Human Services	Defers (Informally)
Department of the Interior	No comment (Informally)

Discussion

H.R. 956 requires the Director of the Office of National Drug Control Policy (ONDCP) to establish a "Drug-Free Communities Support Program". Under the program, grants would be made to community coalitions for programs to prevent and treat substance abuse among youth.

Handwritten red mark: A large red checkmark or 'V' shape is drawn across the middle of the page, starting from the left margin and extending towards the right. To the right of this mark, the word 'V.I.P.' is handwritten in red, slanted upwards.

Appropriations Authorizations. The enrolled bill authorizes appropriations for the program of \$10 million for FY 1998 and a total of \$143.5 million for FYs 1998-2002. The bill cites congressional intent to "rechannel resources from the fiscal year 1998 Federal drug control budget" to fund the program. Your FY 1998 Budget did not request funding for this program.

Not more than 10 percent of the authorized amounts may be spent on administrative costs of the program in FY 1998. This percentage gradually declines to 3 percent by FY 2001.

Grant Eligibility and Amounts. To be eligible to receive a grant, a community coalition must include representatives from specified groups, including groups representing youth, parents, law enforcement, religious and fraternal organizations, and schools. If feasible, the coalition must include an elected official (or a representative of an elected official) from the Federal Government and from the State or local government or the governing body of an Indian tribe. A coalition also must demonstrate that it receives "significant" financial support from non-Federal sources and has a strategy to solicit non-Federal financial support to ensure that the coalition and its activities will be self-sustaining. Any of these requirements may be waived for rural coalitions (i.e., those from counties with populations below 30,000).

The maximum grant for a fiscal year is the lesser of \$100,000 or the amount of non-Federal assistance (including in-kind contributions) raised by the coalition in a fiscal year. Grants may be renewed annually for four years after the initial grant.

Advisory Commission; Appointment of Program Administrator. H.R. 956 establishes an Advisory Commission on Drug-Free Communities, to consist of 11 members appointed to three-year terms by the President. (Some of the initial appointments would be for terms of 1 or 2 years.) Of the 11 members, four are to be appointed from the general public, four are to be appointed from representatives of national substance abuse reduction organizations, and three are to be appointed from representatives of State substance abuse reduction organizations. The ONDCP Director may designate two officers or employees of the Federal Government as ex officio members of the Commission. The Commission terminates at the end of FY 2002.

The purpose of the Commission is to make recommendations to the Director of ONDCP concerning the Drug-Free Communities Support Program. Among other subjects, the Commission may make recommendations concerning: (1) the selection of an Administrator for the program; and (2) any grant made by the program.

If the ONDCP Director rejects the Commission's recommendation concerning the selection of an Administrator, he must notify the Commission in writing within 15 days of his reasons for doing so. The Director must appoint an Administrator within 30 days after receiving the Advisory Commission's recommendations regarding the appointment.

Authority to Contract with Another Agency to Award Grants. H.R. 956 authorizes ONDCP to contract with another Federal agency with responsibility for Federal drug control programs to award the grants. In its enrolled bill views letter, ONDCP advises that it "has initiated informal discussions with other drug control agencies regarding a possible delegation of these [grant-making] responsibilities."

Conclusion and Recommendations

ONDCP recommends approval of H.R. 956 because it "will empower communities to find local solutions to the drug use problem."

We join ONDCP in recommending approval of H.R. 956, which passed the House by a vote of 420-1 and the Senate by voice vote.

A handwritten signature in black ink, appearing to read 'Franklin D. Raines', with a stylized flourish at the end.

Franklin D. Raines
Director

Enclosures

THE WHITE HOUSE

WASHINGTON

'97 JUN 25 PM 1:11

ACTION

June 25, 1997

MEMORANDUM FOR THE PRESIDENT

THROUGH: THE EXECUTIVE CLERK

FROM: SAMUEL BERGER
JOHN HILLEY

SUBJECT: Proposed Income Tax Convention between the United States and South Africa

Purpose

To transmit to the Senate for advice and consent to ratification the Convention Between the United States of America and the Republic of South Africa for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains ("the Convention").

Background

The Secretary of State has forwarded the attached Convention between the United States of America and the Republic of South Africa for your transmission to the Senate requesting its advice and consent to ratification.

Attached for signature is your transmittal message to the Senate (Tab A), which also forwards the State Department report on the convention (Tab B) and the text of the convention (Tab C).

There has been no income tax convention between the United States and South Africa since it was terminated on July 1, 1987, pursuant to the terms of that Convention and Section 313 of the Comprehensive Anti-Apartheid Act of 1986. The attached convention, which was signed on February 17, 1997 and follows the U.S. model tax treaty, establishes maximum rates of tax that may be applied to various types of income, protection from double taxation of income, exchange of information to prevent fiscal evasion, and standard rules to limit the benefits of the Convention so they are available only to persons that are not engaged in treaty shopping.

RECOMMENDATION

That you sign the transmittal message to the Senate (Tab A).

cc: Vice President
Chief of Staff

Attachments

Tab A Transmittal to the Senate

Tab B State Department Report on the Convention

Tab C The Convention

TO THE SENATE OF THE UNITED STATES:

I transmit herewith for Senate advice and consent to ratification the Convention Between the United States of America and the Republic of South Africa for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, signed at Cape Town February 17, 1997. Also transmitted is the report of the Department of State concerning the Convention.

This Convention, which generally follows the U.S. model tax treaty, provides maximum rates of tax to be applied to various types of income and protection from double taxation of income. The Convention also provides for the exchange of information to prevent fiscal evasion and sets forth standard rules to limit the benefits of the Convention so that they are available only to residents that are not engaged in treaty shopping.

I recommend that the Senate give early and favorable consideration to this Convention and give its advice and consent to ratification.

THE WHITE HOUSE,

S/S 9703194

DEPARTMENT OF STATE
WASHINGTON

June 13, 1997

The President:

I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, the Convention Between the United States of America and the Republic of South Africa for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, signed at Cape Town on February 17, 1997 ("the Convention").

Currently, there is no income tax convention between the United States and South Africa. The income tax convention between the United States and South Africa of December 13, 1946 was terminated July 1, 1987, pursuant to the terms of that convention and Section 313 of the Comprehensive Anti-Apartheid Act of 1986. The proposed Convention generally follows the pattern of the U.S. model treaty. It establishes maximum rates of tax that may be applied to various types of income, protection from double taxation of income, exchange of information to prevent fiscal evasion, and standard rules to limit the benefits of the Convention so they are available only to persons that are not engaged in treaty shopping. Like other U.S. tax conventions, this Convention provides rules specifying

The President,

The White House.

JUN 13 20:30

when income that arises in one of the countries (the "source country") and is beneficially owned by residents of the other country (the "country of residence") may be taxed by the source country.

The Convention establishes maximum rates of tax that may be imposed by the source country on specified categories of income, including dividends, interest, and royalties, to residents of the other country that are the same as those in the U.S. model treaty and in many recent conventions with OECD countries. Pursuant to Article 10, dividends from direct investments are subject to tax by the source country at a rate of five percent. The threshold ownership criterion for direct investment is ten percent, consistent with other modern U.S. treaties, in order to facilitate direct investment. Other dividends are generally taxable by the source country at 15 percent.

In general, under Article 11, interest derived and beneficially owned by a resident of a Contracting State is exempt from tax by the source country and may be taxed only in the State in which the owner of the income resides. Under Article 12, royalties derived and beneficially owned by a resident of a Contracting State may also be taxed only in the State in which the owner of the income resides.

These rates of taxation on royalty and interest income do not apply, however, if the beneficial owner of the income is not a resident of, but carries on business in the source country and the income is attributable to a permanent establishment in the source country. In that situation, the income is to be considered either business profit or income from independent personal services and is subject to the provisions of Articles 7 and 14, which deal with these classes of income.

Like other U.S. tax treaties, this Convention provides the standard anti-abuse rules for certain classes of investment income in Articles 10 and 11.

The taxation of capital gains, described in Article 13 of the Convention, follows the pattern of the U.S. model tax treaty. It provides that gains from the sale of real property (including a U.S. real property interest) are taxable in the State in which the property is situated. Gains from the sale of personal property that is part of a permanent establishment or fixed base may be taxed in the State in which the permanent establishment or fixed base is located. The proposed Convention permits taxation of profits from international carriage by ships or airplanes only by the country of residence. Gains, including gains from the sale of ships, aircraft, or containers operated or used in international traffic are taxable only in the Contracting State in which the alienator is located.

Article 7 of the proposed Convention generally follows the standard rules for taxation by one country of the business profits of a resident of the other. The non-residence country's right to tax such profits is generally limited to cases in which the profits are attributable to a permanent establishment located in that country. The proposed Convention, however, grants rights to tax business profits that generally are somewhat broader than those found in the U.S. and OECD model treaties. Under the proposed Convention, pursuant to the definition of a "permanent establishment" in Article 5(2)(k), an enterprise will have a permanent establishment in a Contracting State if its employees or other personnel provide services within that State for 183 days or more within a 12-month period in connection with the same or a connected project.

As do all recent U.S. tax treaties, this Convention preserves the right of the United States to impose its branch profits tax in addition to the basic corporate tax on a branch's business (Article 10). The proposed Convention, at Article 7, also accommodates a provision of the 1986 Tax Reform Act that attributes to a permanent establishment or fixed base income that is earned during the life of the permanent establishment or fixed base but is deferred and not received until after the permanent establishment or fixed base no longer exists.

Consistent with U.S. treaty policy, Article 8 of the new Convention permits only the country of residence to tax profits from international carriage by airplanes and ships. This reciprocal exemption also extends to income from the rental of ships or aircraft if the rental income is incidental to income from the operation of the craft in international traffic.

The taxation of income from the performance of personal services under Articles 14 and 15 of the proposed Convention is subject to rules that essentially follow those of the U.S. model treaty. The 183-day personal service requirement in the definition of permanent establishment (Article 5) is adopted in the definition of fixed base in Article 14.

Under Article 18 of the proposed Convention, at the request of South Africa, the tax treatment of pensions differs from that in the U.S. model treaty. Pensions will be subject to limited source-country tax. The residence country may also tax, subject to a foreign tax credit, if the source country has taxed the pension.

Article 22 of the proposed Convention contains significant anti-treaty-shopping rules making the Convention's benefits unavailable to persons engaged in treaty shopping.

The proposed Convention also contains the standard rules necessary for administering the Convention, including rules for the resolution of disputes under the Convention (Article 25). The information-exchange provisions of the proposed Convention (Article 26) make clear that South Africa is obligated to provide U.S. tax officials such information as is necessary to carry out the provisions of the Convention. The information is understood to include bank information. Consistent with U.S. policy, South African information will be available to U.S. authorities regardless of whether South Africa has a "tax interest" in the information.

The Convention would permit the General Accounting Office and the tax-writing committees of Congress to obtain access to certain tax information exchanged under the Convention for use in their oversight of the administration of U.S. tax laws and treaties (Article 26).

In accordance with Article 28, the United States and South Africa must notify each other that their constitutional requirements for entry into force of the Convention have been satisfied. The Convention will enter into force 30 days after the later of the notifications. It will have effect, with respect to taxes withheld at the source, for amounts paid or credited on or after the first day of January following entry into force. In other cases the Convention will have effect with respect to taxable periods beginning on or after the first day of January following the date on which the Convention enters into force.

Article 29 provides that the proposed Convention will remain in force indefinitely unless terminated by one of the Contracting States. Either State will be able to terminate the Convention after five years from the date on which the Convention enters into force by giving prior notice of at least six months through diplomatic channels.

A technical memorandum explaining in detail the provisions of the Convention will be prepared by the Department of the Treasury and will be submitted separately to the Senate Committee on Foreign Relations.

The Department of the Treasury and the Department of State cooperated in the negotiation of the Convention. It has the full approval of both Departments.

Respectfully submitted,

William O. Douglas

CONVENTION BETWEEN
THE UNITED STATES OF AMERICA
AND THE
REPUBLIC OF SOUTH AFRICA
FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE
PREVENTION OF FISCAL EVASION WITH RESPECT TO
TAXES ON INCOME AND CAPITAL GAINS

The Government of the United States of America and the
Government of the Republic of South Africa desiring to
promote and strengthen the economic relations between the
two countries have agreed as follows:

Article 1

General Scope

1. This Convention shall apply only to persons who are residents of one or both of the Contracting States, except as otherwise provided in the Convention.

2. The Convention shall not restrict in any manner any benefit now or hereafter accorded:

a) by the laws of either Contracting State; or

b) by any other agreement between the Contracting States.

3. Notwithstanding the provisions of subparagraph 2(b):

a) the provisions of Article 25 (Mutual Agreement Procedure) of this Convention exclusively shall apply to any dispute concerning whether a measure is within the scope of this Convention, and the procedures under this Convention exclusively shall apply to that dispute; and

b) unless the competent authorities determine that a taxation measure is not within the scope of this Convention, the non-discrimination obligations of this Convention exclusively shall apply with respect to that measure, except for such national treatment or most-favored-nation obligations as may apply to trade in

goods under the General Agreement on Tariffs and Trade. No national treatment or most-favored-nation obligation under any other agreement shall apply with respect to that measure.

c) For the purpose of this paragraph, a "measure" is a law, regulation, rule, procedure, decision, administrative action, or any other form of measure.

4. Notwithstanding any provision of the Convention except paragraph 5, the United States may tax its residents (as determined under Article 4 (Residence)), and by reason of citizenship may tax its citizens, as if the Convention had not come into effect. For this purpose, the term "citizen" shall include a former citizen or long-term resident whose loss of such status had as one of its principal purposes the avoidance of tax (as defined under the laws of the United States), but only for a period of 10 years following such loss.

5. The provisions of paragraph 4 shall not affect:

a) the benefits conferred by a Contracting State under paragraph 2 of Article 9 (Associated Enterprises), paragraphs 2, 4, 5, 6 and 7 of Article 18 (Pensions and Annuities), and under Articles 23

(Elimination of Double Taxation), 24

(Non-Discrimination), and 25 (Mutual Agreement Procedure); and

b) the benefits conferred by a Contracting State under Articles 19 (Government Service), 20 (Students, Apprentices and Business Trainees), and 27 (Diplomatic Agents and Consular Officers), upon individuals who are neither citizens of, nor have been admitted for permanent residence in, that State.

Article 2

Taxes Covered

1. The existing taxes to which the Convention shall apply are in particular:

a) in the United States: the Federal income taxes imposed by the Internal Revenue Code of 1986 (but excluding social security taxes), and the Federal excise taxes imposed with respect to private foundations;

(hereinafter referred to as "United States tax");

b) in South Africa:

i) the normal tax;

ii) the secondary tax on companies;

(hereinafter referred to as "South African tax").

2. This Convention shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their respective taxation laws or other laws affecting their obligations under the Convention, and of any official published material concerning the application of the Convention, including explanations, regulations, rulings, or judicial decisions.

Article 3

General Definitions

1. In this Convention, unless the context otherwise requires:

- a) i) the term "United States" means the United States of America; and

ii) when used in a geographical sense, the term "United States" means the States thereof and the District of Columbia.

Such term also includes:

aa) the territorial sea thereof;

bb) the seabed and subsoil of the adjacent submarine areas beyond the territorial sea over which the United States exercises sovereign rights in accordance with international law for the purpose of exploration and exploitation of the natural resources of such areas, but only to the extent that the person, property or activity to which this Convention is being applied is connected with such exploration or exploitation;

b) the term "South Africa" means the Republic of South Africa and, when used in a geographical sense, includes the territorial sea thereof as well as any area outside the territorial sea which has been or may hereafter be designated, under international law and the laws of South Africa, as areas within which South

Africa may exercise sovereign rights or jurisdiction with regard to the exploration or exploitation of natural resources;

c) the term "person" includes an individual, an estate, a trust, a partnership, a company and any other body of persons;

d) the term "company" means any body corporate or any entity which is treated as a company or body corporate for tax purposes according to the laws of the Contracting State in which it is organized;

e) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

f) the term "nationals" means all individuals having the citizenship of a Contracting State and all legal persons, partnerships, associations and other entities deriving their status as such from the laws in force in a Contracting State;

g) the term "competent authority" means:

i) in the case of the United States, the Secretary of the Treasury or his delegate; and

ii) in the case of South Africa, the Commissioner for Inland Revenue or his authorized representative;

h) the term "international traffic" means any transport by a ship or aircraft, except when such transport is solely between places in a Contracting State.

2. As regards the application of this Convention at any time by a Contracting State any term not defined therein shall, unless the context otherwise requires or the competent authorities agree to a common meaning pursuant to the provisions of Article 25 (Mutual Agreement Procedure), have the meaning which it has at that time under the law of that State concerning the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 4

Residence

1. For the purposes of this Convention the term
"resident of a Contracting State" means:

a) in the case of the United States,

- i) any person who, under the laws of the United States, is liable to tax therein by reason of his domicile, residence, citizenship, place of incorporation, or any other criterion of a similar nature, provided, however, that this term does not include any person who is liable to tax in the United States in respect only of income from sources therein or of profits attributable to a permanent establishment in the United States; and
- ii) a legal person organized under the laws of the United States and that is generally exempt from tax in the United States and is established and maintained in the United States either:

aa) exclusively for a religious, charitable, educational, scientific, or other similar purpose; or

bb) to provide pensions or other similar benefits to employees pursuant to a plan;

b) in the case of South Africa, any individual who is ordinarily resident in South Africa and any legal person which is incorporated or has its place of effective management in South Africa;

c) that State, and any political subdivision or local authority thereof;

d) in the case of an item of income, profit or gain derived through an entity that is fiscally transparent under the laws of either Contracting State, that income shall be considered to be derived by a resident of a State to the extent that the item is treated for purposes of the taxation law of such Contracting State as the income, profit or gain of a resident.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);

b) if the State in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;

c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;

d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a company is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which it is incorporated.

4. Where by reason of the provisions of paragraph 1 a person other than an individual or a company is a resident of both Contracting States, the competent authorities of the Contracting States shall by mutual agreement endeavour to settle the question and to determine the mode of application of the Convention to such person.

Article 5

Permanent Establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

- a) a place of management;
- b) a branch;

- c) an office;
- d) a factory;
- e) a workshop;
- f) a mine, an oil or gas well, a quarry or other place of extraction of natural resources;
- g) a warehouse, in relation to a person providing storage facilities for others;
- h) a store or premises used as a sales outlet;
- i) a ship, drilling rig, installation or other structure used for the exploration or exploitation of natural resources, but only if it lasts more than twelve months;
- j) a building site or construction, installation or assembly project or supervisory activities in connection therewith, where such site, project or activities lasts more than twelve months; and
- k) the furnishing of services, including consultancy services, within a Contracting State by an enterprise through employees or other personnel engaged by the enterprise for such purposes, but only if activities of that nature continue (for the same or a connected project) within that State for a period or periods aggregating more

than 183 days in any twelve month period commencing or ending in the taxable year concerned.

3. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;

e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character; and

f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e).

4. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 5 applies - is acting on behalf of an enterprise and has and habitually exercises in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 3 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

5. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other Contracting State through a broker, general commission agent or any other agent of an independent

status, provided that such persons are acting in the ordinary course of their business.

6. The fact that a company which is a resident of a Contracting State controls or is controlled by a company that is a resident of the other Contracting State, or that carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company as a permanent establishment of the other.

Article 6

Income from Immovable Property (Real Property)

1. Income derived by a resident of a Contracting State from immovable property (real property), including income from agriculture or forestry, situated in the other Contracting State may be taxed in that other State.

2. The term "immovable property (real property)" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment

used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

Article 7

Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the

enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and independent enterprise engaged in the same or similar activities under the same or similar conditions.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment including a reasonable allocation of executive and general administrative expenses, research and development expenses, interest, and other expenses so incurred, whether in the Contracting State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, incurred (otherwise

than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission or other charges for specific services performed or for management or by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission or other charges for specific services performed or for management or by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

5. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good reason to the contrary.

7. In applying paragraphs 1 and 2 of Article 7 (Business Profits), paragraphs 4 and 6 of Article 10 (Dividends), paragraph 3 of Article 11 (Interest), paragraph 3 of Article 12 (Royalties), paragraph 3 of Article 13 (Capital Gains), Article 14 (Independent Personal Services) and paragraph 2 of Article 21 (Other Income), any income or gain attributable to a permanent establishment or fixed base during its existence is taxable in the Contracting State where such permanent establishment or fixed base is situated even if the payments are deferred until such permanent establishment or fixed base has ceased to exist.

Article 8

Shipping and Air Transport

1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic include profits derived from the rental of ships or aircraft if such ships or aircraft are operated in international traffic by the lessee or if such rental profits are incidental to other profits described in paragraph 1.

3. Profits of an enterprise of a Contracting State from the use or rental of containers (including trailers, barges and related equipment for the transport of containers) used in international traffic shall be taxable only in that State.

4. The provisions of paragraphs 1 and 3 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9

Associated Enterprises

1. Where:

a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State - and taxes accordingly - profits on which an enterprise of the other Contracting

State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits if it agrees with the adjustment made by the first-mentioned State. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

Article 10

Dividends

1. Dividends paid by a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other Contracting State.

2. However, such dividends may also be taxed in the Contracting State of which the payor is a resident, and according to the laws of that State, but if the beneficial

owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 10 per cent of the voting stock of the company paying the dividends; and

b) 15 per cent of the gross amount of the dividends in all other cases.

The provisions of this paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

Subparagraph (a) shall not apply in the case of dividends paid by a United States person that is a Regulated Investment Company or a Real Estate Investment Trust. Subparagraph (b) shall apply in the case of dividends paid by a Regulated Investment Company. In the case of dividends paid by a Real Estate Investment Trust, subparagraph (b) shall apply only if the dividend is beneficially owned by an individual holding a less than 10 percent interest in the Real Estate Investment Trust; otherwise, the rate of withholding applicable under domestic law shall apply.

3. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income that is subjected to the same taxation treatment as income from shares under the laws of the State of which the payor is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the payor is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the dividends are attributable to such permanent establishment or fixed base. In such case, the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

5. Where a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by that resident except in so far as such dividends are paid to a resident of that other State or in so far as the dividends are attributable to a permanent establishment or a fixed base

situated in that other State, even if the dividends paid consist wholly or partly of profits or income arising in such other State.

6. A company that is a resident of one of the Contracting States and that has a permanent establishment in the other Contracting State or, if the United States is the other Contracting State, that is subject to tax in the United States on a net basis on its income that may be taxed there under Article 6 (Income from Immovable Property (Real Property)) or under paragraph 1 of Article 13 (Capital Gains), may be subject in the other Contracting State to a tax, but;

a) in the case of the United States, such tax may not exceed, in addition to the tax on profits, 5 percent of the portion of the profits of the corporation subject to tax in the United States that represents the dividend equivalent amount of such profits; and

b) in the case of South Africa, such tax may be imposed at a rate that does not exceed the normal rate of corporate tax by more than 5 percentage points.

7. The term "dividend equivalent amount" as used in paragraph 6, refers to the portion of the profits of a

permanent establishment subject to a tax under Article 7 (Business Profits), or that portion of the profits of a resident of one State subject to tax on a net basis in the other State under Article 6 (Income from Immovable Property (Real Property)) or under paragraph 1 of Article 13 (Capital Gains), that is comparable to the amount that would be distributed as a dividend if such income were earned by a locally incorporated subsidiary. The term "dividend equivalent amount" shall have the same meaning that it has under the law of the United States as it may be amended from time to time without changing the general principle of this paragraph.

8. Notwithstanding paragraph 2, dividends may not be taxed in the Contracting State of which the payor is a resident if the beneficial owner of the dividends is:

- a) a Contracting State, or any political subdivision or local authority thereof; or
- b) a pension trust or fund of an entity described in subparagraph (a) that is constituted and operated exclusively to administer or provide pension benefits described in Article 19 (Government Service) and that does not control the payor of the dividend.

Article 11

Interest

1. Interest derived and beneficially owned by a resident of a Contracting State shall be taxable only in that State.

2. The term "interest" as used in this Convention means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits and, in particular, income from government securities and income from bonds or debentures, including premiums or prizes attaching to such securities, bonds or debentures, and all other income that is subjected to the same taxation treatment as income from money lent by the taxation law of the Contracting State in which the income arises. Income dealt with in Article 10 (Dividends) and penalty charges for late payment shall not be regarded as interest for the purposes of this Convention.

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base

situated therein, and the interest is attributable to such permanent establishment or fixed base. In such case, the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

4. Where, by reason of a special relationship between the payor and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payor and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

5. Notwithstanding the provisions of paragraph 1:

a) interest that is contingent interest of a type that does not qualify as portfolio interest under United States law may be taxed at a rate not exceeding the rate prescribed in subparagraph (b) of paragraph 2 of Article 10 (Dividends); and

b) interest that is an excess inclusion with respect to a residual interest in a real estate mortgage investment conduit may be taxed by the United States in accordance with its domestic law.

Article 12

Royalties

1. Royalties derived and beneficially owned by a resident of a Contracting State shall be taxable only in that State.

2. The term "royalties" as used in this Convention means:

a) any consideration for the use of, or the right to use, any copyright of literary, artistic, scientific or other work (including computer software, cinematographic films, audio or video tapes or disks, and other means of image or sound reproduction), any patent, trademark, design or model, plan, secret formula or process, or other like right or property, or for information concerning industrial, commercial, or scientific experience; and

b) gain derived from the alienation of any property described in subparagraph (a), provided that such gain is contingent on the productivity, use, or disposition of the property.

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State, in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the royalties are attributable to such permanent establishment or fixed base. In such case, the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

4. Where, by reason of a special relationship between the payor and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payor and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only

to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 13

Capital Gains

1. Gains derived by a resident of a Contracting State that are attributable to the alienation of real property situated in the other Contracting State may be taxed in that other State.

2. For the purposes of this Convention the term "real property situated in the other Contracting State" shall include:

- a) real property referred to in Article 6 (Income from Immovable Property (Real Property));
- b) a United States real property interest; and
- c) an equivalent interest in real property situated in South Africa.

3. Gains from the alienation of movable property forming part of the business property of a permanent establishment

which an enterprise of a Contracting State has in the other Contracting State, or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

4. Gains of an enterprise of a Contracting State from the alienation of ships, aircraft or containers operated in international traffic or movable property pertaining to the operation of such ships, aircraft or containers, shall be taxable only in that State.

5. Gains from the alienation of any property other than that referred to in the preceding paragraphs shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14

Independent Personal Services

Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless such services are performed in the other Contracting State and such individual has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base. For the purposes of this Convention, where an individual who is a resident of a Contracting State stays in the other Contracting State for a period or periods exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned, he shall be deemed to have a fixed base regularly available to him in that other State and the income that is derived from his activities that are performed in that other State shall be attributable to that fixed base.

Article 15

Dependent Personal Services

1. Subject to the provisions of Articles 16 (Directors' Fees), 18 (Pensions and Annuities) and 19 (Government Service), salaries, wages and other remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned;

b) the remuneration is paid by or on behalf of an employer who is not a resident of the other State; and

c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Contracting State in respect of an employment as a member of the complement of a ship or aircraft operated in international traffic may be taxed only in that State.

Article 16

Directors' Fees

Directors' fees and other remuneration derived by a resident of a Contracting State for services rendered in the other Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17

Entertainers and Sportsmen

1. Income derived by a resident of a Contracting State as an entertainer such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, which income would not be liable to tax in that other Contracting State under the provisions of Articles 7 (Business Profits), 14 (Independent Personal Services) and 15 (Dependent Personal Services), may be taxed in that other State except where the amount of the gross receipts derived by such entertainer or sportsman from such activities, including expenses reimbursed to him or borne on his behalf, does not exceed seven thousand five hundred United States dollars (\$7,500) or its equivalent in South African rand for the taxable year concerned.

2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7 (Business Profits), 14 (Independent Personal Services) and 15 (Dependent Personal Services), be

taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised, unless it is established that neither the entertainer or sportsman nor persons related to such entertainer or sportsman participate directly or indirectly in the profits of that other person in any manner, including the receipt of deferred remuneration, bonuses, fees, dividends, partnership distributions or other distributions.

3. Income referred to in the preceding paragraphs of this Article, derived by a resident of a Contracting State in respect of activities exercised in the other Contracting State, shall not be taxed in that other State if the visit of the entertainers or sportsmen to that other State is supported wholly or mainly from the public funds of the Government of the first-mentioned State or of a political subdivision or local authority thereof.

4. The Contracting States may, through the exchange of diplomatic notes, agree to increase the amount referred to in paragraph 1 to reflect economic or monetary developments.

Article 18

Pensions and Annuities

1. Subject to the provisions of Article 19 (Government Service), pension distributions and other similar remuneration derived from sources within a Contracting State and beneficially owned by a resident of the other Contracting State, whether paid periodically or as a single sum, may be taxed by the first-mentioned State under the following conditions:

a) where the United States is the first-mentioned Contracting State, the tax imposed on the pension or similar remuneration may not exceed 15 percent of the gross amount of the pension or similar remuneration, provided that such pension or similar remuneration is not subject to a penalty for early withdrawal; and

b) where South Africa is the first-mentioned Contracting State:

i) the beneficial owner of the pension or similar remuneration has been employed in South Africa for a period or periods aggregating two years or more during the ten year period immediately preceding

the date from which the pension first became due; and

- ii) the beneficial owner of the pension or similar remuneration was employed in South Africa for a period or periods aggregating ten years or more.

2. Notwithstanding paragraph 1 of this Article and paragraph 2(b) of Article 19 (Government Service), social security benefits and other similar public pensions paid by a Contracting State to a resident of the other Contracting State or to a citizen of the United States shall be taxable only in the first-mentioned State.

3. Annuities beneficially derived by a resident of a Contracting State shall be taxable only in that State unless the annuity was purchased in the other Contracting State while such person was a resident of that other State, in which case the annuity may also be taxed in that other state. The term "annuities" as used in this paragraph means a stated sum paid periodically at stated times during life or during a specified number of years, under an obligation to make the payments in return for adequate and full consideration (other than services rendered).

4. Alimony paid by a resident of a Contracting State, and deductible therein, to a resident of the other Contracting State shall be taxable only in the first-mentioned State. Alimony paid by a resident of a Contracting State, and not deductible therein, to a resident of the other Contracting State shall be exempt from tax in both States. The term "alimony" as used in this paragraph means periodic payments made pursuant to a written separation agreement or a decree of divorce, separate maintenance or compulsory support.

5. Periodic payments, not dealt with in paragraph 4, for the support of a minor child made pursuant to a written separation agreement or a decree of divorce, separate maintenance or compulsory support, paid by a resident of a Contracting State to a resident of the other Contracting State, and not deductible in the first-mentioned State, shall be exempt from tax in both Contracting States.

6. For purposes of this Convention, where an individual who is a participant in a pension plan that is established and recognized under the legislation of one of the Contracting States performs personal services in the other Contracting State:

a) Contributions paid by or on behalf of the individual to the plan during the period that he performs such services in the other State shall be deductible (or excludible) in computing his taxable income in that State. Any benefits accrued under the plan or payments made to the plan by or on behalf of his employer during that period shall not be treated as part of the employee's taxable income and shall be allowed as a deduction in computing the profits of his employer in that other State.

b) Income earned but not distributed by the plan shall not be taxable in the other State until such time and to the extent that a distribution is made from the plan.

c) Distributions from the plan to the individual shall not be subject to taxation in the other Contracting State if the individual contributes such amounts to a similar plan established in the other State within a time period and in accordance with any other requirements imposed under the laws of the other State.

d) The provisions of this paragraph shall not apply unless:

- i) contributions by or on behalf of the individual to the plan (or to another similar plan for which this plan was substituted) were made before he arrived in the other State; and
- ii) the competent authority of the other State has agreed that the pension plan generally corresponds to a pension plan recognized for tax purposes by that State.

The benefits granted under this paragraph shall not exceed the benefits that would be allowed by the other State to its residents for contributions to, or benefits otherwise accrued under a pension plan recognized for tax purposes by the other State.

7. For purposes of this Convention, a pension or similar remuneration is deemed to arise from sources within a Contracting State to the extent that the pensionable service to which it relates is performed in that State.

Article 19

Government Service

1. (a) Remuneration, other than a pension, paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority thereof, shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that other State who:

- i) is a national of that other State; or
- ii) did not become a resident of that other State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority thereof, shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either of the Contracting States, a political subdivision or a local authority thereof.

Article 20

Students, Apprentices and Business Trainees

A student, apprentice or business trainee who is present in a Contracting State for the purpose of his full-time education or training and who is, or immediately before being so present was, a resident of the other Contracting State, shall be exempt from tax in the first-mentioned State on payments which arise from sources outside that first-mentioned State for the purposes of his maintenance, education or training. The exemption from tax provided by this Article shall apply to an apprentice or trainee for a period of time not exceeding one year from

the date he first arrives in the first-mentioned Contracting State for the purpose of his apprenticeship or training.

Article 21

Other Income

1. Items of income beneficially owned by a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6 (Income from Immovable Property (Real Property)), if the beneficial owner of the income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the income is attributable to such permanent establishment or fixed base. In such case, the provisions of Article 7 (Business Profits) or Article 14

(Independent Personal Services), as the case may be, shall apply.

Article 22

Limitation on Benefits

1. A resident of a Contracting State shall be entitled to benefits otherwise accorded to residents of a Contracting State by this Convention only to the extent provided in this Article.

2. A resident of a Contracting State shall be entitled to all the benefits of this Convention if the resident is:

- a) an individual;
- b) a Contracting State, political subdivision or local authority thereof;
- c) a company, if:
 - i) all the shares in the class or classes of shares representing more than 50 percent of the voting power and value of the company are regularly traded on a recognized stock exchange, or

ii) at least 50 percent of each class of shares in the company is owned directly or indirectly by companies entitled to benefits under clause i), provided that in the case of indirect ownership, each intermediate owner is a person entitled to benefits of the Convention under this paragraph;

d) a legal person organized under the laws of a Contracting State that is generally exempt from tax in that State under laws relating to charitable and other similar organizations;

e) a legal person organized under the laws of a Contracting State that is generally exempt from tax in that State, and is established and maintained in that State to provide pensions or other similar benefits to employees pursuant to a plan, provided that more than 50 percent of the beneficiaries, members or participants are individuals resident in either Contracting State;

f) a person other than an individual or a trust,
if:

- i) on at least half the days of the taxable year persons described in subparagraphs a), b), c), d) or e) own, directly or indirectly (through a chain of ownership in which each person is entitled to benefits of the Convention under this paragraph), at least 50 percent of each class of shares or other beneficial interests in the person, and
- ii) less than 50 percent of the person's gross income for the taxable year is paid or accrued, directly or indirectly, to persons who are not residents of either Contracting State (unless the payment is attributable to a permanent establishment situated in either State), in the form of payments that are deductible for income tax purposes in the person's State of residence;
- g) a trust, if:
 - i) on at least 274 days of the taxable year persons described in subparagraphs a),

b), c), d), e) or f) own, directly or indirectly (through a chain of ownership in which each person is entitled to benefits of the Convention under this paragraph), at least 80 percent of the aggregate beneficial interests in the trust, and

ii) less than 50 percent of the trust's gross income for the taxable year is paid or accrued, directly or indirectly, to persons who are not residents of either Contracting State (unless the payment is attributable to a permanent establishment situated in either State), in the form of payments that are deductible for income tax purposes in the trust's State of residence.

3. a) A resident of a Contracting State not otherwise entitled to benefits shall be entitled to the benefits of this Convention with respect to an item of income derived from the other State, if:

- i) the resident is engaged in the active conduct of a trade or business in the first-mentioned State,
- ii) the income is connected with or incidental to the trade or business, and
- iii) the trade or business is substantial in relation to the activity of the resident (and any related parties) in the other State generating the income.

b) For purposes of this paragraph, the business of making or managing investments will not be considered an active trade or business unless the activity is banking, insurance or securities activity conducted by a bank, insurance company or registered securities dealer, respectively.

c) Whether a trade or business is substantial for purposes of this paragraph will be determined based on all the facts and circumstances. In any case, however, a trade or business will be deemed substantial if, for the preceding taxable year, or for the average of the three preceding taxable years, the asset value, the gross income, and the payroll expense that are related

to the trade or business in the first-mentioned State equal at least 7.5 percent of the resident's (and any related parties') proportionate share of the asset value, gross income and payroll expense, respectively, that are related to the activity that generated the income in the other State, and the average of the three ratios exceeds 10 percent.

d) Income is derived in connection with a trade or business if the activity in the other State generating the income is a line of business that forms a part of or is complementary to the trade or business. Income is incidental to a trade or business if it facilitates the conduct of the trade or business in the other State.

4. A resident of a Contracting State not otherwise entitled to benefits may be granted benefits of the Convention if the competent authority of the State from which benefits are claimed so determines.

5. For purposes of this Article the term "recognized stock exchange" means:

a) the NASDAQ System owned by the National Association of Securities Dealers, Inc. and any stock ex-

change registered with the U.S. Securities and Exchange Commission as a national securities exchange under the U.S. Securities Exchange Act of 1934;

b) the Johannesburg Stock Exchange; and

c) any other exchange agreed upon by the competent authorities of the Contracting States.

6. Notwithstanding the other provisions of this Convention:

a) where an enterprise of South Africa derives income from the United States;

b) that income is attributable to a permanent establishment which that enterprise has in a third jurisdiction; and

c) the enterprise is not liable to tax in South Africa on the profits attributable to the permanent establishment;

the United States tax benefits that otherwise would apply under the other provisions of this Convention will not apply to any item of income on which the combined tax in South Africa and in the third jurisdiction is less than 50 percent of the tax that would be imposed in South Africa if the income were earned by the South African enterprise and

were not attributable to the permanent establishment in the third jurisdiction. Any interest or royalties to which this paragraph applies will be subject to United States tax at a rate not exceeding 15 percent of the gross amount thereof.

The preceding sentences of this paragraph shall not apply:

a) to interest derived in connection with or incidental to the active conduct of a trade or business carried on by the permanent establishment in the third jurisdiction (other than the business of making or managing investments, unless these activities are banking or insurance activities carried on by a bank or insurance company, respectively);

b) to royalties that are received as a compensation for the use of, or the right to use, intangible property produced or developed by the permanent establishment itself; and

c) to income derived by an enterprise of South Africa if the United States taxes the profits of such enterprise according to the provisions of subpart F of part III of subchapter N of chapter 1 of subtitle A of

the Internal Revenue Code of 1986, as it may be amended from time to time without changing the general principle thereof.

Article 23

Elimination of Double Taxation

1. In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle hereof), the United States shall allow to a resident or a citizen of the United States as a credit against the United States tax on income:

a) the South African tax paid or accrued by or on behalf of such citizen or resident; and

b) in the case of a United States company owning at least 10 per cent of the voting stock of a company which is a resident of South Africa and from which the United States company receives dividends, the South African tax paid by or on behalf of the distributing company with respect to the profits out of which the dividends are paid.

2. Where a United States citizen is a resident of South Africa:

a) with respect to items of income that under the provisions of this Convention are exempt from United States tax or that are subject to a reduced rate of United States tax when derived by a resident of South Africa who is not a United States citizen, South Africa shall allow as a credit against South African tax, only the tax paid, if any, that the United States may impose under the provisions of this Convention, other than taxes that may be imposed solely by reason of citizenship under the saving clause of paragraph 4 of Article 1 (General Scope);

b) for purposes of computing United States tax on those items of income referred to in subparagraph (a), the United States shall allow as a credit against United States tax the tax paid to South Africa after the credit referred to in subparagraph (a); the credit so allowed shall not reduce the portion of the United States tax that is creditable against the South African tax in accordance with subparagraph (a); and

c) for the exclusive purpose of relieving double taxation in the United States under subparagraph (b), items of income referred to in subparagraph (a) shall be deemed to arise in South Africa to the extent necessary to avoid double taxation of such income under subparagraph (b).

3. United States taxes paid by South African residents in respect of income taxable in the United States, in accordance with the provisions of this Convention, other than taxes that may be imposed solely by reason of citizenship under paragraph 4 of Article 1 (General Scope), shall be deducted from the South African taxes due according to South African fiscal law. Such deduction shall not, however, exceed an amount which bears to the total South African tax payable the same ratio as the income concerned bears to the total income taxable in South Africa.

Article 24

Non-discrimination

1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or

any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. This provision shall, notwithstanding the provisions of Article 1 (General Scope), also apply to persons who are not residents of one or both of the Contracting States. However, for the purposes of United States taxation, United States nationals who are subject to tax on a worldwide basis are not in the same circumstances as South African nationals who are not residents of the United States.

2, The taxation on a permanent establishment or fixed base that a resident or enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in that other State than the taxation levied on enterprises or residents of that other State carrying on the same activities.

3. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement

connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.

4. Nothing in this Article shall be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

5. Except where the provisions of paragraph 1 of Article 9 (Associated Enterprises), paragraph 4 of Article 11 (Interest) or paragraph 4 of Article 12 (Royalties) apply, interest, royalties and other disbursements paid by a resident of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of the first-mentioned resident, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

6. Nothing in this Article shall be construed as preventing either Contracting State from imposing a tax as described in paragraph 6 of Article 10 (Dividends).

7. The provisions of this Article shall, notwithstanding the provisions of Article 2 (Taxes Covered), apply to taxes of every kind and description imposed by a Contracting State or a political subdivision or local authority thereof.

Article 25

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of either Contracting State. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Convention (or in the case of tax collected at source within three years from the date of collection).

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to

resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits or other procedural limitations in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Convention. They may also consult together for the elimination of double taxation in cases not provided for in this Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. The competent authorities, through consultations, shall develop appropriate bilateral procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this Article. In addition, a competent authority may devise appropriate unilateral procedures, conditions, methods and techniques

to facilitate the above-mentioned bilateral actions and the implementation of the mutual agreement procedure.

5. In particular the competent authorities of the Contracting States may agree:

a) to the same attribution of income, deductions, credits, or allowances of an enterprise of a Contracting State to its permanent establishment situated in the other Contracting State;

b) to the same allocation of income, deductions, credits, or allowances between persons;

c) to the same characterization of particular items of income;

d) to the same characterization of persons;

e) to the same application of source rules with respect to particular items of income; and

(f) to a common meaning of a term.

Article 26

Exchange of Information and Administrative Assistance

1. The competent authorities of the Contracting States shall exchange such information as is necessary for

carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by this Convention in so far as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1 (General Scope). Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment, collection or administration of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).

3. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall obtain the information to which the request relates in the same manner and to the same extent as if the tax of the first-mentioned State were the tax of that other State. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall provide information under this Article in the form of depositions of witnesses and authenticated copies of unedited original documents

(including books, papers, statements, records, accounts and writings), to the same extent such depositions and documents can be obtained under the laws and administrative practices of that other State with respect to its own taxes.

4. Each of the Contracting States shall endeavour to collect on behalf of the other Contracting State such amounts as may be necessary to ensure that relief granted by the Convention from taxation imposed by that other State does not inure to the benefit of persons not entitled thereto.

5. Paragraph 4 of this Article shall not impose upon either of the Contracting States the obligation to carry out administrative measures which are of a different nature from those used in the collection of its own taxes, or which would be contrary to its sovereignty, security, or public policy.

6. For the purposes of this Article, the Convention shall apply, notwithstanding the provisions of Article 2 (Taxes Covered), to taxes of every kind administered by the competent authorities (but not including customs duties).

7. The competent authority of the requested State shall allow representatives of the applicant State to enter the requested State to interview individuals and examine books and records with the consent of the persons subject to examination.

Article 27

Diplomatic Agents and Consular Officers

Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

Article 28

Entry into Force

1. The Contracting States shall notify each other that the constitutional requirements for the entry into force of this Convention have been complied with.

2. This Convention shall enter into force thirty days after the date of the later of the notifications referred to in paragraph 1 and its provisions shall apply:

a) with regard to taxes withheld at source, in respect of amounts paid or credited on or after the first day of January next following the date upon which the Convention enters into force; and

b) with regard to other taxes, in respect of taxable periods beginning on or after the first day of January next following the date upon which the Convention enters into force.

Article 29

Termination

1. This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention by giving notice of termination, through the diplomatic channel, at least six months before the end of any calendar year starting five years after the year in which the Convention entered into force.

2. In such event, the Convention shall cease to have effect:

a) with regard to taxes withheld at source, in respect of amounts paid or credited on or after the first day of January next following the year in which the notice is given; and

b) with regard to other taxes, in respect of taxable periods beginning on or after the first day of January next following the year in which the notice is given.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Convention.

DONE at Cape Town in duplicate in the English language, this seventeenth..... day of February..... of the year 1997.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:

Al. Rose

Thabo Mbeki

FOR THE GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA: