

file

THE WHITE HOUSE
WASHINGTON

July 19, 1997

7-21-97

MR. PRESIDENT:

Attached is a nice profile of Stephen Goodin that ran in the Houston Chronicle earlier this month. It is a wonderful piece and, in his characteristic modesty, Stephen probably hasn't shown it to you. I thought you would like to see it.

Phil Caplan

Phil

The president's aide

Texan ensures Clinton has whatever he needs to do his job

By **NANCY MATHIS**

Houston Chronicle Washington Bureau

WASHINGTON — He's the Texan closest to President Clinton. No, not Lloyd Bentsen, Bob Strauss, Garry Mauro, Henry Cisneros or any other big-name Lone Star Democrat.

The Texan on whom the president most depends is a sweet-natured, soft-spoken 29-year-old named Stephen Goodin, whose business card states simply: "The President's Aide."

Goodin is the conductor who makes the executive train run on time, the psychic who anticipates the president's every need, the water boy who ensures the appropriate drink (domestic nonsparkling bottled water with no ice) is within presidential reach, the calm within a fury of activity that is the White House.

"My job is to make sure the president has whatever he needs to do his job," Goodin says.

Officially, he is supposed to keep the president on schedule while in the White House and to make sure that events go smoothly on the road, all of which means keeping track of countless details.

Goodin stands at the elbow of history every day, whether on a foreign trip such as the NATO summit in Spain next week or a baseball game in Baltimore.

He's the aide at Clinton's side as the president shakes hands after a speech, always prepared to field autograph requests, gifts or complaints.

Goodin knows he has a good deal.

"There's a very delicate balance. You have to have a certain suspension of reality in order to be able to perform my job. You can't be so awestruck that when President Clinton and President (Boris) Yeltsin are going on in their meeting too long that you can't try to end the meeting. You have to ignore some of the awe in order to be effective," Goodin explains.

See TEXAN on Page 16A.

Texan

Continued from Page 1A.

"At the same time, I try to look for opportunities just to step back and appreciate the position that I'm in. I describe it as a front-row seat on history. Every single day is a different piece of history ... I try to remind myself, which is not hard to do because I'm honored to be there, just how special it is and how lucky I am to witness these things and have a small part," Goodin says.

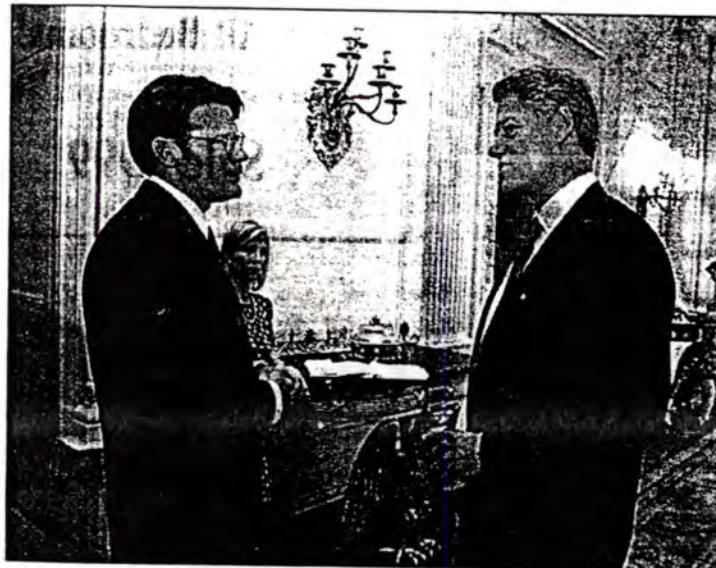
He has earned the respect of more senior and seasoned White House staffers.

"It's certainly thrilling to be in the shadow of the president 24 hours a day, but it also happens to be very demanding," says White House press secretary Mike McCurry. "Steve has the temperament that allows him to put up with the demands and the thrills of the job simultaneously. He's a very, very good guy. He's also the best Bill Clinton barometer in the building."

Goodin's White House desk is no more than a nightstand holding a laptop computer and a telephone, though it is right outside the Oval Office door.

"As they say in real estate: location, location, location," quips Goodin.

He has a dream job that he says



Associated Press

President Clinton is briefed Thursday by aide Stephen Goodin.

"is a testament to this country and this president."

Where else can a kid of modest means, and no political connections, grow up to be at the right hand of the most powerful man on the planet?

Born in Sherman on the Texas-Oklahoma border, Goodin grew up in Gainesville and lived with his family

in a mobile home. There were three girls and three boys, the products of a two-family merger that Goodin likens to the *Brady Bunch*. "I would be Peter Brady," he says.

He worked his way through the University of Texas as a waiter and bartender at Chili's Restaurant in Austin while earning a psychology

degree. He's such a diehard UT fan that he has a Longhorn tattoo on his ankle. The closest he came to politics was hearing President Bush address his 1990 commencement ceremony.

His original dream was to become a clinical psychologist. But Goodin was waylaid by politics when he moved to Washington with the idea of briefly studying the internal workings of Congress from a community psychology perspective.

After the 1992 election, he worked for Clinton's transition office and then for the Democratic Party until 1994 when he moved to his job at the White House.

After three years, his most searing memories are of aftermaths of tragedies: the assassination of Israeli Prime Minister Yitzhak Rabin, to whom Goodin had loaned his own tuxedo tie for a White House affair only a month earlier; a little girl in the Oklahoma City bombing who pushed her stuffed bear into Clinton's hands; the flag-draped coffins bearing colleagues killed when Commerce Secretary Ron Brown's plane crashed.

Still, Goodin can be struck by the oddity of his job.

"What a scam," he concedes he occasionally thinks. "Here I am sitting on Marine One (the presidential helicopter). It's just a dream no one would even know how to dream."

BILLS RECEIVED AT THE WHITE HOUSE

Date received and
notification to OMB: 06/26/97

LAST DAY FOR ACTION: 07/08/97

enrolled bill memo
is here

Comments	Date
'97 JUN 26 PM1:34	APPROVED
224630	

H.R. 1306,
An Act to amend Federal law to clarify the
applicability of host State laws to any branch
in such State of an out-of-State bank, and for
other purposes.

THE WHITE HOUSE
WASHINGTON

July 3, 1997

MR. PRESIDENT:

Attached for your signature is H.R. 1306, a bill clarifying the application of a State's banking laws to out-of-state bank branches operating in that State.

Background. The 1994 Banking and Branching Efficiency Act allows both Federally-chartered ("national") banks and State-chartered banks to establish branches in any state. The 1994 Act made the laws of the "host State" (where the branch is located) applicable to State-chartered bank branches, but it did not address the application of host-State laws to national bank branches. Some in Congress argued this creates an unintended incentive for State-chartered banks to switch to national charters -- and thus avoid application of the host State's laws.

H.R. 1306. The bill provides that host-State law applies to branches of both State-chartered banks *and* national banks. The bill also provides that the Office of the Comptroller of the Currency (OCC) may preempt the application of host-State law to out-of-state, State-chartered bank branches, just as it may now preempt application to national bank branches -- OCC will preempt host-State law if that law interferes with the ability of a bank to carry out its authorities under federal law. Finally, the bill preserves the right of Wisconsin, Iowa and Puerto Rico to continue to cap interest rates their residents pay to out-of-state credit card companies.

Treasury and the Federal Reserve both recommend approval of the bill, which passed both Houses by voice vote. **Last day for action is July 8.**

Todd Stern
Phil Caplan

Document No. _____

WHITE HOUSE STAFFING MEMORANDUM

DATE: 7/2 ACTION/CONCURRENCE/COMMENT DUE BY: _____

SUBJECT: H.R. 1306

	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	☐	☐
MARSHALL	☐	☐	VERVEER	☐	☐
HILLEY	☐	☒	WALDMAN	☐	☐
KLAIN	☐	☐	_____	☐	☐
BERGER	☐	☐	_____	☐	☐
LINDSEY	☐	☐	_____	☐	☐
			_____	☐	☐

REMARKS:

POTUS will sign tomorrow in office time

RESPONSE:



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

July 1, 1997

THE DIRECTOR

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 1306 - Riegle-Neal Amendments Act of 1997
Sponsors - Rep. Roukema (R) New Jersey and 32 others

Last Day for Action

July 8, 1997 - Tuesday

Purpose

Clarifies the extent to which a State's banking laws apply to branches of banks that operate in that State but are chartered in another State.

Agency Recommendations

Office of Management and Budget	Approval
Department of the Treasury	Approval
Federal Reserve System	Approval
Department of Justice	No objection (Informally)
Office of Consumer Affairs	No objection (Informally)
Department of State	No comment (Informally)
Federal Deposit Insurance Corporation	No comment (Informally)

Discussion

The Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (P.L. 103-328) allows Federally-chartered ("national") banks and State-chartered banks to establish branches in States other than their "home" States (i.e., the State in which they are chartered). This provision of the 1994 Act took effect on June 1, 1997.

Red + state
↓
other states - not state

Fed'l chartered

state-chartered

↓
other states (host state)

laws of host applicable
to out-of-state - state chartered

The 1994 Act makes the laws of a "host" State (where the branch is located) applicable to branches of out-of-state, State banks. The Act prohibits out-of-state, State-chartered banks from conducting activities that are not permissible for a bank chartered by the host State. The Act, however, did not address the application of host-State laws to out-of-state national banks. Some have argued that this creates an unintended incentive for State-chartered banks to become national-chartered banks.

In November 1996, Treasury's Office of the Comptroller of the Currency (OCC) adopted new rules concerning the permissible business activities of banks. The new rules: (1) allow national banks to establish subsidiaries to engage in any activity that is part of or incidental to the banking business; and (2) establish a process by which banks can petition the OCC to allow the subsidiaries to engage in activities the bank itself cannot engage in directly.

According to press reports, Rep. Roukema, the sponsor of H.R. 1306, believes the provision of the Riegle-Neal Act that applies host-State laws to out-of-state State banks, combined with the OCC rules on business activity, creates an unintended incentive for State-chartered banks to switch to national charters. Rep. Roukema introduced the bill to provide parity between State-chartered banks and national banks by making the rules for complying with State laws the same for both.

Summary of H.R. 1306

Applicability of State and Federal Law. The enrolled bill provides that host-State law applies to branches of out-of-state, State-chartered banks to the same extent that it applies to a branch of an out-of-state national bank operating in the host State.

To the extent host-State law is inapplicable to a branch of an out-of-state State bank, home-State law shall apply to that branch. (Host-State law might not apply in instances where it has been preempted by OCC with respect to out-of-state branches of national banks, as explained below.) Branches of out-of-state, State-chartered banks may exercise powers they have under their home-State charters if host State-chartered banks or national banks may exercise those powers.

H.R. 1306 states that it does not affect the applicability of: (1) Federal law to State banks; or (2) certain home-State laws concerning the approval process for interstate bank mergers and the applicability to interstate banking operations of State antitrust and tax laws.

OCC Report on Preemption of State Banking Regulations. OCC may currently preempt the application of host-State law to a branch of a national bank if that State law interferes with the ability of the national bank to carry out its authorities under national banking law. As noted above, H.R. 1306 would effectively apply OCC's preemption decisions to out-of-state branches of State-chartered banks.

The enrolled bill requires OCC to include in its annual report to the Congress a review of its decisions with regard to the applicability of State law to national banks and the reasons for each decision. According to Senator Sarbanes, this reporting requirement was added to H.R. 1306 in response to concerns raised by consumer groups that OCC "has undertaken preemptive actions which were unnecessarily expansive."

State Regulation of Interest Rates. H.R.1306 would preserve explicitly a State's right to opt out of a provision of Public Law 96-221 that authorizes State-chartered banks to charge interest rates comparable to those charged by Federally-chartered banks. The effect of this provision would be to allow Wisconsin, Iowa, and Puerto Rico to continue to cap interest rates that their residents pay to out-of-state credit card companies.

Conclusion and Recommendations

The Treasury Department and the Federal Reserve System recommend approval of H.R. 1306.

Treasury notes in its enrolled bill views letter that concerns have been expressed by consumer groups that "the bill may be used to circumvent consumer protection laws in some states." The Department also notes that concerns have been expressed about the application of this bill and the current law to State-chartered foreign banks. The Department concludes, however, that "[w]hile we believe these concerns deserve further consideration, we do not believe that they should delay enactment."

*only
can figure
out why?*

The Federal Reserve advises that the enrolled bill "is important in maintaining the health of the dual banking system." Its enrolled bill views letter states that H.R. 1306 "removes an unnecessary obstacle to interstate branching by state banks while at the same preserving the ability of states to establish uniform practices for all interstate branches in the areas that are of particular concern to states."

We join the Treasury and the Federal Reserve in recommending approval of H.R. 1306, which passed the House and the Senate by voice votes.



Franklin D. Raines
Director

Enclosures

H.R. 1902,

An Act to immunize donations made in the form
of charitable gift annuities and charitable
remainder trusts from the antitrust laws and
State laws similar to the antitrust laws.

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224641

THE WHITE HOUSE
WASHINGTON

July 3, 1997

MEMORANDUM FOR THE PRESIDENT

FROM: TODD STERN *TS*
PHIL CAPLAN *PC*

SUBJECT: H.R. 1902 -- The Charitable Donation Antitrust Immunity Act of 1997

Attached for your signature is H.R. 1902, a bill that immunizes organizations and people who set annuity rates for charitable gift annuities from being sued under Federal and state anti-trust law. Charitable gift annuities provide donors a fixed income for life in exchange for a donation to charity.

Background. In late 1995, you signed legislation that exempted non-profit organizations from anti-trust laws involved in setting up such annuity arrangements. That legislation was introduced in response to a class action lawsuit in federal court in Texas. After the 1995 bill became law, the plaintiffs in the lawsuit amended their complaint to allege that the charities' accountants and lawyers had participated in unlawful anti-trust conduct and that the charities' tax exempt status was fraudulent.

H.R. 1902. The bill would specifically immunize from lawsuits under Federal and State anti-trust law certain persons who assist in the issuance of charitable gift annuities and remainder trusts. According to Congress, this provision of the bill is intended to ensure interpretation by the courts "in a manner that will achieve the goals of the 1995 Act and obviate the need for further litigation." The bill also clarifies that the IRS, and not the courts, is to be the final arbiter of whether the criteria for a charitable gift annuity or remainder trust are met. Finally, the bill requires the Attorney General to study: the effects of the bill on markets for gift annuities, possible inappropriate activity resulting from this bill, and make recommendations on future legislation.

The bill passed both Houses by voice vote and has received all necessary clearances. As in 1995, DOJ recommends approval but believes exemptions from antitrust laws should only be granted for compelling social or economic policy objectives -- a situation DOJ believes is not present here. The bill passed both Houses by voice vote. **Last day for action is July 8.**



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

July 1, 1997

THE DIRECTOR

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 1902 - Charitable Donation Antitrust Immunity Act of 1997
Sponsors - Rep. Hyde (R) Illinois and 12 others

Last Day for Action

July 8, 1997 - Tuesday

Purpose

Provides that: (1) organizations and individuals that participate in setting annuity rates for charitable gift annuities are immune from being sued for such actions under Federal and State antitrust laws; and (2) the Internal Revenue Service will make the final determination regarding the classification of charitable gift annuities or remainder trusts.

Agency Recommendations

Office of Management and Budget

Approval

Department of Justice

Approval

Department of the Treasury

No objection (Informally)

Discussion

Public Law 104-63, enacted in 1995, exempted certain non-profit organizations from antitrust laws when setting annuity rates for charitable gift annuities. This law was enacted in response to a class action lawsuit brought in the U.S. District Court for the Northern District of Texas (Richie v. American Council on Gift Annuities) claiming that the use of annuity rates recommended by the American Council on Gift Annuities constitutes price fixing, and is, therefore, a violation of antitrust laws. According to the House Judiciary Committee's report on H.R. 1902, "[e]nactment of the 1995 Act was anticipated to provide a complete defense to the antitrust portions of *Richie*, as well as protection from future suits based on the use of agreed-upon annuity rates."

Subsequent to enactment of P.L. 104-63, the plaintiffs in the Texas lawsuit amended their complaint to allege that the charities' accountants and lawyers had participated in unlawful antitrust conduct and that the charities' tax exempt status under the Internal Revenue Code was fraudulent.

H.R. 1902 would specifically immunize from lawsuits under Federal and State antitrust laws certain persons who assist in the issuance of charitable gift annuities and remainder trusts. According to the Committee report, this provision is intended to ensure interpretation by the courts "in a manner that will achieve the goals of the 1995 Act [and] obviate the need for further litigation."

The enrolled bill also would clarify that an annuity or trust that is treated as a charitable gift annuity or remainder trust in any filing by the donor with the Internal Revenue Service (IRS) or in any written document provided by the donee to the donor shall be exempt from the antitrust laws as provided in H.R. 1902. If the IRS determines that an annuity or trust does not qualify as a charitable gift annuity or remainder trust, then the annuity or trust would not be exempt from Federal and State antitrust laws. According to remarks on the House floor by the bill's sponsor, this provision would ensure that the IRS, and not the district court, is final arbiter of whether the criteria for a charitable gift annuity or remainder trust are met.

Under current law, States have until December 8, 1998, (three years after the enactment of P.L. 104-63) to override the application of P.L. 104-63 to their antitrust laws. The enrolled bill would expand this override authority to cover the provisions of H.R. 1902.

The enrolled bill's antitrust exemption would apply to "conduct occurring before, on, or after the date of enactment of this Act and shall apply in all administrative and judicial actions pending or commenced after the date of enactment of this Act."

H.R. 1902 would require the Attorney General to conduct a study on: (1) the effects of the legislation on markets for noncharitable annuities, charitable gift annuities, and charitable remainder trusts; (2) possible inappropriate activity resulting from the legislation; and (3) recommendations for legislative changes. The enrolled bill requires that, within 27 months of its enactment, the study be submitted to specified congressional committees.

Conclusion and Recommendations

The Department of Justice recommends approval of H.R. 1902, notwithstanding its belief that "exemptions from the antitrust laws should be granted only when supported by compelling social or economic policy objectives." Justice advises that the need for the enrolled bill has not been demonstrated, but its concerns "are not sufficiently serious to merit a recommendation of Executive disapproval."

We join Justice in recommending approval of H.R. 1902, which passed the House and Senate by voice votes.

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

Franklin D. Raines
Director

Enclosures

APPROVED

DEC 08 1995

THE WHITE HOUSE

WASHINGTON

December 8, 1995

THE PRESIDENT HAS SEEN
12/8/95

MEMORANDUM FOR THE PRESIDENT

FROM: TODD STERN *TDS*

SUBJECT: H.R. 2519 and H.R. 2525 re Charitable Contributions

Attached for your signature are two related bills that exempt certain charities from (i) registration requirements under the securities laws (H.R. 2519) and (ii) the antitrust laws with respect to setting annuity rates for charitable gift annuities (H.R. 2525). Both bills were introduced in response to a lawsuit pending in federal court in the Northern District of Texas (Richie v. American Council on Gift Annuities). The bills passed the House by votes of 421-0 (H.R. 2519) and 427-0 (H.R. 2525) and the Senate by voice votes. **The last day for signing each is December 12, but there is a great deal of interest in the charitable community for prompt action since December is a major gift-giving time.**

H.R. 2519. Some charities operate "charitable income funds", which are typically made up of gifts from multiple donors, each of whom receives a share of the income from the fund during his/her lifetime, with the remainder of the corpus going to the charity upon death. The SEC has said that such funds are generally exempt from registration requirements, but litigation, like the Richie suit, has created uncertainty on this point. H.R. 2519 makes clear that such funds *are* exempt from the requirements that apply to investment companies, though the exemption wouldn't apply to anti-fraud provisions. Charities would, however, be required to provide donors with information about the operation of the fund at the time of donation. The bill would apply to pending as well as future lawsuits or administrative matters. **The SEC supports the bill as "an appropriate balance" between protecting investors and facilitating a charity's ability to manage its donations.**

H.R. 2525. Charitable gift annuities provide donors a fixed income for life in exchange for a donation to a charity. The American Council on Gift Annuities advises charities in computing annuity rates so that (i) charities don't jeopardize their assets by offering annuities that are too high; and (ii) donations are based on the relative merits of different charities rather than on shopping for the highest annuity rate. The claim in the Richie case is that the use of the Council's rates constitutes price fixing. H.R. 2525 would exempt charities from the antitrust laws for purposes of setting annuity rates. States would have three years to override application of H.R. 2525 to their antitrust laws if they wished. DOJ "disfavors" creation of a new antitrust exemption, but nevertheless recommends approval of the bill.

Both bills have cleared the relevant agencies and White House staff. I recommend that you sign them as soon as possible.

WHITE HOUSE STAFFING MEMORANDUM

DATE: 12-7 ACTION/CONCURRENCE/COMMENT DUE BY: 12-7 COBSUBJECT: HR 2525 & HR 2519 on Charitable gifts

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☒	☐	McCURRY	☐	☒
PANETTA	☒	☐	McGINTY	☐	☐
McLARTY	☐	☐	NASH	☐	☐
ICKES	☐	☒	QUINN	☒	☐
BOWLES	☐	☒	RASCO	☐	☐
RIVLIN	☐	☐	SOSNIK	☐	☒
BAER	☐	☐	STEPHANOPOULOS	☐	☒
CURRY	☐	☐	STIGLITZ	☐	☐
EMANUEL	☐	☐	STREETT	☐	☐
GIBBONS	☐	☐	TYSON	☐	☒
GRIFFIN	☒	☐	WALLEY	☐	☐
HALE	☒	☐	WILLIAMS	☐	☒
HERMAN	☒	☐	<u>Clerk</u>	☐	☒
HIGGINS	☒	☐		☐	☐
KLAIN	☐	☐		☐	☐
LAKE	☐	☐		☐	☐
LINDSEY	☐	☐		☐	☐

REMARKS:

Let me know if you have any comment.
 Unless I hear differently, we will probably
 try to have these bills signed tomorrow.

RESPONSE:



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

141234

THE DIRECTOR

December 6, 1995 95 DEC 6 P9:12

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 2519 - Philanthropy Protection
Act of 1995
Sponsor - Rep. Fields (R) Texas and 26 others

Last Day for Action

December 12, 1995 - Tuesday

Purpose

To exempt certain non-profit organizations which maintain charitable income funds from registration requirements under securities laws.

Agency Recommendations

Office of Management and Budget	Approval
Securities and Exchange Commission (SEC)	Approval
Department of Commerce	No objection
Department of the Treasury	No objection (Informally)
Department of Justice	No comment (Informally)
Federal Trade Commission	No comment (Informally)

Discussion

H.R. 2519 was introduced in response to a pending class action lawsuit brought in the U.S. District Court for the Northern District of Texas (Richie v. American Council on Gift Annuities). The suit charges that certain funds maintained by charitable organizations (e.g., religious, charitable, or educational institutions) are investment companies and should be subject to Federal and State securities laws. Such funds, commonly known as charitable income funds, are comprised of charitable gifts from multiple donors. A donor typically receives a share of the income earned by the fund each year during his or her lifetime and, upon death, the remainder of the corpus is retained by the charitable organization.

The SEC has in the past opined that certain charitable income funds are generally exempt from registration and regulation under Federal securities laws. According to the report of the House Commerce Committee on H.R. 2519, the SEC opinions have not prevented litigation by parties on this issue. The report states that H.R. 2519 "is intended to eliminate the uncertainty created by the . . . litigation by codifying the approach taken by the [SEC] staff."

H.R. 2519 would exempt certain organizations that maintain charitable income funds from Federal and State registration requirements and fees that apply to investment companies. The exemption would not apply to the anti-fraud provisions of securities laws. As the SEC advises, the securities laws would continue to prohibit "Ponzi" schemes and other frauds perpetrated under the guise of charitable activity.

H.R. 2519 would require exempt organizations to provide donors information about the operation of the fund at the time of a donation, or within 90 days of the enrolled bill's enactment. Also, effective within 90 days, the enrolled bill's exemption from securities laws would not be fully available to exempt funds that pay commissions or other special compensation based on the number or value of donations collected for the fund.

The enrolled bill's provisions would apply "in all administrative and judicial actions pending on or commenced after the date of enactment of this Act." Finally, the States would have three years to enact legislation to override the application of H.R. 2519 to their securities laws.

Conclusion and Recommendations

In its enrolled bill views letter, the SEC states that H.R. 2519 "strikes an appropriate balance between protecting investors and facilitating a charitable organization's ability to manage its donations." We join the SEC in recommending approval of H.R. 2519, which passed the House by a vote of 421-0 and the Senate by voice vote.



Alice M. Rivlin
Director

Enclosures



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

THE DIRECTOR

December 6, 1995
95 DEC 6 P9:12

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 2525 - Charitable Gift Annuity
Antitrust Relief Act of 1995
Sponsor - Rep. Hyde (R) Illinois and 38 others

Last Day for Action

December 12, 1995 - Tuesday

Purpose

To exempt certain non-profit organizations from antitrust laws when setting annuity rates for charitable gift annuities.

Agency Recommendations

Office of Management and Budget	Approval
Department of Justice	Approval
Department of the Treasury	No objection (Informally)
Department of Commerce	Defers to Justice (Informally)
Federal Trade Commission	No comment (Informally)
Securities and Exchange Commission	No comment (Informally)

Discussion

H.R. 2525 is in response to a pending class action lawsuit brought in the U.S. District Court for the Northern District of Texas (Richie v. American Council on Gift Annuities). The suit charges that the use of annuity rates recommended by the American Council on Gift Annuities (the Council) constitutes price fixing, and is therefore a violation of the antitrust laws. Charitable gift annuities provide donors a fixed income for life in exchange for a donation to certain tax-exempt, non-profit organizations (e.g., religious, charitable, or educational institutions).

According to the House Judiciary Committee's report on H.R. 2525, the Council provides assistance to nonprofit organizations in computing annuity rate levels. These rates are intended to produce an average gift to the organization of

between 40 to 60 percent of the original donation. The report states that use of the Council's rates is intended to: (1) protect the charities from jeopardizing their assets by offering annuity rates that are too high; and (2) ensure that donations are based on the relative merits of the institutions and not on competing annuity rates.

H.R. 2525 would exempt certain tax-exempt, non-profit organizations which issue charitable gift annuities from Federal and State antitrust laws when setting annuity rates. Therefore, these organizations could continue to use the Council's annuity rates. The enrolled bill also provides that States would have three years to enact legislation to override application of H.R. 2525 to their antitrust laws.

The enrolled bill's antitrust exemption would apply to "conduct occurring before, on, or after the date of enactment of this Act."

Conclusion and Recommendations

In its enrolled bill views letter, the Department of Justice advises that it "disfavors the creation of an antitrust exemption" as provided by H.R. 2525. The Department, nevertheless, recommends approval of the enrolled bill. We join Justice in recommending the approval of H.R. 2525, which passed the House by a vote of 427-0 and the Senate by voice vote.



Alice M. Rivlin
Director

Enclosures

> 10

1 of 1 items

CQ's WASHINGTON ALERT 07/02/97

HRpt 105-146 REPORT To accompany H.R. 1902
CHARITABLE DONATION ANTITRUST IMMUNITY ACT OF 1997
House Judiciary
(COMREPORTS 06/23/97; 513 lines)
Item Key: 186

Special Typefaces Key:

[[]] Text to be omitted // \\ Italic text

105th CONGRESS } HOUSE OF REPRESENTATIVES { Report
1st Session } { 105-146

CHARITABLE DONATION ANTITRUST IMMUNITY ACT OF 1997

JUNE 23, 1997.--Committed to the Committee of the Whole
House on the State of the Union and ordered to be printed

Mr. HYDE, from the Committee on the Judiciary, submitted
the following

R E P O R T

[To accompany H.R. 1902]

[Including cost estimate of the Congressional Budget
Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1902) to immunize donations made in the form of charitable gift annuities and charitable remainder trusts from the antitrust laws and State laws similar to the antitrust laws, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

TABLE OF CONTENTS

[CHART/TABLE 1]

PURPOSE AND SUMMARY

The "Charitable Donation Antitrust Immunity Act of 1997" provides antitrust immunity to those involved in raising charitable do-

nations in the form of charitable gift annuities and charitable remainder trusts. The exemption extends to both federal and state law, although a state would have until 1998 to expressly override application of the Act to its state antitrust laws.

BACKGROUND AND NEED FOR THE LEGISLATION

Charitable gift annuities and charitable remainder trusts are fundraising instruments defined and regulated under sections 501(m)(5) and 664(d) of the Internal Revenue Code. A person who enters into a gift annuity or charitable remainder trust agreement with a religious, charitable or educational institution makes a gift to the institution and receives a fixed income for life. Since the value of the gift received is more than the property transferred to the donor, a bargain sale has occurred, and the difference in values is deductible to the donor. //See\\ 26 U.S.C. S 1011(b).

The annuity rate applied to the value of the gift is the critical element in ensuring that the transaction will result in a meaningful gift to the charity. The American Council on Gift Annuities, a non-profit organization representing more than 1,500 charitable organizations and institutions, provides technical assistance to its members in determining appropriate annuity rates. The rates recommended by the Council are based on actuarial studies of mortality experience among annuitants and a conservative projection of the rate of income to be earned on invested reserve funds. They are computed to produce an average "residuum" or gift to the organization of between 40 and 60 percent of the amount originally donated under the agreement. Consequently, the rates are lower than and are not in competition with any rates offered commercially.

The Council promotes the use of its rates for two reasons. First, it protects the fiscal integrity of the charity. Offering gift annuities at rates higher than the recommended rates may jeopardize the gift that is to be available to the charity. If the rate is too high, other funds or the general assets of the organization may be required to carry out the terms of the agreement. Second, it ensures that donative intent rather than financial gain motivates the choice of recipient. Use of consistent annuity rates,

and thus equal rates of return, assure a "level playing field" for charities, so that a donor's choice of the charitable beneficiary of a gift annuity will depend on the relative merits of the institutions under consideration in the subjective judgment of the donor.

Charitable giving through gift annuities and charitable trusts continues to be threatened by a lawsuit currently pending in the United States District Court for the Northern District of Texas. //Richie \\v. //American Council on Gift Annuities, Inc.\\ (Civ. No. 7:94-CV-128-X). The Richie suit, as originally filed, alleged that the use of the same annuity rate by the various charities constituted price fixing, and thus a violation of the antitrust laws. The complaint sought to enjoin the charities from offering gift annuities using the Council's tables, to obtain a refund, and to recover treble damages.

In recognition of the potential impact of this litigation on charitable giving, Congress enacted (by a vote of 427-0 in the House, and by voice vote in the Senate) the "Charitable Gift Annuity Antitrust Relief Act of 1995" (15 U.S.C. S 37, //et seq.\\), which grants antitrust protection to entities described in section 501(c)(3) of the Internal Revenue Code and exempt from taxation, and which issue charitable gift annuities. It specifies that agreeing to use, or using the same annuity rate for the purpose of issuing one or more charitable gift annuity is not unlawful under the antitrust laws. The exemption extends to both Federal and State law, although a state would have three years after enactment to expressly override application of the bill to its state antitrust laws.

Enactment of the 1995 Act was anticipated to provide a complete defense to the antitrust portions of //Richie,\\ as well as protection from future suits based on the use of agreed-upon annuity rates. Unfortunately, that has not proven to be the case. A recent decision by the United States Court of Appeals for the Fifth Circuit, //Ozee \\v. //American Council on Gift Annuities, Inc.,\\ 110 F.3d 1082 (5th Cir. 1997), upheld the denial of a motion to dismiss based on an assertion of the new antitrust exemption. This decision, and the ruling of the District Court, indicates that the Charitable Gift Annuity Antitrust Relief Act of 1995 is not being interpreted as broadly as it was intended by Congress.

H.R. 1902 replaces current law with language drafted in broader terms, so as to ensure that the provision will be interpreted by the courts in a manner which will achieve the goals of the 1995 Act. Enactment of the Act is intended to obviate the need for further litigation over the antitrust portions of the //Richie\\ case, in that it extends complete immunity to all defendants being sued for participation in the issuance of a charitable gift annuity or charitable remainder trust.

The Committee believes that given the valuable role our charities serve in our communities, the importance of gift annuities and charitable remainder trusts as a source of funding for them, and the tremendous legal and financial uncertainty caused by pending and

possibly future antitrust challenges, H.R. 1902 is well justified. The legislation is narrowly crafted and the Antitrust Division of the Department of Justice has voiced no objections to it.

COMMITTEE CONSIDERATION

Chairman Hyde introduced H.R. 1902 on June 17, 1997. Original co-sponsors of the bipartisan measure included Ranking Minority Member Conyers, as well as Mr. Sensenbrenner, Mr. Schiff, Mr. Goodlatte, Mr. Chabot, Mr. Schumer, Mr. Berman, Ms. Lofgren, and Mr. Rothman. On June 18, 1997, the Committee met in open session and ordered the bill reported favorably by voice vote, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(1)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. Congress,
Congressional Budget Office,
as defined in the Unfunded 97.
Mandates Reform n the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Office has prepared the enclosed cost estimate for H.R. 1902, the Charitable Donation Antitrust Immunity Act of 1997.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Susanne S. Mehlman (for federal costs), who can be reached at 226-2860, and Leo

Lex (for the state and local impact), who can be reached at 225-3220.

Sincerely,
JUNE E. O'NEILL, //Director. \\\

Enclosure.

//H.R. 1902--Charitable Donation Antitrust Immunity Act of 1997\\

CBO estimates that enacting H.R. 1902 would result in no significant cost or savings to the federal government. Because enactment of H.R. 1902 would not affect direct spending or receipts, pay-as-you-go procedures would not apply to the bill. H.R. 1902 may contain an intergovernmental mandate as defined in the Unfunded Mandates Reform Act of 1995 (UMRA), but CBO estimates that any resulting compliance costs would be minimal. The bill would impose no new private-sector mandates as defined in UMRA.

H.R. 1902 would provide antitrust protection to charitable gift annuities or charitable remainder trusts, and to persons who assist in the issuance of such annuities or trusts. Under current law, it is unclear whether it is a violation of the antitrust laws for two or more charitable organizations to use or agree to use the same annuity rate for the purpose of issuing one or more charitable gift annuities. According to the Department of Justice (DOJ), only one lawsuit between two private parties alleging such a violation is currently pending in federal court. Based on information from DOJ, CBO estimates that while enacting this bill could preclude certain antitrust cases from being litigated, any reduction in future cases would not be significant. Thus, enacting H.R. 1902 could result in some savings to the federal court system, but the amount of such savings would not be significant.

In addition, enacting H.R. 1902 would require the Attorney General to conduct a study to determine the effect of this Act on markets for noncharitable annuities, charitable gift annuities, and charitable remainder trusts. Based on information from DOJ, CBO does not expect that the cost to conduct such a study would exceed \$500,000.

H.R. 1902 would exempt from state antitrust laws specific charitable organizations and entities involved in establishing charitable remainder trusts and charitable gift annuities. Such a preemption would constitute a mandate under UMRA. However, states are given the authority to enact legislation which would reestablish state antitrust laws governing these entities (assuming the legislation is passed before December 8, 1998). Even in the absence of state legislation that would overturn this preemption and mandate, CBO estimates that the cost of the provisions in H.R. 1902 to state governments would be minimal.

The CBO staff contacts for this estimate are Susanne S. Mehlman (for federal costs), who can be reached at 226-2860, and Leo Lex (for the state and local impact), who can be reached at 225-3220. This estimate was approved by Paul N. Van de Water, Assistant

Director for Budget Analysis.

CONGRESSIONAL AUTHORITY STATEMENT

Pursuant to rule XI, clause 2(1)(4) of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article 1, section 8, clause 3 of the United States Constitution.

SECTION-BY-SECTION ANALYSIS

//SECTION 1.--SHORT TITLE\\

The Act may be cited as the "Charitable Donation Antitrust Immunity Act of 1997."

//SECTION 2.--IMMUNITY FROM ANTITRUST LAWS\\

Section 2 of the bill replaces subsection (a) and (b) in 15 U.S.C. S 37 with four new subsections. It also deletes the definition of "annuity rate" in paragraph (1) of 15 U.S.C. S 37a, and adds to that section the definitions of "charitable remainder trust" and "final determination."

New subsection (a) of 15 U.S.C. S 37 provides that the antitrust laws, or state laws similar to the antitrust laws, shall not apply to charitable gift annuities or charitable remainder trusts.

New subsection (b) provides immunity from suit under the antitrust laws for any person whose annuity or trust as a result of the alleged conduct involves a charitable gift annuity or a charitable remainder trust. This immunity will protect defendants from the cost, burden, and risk of having to participate in discovery and trial. A defendant unsuccessful in obtaining dismissal or summary judgment based on the immunity granted by this subsection will have the right to interlocutory appeal of that ruling. //See Behrens \\v. // Pelletier,\\ 116 S.Ct. 834 (1996).

New subsection (c) creates a conclusive presumption that a particular annuity or trust is a charitable gift annuity or charitable remainder trust, and is thus excluded from coverage of the antitrust laws under subsection (a). This conclusive presumption can be satisfied in two ways. The first is by a showing that the annuity or trust was treated as a charitable gift annuity or charitable remainder trust in any filing by the donor with the Internal Revenue Service. This would include having claimed the annuity or trust as a charitable deduction on a tax return. The second is by a showing that the annuity or trust was treated as a charitable gift annuity or charitable remainder trust in any schedule, form, or written document provided by or on behalf of the

donee to the donor. However, a litigant would not be entitled to a conclusive presumption under this subsection if the Internal Revenue Service has made a final determination that the annuity or trust at issue did not qualify as a charitable gift annuity or charitable remainder trust.

The antitrust protection granted under subsection (a) is limited to charitable gift annuities and charitable remainder trusts, instruments which are described and governed by Internal Revenue Service statutes and regulations. The Committee firmly believes that the determination as to whether an annuity or trust meets those rules should be made by the agency of competence, the Internal Revenue Service. That agency is best situated to analyze, for example, whether the donee organization met the criteria for designation as a section 501(c)(3) organization, or whether the annuity or trust met the criteria established by the Internal Revenue Service for treatment as a tax-deductible instrument.

The Committee recognizes that the Richie amended complaint alleges that, despite having obtained a section 501(c)(3) determination letter from the Internal Revenue Service, certain defendants are not qualified under section 501(c)(3). If this were the case, any annuity or trust issued by that defendant would not qualify as a charitable gift annuity or charitable remainder trust. The Committee has no views on the accuracy of these allegations, but believes that the proper forum for resolving the issue is before the Internal Revenue Service, not in an antitrust suit. The requirement that the Internal Revenue Service be the arbiter of these issues of fact will not preclude a donor from bringing suit under the antitrust laws where the annuity or trust was invalid. In the event that the Internal Revenue Service were to find that a particular donee was not properly qualified, it would issue a final determination to that effect. Upon issuance of that final determination, the annuities and trusts issued by that donee would no longer be entitled to the conclusive presumption granted under subsection (c).

New subsection (d) would allow each of the states to override the provisions of H.R. 1902 as to its state antitrust laws by enacting legislation to that effect on or before December 8, 1998.

The definition of "final determination" is added to make it clear that the term includes a determination of the Internal Revenue Service disallowing the donor's charitable deduction for the year in which the initial contribution was made, on the grounds that the annuity or trust did not qualify as a charitable gift annuity or a charitable remainder trust at that time. This determination becomes final when all administrative remedies are exhausted as to the disallowance.

//SECTION 3.--APPLICATION OF ACT\\

The Act, and any amendments made by the Act, shall apply with respect to all conduct occurring before, on, or after the date of

the enactment of this Act and shall apply in all administrative and judicial actions pending on or commenced after the date of enactment of this Act.

//SECTION 4.--STUDY AND REPORT\\

Section 4 requires the Attorney General to undertake a study to determine the effect of the Act on markets for non-charitable annuities, charitable gift annuities, and charitable remainder trusts. The use of the term "market" for charitable gift annuities and charitable gift annuities should not be interpreted as dispositive of the Committee's view on whether these instruments constitute "pure charity" or "commercial transactions with a public service aspect." //See DELTA \\v. //Humane Society,\\ 50 F.3d 710 (9th Cir. 1995). As the Committee noted in its report on the Charitable Gift Annuity Antitrust Relief Act of 1995, "[w]hether the issuance of a charitable gift annuity will be deemed 'pure charity' or a 'commercial transaction with a public service aspect' is unclear." H.R. Rep. No 104-336 (1995), p. 3.
H.L.C.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

CHARITABLE GIFT ANNUITY ANTITRUST RELIEF ACT OF 1995

* * * * *

[[SEC. 2. MODIFICATION OF ANTITRUST LAWS.]]

[[(a) EXEMPT CONDUCT.--Except as provided in subsection (b), it shall not be unlawful under any of the antitrust laws, or under a State law similar to any of the antitrust laws, for 2 or more persons described in section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)) that are exempt from taxation under section 501(a) of such Code to use, or to agree to use, the same annuity rate for the purpose of issuing 1 or more charitable gift annuities.]]

[[(b) LIMITATION.--Subsection (a) shall not apply with respect to the enforcement of a State law similar to any of the antitrust laws, with respect to conduct described in subsection (a) occurring after the State enacts a statute, not later than 3 years after the date of the enactment of this Act, that expressly provides that subsection (a) shall not apply with respect to such conduct.]]

//SEC. 2. IMMUNITY FROM ANTITRUST LAWS.\\

// (a) INAPPLICABILITY OF ANTITRUST LAWS.--Except as provided in subsection (d), the antitrust laws, and any State law similar to any of the antitrust laws, shall not apply to charitable gift annuities or charitable remainder trusts.\\

// (b) IMMUNITY.--Except as provided in subsection (d), any person subjected to any legal proceeding for damages, injunction, penalties, or other relief of any kind under the antitrust laws, or any State law similar to any of the antitrust laws, on account of setting or agreeing to rates of return or other terms for, negotiating, issuing, participating in, implementing, or otherwise being involved in the planning, issuance, or payment of charitable gift annuities or charitable remainder trusts shall have immunity from suit under the antitrust laws, including the right not to bear the cost, burden, and risk of discovery and trial, for the conduct set forth in this subsection.\\

// (c) TREATMENT OF CERTAIN ANNUITIES AND TRUSTS.--Any annuity treated as a charitable gift annuity, or any trust treated as a charitable remainder trust, either--\\

// (1) in any filing by the donor with the Internal Revenue Service; or\\

// (2) in any schedule, form, or written document provided by or on behalf of the donee to the donor;\\

//shall be conclusively presumed for the purposes of this Act to be respectively a charitable gift annuity or a charitable remainder trust, unless there has been a final determination by the Internal Revenue Service that, for fraud or otherwise, the donor's annuity or trust did not qualify respectively as a charitable gift annuity or charitable remainder trust when created.\\

// (d) LIMITATION.--Subsections (a) and (b) shall not apply with respect to the enforcement of a State law similar to any of the antitrust laws, with respect to charitable gift annuities, or charitable remainder trusts, created after the State enacts a statute, not later than December 8, 1998, that expressly provides that subsections (a) and (b) shall not apply with respect to such charitable gift annuities and such charitable remainder trusts.\\

SEC. 3. DEFINITIONS.

For purposes of this Act:

[[(1) ANNUITY RATE.--The term "annuity rate" means the percentage of the fair market value of a gift (determined as of the date of the gift) given in exchange for a charitable gift annuity, that represents the amount of the annual payment to be made to 1 or 2 annuitants over the life of either or both under the terms of the agreement to give such gift in exchange for such annuity.]]

[[(2)]] //(1)\\ ANTITRUST LAWS.--The term "antitrust laws" has the meaning given it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12), except that such term includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that such section 5 applies to unfair methods of competition.

// (2) CHARITABLE REMAINDER TRUST.--The term "charitable remainder trust" has the meaning given it in section 664(d) of the Internal Revenue Code of 1986 (26 U.S.C. 664(d)).\\

(3) CHARITABLE GIFT ANNUITY.--The term "charitable gift annuity" has the meaning given it in section 501(m)(5) of the Internal Revenue Code of 1986 (26 U.S.C. 501(m)(5)).

// (4) FINAL DETERMINATION.--The term "final determination" includes an Internal Revenue Service determination, after exhaustion of donor's and donee's administrative remedies, disallowing the donor's charitable deduction for the year in which the initial contribution was made because of the donee's failure to comply at such time with the requirements of section 501(m)(5) or 664(d), respectively, of the Internal Revenue Code of 1986 (26 U.S.C. 501(m)(5), 664(d)).\\

[[(4)]] //(5)\\ PERSON.--The term "person" has the meaning given it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)).

[[(5)]] //(6)\\ STATE.--The term "State" has the meaning given it in section 4G(2) of the Clayton Act (15 U.S.C. 15g(2)).

* * * * *

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224209

THE WHITE HOUSE
WASHINGTON

July 3, 1997

MR. PRESIDENT:

Attached for your signature is H.R. 363, a bill that extends DOE's Electric and Magnetic Fields Research and Public Information Dissemination Program (RAPID) through December 31, 1998, bringing a 20-year effort to a close.

Background. In the late 1970s, DOE initiated research on the potential health effects of electric and magnetic fields (EMF) produced by the generation and transmission of electricity. These efforts were augmented by the 1992 Energy Policy Act, which authorized \$65 million for RAPID and required that 50% of the project costs be paid by non-federal entities. The project aims to, among other things, determine the health effects of EMF exposure, investigate technologies to mitigate potential adverse health effects, and disseminate information to the public. RAPID's authorization will run out in December 1997, a year before the project is to be completed.

H.R. 363. The bill extends RAPID and all reporting deadlines through December 1998. The bill also lowers its total authorization from \$65 million to \$46 million; total funding over the life of RAPID to date has been \$37 million. Your FY '98 Budget requested \$4 million for the Federal share of the project.

The bill has received all necessary clearances, including DOE. It passed the House 387-35 and the Senate by voice vote. **Last day for action is July 5.**

Todd Stern
Phil Caplan

Document No. _____

WHITE HOUSE STAFFING MEMORANDUM

DATE: 7/2 ACTION/CONCURRENCE/COMMENT DUE BY: _____

SUBJECT: HR 363

	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	☐	☐
MARSHALL	☐	☐	VERVEER	☐	☐
HILLEY	☐	☐	WALDMAN	☐	☐
KLAIN	☐	☐	<u>Silverman</u>	☒	☐
BERGER	☐	☐	_____	☐	☐
LINDSEY	☐	☐	_____	☐	☐

REMARKS:

RESPONSE: POTUS will sign tomorrow in office hour



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

THE DIRECTOR

June 27, 1997

*The Bill is
here*

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 363 - Electric and Magnetic Fields Research and
Public Information Dissemination Program Extension
Sponsors - Reps. Towns (D) NY and Pallone (D) NJ

Last Day for Action

July 5, 1997 - Saturday

Purpose

To extend the Electric and Magnetic Fields Research and Public Information
Dissemination Program through 1998.

Agency Recommendations

Office of Management and Budget	Approval
Department of Energy (DOE)	Approval
Department of Agriculture	Approval (Informally)
Environmental Protection Agency	Approval (Informally)
Department of Health and Human Services	Defers to DOE (Informally)
Department of Defense	Defers to DOE (Informally)
Department of Labor	No objection (Informally)
Department of Commerce	No objection (Informally)
Department of Transportation	No objection (Informally)

Discussion

In the late 1970s, DOE initiated research on the potential health effects of electric and magnetic fields (EMF) produced by the generation, transmission, and use of electric energy. DOE's efforts were augmented under the Energy Policy Act of 1992 (EPAct), which authorized appropriations of \$65 million over five years (FYs 1993-1997) for the EMF Research and Public Information Dissemination Program (RAPID). EPAct required that 50 percent of RAPID project costs be paid by non-federal entities.

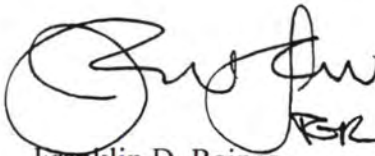
RAPID, which is co-managed by DOE and the National Institute of Environmental Health Sciences (NIEHS), provides for improved coordination of EMF research in various Federal agencies. The program's objectives are to: determine the health effects of EMF exposure; investigate technologies to mitigate potential adverse health effects; and disseminate information to the public regarding EMF sources, exposure levels, and possible health effects. RAPID is to culminate in an EMF risk assessment developed by NIEHS.

Although RAPID was authorized to begin in FY 1993, funding did not become available until FY 1994. Absent an extension, the envisioned five-year program will terminate in its fourth year, prior to the completion of the NIEHS risk assessment.

H.R. 363 would extend RAPID through December 31, 1998, and extend all intervening deadlines (e.g., for certain reports) by one year. The enrolled bill would also lower RAPID's total authorization of appropriations from \$65 million to \$46 million. Program funding through FY 1997 has totaled \$38 million, including matching non-federal funds. The FY 1998 Budget requested \$4 million for the Federal share of the program.

Conclusion and Recommendations

In its views letter, DOE recommends approval of H.R. 363 because it "will allow a proper completion of the Department's 20-year effort to address concerns about electric and magnetic fields." We join Energy, EPA, and Agriculture in recommending approval of H.R. 363, which passed the House by a vote of 387-35 and the Senate by voice vote.



Franklin D. Raines
Director

Enclosures



Department of Energy
Washington, DC 20585

June 26, 1997

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

Dear Mr. Raines:

This responds to your request for Department of Energy views on H.R. 363, an enrolled bill that would extend the Electric and Magnetic Fields Research and Public Information Dissemination (RAPID) program.

The RAPID program was established under section 2118 of the Energy Policy Act of 1992 (EPACT) to expand and accelerate the research needed to address public concerns that electric and magnetic fields might be a human health hazard. The focus of the program is an assessment by the National Institute of Environmental Health Sciences of the risk to human health caused by exposures to electric and magnetic fields, which are produced by the generation, delivery, and use of electricity. The program was to run for five years and is scheduled to expire on December 31, 1997.

The law required the establishment of two advisory committees and the solicitation of 50 % of the project's funding from non-Federal sources. These factors, combined with the need to seek the Federal share of funding beginning with the fiscal year following enactment of EPACT, led to delays in conducting the necessary research. It is clear now that additional time is needed to complete the project.

H.R. 363 would extend the RAPID program until December 31, 1998, and all intervening deadlines by one year, thereby permitting completion of the planned five years of work mandated by EPACT. In addition, the bill would decrease authorization of appropriations for the program from \$65 million to \$46 million. H.R. 363, along with the President's fiscal year 1998 budget request, will allow a proper completion of the Department's 20-year effort to address concerns about electric and magnetic fields.

The Department of Energy recommends that the President approve H.R. 363.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric J. Fygi", is written over a horizontal line.

Eric J. Fygi
Acting General Counsel

BILLS RECEIVED AT THE WHITE HOUSE

Date received ~~97 JAN 24~~ 97 JAN 24 PM 3:27
notification to OMB: 06/24/97

LAST DAY FOR ACTION: 07/05/97

*Bill Memo
is here*

H.R. 363,
An Act to amend section 2118 of the Energy
Policy Act of 1992 to extend the Electric and
Magnetic Fields Research and Public
Information Dissemination program.

: Comments	: Date
:	: APPROVED
:	:
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:	:
: 224209:	:
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BILLS RECEIVED AT THE WHITE HOUSE

Date received and
notification to OMB: 06/26/97

LAST DAY FOR ACTION: 07/08/97

enrolled bill

Comments	Date
	APPROVED
	'97 JUN 26 PM 1:34

H.R. 1306,
An Act to amend Federal law to clarify the applicability of host State laws to any branch in such State of an out-of-State bank, and for other purposes.

224630

H.R. 1902, *enrolled bill memo is here:*
An Act to immunize donations made in the form of charitable gift annuities and charitable remainder trusts from the antitrust laws and State laws similar to the antitrust laws.

224641

to RM

—

File
225613

THE WHITE HOUSE
WASHINGTON

July 4, 1997

MEMORANDUM FOR THE PRESIDENT

FROM: PHIL CAPLAN *PC*

SUBJECT: Crack/powder cocaine sentencing recommendations

The attached Bruce Reed/Elena Kagan memo recommends that you accept a recommendation from the Attorney General and Director McCaffery and authorize them to work with Congress on legislation to change the threshold for a 5-year mandatory sentence for crack cocaine from 5 grams to 25 grams and from 500 grams to 250 grams for powder cocaine -- a ratio of 10:1 rather than the current 100:1. **You should act upon this before your trip if possible.**

Background. In May 1995, the U.S. Sentencing Commission voted to make the ratio 1:1 at 500 grams for both substances. The Administration opposed these changes and, in October 1995, you signed legislation rejecting them and directing the Sentencing Commission to submit new recommendations to Congress. On April 29, the Commission submitted the new report that suggested a range of 25-75 grams for crack and 125-375 grams for powder. You asked the AG and McCaffery to review the recommendations.

Recommendations. The AG's and McCaffery's recommendations stand upon a three-pronged rationale. First, the revised sentencing structure would help federal prosecutors and law enforcement officials better allocate resources by enabling them to focus on mid- to high-level dealers and permitting state and local prosecutors to focus on lower level dealers. Second, the current 100:1 ratio is outdated because the rates and danger of crack and powder use have narrowed over the years. Third, the current ratio is a symbol of racial bias and that our proposal would reduce the perception of injustice and inconsistency.

Congress. Next week, Senators Hatch and Abraham may offer an amendment to the juvenile justice bill lowering the minimum for powder to 100 grams while leaving crack at 5 grams -- a 20:1 ratio. Other Members have proposed lowering powder to as low as 5 grams for a 1:1 ratio. Bruce/Elena note that addressing the disparity in this manner will increase the federal government's role in low-level drug cases, overwhelm the courts and add billions to the federal prison budget.

Views. Bruce/Elena believe that the recommended changes represent the middle ground and the best hope of achieving progress on the issue. They advocate getting into the debate now and pushing for sensible legislation, but note that the Congressional Black Caucus will criticize 10:1 and advocate for further reducing the ratio. Ben Johnson notes that 10:1 will not sit well with the African-American and Hispanic communities, but that agrees that we need to enter the debate so as to push for sensible legislation. Rahm notes that our communications strategy will need

refining from the current Reno/McCaffery approach, but agrees with the underlying decision to accept 10:1 and move ahead. *Ann Lewis concurs. John Podesta would like to get a sense of where you stand on the issue before you depart, and then meet about the communications strategy on Monday before making any further moves as several relevant senior staffers are out of town for the holiday. Once our strategy is set, he would like to confirm with you on the road.*

Recommendation. Enter the debate based on the Reno/McCaffery recommendation, but move forward only after a communications strategy is set:

_____ Agree

_____ Disagree

_____ Discuss

THE WHITE HOUSE
WASHINGTON

July 3, 1997

97 JUL 3 PM 7:30

MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED
ELENA KAGAN

SUBJECT: CRACK SENTENCING RECOMMENDATIONS

On April 29, the U.S. Sentencing Commission submitted a report to Congress with new recommendations on sentencing policy for trafficking in crack and powder cocaine. In response, you directed the Attorney General and ONDCP Director to review the report and make recommendations to you within 60 days. Today, they submitted a joint recommendation, attached to this memo, that you support changing the threshold for a 5-year mandatory sentence from 5 grams to 25 grams for crack cocaine and from 500 grams to 250 grams for powder cocaine. This change would reduce the current disparity between crack and powder cocaine sentences from a ratio of 100:1 to a ratio of 10:1. The DPC believes that you should accept this recommendation and instruct your advisers to begin working with Congress immediately to enact legislation making these changes in crack and powder cocaine sentencing.

I. Background

Under current law, the same 5-year mandatory minimum sentence applies to a person selling 5 grams of crack cocaine (worth about \$300) and a person selling 500 grams of powder cocaine (worth about \$30,000). This disparity is often referred to as the "100-to-1" ratio between crack and powder cocaine sentences.

In May 1995, the Sentencing Commission, by a 4-3 vote, issued changes to the sentencing guidelines to reduce crack cocaine penalties to the same level as powder sentences -- a 1:1 ratio at 500 grams. The Administration opposed these changes on the ground that crack is more harmful than powder cocaine. In October 1995, you signed legislation rejecting the changes and directing the Commission to submit new recommendations to Congress.

The Sentencing Commission's revised recommendations, submitted this April, suggested appropriate ranges for the amount of crack or powder cocaine that should trigger a mandatory minimum sentence: between 25 and 75 grams for crack cocaine and between 125 and 375 grams for powder cocaine. In asking the Attorney General and ONDCP Director to review these recommendations, you stated that "the sentencing laws must continue to reflect that crack cocaine is a more harmful form of cocaine," but that "some adjustment to the cocaine penalty structure is warranted as a matter of sound criminal justice policy."

II. Department of Justice and ONDCP Recommendation

After reviewing the Sentencing Commission's report, the Attorney General and ONDCP Director have recommended that the Administration support and work with Congress to enact legislation changing the mandatory minimum thresholds from 5 grams of crack and 500 grams of powder to 25 grams of crack and 250 grams of powder cocaine. These changes would reduce the current ratio between crack and powder sentencing from 100:1 to 10:1.

The Attorney General and ONDCP Director believe that this revised sentencing structure would help to ensure that federal prosecutors focus on the prosecution of mid- and high-level cocaine traffickers, rather than on lower-level traffickers whom state and local authorities can easily prosecute. A mid-level crack dealer typically deals in ounce (28 grams) or multi-ounce quantities. By raising the mandatory minimum to this level, Congress would remove incentives for federal prosecutors to prosecute lower-level dealers and increase the likelihood of their bringing only high-priority cases involving mid- and high-level traffickers.

The Attorney General and ONDCP Director also state that the current 100:1 ratio is outdated because the rates of crack and powder cocaine use, as well as the dangers associated with such use, have narrowed over the years. Finally, they note that the current ratio has become a symbol of racial bias in the criminal justice system and has had a corrosive effect on "respect for the law in certain communities and on the effective administration of justice."

III. Suggested Course of Action

We suggest that you endorse the recommendation submitted by the Attorney General and the ONDCP Director. The proposed 10:1 ratio, with mandatory minimum triggers at 25 grams of crack cocaine and 250 grams of powder cocaine, is fundamentally sound. This recommendation reduces the disparity between crack and powder cocaine sentencing, as well as the perception of injustice and inconsistency that goes with it. At the same time, the recommendation makes sense from a law enforcement perspective by linking the crack threshold to an amount (25 grams) that corresponds with the practice of mid-level crack dealers to traffick in ounce (28 grams) or multi-ounce quantities.

The one downside of this recommendation is that the proposed approach risks placing the Administration in the center of a debate that has no center -- with Members of Congress attacking from both directions. On the one hand, Republicans will accuse the Administration of coddling drug users by raising the mandatory minimum threshold for crack cocaine. Senators Hatch and Abraham support a proposal to drop the threshold for powder cocaine from 500 grams to 100 grams while leaving intact the threshold for crack cocaine (resulting in a 20:1 ratio). Other Republican Members have proposed dropping the powder cocaine threshold to as low as 5 grams, which would reduce the ratio to 1:1, but only at the cost of overprosecuting other low-level drug dealers and adding billions of dollars to the federal prison budget. On the other hand, the Congressional Black Caucus and others in the African-American community will attack the

Administration for failing to go far enough to remove a racial injustice. As you know, many CBC Members favor removing the disparity between crack and powder cocaine entirely -- or at least reducing it far more sharply than the Attorney General and ONDCP Director recommend.

But precisely because it takes a middle position -- and because, as noted above, it can be hooked to law enforcement objectives -- this recommendation offers the best hope of achieving progress on this issue. The CBC approach to this issue will go nowhere in Congress, even with our support. The Republican approach stands a scarily high chance of success, unless we counter it with a credible alternative. We are not particularly optimistic that the recommended approach (assuming you accept it) will prevail, but it stands a better than any alternative approach of leading to a decent outcome.

We also suggest, if you accept the recommendation, that you authorize the Attorney General and ONDCP Director to begin immediate discussions with Members of Congress on this issue. Senators Hatch and Abraham may offer their alternative proposal as early as next week at the Senate Judiciary Committee's markup of the Juvenile Justice bill. We should engage with an alternative proposal as quickly as possible.

_____ Agree

_____ Disagree

_____ Discuss



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

July 3, 1997

The President
The White House
Washington, DC 20500

Re: Crack and Powder Cocaine Sentencing
Policy in the Federal Criminal Justice System

Dear Mr. President:

On April 29, 1997, the United States Sentencing Commission ("Commission") submitted to Congress a report containing recommendations regarding crack and powder cocaine sentencing policy in the federal criminal justice system. The Commission recommended that the triggering amount for a five-year mandatory minimum sentence for crack be changed from the current 5 grams to somewhere between 25 and 75 grams, and that the triggering amount for a five-year mandatory minimum sentence for powder cocaine be changed from the current 500 grams to somewhere between 125 and 375 grams.

In a statement issued on the day the report was submitted to Congress, you commended the Commission for its report, agreeing that "some adjustment to the cocaine penalty structure is warranted as a matter of sound criminal justice policy [because] [f]ederal prosecutors should target mid- and high-level drug traffickers, rather than low-level drug offenders." You recognized that "[t]he disparity between sentences for powder and crack cocaine has led to a perception of unfairness and inconsistency in the federal criminal justice system." You further stated, however, that crack has had a particularly devastating impact on communities across America, and thus "[t]he sentencing laws must continue to reflect that crack cocaine is a more harmful form of cocaine." You directed us to study the Commission's report and to make our recommendations on cocaine sentencing in the federal system.

Recommendation

The Office of National Drug Control Policy (ONDCP) and the Department of Justice (DOJ) have carefully studied the Commission's report, engaged in a comprehensive review of recent literature on this subject, and examined information from the

Commission, DOJ, ONDCP, and the Department of Health and Human Services. Consistent with the Commission's report, we recommend that the threshold for the five-year mandatory minimum sentence for crack be set at 25 grams and the corresponding threshold for powder be set at 250 grams and urge that the Administration work with Congress to adopt implementing legislation.

Rationale

When Congress enacted the current mandatory minimum sentences for a wide range of illegal drugs, it stated that these sentences should be reserved for significant drug traffickers. Accordingly, the federal government should primarily focus its narcotics enforcement resources on mid-level and high-level drug traffickers, generally leaving lower-level traffickers and users for prosecution by state and local law enforcement. Indeed, the overwhelming majority of drug prosecutions in this country are brought by state and local prosecutors.

This division of responsibility makes sense. With its powerful enforcement tools, such as the RICO statute, wiretapping capabilities, and the witness protection program, and with its national and international enforcement programs, the federal government is better situated to target and dismantle major drug trafficking organizations, whether the organizations deal in heroin, LSD, methamphetamine, cocaine, or other dangerous narcotics. Because successful narcotics prosecutions often involve "working up the chain," there is also a federal interest in prosecuting individuals who, if they were to cooperate, could provide information that would lead to the prosecution of these organizations and major drug dealers.

The current sentencing structure for cocaine, however, has undermined this division of responsibility. Today, a defendant who traffics in 500 grams of powder cocaine faces a five-year mandatory minimum sentence. According to the Drug Enforcement Administration (DEA), 500 grams -- a half-kilogram -- of powder cocaine has a street value of approximately \$30,000. An individual who deals in \$30,000 (or more) of powder cocaine is a serious drug dealer who should, at the minimum, have information relevant to prosecuting even larger individual dealers or organizations.

In contrast, serious mandatory minimum sentences are not reserved for mid-level and high-level dealers when it comes to crack cocaine. Under the current system, a defendant need only traffic in 5 grams of crack in order to face a five-year mandatory minimum sentence. According to the DEA, 5 grams of crack is worth a few hundred dollars at most, and its sale is

characteristic of a low-level street dealer. A mid-level crack dealer typically deals ounce or multi-ounce quantities. (A single ounce equals 28 grams.) Thus, setting the five-year mandatory minimum threshold at 25 grams would ensure that even the very bottom of the mid-level range would be covered; setting the threshold any lower than 25 grams would undermine positive change and would continue, inappropriately, to target low-level street dealers.

Several negative consequences have resulted from the current cocaine sentencing scheme:

- Agents and prosecutors have the incentive to concentrate on cases where less effort can nonetheless result in long sentences. Thus, the current sentencing scheme may lead federal agents and prosecutors to focus on low-level street dealers of crack, who could as easily and appropriately be prosecuted by our state and local law enforcement partners.
- To the extent that law enforcement resources are directed against low-level street dealers, scarce federal law enforcement agents and prosecutors are diverted away from other higher priorities including larger-scale and more serious drug traffickers. Moreover, imprisoning scores of lower-level crack dealers for long periods of time has consumed considerable resources of the Bureau of Prisons.
- The large disparity in the sentencing scheme is outdated insofar as current data show that crack use has stabilized over the past few years; that the violence associated with crack dealing has dropped over the past few years, contributing to the overall crime drop across America; that of all the cocaine consumed in the United States, there is nearly an even split between crack users and powder users; and that treatment programs for crack and powder addicts are similar and have similar success rates.
- A sentencing scheme that treats crack 100 times more harshly than powder undoubtedly has become an important symbol of racial injustice in our criminal justice system. We cannot turn a blind eye to the corrosive effect this has had on respect for the law in certain communities and on the effective administration of justice. When communities lose faith in the fairness of the legal process, our ability to enforce the law suffers.

These problems cannot be solved by increasing powder penalties, while leaving current crack penalties unchanged. Such a change would merely replicate for powder cocaine the major

problem with current law enforcement efforts against crack cocaine -- the diversion of scarce federal resources to the prosecution and incarceration of low-level drug dealers who are more properly the focus of state and local officials. Moreover, simply increasing powder cocaine penalties would do little to address the perception that crack penalties inappropriately target racial minorities for harsh punishment. We support, in conjunction with a change in crack penalties, a change in the triggering amount for powder cocaine from 500 grams to 250 grams recognizing that all crack is brought into this country as powder and the ease by which that powder is converted to crack.

None of this is to say that the federal government should retreat from its vigorous prosecution of crack cocaine offenses. Under our recommended penalty structure, federal law enforcement would continue to prosecute crack cases in the federal system, particularly when there is organized drug dealing, the use of weapons, the use of minors in drug trafficking, drug trafficking near schools and other places, or other aggravating factors. Moreover, crack dealers would continue to be punished more harshly than powder dealers, which appropriately reflects the additional dangers associated with crack cocaine.

Conclusion

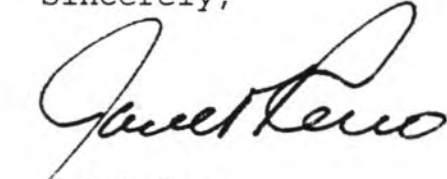
In short, we support a revised penalty structure with the five-year mandatory minimum threshold for crack set at 25 grams and the corresponding threshold for powder set at 250 grams because it would:

- Maintain tough federal sentences for serious drug offenders.
- Properly focus federal law enforcement efforts on mid-level and high-level drug traffickers.
- Improve the allocation of scarce federal law enforcement resources.
- Address perceptions of serious unfairness and inconsistency in the current sentencing scheme.
- Continue to reflect an appropriate distinction between crack and powder cocaine.

The President
Page 5

With your concurrence, we will work with Congress to adopt legislation that will improve federal law enforcement's response to the scourge of powder and crack cocaine trafficking in this country.

Sincerely,



Janet Reno
Attorney General

Sincerely,



Barry R. McCaffrey
Director, Office of
National Drug Control Policy

7:30

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THE WHITE HOUSE
WASHINGTON

July 3, 1997

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MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED
ELENA KAGAN

SUBJECT: CRACK SENTENCING RECOMMENDATIONS

On April 29, the U.S. Sentencing Commission submitted a report to Congress with new recommendations on sentencing policy for trafficking in crack and powder cocaine. In response, you directed the Attorney General and ONDCP Director to review the report and make recommendations to you within 60 days. Today, they submitted a joint recommendation, attached to this memo, that you support changing the threshold for a 5-year mandatory sentence from 5 grams to 25 grams for crack cocaine and from 500 grams to 250 grams for powder cocaine. This change would reduce the current disparity between crack and powder cocaine sentences from a ratio of 100:1 to a ratio of 10:1. The DPC believes that you should accept this recommendation and instruct your advisers to begin working with Congress immediately to enact legislation making these changes in crack and powder cocaine sentencing.

I. Background

Under current law, the same 5-year mandatory minimum sentence applies to a person selling 5 grams of crack cocaine (worth about \$300) and a person selling 500 grams of powder cocaine (worth about \$30,000). This disparity is often referred to as the "100-to-1" ratio between crack and powder cocaine sentences.

In May 1995, the Sentencing Commission, by a 4-3 vote, issued changes to the sentencing guidelines to reduce crack cocaine penalties to the same level as powder sentences -- a 1:1 ratio at 500 grams. The Administration opposed these changes on the ground that crack is more harmful than powder cocaine. In October 1995, you signed legislation rejecting the changes and directing the Commission to submit new recommendations to Congress.

The Sentencing Commission's revised recommendations, submitted this April, suggested appropriate ranges for the amount of crack or powder cocaine that should trigger a mandatory minimum sentence: between 25 and 75 grams for crack cocaine and between 125 and 375 grams for powder cocaine. In asking the Attorney General and ONDCP Director to review these recommendations, you stated that "the sentencing laws must continue to reflect that crack cocaine is a more harmful form of cocaine," but that "some adjustment to the cocaine penalty structure is warranted as a matter of sound criminal justice policy."

II. Department of Justice and ONDCP Recommendation

After reviewing the Sentencing Commission's report, the Attorney General and ONDCP Director have recommended that the Administration support and work with Congress to enact legislation changing the mandatory minimum thresholds from 5 grams of crack and 500 grams of powder to 25 grams of crack and 250 grams of powder cocaine. These changes would reduce the current ratio between crack and powder sentencing from 100:1 to 10:1.

The Attorney General and ONDCP Director believe that this revised sentencing structure would help to ensure that federal prosecutors focus on the prosecution of mid- and high-level cocaine traffickers, rather than on lower-level traffickers whom state and local authorities can easily prosecute. A mid-level crack dealer typically deals in ounce (28 grams) or multi-ounce quantities. By raising the mandatory minimum to this level, Congress would remove incentives for federal prosecutors to prosecute lower-level dealers and increase the likelihood of their bringing only high-priority cases involving mid- and high-level traffickers.

The Attorney General and ONDCP Director also state that the current 100:1 ratio is outdated because the rates of crack and powder cocaine use, as well as the dangers associated with such use, have narrowed over the years. Finally, they note that the current ratio has become a symbol of racial bias in the criminal justice system and has had a corrosive effect on "respect for the law in certain communities and on the effective administration of justice."

III. Suggested Course of Action

We suggest that you endorse the recommendation submitted by the Attorney General and the ONDCP Director. The proposed 10:1 ratio, with mandatory minimum triggers at 25 grams of crack cocaine and 250 grams of powder cocaine, is fundamentally sound. This recommendation reduces the disparity between crack and powder cocaine sentencing, as well as the perception of injustice and inconsistency that goes with it. At the same time, the recommendation makes sense from a law enforcement perspective by linking the crack threshold to an amount (25 grams) that corresponds with the practice of mid-level crack dealers to traffick in ounce (28 grams) or multi-ounce quantities.

The one downside of this recommendation is that the proposed approach risks placing the Administration in the center of a debate that has no center -- with Members of Congress attacking from both directions. On the one hand, Republicans will accuse the Administration of coddling drug users by raising the mandatory minimum threshold for crack cocaine. Senators Hatch and Abraham support a proposal to drop the threshold for powder cocaine from 500 grams to 100 grams while leaving intact the threshold for crack cocaine (resulting in a 20:1 ratio). Other Republican Members have proposed dropping the powder cocaine threshold to as low as 5 grams, which would reduce the ratio to 1:1, but only at the cost of overprosecuting other low-level drug dealers and adding billions of dollars to the federal prison budget. On the other hand, the Congressional Black Caucus and others in the African-American community will attack the

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But precisely because it takes a middle position -- and because, as noted above, it can be hooked to law enforcement objectives -- this recommendation offers the best hope of achieving progress on this issue. The CBC approach to this issue will go nowhere in Congress, even with our support. The Republican approach stands a scarily high chance of success, unless we counter it with a credible alternative. We are not particularly optimistic that the recommended approach (assuming you accept it) will prevail, but it stands a better than any alternative approach of leading to a decent outcome.

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_____ Agree

_____ Disagree

_____ Discuss



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

July 3, 1997

The President
The White House
Washington, DC 20500

Re: Crack and Powder Cocaine Sentencing
Policy in the Federal Criminal Justice System

Dear Mr. President:

On April 29, 1997, the United States Sentencing Commission ("Commission") submitted to Congress a report containing recommendations regarding crack and powder cocaine sentencing policy in the federal criminal justice system. The Commission recommended that the triggering amount for a five-year mandatory minimum sentence for crack be changed from the current 5 grams to somewhere between 25 and 75 grams, and that the triggering amount for a five-year mandatory minimum sentence for powder cocaine be changed from the current 500 grams to somewhere between 125 and 375 grams.

In a statement issued on the day the report was submitted to Congress, you commended the Commission for its report, agreeing that "some adjustment to the cocaine penalty structure is warranted as a matter of sound criminal justice policy [because] [f]ederal prosecutors should target mid- and high-level drug traffickers, rather than low-level drug offenders." You recognized that "[t]he disparity between sentences for powder and crack cocaine has led to a perception of unfairness and inconsistency in the federal criminal justice system." You further stated, however, that crack has had a particularly devastating impact on communities across America, and thus "[t]he sentencing laws must continue to reflect that crack cocaine is a more harmful form of cocaine." You directed us to study the Commission's report and to make our recommendations on cocaine sentencing in the federal system.

Recommendation

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Commission, DOJ, ONDCP, and the Department of Health and Human Services. Consistent with the Commission's report, we recommend that the threshold for the five-year mandatory minimum sentence for crack be set at 25 grams and the corresponding threshold for powder be set at 250 grams and urge that the Administration work with Congress to adopt implementing legislation.

Rationale

When Congress enacted the current mandatory minimum sentences for a wide range of illegal drugs, it stated that these sentences should be reserved for significant drug traffickers. Accordingly, the federal government should primarily focus its narcotics enforcement resources on mid-level and high-level drug traffickers, generally leaving lower-level traffickers and users for prosecution by state and local law enforcement. Indeed, the overwhelming majority of drug prosecutions in this country are brought by state and local prosecutors.

This division of responsibility makes sense. With its powerful enforcement tools, such as the RICO statute, wiretapping capabilities, and the witness protection program, and with its national and international enforcement programs, the federal government is better situated to target and dismantle major drug trafficking organizations, whether the organizations deal in heroin, LSD, methamphetamine, cocaine, or other dangerous narcotics. Because successful narcotics prosecutions often involve "working up the chain," there is also a federal interest in prosecuting individuals who, if they were to cooperate, could provide information that would lead to the prosecution of these organizations and major drug dealers.

The current sentencing structure for cocaine, however, has undermined this division of responsibility. Today, a defendant who traffics in 500 grams of powder cocaine faces a five-year mandatory minimum sentence. According to the Drug Enforcement Administration (DEA), 500 grams -- a half-kilogram -- of powder cocaine has a street value of approximately \$30,000. An individual who deals in \$30,000 (or more) of powder cocaine is a serious drug dealer who should, at the minimum, have information relevant to prosecuting even larger individual dealers or organizations.

In contrast, serious mandatory minimum sentences are not reserved for mid-level and high-level dealers when it comes to crack cocaine. Under the current system, a defendant need only traffic in 5 grams of crack in order to face a five-year mandatory minimum sentence. According to the DEA, 5 grams of crack is worth a few hundred dollars at most, and its sale is

characteristic of a low-level street dealer. A mid-level crack dealer typically deals ounce or multi-ounce quantities. (A single ounce equals 28 grams.) Thus, setting the five-year mandatory minimum threshold at 25 grams would ensure that even the very bottom of the mid-level range would be covered; setting the threshold any lower than 25 grams would undermine positive change and would continue, inappropriately, to target low-level street dealers.

Several negative consequences have resulted from the current cocaine sentencing scheme:

- Agents and prosecutors have the incentive to concentrate on cases where less effort can nonetheless result in long sentences. Thus, the current sentencing scheme may lead federal agents and prosecutors to focus on low-level street dealers of crack, who could as easily and appropriately be prosecuted by our state and local law enforcement partners.
- To the extent that law enforcement resources are directed against low-level street dealers, scarce federal law enforcement agents and prosecutors are diverted away from other higher priorities including larger-scale and more serious drug traffickers. Moreover, imprisoning scores of lower-level crack dealers for long periods of time has consumed considerable resources of the Bureau of Prisons.
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These problems cannot be solved by increasing powder penalties, while leaving current crack penalties unchanged. Such a change would merely replicate for powder cocaine the major

problem with current law enforcement efforts against crack cocaine -- the diversion of scarce federal resources to the prosecution and incarceration of low-level drug dealers who are more properly the focus of state and local officials. Moreover, simply increasing powder cocaine penalties would do little to address the perception that crack penalties inappropriately target racial minorities for harsh punishment. We support, in conjunction with a change in crack penalties, a change in the triggering amount for powder cocaine from 500 grams to 250 grams recognizing that all crack is brought into this country as powder and the ease by which that powder is converted to crack.

None of this is to say that the federal government should retreat from its vigorous prosecution of crack cocaine offenses. Under our recommended penalty structure, federal law enforcement would continue to prosecute crack cases in the federal system, particularly when there is organized drug dealing, the use of weapons, the use of minors in drug trafficking, drug trafficking near schools and other places, or other aggravating factors. Moreover, crack dealers would continue to be punished more harshly than powder dealers, which appropriately reflects the additional dangers associated with crack cocaine.

Conclusion

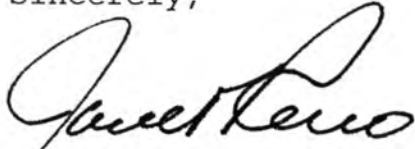
In short, we support a revised penalty structure with the five-year mandatory minimum threshold for crack set at 25 grams and the corresponding threshold for powder set at 250 grams because it would:

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- Improve the allocation of scarce federal law enforcement resources.
- Address perceptions of serious unfairness and inconsistency in the current sentencing scheme.
- Continue to reflect an appropriate distinction between crack and powder cocaine.

The President
Page 5

With your concurrence, we will work with Congress to adopt legislation that will improve federal law enforcement's response to the scourge of powder and crack cocaine trafficking in this country.

Sincerely,

A handwritten signature in cursive script, appearing to read "Janet Reno".

Janet Reno
Attorney General

Sincerely,

A handwritten signature in cursive script, appearing to read "Barry R. McCaffrey".

Barry R. McCaffrey
Director, Office of
National Drug Control Policy

THE WHITE HOUSE
WASHINGTON

July 3, 1997

'97 JUL 3 PM7:30

MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED
ELENA KAGAN

SUBJECT: CRACK SENTENCING RECOMMENDATIONS

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I. Background

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III. Suggested Course of Action

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The one downside of this recommendation is that the proposed approach risks placing the Administration in the center of a debate that has no center -- with Members of Congress attacking from both directions. On the one hand, Republicans will accuse the Administration of coddling drug users by raising the mandatory minimum threshold for crack cocaine. Senators Hatch and Abraham support a proposal to drop the threshold for powder cocaine from 500 grams to 100 grams while leaving intact the threshold for crack cocaine (resulting in a 20:1 ratio). Other Republican Members have proposed dropping the powder cocaine threshold to as low as 5 grams, which would reduce the ratio to 1:1, but only at the cost of overprosecuting other low-level drug dealers and adding billions of dollars to the federal prison budget. On the other hand, the Congressional Black Caucus and others in the African-American community will attack the

Administration for failing to go far enough to remove a racial injustice. As you know, many CBC Members favor removing the disparity between crack and powder cocaine entirely -- or at least reducing it far more sharply than the Attorney General and ONDCP Director recommend.

But precisely because it takes a middle position -- and because, as noted above, it can be hooked to law enforcement objectives -- this recommendation offers the best hope of achieving progress on this issue. The CBC approach to this issue will go nowhere in Congress, even with our support. The Republican approach stands a scarily high chance of success, unless we counter it with a credible alternative. We are not particularly optimistic that the recommended approach (assuming you accept it) will prevail, but it stands a better than any alternative approach of leading to a decent outcome.

We also suggest, if you accept the recommendation, that you authorize the Attorney General and ONDCP Director to begin immediate discussions with Members of Congress on this issue. Senators Hatch and Abraham may offer their alternative proposal as early as next week at the Senate Judiciary Committee's markup of the Juvenile Justice bill. We should engage with an alternative proposal as quickly as possible.

_____ Agree

_____ Disagree

_____ Discuss

THE WHITE HOUSE
WASHINGTON

July 3, 1997

'97 JUL 3 PM7:30

MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED
ELENA KAGAN

SUBJECT: CRACK SENTENCING RECOMMENDATIONS

On April 29, the U.S. Sentencing Commission submitted a report to Congress with new recommendations on sentencing policy for trafficking in crack and powder cocaine. In response, you directed the Attorney General and ONDCP Director to review the report and make recommendations to you within 60 days. Today, they submitted a joint recommendation, attached to this memo, that you support changing the threshold for a 5-year mandatory sentence from 5 grams to 25 grams for crack cocaine and from 500 grams to 250 grams for powder cocaine. This change would reduce the current disparity between crack and powder cocaine sentences from a ratio of 100:1 to a ratio of 10:1. The DPC believes that you should accept this recommendation and instruct your advisers to begin working with Congress immediately to enact legislation making these changes in crack and powder cocaine sentencing.

I. Background

Under current law, the same 5-year mandatory minimum sentence applies to a person selling 5 grams of crack cocaine (worth about \$300) and a person selling 500 grams of powder cocaine (worth about \$30,000). This disparity is often referred to as the "100-to-1" ratio between crack and powder cocaine sentences.

In May 1995, the Sentencing Commission, by a 4-3 vote, issued changes to the sentencing guidelines to reduce crack cocaine penalties to the same level as powder sentences -- a 1:1 ratio at 500 grams. The Administration opposed these changes on the ground that crack is more harmful than powder cocaine. In October 1995, you signed legislation rejecting the changes and directing the Commission to submit new recommendations to Congress.

The Sentencing Commission's revised recommendations, submitted this April, suggested appropriate ranges for the amount of crack or powder cocaine that should trigger a mandatory minimum sentence: between 25 and 75 grams for crack cocaine and between 125 and 375 grams for powder cocaine. In asking the Attorney General and ONDCP Director to review these recommendations, you stated that "the sentencing laws must continue to reflect that crack cocaine is a more harmful form of cocaine," but that "some adjustment to the cocaine penalty structure is warranted as a matter of sound criminal justice policy."

II. Department of Justice and ONDCP Recommendation

After reviewing the Sentencing Commission's report, the Attorney General and ONDCP Director have recommended that the Administration support and work with Congress to enact legislation changing the mandatory minimum thresholds from 5 grams of crack and 500 grams of powder to 25 grams of crack and 250 grams of powder cocaine. These changes would reduce the current ratio between crack and powder sentencing from 100:1 to 10:1.

The Attorney General and ONDCP Director believe that this revised sentencing structure would help to ensure that federal prosecutors focus on the prosecution of mid- and high-level cocaine traffickers, rather than on lower-level traffickers whom state and local authorities can easily prosecute. A mid-level crack dealer typically deals in ounce (28 grams) or multi-ounce quantities. By raising the mandatory minimum to this level, Congress would remove incentives for federal prosecutors to prosecute lower-level dealers and increase the likelihood of their bringing only high-priority cases involving mid- and high-level traffickers.

The Attorney General and ONDCP Director also state that the current 100:1 ratio is outdated because the rates of crack and powder cocaine use, as well as the dangers associated with such use, have narrowed over the years. Finally, they note that the current ratio has become a symbol of racial bias in the criminal justice system and has had a corrosive effect on "respect for the law in certain communities and on the effective administration of justice."

III. Suggested Course of Action

We suggest that you endorse the recommendation submitted by the Attorney General and the ONDCP Director. The proposed 10:1 ratio, with mandatory minimum triggers at 25 grams of crack cocaine and 250 grams of powder cocaine, is fundamentally sound. This recommendation reduces the disparity between crack and powder cocaine sentencing, as well as the perception of injustice and inconsistency that goes with it. At the same time, the recommendation makes sense from a law enforcement perspective by linking the crack threshold to an amount (25 grams) that corresponds with the practice of mid-level crack dealers to traffick in ounce (28 grams) or multi-ounce quantities.

The one downside of this recommendation is that the proposed approach risks placing the Administration in the center of a debate that has no center -- with Members of Congress attacking from both directions. On the one hand, Republicans will accuse the Administration of coddling drug users by raising the mandatory minimum threshold for crack cocaine. Senators Hatch and Abraham support a proposal to drop the threshold for powder cocaine from 500 grams to 100 grams while leaving intact the threshold for crack cocaine (resulting in a 20:1 ratio). Other Republican Members have proposed dropping the powder cocaine threshold to as low as 5 grams, which would reduce the ratio to 1:1, but only at the cost of overprosecuting other low-level drug dealers and adding billions of dollars to the federal prison budget. On the other hand, the Congressional Black Caucus and others in the African-American community will attack the

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_____ Agree

_____ Disagree

_____ Discuss

WHITE HOUSE STAFFING MEMORANDUM

DATE: 7/3 ACTION/CONCURRENCE/COMMENT DUE BY: 7/3 5:00pmSUBJECT: Crack Sentencing Recommendations

	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	☐	☐
IBARRA	☐	☐	SPERLING	☐	☐
RADD	☐	☐	TARULLO	☐	☐
MARSHALL	☐	☐	VERVEER	☐	☐
HILLEY	☒	☐	WALDMAN	☐	☐
KLAIN	☒	☐		☐	☐
BERGER	☐	☐		☐	☐
LINDSEY	☐	☐		☐	☐

REMARKS:

Please advise. Should go to POTUS tonight

RESPONSE:

bought not to focus

- baby

- starts + falls

sentences

- can't be testified

on Bill law enforcement
Chuck Pott

THE WHITE HOUSE
WASHINGTON

July 3, 1997

1997 JUL 3 PM 1:38

MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED
ELENA KAGAN *ER*

SUBJECT: CRACK SENTENCING RECOMMENDATIONS

On April 29, the U.S. Sentencing Commission submitted a report to Congress with new recommendations on sentencing policy for trafficking in crack and powder cocaine. In response, you directed the Attorney General and ONDCP Director to review the report and make recommendations to you within 60 days. Today, they submitted a joint recommendation, attached to this memo, that you support changing the threshold for a 5-year mandatory sentence from 5 grams to 25 grams for crack cocaine and from 500 grams to 250 grams for powder cocaine. This change would reduce the current disparity between crack and powder cocaine sentences from a ratio of 100:1 to a ratio of 10:1. The DPC believes that you should accept this recommendation and instruct your advisers to begin working with Congress immediately to enact legislation making these changes in crack and powder cocaine sentencing.

I. Background

Under current law, the same 5-year mandatory minimum sentence applies to a person selling 5 grams of crack cocaine (worth about \$300) and a person selling 500 grams of powder cocaine (worth about \$30,000). This disparity is often referred to as the "100-to-1" ratio between crack and powder cocaine sentences.

In May 1995, the Sentencing Commission, by a 4-3 vote, issued changes to the sentencing guidelines to reduce crack cocaine penalties to the same level as powder sentences -- a 1:1 ratio at 500 grams. The Administration opposed these changes on the ground that crack is more harmful than powder cocaine. In October 1995, you signed legislation rejecting the changes and directing the Commission to submit new recommendations to Congress.

The Sentencing Commission's revised recommendations, submitted this April, suggested appropriate ranges for the amount of crack or powder cocaine that should trigger a mandatory minimum sentence: between 25 and 75 grams for crack cocaine and between 125 and 375 grams for powder cocaine. In asking the Attorney General and ONDCP Director to review these recommendations, you stated that "the sentencing laws must continue to reflect that crack cocaine is a more harmful form of cocaine," but that "some adjustment to the cocaine penalty structure is warranted as a matter of sound criminal justice policy."

II. Department of Justice and ONDCP Recommendation

After reviewing the Sentencing Commission's revised report, the Attorney General and ONDCP Director recommend that the Administration support and work with Congress to enact legislation changing the mandatory minimum thresholds from 5 grams of crack and 500 grams of powder to 25 grams of crack and 250 grams of powder cocaine. These changes would reduce the current ratio between crack and powder sentencing from 100:1 to 10:1.

The Attorney General and ONDCP Director believe that this revised sentencing structure would help to ensure that federal prosecutors focus on the prosecution of mid- and high-level cocaine traffickers, while leaving the prosecution of lower-level traffickers to state and local authorities. A mid-level crack dealer typically deals in ounce (28 grams) or multi-ounce quantities. By raising the mandatory minimum to this level, Congress would remove incentives for federal prosecutors to bring cases against lower-level dealers. This action would improve the allocation of limited law enforcement resources, as federal prosecutors would concentrate on high-priority cases involving mid- and high-level traffickers.

The Attorney General and ONDCP Director also state that the current 100:1 ratio is outdated because the rates of crack and powder cocaine use, as well as the dangers associated with such use, have narrowed over the years. Finally, they note that the current ratio has become a symbol of racial bias in the criminal justice system and has had a corrosive effect on "respect for the law in certain communities and on the effective administration of justice."

III. Suggested Course of Action

We suggest that you endorse the recommendation submitted by the Attorney General and the ONDCP Director and ask them to work with Congress to address this matter. We believe that the proposed 10:1 ratio, with mandatory minimum triggers at 25 grams of crack cocaine and 250 grams of powder cocaine, is fundamentally sound. This recommendation reduces the disparity between crack and powder cocaine sentencing, as well as the perception of injustice and inconsistency that goes with it. At the same time, the recommendation makes sense from a law enforcement perspective by linking the crack threshold to an amount (25 grams) that corresponds with the practice of mid-level crack dealers to traffick in ounce (28 grams) or multi-ounce quantities.

We also suggest that you authorize the Attorney General and ONDCP Director to begin immediate discussions with Members of Congress on this issue. Senators Hatch and Abraham may offer an alternative proposal next week as an amendment to the juvenile justice bill; their legislation would drop the mandatory minimum threshold for powder cocaine from 500 grams to 100 grams while leaving intact the threshold for crack cocaine intact (resulting in a 20:1 ratio). Other members have proposed dropping the powder cocaine threshold to as low as 5 grams. As you know, addressing the disparity between crack and powder cocaine sentences in this manner will increase the federal government's role in low-level drug cases that are best addressed by

state and local law enforcement -- and add billions of dollars to the federal prison budget. Though we are not particularly optimistic that our approach (assuming you approve it) will prevail, we should at least make every effort to get into this debate and push for sensible legislation.



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

The President
The White House
Washington, DC 20500

Re: Crack and Powder Cocaine Sentencing
Policy in the Federal Criminal Justice System

Dear Mr. President:

On April 29, 1997, the United States Sentencing Commission ("Commission") submitted to Congress a report containing recommendations regarding crack and powder cocaine sentencing policy in the federal criminal justice system. The Commission recommended that the triggering amount for a five-year mandatory minimum sentence for crack be changed from the current 5 grams to somewhere between 25 and 75 grams, and that the triggering amount for a five-year mandatory minimum sentence for powder cocaine be changed from the current 500 grams to somewhere between 125 and 375 grams.

In a statement issued on the day the report was submitted to Congress, you commended the Commission for its report, agreeing that "some adjustment to the cocaine penalty structure is warranted as a matter of sound criminal justice policy [because] [f]ederal prosecutors should target mid- and high-level drug traffickers, rather than low-level drug offenders." You recognized that "[t]he disparity between sentences for powder and crack cocaine has led to a perception of unfairness and inconsistency in the federal criminal justice system." You further stated, however, that crack has had a particularly devastating impact on communities across America, and thus "[t]he sentencing laws must continue to reflect that crack cocaine is a more harmful form of cocaine." You directed us to study the Commission's report and to make our recommendations on cocaine sentencing in the federal system.

Recommendation

The Office of National Drug Control Policy (ONDCP) and the Department of Justice (DOJ) have carefully studied the Commission's report, engaged in a comprehensive review of recent literature on this subject, and examined information from the

The President
Page 2

Commission, DOJ, ONDCP, and the Department of Health and Human Services. Consistent with the Commission's report, we recommend that the threshold for the five-year mandatory minimum sentence for crack be set at 25 grams and the corresponding threshold for powder be set at 250 grams and urge that the Administration work with Congress to adopt implementing legislation.

Rationale

When Congress enacted the current mandatory minimum sentences for a wide range of illegal drugs, it stated that these sentences should be reserved for significant drug traffickers. Accordingly, the federal government should primarily focus its narcotics enforcement resources on mid-level and high-level drug traffickers, generally leaving lower-level traffickers and users for prosecution by state and local law enforcement. Indeed, the overwhelming majority of drug prosecutions in this country are brought by state and local prosecutors.

This division of responsibility makes sense. With its powerful enforcement tools, such as the RICO statute, wiretapping capabilities, and the witness protection program, and with its national and international enforcement programs, the federal government is better situated to target and dismantle major drug trafficking organizations, whether the organizations deal in heroin, LSD, methamphetamine, cocaine, or other dangerous narcotics. Because successful narcotics prosecutions often involve "working up the chain," there is also a federal interest in prosecuting individuals who, if they were to cooperate, could provide information that would lead to the prosecution of these organizations and major drug dealers.

The current sentencing structure for cocaine, however, has undermined this division of responsibility. Today, a defendant who traffics in 500 grams of powder cocaine faces a five-year mandatory minimum sentence. According to the Drug Enforcement Administration (DEA), 500 grams -- a half-kilogram -- of powder cocaine has a street value of approximately \$30,000. An individual who deals in \$30,000 (or more) of powder cocaine is a serious drug dealer who should, at the minimum, have information relevant to prosecuting even larger individual dealers or organizations.

In contrast, serious mandatory minimum sentences are not reserved for mid-level and high-level dealers when it comes to crack cocaine. Under the current system, a defendant need only traffic in 5 grams of crack in order to face a five-year mandatory minimum sentence. According to the DEA, 5 grams of crack is worth a few hundred dollars at most, and its sale is

The President

Page 3

characteristic of a low-level street dealer. A mid-level crack dealer typically deals ounce or multi-ounce quantities. (A single ounce equals 28 grams.) Thus, setting the five-year mandatory minimum threshold at 25 grams would ensure that even the very bottom of the mid-level range would be covered; setting the threshold any lower than 25 grams would undermine positive change and would continue, inappropriately, to target low-level street dealers.

Several negative consequences have resulted from the current cocaine sentencing scheme:

- Agents and prosecutors have the incentive to concentrate on cases where less effort can nonetheless result in long sentences. Thus, the current sentencing scheme may lead federal agents and prosecutors to focus on low-level street dealers of crack, who could as easily and appropriately be prosecuted by our state and local law enforcement partners.

- To the extent that law enforcement resources are directed against low-level street dealers, scarce federal law enforcement agents and prosecutors are diverted away from other higher priorities including larger-scale and more serious drug traffickers. Moreover, imprisoning scores of lower-level crack dealers for long periods of time has consumed considerable resources of the Bureau of Prisons.

- The large disparity in the sentencing scheme is outdated insofar as current data show that crack use has stabilized over the past few years; that the violence associated with crack dealing has dropped over the past few years, contributing to the overall crime drop across America; that of all the cocaine consumed in the United States, there is nearly an even split between crack users and powder users; and that treatment programs for crack and powder addicts are similar and have similar success rates.

- A sentencing scheme that treats crack 100 times more harshly than powder undoubtedly has become an important symbol of racial injustice in our criminal justice system. We cannot turn a blind eye to the corrosive effect this has had on respect for the law in certain communities and on the effective administration of justice. When communities lose faith in the fairness of the legal process, our ability to enforce the law suffers.

These problems cannot be solved by increasing powder penalties, while leaving current crack penalties unchanged. Such a change would merely replicate for powder cocaine the major

The President
Page 4

problem with current law enforcement efforts against crack cocaine -- the diversion of scarce federal resources to the prosecution and incarceration of low-level drug dealers who are more properly the focus of state and local officials. Moreover, simply increasing powder cocaine penalties would do little to address the perception that crack penalties inappropriately target racial minorities for harsh punishment. We support, in conjunction with a change in crack penalties, a change in the triggering amount for powder cocaine from 500 grams to 250 grams recognizing that all crack is brought into this country as powder and the ease by which that powder is converted to crack.

None of this is to say that the federal government should retreat from its vigorous prosecution of crack cocaine offenses. Under our recommended penalty structure, federal law enforcement would continue to prosecute crack cases in the federal system, particularly when there is organized drug dealing, the use of weapons, the use of minors in drug trafficking, drug trafficking near schools and other places, or other aggravating factors. Moreover, crack dealers would continue to be punished more harshly than powder dealers, which appropriately reflects the additional dangers associated with crack cocaine.

Conclusion

In short, we support a revised penalty structure with the five-year mandatory minimum threshold for crack set at 25 grams and the corresponding threshold for powder set at 250 grams because it would:

- Maintain tough federal sentences for serious drug offenders.
- Properly focus federal law enforcement efforts on mid-level and high-level drug traffickers.
- Improve the allocation of scarce federal law enforcement resources.
- Address perceptions of serious unfairness and inconsistency in the current sentencing scheme.
- Continue to reflect an appropriate distinction between crack and powder cocaine.

The President
Page 5

With your concurrence, we will work with Congress to adopt legislation that will improve federal law enforcement's response to the scourge of powder and crack cocaine trafficking in this country.

Sincerely,

Sincerely,

Janet Reno
Attorney General

Barry R. McCaffrey
Director, Office of
National Drug Control Policy

WHITE HOUSE STAFFING MEMORANDUM

DATE: 7/3 ACTION/CONCURRENCE/COMMENT DUE BY: 7/3 5:00pm

SUBJECT: Crack Sentencing Recommendations

	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	☐	☐
MARSHALL	☐	☐	VERVEER	☐	☐
HILLEY	☒	☐	WALDMAN	☐	☐
KLAIN (all for it)	☒	☐		☐	☐
BERGER	☐	☐		☐	☐
LINDSEY	☐	☐		☐	☐

REMARKS:

Please advise. Should go to POTUS tonight

RESPONSE:

THE WHITE HOUSE
WASHINGTON

July 3, 1997

1997 JUL 3 4:13 PM

MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED
ELENA KAGAN *ek*

SUBJECT: CRACK SENTENCING RECOMMENDATIONS

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I. Background

Under current law, the same 5-year mandatory minimum sentence applies to a person selling 5 grams of crack cocaine (worth about \$300) and a person selling 500 grams of powder cocaine (worth about \$30,000). This disparity is often referred to as the "100-to-1" ratio between crack and powder cocaine sentences.

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II. Department of Justice and ONDCP Recommendation

After reviewing the Sentencing Commission's revised report, the Attorney General and ONDCP Director recommend that the Administration support and work with Congress to enact legislation changing the mandatory minimum thresholds from 5 grams of crack and 500 grams of powder to 25 grams of crack and 250 grams of powder cocaine. These changes would reduce the current ratio between crack and powder sentencing from 100:1 to 10:1.

The Attorney General and ONDCP Director believe that this revised sentencing structure would help to ensure that federal prosecutors focus on the prosecution of mid- and high-level cocaine traffickers, while leaving the prosecution of lower-level traffickers to state and local authorities. A mid-level crack dealer typically deals in ounce (28 grams) or multi-ounce quantities. By raising the mandatory minimum to this level, Congress would remove incentives for federal prosecutors to bring cases against lower-level dealers. This action would improve the allocation of limited law enforcement resources, as federal prosecutors would concentrate on high-priority cases involving mid- and high-level traffickers.

The Attorney General and ONDCP Director also state that the current 100:1 ratio is outdated because the rates of crack and powder cocaine use, as well as the dangers associated with such use, have narrowed over the years. Finally, they note that the current ratio has become a symbol of racial bias in the criminal justice system and has had a corrosive effect on "respect for the law in certain communities and on the effective administration of justice."

III. Suggested Course of Action

We suggest that you endorse the recommendation submitted by the Attorney General and the ONDCP Director and ask them to work with Congress to address this matter. We believe that the proposed 10:1 ratio, with mandatory minimum triggers at 25 grams of crack cocaine and 250 grams of powder cocaine, is fundamentally sound. This recommendation reduces the disparity between crack and powder cocaine sentencing, as well as the perception of injustice and inconsistency that goes with it. At the same time, the recommendation makes sense from a law enforcement perspective by linking the crack threshold to an amount (25 grams) that corresponds with the practice of mid-level crack dealers to traffick in ounce (28 grams) or multi-ounce quantities.

We also suggest that you authorize the Attorney General and ONDCP Director to begin immediate discussions with Members of Congress on this issue. Senators Hatch and Abraham may offer an alternative proposal next week as an amendment to the juvenile justice bill; their legislation would drop the mandatory minimum threshold for powder cocaine from 500 grams to 100 grams while leaving intact the threshold for crack cocaine intact (resulting in a 20:1 ratio). Other members have proposed dropping the powder cocaine threshold to as low as 5 grams. As you know, addressing the disparity between crack and powder cocaine sentences in this manner will increase the federal government's role in low-level drug cases that are best addressed by

state and local law enforcement -- and add billions of dollars to the federal prison budget. Though we are not particularly optimistic that our approach (assuming you approve it) will prevail, we should at least make every effort to get into this debate and push for sensible legislation.

_____ Agree

_____ Disagree

_____ Discuss

3rd Page of
memo from
Hane

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'97 JUL 8 PM 4:05



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

July 3, 1997

The President
The White House
Washington, DC 20500

Re: Crack and Powder Cocaine Sentencing
Policy in the Federal Criminal Justice System

Dear Mr. President:

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In a statement issued on the day the report was submitted to Congress, you commended the Commission for its report, agreeing that "some adjustment to the cocaine penalty structure is warranted as a matter of sound criminal justice policy [because] [f]ederal prosecutors should target mid- and high-level drug traffickers, rather than low-level drug offenders." You recognized that "[t]he disparity between sentences for powder and crack cocaine has led to a perception of unfairness and inconsistency in the federal criminal justice system." You further stated, however, that crack has had a particularly devastating impact on communities across America, and thus "[t]he sentencing laws must continue to reflect that crack cocaine is a more harmful form of cocaine." You directed us to study the Commission's report and to make our recommendations on cocaine sentencing in the federal system.

Recommendation

The Office of National Drug Control Policy (ONDCP) and the Department of Justice (DOJ) have carefully studied the Commission's report, engaged in a comprehensive review of recent literature on this subject, and examined information from the

Commission, DOJ, ONDCP, and the Department of Health and Human Services. Consistent with the Commission's report, we recommend that the threshold for the five-year mandatory minimum sentence for crack be set at 25 grams and the corresponding threshold for powder be set at 250 grams and urge that the Administration work with Congress to adopt implementing legislation.

Rationale

When Congress enacted the current mandatory minimum sentences for a wide range of illegal drugs, it stated that these sentences should be reserved for significant drug traffickers. Accordingly, the federal government should primarily focus its narcotics enforcement resources on mid-level and high-level drug traffickers, generally leaving lower-level traffickers and users for prosecution by state and local law enforcement. Indeed, the overwhelming majority of drug prosecutions in this country are brought by state and local prosecutors.

This division of responsibility makes sense. With its powerful enforcement tools, such as the RICO statute, wiretapping capabilities, and the witness protection program, and with its national and international enforcement programs, the federal government is better situated to target and dismantle major drug trafficking organizations, whether the organizations deal in heroin, LSD, methamphetamine, cocaine, or other dangerous narcotics. Because successful narcotics prosecutions often involve "working up the chain," there is also a federal interest in prosecuting individuals who, if they were to cooperate, could provide information that would lead to the prosecution of these organizations and major drug dealers.

The current sentencing structure for cocaine, however, has undermined this division of responsibility. Today, a defendant who traffics in 500 grams of powder cocaine faces a five-year mandatory minimum sentence. According to the Drug Enforcement Administration (DEA), 500 grams -- a half-kilogram -- of powder cocaine has a street value of approximately \$30,000. An individual who deals in \$30,000 (or more) of powder cocaine is a serious drug dealer who should, at the minimum, have information relevant to prosecuting even larger individual dealers or organizations.

In contrast, serious mandatory minimum sentences are not reserved for mid-level and high-level dealers when it comes to crack cocaine. Under the current system, a defendant need only traffic in 5 grams of crack in order to face a five-year mandatory minimum sentence. According to the DEA, 5 grams of crack is worth a few hundred dollars at most, and its sale is

characteristic of a low-level street dealer. A mid-level crack dealer typically deals ounce or multi-ounce quantities. (A single ounce equals 28 grams.) Thus, setting the five-year mandatory minimum threshold at 25 grams would ensure that even the very bottom of the mid-level range would be covered; setting the threshold any lower than 25 grams would undermine positive change and would continue, inappropriately, to target low-level street dealers.

Several negative consequences have resulted from the current cocaine sentencing scheme:

- Agents and prosecutors have the incentive to concentrate on cases where less effort can nonetheless result in long sentences. Thus, the current sentencing scheme may lead federal agents and prosecutors to focus on low-level street dealers of crack, who could as easily and appropriately be prosecuted by our state and local law enforcement partners.

- To the extent that law enforcement resources are directed against low-level street dealers, scarce federal law enforcement agents and prosecutors are diverted away from other higher priorities including larger-scale and more serious drug traffickers. Moreover, imprisoning scores of lower-level crack dealers for long periods of time has consumed considerable resources of the Bureau of Prisons.

- The large disparity in the sentencing scheme is outdated insofar as current data show that crack use has stabilized over the past few years; that the violence associated with crack dealing has dropped over the past few years, contributing to the overall crime drop across America; that of all the cocaine consumed in the United States, there is nearly an even split between crack users and powder users; and that treatment programs for crack and powder addicts are similar and have similar success rates.

- A sentencing scheme that treats crack 100 times more harshly than powder undoubtedly has become an important symbol of racial injustice in our criminal justice system. We cannot turn a blind eye to the corrosive effect this has had on respect for the law in certain communities and on the effective administration of justice. When communities lose faith in the fairness of the legal process, our ability to enforce the law suffers.

These problems cannot be solved by increasing powder penalties, while leaving current crack penalties unchanged. Such a change would merely replicate for powder cocaine the major

problem with current law enforcement efforts against crack cocaine -- the diversion of scarce federal resources to the prosecution and incarceration of low-level drug dealers who are more properly the focus of state and local officials. Moreover, simply increasing powder cocaine penalties would do little to address the perception that crack penalties inappropriately target racial minorities for harsh punishment. We support, in conjunction with a change in crack penalties, a change in the triggering amount for powder cocaine from 500 grams to 250 grams recognizing that all crack is brought into this country as powder and the ease by which that powder is converted to crack.

None of this is to say that the federal government should retreat from its vigorous prosecution of crack cocaine offenses. Under our recommended penalty structure, federal law enforcement would continue to prosecute crack cases in the federal system, particularly when there is organized drug dealing, the use of weapons, the use of minors in drug trafficking, drug trafficking near schools and other places, or other aggravating factors. Moreover, crack dealers would continue to be punished more harshly than powder dealers, which appropriately reflects the additional dangers associated with crack cocaine.

Conclusion

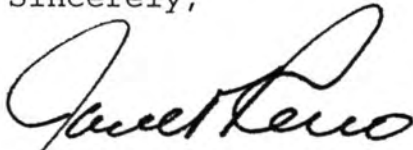
In short, we support a revised penalty structure with the five-year mandatory minimum threshold for crack set at 25 grams and the corresponding threshold for powder set at 250 grams because it would:

- Maintain tough federal sentences for serious drug offenders.
- Properly focus federal law enforcement efforts on mid-level and high-level drug traffickers.
- Improve the allocation of scarce federal law enforcement resources.
- Address perceptions of serious unfairness and inconsistency in the current sentencing scheme.
- Continue to reflect an appropriate distinction between crack and powder cocaine.

The President
Page 5

With your concurrence, we will work with Congress to adopt legislation that will improve federal law enforcement's response to the scourge of powder and crack cocaine trafficking in this country.

Sincerely,

A handwritten signature in black ink, appearing to read "Janet Reno", written in a cursive style.

Janet Reno
Attorney General

Sincerely,

A handwritten signature in black ink, appearing to read "Barry R. McCaffrey", written in a cursive style with a large, stylized flourish at the end.

Barry R. McCaffrey
Director, Office of
National Drug Control Policy



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

July 3, 1997

The President
The White House
Washington, DC 20500

Re: Crack and Powder Cocaine Sentencing
Policy in the Federal Criminal Justice System

Dear Mr. President:

On April 29, 1997, the United States Sentencing Commission ("Commission") submitted to Congress a report containing recommendations regarding crack and powder cocaine sentencing policy in the federal criminal justice system. The Commission recommended that the triggering amount for a five-year mandatory minimum sentence for crack be changed from the current 5 grams to somewhere between 25 and 75 grams, and that the triggering amount for a five-year mandatory minimum sentence for powder cocaine be changed from the current 500 grams to somewhere between 125 and 375 grams.

In a statement issued on the day the report was submitted to Congress, you commended the Commission for its report, agreeing that "some adjustment to the cocaine penalty structure is warranted as a matter of sound criminal justice policy [because] [f]ederal prosecutors should target mid- and high-level drug traffickers, rather than low-level drug offenders." You recognized that "[t]he disparity between sentences for powder and crack cocaine has led to a perception of unfairness and inconsistency in the federal criminal justice system." You further stated, however, that crack has had a particularly devastating impact on communities across America, and thus "[t]he sentencing laws must continue to reflect that crack cocaine is a more harmful form of cocaine." You directed us to study the Commission's report and to make our recommendations on cocaine sentencing in the federal system.

Recommendation

The Office of National Drug Control Policy (ONDCP) and the Department of Justice (DOJ) have carefully studied the Commission's report, engaged in a comprehensive review of recent literature on this subject, and examined information from the

Commission, DOJ, ONDCP, and the Department of Health and Human Services. Consistent with the Commission's report, we recommend that the threshold for the five-year mandatory minimum sentence for crack be set at 25 grams and the corresponding threshold for powder be set at 250 grams and urge that the Administration work with Congress to adopt implementing legislation.

Rationale

When Congress enacted the current mandatory minimum sentences for a wide range of illegal drugs, it stated that these sentences should be reserved for significant drug traffickers. Accordingly, the federal government should primarily focus its narcotics enforcement resources on mid-level and high-level drug traffickers, generally leaving lower-level traffickers and users for prosecution by state and local law enforcement. Indeed, the overwhelming majority of drug prosecutions in this country are brought by state and local prosecutors.

This division of responsibility makes sense. With its powerful enforcement tools, such as the RICO statute, wiretapping capabilities, and the witness protection program, and with its national and international enforcement programs, the federal government is better situated to target and dismantle major drug trafficking organizations, whether the organizations deal in heroin, LSD, methamphetamine, cocaine, or other dangerous narcotics. Because successful narcotics prosecutions often involve "working up the chain," there is also a federal interest in prosecuting individuals who, if they were to cooperate, could provide information that would lead to the prosecution of these organizations and major drug dealers.

The current sentencing structure for cocaine, however, has undermined this division of responsibility. Today, a defendant who traffics in 500 grams of powder cocaine faces a five-year mandatory minimum sentence. According to the Drug Enforcement Administration (DEA), 500 grams -- a half-kilogram -- of powder cocaine has a street value of approximately \$30,000. An individual who deals in \$30,000 (or more) of powder cocaine is a serious drug dealer who should, at the minimum, have information relevant to prosecuting even larger individual dealers or organizations.

In contrast, serious mandatory minimum sentences are not reserved for mid-level and high-level dealers when it comes to crack cocaine. Under the current system, a defendant need only traffic in 5 grams of crack in order to face a five-year mandatory minimum sentence. According to the DEA, 5 grams of crack is worth a few hundred dollars at most, and its sale is

characteristic of a low-level street dealer. A mid-level crack dealer typically deals ounce or multi-ounce quantities. (A single ounce equals 28 grams.) Thus, setting the five-year mandatory minimum threshold at 25 grams would ensure that even the very bottom of the mid-level range would be covered; setting the threshold any lower than 25 grams would undermine positive change and would continue, inappropriately, to target low-level street dealers.

Several negative consequences have resulted from the current cocaine sentencing scheme:

- Agents and prosecutors have the incentive to concentrate on cases where less effort can nonetheless result in long sentences. Thus, the current sentencing scheme may lead federal agents and prosecutors to focus on low-level street dealers of crack, who could as easily and appropriately be prosecuted by our state and local law enforcement partners.
- To the extent that law enforcement resources are directed against low-level street dealers, scarce federal law enforcement agents and prosecutors are diverted away from other higher priorities including larger-scale and more serious drug traffickers. Moreover, imprisoning scores of lower-level crack dealers for long periods of time has consumed considerable resources of the Bureau of Prisons.
- The large disparity in the sentencing scheme is outdated insofar as current data show that crack use has stabilized over the past few years; that the violence associated with crack dealing has dropped over the past few years, contributing to the overall crime drop across America; that of all the cocaine consumed in the United States, there is nearly an even split between crack users and powder users; and that treatment programs for crack and powder addicts are similar and have similar success rates.
- A sentencing scheme that treats crack 100 times more harshly than powder undoubtedly has become an important symbol of racial injustice in our criminal justice system. We cannot turn a blind eye to the corrosive effect this has had on respect for the law in certain communities and on the effective administration of justice. When communities lose faith in the fairness of the legal process, our ability to enforce the law suffers.

These problems cannot be solved by increasing powder penalties, while leaving current crack penalties unchanged. Such a change would merely replicate for powder cocaine the major

problem with current law enforcement efforts against crack cocaine -- the diversion of scarce federal resources to the prosecution and incarceration of low-level drug dealers who are more properly the focus of state and local officials. Moreover, simply increasing powder cocaine penalties would do little to address the perception that crack penalties inappropriately target racial minorities for harsh punishment. We support, in conjunction with a change in crack penalties, a change in the triggering amount for powder cocaine from 500 grams to 250 grams recognizing that all crack is brought into this country as powder and the ease by which that powder is converted to crack.

None of this is to say that the federal government should retreat from its vigorous prosecution of crack cocaine offenses. Under our recommended penalty structure, federal law enforcement would continue to prosecute crack cases in the federal system, particularly when there is organized drug dealing, the use of weapons, the use of minors in drug trafficking, drug trafficking near schools and other places, or other aggravating factors. Moreover, crack dealers would continue to be punished more harshly than powder dealers, which appropriately reflects the additional dangers associated with crack cocaine.

Conclusion

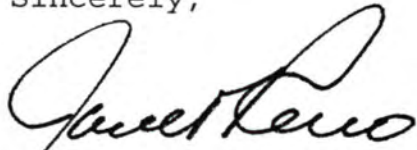
In short, we support a revised penalty structure with the five-year mandatory minimum threshold for crack set at 25 grams and the corresponding threshold for powder set at 250 grams because it would:

- Maintain tough federal sentences for serious drug offenders.
- Properly focus federal law enforcement efforts on mid-level and high-level drug traffickers.
- Improve the allocation of scarce federal law enforcement resources.
- Address perceptions of serious unfairness and inconsistency in the current sentencing scheme.
- Continue to reflect an appropriate distinction between crack and powder cocaine.

The President
Page 5

With your concurrence, we will work with Congress to adopt legislation that will improve federal law enforcement's response to the scourge of powder and crack cocaine trafficking in this country.

Sincerely,

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Janet Reno
Attorney General

Sincerely,

A handwritten signature in cursive script, appearing to read "Barry R. McCaffrey".

Barry R. McCaffrey
Director, Office of
National Drug Control Policy

WHITE HOUSE STAFFING MEMORANDUM

DATE: 7/3 ACTION/CONCURRENCE/COMMENT DUE BY: 7/3 5:00pm

SUBJECT: Crack Sentencing Recommendations

	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	☐	☐
MARSHALL	☐	☐	VERVEER	☐	☐
HILLEY	☒	☐	WALDMAN	☐	☐
KLAIN	☒	☐		☐	☐
BERGER	☐	☐		☐	☐
LINDSEY	☐	☐		☐	☐

REMARKS:

Please advise. Should go to POTUS tonight

RESPONSE:

THE WHITE HOUSE
WASHINGTON

July 3, 1997

1997 JUL 3 PM 1:33

MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED
ELENA KAGAN *ek*

SUBJECT: CRACK SENTENCING RECOMMENDATIONS

On April 29, the U.S. Sentencing Commission submitted a report to Congress with new recommendations on sentencing policy for trafficking in crack and powder cocaine. In response, you directed the Attorney General and ONDCP Director to review the report and make recommendations to you within 60 days. Today, they submitted a joint recommendation, attached to this memo, that you support changing the threshold for a 5-year mandatory sentence from 5 grams to 25 grams for crack cocaine and from 500 grams to 250 grams for powder cocaine. This change would reduce the current disparity between crack and powder cocaine sentences from a ratio of 100:1 to a ratio of 10:1. The DPC believes that you should accept this recommendation and instruct your advisers to begin working with Congress immediately to enact legislation making these changes in crack and powder cocaine sentencing.

I. Background

Under current law, the same 5-year mandatory minimum sentence applies to a person selling 5 grams of crack cocaine (worth about \$300) and a person selling 500 grams of powder cocaine (worth about \$30,000). This disparity is often referred to as the "100-to-1" ratio between crack and powder cocaine sentences.

In May 1995, the Sentencing Commission, by a 4-3 vote, issued changes to the sentencing guidelines to reduce crack cocaine penalties to the same level as powder sentences -- a 1:1 ratio at 500 grams. The Administration opposed these changes on the ground that crack is more harmful than powder cocaine. In October 1995, you signed legislation rejecting the changes and directing the Commission to submit new recommendations to Congress.

The Sentencing Commission's revised recommendations, submitted this April, suggested appropriate ranges for the amount of crack or powder cocaine that should trigger a mandatory minimum sentence: between 25 and 75 grams for crack cocaine and between 125 and 375 grams for powder cocaine. In asking the Attorney General and ONDCP Director to review these recommendations, you stated that "the sentencing laws must continue to reflect that crack cocaine is a more harmful form of cocaine," but that "some adjustment to the cocaine penalty structure is warranted as a matter of sound criminal justice policy."

II. Department of Justice and ONDCP Recommendation

After reviewing the Sentencing Commission's revised report, the Attorney General and ONDCP Director recommend that the Administration support and work with Congress to enact legislation changing the mandatory minimum thresholds from 5 grams of crack and 500 grams of powder to 25 grams of crack and 250 grams of powder cocaine. These changes would reduce the current ratio between crack and powder sentencing from 100:1 to 10:1.

The Attorney General and ONDCP Director believe that this revised sentencing structure would help to ensure that federal prosecutors focus on the prosecution of mid- and high-level cocaine traffickers, while leaving the prosecution of lower-level traffickers to state and local authorities. A mid-level crack dealer typically deals in ounce (28 grams) or multi-ounce quantities. By raising the mandatory minimum to this level, Congress would remove incentives for federal prosecutors to bring cases against lower-level dealers. This action would improve the allocation of limited law enforcement resources, as federal prosecutors would concentrate on high-priority cases involving mid- and high-level traffickers.

The Attorney General and ONDCP Director also state that the current 100:1 ratio is outdated because the rates of crack and powder cocaine use, as well as the dangers associated with such use, have narrowed over the years. Finally, they note that the current ratio has become a symbol of racial bias in the criminal justice system and has had a corrosive effect on "respect for the law in certain communities and on the effective administration of justice."

III. Suggested Course of Action

We suggest that you endorse the recommendation submitted by the Attorney General and the ONDCP Director and ask them to work with Congress to address this matter. We believe that the proposed 10:1 ratio, with mandatory minimum triggers at 25 grams of crack cocaine and 250 grams of powder cocaine, is fundamentally sound. This recommendation reduces the disparity between crack and powder cocaine sentencing, as well as the perception of injustice and inconsistency that goes with it. At the same time, the recommendation makes sense from a law enforcement perspective by linking the crack threshold to an amount (25 grams) that corresponds with the practice of mid-level crack dealers to traffick in ounce (28 grams) or multi-ounce quantities.

We also suggest that you authorize the Attorney General and ONDCP Director to begin immediate discussions with Members of Congress on this issue. Senators Hatch and Abraham may offer an alternative proposal next week as an amendment to the juvenile justice bill; their legislation would drop the mandatory minimum threshold for powder cocaine from 500 grams to 100 grams while leaving intact the threshold for crack cocaine intact (resulting in a 20:1 ratio). Other members have proposed dropping the powder cocaine threshold to as low as 5 grams. As you know, addressing the disparity between crack and powder cocaine sentences in this manner will increase the federal government's role in low-level drug cases that are best addressed by

state and local law enforcement -- and add billions of dollars to the federal prison budget. Though we are not particularly optimistic that our approach (assuming you approve it) will prevail, we should at least make every effort to get into this debate and push for sensible legislation.



Document No. _____

WHITE HOUSE STAFFING MEMORANDUM

DATE: 7/3 ACTION/CONCURRENCE/COMMENT DUE BY: 7/3 5:00pmSUBJECT: Crack Sentencing Recommendations

	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	☐	☐
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HILLEY	☒	☐	WALDMAN	☐	☐
KLAIN	☒	☐		☐	☐
BERGER	☐	☐		☐	☐
LINDSEY	☐	☐		☐	☐

REMARKS:

Please advise. Should go to POTUS tonight

RESPONSE:

I'm all for it - let's go.

Ann L

Staff Secretary
Ext. 6-2702

THE WHITE HOUSE
WASHINGTON

July 3, 1997

1997 JUL 3 PM 1:33

MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED
ELENA KAGAN *ek*

SUBJECT: CRACK SENTENCING RECOMMENDATIONS

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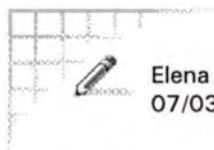
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state and local law enforcement -- and add billions of dollars to the federal prison budget. Though we are not particularly optimistic that our approach (assuming you approve it) will prevail, we should at least make every effort to get into this debate and push for sensible legislation.



Elena Kagan
07/03/97 06:03:35 PM

Record Type: Record

To: Phillip Caplan/WHO/EOP
cc:
Subject: Sentencing recommendations

Thought you should see this. I wouldn't mind something in the cover note to the effect that Bob believes the "base community" will be unhappy. We probably should have said that in our memo -- and still can if you want.

----- Forwarded by Elena Kagan/OPD/EOP on 07/03/97 06:02 PM -----



07/03/97
05:35:06 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP
cc: See the distribution list at the bottom of this message
Subject: Sentencing recommendations

I have been tracking this issue for some time and I don't think the latest recommendations are going to sit well in the base community. Most people I talk to see this as a fairness issue. They want both drugs to get equal punishment. At the very least, they want the disparity closed. Politically it may not be possible to get it down to a one to one ratio, but we need to move more in that direction especially now that we are engaged on the race initiative.

In view of the political realities, I recommend 50 grams of crack be the threshold for the 5 year sentence. Additionally, 100 grams of powder cocaine should be the other threshold. According to local law enforcement authorities both drugs cost about the same per gram. The only difference is one drug is in heavy use by young blacks and the other by mostly whites.

Message Copied To:

Sylvia M. Mathews/WHO/EOP
Maria Echaveste/WHO/EOP
Minyon Moore/WHO/EOP
Bob J. Nash/WHO/EOP
Elena Kagan/OPD/EOP
Charles F. Ruff/WHO/EOP
Cheryl D. Mills/WHO/EOP

File

RM

THE WHITE HOUSE
WASHINGTON

July 4, 1997

MEMORANDUM FOR THE PRESIDENT

FROM: PHIL CAPLAN *PC*

SUBJECT: Recent Information Items

We are forwarding the following recent information items:

- (A) **Raines letter to budget conferees.** Frank forwards a copy of his 19-page letter detailing Administration positions on a variety of major issues -- from Medicare to Medicaid to Welfare-to-Work.
- (B) **Jennings memo on Medicare fraud.** You saw a recent WSJ story about an upcoming HHS IG report, to be released in mid-July, that will estimate \$23 billion in improper payments. You asked, "Can't we do better." Chris reports that we can, and that, when the report is released, HHS will announce a Corrective Action Plan to make sure that payments are adequately validated and receivables are properly documented and reconciled. Chris notes that your record on fraud and abuse in Medicare and Medicaid has been very good so far, saving billions of dollars since you took office. Your FY '98 budget proposal contains a number of new initiatives.
- (C) **Silverman/Thompson-Cole memo on D.C. Summer Jobs.** You asked Sylvia to look into the situation, as reported in the Washington Post, that the federal government is not living up to its goal of providing 1,000 slots. At this time, 182 students have been given jobs, but this represents the same hiring pattern as last year when agencies eventually hired 895 D.C. students. OPM expects the number to significantly increase in the coming weeks. Steve/Carol report that, while there is a shortfall, OPM and DOL are working aggressively to ensure that all students who want to work, can work. Much of the problem stems from the D.C. Council cutting the administrative side of the program by 60%. The D.C. Dept. of Employment Services often will not answer agencies' requests for referrals of students. Although DOL has provided more money this year for jobs, the District's lack of administrative budget has not resulted in effective use of the money.
- (D) **Katzen memo on elimination/reinvention of regulations.** Sally forwards a chart showing the progress the Administration has made. If you remember, in June 1995, you announced the Administration's plans to eliminate 16,000 pages and reinvent 31,000 pages of regulations. Many of the agencies met or exceeded the original targets. In the elimination category, as a group, agencies have completed action to eliminate nearly 80% of your targets, or just over 13,000 pages. If those actions that have already been proposed or are otherwise pending or are included, the elimination total is nearly 100%. In the reinvention category, agencies have met about 80% of the target or 24,600 pages.

7-97

- (E) **Sperling/Horowitz memo on Wall Street Journal/NBC poll on the economy and various clips on the economy.** Gene/Russell forward a summary of the favorable poll on the economy conducted last week. They also thought you might like to see: 1) an Al Hunt piece that is critical of the competing tax cut plans, but hits the Republicans for not extending the child tax credit to the working poor; 2) a Bob Herbert column that makes the same point; and 3) a favorable Washington Post editorial on the EITC.

We have also received the following items:

- **Socarides memo on the Simon Weisenthal Center's CyberWatch Program.** You gave Sylvia a computer disk which Richard has reviewed. The "Hate, Violence and Mayhem on the Internet" disk provides snap-shots of material on the Web pages of ten mostly neo-Nazi hate groups. Richard thinks the material maybe useful in planning for the WH Conference on Hate Crimes, scheduled for November 10.



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

THE DIRECTOR



July 2, 1997

57 JUL 14
7-7-97

MEMORANDUM FOR THE PRESIDENT

FROM:

Franklin D. Raines

SUBJECT:

Letter to the Conferees on the Budget

As we kick-off the 1998 spending reconciliation bill negotiations with the Conferees, the attached letter sets forth our views on the major issues. You may find it a useful reference tool for yourself.

We will keep you informed of our progress throughout the process.

Attachment



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

THE DIRECTOR

July 2, 1997

The Honorable John R. Kasich
Chairman
Committee on the Budget
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

As the Conferees begin to consider this year's budget reconciliation bill, I am writing to transmit the Administration's views on the House and Senate versions of the spending bill on reconciliation, H.R. 2015. The Administration will separately transmit its views on the tax provisions.

We are pleased that the House and Senate adopted many provisions that are consistent with the Bipartisan Budget Agreement, reflecting the continuing bipartisan cooperation that we will need to fully implement the agreement and balance the budget. In several areas, however, the House and Senate bills violate the agreement. In other areas outside the scope of the agreement, we have very strong concerns about the reported provisions. We have raised a number of these issues in letters to you and to the authorizing committee chairmen and ranking members throughout House and Senate consideration of the separate reconciliation spending bills.

On the pages that follow, we have outlined noteworthy provisions of the House and Senate bills with which we agree, others that we believe violate the budget agreement, and still others about which we have concerns.

We expect and will insist that the final budget legislation conform to the budget agreement. In addition, we look forward to working with you to craft a final conference report that is free of objectionable provisions, resolves the other major policy differences between us, and balances the budget by 2002 in a way that we can all be proud of. We hope to meet that goal before the August recess.

We look forward to working with you.

Sincerely,

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

Franklin D. Raines
Director

Enclosure

cc: Senate Conferees
House Committee Chairmen and Ranking Members

Identical letter sent to Honorable Pete V. Domenici,
Honorable John M. Spratt Jr., and Honorable Frank R. Lautenberg

THE ADMINISTRATION'S DETAILED VIEWS:

THE HOUSE AND SENATE RECONCILIATION BILLS ON SPENDING

Medicare

We applaud the House and Senate for reporting bills that largely conform to the underlying principles of the budget agreement. Both bills achieve the necessary level of Medicare savings -- although we still await final scoring of the Senate provisions from the Congressional Budget Office (CBO) -- and would extend the life of the Hospital Insurance Trust Fund by at least 10 years; provide structural reforms that will give beneficiaries more informed choices among competing health plans; establish prospective payment systems for home health agencies, skilled nursing facilities, and hospital outpatient departments; incorporate prudent purchasing reforms; and provide the funds to establish a wide array of cost-effective preventive benefits, including mammography and colorectal screening. We look forward to working with your staffs on the many technical issues related to ensuring that these provisions are implemented correctly.

We are pleased that the Senate has included provisions in its bill to require managed care and fee-for-service demonstrations of Medicare reimbursement to the Departments of Defense (DOD) and Veterans Affairs -- a concept known as Medicare subvention. We are encouraged that these provisions are similar to our own Medicare subvention legislation, which we transmitted to Congress on February 7, 1997. We look forward to working with the Conferees to develop a bill that addresses Administration concerns about the fee-for-service and payment rate components of the DOD demonstration.

Notwithstanding these achievements, both the House Ways and Means and Senate bills contain a provision that we believe is inconsistent with the budget agreement. During our negotiations over the agreement, we discussed at great length the reallocation of home health expenditures to Medicare Part B. All sides clearly understood that the reallocation would be immediate. Both bills, however, phase in the reallocation, which costs two years of solvency in the Part A trust fund -- two years that we can ill afford to lose. We urge the Conferees to incorporate the provisions in the House Commerce Committee title of the House bill, reallocating home health spending consistent with the budget agreement.

The Administration has significant concerns with other provisions of the two bills, concerns that we urge the Conferees to address.

Beneficiary Contributions to a Balanced Budget. We worked very hard during the budget negotiations to set a beneficiary contribution to a balanced budget that was fair and equitable -- applying the Part B premium, over several years, to the home health reallocation and maintaining the Part B premium equal to 25 percent of program costs. Other provisions of the Senate bill, however, would go beyond the budget agreement and introduce new, inadequately developed proposals.

- *Raising the Medicare Eligibility Age.* The Senate bill raises the eligibility age for Medicare from 65 to 67 over a period of years. Raising the eligibility age is not necessary to balance the budget, and consideration of this policy should be part of a bipartisan process to address the long-term financing challenges facing Medicare. Moreover, early retirees between 65 and 67 may not be able to obtain affordable insurance in the private market. The Administration is concerned about the potential loss of coverage for any American, and we urge the Conferees to drop the provision as part of this bill.
- *Imposing Home Health Copayments.* The Senate bill would impose a Part B home health copayment of \$5 per visit, capped at an amount equal to the annual hospital deductible. Most home health users who lack Medigap or Medicaid protections are poor and will face financial burdens that may result in reduced access to needed care. Those beneficiaries who have Medigap or Medicaid will have no real incentive to reduce utilization. We do not need to impose a home health copay to balance the budget, and any further consideration of this policy should be part of a bipartisan process to address the long-term financing challenges facing Medicare. We urge the Conferees to drop this provision as part of this bill.
- *Income-relating the Part B Premium.* The Senate bill would income-relate the Medicare Part B premium. While we do not oppose income-relating Medicare in principle, we have a number of concerns about this proposal. First, we do not need income-related beneficiary contributions to Medicare to balance the budget. Second, we have serious concerns about how an income-related premium will be administered. Administration by the Department of Health and Human Services (HHS), which has no access to individual beneficiary income data, would be impractical and very expensive, and we have previously said that only the Treasury Department could administer such a policy in the short run. Moreover, the administering agency would require substantial additional resources to undertake this new responsibility. Finally, we believe that this provision, which completely eliminates any Part B premium subsidy for the highest-income beneficiaries, could lead these beneficiaries to drop Medicare coverage, thus leaving poorer, typically less healthy, beneficiaries in the Medicare risk pool and thereby increasing their premiums. While we have serious concerns about this proposal as drafted, we remain interested in discussing it, or proposals like it, in the broader context of reforms to address the long-term financing and structural challenges facing the program.

Threat to Beneficiary Protections. The Administration strongly supports the introduction of new options for Medicare beneficiaries in both the fee-for-service and managed care sectors. We also believe, however, that any new options must both provide value beyond that offered by the traditional Medicare program and include beneficiary protections. The Senate bill includes several provisions that violate these principles, and we urge the Conferees to drop them.

The first provision allows beneficiaries to choose a so-called “private fee-for-service” option under the Medicare Choice program. We are concerned that private fee-for-service plans in Medicare Choice represent bad policy, particularly given the fact that these plans will be subject to no balance billing or quality protections. We are also concerned that this option will attract primarily healthy and wealthy beneficiaries and leave sicker and poorer beneficiaries in the more expensive, traditional Medicare program. In addition, it could disproportionately attract rural beneficiaries if the few providers in their area choose to leave traditional Medicare and form private fee-for-service plans.

The second provision would allow physicians to obtain private contracts from beneficiaries whereby the beneficiary would agree to pay whatever the physician charged (i.e., waive balance billing limits) and agree not to submit a bill to or collect anything from Medicare. The beneficiary would be totally responsible for out-of-pocket expenses for the physician’s entire bill, even though the service would be covered by Medicare if the bill were submitted to Medicare. As a result, we are concerned that private agreements could become licenses for physicians to coerce beneficiaries, exposing beneficiaries to unlimited liability and making meaningless the Medicare coverage they have paid for.

The third provision would allow Durable Medical Equipment (DME) suppliers to bill Medicare beneficiaries for amounts beyond cost-sharing for “upgraded” DME items, while still accepting assignment. Beneficiaries already have the option of choosing upgraded DME under current law. We are concerned that this new option undermines limits on beneficiaries’ out-of-pocket payments and, as a result, could permit suppliers to take advantage of beneficiaries.

Medical Savings Accounts. We believe that any demonstration of this concept should be limited in order to minimize potential damage and costs to Medicare. We commend the Senate for limiting the demonstration to 100,000 participants, but we believe a successful demonstration could be structured with fewer participants. In any case, we want this demonstration to be as small as possible. We also commend the Senate for limiting cost-sharing and deductibles to amounts enacted under the Health Insurance Portability and Accountability Act (HIPAA). But, we still prefer a geographically-limited demonstration that applies current law limits on balance billing to protect beneficiaries from additional provider charges. We urge the Conferees to limit this demonstration numerically (within the numbers outlined above) and geographically for a trial period (two States for three years), enabling us to design the demonstration to answer key policy questions.

Preventive Benefits. We are pleased that the preventive benefits in the House and Senate bills are largely the same as those in the President's budget. Unlike the budget, however, the House and Senate bills do not waive all cost sharing (coinsurance and deductibles) for mammograms. Research shows that copayments hinder women from fully taking advantage of this benefit. We urge the Conferees to modify the House and Senate provisions to waive all cost sharing for mammograms.

Medigap. The President's budget advanced a number of important Medigap reforms, including annual open enrollment, community rating, initial open enrollment for disabled and kidney dialysis beneficiaries, and various portability provisions. We are disappointed that neither the House or Senate adopted certain of these reforms. The Senate bill took the largest strides toward these important reforms, providing for an initial open enrollment period for disabled beneficiaries and a trial period for managed care enrollees. We urge the Conferees to adopt at least the Senate provisions, and to fully consider the President's suggested additional reforms.

Medical Malpractice. The House bill includes malpractice provisions that are extraneous to the budget agreement. The Administration has consistently made it clear that we find these provisions objectionable, and we urge the Conferees to delete them.

Provider Sponsored Organizations. Another step forward in both bills is their inclusion of provider sponsored organizations (PSOs) as Medicare options. We are concerned, however, about the lack of minimum private enrollment requirements and aspects of the PSO definition, and we look forward to working with the Conferees on these issues.

Managed Care Payments. We agree that the current unjustifiable geographic variation in payments to managed care plans should be remedied as part of the reconciliation bill. We prefer the House proposal, which mitigates the geographic variation in payments and maintains the link to fee-for-service payments, along with an adjustment for adverse selection. Various payment provisions in the Senate bill, some of which are individually justifiable, together have a significant negative impact on areas with a high managed care enrollment and could lead to abrupt changes in additional benefits now provided to Medicare enrollees. The Senate proposal also ties growth in managed care payments to growth in gross domestic product (GDP). We prefer a less disruptive payment proposal and one that ties growth in payments to growth in fee-for-service Medicare. Limiting managed care payment growth to GDP effectively creates two growth rates for Medicare payments, leading to an erosion of the value of the Medicare Choice benefit package and exposing beneficiaries to increased premiums.

Managed Care Risk Adjustment. The Senate bill includes immediate implementation of an untried, "new enrollee" risk adjustment methodology that would be applied in an inequitable manner (exempting some plans) and that would be replaced by a different revised

methodology two years later. We prefer to implement a managed care risk adjustment methodology once -- and sooner. Therefore, we support the House provisions on risk adjustment, modified to authorize the collection of hospital discharge data immediately and to authorize implementation of the risk adjustment methodology in 2000.

Medical Education/Disproportionate Share (DSH) Carve-out. The President's 1998 budget proposed to move medical education (indirect and direct) and DSH adjustments out of managed care payment rates and redirect them to eligible hospitals that provide services to Medicare managed care enrollees. This important proposal would ensure that the Nation's teaching hospitals and those that serve low-income populations receive the Medicare payments to which they are entitled. The Senate and the House Commerce Committee adopted these provisions, and we urge the Conferees to adopt them as well.

Managed Care Enrollment. We urge adoption of the Senate provisions with regard to open enrollment. The House bill permits beneficiaries to be locked into a MedicarePlus plan for as long as nine months, after a lengthy transition period. We continue to support the monthly disenrollment option as an important safety valve for managed care enrollees who are dissatisfied with their managed care plan.

Managed Care Quality. Both the House and Senate bills go far to ensure quality in Medicare managed care. The House bill, however, has an objectionable provision allowing external quality review requirements to be met through accreditation. The House bill also contains a similar provision in its Medicaid title. We prefer maintaining a true requirement for external quality review to protect beneficiaries in this rapidly changing marketplace, as the Senate bill provides.

Medicare Commission. Both the Senate and House bills would establish a Medicare commission. We believe strongly that a mutually agreeable, bipartisan process is essential to successfully address the long-term financing challenges facing Medicare. We look forward to working with you to develop the best possible bipartisan process to address those challenges while simultaneously ensuring the sound restructuring of Medicare to continue to provide high-quality care for our Nation's senior citizens.

Office of Competition. The Senate bill would create an Office of Competition within HHS to administer competitive pricing demonstrations. We believe this provision would create unnecessary duplication of staff and resources within HHS and become a potential source of confusion for Medicare beneficiaries and plans. We are also concerned about certain aspects of the competitive pricing demonstration, and we look forward to working with the Conferees to ensure that the demonstration authority would lead to valid and verifiable results.

Hospital Payment Systems. We have several concerns with various House and Senate provisions relating to hospital payments, including: the Senate provision to move the hospital update to a calendar year basis while leaving all other changes to PPS payments on a fiscal year basis, thus requiring two separate payment rules; the Senate provision on hospital transfers, which does not include home health agencies and which we believe creates a strong, unjustified payment bias to use home health services for post acute care; and the Senate provision to provide large bonus payments for certain PPS-exempt facilities, which could lead to a significant redistribution of funds among PPS exempt facilities.

Medicare Disproportionate Share Payments (DSH). We look forward to working with Congress to develop a new adjustment for hospitals that serve a disproportionate share of low-income individuals. We want to improve the current adjustment to create a better measure of services to indigent populations so that we can better target DSH payments. But, we oppose any cuts to the current DSH adjustment in the interim. We have proposed to freeze the adjustment for the next two years to ensure that vulnerable hospitals serving large numbers of uninsured and under-insured patients are not burdened with excessive cuts.

Medicare Secondary Payer (MSP). Both the House and Senate bills limit the time period for MSP recovery to three years after the date of service. We urge the Conferees to adopt a five-year time limit, consistent with the President's proposal. The IRS/SSA data match does not provide information in a timely enough manner to be able to recover overpayments within a three-year window. We also urge the Conferees to adopt our insurer reporting proposals.

Implementation Issues. We are concerned about how the full scope of the House and Senate provisions would affect HHS' administrative abilities and resources necessary to implement them. We urge the Conferees to consider changes in the effective dates of the provisions so they are consistent with the funding levels that the budget agreement provided to the Health Care Financing Administration (HCFA).

Medicaid

We commend the House and Senate for reporting bills that conform to many of the Medicaid reform principles of the budget agreement. Both achieve savings through lower disproportionate share hospital payments (DSH) and greater State flexibility. Both bills give States more flexibility to manage their Medicaid programs by repealing the Boren amendment, allowing managed care without Federal waivers, and eliminating unnecessary administrative requirements. We also commend the Senate for including managed care quality standards that are consistent with the President's consumer protection framework.

Nevertheless, the House and Senate bills contain provisions that are inconsistent with the budget agreement.

First, the budget agreement includes a provision to restore Medicaid for current disabled children losing Supplemental Security Income (SSI) because of the new, more strict definition of childhood eligibility. The Senate bill does not include this proposal. The House bill allows, but does not require, States to provide Medicaid benefits for about 30,000 children who could lose their health care coverage in fiscal 1998. We strongly urge the Conferees to conform to the budget agreement by including the provision from the President's budget that would guarantee coverage to these children, and allocate the necessary funds for this purpose.

Second, the budget agreement includes a 70 percent Federal matching payment for Medicaid in the District of Columbia. We are pleased that the Senate bill includes a higher matching payment, but we are concerned that it is not sufficient; it sunsets at the end of fiscal 2000 and is 10 percentage points lower than the 70 percent that the budget agreement called for. A 60 percent matching rate would still leave the District paying a higher share of its Medicaid program than any other local government. We urge the Conferees to include the provision from the agreement.

The budget agreement also includes adjustments for the Medicaid programs in Puerto Rico and the territories. We are pleased that the Senate includes adjustments for those programs, but we would prefer that the Conferees include the language in the President's 1998 budget.

The Administration has significant concerns with other House and Senate provisions that we urge the Conferees to address.

Assistance for Low-Income Medicare Beneficiaries. The Senate bill includes \$1.5 billion in premium assistance for low-income beneficiaries through a Medicare block grant to States. The House provides \$1.5 billion to expand eligibility to Medicaid but does so, in part, through an administratively complex formula subsidizing only a portion of the Part B premium. We prefer a simpler approach that would finance the cost of the full Part B premium through Medicaid. In addition, we object to the Senate provision that sunsets this assistance in 2002; low-income senior citizens will still need this assistance after that date.

Medicaid Cost Sharing. The Senate bill would allow States to require limited cost sharing for optional benefits. We are pleased that a Senate amendment would bar States from imposing cost sharing on children under 18 in families with incomes below 150 percent of poverty. But, we are still concerned that the bill may compromise beneficiary access to quality care. Low-income elderly and disabled Medicaid beneficiaries may forgo needed services if they cannot afford the copayments.

Disproportionate Share Hospitals --Allocation to States. We have concerns about the House and Senate allocations and levels of DSH payment reductions among States. As in the DSH policy of the 1993 budget reconciliation bill, this year's policy should address past abuses without causing undue hardship on any State. We are seriously concerned, however,

that the House and Senate bills may have unintended distributional effects among States. We urge the Conferees to adopt the President's 1998 budget proposal, which takes an equal percentage off of States' total DSH spending up to an "upper limit," ensuring that States with the highest DSH spending do not bear most of the impact.

Disproportionate Share Hospitals --Targeting to Hospitals. The House bill does not retarget DSH funds. The Senate bill would require States to develop DSH targeting plans, but it does not include a Federal DSH targeting standard. As we have said previously, we believe that significant DSH savings should be linked to a Federal standard for targeting the remaining DSH funds to needy hospitals. Without such standards, providers with high-volume Medicaid and low-income utilization may not be sufficiently protected from DSH reductions.

In addition, the House bill would require States to make DSH payments directly to qualifying hospitals, and would not allow States to make DSH payments through capitation payments to managed care organizations. The Senate bill does not include this provision. We urge the Conferees to adopt the House provision, ensuring that all eligible hospitals receive a Federal DSH payment regardless of their contract, or lack of a contract, with a particular HMO.

§1115 Extensions and Provider Tax Waiver. The House and Senate bills would extend expiring §1115 Medicaid waivers. The Senate would deem approved §1115 waivers without regard to whether they will increase spending. In addition, the Senate bill would deem provider taxes as approved for one State. We have serious concerns about these provisions and would like to work with the Conferees to address the underlying problems.

Return to Work. We are pleased that the Senate bill would allow States to allow workers with disabilities to buy into Medicaid. But we urge the Conferees to adopt the version of this proposal from the President's 1998 budget, which would not limit eligibility for this program to people whose earnings are below 250 percent of poverty. We believe that the Senate-proposed limit would not give States enough flexibility to remove disincentives to work for people with disabilities.

Criminal Penalties for Asset Divestiture. The Senate bill would amend Section 217 of the Health Insurance and Portability and Accountability Act 1996 (HIPAA) to provide sanctions against those who help people to dispose of assets in order to qualify for Medicaid. We prefer to repeal section 217 because we believe that the Medicaid laws in effect before HIPAA are sufficient to protect Medicaid against inappropriate asset divestiture.

Management Information. The President's 1998 budget included a major reduction in unnecessary administrative burdens on the States, but ensured that States collect sufficient information to effectively manage their Medicaid programs. The House approach would require States to show that their State-designed systems meet outcome-based performance

standards and would permit the collection and analysis of person-based data. The Senate did not include this provision. We urge the Conferees to adopt the House provision.

Alaska FMAP Change. The Senate bill would increase Alaska's Federal Medical Assistance Percentage (FMAP) above the level of the current law formula. While we have consistently supported efforts to examine alternatives to the current Medicaid matching structure, we believe that changing the FMAP for Alaska alone is unwarranted and does not address the underlying inequities in the current system.

Children's Health

We are pleased that the children's health initiative is in both the House and Senate bills. In fact, the Senate bill goes beyond the \$16 billion that the budget agreement provides, adding another \$8 billion, which is a portion of the revenue from a 20-cent increase in the tobacco tax.

We support a 20-cent increase in the tobacco tax -- we agree that it complements the budget agreement -- and we endorse the idea of using all of the revenues raised by such an increase for initiatives that focus on the needs of children and health. We urge the Conferees to invest all of these funds wisely in order to ensure meaningful coverage for millions of uninsured children. In addition, we especially support the Senate provisions for benefits and cost sharing.

Notwithstanding these achievements, we have serious concerns about the following House and Senate provisions, which we urge the Conferees to address.

Sunset of Tobacco Tax Revenue for Children's Health. Although we commend the Senate for supporting the use of the tobacco tax for children's health, we urge the Conferees to continue this funding after 2002. A sudden drop in funding in 2003 would cause many of the newly-insured children to lose their coverage.

Meaningful Benefits, Cost Sharing/Direct Services. The budget agreement calls for the children's health investment to go for health insurance coverage. Thus, we support the Senate's definition of benefits and its limits on cost sharing, the latter of which will ensure that low-income children do not shoulder unrealistically high costs that could lead to reduced access to needed health care. We do not support the direct services option of the House bill because we are concerned that a State could spend all of its money on one benefit or to offset the effects of the DSH cuts on certain hospitals, and that children would not be assured appropriate coverage. In our view, this provision does not fulfill the commitment of the budget agreement to provide "up to five million additional children with health insurance by 2002."

Funding Structure. We support the straightforward funding structure of the House bill. But its proposal for different matching rates for Medicaid and the grant option could discourage States from choosing Medicaid. We believe Medicaid is a cost-effective approach to covering low-income children, and we support using the same matching rates for both options. In addition, we support the House provision that gives States the flexibility to spend their grant money on Medicaid, a grant program, or a combination of the two. The Senate bill requires States to choose between Medicaid and a grant option.

Eligibility. The Senate bill includes a ceiling of 200 percent of poverty. We agree that the funds should first go for insurance coverage for low-income uninsured children, but we believe income ceilings would limit States' flexibility to design programs that best fit their needs.

Use of Funds. We want to ensure that the investment in children's health goes to cover children who currently lack insurance, rather than replace existing public or private funds for children's health insurance. Thus, we support a strong maintenance of effort provision and the prohibition on using provider taxes and donations to fund the State share of the program. In addition, we want to ensure that the funds are used in the most cost-effective manner to provide coverage to as many children as possible. Therefore, we do not support provisions that allow States to pay for family coverage or pay the employee's share of employer sponsored insurance.

Expansion of the "Hyde Amendment"

Both the House and Senate bills would expand the Hyde Amendment prohibitions on Medicaid payment for abortion services to include spending on the children's health initiative, and to codify these prohibitions in permanent law. This provision could deny access to abortion services to poor women to the extent that States choose to use the children's health funding to offer family coverage, as the House bill would permit. As we have repeatedly said, we do not support limiting access to medically necessary benefits, including abortion services.

In addition, the Senate bill contains a provision that redefines the term "medically necessary services" in the context of managed care sanctions to exclude abortion services except under certain circumstances. We oppose this attempt to further constrain the availability of abortion services through this provision, and we strongly urge the Conferees not to begin writing into the Medicaid law permanent, restrictive definitions of what are "medically necessary" services -- an issue that is more appropriately decided by health professionals.

Multiple Employer Welfare Arrangements (MEWAs)

The House bill allows for Multiple Employer Welfare Arrangements (MEWAs) by including language from H.R. 1515, the "Expansion of Portability and Health Insurance Coverage Act of 1997," while the Senate bill includes no such provisions. We strongly oppose including provisions from H.R. 1515 because the bill has inadequate consumer protections and could lead to premium increases for small businesses and employees who may bear the burden of adverse selection. H.R. 1515 would transfer the regulation of a large health insurance market away from the States by preempting State laws under the Employee Retirement Income Security Act ("ERISA"). This far-reaching proposal demands much greater analysis and discussion. We also oppose the provision of the House and Senate bills that would allow a religious fraternal benefit society plan to establish a Medicare Choices plan; it would set a precedent for allowing association health plans (such as those allowed under the House MEWA language) to become Medicare Choice providers.

Continued SSI and Medicaid Benefits for Legal Immigrants

We are pleased with several provisions in the House and Senate bills. Both bills would grandfather immigrants who were receiving SSI benefits as of August 22, 1996, as the President indicated he would support in a June 20 letter to Budget Committee Chairman Kasich and Ranking Member Spratt. Both bills also extend the exemption period from five to seven years for refugees, asylees, and those who are not deported because they would likely face persecution back home.

We are pleased that the Senate bill, which restores SSI and Medicaid eligibility for all legal immigrants who are or become disabled and who entered the U.S. prior to August 23, 1996, implements the budget agreement. The House bill, however, does not. It fails to fully restore SSI and Medicaid benefits for all legal immigrants who are or become disabled and who entered the U.S. prior to August 23, 1996. As the President stated in his June 20 letter, he will not sign legislation that does not include the policy, as the budget agreement calls for, that protects disabled immigrants. Compared to the budget agreement, the House bill would protect 75,000 fewer immigrants by 2002. We strongly urge the Conferees to adopt the Senate approach.

In addition, if resources are available, we urge the Conferees to support several other Senate provisions. The Senate bill restores Medicaid coverage for future immigrant children; provides SSI and Medicaid to immigrants who are too disabled to satisfy the requirements to naturalize; and provides the same exemption period for Amerasian and Cuban Haitian immigrants as for refugees. We look forward to working with you on these matters.

Additional Work Slots for Individuals Subject to the Food Stamp Time Limits

The budget agreement included \$1.5 billion in additional Food Stamp funding to encourage work and give States the flexibility to exempt individuals from Food Stamp time limits due to hardship. The agreement specifically states that existing Food Stamp Employment and Training funds will be redirected and new capped mandatory funding added "to create additional work slots for individuals subject to the time limits," and it provides \$1 billion for this purpose.

We appreciate that the House and Senate bills would implement the 15 percent hardship exemption, consistent with the agreement. But, we are concerned that both bills create significantly fewer job opportunities than the five-year target of 350,000 slots -- 70,000 a year -- that the negotiators discussed. We are particularly concerned about the House bill, which would create 100,000 fewer slots than the President's proposal and about 40,000 fewer than the Senate approach over five years. The House bill also does not reflect the agreement because it does not target the funding to work slots for individuals facing the time limits. We believe the final bill should follow the Senate approach in targeting funds to work slots that meet the welfare reform law's tough requirements for Food Stamp recipients, and establishing performance standards to reward States that create additional work opportunities. We urge the Conferees to follow the Senate approach, with the House maintenance of effort provision, to make it fully consistent with the budget agreement.

Welfare to Work

We are pleased that the House and Senate bills would address many of our priorities for the welfare-to-work program to some degree, including: the provision of formula grant funds to States based on poverty and adult welfare recipients; a sub-State allocation of the formula grants to ensure targeting on areas of greatest need; appropriate flexibility for grantees to use the funds for a broad array of activities that offer the promise of permanent placement in unsubsidized jobs; some funds awarded on a competitive basis; and a substantial set-aside for evaluation. We look forward to working with the Conferees to refine these provisions.

We continue to be concerned, however, about several priority issues. In some cases, only one Chamber has adequately addressed our concerns; in others, neither has. The issues that concern us the most are highlighted below, and we urge the Conferees to address them.

Targeting Welfare-to-Work Funding to Cities and Counties with Large Poverty Populations. The challenge of welfare reform -- moving welfare recipients into permanent, unsubsidized employment -- will be greatest in large urban centers, especially those with the highest number of adults in poverty. Recognizing this fact, the budget agreement provided that funds be allocated and targeted to areas with high poverty and unemployment. While

both the House and Senate bills include formulas to target funds to these areas to some degree, of the three provisions in conference, the Ways and Means provision of the House bill best accomplishes this goal through its division of funds between formula (50 percent) and competitive (50 percent); its formula grant sub-State allocation factors and method of administration; and its reserving of 65 percent of competitive grants for cities with large poverty populations. We urge the Conferees to adopt the Ways and Means proposal.

Local Program Administration. The budget agreement provided not only that welfare-to-work funds be targeted to high-poverty and high unemployment areas, but that a share of them go to cities and counties. We strongly believe that cities and other local areas should manage a substantial amount of all welfare-to-work funds. These entities can most effectively move long-term welfare recipients into lasting unsubsidized employment that cuts or ends dependency. Recognizing this fact, the House provisions use existing structures to help accomplish this goal. We urge the Conferees to adopt these provisions.

Federal Administering Agency. Both bills would require consistency with Federal TANF strategies and focus resources on achieving the goal of moving long-term welfare recipients into lasting jobs. We agree with the need for consistency and with the goal, and we believe we can most effectively achieve it if we closely align welfare-to-work activities with the workforce development system that the Secretary of Labor oversees. Thus, we believe the Secretary should administer this program in consultation with the Secretaries of HHS and HUD, as included in titles V and IX of the House bill.

Performance Fund. We are pleased that the Senate recognized the value of a performance bonus concept. The Senate performance approach, however, simply augments the existing TANF performance fund in 2003, with no link to the performance that welfare-to-work funds achieve. We want to work with the Conferees to develop an effective mechanism to provide needed incentives and rewards for placing more of the hardest-to-serve in lasting unsubsidized jobs that promote self-sufficiency. A possible approach could include requiring the Governors to use a share of their discretionary funds to reward high-achieving welfare-to-work programs.

Distribution of Funds by Year. The House provides for a two-year program, with \$1.5 billion in 1998 and in 1999. The Senate bill provides for a three-year program. We want to work with the Conferees to ensure that the final bill includes an outlay pattern consistent with an estimate of zero outlays in fiscal 2002, as the budget agreement calls for. Congress could modify the Senate proposal, for instance, by requiring that no resources are spent after fiscal 2001.

Minimum Wage and Workfare

We applaud the Senate for not modifying current law with respect to applying the minimum wage and other worker protections for working welfare recipients under TANF. The minimum wage and welfare work requirement proposals in the House-passed bill were not part of the budget agreement and, had they come up in the negotiations, we would have strongly opposed them. We believe strongly that everyone who can work must work, and everyone who works should earn at least the minimum wage and receive the protections of existing employment laws -- regardless of whether they are coming off welfare.

As a result, we continue to have serious concerns that certain welfare recipients would not enjoy the status of employees under the House bill and, thus, would not receive worker protections. Although the House bill moves toward ensuring that welfare recipients in work experience and community service receive the minimum wage, it fails to provide an effective enforcement mechanism. Also, while the House bill contains some protections against discrimination and threats to health and safety, we believe that its limited grievance procedures are inadequate to ensure welfare recipients receive the same protections as regular employees, and regular employees receive protection against displacement. In addition, the Administration strongly believes that we must retain the welfare law's strict emphasis on work and oppose provisions to permit States to count additional time spent in activities such as job search toward the work requirements.

We urge the Conferees to adopt the Senate position on the minimum wage, which makes no changes to current law, and to extend the Senate provisions on grievance procedures and worker protections to all working welfare recipients under TANF.

Non-Displacement

While we support the Senate provisions that include worker displacement language from H.R. 1385 (the House-passed job training reform bill), we urge the Conferees to apply these enhanced non-displacement protections to all welfare recipients moving from welfare to work, as the House does, not just to welfare-to-work funds. In addition, we urge the Conferees to accept the House provision that ensures that the Federal Government will not pre-empt State non-displacement laws that provide greater worker protections than Federal law.

Unemployment Insurance

We are pleased that the House and Senate have included the Unemployment Trust Fund ceiling adjustment and special distribution to the States that were part of the budget agreement.

The House bill also includes the provision of the agreement that achieves \$763 million in mandatory savings over five years by authorizing an increase in discretionary spending for unemployment insurance "program integrity" activities of \$89 million in 1998 and \$467 million over five years. We urge the Conferees to adopt the House language. In addition, we are seeking budget process provisions to allow for discretionary funding for these activities and the resulting savings.

Repeal of Maintenance of Effort Requirement on State Supplementation of SSI Benefits

We are pleased that the Senate bill does not repeal the maintenance of effort requirement on State supplementation of SSI benefits. We strongly oppose the House provision, which would let States significantly cut, or even eliminate, benefits to nearly 2.8 million poor elderly, disabled, and blind persons. Congress instituted the maintenance of effort requirement in the mid-1970s to prevent States from effectively transferring Federal benefit increases from SSI recipients to State treasuries. The House proposal also could put at risk low-income elderly and disabled individuals who could lose SSI entirely and possibly then lose Medicaid coverage. We opposed this proposal during last year's welfare reform debate, and we urge the Conferees to follow the Senate approach and not repeal the State maintenance of effort requirement for State supplementation of SSI benefits.

Spectrum

We support a number of the spectrum-related provisions in the Senate and House bills. We believe, however, that the Senate bill is more consistent with the goals and targets in the budget agreement, and we urge the Conferees to use it as the basis for conference negotiations. Specifically, the Senate bill provides for reimbursing Federal agencies for the costs of relocating to new spectrum bands, so that the Federal Communications Commission (FCC) can auction, for commercial use, the spectrum that they are now using. This key provision is essential to prevent agencies from making future multi-billion dollar requests for additional discretionary funding.

We have other significant concerns with both bills. First, they fall over \$6 billion short of the savings targets of the budget agreement. They both fail to include two proposals that the agreement specifies -- the auction of "vanity" toll-free telephone numbers (which would raise \$0.7 billion) and the spectrum fee (which would raise \$2 billion). In addition, neither bill contains a firm date for terminating analog broadcasting (as the budget agreement assumed), which reduced the CBO's scoring of the House bill by \$2.9 billion, and of the Senate bill by \$3.4 billion. Any delay in returning analog broadcast spectrum will likely impede the rapid build-out of digital technology, delay job creation and consumer benefits, and reduce revenues from spectrum auctions. We urge the Conferees to conform the final bill to these provisions of the budget agreement.

We also request that the Conferees delete the House language that specifies spectrum bands and bandwidth for reallocation; repeals the FCC's fee retention authority; waives the duopoly/newspaper cross-ownership rules; and accelerates payments from the universal service fund. These provisions conflict with good telecommunications policy, and with sound and efficient spectrum management policy. We also urge the Conferees to amend the overly expansive definition of "public safety" of the bills; to delete mandated minimum bid requirements; and to include provisions that would authorize the FCC (1) to revoke and reassign licenses when an entity declares bankruptcy, and (2) to use economic mechanisms (such as user fees), other than auctions. We support Senate provisions requiring the FCC to explain its rationale if it cannot accommodate relocated users in commercial spectrum and to consult with the Secretary of Commerce and the Attorney General on assigning new spectrum made available for public safety.

TANF Transfers to Title XX

We oppose the House provision to allow States to divert TANF funds away from welfare-to-work efforts to other Title XX social service activities. The Senate bill includes no such provision. The budget agreement did not address making changes in the Title XX transfers provisions, and we strongly urge the Conferees to drop these provisions.

Vocational Education in TANF

We are concerned with the House and Senate provisions on vocational education in TANF. The House bill includes two sets of provisions -- one from the Ways and Means Committee, the other from the Education and Workforce Committee -- which narrow the base of eligible recipients against which the cap on vocational education applies. The Ways and Means Committee excluded teen parents in school from the cap, and set the cap at 30 percent of the narrower base. The Senate bill maintains the existing base, but removes teen parents who attend school from the 20 percent cap on vocational education. The budget agreement did not address changes in TANF work requirements regarding vocational education and educational services for teen parents, and we urge the Conferees to drop these provisions.

State SSI Administration Fees

The House bill includes a provision, consistent with the budget agreement, to raise the fees that the Federal Government charges States for administering their State supplemental SSI payments and to make the increase available, subject to appropriations, for SSA administrative expenses. This proposal would collect about \$380 million over five years, to be spent upon receipt for this purpose. The Senate bill does not reflect this provision of the budget agreement, and evidently assumes that the Appropriations Committee will implement

the proposal. The agreement, however, anticipated revenue from this proposal over the full five years and, as part of the reconciliation bill, Congress should raise the fees and make the increased revenue available, subject to appropriations. Consequently, we urge the Conferees to adopt the House provision.

Housing

We are pleased that the House and Senate bills include provisions to produce savings by reforming the FHA Assignment program and making appropriate reductions to Section 8 annual adjustment factors. We are concerned, however, about two additional provisions of the Senate bill.

The Senate bill would not transform FHA multifamily housing restructuring in the most efficient, effective fashion. By ruling out the possibility of portable tenant-based assistance, the bill would limit tenants' ability to find the best available housing and prevent projects from developing a more diverse mix of income levels. By establishing a preference for delegating restructuring tasks to housing finance agencies, the bill places an unnecessary constraint on HUD's ability to design the most effective partnerships. Finally, since Congress did not address tax issues explicitly, the Senate bill does not resolve impediments that could discourage owners from participating in a restructuring process.

We oppose the inclusion, in the reconciliation bill, of Section 2203 of the Senate bill, which repeals Federal preferences for low-income or disadvantaged individuals for the Section 8 tenant-based and project-based programs. We have supported such repeals only if they come with income targeting that would replace the Federal preferences. That targeting would ensure: (1) that the tenant-based program continues to mostly serve extremely low income families, with incomes below 30 percent of the area median income, and (2) that all developments in the project-based program are accessible to a reasonable number of extremely low-income families. We are working with Congress on this issue in the broader context of separate public housing reform legislation.

Privatization of Welfare Programs

The House bill would allow for privatizing eligibility and enrollment determination functions in Medicaid and Food Stamps. While certain program functions, such as computer systems, can now be contracted out to private entities, the certification of eligibility for benefits and related operations (such as obtaining and verifying information about income and other eligibility factors) should remain public functions. Thus, we strongly oppose the House provision, and we urge the Conferees to drop it.

Student Loans

We are pleased that both bills include \$1.8 billion in outlay savings, including \$1 billion in Federal reserves recalled from guaranty agencies, \$160 million from an end to the fee paid to institutions in the Direct Loan program, and \$603 million in reduced Federal student loan administrative costs. All of these provisions are consistent with the budget agreement, and the savings are achieved without raising costs on, or reducing benefits to, students and their families.

But, we oppose a provision in both bills, unrelated to the budget agreement, requiring administrative cost allowances (ACAs) to guaranty agencies in the Federal Family Education Loan (FFEL) program at a rate of .85% of new loan volume -- paid from mandatory funding authorized under Section 458 of the Higher Education Act of 1965 (HEA) from 1998 to 2000. This provision would create a new Federal entitlement, and it would inappropriately limit the funds available to the Secretary to effectively manage the FFEL Program. Any allowance to these agencies should bear some relationship to the costs these agencies incur, and should not be based on an arbitrary formula. This is an issue more appropriately left for the Higher Education Act (HEA) reauthorization.

We strongly prefer the House language for cutting student loan administrative costs. It specifies that the Education Department may use administrative funds authorized under section 458 of the HEA to operate the FFEL program and the Direct Loan program. Under the Senate language, the Secretary would lack adequate funds to administer the FFEL program effectively.

We also oppose a House provision that would stipulate that an 18.5 percent guaranty agency retention allowance on default collections that result from defaulted loans reentering repayment through loan consolidation. This provision, now specified in regulation and letters as "up to" 18.5 percent, would codify this share at 18.5 percent without regard to the actual expenses that the guaranty agencies incur. This issue also should be resolved in the upcoming HEA reauthorization.

Smith-Hughes

We are pleased that the House bill would repeal the Smith-Hughes Act of 1917 and is consistent with the budget agreement. The Senate bill does not include such a provision, although it finds the agreed-upon \$29 million savings from the student loan programs. In light of the \$1.2 billion annual appropriation under the Carl D. Perkins Vocational and Applied Technology Education Act, we see no justification for \$7 million in mandatory spending a year under Smith-Hughes. We urge the Conferees to adopt the House provision.

Budget Process

On budget process, the House and Senate bills generally follow the budget agreement. We appreciate the provisions to extend the discretionary caps to 2002 at the levels in the agreement, to create a firewall between defense and non-defense spending for 1998-99, to provide an adjustment for international arrears and for an IMF quota increase and the New Arrangements to Borrow, and to otherwise extend and update the Budget Enforcement Act along the lines of the budget agreement.

In some respects, however, the House or Senate bills are not fully consistent with the budget agreement. For instance, both bills provide that only net deficit increases in the prior year, rather than both increases and decreases, would count under the paygo "lookback" procedure. In addition, the House bill is inconsistent with the agreement (and with the Senate bill) with regard to "paygo" requirements.

In other respects, the bills include provisions about which we have serious concerns. For instance, the House bill does not provide for the transportation reserve funds that the budget resolution established for highways, Amtrak and transit. Also, one or both of the House and Senate bills do not include several technical changes to fully extend the Budget Enforcement Act. These changes include a budget authority allowance for technical estimating differences between CBO and OMB, as current law provides; a reserve fund for unemployment integrity to carry out the mandatory savings of the agreement; and a technical change to the existing Continuing Disability Reviews (CDR) adjustment to account for the conversion of obligation limitations to budget authority. In addition, the House bill would require a cumbersome notification procedure for the detailed scoring of each paygo or appropriations bill.

THE WHITE HOUSE
WASHINGTON



June 30, 1997



'97 JUN 30 PM10:14

MEMORANDUM TO THE PRESIDENT

FR: Chris Jennings

RE: Improper Payments in the Medicare Program

This memo is in response to your inquiry about a recent *Wall Street Journal* story that said that an upcoming HHS Inspector's General (IG) report -- not yet made public -- estimates that Medicare made \$23 billion in improper payments to medical providers in FY 1996.

You asked whether the Medicare program could do better. We believe that the IG's report confirms that the Medicare program can do better and you are taking action to make sure it will.

The Inspector General's Report

In mid July, the Inspector General will report that improper payments in Medicare amounted to 12 percent (about \$23 billion) of Medicare's \$194 billion budget last year. This report is the result of the Government Management Reform Act of 1994 (GMRA), which you signed into law, that requires every Inspector General to audit financial statements of their Department. The fact that \$23 billion was lost in improper payments was leaked either by the Department or the General Accounting Office (GAO), who is involved in the auditing process. The report will say that the \$23 billion in improper payments should not have been made for a range of reasons, including errors, lack of proper documentation, lack of proper auditing as well as fraud and abuse.

Response to the Report

The Department is planning Corrective Action Plan to be released along with the official report next month which targets the biggest problems identified by the report. The Corrective Action Plan will take steps to make sure that: Medicare payments are adequately validated; that the collection of Part B premiums, which are paid to HCFA from Social Security, are properly audited (this transaction is currently not audited); and that Medicare receivables are properly documented and reconciled.

Your Record on Fraud and Abuse

You have an extremely successful record on cutting down on fraud and abuse. Since you took office, you have implemented or proposed the following initiatives which have saved billions of dollars:

- **FY 1993 Budget.** Your first budget closed a number of loopholes in Medicare and Medicaid, tightening up on fraud and abuse. The Justice Department has also made this a major priority, dramatically increasing health care fraud investigations, criminal prosecutions, convictions, and civil recoveries.
- **Operation Restore Trust.** Two years ago you introduced Operation Restore Trust, a comprehensive anti-fraud initiative in five key states. Since its inception, Operation Restore Trust has produced returns of \$10 for every \$1 spent.
- **Fraud and Abuse Initiatives in Kassebaum-Kennedy.** Last year, you signed the Kassebaum-Kennedy legislation into law, which expanded Operation Restore Trust nationwide, for the first time, creating a stable source of funding for fraud control. The fraud and abuse provisions of the Kassebaum-Kennedy legislation contain an estimated savings of \$5.2 billion for FY 1997 alone, with a \$12 return for every \$1 spent.
- **Outstanding Fraud and Abuse Initiatives.** Your FY 1998 budget contains a number of new initiatives, including cracking down on abuses in home health services and skilled nursing facilities. CBO has estimated that the fraud and abuse savings in your budget will be worth \$9.7 billion over ten years. In March you announced a new series of anti-fraud initiatives. Some of the initiatives in your budget and subsequent legislation have been included in the House and Senate mark-up. We are working to ensure that all of these provisions are included in reconciliation.

We are working with HHS to ensure that there is a successful communications rollout strategy. To this end, your strong record in this area, in addition to the new HCFA initiatives, will be highlighted along with the release of the report.

6/12/97

Estimate of Improper Medicare Costs Soars

By GEORGE ANDERS

Staff Reporter of THE WALL STREET JOURNAL
WASHINGTON—The federal Medicare program made an estimated \$23 billion in improper payments to medical providers in fiscal 1996, according to a financial audit being prepared by government reviewers.

The new calculation by the inspector general's office of the Department of Health and Human Services represents a

Senate Medicare Plan

The Senate GOP plan to overhaul Medicare would raise the eligibility age to 67 from 65 and would seek slightly deeper cuts in payments to hospitals than the House plan. Article on page A4.

big jump from traditional estimates of medical-spending irregularities. Policy analysts generally have pegged fraud and abuse at 3% to 10% of overall health spending. The inspector general's report, which hasn't yet been made public, would suggest that improper payments last year amounted to 12% of Medicare's \$194 billion budget.

The audit "verifies what a lot of people at the grass roots have been saying," remarked Charles Grassley, chairman of the Senate Special Committee on Aging. "There's a great deal of suspicion among taxpayers, particularly senior citizens, with regard to overbillings in Medicare," the Iowa Republican added.

Bill-by-Bill Review

People familiar with the audit say it is based on a detailed, bill-by-bill review of about 5,000 Medicare claims filed last year. Investigators visited doctors, hospitals, laboratories and other providers to check whether medical records corroborated

CORRECTIONS & AMPLIFICATIONS

AN ARTICLE in the Florida Journal edition last Wednesday incorrectly stated that Orlando tourism officials' data on out-of-state visitors would indicate demand for 52.4 million room-nights in 1996. A room-night is generally defined in the lodging industry as a room sold no matter how many individuals are in it. The article failed to report that an average of 2.46 individuals stay in a typical room and should have stated the number of room-nights as 21.3 million.

claims filed with the Medicare system. Auditors reportedly found problems with 30% of the claims.

The main recipient of the audit will be the Health Care Financing Administration, which oversees Medicare. A HCFA spokesman said he believes the audit "will be a useful roadmap to protect the Medicare program," and could help reduce flaws in the system. The spokesman said that in recent years, "we've made pretty good progress in improving Medicare integrity on all fronts."

The inspector general's office declined to comment on the audit, noting that the report is still being completed. HCFA is due to get an official draft of the report next month, with an opportunity to attach its own comments before formal publication of the audit later this year.

The audit found billing problems were common throughout Medicare, according to people knowledgeable about the study. Irregularities were especially pervasive in home-health services and skilled nursing facilities, but there weren't any areas that were deemed spotless.

The report is likely to be welcome news for federal fraud investigators, who recently have gained extra funds to pursue health-care cases. The audit may be less-welcome news for medical providers. They are likely to raise questions about whether the study's relatively small size — \$5 million in claims — is enough to justify its extrapolation to the entire Medicare program.

Fraud or Lapses?

Doctors and other providers also are likely to question whether apparent evidence of improper payments is fully justified. At this stage, people involved in drafting the report aren't saying how many of the suspected problem cases reflect underlying fraud and abuse, compared with those that simply may reflect innocent lapses in record-keeping.

The audit is being carried out under the Government Management Reform Act, which calls for rigorous review of government agencies' bookkeeping under generally accepted accounting principles. Under

that act, government auditors have taken new steps to review individual case records, rather than relying on summary data.

Historically, Medicare has delegated much of its claims-processing to private insurance companies, which pay bills for specific parts of the country. These insurers, known as "fiscal intermediaries," have their own fraud-investigation units, as well as statistical screens that look for aberrant billing patterns.

But critics, including Malcolm Sparrow, a fraud expert at Harvard University, have contended that the fiscal-intermediary system focuses mainly on making sure that claims are submitted in a standard fashion, rather than checking whether Medicare is paying for appropriate care.

Handwritten notes:
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THE WALL STREET JOURNAL
WEDNESDAY, JUNE 11, 1997

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THE WHITE HOUSE
WASHINGTON

July 3, 1997

MEMORANDUM FOR THE PRESIDENT

THROUGH: SYLVIA MATHEWS *SM*
FROM: STEPHEN SILVERMAN *SS*
CAROL THOMPSON-COLE
SUBJECT: D.C. SUMMER JOBS
CC: THURGOOD MARSHALL, JR.
MELANNE VERVEER

'97 JUL 3 PM8:57

As you requested, we have reviewed the D.C. summer jobs shortfall reported in the *Washington Post* on June 30. While a shortage does exist, OPM and the Department of Labor are both working aggressively to ensure that all students who want to work can work. Much of the problem stems from D.C. Council budget cuts which have left the summer jobs program with 60 percent less funding than last year. To ameliorate the situation, we are working with agencies to:

- Encourage more private sector participation (mentioning in one of your speeches may be appropriate).
- Ensure that the federal government lives up to its goal of providing 1000 summer jobs. As of July 1, only 182 students have been employed.

Both the Department of Labor and OPM have looked into the matter and reported the following:

OPM

On July 1, Director King reported that although only 182 students have been given jobs to date, this figure represents the same hiring pattern as last year when agencies eventually hired 895 D.C. students. OPM anticipates this summer's hiring numbers to significantly increase in the next few weeks. As Director King explained, Federal agencies have expressed two concerns about this year's program: First, there is some frustration with the D.C. Department of Employment Service's coordination efforts. In particular, agencies have reported that their phone calls requesting hiring referrals have gone unanswered. OPM has been actively working with the District to correct these administrative problems, and they believe good progress has been made. Second, there is concern that competing interests for a limited number of Federal jobs may lower the number of summer hires under this program (i.e., increasing numbers of welfare to work participants). OPM is also working to address this concern.

LABOR

On June 30, Ray Uhalde, the Acting Assistant Secretary, reported that Federal funding for the D.C. jobs program has increased by more than 42 percent over the previous year. Specifically, the CY 1997 allocation was \$3,471,224, while the CY 1996 allocation was \$2,436,956 - a difference of \$1,034,268. The \$1 million of additional funds this year are estimated to finance approximately 1,400 additional jobs, for a total of 4,400 made possible through federal efforts.

Since funding for the summer jobs program is based on a statutory formula, the federal government is limited in its ability to make up for the jobs shortfall. In addition, according to Labor, the Financial Control Board is unlikely to provide additional funds from the D.C. budget, and thus the only viable source of additional jobs is from the private sector. You and the First Lady could offer encouragement for more participation, as appropriate.

In fact, one idea is that the First Lady could accept the Mayor's invitation to speak at the 18th annual Youth Leadership Institute, a forum for 500 D.C. youth, scheduled for mid-July. This event can serve the dual purpose of highlighting the importance of helping youth find jobs and underscore the Administration's continuing commitment to District affairs.

SALLY KATZEN

7/3/97

Mr President,

This is the final
report of the agencies
efforts to eliminate
old streamline
regulations.

We made some
real progress

Sally

(X)

✓ 7-7-97



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

ADMINISTRATOR
OFFICE OF
INFORMATION AND
REGULATORY AFFAIRS

JUL - 2 1997

MEMORANDUM TO THE REGULATORY WORKING GROUP

FROM: SALLY KATZEN *S. Katzen*
SUBJECT: ELIMINATION/REINVENTION OF REGULATIONS

I want to report to all of you on the substantial efforts of your agencies in eliminating and reinventing regulations in the Code of Federal Regulations (CFR). As you recall, on February 21, 1995, the President directed all agencies to undertake a complete review of their regulations in the CFR to determine which should be eliminated and which should be streamlined, simplified, updated, or otherwise improved. On June 12, 1995, the President announced the results of your review, and your plans to eliminate 16,000 pages and reinvent 31,000 pages of regulations.

Attached is a chart that I will be sending to the President and the Vice President that notes the substantial progress that you have made over the past two years. Many of your agencies met or exceeded your original targets. As a group, agencies have completed action to eliminate nearly 80 percent of your targets, or just over 13,000 pages. If we include actions that have already been proposed or are otherwise pending, the elimination total is nearly 100 percent of the target. In the reinvention category, final and proposed actions total about 80 percent of the target, or about 24,600 pages, with additional actions awaiting legislation or dependent on actions by another agency or a court.

You are to be congratulated on your efforts and should be very proud of your accomplishments. As we do our final report on this initiative, I know you will continue to work to improve the regulatory system so that it is fair, efficient, and effective for the American people.

Thank you again for your efforts.

Attachment

Progress of Key Agencies in CFR Elimination and Reinvention
Final Report Through April 30, 1997

Agency	CFR Pages Eliminated:				CFR Pages Reinvented:			
	-Target- Number of Pages	Final Action Complete	...plus Proposed Actions	...plus Pending Actions	-Target- Number of Pages	Final Action Complete	...plus Proposed Actions	...plus Pending Actions
USDA	3,510	84%	87%	87%	8,174	42%	53%	53%
DOC	696	83%	105%	105%	1,894	65%	90%	90%
ED	842	85%	100%	110%	1,142	61%	82%	97%
DOE	726	99%	100%	100%	1,206	47%	103%	103%
HHS	1,783	46%	60%	139%	2,261	33%	73%	81%
HUD	2,802	71%	73%	82%	1,507	102%	103%	103%
DOI	616	64%	114%	114%	2,674	38%	104%	104%
DOJ	109	132%	132%	132%	478	91%	108%	121%
DOL	1,737	73%	75%	87%	2,228	15%	30%	40%
State	58	91%	103%	103%	195	95%	101%	101%
DOT	1,221	105%	112%	112%	2,129	156%	167%	167%
Treasury	483	85%	99%	99%	2,477	56%	91%	91%
VA	232	113%	115%	115%	748	104%	108%	108%
EPA	1,457	92%	94%	94%	3,859	45%	56%	64%
SBA	355	85%	85%	85%	300	82%	82%	82%
TOTAL	16,627	79%	87%	99%	31,272	57%	79%	82%

NOTES:

1. "Final Action Completed" means a final rulemaking has been promulgated.
2. "Proposed Actions" are proposed rulemakings.
3. "Pending Actions" are those dependent on action by Congress, a Court, or another agency.
4. Some agency totals exceed 100% due to actions beyond those identified in their June, 1995 reports
5. EPA's reinvention target (229 CFR Parts) and progress were converted to pages and may not be precise.

THE WHITE HOUSE
WASHINGTON

97 JUL 3 AM 10:18

July 3, 1997

MEMORANDUM FOR THE PRESIDENT

FROM: GENE SPERLING
RUSSELL HORWITZ

RE: *Wall Street Journal* Poll and Other Articles of Interest

We have attached some recent articles which we think you will find interesting.

Wall Street Journal/NBC News Survey: First, included in last Friday's *Wall Street Journal* is a separate section titled the "American Opinion" which presents the findings of the most recent *Wall Street Journal*/NBC News survey.

The questions concerning the economy found the following:

- Three out of five Americans expressed satisfaction with the economy and even more expressed satisfaction with their own financial situation. "This optimism cuts across nearly every age, regional, educational, occupational and racial fault line."
- Almost three in 10 respondents (28%) said you deserved most of the credit for the economic upswing -- far more than anyone else. Increased worker productivity received 17%, the Federal Reserve received 14%, American corporations received 13% and Congress garnered 8%.
- 59% of the public says their families are better off than they were four years earlier -- an historic high and ten points higher than last October.
- A 53% to 42% majority expects its kids' generation will enjoy a higher standard of living than they do. The opposite view drew a similar majority just 18 months ago.
- While there is a clear feeling among the respondents that there won't be a recession within the next year, many felt that there would be one within the next five.
- Still, while many Americans seem to recognize the health of the economy, over 80% of the respondents believe that it disproportionately benefits top wage earners and more needs to be done to close the gap between the rich and poor.

- While 60% of the respondents believe that the economy “could perform even better if we made deeper cuts in taxes, 52% said cutting taxes wouldn’t make much difference and could even hurt the economy.
- Nearly six in 10 Americans agree with Democrats that the federal government should do more to help the poor, as with education and training programs.

Al Hunt Column: We have also attached Al Hunt’s article from Thursday titled “This Republican Tax-Cut Dog Won’t Hunt.” While generally critical of both the Republican plan and ours, he does hit the Republicans hard for not extending the child tax credit to the working poor. Hunt uses the example of the police officer in Georgia with two kids who makes \$23,000, and still pays over \$1100 in payroll and federal excise taxes even after the EITC rebate -- but still wouldn’t qualify for the child tax credit under the Republican plan.

Hunt makes the telling point that under the House GOP tax measure, Bill Gates would benefit from capital gains and estate tax reductions, but a \$23,000-a-year rookie cop would receive no tax credit for his kids.

Bob Herbert Column: Bob Herbert’s column in Monday’s New York Times “Topsy-Turvey Tax Cut” makes the similar point. Using the real life example of the McCumbers family (two children) of West Virginia who make just over \$20,000, Herbert slams the Congress for excluding it to millions of families: *“To exclude the McCumberses and millions of other working-class families from a child tax credit plan while giving the credit to well-do-do families, some with annual incomes higher than \$100,000, is absurd.”* I believe examples such as these resonate and hurt the GOP where they are so clearly vulnerable on this issue.

Washington Post Editorial on EITC: Lastly, we’ve included a Post editorial from last Sunday entitled, “Tax Fraud.” It defends the EITC as an “underappreciated provision” and faults the Republicans in stacking it against the child tax credit.

Who Gets Credit: Clinton Receives Big Pat on Back For the Economy

A year or so ago, President Clinton would complain—privately but vehemently—that unlike Ronald Reagan he didn't get sufficient credit for an improving economy.

By November, that obviously had changed; the voters gave him more than sufficient recognition. And in this month's Wall Street Journal/NBC News poll, the president gets the highest grades for the bullish economy. Almost three in 10 respondents say he deserves most of the credit for the economic upswing, far more than anyone else receives.

"More than anything else—the Fed, business, labor or Congress—Clinton gets credit for how well the economy is performing," says Fred Yang, vice president of the Peter Hart polling firm. "Increasingly this is seen as a Clinton economy."

Moreover, when asked point-blank whether first Bill Clinton and then Ronald Reagan deserve credit for an improving economy under their watch, the responses are almost identical: More than four in 10 say both presidents should get a great deal or fair amount of credit, while about half say neither should get much credit. Of course, Clinton and Reagan partisans differ sharply over which president produced the best economy. This gets into arcane arguments over which is the fairest period to measure.

One reasonably neutral method is to compare the entire eight-year Reagan term with the four-and-a-half years of the Clinton presidency. Under Mr. Reagan, almost 16 million new jobs were added, or an average of about two million a year. Under Mr. Clinton, a little more than 12 million jobs have been added, or somewhat less than three million a year.

When both men took office, the jobless rate was about the same: 7.5% in January 1981 and 7.3% in January 1993. In both instances it dropped dramatically. By the time Ronald Reagan left office, the unemployment rate stood at 5.4%, while under Bill

The Credit Card

Who do you give the most credit for the country's economic upswing?

The Clinton Administration	28%
Increased Worker Productivity	17%
The Federal Reserve	14%
American Corporations	13%
Congress	8%

Clinton's stewardship, it fell to 4.8% last month, the lowest in a quarter-century.

The stock market also more than doubled under both the Reagan administration and the first part of the Clinton administration. Under President Reagan the Dow Jones Industrial Average soared to 2235 from 950; the average was at 3241 when Bill Clinton was first sworn in as president and as of yesterday stood at 7654.25.

Reagan partisans argue that unlike Mr. Clinton, their man faced raging inflation—averaging 12% in 1980—and getting that down to 4% while at the same time boosting the economy is a bigger achievement. The Clinton forces, however, reply that while the budget deficit soared in the Reagan years from \$79 billion to \$152 billion, it has dropped substantially during Mr. Clinton's watch—from \$255 billion to an estimated \$67 billion this year.

Not surprisingly, the question of who deserves credit for today's bullish economy depends on whom you ask. Mr. Clinton gets the highest marks from Democrats, blue collar workers, African-Americans and most of the middle-income population. He does less well among Republicans, conservatives and the wealthiest Americans. Among those groups, the Federal Reserve gets more accolades. Very few people in any group think Congress deserves much credit.

—Albert R. Hunt

The New Living-Room Detente

Trashing TV is a popular pastime with politicians and conservative pressure groups. But ordinary parents don't seem inclined to demonize television.

TV just isn't a source of conflict in most families, according to the Wall Street Journal/NBC News poll. Far from it: Most say television brings families together, and as many parents say television is a good influence on their children as those who decry it.

Among the medium's harshest critics are conservatives, Republicans, women and those 65 and older; with well over 60% of each group saying TV quality has worsened in the past decade. Far less critical were men, African-Americans, liberals and young adults.

For years, the networks' standard retort to critics of racy and violent programs was to remind them that they could always turn off the set. Now, parents seem to be acting on that advice—often by substituting videotapes or computer games. Thus some of TV's provocative power has been neutralized.

Nonetheless, pressure from Congress and parent groups led broadcast and cable networks to agree this year to a voluntary content rating system. TV shows now carry codes similar to the movie industry's "PG" and "R" system, and are likely to soon carry new labels flagging sex, violence and bad language. Beginning next year, new televisions must be equipped with the so-called "V-chip," by which adults can block out objectionable programs.

Most parents, however, contend they have the situation firmly under control without outside assistance. "One way to prevent problems is to be there," says Mary Bodell of Simi Valley, Calif. She approves in advance the shows watched by her daughters, ages 10 and 12. And because she is there—she runs a business from her home and home-schools her daughters—she figures she doesn't need the content ratings.

Fully 71% of parents surveyed in the Wall Street Journal/NBC poll reported that televi-

sion is "rarely" or "never" a source of parent-child tension in their homes. Only 11% said they fight "very often" over television viewing.

Indeed, nearly twice as many parents—47% compared with 24%—said that TV brings them together as a family rather than divides them. Still, the rise of the multiset household means that family members often watch different

shows in different rooms. Of parents surveyed, 44% said they "fairly often" or "very often" watched TV in a different room from other family members.

John Malknecht of Minneapolis has held the line on bedroom TVs for his two daughters: "That would tend to make them antisocial, cocooned in their room," he says.

Americans are ambivalent about television's impact on their children. Thirty-six percent said it was predominantly a good influence, while 35% a poor influence. These ratings were slightly less favorable than in 1992, when a survey by the Gallup Organization found that 38% thought TV was a good influence and 20% a bad influence.

"TV has changed our lives for the better," declares Teresa Hickerson of Unalakleet, Alaska, a town of 800 on the Bering Sea. Most families can't conceive of a time when television wasn't a powerful presence in their home. But until six years ago, when cable finally arrived, Unalakleet was not really part of the television age. TV's arrival has brought big changes, both good and bad.

Reachable only by boat or plane, Unalakleet doesn't get daily newspaper delivery. Now, via CNN, "we're right up there with the world," says Mrs. Hickerson, who has three teenage sons.

Yet children in the village have changed, she says. At first, instead of hunting and fishing, they closeted themselves indoors watching television—often staying up until 3:00 a.m. school nights. Some of the novelty has worn off. Even 13 channels, she says, can "break the monotony of wintertime."

—Ellen Grah



Family Factors

Parents' views on the positive or negative effects of TV on their children and families

TV brings family together	47%
TV comes between family	24%
TV is a good influence on kids	36%
TV is a bad influence on kids	35%

THE WALL STREET JOURNAL
FRIDAY, JUNE 27, 1997

"AMERICAN Opinion"

IT DOESN'T GET MUCH BETTER

Despite Our Prosperity, We Worry The Good Times Won't Last

By ALBERT R. HUNT
Staff Reporter of THE WALL STREET JOURNAL

Americans view the economy a bit like most Chicagoans see their NBA champion Bulls: It's a terrific time, and it'll last for a while, but not forever.

Three out of five Americans express satisfaction with the economy and even more express satisfaction with their own financial situation, this month's Wall Street Journal/NBC survey of more than 2,000 Americans finds. This optimism cuts across nearly every age, regional, educational, occupational and racial fault line.

"American attitudes toward today's economy are as bullish as the economic statistics themselves," note pollsters Peter Hart and Robert Teeter, who conducted the survey. "Every number is the highest or most positive recorded in the eight-year history of the Wall Street Journal/NBC news survey."

The public, however, doesn't believe the economy has undergone permanent changes that assure perpetual prosperity. There's a clear sense that there won't be a recession within the next year but there will be one within the next five.

"For all the optimism that Americans express about today's economy," say Messrs. Hart and Teeter, "this satisfaction is matched by equal amounts of apprehension toward the economy of tomorrow."

Yet it's almost impossible to exaggerate the bullishness of today's economic circumstances and climate. It was Ronald Reagan, during the 1980 campaign, who framed the politically astute question of whether Americans felt they were better off than four years earlier; then, a strong majority did not, which also was the case when President Clinton defeated incumbent George Bush in 1992.

In this month's poll, 59% of the public says their families are better off than they were four years earlier. That's a historic high and 10 points higher than last October. Moreover, a clear majority believe their kids' generation will enjoy a higher standard of living than they do, which the pollsters say is more a reflection of the present than the future.

Some of the soaring optimism derives less from personal experiences than just the general notion that these are good times. "Until very recently, the people who thought the economy was good were those that the economy was, in fact, good for," says Mr. Teeter. "But now we're seeing a quantum leap in the number of people who just think it's good." As a pollster, he postulates that the number of ingrained pessimists has dipped to about 25% of the public from a short while ago.

Not surprisingly, this is redounding to President Clinton's advantage. His ratings on handling the economy are at record highs, and voters credit him for the good times; even 43% of Republicans approve

Please Turn to Page R6, Column 1



Continued From Page R1

of the president's performance on the economy. "The American people are judging President Clinton on what counts for them, and that's the economy," says Mr. Hart. "Americans' high paychecks translate into higher Clinton ratings."

On almost every issue, most Americans are sanguine about the present. Three times as many respondents, for example, are satisfied with their job security than are dissatisfied. Majorities also are positive about opportunities for career advancement, income keeping up with the cost of living, interest rates and retirement security. One negative area is dissatisfaction with the amount of money being saved. (Inflation has remained below 3% despite the conventional wisdom of the past that with a jobless rate below 5%—it's now at 4.8%—prices should take off. Yet almost half the people still worry about the cost of living.)

Interestingly, Americans see the robust economy as technology-driven, and they like that. The most frequent reason cited for the economy's growth is that the U.S. has quickly become a world leader in the information- and technology-based industries. That view is especially pronounced among both upper-income and younger Americans.

The public also believes that workers are better trained—two out of five say they've either received retraining or taken college courses for their job—and that American companies are more efficiently run. The Federal Reserve gets high marks and a general sense emerges that government hasn't messed up the economy.

But people don't buy the argument that a less-influential labor movement—with fewer strikes—has played a major role in the economy's success. And there is considerable skepticism over the globalization of the economy which, on balance, is viewed negatively.

One of the most oft-used measurements of public opinion on the economy—first developed 40 years ago—is the so-called ladder scale, in which people choose a number between one (very bad)

and 10 (very good) to characterize conditions. Customarily, Americans have shown more optimism about the past than the present and are more enthusiastic about the future. But in this survey, the present does better than both the past and the future. Almost half rate today's economy somewhere between seven and 10, and only one in seven score it four or below. Again, this cuts across virtually all groups.

But just as Chicagoans realize that Michael Jordan and Scottie Pippen won't be around for ever, Americans don't believe that the business cycle has been repealed, that robust growth and stable prices are a permanent condition. When asked whether the economy has changed so that traditional economic cycles are outdated, meaning recession can be avoided for long periods, the public by a decisive 4-to-1 ratio says no.

Most don't believe that there will be a recession in the next year, but two-thirds believe there will be one in the next five years. Every subgroup expects a downturn by 2002.

When asked what will be the likely cause of any recession, the public doesn't cite the business cycle but points the finger at accumulating too much debt—governmental and consumer. (While red ink remains anathema to most individuals, a majority also believe that a strong economy alone isn't sufficient to help the poor and that more government aid—like expanded education and job-training programs—is needed.)

There are specific concerns about the future. By a huge margin, most people think the economy will be creating more low-paying jobs than high-paying ones. "Those most emphatic in this belief that the new jobs are low-paying are those most likely to be filling those jobs: blue-collar workers, in particular women, members of union households, African-Americans and young adults," say Messrs. Hart and Teeter, the pollsters.

And if the stock market hasn't heeded Alan Greenspan's admonition last December about its "irrational exuberance"—it has risen more than 1,200 points since then—the general public shares the Federal Reserve chairman's worry. The respondents, 50% of whom said they own at least \$5,000 of common stock or mutual funds either individually or through a retirement savings program, by a 3-to-2 ratio say the stock market high makes them less likely to invest in the future. A plurality of upper-income individuals share this bearish view.

The survey also suggests the resiliency and adaptability of Americans. About 15% say they've been laid off from their jobs over the past three to five years. Contrary to conventional wisdom, there is little variation by income, education or occupation. But the vast majority of these people have gotten new work. Upward mobility seems more than ever a staple of the American dream. Two out of every five individuals say they've left a job to take a better position. This is especially true for 18- to 34-year-olds, African-Americans and high-tech workers.

Despite the apprehensions over globalization the public sees this country as the pre-eminent economic power in the world. Even those who might be less inclined to regard the U.S. as an economic superpower—those with jobs in manufacturing or people who've been laid off—still think of America as a "formidable economic force," Messrs. Hart and Teeter note. This is much more so than when the same question was asked both five years ago and seven years ago.

Whatever apprehensions exist about the future, the optimism surfaces when asked whether they'd rather work and live under the anticipated conditions of the next 30 years or the conditions of the past 30 years. By 48% to 39%, Americans opt for the uncertain future.

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Sure, the Economy May Be Sizzling, But Some See Room for Improvement

By JACKIE CALMES

Staff Reporter of THE WALL STREET JOURNAL

The economy may be as good as it gets, but that's not good enough for the folks in both political parties.

For liberal Democrats, what stands out following month after month of good news on unemployment, inflation, interest rates and stock prices are the stubbornly stagnant wages of the least-skilled workers and, in turn, a growing gap between the incomes of the richest and poorest Americans.

"The economy is, on the numbers, better than it's been in 25 or 30 years, and there's no doubt about that," says House Democratic Leader Richard Gephardt of Missouri. "Having said that, there are many places, mainly among the low-middle class, people in the middle, and people trying to get in the middle... who are not feeling the benefits yet of the productivity they have helped produce."

Conservative Republicans, meanwhile, allow that the economy has thrived on President Clinton's watch. But they contend it could be humming even more if taxes were slashed, particularly on investors' capital gains from the sale of stocks and other assets.

"We would have had a more robust recovery" after the recession that opened this decade, insists Rep. James Saxton, had it not been "slowed down by bad fiscal policy." The New Jersey Republican, who heads Congress's Joint Economic Committee, cites President Clinton's 1993 deficit-reduction plan that raised top earners' income taxes. Growth would be greater had taxes been cut, he says. The credit for what growth there has been, Mr. Saxton adds, "all goes" to the Federal Reserve Board's monetary policy.

Both sides can find support in the latest Wall Street Journal/NBC News poll. By an overwhelming 81% to 17% margin, those polled agreed with the typical Democrat's view that the strong economy has mostly benefited the top wage earners, "and more



needs to be done to close the gap between the rich and the poor."

A narrower but still strong overall majority of 60% to 33% endorsed the common Republican view, that the economy "could perform even better if we made deeper cuts in taxes." To a separate question, however, 52% said cutting taxes for businesses and individuals wouldn't make much difference and could even hurt the economy.

Predictably, respondents who identified themselves as Democrats were more likely than self-described Republicans to express concern about yawning income inequality.

Assessing Public Opinion on the Economy

Party Divisions

Which of the following statements comes closer to your point of view?

	DEMOCRAT	REPUBLICAN
The poor should have more help from the federal government	72%	39%
The poor do not need more help from the federal government	28%	55%

The benefits from the strong economy over the past few years have gone mostly to the top wage earners, and more needs to be done to close the gap between rich and poor.

Agree	82%	60%
Disagree	17%	32%

While the current economy is strong, it could perform even better if we made deeper cuts in taxes.

Agree	52%	71%
Disagree	41%	22%

Republican respondents, on the other hand, were more likely to say the good economy still could benefit from tax cuts.

Whatever reservations the public may share with the politicians, "Americans' attitudes toward today's economy are as bullish as the economic statistics themselves," say Peter Hart and Robert Teeter, who conducted the Journal/NBC poll. The latest survey questions yielded the most positive responses in the poll's eight-year history, they note.

Nearly two-thirds of respondents rated the economy a six or more on a scale of one to 10. Three out of five said they are better off today than they were four years ago. "Satisfaction with the economy cuts across race, income and education level," Messrs. Hart and Teeter say. More Americans are optimistic about the future: A 53% to 42% majority expects its children's generation to be better off, while the opposite view drew a similar majority just 18 months ago.

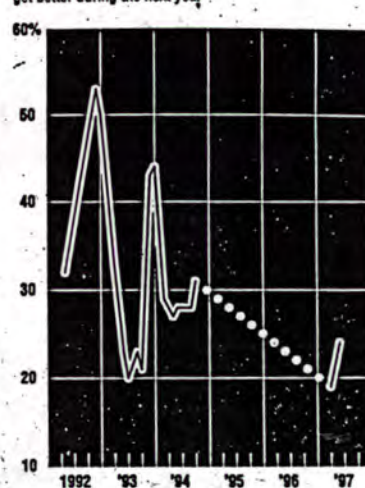
The public attitude is hardly a surprise given the drumbeat of good economic news. At 4.8%, unemployment is at a 24-year low, and consumer confidence is at a 28-year high. Inflation is just 2.2%, and for the first time since 1952, producer prices actually have declined for five months running. Interest rates remain low, and record numbers of Americans own homes. The stock market hits records routinely. The federal budget deficit, as a percentage of the economy's total goods and services, is at its lowest level since 1974.

"I'm not surprised if people are feeling a little better," says Jeff Faux of the Economic Policy Institute, a liberal Democratic think tank. "But this is not the 1950s," he adds. "Growth is not being distributed the way it used to be." After declining for years, wages for less-skilled workers are at best keeping ahead of inflation now. "Workers have just begun to share, just a bit, in the prosperity their front-office bosses have enjoyed," says Rep. David Obey, a leading liberal Democrat from Wisconsin.

While Republicans make this point far less often, one who harps on it is Jack Kemp, a potential Republican presidential candidate and advocate of the urban poor. His biggest complaint about the economy, he says, is the widening "division in our society between the

Returning Optimism

Percentage of respondents who feel the economy will get better during the next year



haves and have-nots, or the have-littles."

Mr. Kemp and the liberal Democrats part ways, however, on their prescriptions for the problem. Supply-sider Mr. Kemp would cut capital-gains taxes even more than his fellow Republicans in Congress propose, arguing that new private investments would spawn jobs. And he'd allow workers an income-tax deduction against their payroll taxes.

But Mr. Obey says flatly, "The answer is not to produce a tax package that gives a big tax break to Michael Eisner," the Walt Disney Co. chief executive, and other wealthy businessmen. The Democrats want more government spending on job training, education—from Head Start to college—and on research and development. They don't want the Fed to raise interest rates.

Nearly six in 10 Americans agree with Democrats that the federal government should do more to help the poor, as with education and training programs, according to the Journal/NBC poll. Nearly three-quarters of Democratic respondents said so. But among Republicans, 55% said the strong economy can provide jobs and opportunities without help from the government.

Making the Grade

On a scale of 1 to 10, on which a '1' means very bad, and a '10' means very good, how would you rate economic conditions in America?

	FIVE YEARS AGO	NOW	FIVE YEARS FROM NOW
ALL ADULTS	5.5	6.2	5.8
Democrats	5.3	6.3	6.1
Independents	5.3	5.9	5.5
Republicans	5.7	6.3	5.8
Had manufacturing job	5.5	6.1	5.9
Have high-tech job	5.5	6.3	6.0
Own stock	5.7	6.6	6.0



Journal Link: For the full text of The Wall Street Journal/NBC News Poll, see The Wall Street Journal Interactive Edition at <http://wsj.com>

THE WALL STREET JOURNAL
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Media's Coverage Gets Good Marks

By SARAH McBRIDE

Staff Reporter of THE WALL STREET JOURNAL

In bad times, the public often wants to blame the messenger. In good times, the messenger predictably does better.

According to this month's Wall Street Journal/NBC News survey, three out of five Americans believe that news coverage of the economy is balanced. One in five thinks it's too negative and slightly less than that believe it's too positive.

Overall, more Americans feel negatively toward the media—41%—than feel positively about it—35%. But that is better than it was two and a half years ago when, by a 2-to-1 ratio, the public was disapproving.

But academics say the public may be letting the news media off the hook too easily. On economic coverage, most experts rattle off a list of problems such as placing too much emphasis on irrelevant issues while important but complex issues get short shrift. Television news is especially superficial, while large national newspa-

pers generally do a good job, they say.

Richard Parker of Harvard University's Shorenstein Center on the Press, Politics and Public Policy, points to coverage of the Social Security overhaul. Since a government panel recommended options for change in January, the three major TV networks' evening news shows have carried only one segment each on the plans. Over the same period, they have aired nine segments on Internet access to Social Security records—a sexier topic but one that affects fewer Americans.

Other criticisms include:

- Giving too little time to economics on television. Of the nearly 300 available minutes each week on the three major network news shows, an average of just 18 minutes are spent on economics, according to the New York-based Tyndall Report. For many of the 30 million American households that tune in to one of the three major evening newscasts each night, the shows are their primary news source.

- Playing up conflict stories. Take layoffs, for example, says Stephen Hess of the Brookings Insti-

tution. When AT&T Corp. announces it will downsize, the headlines are huge, but "it's almost below the radar screen when it's someone who's going to hire 10 people," he says. "Collectively, it may be that they're going to hire more people than the big companies are going to lay off."

- Politicizing economics. "How will this affect [House Speaker] Newt Gingrich?" Such is Mr. Parker's example of how economic reports are frequently framed in terms of the political impact instead of how the news will affect average Americans.

But there are bright spots. Analysts say that a sprinkling of television shows and major newspapers cover the economy thoroughly. In large newspapers especially, publishers have given business reporting a higher priority; gone are the days when the business page "consisted largely of [publicity] announcements from companies," says Victor Fuchs of Stanford University. Moreover, there are promising indicators: More young reporters want to cover business news and are better trained in economics and management.

Opinions Diverge on Globalization

A sense of buoyancy about the economy permeates all demographic groups in America: young and old, black and white, men and women. But sharper differences emerge on some particulars, especially when people start thinking about the global economy.

Men are slightly more optimistic than women about the American economy but not dramatically so, the latest Wall Street Journal/NBC News poll found. And there is very little difference between the attitudes of working women and homemakers; in the 1996 election, there was a much sharper divide between the sexes on the economic issue.

However, when it comes to globalization of the economy, a slight plurality of men think it has been good because it has opened up new markets for American products and resulted in more jobs. But a clear majority of women think it has been bad because it has subjected American companies and employees to unfair competition and cheap labor.

"People are united on the economy," notes David Iannelli, an associate of pollster Robert Teeter. "But the one aspect that most divides them is the effects of globalization on the economy. Typically, more economically pressured groups have the most negative reactions to this."

Other interesting distinctions surface on the basis of geography (urban and suburban vs. rural) and education (college- vs. noncollege-educated individuals).

Among rural residents, there is much more of a hint of nostalgia for the way things used to be. More would prefer living and working under the economy of the past 30 years than under the economy they expect for the next 30 years. But a majority of urban and suburban residents look to the future instead.

Thus, it follows that rural folks are less op-

Globalization Attitudes

Is the fact that the American economy has become increasingly global good or bad?

	GOOD	BAD
ALL ADULTS	42%	58%
Men	46%	54%
Women	38%	62%
Whites	43%	57%
Blacks	29%	71%
Urban	43%	57%
Suburbs/towns	45%	55%
Rural	52%	48%
Under \$30,000	34%	66%
\$30,000-\$50,000	42%	58%
Over \$50,000	52%	48%
Professional/managers	55%	45%
White-collar workers	40%	60%
Blue-collar workers	36%	64%
High school or less	33%	67%
College graduates	58%	42%

timistic about the future and less convinced that the political and economic systems offer opportunities for everyone. While suburban and urban dwellers split down the middle on whether globalization has been good or bad for the American economy, rural residents, by almost a 2-to-1 ratio, say it is bad.

There is a similar divergence by education. College graduates overwhelmingly have positive views on globalization, while those with only high-school degrees just as strongly harbor negative attitudes.

—Albert R. Hunt

On Immigration, Party Leaders Aren't Necessarily In Sync With Feelings of Rank and File

By ALBERT R. HUNT
Staff Reporter of THE WALL STREET JOURNAL

The immigration debate, steeped heavily in economic arguments, rages nationally, most notably in key states such as California. While Republican leaders have embraced the anti-immigration position, top Democrats generally have been more supportive of immigrants.

Yet, ironically, the rank and file split the other way: Republican voters nationally are more pro-immigration while Democrats are more negative.

The Wall Street Journal/NBC News survey draws two distinct conclusions: The public is closely divided over whether immigrants are a positive or a negative influence in America, and Americans' views are largely driven by their station in life and their economic outlook. The better off—disproportionately GOP followers—tend to be more tolerant while the lower end of the socio-economic scale tend to be more threatened by immigrants.

Thus, self-identified Republicans are narrowly pro-immigration while Democrats by a clear margin see more negative consequences. Managers and professional people think immigration is good for the economy, while blue-collar workers think it's bad. Among income groups there is almost a perfect curve: people with the lowest incomes, by better than a 3-to-2 ratio, express negative views, while those in the top bracket, by about the same ratio, voice pro-immigration sentiments.

Republicans, in a movement started in California three years ago, have blamed immigration for many of society's economic and social problems. Much of the earlier efforts to curb benefits were aimed at illegal immigrants. But last year, the GOP-led Congress adopted provisions in the welfare bill that denied certain government benefits to legal immigrants. With a few exceptions, top Democrats, including President Clinton, have fought these restrictions.

Despite the apparent dichotomy in the poll



Illustrations by Rupert Howard

numbers, there are ample political reasons for both sides' stances. Republicans believe the anti-immigration issue may attract some working-class Democrats—frequently called Reagan Democrats—to their side. Further, they believe, the issue will resonate more whenever there's an economic downturn. (Some GOP leaders like Jack Kemp, however, take strong exception to the whole anti-immi-

gration pitch.) Democrats, on the other hand, argue that the GOP politically is writing off the fastest-growing slice of the electorate, Hispanics. Although in the Wall Street Journal/NBC News poll the number of Hispanic respondents is so small that the margin of error is considerable, it nevertheless suggests these Americans have an overwhelmingly positive view of immigration.

Legal Immigration and the National Economy

	ALL ADULTS	INCOME					OCCUPATION			PARTY IDENTIFICATION	
		Under \$20k	\$20k-\$30k	\$30k-\$50k	\$50k-\$75k	Over \$75k	Professional	White collar	Blue collar	Democrats	Republicans
HAS A POSITIVE EFFECT	44%	36%	41%	44%	48%	56%	54%	47%	35%	41%	48%
HAS A NEGATIVE EFFECT	49	58	50	50	49	34	39	45	60	51	46

"American Opinion"

This Republican Tax-Cut Dog Won't Hunt

"Taxes are the killing fields for Democrats," Grover Norquist, the irrepressible conservative activist, predicted to Time magazine this week.

After the government shutdown and minimum wage defeats of the last Congress and the disaster relief debacle of last month, the GOP hopes that finally the political game is being played on their turf. They're living in yesteryear.

The case for any tax cut in this booming economy is dubious. If President Clinton gets his way, precious few additional kids are going to get college educations because of this tax bill. If the Republicans get their way, the tax bill is going to add precious few jobs.

Moreover, voters should feel duped by this debate. Last year, the Republicans stressed a simpler and flatter tax code;



Politics & People

By Albert R. Hunt

their proposals create more special preferences and a more complicated code. In 1996, the Democrats emphasized equity; whatever emerges, however, will be skewed heavily to upper-income individuals and exacerbate the income gap between rich and poor.

Thus the battle over the size and shape of tax cuts over the next month is about politics. The heart of the GOP tax cut effort—capital gains and estate tax relief—resonates with campaign contributors, not with voters. When it comes to the specific proposals before Congress today, according to this past weekend's Wall Street Journal/NBC News poll, Americans side with the Democrats by a lopsided 2-to-1 margin.

The House and Senate both likely will pass separate Republican-crafted bills this week. Both bills, however, are so bad—a

bonanza for the affluent, crumbs for the working class and eventually costly—that President Clinton will enjoy enormous leverage in the negotiations over distribution and costs. The Republican-run congressional tax committee has put out phony estimates of both the distribution effects and the costs, only calculating the first five years; the bills are back-loaded so that tax cuts for capital gains, estate taxes and new retirement accounts explode in five to 10 years.

According to more reliable Treasury estimates, when the bill is fully effective, the top 1% of taxpayers would get 19.3% of the benefits under the House bill and 13.3% under the Senate version. Conversely, the bottom three-fifths of families get only about 12% in both measures. The liberal Center on Budget and Policy Priorities argues that the Treasury underestimates the case; it calculates that under the House Republican tax and spending measures, the poorest 20% of the population would actually lose income while the wealthiest 1% ultimately would get an annual average tax cut of \$27,155.

Under this so-called balanced-budget agreement, the net tax cuts can't exceed \$250 billion over the next 10 years. But with the back-loading in the following 10 years, the House bill would cost between \$650 billion and \$700 billion, while the Senate version would cost around \$600 billion.

Even worse, in order to shoehorn in tax breaks for their wealthier constituents, the Republican bills shamefully shortchange the working poor. Conservatives have long argued that the tax code shouldn't be used to redistribute income. Yet that's exactly what these Republican bills do.

A critical issue is whether the politically popular, if economically questionable, \$500 child credit goes to the working poor. Last week House Speaker Newt Gingrich charged that the Democrats' efforts to give more to the working poor amounted to a "welfare" sop.

Republicans would deny the child credit

to workers who already are receiving the earned income tax credit. They argue that since the EITC wipes out income tax liabilities for these people, they don't deserve the credit.

The real reason they want to deny these taxpayers the credit is that they want to use the money for tax breaks on capital gains, estates and retirement accounts. Both the GOP's Contract With America in 1994 and the tax bill that Senate Republican leader Trent Lott introduced earlier this year proposed to give the child care credit to EITC beneficiaries. The House bill would deny this to six

Clinton's Advantage

With which do you agree:

a) the Republican tax cut providing \$500 per child tax credit and college tuition credit for upper- and middle-income families and additional tax cuts for investors, savers, businesses and estates worth more than \$600,000.

b) the Democratic tax cut giving more benefits and college tuition credits to lower- and middle-income families while limiting capital gains and estate tax cuts to small businesses and family farms worth more than \$600,000.

Republican ☐ 31%
Democratic ☒ 60%

Poll taken June 19-23, 1997

THE WALL STREET JOURNAL/NBC NEWS POLL

million kids' and the Senate bill would deny it to four million in this category. Moreover, ever since the EITC was enacted in 1975, its purpose was to offset not only income taxes but the regressive payroll taxes that all of these recipients pay; until it became a budgetary inconvenience, most Republicans supported that notion.

This is best illustrated by a real situation. A starting police officer in Gwinnett County, Ga.—coincidentally part of Speaker Gingrich's district—is paid

\$23,078 a year. If his family has two kids, it gets a \$1,668 earned income tax credit, which offsets its \$675 in federal taxes and yields a check for \$993. But that family pays \$1,760 in payroll taxes (most economists would also add the employer's share of payroll taxes too) and another \$354 in federal excise taxes. Thus, even after the EITC, this police officer's family's out-of-pocket federal taxes would be at least \$1,121 and in reality more like \$2,881.

Mr. Gingrich and company apparently believe giving that young police officer and his family the child credit is welfare. In truth, these are working people who most need help. The bottom line in the House GOP tax measure: Bill Gates would get capital gains and estate tax reductions and even a new IRA provision that would let him take a \$4,000 tax break for educational expenses for his kids, but a \$23,000-a-year rookie cop would be denied a tax credit for his kids.

The Clinton administration is calculating how to reshape the tax legislation in the next month and may set some benchmarks for what's unacceptable. One possibility under consideration is that the cost of the tax cuts in the second 10 years couldn't exceed \$500 billion, about halfway between the House Democratic and Republican measures. And top administration officials say that at least 40% of the tax-cut benefits should go to the bottom 60% of taxpayers. That would still be regressive but much less onerous.

Republicans hope—and more than a few Democrats fear—that if the president gets his college tuition tax breaks, he'll cave on the other issues. Some also note that many of those Lincoln bedroom guests and campaign contributors of 1996 would do very well by these tax bills.

But congressional Republicans are notorious in misjudging Bill Clinton if the politics are on his side. In this fight, that's where they are.

In America

BOB HERBERT

Topsy-Turvy Tax Cut

Marie McCumbers and her husband, Rickey, have played by the so-called rules for years. They live in Frametown, a little hole-in-the-wall between Clarksburg and Charleston in West Virginia. Mrs. McCumbers is a secretary-receptionist for an organization that supplies food to soup kitchens. Rickey McCumbers is a greenhouse worker. Their combined income this year will be a shade over \$20,000.

The McCumberses have two children: Beckie, 10, and John, 13. Not surprisingly, money is always in short supply. Every expenditure is harshly scrutinized.

"Vacation?" said Mrs. McCumbers. "Oh, we go to my mom's for vacation. She lives in Akron. That's about a four-hour drive."

The trip is made in the family's 1987 Blazer, which the McCumberses bought secondhand. "I'm still paying on it," Mrs. McCumbers said.

Luxuries? Entertainment?

"We don't have any frills whatsoever. We don't go out to eat. We don't go to the movies. We don't take our kids bowling."

"It's boring," said John McCumbers.

His mother laughed. "Our entertainment is to go to Sutton Dam. That's a state park. Doesn't cost anything."

The family lives in a three-bedroom, one-story home. Meeting the mortgage is a struggle. There is no financial cushion. Any unanticipated expense is a crisis.

Each year at tax time, the refund is used for something important. "It goes toward my property taxes and homeowner's insurance," Mrs. McCumbers said. "Or the kids' dental work or doctor visits. We can't afford medical insurance for the kids."

"I have to make sure they deduct enough from each paycheck, otherwise we'd have to pay at the end of the year. I make sure they have me down as single with no dependents."

When politicians talk about tax cuts to help working families with children, you would think they had families like the McCumberses in mind.

Families that need the tax credit most won't get it.

You would certainly think they were talking about children like Beckie and John McCumbers if they came up with a plan to provide tax credits worth \$500 per child.

But if you thought that, you would be wrong. The McCumberses are among several million working and tax-paying families that will get nothing from the ballyhooed child tax credit passed by the House and Senate last week. They are ineligible for the child credit because their incomes are not high enough.

To exclude the McCumberses and millions of other working-class families from a child tax credit plan while giving the credit to well-to-do families, some with annual incomes higher than \$100,000, is absurd. The legislation passed last week would deny the tax credit to families that account for more than 25 million children. That's 40 percent of all the children in the United States.

The proponents of this unfairness argue that families like the McCumberses benefit from the earned income tax credit and already pay very low Federal income taxes, which is true. But the families also pay payroll taxes and have a substantial net tax liability at the end of the year. The Center on Budget and Policy Priorities noted that families with incomes below \$30,000 will owe \$644 billion in Federal taxes in the period 1996-2000. Ninety percent of that liability will come from payroll taxes, not the Federal income tax. If anyone needs tax relief, those families do.

Three years ago Newt Gingrich's Contract With America promised to apply the child tax credit against any net tax liability. Under the contract, even the employer's share of payroll taxes was considered part of a family's tax liability. But the Republicans have broken that promise. Now families like the McCumberses are completely frozen out, not even eligible for a partial credit.

In previous Republican-sponsored proposals, the child credit was to be applied before the earned income tax credit was taken into account. That protected a few million more families than the current legislation. But there is only so much money available for tax cuts and the Republicans tightened the requirements over the past few weeks.

The squeezing out of low- and moderate-income families from participation in the tax cuts was necessary to protect the big cuts in capital gains and other taxes that will primarily benefit upper-income Americans. That is how the Government works now, all benefits skewed to the top. The triumph of the well-to-do continues. □



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Editorial

Talk Central Section: discuss hot topics of the day online.

All Editorials and Op-Ed columns from this morning's Washington Post.

All editorials and commentary from Sunday's Washington Post Outlook section.

Tax Fraud

Sunday, June 29, 1997; Page C06
The Washington Post

ONE OF the most bitter fights in connection with the tax bill Congress is now writing has to do with a device called the earned income tax credit (EITC). It's an obscure and underappreciated provision which, at \$28 billion a year and rising, has become the major form of federal aid to low- and lower-middle-income workers. Partly to save money for other tax cuts heavily tilted toward the better-off, the Republicans propose to change the rules by which the EITC traditionally have been applied in a way that would vitiate it. The Democrats, led by the president, have mounted a defense. We hope on this they are unyielding. The rest of this bill is bad enough. To weaken a benefit for lower-income workers to pay for it is an outrage.

The EITC was created in 1975, in part to compensate low-wage workers for the increasingly heavy Social Security and other payroll taxes they were having to pay, and to sharpen the incentive to work. A number of other rationales have been used for increasing it over the years -- that it constituted a child care subsidy for the working poor by another name, for example, or that it could be looked upon as an alternative to increasing the minimum wage. The basic purpose, through all the labels, has been to increase the after-tax income of lower-income working families -- particularly those with children.

The credit thus comes at the very end of the income tax calculation; that's where it has come in the past, at any rate. First, workers figure what their tax would be -- the normal tax, you could call it -- using all the other provisions in the code. Then they figure their EITC -- a percentage of earnings, on a complicated sliding scale. They use the EITC to reduce or eliminate their tax -- and if there is any left over, the government pays them that amount. The tax code and Treasury are used to administer a government wage supplement.

The Republicans would reverse this order in the case of the children's tax credit that is a central element in their bill. What sounds like just a mechanical step -- who cares

which calculation comes first? -- turns out to have an enormous effect. Instead of letting workers use the children's credit to reduce their liability and then collect their entire EITC in addition, they'd deny the children's credit to workers whose EITC was enough to eliminate their liability. Millions of low-income households would be losers, relative to other families with children. But at bottom it's not the children's credit they're playing with; it's the value of the EITC.

The sponsors say it's only fair to do as they propose, since the purpose of this bill is to give relief to taxpayers, not add to "welfare." Of all the distortions they have used to grease and sell this awful bill, none matches this. The implication is that the people who would lose from this provision are freeloading. The absolute opposite is true. These are working people, typically with children and with incomes in the range of, say, \$17,000 to \$27,000 a year -- precisely the kind of struggling, taxpaying, not-on-welfare Americans for whom the Republicans profess to bleed. The EITC may wipe out the income tax liability of many of them; it doesn't wipe out their total liability, counting the payroll tax. They remain net taxpayers. Is this really the part of the population that the Republican Party wants to stiff in order to pay for a tax cut for folks much better off?

The president long ago accepted the broad outlines of this bad bill. Our sense is that he is going to fight it mainly on the margins -- where it crosses, even in the present political climate, some outer limit of sensibility. Clearly this is one such area. The EITC is not a perfect instrument, but on balance it is benign. The president helped strengthen it in 1993, to his credit. We hope he now will draw a line; the Republicans need to understand that this one is out of bounds.

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File



THE WHITE HOUSE
WASHINGTON

July 4, 1997

an

MR. PRESIDENT:

Attached are the following weekly information items:

- (A) Interest Rates and the Stock Market
- (B) CEA Weekly Economic Briefing
- (C) CEQ Report
- (D) Cabinet Report
- (E) Public Liaison Report
- (F) Intergovernmental Report
- (G) OSTP Report
- (H) Political Report

Phil Caplan

Phil

Todd

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL OF ECONOMIC ADVISERS
WASHINGTON, D.C. 20502

July 3, 1997

'97 JUL 3 PM 6:26

MEMORANDUM FOR THE PRESIDENT

FROM: JEFFREY A. FRANKEL



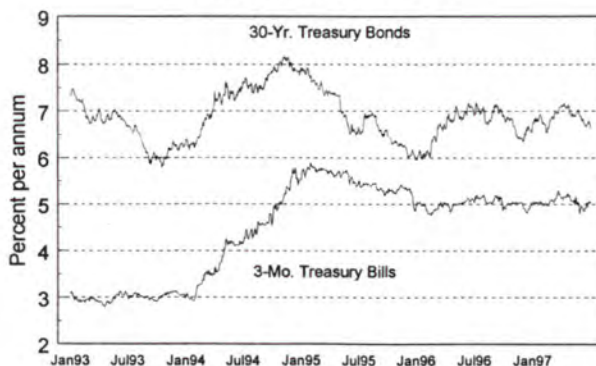
SUBJECT: Interest Rates and the Stock Market, Week Ending Thursday, July 3, 1997

Longer-term Treasury rates fell sharply this week; short-term rates were about unchanged. Rates on 10- and 30-year Treasury securities fell to their lowest levels since February, with the yield on 10-year notes falling 15 basis points to 6.31 percent and that on 30-year bonds falling 12 basis points to 6.63 percent. By contrast, the rate on 3-month Treasury bills fell just 1 basis point, to 5.01 percent. Interest rates fell slightly on Wednesday, following the Fed's decision to leave rates unchanged at this week's FOMC meeting. The bulk of the decline, however, came following Thursday's employment report, which bolstered the view that growth is slowing to a sustainable pace with lower than expected wage growth. Evidence from the Fed funds futures market suggests that market participants see very little chance of a rate rise at the next FOMC meeting in August.

	Close 6/27/97	Close 7/3/97	Change
3-month bills	5.02	5.01	-0.01
10-year notes	6.46	6.31	-0.15
30-year bonds	6.75	6.63	-0.12

The stock market rose this week, posting new record highs. The decline in interest rates was mirrored by a rise in the stock market. The Dow Jones Industrial Average rose 2.7 percent on the week, finishing at 7895.81, a record high. The broad-based S&P 500 index also set a new record, closing at 916.92, up 3.3 percent. The Nasdaq Composite Index closed at a record 1467.61, up 2.0 percent on the week.

Daily Interest Rates



Dow Jones Industrial Average



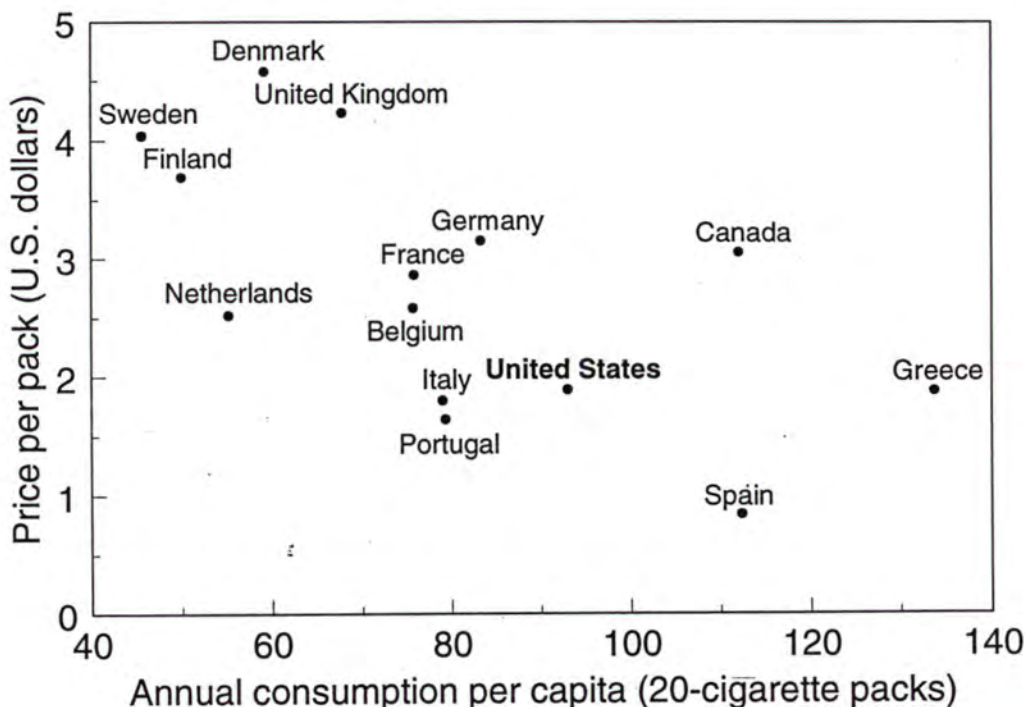
WEEKLY ECONOMIC BRIEFING OF THE PRESIDENT OF THE UNITED STATES

Prepared by the Council of Economic Advisers
with the assistance of the Office of the Vice President

July 4, 1997

CHART OF THE WEEK

Cigarette Prices and Consumption in 1995



Cigarette prices vary widely across countries, primarily because of differences in taxes. A general tendency exists for countries with lower prices to have higher per capita consumption. A pack of cigarettes costs less in the United States than in Canada and many of the European countries represented on the chart.

CONTENTS

CURRENT DEVELOPMENT

Import Prices Are Restraining Inflation, But for How Long? 1

SPECIAL ANALYSES

New Studies Question Effects of Teen Childbearing 3

Why Are Computers “Everywhere But in the Productivity Statistics?” 4

ARTICLE

The Netherlands and the “Third Way” 6

DEPARTMENTS

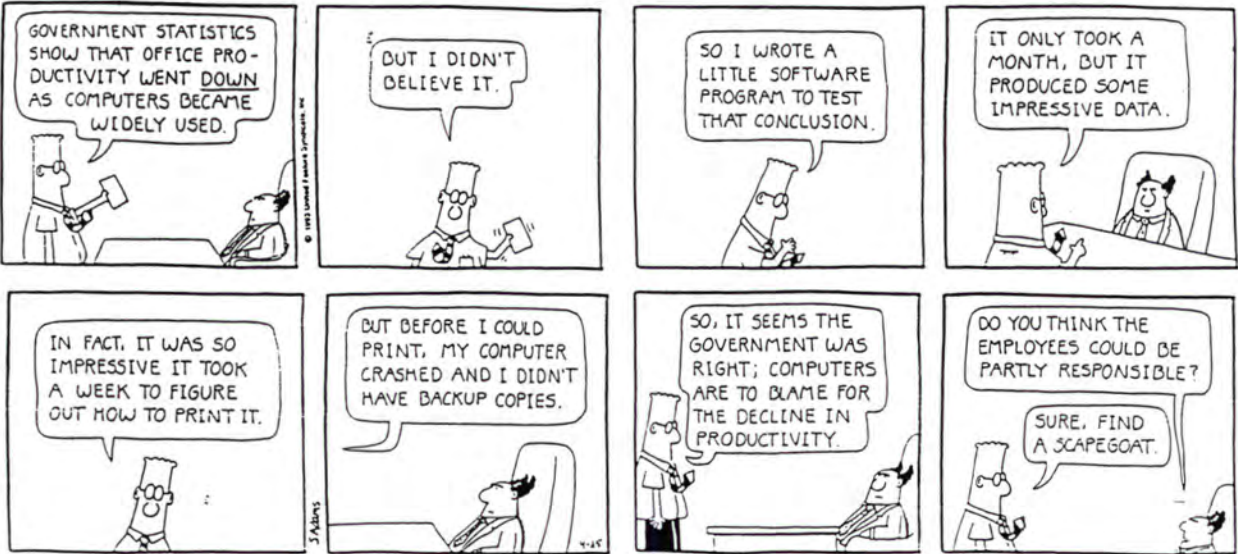
Business, Consumer, and Regional Roundup 8

International Roundup 9

Releases 10

U.S. Economic Statistics 11

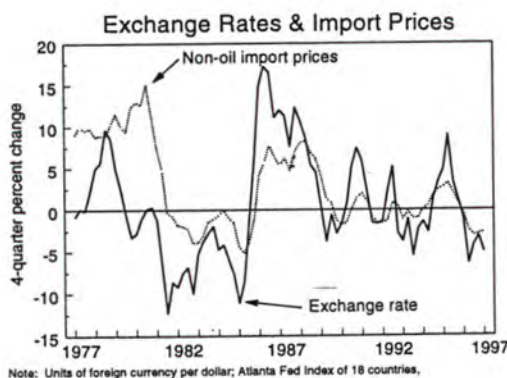
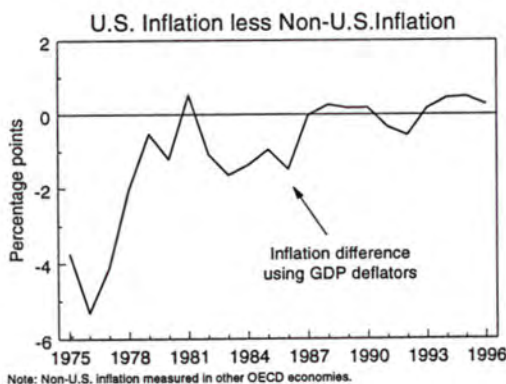
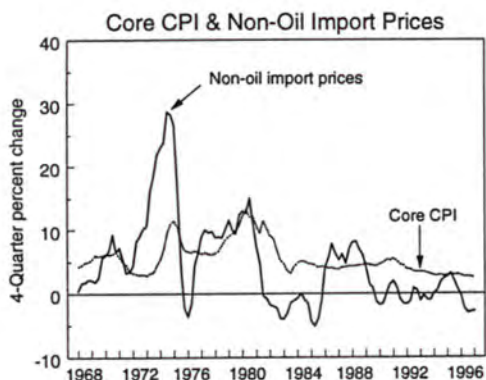
Financial and International Statistics 12



CURRENT DEVELOPMENT

Import Prices Are Restraining Inflation, But for How Long?

Without the 2½ percent decline in non-oil import prices so far this year (see upper chart), the core rate of inflation would have been about 0.2 percent higher than its current rate of 2½ percent. Three interdependent factors could be affecting the decline in import prices.

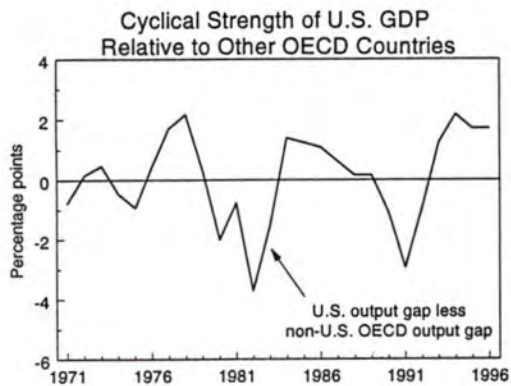


Relative inflation rates. The rise in import prices relative to domestic prices depends, in part, on the relative inflation rates at home and abroad. Foreign inflation has fallen to its lowest level in over 20 years. U.S. inflation, although low, is higher than OECD inflation—one of the few such occurrences in the past two decades (see middle chart).

Exchange rates. Second, import prices move with the exchange rate, and the dollar has appreciated 13 percent against a group of 18 major currencies over the past 2 years (see lower chart). This appreciation has allowed U.S. consumers to pay less for imported goods.

Importer markups. Finally, only about half of the change in the exchange rate is passed through to (non-oil) import prices, on average. The fraction of the change in exchange rates that is not translated into import prices is reflected in the markup of import prices over costs. Over the past year, importers have edged up their markup.

Outlook. Foreign inflation has been held down by excess capacity abroad. In fact, the amount of slack in OECD economies relative to the United States is now greater than at any time since the late 1970s (see chart on next page). Although the difference in slack may disappear as U.S. growth slows and foreign growth picks up over the next year,



the change is likely to be gradual. Thus, the effect of relatively low foreign inflation is likely to remain a restraining influence in the near term.

The influence of the dollar is likely to be far larger, but it is also far more uncertain because exchange rates are notoriously hard to forecast. Even so, the appreciation of 1995-97 is not likely to be repeated. Thus, the moderating effect of falling import prices cannot be expected to be as great in the next 2 years as it was in the last 2 years.

SPECIAL ANALYSIS

New Studies Question Effects of Teen Childbearing

Teen childbearing is thought to contribute to a variety of disadvantages for both the teen mother and her children. However, teen mothers tend to come from very disadvantaged backgrounds. They (and their children) would face many of the same problems had they delayed childbearing to a later age. The challenge for researchers and policy analysts is to determine the contribution of a teen birth *per se* to adverse health, developmental, and economic outcomes—beyond those expected from the disadvantaged circumstances in which the teen mother grew up.

Cause or symptom? Evidence continues to mount that teenage childbearing may be more a symptom of disadvantage than a cause. For example, a new study compares women who became pregnant as teenagers (before age 18) but had a miscarriage with those who had a child. The women who had miscarriages as teenagers did no better with respect to a variety of adult socioeconomic outcomes than those who bore children as teenagers. The authors conclude that many of the negative consequences of teen births are smaller than estimated elsewhere in the literature and are short-lived. Moreover, and surprisingly, those who had children as teenagers accumulated more work experience by their late 20s and had somewhat higher wage rates than those who had miscarriages as teenagers. As a result they earned more—about \$7,000 per year. The study also finds that teenage childbearing does not increase the use of public aid over a woman's lifetime but simply shifts it to younger ages.

What about the children? Earlier studies gauged the impact on children of having a teen mother by comparing outcomes between the children of pairs of sisters, one of whom had a birth as a teenager, the other of whom did not. In early childhood, children of teen mothers did no worse on tests of cognitive and emotional development than their first cousins whose mothers had delayed childbearing into their 20s. (Outcomes in later childhood were not available at the time the research was conducted.) Neither did these comparisons of sisters reveal evidence of adverse infant health effects (such as low birth weight). Teen mothers were more likely than their sisters to delay initiation of prenatal care, but less likely to drink alcohol during pregnancy. For whites, but not blacks, teen mothers were more likely than their sisters to smoke during pregnancy. Interestingly, children of teenage mothers did better than their first cousins on several tests of cognitive development.

Conclusion. Teen mothers and their children suffer economically and developmentally. However, new studies raise a flag of caution about attributing their adverse socioeconomic and health outcomes to the teen birth rather than to their mother's disadvantaged circumstances. Very similar women who delay childbearing do not appear to do better than teen moms. Nor do their children. For some outcomes, such as work experience and child development, they may do worse.

SPECIAL ANALYSIS

Why Are Computers “Everywhere But in the Productivity Statistics?”

Over the last three decades, firms have made large investments in information technology, and computers have transformed the workplace. Yet economists have failed to detect much of an effect on aggregate productivity growth, which remains mired in its post-1973 doldrums. As Nobel Prize winner (and former CEA economist) Robert Solow has quipped, “You can see the computer age everywhere but in the productivity statistics.”

Computers and aggregate productivity. The pace of real gross investment in computing equipment has been rapid, averaging 33 percent annually since the early 1970s. Nevertheless, computing equipment remains a small fraction of the aggregate net capital stock—2.0 percent in 1993, up from 0.8 percent in 1970. (Computers are subject to rapid depreciation, making net investment substantially smaller than gross investment.) In a standard growth accounting framework, the relatively small contribution of computers to the aggregate capital stock would be expected to make a correspondingly small contribution to aggregate output growth—0.16 percent per year according to one estimate. In this approach, it is no surprise that computers do not show up in the productivity statistics: There are not enough of them to matter.

Microeconomic evidence. But computers could affect productivity in ways other than through their influence on the capital stock if they enable more efficient means of organizing production. In the terminology of growth accounting, they could raise “total factor productivity.” Evidence for individual firms suggests computers may be making a difference that goes beyond their direct contribution to the capital stock. Between 1987 and 1991, for example, the net private return on investment in computer capital was much higher than the return on other types of capital investment. In addition, research indicates that an extra dollar spent to employ computer workers will generate several times as much output as an extra dollar spent on non-computer labor. Finally, studies of the financial services sector reveal substantial benefits arising from large investments in computing equipment—benefits on the order of twice the amount actually spent for computing equipment.

Why the difference? Two factors may account for the discrepancy between these results.

- **Mismeasurement.** Much of the investment in computers is in the service sector, where measurement of real output is difficult. Moreover, new services that result from computerization, such as activities related to electronic commerce, may be introduced slowly into the statistical measures. Admittedly, incorporating quality change in services has always been an issue, but incorporating gains from introducing computers may pose special difficulties that make the problem worse.

- **Industrial reconfiguration.** Most large modern establishments do not immediately adopt the newest generation of computing platform, delaying potentially revolutionary applications. In most organizations, the process of integrating PCS into existing large business systems has been very difficult. It has called for developing new organizational forms, new job definitions for workers that use computers, even new relationships between the firm and its suppliers and customers, as in the case of networked computing. Hence, the benefits of radically new technologies diffuse gradually, often requiring major reorganizations of production, which take a long time to be developed.

Conclusion. Undoubtedly, information technology is changing the way we work and live. This transformation has not translated directly into a surge in measured aggregate productivity. Part of the reason is that in spite of the huge rates of investment, computers are still a small chunk of the total capital stock. Nevertheless, some industries—those that were particularly heavy investors in the technology—have benefited tremendously. Mismeasurement problems may also partly explain why we are not seeing productivity increases in the official statistics. Another explanation may be that it takes a long time for potentially revolutionary technologies to be absorbed into generally accepted practices in businesses and industries.

ARTICLE

The Netherlands and the “Third Way”

Since the early 1980s, the Netherlands has implemented a comprehensive program of economic reforms and enjoyed relatively strong economic performance. These developments have caused some observers to identify the Dutch approach as a “third way,” one that combines the commitment to economic security found in the European system with the economic efficiency that characterizes the United States. Closer inspection reveals that this view misconstrues the nature of the Dutch approach—as well as the reasons for its success.

Dutch economic reform: an overview. Economic reform in the Netherlands started in 1982 in response to a sharp deterioration in economic performance that began in the late 1970s. The reforms represented a significant departure from previous policies, but still maintained a system of social programs that was generous relative to those present in other European countries.

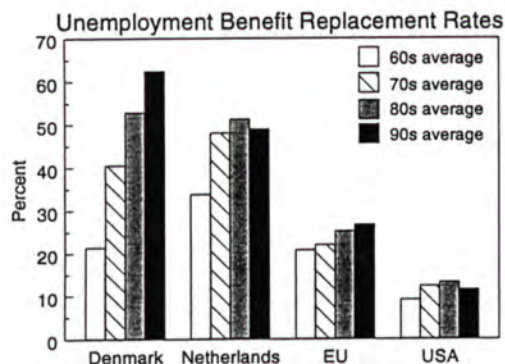
- Fiscal policy. Government expenditures were curtailed sharply, in part through a reduction in transfer payments. This allowed the government to reduce taxes and mandatory contributions for social programs.
- Labor markets. Labor market reform included reductions in the duration and level of unemployment, disability, and sick leave benefits, as well as tightening of eligibility requirements for these programs. The minimum wage was ratcheted down over the 1980s, and the minimum benefit payable under transfer programs was no longer set equal to the minimum wage. Recently, the government has reduced required employer contributions for social insurance for low-wage workers, financing their benefits through general revenues.

Other government policies contributed to changes in the labor market. For example, the reductions in payroll taxes that resulted from fiscal consolidation allowed after-tax real wages to rise even as pre-tax real wages stayed constant or fell. This helped foster agreements between unions and firms that were aimed at moderating the high rate of wage inflation that prevailed in the early 1980s.

- Policies to promote competition. Antitrust regulations were put in place in 1993 and 1994, postal and telephone services were privatized, and certain other regulations (such as strict licensing requirements) were lifted.

Dutch economic performance since the early 1980s. Job creation in the Netherlands has been more rapid than in many other European countries. Officially measured unemployment has fallen sharply, and real GDP per capita has grown faster than the EU average. But these statistics mask other trends.

- Generous unemployment benefits. Dutch unemployment benefits remain very generous. For example, Dutch replacement rates (the proportion of earnings



replaced by unemployment benefits) are higher than those of every other OECD country except Denmark (see chart). And, reciprocity rates for unemployment and disability benefits remain near record-high levels. Because older workers (those aged 57½ years or older) are not required to look for work in order to receive unemployment benefits, many receiving such benefits are not counted in the official unemployment statistics.

- Low labor force participation. The share of the working-age population in the labor force is one of the lowest in the industrialized world—especially when adjusted for part-time work—and is particularly low for those aged 55 to 64. (The fact that older workers can receive unemployment benefits without actively searching for work probably contributes to this.)
- Part-time work. Temporary and part-time work has risen sharply over the past decade; the share of employment accounted for by part-time work is much higher in the Netherlands than in the rest of Europe.

Have the Dutch followed a “third way?” The impressive gains of the Dutch economy during the 1980s mainly reflect its “catching up” to other European countries from a dismal starting position. High rates of wage inflation during the 1970s left the Netherlands with a real wage level that was inconsistent with full employment. Reducing labor costs, promoting labor market flexibility, and making employment more attractive helped to speed up necessary labor market adjustments. But these measures represented an orthodox portfolio of reforms whose success essentially represents a return to a more normal situation. Currently, it appears that the wage-related imbalances that faced the economy on the eve of the reform program have been largely corrected, so any additional progress will come at a slower pace.

BUSINESS, CONSUMER, AND REGIONAL ROUNDUP

Supreme Court Upholds “Outsider” Trading Regulation. Last week the Supreme Court reinstated the securities trading conviction of a Minneapolis lawyer who had earned trading profits of more than \$4 million after learning of a corporate takeover planned by one of his firm’s clients. This was not a conventional insider trading case because the lawyer was not an employee of the corporation whose stock he was trading, and the corporation was not a client of his firm. The SEC successfully argued, however, that the lawyer’s trades involved a misappropriation of nonpublic information. The SEC claimed that such misappropriations have accounted for a large fraction of all insider trading cases in recent years. The decision bolsters the SEC’s ability to pursue such cases. Writing for the 6-3 majority, Justice Ginsberg argued that it did not make sense to preclude such trades by lawyers working for a firm representing the target of a takeover bid, while not doing so for those working for a firm representing the bidder. Moreover, she asserted that “investors likely would hesitate to venture their capital in a market where trading based on misappropriated nonpublic information is unchecked by law.”

Former Welfare Recipients May Find Themselves Short on Child Care. The Temporary Assistance for Needy Families (TANF) program requires at least 25 percent of a state’s adult welfare caseload to work or participate in work-related activities by fiscal year 1997, and 50 percent by fiscal year 2002. To comply with these new work requirements, many more welfare parents are likely to need child care. But a recent General Accounting Office report raises questions about the adequacy of existing arrangements. For example, the GAO estimates that the current supply of child care in Chicago would be sufficient to meet just 14 percent of the demand for infant care that will exist by the end of this fiscal year, and only 12 percent by 2002. Furthermore, in a nationwide survey of Job Opportunities and Basic Skills Training (JOBS) program officials, 23 percent stated that they could not meet the child care needs of all their participants. The GAO study looks only at registered child care centers and providers. Welfare parents would probably look to family, friends, and other unregistered sources for their child care needs, but the quality of such care might not be the same as in registered centers. The study’s focus was on the short term. Over time, new providers may enter the market.

Food for Thought on the Fourth. Where do the picnic meats and salad vegetables eaten at Fourth of July festivities normally come from? The most recent Census of Agriculture shows that Texas is the main source of hamburgers and steaks. Where hot dogs and ribs are concerned, Iowa accounts for approximately a quarter of the Nation’s total pork production. As for barbecued chicken, the traditional broiler producing states are Arkansas, Georgia, Alabama, North Carolina, and Mississippi. Meanwhile, California, sometimes called “America’s Salad Bowl,” accounts for one-fourth of all land used for vegetable production. Finally, on the beverage-side of things, Yakima and Benton counties in Washington represent almost four-fifths of the Nation’s hops production.

INTERNATIONAL ROUNDUP

Romania Legalizes Foreign Portfolio Investment. The Romanian government recently moved to allow foreign portfolio investment into its rapidly growing stock market. The new measure enables foreign investors to repatriate capital gains, principal, and interest freely, while taxing their capital gains at a modest 4 percent. These investment provisions are consistent with the pro-reform approach embraced by Prime Minister Ciorbea. In the last 6 months, the Romanian government has taken steps to liberalize prices and the foreign exchange market, accelerated its privatization schedule, and taken credible measures to cut its budget deficit. It has also moved to restructure various industries, including agriculture.

Poland: Still Doing Well, But Trade Deficit Bears Watching. In 1989, Poland embarked on its transition to a market-based economy. Since then, the success of Poland's economic transformation has been dramatic. Poland's economy was the first of the "transition economies" to exceed its pretransition level of GDP, and has chalked up 5 years of strong growth. Privatization in Poland has also proceeded at a steady pace. Poland's success can be traced to several factors, among them fiscal and monetary restraint, a strong commitment to reform on the part of the public sector (despite numerous changes in government since 1990), and an approach to privatization that has involved forming "strategic partnerships" with outside investors. However, high rates of capital investment have recently contributed to a rapid increase in the trade deficit. Borrowing from abroad in order to invest in productive capacity is a sensible strategy for a developing economy. But the magnitude and speed of the swing in Poland's trade balance have raised fears of a foreign exchange crisis similar to that which recently derailed economic reforms in the Czech Republic, whose economy not too long ago was also being held up as a model for other economies in transition.

Shaken Financial Sector Forces Thailand to Float Currency. The Bank of Thailand announced this week that it was floating the currency, the Baht, in the wake of a joint announcement by the Bank and the Finance Ministry that they were suspending operations of 16 finance companies, including some of the country's largest and best-known firms. This news was released 1 day after the Bank revealed that its foreign reserves had fallen by \$4 billion in the month of May. The companies will be suspended for 30 days, pending a forced merger into five core finance companies. According to Finance Ministry officials, their investigation had not revealed any fraud or wrongdoing on the part of the finance companies. This finding contrasts with events during Thailand's last major financial crisis 14 years ago.

RELEASES THIS WEEK

Employment and Unemployment

In June, the unemployment rate was 5.0 percent; it was 4.8 percent in May. Nonfarm payroll employment rose by 217,000.

Leading Indicators

The composite index of leading indicators increased 0.3 percent in May.

NAPM Report on Business

The Purchasing Managers' Index declined to 55.7 percent in June from 57.1 percent in May.

MAJOR RELEASES NEXT WEEK

Producer Prices (Friday)

U.S. ECONOMIC STATISTICS

	1970- 1993	1996	1996:3	1996:4	1997:1
Percent growth (annual rate)					
Real GDP (chain-type)	2.7	3.1	2.1	3.8	5.9
GDP chain-type price index	5.4	2.1	2.0	1.9	2.7
<u>Nonfarm business (NFB) sector:</u>					
Productivity (chain-type)	1.5	0.9	-0.2	1.3	2.6
Real compensation per hour:					
Using CPI	0.6	0.4	0.8	0.3	2.8
Using NFB deflator	1.3	2.2	2.4	2.8	2.7
Shares of Nominal GDP (percent)					
Business fixed investment	10.9	10.4	10.6	10.6	10.6
Residential investment	4.5	4.1	4.1	4.1	4.1
Exports	8.2	11.3	11.1	11.5	11.5
Imports	9.2	12.6	12.7	12.6	12.8
Personal saving	5.3	3.6	3.9	3.8	3.5
Federal surplus	-2.7	-1.7	-1.6	-1.4	-1.0
	1970- 1993	1996	April 1997	May 1997	June 1997
Unemployment Rate	6.7**	5.4**	4.9	4.8	5.0
Payroll employment (thousands)					
increase per month			327	166	217
increase since Jan. 1993					12538
Inflation (percent per period)					
CPI	5.8	3.3	0.1	0.1	N.A.
PPI-Finished goods	5.0	2.8	-0.6	-0.3	N.A.

**Figures beginning 1994 are not comparable with earlier data.

New or revised data in **boldface**.

FINANCIAL STATISTICS

	1995	1996	May 1997	June 1997	July 3, 1997
Dow-Jones Industrial Average	4494	5743	7242	7600	7896
Interest Rates					
3-month T-bill	5.49	5.01	5.05	4.93	5.01
10-year T-bond	6.57	6.44	6.71	6.49	6.31
Mortgage rate, 30-year fixed	7.95	7.80	7.94	7.69	7.62
Prime rate	8.83	8.27	8.50	8.50	8.50

INTERNATIONAL STATISTICS

Exchange Rates	Current level July 3, 1997	Percent Change from	
		Week ago	Year ago
Deutschemark-Dollar	1.750	1.3	14.9
Yen-Dollar	113.5	0.2	2.9
Multilateral \$ (Mar. 1973=100)	95.61	0.6	8.8

International Comparisons	Real GDP growth (last 4 quarters)	Unemployment rate	CPI inflation (last 12 months)
United States	4.1 (Q1)	5.0 (Jun)	2.2 (May)
Canada	2.8 (Q1)	9.5 (May)	1.4 (May)
Japan	2.6 (Q1)	3.6 (May)	1.9 (May)
France	1.0 (Q1)	13.0 (Mar)	0.9 (May)
Germany	2.8 (Q1)	7.8 (Apr)	1.5 (May)
Italy	-0.4 (Q1)	12.3 (Jan)	1.6 (May)
United Kingdom	3.2 (Q1)	6.9 (May)	2.6 (May)



EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

July 3, 1997

MEMORANDUM FOR THE PRESIDENT

FROM: KATHLEEN A. MCGINTY

CC: ERSKINE BOWLES

RE: CEQ WEEKLY REPORT

Handwritten: Kathy McGinty for IAM

97 JUL 3 PM 7:10

RESOURCE STEWARDSHIP

Protection of Yellowstone

Last week the House Appropriations Committee failed to include the \$700 million for the Land and Water Conservation Fund (LWCF) to which you and the Congressional leadership agreed. I think we are going to have to be more vocal about what the bipartisan budget agreement includes and take to task those who fail to support this budget agreement. Some Republicans are already catching some heat for not supporting LWCF appropriations.

SUSTAINABLE COMMUNITIES

American Heritage Rivers initiatives

We continue to make progress in getting your American Heritage Rivers initiative understood by the general public, members of Congress and the media. The more extreme elements of the private property rights movement have attacked us but counterweights are now in play. Attached is The Washington Post article from today. Governors Jim Edgar (R-IL) and George Pataki (R-NY) have expressed strong support and enthusiasm for the initiative. In fact, Governor Pataki has directed all state agencies and programs to work with riverfront organizations across the State to prepare applications. Cabinet members are speaking across the country, from Hartford, Connecticut to Los Angeles, to further spread the message. My staff is meeting with the Farm Bureau Board of Directors in Texas, Missouri and Iowa next week to help them understand the initiative and to reassure them that American Heritage Rivers creates no new regulations or mandates.

OTHER

Environmental Politics

Attached is an article from The New York Times yesterday which emphasizes that the environment still has the same appeal as it did throughout 1996.

Meeting with the National Association of Home Builders - Takings

On Thursday, July 3, the Vice President met with the President and other officers of the National Association of Home Builders (NAHB). Among other issues, the Vice President discussed a possible partnership with the NAHB in promoting home-builder use of sustainable building materials.

NAHB asked the Vice President to consider support for one of the most recent takings bills, which addresses NAHB's concern about the effects of wetlands and other zoning and land use restrictions on development rights. At least six takings bills have now been introduced in the 105th Congress. These bills are of two types: the compensation bills establish a broad right to compensation whenever a regulatory action diminishes property values; another type is "procedural" -- eliminating procedural bars to takings claims or requiring elaborate analysis of property rights issues raised by a regulatory decision that could be used against the agency in any later takings litigation. The Conference of Mayors and other organizations representing state and local governments have joined you and the Vice President in strongly opposing these bills, because they would either create billions of dollars of unwarranted liability for both the Federal and state governments, or tie agencies up in costly procedural knots whenever they act to protect public health or the environment. Notably, several state ballot referenda for takings bills have failed -- in Arizona and Washington, for example, as have efforts to pass such bills in state legislatures.

The NAHB struck the posture that they have retreated from the "extreme" proposals requiring compensation, in favor of a "procedural" bill introduced by Representative Elton Gallegly (R-CA), which would address ripeness and abstention defenses to takings claims. The Department of Justice and numerous agencies strongly oppose this bill, and have questioned its constitutionality.

CEQ will work with OSTP to convene a follow-up meeting with NAHB and interested agencies to explore the possibility of the building materials partnership, likely as part of an existing OSTP initiative. CEQ will also meet with NAHB again separately to better understand their position on the takings bills.

Japanese oil spill

Coast Guard, DOD, and NOAA have made offers of technical assistance to Japan, coordinated by the Department of State, in response to a spill of 390,000 gallons of light crude oil in Tokyo Bay that threatens a nearby fishing ground. The State of Alaska also may want to make an offer

of assistance, although Alaska has limited experience in light crude cleanups, particularly in an urban setting like Tokyo Bay.

By a curious coincidence, CEQ had a long-scheduled meeting this morning with representatives of a maritime industry coalition seeking limits to environmental liability for oil spills under the Oil Pollution Act of 1990 (OPA). This group is particularly concerned about the scope of liability for natural resource damages (NRD) under OPA, which was enacted in response to the Exxon Valdez oil spill in Prince William Sound, Alaska. CEQ may explore the possibility that some of the industry group's concerns could be addressed in the context of NRD reform under Superfund.

Muddying the Waters

Critics Fear a U.N. Plot Beneath Surface of 'Heritage Rivers' Initiative

By Joby Warrick
Washington Post Staff Writer

There are, as yet, no reports of black helicopters zagging over California's American River, and no sightings of blue-helmeted foreign troops at the ski resorts along the north fork. But rumors of the river's possible induction into a government cleanup program have convinced some locals that United Nations hordes are at the gates.

"The U.N. wants our river," declares a recent column in the Reporter, a newspaper in Placerville, Calif., a few miles to the south. Unless the scheme is stopped, the article predicts, local property owners will find themselves facing a maze of new restrictions, enforced by "aerial photography and satellite" surveillance. "Don't let America's land rights be stolen," it warns.

The source of the distress is a relatively modest Clinton administration initiative called "American Heritage Rivers." Announced by the president in his State of the Union address in January, it aims to enlist 10 U.S. waterways this year in a program that will make river communities eligible for more money to clean up pollution and revitalize waterfronts.

White House officials had expected some friendly jousting among groups vying for the slots. But what they did not expect was that the program, being run jointly by the Agriculture, Interior, Defense, and Housing and Urban Development departments and the Environmental Protection Agency, would become the newest symbol for anti-Washington factions convinced of a U.N. plot to take over the country's natural resources.

Phone calls and letters condemning the program have been streaming into the White House for weeks under a formal comment period that has been lengthened, in part, to accommodate the flow. Speakers decried the initiative in congressional hearings last month and at a "Fly-in for Freedom" in Washington, organized by "wise-use" groups that oppose federal environmental policies.

Some of the angrier voices equated "Heritage Rivers" with

socialism, communism and even treason.

"You've destroyed ethics, morals, home and God. Now American Heritage Rivers initiative?" begins one missive faxed to the White House last month.

"Stop your rivers land grab! We know you love the New World Order and federal control of everything," says another.

Not all the critics see U.N. fingerprints on the program. House Republicans expressed "strong reservations" about Heritage Rivers in a letter to the White

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House last month, and Rep. Helen Chenoweth (R-Idaho) filed a resolution to block the initiative. But congressional opposition stems from concerns that the rivers program would restrict property rights by injecting federal influence into watershed management decisions.

Other critics see the administration's 10 rivers as a down payment to a United Nations bent on global domination. Some of the letters to the White House reflect the conviction, held by some groups, that the United Nations is behind a shadowy plot to seize American

real estate and strip away individual rights and liberties.

What's the connection between a largely symbolic environmental program and the purported U.N. takeover? A similar name, for one thing. American Heritage Rivers sounds suspiciously like World Heritage Sites, the U.N. program that offers technical guidance to nations interested in preserving areas of natural or cultural distinction.

The establishment of 18 World Heritage Sites in this country—including Yellowstone National Park and the Statue of Liberty—fueled the conspiracy chatter on talk radio and certain Internet Web pages. Reported "sightings" of foreign troops or mysterious black helicopters around Heritage Sites have become so common that brochures for some national parks now include disclaimers denying ownership by the United Nations.

White House officials have reacted to the criticism with bewilderment. The American Heritage Rivers program is about reducing bureaucratic interference, not increasing it, officials said this week. Fully voluntary, it is designed to increase communities' access to federal money and programs to revitalize rivers.

Under the program, cities and organizations nominate a river or section of river for one of 10 Heritage designations. The designation makes it eligible for money for a variety of potential projects, such as recreational facilities or pollution control. Scores of groups already are competing for one of the designations.

Dan Berry, of the Washington environmental group CLEAR, viewed the opposition to the program as both misguided and ironic. "There are no regulations tied to this," he said.

Berry, whose group tracks organizations it considers hostile to environmental regulation, doesn't doubt that some of the U.N. conspiracy theories are sincerely believed. But he says the ones driving the opposition are less concerned about black helicopters than about the spread of government in any form.

"These are people," he said, "who see environmentalism as an incremental disease."

The Washington Post

THURSDAY, JULY 3, 1997

In a Reversal, G.O.P. Courts The 'Greens'

By RICHARD L. BERKE

WASHINGTON — The environmental movement is so closely identified with the Democrats, the joke goes, that to the Republicans, "green" is a place to putt at their country club golf courses.

But far from attacking the Democrats as belonging to "the eco-terrorist underworld," as House Republican leaders did only a year or so ago, many Republicans now declare themselves champions of the environment.

Speaker Newt Gingrich, the Georgia Republican who helped lead a failed drive in 1995 to dismantle environmental regulations, rose on the floor recently to press for conservation efforts. Gov. George E. Pataki of New York is one of a parade of Republican governors who sound like tree-huggers as they trumpet their environmental records. And Senator Alfonse M. D'Amato, Republican of New York, warned the White House last week that it had better strengthen its resolve on tightening the nation's clean air standards.

The shift may be sharper in tone than in substance, but it is particularly stark because Democrats themselves seem unsure about how much to press for environmental causes they have long supported. Just last week, many environmentalists were heartened that Mr. Clinton declared his support for new clean air requirements. But only a day later, they were distressed when he rebuffed calls for a specific target for reducing greenhouse gases.

The Democrats' ambivalence was clear early this year when the environment was nowhere to be found in the Congressional Democrats' "Families First" manifesto for the current Congress.

Some Democrats who were considered staunch allies are now under question. Representative Tom Sawyer, Democrat of Ohio, was endorsed last year by the Sierra Club but is now the target of a television commercial by the same group warping him not to cave in to "corporate

interests" on clean air standards.

In fact, nearly 80 of Mr. Sawyer's Democratic colleagues in the House had urged Mr. Clinton to reject the tougher air quality plan.

Most recently, several environmental organizations expressed outrage when Senator Carl Levin, a Michigan Democrat, last week introduced a regulatory overhaul bill that they said would threaten environmental rules.

The Republicans' gentler approach is clearly driven by electoral politics. A variety of polls show that the perception among voters that Republicans do not care about the environment cost the party dearly in the 1996 elections, especially among independents, women, men under the age of 45 and suburban voters. Surveys also found that the environment was a principal reason voters had favored Democratic challengers over Republican incumbents in several close races for Congress last year.

"The environment is potentially the sleeper issue going into the next millennium," said Kellyanne Fitzpatrick, a Republican pollster who has advised Mr. Gingrich and Senator Trent Lott of Mississippi, the majority leader, to tone down their anti-environment oratory. "We're doing abysmally on this issue. In the Northeast, it can be a potential killing field for Republicans in the future."

Recalling her conversations with Republican leaders, Ms. Fitzpatrick said, "If I want any of them to pay attention to the environment, I start out with two words: 'gender gap.'"

Many Republican politicians recite like a mantra the findings of a nationwide survey of adults in both parties who voted in the 1996 election by Linda DiVall, a Republican pollster. Asked what caused their greatest concern about Republicans controlling Congress, the largest proportion, 24 percent, cited the party's position on the environment.

"It's pretty clear that the environmental ballot box lessons of 1996 were learned by some Republicans better than by some Democrats," said Michael Casey, a spokesman for the Environmental Information Center and a former Democratic Party official.

Though Republicans are generally perceived as more sympathetic to industry, the notion of Republicans as "green" is not at odds with history. Teddy Roosevelt, after all, was always more comfortable in the outdoors than in the Oval Office, and he once predicted that his greatest legacy as President would be his conservation policies. It was Richard M. Nixon who created the Environmental Protection Agency by executive order. And many environmental battles have been fought as much on regional as on partisan grounds.

Still, the repositioning by the parties leaves many environmentalists wary. Some environmental groups said they did not trust the Republicans and accused them of going underground with their anti-environmental agenda.

Despite their oratory, many Republicans persist in quietly pressing for legislation that environmental groups sharply oppose, like diluting the Endangered Species Act, altering toxic cleanup efforts and limiting the protection of ancient timber.

But Representative Sherwood Boehlert of New York, one of the environmental movement's most prominent Republican allies, complained that his party had been unfairly maligned. "Don't judge us by the harsh rhetoric of a few people spouting off with ridiculous exaggerated statements," Mr. Boehlert said. While some leading Republicans said that they hardly expected to

become militant environmentalists, they are determined to neutralize the issue so it does not cause more damage. "It is a very important, maybe even crucial issue in the 1998 elections: how we handle our stewardship of the great treasures of America," said Senator John McCain, Republican of Arizona, who nevertheless draws poor ratings from environmental groups.

Environmentalists suggest that Democrats have wavered because they assume that conservation-minded voters will never defect to the Republicans. They also accuse Democrats of cozying up to business interests who could help finance their re-election campaigns. Another factor is that since Congressional Republicans have stopped pressing aggressively for an anti-environment agenda, Democrats in Congress no longer can coalesce as easily against Republicans.

That has left the White House to take the lead on environmental issues, which has seemed only to complicate matters.

"The White House has been more muffled, so it's been confusing for Democrats," said Celinda Lake, a Democratic pollster. In 1996, Democrats were not helped as much by identification with environmental causes as the Republicans were hurt, she pointed out. "Voters don't give you as much credit for being good as they give you demerits for being bad," Ms. Lake said.

Daniel J. Weiss, political director of the Sierra Club, argued that Democrats were still generally more devoted to the group's causes. "Congressional Democrats are hiding on the environmental issues," Mr. Weiss said, "while Republicans have drawn a smiley face on their poison."

One sign of the disaffection among Democratic voters who care about environmental issues is that a Green Party candidate in a special Congressional election in New Mexico recently pulled in enough votes to assure victory for a Republican.

When Senator Lott told a small group of environmental leaders early this year that they were appendages of the Democratic Party, Fred Krupp, executive director of the Environmental Defense Fund, was among those who challenged the Republican leader.

The New York
Times

July 2, 1997

1997 JUL 3 PM 7:23

THE WHITE HOUSE
WASHINGTON

July 3, 1997

MEMORANDUM FOR THE PRESIDENT

FROM: THURGOOD MARSHALL, JR. *EM for TM*
SUBJECT: Summary of Cabinet Weekly Reports
June 28 - July 4, 1997

DEPARTMENT OF TREASURY

- **Tax Package:** On June 30, Secretary Rubin joined you in announcing your proposed tax package and then joined Deputy Secretary Summers and other members of the White House economic team to brief the press corps on the details of your tax package. Treasury is drafting a letter to the conferees which will detail specific provisions the Administration would like to see included in the final bill, as well as those we would like to see omitted. Treasury also forwarded your tax cut proposal, speech and a distributional analysis to all Members of Congress. Treasury is working with the White House to coordinate outreach to governors and state elected officials.
- **Bosnia:** On June 30, Bosnia reached agreement with its London Club (private sector) creditors on a settlement that will provide deep debt reduction. Bosnia's negotiations on an IMF program are also progressing, with only a few major issues outstanding. An agreement is expected soon. An IMF Program is key to the establishment of statewide economic institutions and policies such as the central bank, unified customs tariffs, and the budget. Agreement on an IMF program is also a pre-condition for the convening of the next Bosnia donors conference, which is expected to raise \$1.4 billion for Bosnia's reconstruction.
- **Croatia:** On July 1, a majority of the World Bank's Board secured an indefinite postponement of a \$30 million financial sector development loan to Croatia. The U.S. pressed strongly for the loan's delay, arguing that the Croatian government's lack of commitment to implementing the Dayton peace settlement called into question the stability of the Croatian economy and that lending by the World Bank in such a situation was likely to be unproductive.

- **Haiti:** On June 30 - July 2, as part of a congressional delegation led by Representative Conyers, Under Secretary Kelly visited Haiti to review the capabilities of the Haitian National Police and Haitian Customs. In coordination with State, the Under Secretary met with former President Aristide, Haitian police and customs officials and President Preval, who is working on a new program to combat contraband and to improve Customs operations in Port-au-Prince.
- **Medicare:** Treasury is working with other agencies on the economics and administrability of the proposed Senate provision for relating the premiums of Medicare beneficiaries to income. In particular, Treasury is exploring the costs and benefits of administering this through the tax system, as opposed to a stand-alone premium paid to HCFA.
- **Tobacco:** Treasury is working to compute the revenue implications of the settlement.
- **D.C.:** The Jeffords Amendment to the Senate tax bill scaled back from \$75 million to \$60 million the amount of allocable tax credits for investments in and loans to D.C. businesses for the period after 1997 and before 2003. It also changed the provision that provided a 0 percent capital gains rate for certain D.C. assets to a 10 percent rate for any D.C. asset acquired during 1998. In addition, the amendment directs Treasury to create a \$50 million trust fund to be used for debt service on D.C. school bonds that are issued after March 31, 1998, to be used to pay for construction, rehabilitation and repair of public schools in D.C. The Senate bill now contains no wage credit, no tax-exempt financing benefits (other than the school trust fund) and no reduced income tax rate for residents of certain areas, as is provided in the House version.

DEPARTMENT OF JUSTICE

- **Lithuanian Genocide Charges:** On June 24, the Lithuanian Government formally announced its intention to prosecute Aleksandras Lileikis, formerly of Norwood, MA, under Lithuania's genocide statute. This case is the first prosecution of a WWII-era war criminal by post-Soviet Lithuania and the first prosecution under that nation's 1992 genocide law. Lileikis, who headed the Nazi-sponsored Lithuanian Security Police during World War II, fled to Lithuania in June 1996 after a MA court issued a denaturalization decision. In an April meeting at the White House, the Vice President raised the case with Lithuanian parliament Chairman Vytautas Landsbergis.
- **Gang Prevention Conference:** Last week, the U.S. Attorney for the District of AZ sponsored a Native American Youth Gang Prevention Conference, in conjunction with the AZ Drug and Gang Prevention Resource Center and DOJ's Office of Juvenile Justice and Delinquency Prevention. At the conference, the teams discussed gang prevention strategies and prepared a gang prevention program tailored for their Reservation.

- **Remedial Instruction:** In Agostini v. Felton, the Supreme Court, in a 5 to 4 decision, overruled the 1985 Aguilar case and held that "a federally funded program providing supplemental, remedial instruction to disadvantaged children on a neutral basis is not invalid under the Establishment Clause when such instruction is given on the premises of sectarian schools by government employees pursuant to a program containing safeguards" to avoid an "excessive entanglement between church and state."
- **New England Milk Compact:** On June 23, Federal District Judge Paul Friedman granted summary judgment in favor of Secretary Glickman and the Northeast Dairy Compact Commission. The milk industry challenged the action taken by the Secretary under Section 147 of the Federal Agricultural Improvement and Reform Act of 1996, which conditioned Congress' consent to the Northeast Dairy Compact on a finding by the Secretary that there was a compelling public interest for the Compact in New England. The court rejected claims that the Secretary's action was invalid because Section 147 was an unconstitutional delegation of legislative power to the Secretary and the Secretary had exercised his delegated authority arbitrarily and capriciously in violation of the Administrative Procedure Act.

DEPARTMENT OF COMMERCE

- **Electronic Commerce:** On July 7-8, Secretary Daley will travel to Bonn, Germany, for the German-EU GII Global Information Networks Ministerial Conference. The Secretary will address the opening plenary session on "Creating a Favourable Environment for Electronic Commerce."
- **Census 2000:** On July 8, in New Brunswick, NJ, and on July 9, in Philadelphia, PA, Census Director Riche will lead two Census 2000 Partnership Rollout meetings. The meetings are designed to inform states, localities, tribes and communities of plans for Census 2000 and to discuss ways to improve methods of communication and community involvement. Subsequent partnership and rollout events will occur in nine additional cities through the end of August.
- **Innovation Awards:** On June 30, the National Institute of Standards and Technology received word that two of its projects have been selected to receive R&D 100 awards for the year's 100 most technologically significant products and processes. The awards, for NIST's work in software and machining, will be presented September 25 in Chicago, IL.
- **Baldrige Awards:** From June 30 - July 7, the National Institute of Standards and Technology is doing a special media promotion on the Administration's proposed Malcolm Baldrige National Quality Award for healthcare and education organizations.

DEPARTMENT OF LABOR

- **Deputy Secretary Higgins:** On June 27, the Senate unanimously confirmed Kathryn Higgins as the Deputy Secretary of DOL. On July 2, Ms. Higgins was sworn in by Secretary Herman.
- **Individuals with Disabilities:** Next week, DOL will award a total of \$1.3 million to three organizations that train and help place disabled individuals in mainstream jobs. The recipients are Resource, Inc. in Minneapolis, MN, the Cerebral Palsy Research Foundation in Wichita, KS, and Able-Disabled Advocacy, Inc. in San Diego, CA.
- **Detroit Newspaper Strike:** On July 1, National Labor Relations Board Chairman Gould announced that a unanimous Board authorized injunctive relief in the Detroit, MI, newspapers dispute. The NLRB instructed the General Counsel in Washington and the Regional Director in Detroit to proceed immediately in the federal district court to seek an injunction which will, if granted, reinstate those strikers who have unconditionally offered to return to work and who have not been discharged for strike misconduct. The court will be asked to direct the newspapers to displace replacement employees if this is necessary to reinstate the strikers.
- **Unemployment Statistics:** On July 3, Secretary Herman released the unemployment figures for June 1997.

DEPARTMENT OF TRANSPORTATION

- **TWA 800:** On June 17-18, FAA staff met with NTSB to address NTSB's TWA 800 safety recommendations. Both agencies agree that the common goal is to minimize the risk of fuel tank explosions and share the belief that the reduction of ignition sources and fuel volatility are the most promising paths to this objective. In July, as part of the ongoing investigation of the cause of the TWA 800 accident, the NTSB plans to perform ground and flight testing on a Boeing 747. The purpose of the test is to collect data on the temperature and pressures in the center fuel tank. FAA officials will hold editorial board meetings regarding the TWA 800 anniversary this week and next with the *Washington Post*, *USA Today*, *NY Times*, *AP* and *Newsday*. On July 10, the House Transportation and Infrastructure Subcommittee on Aviation will hold a hearing on TWA 800. FAA will testify.
- **Assistance to Families of Aviation Disasters:** On July 9, Secretary Slater will chair the opening session of a meeting of the Secretary's Task Force on Assistance to Families of Aviation Disasters in Washington, D.C.

- **Secretary Peña Suit:** Secretary Peña and the Director of DOT's Office of Small and Disadvantaged Business Utilization were voluntarily dismissed, without prejudice, from a case challenging their actions in reinstating a contractor. A former Coast Guard auditor had alleged in the suit that they improperly forced the Coast Guard to reinstate the contractor, a Disadvantaged Business Enterprise, after the company was terminated for poor performance. On July 22, the Court will consider the government's suggestion of sanctions at a hearing.
- **Youth Driver Drug Testing:** On July 2, the *Federal Register* published a NHTSA notice soliciting applications from states interested in implementing a demonstration of drug testing for young driver license applicants. This demonstration was recommended in the Presidential Initiative on Drugs, Driving, and Youth, submitted to you by Secretary Slater in February. Qualifying states will be awarded planning grants to investigate the many complex practical and legal issues involved in a drug testing demonstration and to develop a detailed proposal for the demonstration itself. On July 30, Secretary Slater and Director McCaffrey have tentatively scheduled an event to officially release the *Presidential Initiative* and formally kick-off this effort.

SMALL BUSINESS ADMINISTRATION

- **Racial Reconciliation:** Administrator Alvarez will continue to amplify your initiative in speeches to major Hispanic-American groups over the next few weeks. On July 10, the Administrator will sit on a panel at a meeting of the Mexican American Women's National Association and address the National Summit on Hispanic Women in Business in Washington, D.C. On July 21, the Administrator will address the Council of La Raza in Chicago, IL.

FEDERAL EMERGENCY MANAGEMENT AGENCY

- **MI Tornadoes:** On July 2, severe storms and tornadoes struck southeast MI, causing six deaths, dozens of injuries and extensive power outages. At least four tornadoes were sighted in Wayne County, where most of the damage to homes, businesses and infrastructure occurred. Wayne County officials have declared a state of emergency in the communities of Hamtramck and Highland Park. FEMA is putting together a Preliminary Damage Assessment team in anticipation of a request for federal assistance.

DEPARTMENT OF INTERIOR

- **Cherokee Nation:** The constitutional crisis within the Cherokee nation continues. The BIA police remain as the law enforcement presence, having replaced the Cherokee marshals several months ago. The Tribal council and representatives from the disputing factions have been developing a strategy for resolving the crisis. This would involve

appointing a three to five member independent commission to investigate grievances against all parties. DOI's objective has been to minimize its intervention into the internal affairs of the Tribe, while assuring the safety of the community.

- **Washington Monument Restoration:** On July 3, TARGET stores announced that it has raised the \$5 million necessary for the National Park Service to begin restoration of the Washington Monument, which is in need of major work to combat weathering. Work on scaffolding and repointing the Monument is scheduled to begin in late winter 1998. The Monument will remain open through the majority of the project, which is expected to be completed by 2000.
- **National Parks Phone Cards:** American Express and the National Park Foundation are offering pre-paid phone cards entitled "National Parks -- America's Legacy." For every card purchased, American Express will donate \$1 to NPF for priority projects throughout the park system.
- **Grand Staircase-Escalante:** The Notice of Intent will be published soon as the BLM develops the management plan and the Environmental Impact Statement for the Grand Staircase-Escalante National Monument. BLM will seek comments from all individuals, groups, organizations, agencies and American Indian Tribes with an interest in the national monument.
- **Roosevelt Monument:** On June 25, the House Resources Committee reported the Senate-passed version of a resolution to add a depiction of President Roosevelt's disability to the FDR Memorial. This bill is supported by the Administration and was the compromise announced prior to the dedication of the Monument in May. Once the bill is approved, the National Park Service will set up an advisory committee to consider additions to the monument.
- **Secretary's Schedule:** On July 6, Secretary Babbitt will depart for a week-long trip to AK where he will be briefed on the National Petroleum Reserve and possible future land exchanges in the region.

UNITED STATES DEPARTMENT OF AGRICULTURE

- **Food Waste Report:** More than one-fourth of all the food produced in the U.S. is wasted, according to a new USDA study released July 1 by Secretary Glickman at the annual meeting of Second Harvest in San Diego, CA. The study, the first of its kind in 20 years to examine and quantify food loss, found that in 1995 about 96 billion pounds of food, or 27 percent of the 356 billion pounds of food available for human consumption in the U.S., were lost at the retail, consumer and food service levels.

DEPARTMENT OF ENERGY

- **Subcritical Experiment:** On July 2, DOE performed the first of two experiments to obtain scientific data on the properties of nuclear materials. The experiment, code named Rebound, took place at the NV test site. The configuration and quantities of explosives were such that no nuclear explosion took place. Thus, the experiments are consistent with the provisions of the Comprehensive Test Ban Treaty. Subcritical experiments are integral to DOE's Nuclear Weapons Stockpile Stewardship Program and the U.S. commitment to a world free of testing while maintaining a reliable nuclear deterrent.
- **AK Radiation Program:** On July 1, in Barrow, AK, DOE will dedicate the ARM North Slope of AK Cloud and Radiation Test bed site. This ceremony will signal the beginning of a ten-year data-gathering effort to improve general circulation models used to predict global change. The ARM site on the North Slope will help obtain the information needed to understand the influences of cold regions on global climate change and of climate change on cold regions.

DEPARTMENT OF EDUCATION

- **MA Charter Schools:** On June 23, the MA Congressional delegation wrote to Secretary Riley for information on MA charter schools and the Secretary's views on how effectively they are meeting basic requirements of equity, access and quality education for their students. The letter follows an earlier letter expressing concern about allegations made by the MA Teacher Association that some MA charter schools may not be complying with federal law, including the Individuals with Disabilities Education Act.
- **MI Ed-Flex:** On July 2, Secretary Riley approved MI's application to participate in the Ed-Flex program. The program allows up to 12 participating states to waive certain federal statutory and regulatory requirements affecting state and local school districts and schools. In exchange, the state must waive its own statutory or regulatory requirements and hold schools and districts affected by waivers more accountable for student performance. MI is the tenth state to be approved for participation in the program.
- **Education Spending:** In June, DOEd's National Center for Education Statistics released *Revenues and Expenditures for Public Elementary and Secondary Education: School Year 1994-95*. The report shows that over \$273 billion was raised and \$244 billion spent by local, state and federal governments to fund public education for students in Pre K - 12 in school year 1994-95. Three out of every five dollars were spent on teachers, textbooks and other instructional services and supplies. An average of \$5,528 was spent on each student.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

- **Child Health:** On July 2, HHS released an interagency report on children's health. The report stated that an increasing percentage of children are being enrolled in early childhood education programs, more are being read-to by their parents and fewer children are uncertain about where their next meal is coming from "America's Children: Key National Indicators or Well-Being," issued by the Federal Interagency Forum on Child and Family Statistics, presents 25 key indicators on critical aspects of children's lives, including their behavior and social environment, economic security, education and health. This first report indicates that several areas of children's lives are not improving, such as an increase in drug use and smoking and more youths becoming victims of violent crime, abuse or neglect.
- **HIV Home Test:** On June 23, Johnson & Johnson's Direct Access Diagnostics (DAD) unit, marketer of the Confide home HIV test collection kit, announced that it will shut down operations, go out of business and recall all stock on shelves and in distribution. The decision was attributed to weak consumer demand. On August 8, DAD will discontinue testing of already-distributed kits and the company will discontinue operation of the information center for obtaining results after August 29. After that date, calls will be forwarded to CDC's AIDS hotline.
- **Child Welfare Training:** A *Federal Register* Notice to be published the week of July 7 will request applications, subject to the availability of FY97 funds, to support child welfare training projects. Approximately \$3.5 million grant dollars may be available.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

- **Homelessness, Jobs, Crime and Drugs Grants:** This month, HUD will review applications for assistance award programs around the country. The funding will include: \$625 million to help homeless Americans find places to live and become self-supporting; \$42 to help people move from welfare to work; \$20 million to fight crime in neighborhoods surrounding HUD-assisted housing under the Safe Neighborhood Grants Program; \$20 million for welfare-to-work initiatives for public housing residents; \$20 million to help provide housing and support services for low-income people with HIV/AIDS and their families and \$17 million to reduce drug-related crime in HUD-assisted housing.
- **Management Reform:** On June 25, Secretary Cuomo announced the HUD 2020 Management Reform plan to streamline operations and stamp out waste, fraud and abuse in HUD programs. The plan includes a targeted buyout program that will reduce the HUD workforce to 7,500 from its current 10,500 by the year 2000, and the creation of a new enforcement division under the direction of the FBI.

VETERANS AFFAIRS

- **Tobacco:** Several major veterans service organizations, including the Vietnam Veterans of America and the Disabled American Veterans, opposed the Administration's legislative proposal to disallow compensation claims for disabilities based on illness resulting from tobacco use. They argue that since the Administration considers tobacco addictive, it should not oppose paying compensation to those who became addicted during service, especially when the Armed Forces were providing free cigarettes. In July, VA will release comparative criteria for diseases resulting from post-service smoking based on nicotine dependence that began in service.
- **Wheelchair Games:** On July 5-10, more than 600 veterans from across the Nation, Puerto Rico and Great Britain are expected in San Diego, CA, to compete in the 17th National Veterans Wheelchair Games. Cosponsored by VA and the Paralyzed Veterans of America, this event is open to U.S. military veterans who use wheelchairs because of spinal cord injury, certain neurological conditions, amputations or other mobility impairments.

GENERAL SERVICES ADMINISTRATION

- **D.C.:** On July 9, GSA will hold a general information meeting to solicit public participation in the identification of adaptive use concepts for the Tariff Building located between 7th and 8th Streets, NW in D.C.
- **Administrator's Schedule:** On July 14, Administrator Barram will greet EPA and AID employees on their first day at the new Ronald Reagan Building.

UNITED STATES INFORMATION AGENCY

- **Rabin - Fulbright Awards:** On July 8, Leah Rabin will present the first Yitzhak Rabin-Fulbright awards to two Israeli senior scholars at the Tel Aviv residence of Ambassador Indyk. USIA will issue a news release and conduct extensive outreach of the presentation.

cc:

The Vice President

Erskine Bowles

Franklin Raines

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Sylvia Mathews

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