

THOMAS P. THRASH
ATTORNEY AT LAW
1101 GARLAND STREET
LITTLE ROCK, ARKANSAS 72201-1214

TELEPHONE (501) 374-1058
FACSIMILE (501) 375-3141

00 FEB 22 PM 1:19

fax

to: President Bill Clinton

fax #: 202-456-6703

from: Thomas P. Thrash

date: February 21, 2000

Subject:

pages: -20-

NOTES:

Dear Mr. President:

Mike Hausfeld asked me to pass
this to you. I am hopeful that we
will be able to meet in the next
week or so.

Sincerely,
Tom Thrash

2-26-00
Send to Burkhardt for reply?

Yes ☒

No ☐

Dan - what do you think?
Coordinate w/ NSC / Counsel

Justin

COHEN, MILSTEIN, HAUSFELD & TOLL, P.L.L.C.

HERBERT E. MILSTEIN
MICHAEL D. HAUSFELD
STEVEN J. TOLL
ANN C. YAHNER
LISA M. MEZZETTI
ANDREW N. FRIEDMAN
RICHARD S. LEWIS
DANIEL S. SOMMERS
DANIEL A. SMALL*
GARY E. MASON
JOSEPH M. SELLERS
SHARON A. SNYDER
MARK S. WILLIS***

ANTHONY Z. ROISMAN
MARGARET G. FARRELL

OF COUNSEL

JERRY S. COHEN (1925-1995)

1100 NEW YORK AVENUE, N.W.
WEST TOWER, SUITE 500
WASHINGTON, D. C. 20005-3964

(202) 408-4600
FACSIMILE (202) 408-4699

999 THIRD AVENUE
SUITE 3600
SEATTLE, WA 98104

(206) 521-0080
FACSIMILE (206) 521-0166
www.cmlht.com

PAUL T. GALLAGHER
CHRISTINE E. WEBBER
ALEXANDER E. BARNETT
MATTHEW J. IDE**
MATTHEW F. PAWA
SUZETTE M. MALVEAUX*
MARY N. STRIMEL
LYN M. RAHILLY*
KRISTOPHER A. KINKADE**
AGNIESZKA M. FRYSZMAN
JENNIFER A. GUNDLACH
CHARLES E. TOMPKINS

*ADMITTED ONLY IN MD
**ADMITTED ONLY IN WA
***ADMITTED ONLY IN MA

SENDER'S DIRECT DIAL

January 31, 2000

The President
The White House
Washington, D.C.

Dear Mr. President:

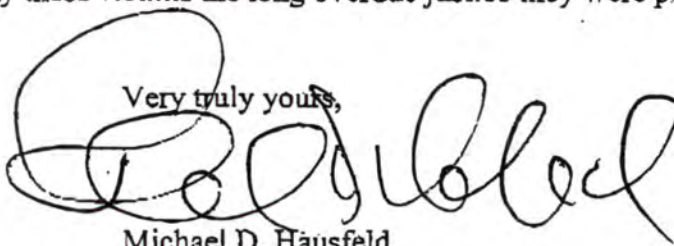
The last time we met you commended me for my success in the *Texaco* racial discrimination case. You urged that I continue the effort to correct all forms of injustice because the resulting benefits were "worth it." Many of us have tried to do precisely that in seeking a measure and sense of justice for former forced and slave laborers of the German economy during World War II. We believed we had achieved an agreement in December in Berlin when Germany offered the sum of 10 billion DM, present value, to compensate for these offenses in return for legal peace.

However, in an affidavit (attached) filed by attorneys representing the German industrialists, representations were made under oath which seek to undermine that agreement. In essence, the affidavit claims that the framework of a settlement on these issues is expressed in an undisclosed exchange of letters between you and Chancellor Schroeder. Among other objectionable provisions, this private accord purportedly provides that if the victims don't agree with its terms, German companies will request that United States courts involuntarily dismiss the claims of the victims and such requests will be supported by a Statement of Interest filed by the United States government.

The President
January 31, 2000
Page 2

A bilateral imposition between Germany and the United States of a resolution of these offenses against the wishes of the victims and without their agreement would be most unfortunate and most likely unconstitutional. I sincerely seek your guidance and involvement in assuring that nothing is done to deny these victims the long overdue justice they were promised and achieved in Berlin.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael D. Hausfeld", written in a cursive style.

Michael D. Hausfeld

MDH/scb

Enclosure

DECLARATION OF ROGER M. WITTEN

I, Roger M. Witten, hereby declare as follows:

1. I am an attorney authorized to practice before the United States District Court for the District of Columbia.
2. I am a partner in the law firm of Wilmer, Cutler & Pickering, attorneys for the German Economy Foundation Initiative ("GEFI"), the group of German companies that, together with the Government of the Federal Republic of Germany, announced the anticipated creation of the Foundation described in greater detail below. As counsel for the GEFI, I have participated extensively for more than 2 year in discussions with both the German and U.S. Governments to reach an intergovernmental resolution of all matters involving German companies arising out of World War II and the Nazi era and have participated in the ongoing negotiations described below that have been co-sponsored by the German and U.S. Governments.
3. I have personal knowledge of the matters declared herein and if called upon to testify I could and would competently testify to the truth of the following.

Summary

4. On December 17, 1999, the United States and Germany announced an agreement in principle following an international conference in Berlin, Germany (the "Berlin Agreement").

5. The Berlin Agreement is not a judicial settlement. Rather, as announced by Germany and the United States, it is a government-sponsored agreement on a framework for achieving a global, intergovernmental resolution of all matters involving German companies arising out of World War II and the Nazi era. This intergovernmental resolution is being negotiated by Executive Branch representatives of the German and U.S. Governments, with the participation of the Governments of Belarus, the Czech Republic, Israel, Poland, Russia, and the Ukraine; representatives of the German private economy (the GEFT); and representatives of victims who suffered injury or loss at the hands of German companies during World War II or the Nazi era, including the Conference on Jewish Material Claims Against Germany, allied Jewish survivor organizations, and lawyers in the United States and abroad (including lawyers who represent plaintiffs in cases pending in the United States). These interested governments and other persons participating in the negotiations reached consensus on the agreement announced in Berlin by the German and U.S. Governments. To the extent that the Berlin Agreement has been reduced to writing, it consists of an exchange of letters between President Clinton and Chancellor Schroeder.

6. In broad terms, what is contemplated is an Executive Agreement, between the United States and Germany, calling for, among other things, the adoption of federal legislation in Germany creating a Foundation to make substantial payments to those who suffered at the hands of the Nazi Government or German companies during World War II or the Nazi era, to establish an endowed fund for humanitarian projects, and for other purposes. The Foundation will be an instrumentality of the German state, funded in part by the German Government and in part by German companies. The Foundation's funds, capped at DM 10 billion (approximately U.S. \$5.2 billion), will be allocated in accordance with the U.S.-German

Executive Agreement and the German legislation creating the Foundation. The Foundation will not be subject to suit in the United States, will not become a party to any judicial proceedings in the United States, and will not be subject to the direction or supervision of any court in the United States.

7. All payments by the Foundation will be conditioned on the prior dismissal, with prejudice as to the named plaintiffs only, of all pending cases in the United States against German companies and their affiliates arising out of World War II or the Nazi era. Those plaintiffs' counsel who have participated in the negotiations leading to the Berlin Agreement have agreed, once a final agreement is in place, to seek such dismissals voluntarily, and, pursuant to the U.S.-German Executive Agreement, the U.S. Government will file Statements of Interest supporting such dismissals in all pending and any future cases filed in the United States. Details of the mechanics for seeking expedited dismissal of the cases, once final agreement is reached, remain to be determined, but the role of U.S. courts will be very limited.

8. The United States will assure each U.S. court, in its Statement of Interest, that in the judgment of the United States the Foundation represents the fairest and most efficient way to resolve these issues stemming from World War II and the Nazi era. Germany will undertake, pursuant to the Executive Agreement, to ensure that the Foundation provides appropriately extensive publicity, and it is not contemplated that any notice will be given by or under the supervision of U.S. courts. The U.S. Government has also expressed its willingness to state that nothing in the Executive Agreement is intended as reinterpreting any existing treaties.

9. More remains to be done before the Berlin Agreement can be implemented. The final texts of the Executive Agreement, the German legislation creating the

Foundation, the U.S. Statement of Interest, and other operative documents all remain to be prepared by the relevant governments. The terms that are not yet entirely resolved include the allocation of the Foundation's resources among various groups of recipients, the details of legal closure, including the mechanics for dismissal of all pending cases in the United States, and the amount of any payment out of the Foundation's resources to counsel representing plaintiffs in the United States. All of these matters must be resolved by the governments taking part in the ongoing negotiations, together with the other participants, and there is no role for U.S. courts. In addition, the Berlin Agreement will be conditioned on commitments by the governments of Central and Eastern Europe and Israel to take all necessary measures within their jurisdictions to resolve these issues stemming from World War II and the Nazi era.

Statement

History and General Nature of the Foundation Concept

10. It is well known that the totalitarian Nazi State initiated, implemented, and enforced deplorable policies of slave and forced labor and persecution on a massive scale. After the defeat of the Nazi regime, the Federal Republic of Germany, on behalf of the German people and as the legal successor of the German Reich, established extensive restitution and compensation programs for victims of the Nazi era. These programs to redress past wrongs were undertaken pursuant to government-to-government agreements, with the United States and other countries, and pursuant to German federal legislation. These programs reflect fundamental policy decisions made by the policy branches of the German and U.S. Governments and other governments involved.

11. The German Government has made payments totaling more than DM 100 billion (more than U.S. \$60 billion), and many of the programs continue to this day. The United Nations has characterized Germany's system for compensating victims of Nazi persecution as "[t]he most comprehensive and systematic precedent of reparation by a Government to groups of victims for the redress of wrongs suffered" Study Concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedom, U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities, 45th Sess., Provisional Agenda Item 4, at 44, U.N. Doc. E/CN. 4/Sub. 2/1993/8.

12. It is well known that German companies were integrated into the government-run economy under the Nazi regime and were thus also involved in the wrongs perpetrated by it. Many German companies have previously made substantial funds available, on a voluntary basis, to relieve the consequences of past wrongs.

13. Notwithstanding these previous measures, the new German Government of Chancellor Schroeder, which came into power in September 1998, pledged in its coalition contract to establish a government foundation to provide additional humanitarian relief to slave and forced laborers and other victims of the Nazi era. On February 16, 1999, Chancellor Schroeder and the leaders of twelve major German companies proposed the establishment of a parallel private foundation, the "Foundation Initiative of German Enterprises."

14. The German Government and a larger number of German companies have since agreed that the creation of a single humanitarian foundation, "Remembrance, Responsibility and the Future," formed under German federal law and funded by capped contributions from both the German Government and German companies, would better achieve

their stated objectives than two parallel foundations. These objectives are to continue to accept German moral responsibility for the wrongs that occurred and to seek to ensure that the inhumanities committed during the Nazi regime are never forgotten and similar inhumanities are never allowed to occur again. The Foundation is intended to supplement the very significant measures already undertaken by the German Government and individual companies since the end of World War II and the very significant ongoing programs. The Foundation will provide additional relief on a humanitarian basis to those who suffered as a result of the involvement of German companies in the Nazi government-run economy.

15. The Foundation is a voluntary initiative on the part of the German Government and German companies, regardless of whether or to what degree they were involved in the Nazi government-run economy. The founders have not created it out of any legal obligation. The founders do not believe that any legal basis exists for claims against German companies arising out of the injustices of World War II and the Nazi era. Rather, the German Government and German companies are acting in continued recognition of their moral responsibility for the wrongs committed during the Nazi era. All U.S. courts that have ruled on suits filed against German companies relating to their participation in the Nazi government-run economy have dismissed such suits on a variety of legal grounds, including nonjusticiability, in light of the history of governmental and intergovernmental resolution of these issues as reparations since the end of World War II.

16. An indispensable precondition to the establishment of the Foundation, fully agreed to by the German and U.S. Governments, the GEFI, and other interested participants, is all-embracing and enduring legal peace and, in particular, protection from present and future lawsuits and administrative and regulatory proceedings in countries whose citizens

would benefit from the Foundation. Payments from Foundation funds are contingent upon the dismissal of all pending lawsuits. The U.S. Government supports the objective of all-embracing and enduring legal peace in return for the establishment of the Foundation.

17. After the announcement of the GEFI in February 1999, the German and U.S. Governments opened a series of negotiations with other interested governments and with the participation of other parties to make the Foundation a reality. These U.S.-German sponsored negotiations are continuing and have been held alternately in the United States and Germany. The negotiations have been chaired by U.S. Deputy Secretary of Treasury Stuart Eizenstat, Special Representative for Holocaust Issues, on behalf of the United States, and Count Otto Lambsdorff, former Economics Minister (who assumed the chair formerly held by Bodo Hombach, then Chief of Staff for Chancellor Schroeder), on behalf of Germany.

18. Participants in these U.S.-German government-sponsored negotiations include the Governments of Belarus, the Czech Republic, Israel, Poland, Russia, and the Ukraine; the GEFI and its counsel, Wilmer, Cutler & Pickering; and representatives of victims, including the Conference on Jewish Material Claims, allied Jewish survivor groups, and lawyers in the United States and abroad (including lawyers who represent plaintiffs in cases pending in the United States).

19. The number of German companies participating in the GEFI has increased from the initial twelve companies that joined Chancellor Schroeder in announcing the initiative on February 16, 1999, and now exceeds 100 companies, with additional companies joining every week. The GEFI membership is not in any way coextensive with those German companies that have been sued in courts in the United States. It includes numerous companies that are not

subject to suit in the United States and many companies that were not in existence during the Nazi era.

The Berlin Agreement

20. As a result of months of government-sponsored negotiations, an agreement in principle was embodied in an exchange of letters between Chancellor Schroeder and President Clinton on December 13 and 14, 1999, covering the general framework for the global resolution of all World War II and Nazi-era wrongs involving German companies. That agreement in principle reflected the consensus of all parties participating in the U.S.-German government-sponsored negotiations and was formally announced to the public in Berlin on December 17, 1999, at a press conference attended by Chancellor Schroeder, Special Representative Count Lambsdorff, U.S. Deputy Secretary of Treasury Eizenstat, and Dr. Manfred Gentz, Chief Financial Officer of DaimlerChrysler and Chair of the Coordination Circle of the GEFIL. The negotiation session was opened and addressed by U.S. Secretary of State Madeleine Albright and German Foreign Minister Joschka Fischer. During the negotiation session, all participants consented to the agreement in principle outlined by Deputy Secretary Eizenstat and Count Lambsdorff.

21. The key features of the Berlin Agreement, supported by all parties participating in the negotiations, are (1) agreement on the establishment of a single, public foundation to be created pursuant to German federal legislation and recognized as the exclusive forum and remedy for victims of German companies during World War II and the Nazi era; (2) agreement on a capped amount of DM 10 billion (approximately U.S. \$5.2 billion), covering all payments, costs, and expenses, to be funded by equal capped contributions of DM 5 billion

from the German Government and German companies; and (3) agreement on a framework for all-embracing and enduring legal peace in countries whose nationals would benefit from the Foundation.

22. The centerpiece of the Berlin Agreement would be a binding Executive Branch agreement between the United States and Germany recognizing the Foundation as the exclusive forum for the resolution of all claims that have been or may be asserted against German companies arising from World War II and the Nazi era. This bilateral Executive Agreement would recognize the establishment of the Foundation as a culmination of 50 years of efforts by the two governments to address issues arising out of World War II and the Nazi era and would recognize that all-embracing and enduring legal peace advances the foreign policy interests of both the United States and Germany. The Executive Agreement builds on various agreements entered into by Germany, the United States, and other countries since World War II. The U.S. Government has also expressed its willingness to state that nothing in the Executive Agreement is intended as reinterpreting any existing treaties. The text of the Executive Agreement is not final.

23. Pursuant to the Executive Agreement, Germany would adopt German federal legislation establishing a joint German Government-German Economy public Foundation, to be sited in Germany, to be governed by German law, to be an instrumentality of the German Government and enjoy sovereign immunity where applicable, and to be administered by an international board of trustees. The Foundation would have two primary functions: (1) to make payments, based on relaxed standards of proof, to victims of the Nazi era of any nationality who suffered at the hands of the Nazi Government or German companies, whether or not those companies still exist or are participating in the Foundation, and who have

not already been compensated, including payments to (a) slave and forced laborers; (b) those who allege property-related losses or damage, including Aryanization, bank claims, and insurance claims; and (c) those who suffered personal injury in other cases; and (2) to establish an endowed, permanent fund, entitled "Remembrance and the Future," which would finance projects that contribute to the endeavor of avoiding the recurrence of inhumanities of the kind experienced during the Nazi era, and in memory and honor of those who perished then, those who have not survived since then, and their heirs. The "Remembrance and the Future" fund would support projects that serve to promote understanding between nations and serve social justice and international cooperation in the humanitarian sector, support youth exchange programs, and keep alive the memory of the threat posed by totalitarian, unlawful regimes and tyranny.

24. The German federal legislation establishing the Foundation is currently being drafted by the German Finance Ministry and will be introduced in the German legislature in the coming months and enacted on an accelerated legislative calendar. A paper outlining the key features of the German legislation would be attached to the Executive Agreement. The text of this paper and the text of the German legislation are not final.

25. Pursuant to the Executive Agreement, Germany would undertake to ensure that the Foundation provides appropriately extensive publicity concerning its existence, its objectives, and the availability of funds.

26. Pursuant to the Executive Agreement, the United States would file a Statement of Interest in each pending and any future lawsuit in any state or federal court in the United States stating that dismissal of the lawsuit is fair and equitable in view of the

establishment of the Foundation and the difficult legal issues faced by plaintiffs, including nonjusticiability, that the Foundation should be recognized as the exclusive forum for the resolution of all claims that have been or may be asserted against German companies arising from World War II and the Nazi era; that the lawsuit touches on the foreign policy interests of the United States; and that dismissal is in the interests of the foreign policy of the United States. Deputy Secretary Eizenstat would also file a declaration setting forth the history of government-to-government negotiations addressing the issues and the history of the negotiations culminating in the U.S.-German Executive Agreement. A paper outlining the elements of the U.S. Government Statement of Interest would be attached to the Executive Agreement. The texts of this paper, the Statement of Interest, and the Eizenstat Declaration are not final.

27. Pursuant to the Executive Agreement, the United States would also commit to take comparable action in state and local administrative and regulatory proceedings in support of the objectives of the Agreement, including all-embracing and enduring legal peace.

28. The Berlin Agreement embodies the consensus of all parties participating in the U.S.-German government-sponsored negotiations as to how all-embracing and enduring legal peace in the United States would be effected pursuant to a final agreement. Once all remaining issues have been resolved and the operative documents are final, those plaintiffs' counsel participating in the negotiations would agree to dismiss voluntarily, with prejudice to the named plaintiffs only, all pending actions in state and federal courts. No parties would move to certify any classes, and thus unnamed putative class members would not be bound by the dismissals. The U.S. Government, as noted above, would file its Statement of Interest in all pending cases, supporting dismissal in conjunction with either plaintiffs' voluntary dismissal with prejudice or defendants' motions to dismiss the claims of those plaintiffs who did not

voluntarily dismiss their pending lawsuits. No payments would be made from the Foundation's funds until all pending lawsuits are dismissed. If any future cases are filed against German companies arising out of World War II or the Nazi era, the U.S. Government would file its Statement of Interest in each such future case urging dismissal.

Issues That Remain to Be Resolved Pursuant to Negotiation

29. The Berlin Agreement outlines the basic framework for reaching a global, intergovernmental resolution of all matters arising out of the role of German companies during World War II and the Nazi era. However, several significant issues, including those mentioned below, remain to be resolved pursuant to the ongoing U.S.-German government-sponsored negotiation process before any final agreement can be reached.

30. First, there must be agreement on the final language of the operative documents, including the Executive Agreement, the key features of the German federal legislation establishing the Foundation, the elements of the U.S. Government Statement of Interest, and other relevant documents.

31. Second, the DM 10 billion capped amount must be allocated among the various parts of the Foundation, among the various categories of victims, and among the various countries in which victims currently reside.

32. Third, the steps that the governments of Central and Eastern Europe and Israel will take to provide all-embracing and enduring legal peace in their jurisdictions must be resolved.

33. Fourth, the question of attorneys' fees for counsel in the United States from within the capped funds of the Foundation must be resolved.

Role of Courts in Implementation of Any Final Agreement

34. The Berlin Agreement envisions virtually no role for any court in the implementation of a final agreement on the global, intergovernmental resolution of these issues.

35. Defendants have taken the position, in all cases, that there are no justiciable claims against German companies involving World War II or the Nazi era. All courts that have addressed this issue have agreed that plaintiffs have no valid legal claims, see e.g., Friedman v. Bayer Corp., 99 CV 3615 (E.D.N.Y. Dec. 15, 1999) (Sifton, C.J.), and/or that plaintiffs present no justiciable claims in light of the extensive post-war government-to-government resolution of these issues, see e.g., Burger-Fischer v. Degussa, 65 F. Supp.2d 248 (D.N.J. Sept. 13, 1999) (Debevoise, J.); Iwanowa v. Ford, 67 F. Supp.2d 424 (D.N.J. Oct. 28, 1999) (Greenaway), and have accordingly dismissed all of plaintiffs' asserted claims. See also Kelberine v. Societe Internationale, 363 F.2d 989 (D.C. Cir. 1965) (dismissing because "the problem is not within the established scope of judicial authority"); Fishel v. BASF, Civ. No. 4-96-CV-10449, slip op. (S.D. Iowa 1998) (dismissing because no valid legal claims); Princez v. BASF Group, Civ. No. 92-0644, slip op. (D.D.C. 1995) (stipulated dismissal reciting plaintiff's acknowledgment that "claims such as those in the pending complaint are to be resolved through government-to-government negotiations (which are presently in progress between the United States government and the German government concerning U.S. nationals) rather than litigation"). The plaintiffs have appealed the dismissals in Burger-Fischer and Iwanowa to the Court of Appeals for the Third Circuit, which has scheduled plaintiffs' appeals for immediate

briefing. The decisions of these appeals will of course be controlling precedent with respect to cases currently pending in the Third Circuit, including the some 25 lawsuits pending in the District of New Jersey.

36. Consistent with the decisions in Burger-Fischer and Iwanowa, and other cases, recognizing the history of intergovernmental and governmental resolution of matters regarding World War II and the Nazi era, the Executive Agreement envisaged by the Berlin Agreement would be a government-to-government resolution of all matters concerning the role of German companies during World War II and the Nazi era. The Executive Agreement would recognize the establishment of the Foundation as a culmination of 50 years of efforts by the two governments to address issues arising out of World War II and the Nazi era.

37. The framework for implementing all-embracing and enduring legal peace outlined in the Berlin Agreement does not constitute a judicial settlement of any of the pending cases and shares no attributes with a judicial settlement. The Berlin Agreement does not envision any role for courts in the United States other than accepting the voluntary dismissal of plaintiffs' lawsuits as a precondition, mandated by the German legislation, to the payment of funds from the Foundation.

38. The Executive Agreement will not call for any judicially supervised settlement of any case. The Executive Agreement will be a binding government-to-government agreement and not an agreement entered into by private parties in any particular lawsuits. The interested governments and other participants in the negotiations who have reached consensus on the Berlin Agreement are not identical to the litigants in the pending lawsuits. To my knowledge, the Governments of Belarus, the Czech Republic, Israel, Poland, Russia, and the

Ukraine are not parties in any lawsuit against German companies, nor are the Jewish Claims Conference and allied Jewish survivor groups. Most German companies participating in the Foundation are not parties to any lawsuit, and many, including German companies named as defendants in pending lawsuits, are not subject to the jurisdiction of any U.S. court. Many of the German companies participating in the Foundation were not in existence during the Nazi era. The victims of the Nazi regime who would benefit from the Foundation include potentially all persons who suffered at the hands of German companies during World War II and the Nazi era, whether or not those companies still exist, and may include victims of public companies, SS-run companies, and public agricultural workers who could not recover in U.S. courts because of the sovereign immunity of the German Government.

39. There is no relationship between the categories of wrongs to be covered by the Foundation and the claims alleged in any lawsuit. The lawsuits allege specified categories of wrongs, while the Foundation will cover all wrongs involving German companies arising out of World War II or the Nazi era.

40. There would be no ongoing role for courts in overseeing or supervising the Foundation; rather, pursuant to the Executive Agreement, Germany would ensure that the Foundation complied with the requirements set forth in the Agreement and was subject to German law. There would be no court-administered notice to putative class members; rather, pursuant to the Executive Agreement, Germany would ensure adequate publicity of the Foundation so that victims could file applications for payment from the Foundation. Only those named plaintiffs who voluntarily dismiss their cases would be bound by their dismissals because the Berlin Agreement would not call for the certification of any putative class in any case; unnamed putative class members would not be bound by the dismissal of named plaintiffs.

claims. There would be no role for any court in determining attorneys' fees; rather, any attorneys' fees would be negotiated.

41. In summary, there is no relationship in any respect between the Foundation and any lawsuit in the United States, except for the indispensable precondition to be reflected in the German legislation that no payments will be made from the Foundation until all pending cases in U.S. courts are dismissed.

42. The United States and Germany will recognize in the Executive Agreement that the Foundation will assure broad coverage of both victims and companies, which would not be possible through judicial proceedings in any jurisdiction. The United States and Germany will also recognize in the Executive Agreement that the Foundation will provide as expeditious as possible a mechanism for making fair payments to eligible victims. The U.S. Government will declare in its Statement of Interest that dismissal of all pending and any future lawsuits against German companies is fair and equitable in view of the establishment of the Foundation and in light of the difficult legal hurdles faced by plaintiffs and the uncertainty of their litigation prospects and the particular difficulties faced by heirs. The U.S. Statement of Interest will recognize that resolution of these issues and the establishment of the Foundation are in the interests of the elderly victims so that they may receive some measure of justice in their lifetimes. And, the U.S. Statement of Interest will recognize that all-embracing and enduring legal peace is in the interests of the foreign policy of the United States.

43. Any consideration of consolidation of all pending U.S. federal court cases is at best premature, and consolidation at this time is unnecessary and inappropriate. No court management or supervision is necessary or contemplated by the Berlin Agreement.

44. The Berlin Agreement is merely an agreement in principle, which leaves a number of issues to further negotiation pursuant to the ongoing U.S.-German government-sponsored negotiations. As noted above, the operative documents, including the Executive Agreement, the key features of the German legislation, the elements of the Statement of Interest, and other papers are only in draft form. German legislation establishing the Foundation will not be enacted for months. Judicial participation in these matters at this time is not only unnecessary, it would disrupt the ongoing intergovernmental negotiations to reach a global resolution of these issues and delay establishment of the Foundation and thereby delay payments to the elderly victims.

45. The participants are discussing, but have not reached agreement on, the mechanics for seeking expedited dismissal of all pending cases once final agreement is reached. There is no agreement of the parties to the U.S. lawsuits whether consolidation, at some point in the future when final agreement has been reached, would be necessary or beneficial in seeking the expeditious dismissal of all pending cases.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed on January 20, 2000, in New York, New York.

By: R. M. Witten

Roger M. Witten

THE WHITE HOUSE
WASHINGTON

DATE: 2/22/00

NOTE FOR: Taylor Branch

The President has reviewed the attached, and it is forwarded to you
for your:

Information ☒
Action ☐

Thank you.

Staff Secretary
(x6-2702)

cc:

Taylor Branch
1806 South Road
Baltimore, MD 21209



The Guardian
The Observer

THE PRESIDENT HAS SEEN 2-20.00

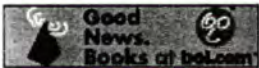
Give them the best of the Guardian for a whole year!

Subscribe now.

Unlimited sites Useful stuff

Home | Guardian eye | The Guardian | Columnists | Talk | Saved stories | Help
Breaking news | The wrap | The Observer | Special reports | Quiz | Search

*copied
Lockhart
Podesta
S. Ricchetti
maria E.
minyon Moore
T. Branch*



Daily sections

Weekly sections

Search this site

- Tools
- Text-only version >
 - Send it to a friend >
 - Read it later >
 - See saved stories >

- The Guardian
- Front page >
 - Story index >

- In this section
- [Trouble unlimited](#)
 - [We was robbed](#)
 - [The pro-Clinton factor](#)
 - [Helena Smith @Belgrade](#)
 - [You can't rely on anyone](#)

newsUnlimited The Guardian

Inside America

The pro-Clinton factor

Americans want to forgive and move on. Republicans forget this

The US elections: special report

Harold Evans
Monday February 21, 2000

The ranks of the loyalist Republicans should scarce forbear to cheer. The comeback of GW Bush in South Carolina's Saturday primary against the in-your-face insurgent John McCain was a relief to the party bosses, who have staked all on GW - but they should have seen the smiles on the faces of Al Gore's men in the Democratic encampments.

The Democrats reckon that McCain, a maverick with a chest full of medals, a wise-cracking mouth and an appeal to the independent voters proven once again, would have been harder to beat in the general election. The latest poll suggests they are right. In presidential trial heats just conducted by CNN/USA Today/Gallup, Al Gore is at 45% and Bush at 50% but McCain romps away with 55% against Gore's 39%. The most recent ABC/Washington Post poll, taken between February 3 and 6 shows that with Pat Buchanan taking 5% for the Reform party - and he looks set to be the nominee - Bush and Gore are at a statistical dead heat.

Of course, the Republican scrap is not over yet. McCain will almost surely win his native state of Arizona next Tuesday and he has the edge the same day in Michigan where Bush will not be able to play Onward Christian Soldiers at the volume he did in South Carolina, where the rightwing Christian Coalition is well organised. But even if McCain wins in Michigan he faces another blitz of negative advertising and the superior resources of the Bush campaign in getting out the Republican vote on a succession of Super Tuesdays in March

*Lockhart
S. Ricchetti
Podesta
maria E.
minyon Moore
T. Branch*

You can't rely on anyone
these days - but you have
to

A boost for the bard

A Country Diary

The Observer

Front page ▶

Story index ▶



succession of Super Tuesdays in March when many states votes.

While the Republican leaders have been sticking needles in models of John McCain, something else has been going on. Al Gore, the Democratic frontrunner, has been gaining in popularity. It is a safe bet that he has squashed the challenge from Bill Bradley, a clever and likable man who has somehow come over as a patronising whiner: folks, how privileged you are to be able to vote for me.

And now a Gore presidency is not the chimera it was thought a few months ago. The polls vary, but all agree that Gore has gained from three to five points in the last month. What is going on? Gore is coming over as a man who knows his stuff - and is less stuffy. The Bradley challenge has roused him to fight. The common wisdom has been that his experience and decency won't count because reference to eight years in the White House will remind everyone that he stood loyally by a liar. The Republicans have been playing this "Clinton fatigue" hard. Bush and McCain have been competing over who is the most unlike Clinton. Most commentators have bought into this leprosy theory.

I wonder.

Just as during the impeachment crisis, the public does not parrot what it is told it is supposed to be thinking. A little publicised poll by Gallup/CNN/USA Today, taken between February 2 and 15, finds Clinton's job approval rate at 62%; Fox News/Opinion Dynamics has it at a phenomenal 66%. Bill Clinton has been a very successful president: but for the 22nd amendment he might well have run and won a third term.

The good times are the principal reason for this, but there has also been a deepening realisation that there was indeed a rightwing plot to bring him down. A majority wants to forgive and forget Clinton's lapses and that was before the publication of a best selling book by the non-partisan journalist and lawyer Jeffrey Toobin. In A Vast Conspiracy, Toobin has coolly unravelled how extremists of the political right tried to use the legal system to undo Clinton's election. Clinton certainly had a less than fair press which constantly had its ear cocked, and its critical faculties suspended, for any leak from Ken Starr's prosecutorial team. There were big headlines for the purported scandals of Whitewater, Travelgate, Filegate, and others, but when they all evaporated the acquittals got nothing like the same play,

even in the better papers like the New York Times and Washington Post, a shaming fact which gives a little glow of martyrdom to the departing president.

"The astonishing fact," writes Toobin, "may be this one: in spite of his consistently reprehensible behaviour, Clinton was, by comparison, the good guy in this struggle." He looked it when he stood up to give his state of the union address, full of good news and high promise, and the Republicans sat on their hands like so many thwarted bullies.

Clinton has kept away from the campaign while Gore has established his independence. But come the fall expect an ebullient president to emerge. He is eager to do that, refreshed and confident again. And he is by far and away the best campaigner of them all, as good as Harold Macmillan whose "Supermac" battle cry he could echo. "You've never had it so good. Why risk it with the untried Daddy's boy from Texas?"



Guardian Unlimited © Guardian Newspapers Limited 2000