

THE WHITE HOUSE
WASHINGTON

May 29, 1993

MEMORANDUM FOR BROOKE SHEARER

FROM: JOHN PODESTA 

SUBJECT: WHITE HOUSE FELLOWS

I received your letter of May 17 concerning a possible White House Fellow and put it aside. Frankly, I just couldn't figure out where to physically put someone so that they could be fully integrated into the functioning of the Staff Secretary's Office.

It recently dawned on me that in addition to moving the paperflow to and from the President, I am also managing or helping to manage many of the open government/information policy initiatives of the Clinton Administration. The kinds of things I'm referring to are revising the Executive order on classification, expanding the Freedom of Information Act to cover more electronic records, developing the National Information Infrastructure, etc.

If there is someone on your list who has a press background, a computer technology background, or a background as an historian, they might find these issues interesting and challenging, and I sure could use the talent.

Let me know.

**PRESIDENT'S
COMMISSION ON WHITE HOUSE FELLOWSHIPS**
THE WHITE HOUSE

May 17, 1993

The Honorable John D. Podesta
Assistant to the President
and Staff Secretary
Executive Office of the President
The White House
1600 Pennsylvania Avenue
Washington, DC 20500

Dear Mr. Podesta:

During the week of June 1, the President will announce next year's class of White House Fellows. Each year, eleven to nineteen White House Fellows serve as Special Assistants to members of the President's White House staff, to the Vice President, to members of the Cabinet, and to agency heads.

We invite you to consider having a member of the 1993-94 class of White House Fellows working with you as a Special Assistant from September 1, 1993, to August 31, 1994. We are very proud that the White House Fellows program has lived up to its original promise of developing our best and brightest young people for future service to the country. Your agreement to participate in the Program will enable us to continue this commitment.

The crux of the program is the work assignment. Although the Fellows take part in an education program which includes luncheon seminars and occasional travel, work takes priority. Your Fellow will become a full and productive member of your staff.

If you are interested in selecting a Fellow, please provide the name of a person on your staff who will serve as a liaison to review resumés and schedule interviews. A set of files on the new Fellows will be sent to your designee the week of May 31. Interviews will be scheduled the week of June 21.

I would be delighted to meet with you and your staff to discuss the candidates or any aspect of the program. I look forward to hearing from you soon.

Sincerely,

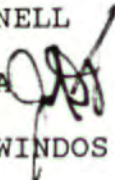


Brooke Shearer
Director

THE WHITE HOUSE
WASHINGTON

May 29, 1993

MEMORANDUM FOR MIKE NELSON
MARLA ROMASH
SALLY KATZEN
BRUCE MCCONNELL

FROM: JOHN PODESTA 

SUBJECT: SON OF GPO WINDOS BILL

S. 564, the Electronic Information Access Enhancement Act of 1993, has passed the Congress and is here ready to be signed. OMB is doing an interagency clearance, but I anticipate no problems.

As I recall, this was the Vice President's initiative in the last Congress.

I mentioned to Marcia that we might want to do a signing ceremony on Thursday with librarians, information industry executives, and relevant members of Congress. (Recess may cut down on Congressional attendance.) Let Marcia know what you think.

On a more substantive note, I'm attaching a memo from Steve Metalitz with the Information Industry Association seeking language in a signing statement. Let me know your views on this, if any.

cc: Carol Rasco
Bruce Reed
Marcia Hale

**Information Industry Association**

555 New Jersey Avenue, N.W., Suite 800
Washington, D.C. 20001
202/639-8262
Fax: 202/638-4403
Cable: INFORMASSIN WASHINGTON

May 28, 1993

TO: John Podesta, Staff Secretary to the President
Todd Stern, Deputy Staff Secretary to the President

FM: Steve Metalitz

RE: Signing statement on S. 564, Government Printing Office
Electronic Information Access Enhancement Act of 1993

This bill, approved by the Senate in March, passed the House without amendment earlier this week. Per my previous conversations with Todd, I am writing to suggest that language along the following lines be included in the President's signing statement:

Since the purpose of the Act is to enhance public access to federal electronic information, existing channels for that access must be preserved. The GPO currently makes available federal electronic information in the form of magnetic tapes or other media. As the legislative history of this bill makes clear, parties requesting this data must continue to receive it in a timely and non-discriminatory fashion, without unjustified delays or new restrictions on re-use or re-dissemination of the data.

With the signing of this bill, the President can reinforce an important substantive and political message. As set forth in "Technology for America's Economic Growth," while the Administration seeks to promote dissemination of federal information, it also seeks to encourage the growth of the information industry. That industry depends on continued timely access to federal data, which it uses to develop value-added information products and services for diverse markets.

The signing statement would send a very positive signal to the private sector information industry, reassuring it of the Administration's commitment to fostering a competitive marketplace for information services. It would also encourage industry support for the Administration's information infrastructure initiatives.

IIA's concerns about this issue were heightened by a recent instance of unjustifiable government interference with public access to government data covered by the GPO bill. The incident is described in the attached letter, which was sent to several Democratic Senators as soon as the bill was reported from the Rules Committee. This led to a floor colloquy between Senators Ford and Simon (attached). The timely access issue is a hot button for several information companies, which were uncomfortable with the bill, although IIA did not oppose it.

Thanks for reviewing this material. Please let me know if you have any questions.

**Information Industry Association**

555 New Jersey Avenue, N.W., Suite 800
Washington, D.C. 20001
202/639-8262
Fax: 202/638-4403
Cable: INFORMASSN WASHINGTON

March 18, 1993

The Honorable Paul Simon
United States Senate
Washington, DC 20510

Dear Senator Simon:

I write on behalf of the Information Industry Association (IIA) to alert you to a serious information policy concern presented by S. 564, the Government Printing Office Electronic Information Access Enhancement Act, and to seek, on an urgent basis, your assistance.

S. 564 was introduced seven days ago, and has not been the subject of any hearings. This legislation was ordered reported this morning by the Committee on Rules and Administration. While IIA is not opposed to the bill in concept, we are convinced that it must be amended to guarantee continued timely and nondiscriminatory public access to the Congressional Record and other vital information disseminated by the GPO.

As you know, IIA member companies help meet America's information needs by developing and distributing products and services based upon information originating with the federal government. These companies, and their many customers throughout the business world, in academia, in government, and in professional circles, depend upon timely, convenient, and non-discriminatory access to government data, including magnetic tape versions of the Congressional Record text distributed by GPO.

S. 564 directs the GPO to create new on-line delivery systems for the Congressional Record and certain other government information. IIA has concerns about the impact of this new initiative on long-standing private sector channels for electronic dissemination of this information. A recent episode provides a concrete — and disturbing — example.

During the closing weeks of the last Congress, the House passed H.R. 5983, a bill similar to this year's S. 564. (The Senate did not act upon H.R. 5983 before adjournment.) IIA urged the drafters of last year's legislation to include a provision preserving timely and non-discriminatory public access to GPO-held government information through existing means of dissemination. We were repeatedly told by the staff director of the Joint Committee on Printing, and by other Congressional staff, that our suggested provision was unnecessary, since nothing in the bill could be read to authorize any delay or discrimination in making this material available. Because a reference to this issue was included in the report of the House Administration Committee, IIA decided not to oppose H.R. 5983. This decision was communicated to Congressional staff.

The Honorable Paul Simon
March 18, 1993
page two

On Tuesday, October 6, 1992, we were shocked to learn from the staff director of the Joint Committee on Printing that he had instructed GPO not to release to information companies the tapes containing text of the previous day's Congressional Record. I was told by this staff member that he had, in his phrase, "placed a hold" on these tapes in order to confirm his suspicion that a Senator was objecting to Senate consideration of H.R. 5983 at the instigation of one of the regular recipients of the tape, or another information company. This staff member specifically told me, and repeated the statement to representatives of at least one IIA member company, that the reason he had ordered the tapes withheld was to bring pressure that would allow him to ascertain who had instigated the hold on H.R. 5983.

Although the JCP staff order for GPO to deny access to this data was apparently rescinded or countermanded within a few hours, the whole episode provides a powerful object lesson of the need for statutory guarantees of public access to public information. The order was presented to us as a deliberate effort to manipulate public access to information for the stated reason of achieving a specific political result. That the material in question was the text of the Congressional Record — the basic source of information about the workings of the people's branch of government — makes the incident even more troubling.

Simply put, if what happened last October is not now against the law, it should be. That is precisely what our proposed amendment to last year's bill sought to achieve.

Given this history, we were disappointed that S. 564, when it was introduced on March 11, lacked the strong statutory access guarantees we sought. We were alarmed to learn late yesterday afternoon that S. 564 was scheduled for Rules Committee mark-up this morning, foreclosing any realistic opportunity to amend the bill at the committee level.

We urge you to consider offering the attached amendment when the full Senate turns to S. 564. Since the bill is obviously on a fast track, we urge you to preserve the opportunity to offer the amendment by giving appropriate notification to the leadership of your concerns about this measure.

IIA has concerns about two other differences between S. 564 and its predecessor in the 102nd Congress: the new mandate for GPO to operate an "electronic storage facility" for public information, and the omission of a requirement for a feasibility study of further GPO electronic information dissemination ventures. We are confident that these concerns can be addressed if there is an adequate chance to discuss these changes and offer our input. With regard to the preservation of existing channels of access to information controlled by GPO, however, we firmly believe that explicit statutory guarantees are needed to prevent any recurrence of the disturbing events described above. We hope that you will agree, and look forward to working with you to achieve this goal.

Sincerely yours,


Steven J. Metalitz
Vice President and
General Counsel

THE WHITE HOUSE

WASHINGTON

May 29, 1993

Mr. Jim Champagne
President
Champagne Ink
Suite 101
3 Washington Circle, N.W.
Washington, D.C. 20037

Dear Jim:

Thanks for your draft. I passed it
along to David Kusnet.

Sincerely,



John Podesta
Assistant to the President
and Staff Secretary



3 Washington Circle N.W.
Suite 101
Washington, D.C. 20037



Jim Champagne
President
(202) 296-7429

May 27, 1993

Mr. John Podesta
Assistant to the President
Staff Secretary
The White House
Washington, DC 20500

Dear John:

Attached is an unsolicited draft for your review.

I do not pretend to know what President Clinton thinks about certain issues. However, I am a skilled speechwriter who knows how to convey a message very well. And, given my 25 years as a Washington political observer (and sometime participant in the process itself) I have a pretty good feel for what needs to be said on special occasions.

The prospect of President Clinton running into some problems with the Vietnam Memorial speech does not sit well with me. And so I took the liberty of drafting something "appropriate" for the occasion.

Obviously, you are under no obligation whatsoever even to read it. But, if you have the time, I would appreciate it if you would take a look at it.

Assuming, you think it has some merit, feel free to pass it on to George Stephanopoulos or David Kusnet or whoever.

Also, there is absolutely no charge involved or no return favor necessary.

Keep fighting the good fight.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jim Champagne", with a long horizontal line extending from the end of the signature.

President Bill Clinton
Memorial Day Remarks at the Vietnam Memorial - 1993

Draft Only

Good afternoon. The brave and fine souls whose names are etched in this memorial wall represent a free people -- men and women who followed their sense of duty to the ultimate sacrifice. And it is because of their selfless offering -- and that of other high heroes of battlefield conflict -- that every American citizen lives now in the warm glow of freedom and democracy.

On a personal note, I have come upon my middle age during a time that mimics the spirited resonance of a great General who ended his brilliant career with the words, "...of the Corps, and the Corps, and the Corps." Only the refrain for me and for many others of my generation has been the constant and sorrowful lament, "...the Wall, the Wall, the Wall."

My name is not on that wall. Yet, I am not embarrassed by that fact. The ambiguities of the Vietnam Conflict blurred the usual perfectly chiseled admonition of "Duty, Honor, and Country" that every American embraces as a great commandment.

But, I did my duty as I saw fit. I felt then no dishonor, nor am I plagued by that possibility now. And I am proud of my country, albeit humbled by the task of service to it that is with me every waking moment as your President.

No matter. There are people who still would disparage my convictions of two decades ago -- as there are now also others who decry my presence here today. And I am left with the unlikely obligation of having to rewrite my personal history to satisfy their perceived indignation.

This I can not do. Nor would I do, even if I could. I have not been a mere passenger in the generational tide that carried many of my peers to an untimely death in a conflict on foreign soil. And I shall not be shamed into believing that my convictions and actions as a young man merit the righteous censorship of others, let alone eternal condemnation from any fraternity.

So I stand before this dark stone edifice -- this wall of memory -- first as a common citizen who wishes to offer a sincere and noble expression of reverence and recognition to Americans who died in battle, and second as your President who is mindful of the inviolable duty of the Commander-in-Chief both to remember and cause others to remember the true cost of democracy's legacy.

Our presence here marks no special tribute to militarism or to war. Instead, we celebrate bravery and the quintessential charity that these heroes displayed and acted out for their families, for their neighbors and for their country.

We do not mourn their gift to us. The time for grief is long past, even though the bittersweet memory of loved ones is indeed infinite.

Rather, we rejoice in the sureness of freedom bequeathed to each and every American by the men and women memorialized here. And we also bear witness to the fact that their singular acts of courage and daring championed the cause of justice.

We, as a people, will never accept less. The men and women who we humbly honor on this Memorial Day are ample testimony to that promise.

It is said that death without a purpose is a sad event.

Today, let us take the opportunity to reaffirm our country's purpose of liberty and justice for all. And with our heads held high, let us pay tribute to the those dead soldiers -- men and women -- who saw value in this country's purpose and who accepted the ultimate price.

At the same time, we are obliged to remain vigilant and aware that there are those who would close their eyes to the constant threats to liberty and justice. They are people who, through bigotry, prejudice and ignorance, mock the deep sleep of our brave fellow countrymen and women who rest buried in earthen graves around the globe.

We should not suffer such mockery. We must always guard against the apathy that breeds it and the haughtiness that perpetuates it. To paraphrase President Kennedy, we should not tolerate those who "enjoy the comfort of opinion without the discomfort of thought."

Nonetheless, we must strive also with equal fervor to maintain that difficult but valuable balance that allows dissent and debate.

We are not, after all, a monolithic people. We do not impose our values or our ideas on anyone else. But we will defend our cherished rights against any dark and sinister forces -- domestic or from beyond our shores -- that seek to deprive us of those rights. The memory of those who have fallen in past battles demands nothing less.

We are a homogeneous group of ordinary people and those of us whose heroism and bravery we praise today were also ordinary people. But they were ordinary people who shared in an extraordinary belief that the price of liberty and justice is never too dear and never too painful.

Freedom, my friends, has infinite possibilities. The brave and fine souls whose names are etched in this great wall gifted us with the opportunity to enjoy freedom, now and in the future, and to realize its unending potential.

We must never forsake that gift, no matter that this charge brings with it awesome responsibilities. Freedom says loudly and clearly that we must heed always the cry for help against tyranny. It says also with similar clarity and insistence that we must take whatever measures are necessary to protect against any gradual and silent encroachments of the powerful upon the powerless. If we shirk this call to duty, those who here sleep their just peace might well seek vengeance on such moral poverty.

Responsibility is the keystone of our liberty. We can not avoid it. Woe to anyone who would entertain the notion that liberty is -- ever has been or ever will be -- an easy burden. To be sure, it is as glorious as it is difficult to preserve.

Today, let us recommit ourselves to its preservation. In so doing, we shall praise and honor the countless men and women who gave their lives to secure freedom's place in ours.



THE WHITE HOUSE
WASHINGTON

DATE: 05/28/93

TO: RICKI SEIDMAN

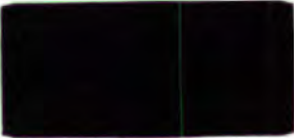
FROM: JOHN D. PODESTA
Assistant to the President and
Staff Secretary



I am forwarding this book to
you per the President's
request.

When you have finished with
it, please leave all notes
attached, and send to
Records Management.

Thanks.





Working here is like an
amusement park!
There's excitement!
There's challenge...

to A. S. S. S. S. S.

Fyl - A.

...and it will often make you sick.

© 1984 MARK LARSEN, INC.

The Public,
PRIVACY
and the Press:

*Have
the
Media
Gone
Too
Far?*



AMERICAN PRESS INSTITUTE
J. MONTGOMERY CURTIS MEMORIAL SEMINAR
SEPTEMBER 13, 14, 15, 1992

The Public,
PRIVACY
and the Press:



*Have
the
Media
Gone
Too
Far?*

AMERICAN PRESS INSTITUTE
J. MONTGOMERY CURTIS MEMORIAL SEMINAR
SEPTEMBER 13, 14, 15, 1992

J. MONTGOMERY CURTIS



J. MONTGOMERY CURTIS

API's annual J. Montgomery Curtis Memorial Seminars began in 1984 as a tribute to the Institute's former executive director (1951-67). Curtis was city editor of the *Buffalo Evening News* when he joined API in 1947 as an associate director. Later, as a corporate executive with Knight-Ridder newspapers, he served on the API Board of Directors.

Curtis died in 1982. In his memory, the Knight Foundation contributed a \$75,000 challenge grant that was matched by donations from newspaper friends of the Institute and long-time Curtis admirers. Income from the fund supports this annual seminar on a subject of interest or concern to the newspaper industry.

Introdu

Seminar

Session

Session

Session

Session

Session

Group

PREVIOUS CURTIS PROGRAMS

1984

The Public Perception of Newspapers: Examining Credibility

1985

New Strategies for Newspaper Advertising Growth

1986

Attracting and Retaining Newspaper Readers

1987

Covering the Candidates: Role and Responsibilities of the Press

1988

Newspaper Design: 2000 and beyond

1989

Customer Service: A Blueprint for Success

1990

The Drug Crisis: Role of the Press

1991

Free Speech Restrictions and the Press

EDITOR'S NOTE

The proceedings were tape-recorded and edited. An effort was made to put everyone's comments in a readable style. Thus, the transcript is not always verbatim and segments of some discussion may be missing. We regret any omissions or errors in this transcript and request that any quotes taken from this material first be doublechecked with the source.



FINN



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About the Institute

The American Press Institute is a non-profit organization dedicated to the continuing education and career development of newspaper men and women. The Institute conducts more than 40 programs annually, including:

- Seminars.
- An Executive Development Program.
- Regional Workshops.
- Occasional special conferences such as this Curtis Memorial Program.

Most API seminars last five days and are designed for experienced executives and staff members from all departments of newspapers. The Executive Development Program, aimed at senior executives of daily newspapers and groups and those who are candidates for key publishing or upper management responsibilities, features an intensive computerized newspaper management simulation. Approximately 1,200 members from U.S. and Canadian newspapers attend API programs each year. The objectives for all are the same:

- To exchange information and ideas.
- To increase knowledge and professional skills.
- To improve the quality of newspapers.

The Institute occupies a permanent training center in Reston, VA. Seminars are limited to 38 members. To guide discussion, API invites more than 400 guest discussion leaders each year.

The Institute was founded in 1946. At the urging of Sevellon Brown, then editor and publisher of *The Providence (R.I.) Journal and Evening Bulletin*, 38 newspapers formed a founding fund to cover an initial series of seminars.

Columbia University provided space in its Graduate School of Journalism building, and each API group was housed and fed on campus.

The idea flourished and over the years, API's seminar offerings tripled. In need of additional space, the Institute built its own conference center in Reston and moved there in 1974. As the demand for seminars continued, API's Board of Directors decided in 1978 to expand the Reston facility.

Construction of a second conference room was completed in October 1980, enabling API to broaden its schedule by conducting two seminars at once.

Additional copies of this book can be obtained for \$5.00, plus \$1.50 per book for postage. Please write:

**American Press Institute
(Curtis Memorial
Seminar IX),
11690 Sunrise Valley Drive
Reston, VA 22091**

**Phone: (703) 620-3611
Fax: (703) 620-5814**

ADDITIONAL COPIES



THE WHITE HOUSE
WASHINGTON

DATE: 05/28/93

TO: LEEANN INADOMI

FROM: JOHN D. PODESTA
Assistant to the President and
Staff Secretary



For response.



Officers

Kweisi Mfume
Chairman
Cardiss Collins
Vice Chairman
Alcee Hastings
Vice Chairman
William Jefferson
Secretary
Barbara-Rose Collins
Treasurer
Eddie Bernice Johnson
CBC Whip



Congressional Black Caucus Congress of the United States

H2-344 House Annex #2

The Ford Building

Washington, D.C. 20515

202 — 226-7790

May 26, 1993

Honorable William J. Clinton
President
United States of America
1600 Pennsylvania Avenue N.W.
Washington, D.C. 20500

Dear Mr. President:

I write on behalf of the Members of the Congressional Black Caucus to express our initial support and interest in working to shape a review process to be incorporated in the '93 Reconciliation package targeted to deficit reduction. The Caucus, by this communication, goes on record in support of the legislation as reported out of House Ways and Means. In addition, Caucus Members are prepared to participate in the fashioning of language to create a review process for federal spending and revenue projections to be triggered by forecasts from OMB/CBO.

As a part of these negotiations, the Congressional Black Caucus calls for the maintenance and preservation of the entitlement spending baseline of \$234 billion, as established by the Ways and Means Committee, as the ceiling which must be reached before any review of these programs would begin. Further, it is our request that all elements of the budget package, including subsidies, discretionary spending, and alternate revenue enhancement options be explored on a equal basis with considerations impacting the funding of entitlement programs. Any title or element of this review process should be reflective of this comprehensive approach.

We look forward to working you and the Leadership on bringing closure to this issue immediately and winning passage of the Reconciliation package.

Sincerely,

KWEISI MFUME
Chairman

U.S. House of Representatives

John Conyers, Jr., MI '65
William Clay, MO '69
Louis Stokes, OH '69
Ronald V. Dellums, CA '71
Charles B. Rangel, NY '71
Cardiss Collins, IL '73
Harold E. Ford, TN '74
Julian C. Dixon, CA '79
Major R. Owens, NY '83
Edolphus Towns, NY '83
Alan Wheat, MO '83
Mike Espy, MS '87
Flora Flake, NY '87
John Lewis, GA '87
Kweisi Mfume, MD '87
Donald M. Payne, NJ '89
Craig A. Washington, TN '90
Barbara Rose Collins, MI '91
Gary Franks, CT '91
Eleanor Holmes-Norton, DC '91
William Jefferson, LA '91
Maxine Waters, CA '91
Lucien Blackwell, PA '91
Eva Clayton, NC '92
Sanford Bishop, GA '93
Corrine Brown, FL '93
Jim Clyburn, SC '93
Cleo Fields, LA '93
Alcee Hastings, FL '93
Earl Hilliard, AL '93
Eddie Bernice Johnson, TX '93
Cynthia McKinney, GA '93
Carrie Meek, FL '93
Mel Reynolds, IL '93
Bobby Rush, IL '93
Robert Scott, VA '93
Walter Tucker, CA '93
Melvin Watt, NC '93
Albert Wynn, MD '93

U.S. Senate

Carol Moseley Braun, IL '93

Chran

THE WHITE HOUSE
WASHINGTON

DATE: 05/28/93

TO: MACK MCLARTY
MARK GEARAN
BOB RUBIN

FROM: JOHN D. PODESTA
Assistant to the President and
Staff Secretary

The attached has been forwarded
to the President.

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL OF ECONOMIC ADVISERS

WASHINGTON, D.C. 20500

May 28, 1993 33 MAY 28 P6:38

MEMORANDUM FOR THE PRESIDENT

FROM: ALAN BLINDER AB

SUBJECT: Interest Rates, Stock Market, and Money Supply,
Week Ending Friday, May 28, 1993

Long bond yields decreased slightly this week while short-term interest rates increased substantially. Thus, the yield curve flattened. Changes in Treasury borrowing rates over the week were as follows:

	Close 5/21/93	Close 5/28/93	Change
3-month bills	3.07	3.13	0.06
10-year bonds	6.16	6.16	0.00
30-year bonds	7.03	6.98	-0.05

The stock market closed higher for the week. The S&P index closed Friday, May 28, at 450.19, up 1.0 percent from the preceding Friday's close. The Dow Jones Industrial Average also increased 1.0 percent over the week. It hit record highs on both Wednesday and Thursday and closed at 3527.43.

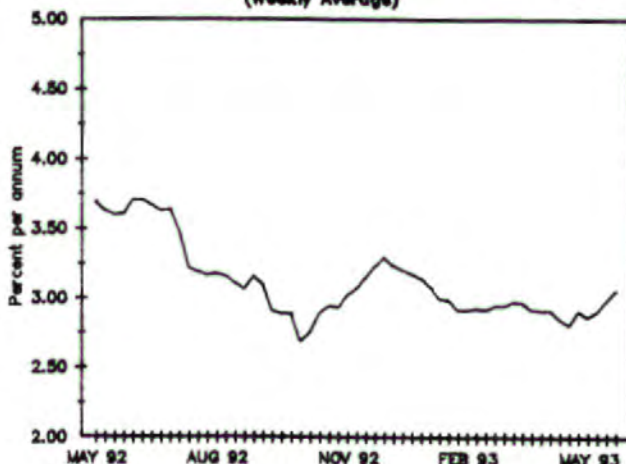
This week the Fed announced that M2 and M1 both increased while M3 declined in the week ending May 17. Since April of last year, growth rates of the various M's have been:

M1: +10.8%

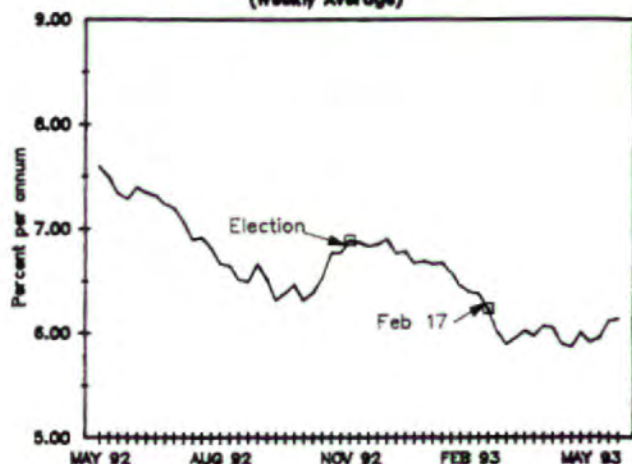
M2: +0.2%

M3: -1.0%

3-Month Treasury Bill Rate
(Weekly Average)



10-Year Treasury Note Yield
(Weekly Average)



EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL OF ECONOMIC ADVISERS

WASHINGTON, D.C. 20500

93 MAY 28 P6:38
May 28, 1993

MEMORANDUM FOR THE PRESIDENT

FROM: ALAN BLINDER *AB*
SUBJECT: Foreign Economic Developments

Exchange Rates: The dollar fell sharply relative to both the yen and the deutschemark this week, causing the multilateral exchange rate to decline. The multilateral exchange rate is now roughly where it was a year ago (89.01 vs. 88.35).

	Week Ending 5/14/93	Week Ending 5/21/93	Percent Change
Deutschemark	\$1 = 1.626 DM	\$1 = 1.586 DM	-2.5%
Yen	\$1 = 110.2 Yen	\$1 = 107.2 Yen	-2.7%
Multilateral (March 1973 = 100)	90.73	89.01	-1.9%

Japan: Japan's unemployment rate remained unchanged in April at 2.3 percent, but the ratio of job seekers to job offers fell to 0.84 in April from 0.88 in March. (It peaked on 3/91 at 1.47.) Consumer prices in April rose just 0.9 percent on a year-over-year basis. Non-performing loans at Japan's major banks were 3.1 percent of total loans during the fiscal year that ended March 31. This was the first time such information was disclosed.

Europe: ► DRI-McGraw Hill forecast that industrial output in Europe will fall 3.9 percent in 1993.

► **Germany's** wholesale sales fell 3 percent in real terms in April on a year-over-year basis. West German plant and machinery orders fell 11 percent in real terms in April on a year-over-year basis.

► **French** unemployment rose to 10.9 percent in April from 10.7 percent in March.

► **UK's** revised GDP figures for the first quarter show a 0.7 increase on a year-over-year basis, and a 0.3 percent rise over the fourth quarter of 1992.

Other Countries: ► **Latin America's** real growth in 1993 is projected to increase from 2.2 percent in 1992 to 3.1 percent in 1993, according to Consensus Economics.

► **Mexico's** trade deficit in the first quarter was \$3.6 billion, up 7.9 percent over the first quarter of 1992.

► **Canada's** House of Commons approved NAFTA.

Chrom

THE WHITE HOUSE
WASHINGTON

DATE: 05/28/93

TO: TONY LAKE

FROM: JOHN D. PODESTA
Assistant to the President and
Staff Secretary

The attached has been forwarded
to the President.

THE WHITE HOUSE
WASHINGTON

May 28, 1993

Mr. President --

Senator Cohen handed this to Howard and made him promise that he would provide it to you directly.

I've given an information copy directly to Tony Lake.

A handwritten signature in black ink, appearing to read "JOP", is centered on the page.

John Podesta

United States Senate

WASHINGTON, DC 20510-1901

May 25, 1993

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

I appreciate the frustration you must feel at having inherited a set of seemingly insoluble problems in the former Yugoslavia but not a policy adequate to the situation.

Let me emphasize that I am pleased at the recent evolution in your Administration's thinking on the former Yugoslavia. For some time I have been concerned that the U.S. may be on the verge of multiplying the mistakes made in the last two years by your predecessor and the Congress. To put it simply, in my opinion the debate up until this week has been focused on the wrong questions, leading to inadequate answers that could lead us to disaster.

First, in my view, we should not be asking "What should we do in Bosnia?" but "What should we do in the Balkans?" The broader conflict of which the Bosnian war is a part will not be resolved by a cessation of hostilities in Bosnia. Indeed, compelling a ceasefire in Bosnia might lead to renewed fighting in Croatia or elsewhere unless adequate preventative steps are taken promptly.

Second, beyond asking how can Bosnia be saved as a state, we should ask whether Bosnia-Herzegovina can ever become a viable state. If not, we must ask how can we accommodate that fact without condoning aggression.

On the first question, I urge a more vigorous international effort to prevent the conflict from spreading. Among the steps I would support are the following, which are consistent with and build upon the joint action plan announced Saturday: strengthen the capabilities of the UN force in Croatia and Macedonia and deploy UN forces in Albania; seek congressional endorsement of the U.S. threat to retaliate against a Serb offensive in Kosovo; expand the Missions of Long Duration in Kosovo, Vojvodina, and the Sandzak; and seek guarantees for minorities in Macedonia and resolution of the dispute between Athens and Skopje.

On the second question, the demise of the Athens agreement compels us to acknowledge that there is little likelihood that a viable, unitary Bosnian state can be reconstructed. I believe our efforts in Bosnia should now focus on minimizing the violence while diplomacy seeks a politically sustainable outcome. Such an outcome may have to involve internationally supervised population relocation to provide each of the three factions with a contiguous entity under its control; some form of association between Bosnian

Croat and Serb entities and Croatia and Serbia; and international guarantees for the Bosnian Muslim entity.

This approach might be misconstrued as condoning or rewarding aggression. This might be mitigated if formal international recognition of the new situation were conditioned on the demonstration by each party, over a period of several years, of respect for minority rights and the departure from power during this period of individuals deemed responsible for war crimes. We should also acknowledge errors in past policy, such as premature recognition of Croatia and Bosnia and failure to adequately take into account minority interests there. Such measures could lend credibility to a more clearly defined policy for dealing with nationalist/ethnic disputes, thereby reducing the risk that the Bosnian outcome would encourage similar conflicts in the future.

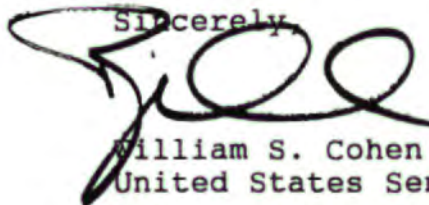
While more ambitious objectives, such as rolling back all Serb gains and preserving a unitary Bosnian state, may be desirable, there is little basis for believing they can be achieved under present circumstances. Attached is a memorandum outlining in greater detail my views on what objectives are attainable and how we might pursue them.

A quarter century ago, a newly sworn-in President gave an inaugural address resonating with the themes of "the American covenant" and "change" at home and abroad. "If American lives must end and American treasure be spilled in countries that we barely know," he said, "then that is the price that change has demanded of conviction and of our enduring covenant." With this noble belief, Lyndon Johnson led America into war. As a result, his ambitious plans to heal America's economic and racial divisions were displaced by corrosive divisions among our people that, even today, have not yet fully healed. And after much blood and treasure were spilled, our Armed Forces came home defeated and American influence in the world was dangerously diminished.

It would be a tragedy for the nation, Mr. President, if the great hope inspired by you in your campaign and the opening months of your Administration were to suffer the same fate on a distant battlefield pursuing noble but unattainable objectives.

I appreciate your attention to the attached paper.

With best wishes, I am

Sincerely,

William S. Cohen
United States Senator

Enclosure

M E M O R A N D U M

DATE: May 25, 1993

TO: The President
FROM: Senator William S. Cohen
RE: U.S. Policy Options in the Balkans

I appreciate the frustration you must feel at having inherited a complex of seemingly insoluble problems in the former Yugoslavia but not a U.S. policy adequate to the situation. Accordingly, I hope you will receive the following recommendations in the constructive vein in which they are offered.

Let me emphasize that I am pleased at the apparent evolution in your Administration's thinking on the former Yugoslavia in recent days. For some time I have been concerned that the U.S. may be on the verge of multiplying the mistakes made in the last two years by your predecessor and the Congress. To put it simply, in my opinion the debate up until this week regarding the former Yugoslavia has been focused on the wrong questions, leading to inadequate answers that could lead us to disaster.

First, in my view, we should not be asking "What should we do in Bosnia?" but "What should we do in the Balkans?" The broader conflict of which the Bosnian war is a part will not be resolved by a cessation of hostilities in Bosnia. Indeed, compelling a ceasefire in Bosnia might lead to renewed fighting in Croatia or elsewhere unless adequate preventative steps are taken promptly.

Second, beyond asking how can Bosnia be saved as a state, we should ask whether Bosnia-Herzegovina can ever become a viable state. If not, we must ask how can we accommodate that fact without condoning aggression and what are the implications for the Vance-Owen process.

I. Preventing a Wider War

Our principal national interest in the Yugoslav crisis is to prevent an uncontrolled spread of the conflict. This should be our foremost objective to which all other objectives are subordinated, in my view. While I support lifting the arms embargo on the Muslims, I believe we must acknowledge that such an action could lead to horizontal escalation, as could airstrikes on Serb positions in Bosnia. To minimize this risk, any U.S. military actions taken in Bosnia should be part of a coherent strategy aimed at an outcome that is realistically attainable and encompasses all of the former Yugoslavia -- not a compromise between advocates of "doing something" in Bosnia and those cautious over U.S. intervention.

I would urge consideration of the following measures to help prevent the war from spreading:

1.) Enlarge the number of United Nations troops in Croatia and strengthen their capabilities to demilitarize UN Protected Areas and neighboring areas, control the borders of these areas and monitor the pink zones. UNPROFOR may be so discredited in Croatia that it may be necessary to replace it with a new UN force having improved tools, including more capable forces, a more effective command structure, and appropriate rules of engagement. This may require a U.S. contribution of ground forces. Prompt UN action is needed, since the chances of renewed Croat-Serb fighting is high, especially if Western military action is taken in Bosnia.

2.) Expand the symbolic UNPROFOR presence now in Macedonia and deploy UN forces in Albania to monitor their borders with Serbia, Kosovo and each other and reduce the risk of their being drawn into the conflict. The UNPROFOR commander in Macedonia has called for a brigade of 5000 to 7000 soldiers from NATO nations to control Macedonia's northern and western borders. This may also require a U.S. contribution of ground forces, a possibility you have recently discussed in public.

Admittedly, deploying a meaningful UNPROFOR force to Macedonia and Albania could have the ironic effect of making it easier for Serbia to move against the Kosovar Albanians. This is because UN troops would presumably prevent any effort to aid Kosovar Albanians by or via Albania or Macedonia. UN border monitors could also be forced to receive expelled Kosovar Albanians, much as UN peacekeepers in Bosnia have had little choice but to facilitate Serb ethnic cleansing to save Muslim lives. (These factors may be why the Macedonian government has not endorsed the enlargement of the UNPROFOR force there. Diplomatic efforts would obviously be required to attain the assent of Skopje and Tirana to such deployments) Accordingly, the following two measures are needed to reduce the risk of Serb violence in Kosovo.

3.) Seek explicit congressional endorsement of the threat made by President Bush and reaffirmed by your Administration to retaliate severely against Serbia if Belgrade moves against Kosovo. Unlike the Bosnian airstrike option, this threat can be carried out by air attacks alone, targeted against critical political, economic and military assets in Serbia. This fact, combined with congressional endorsement, should give this threat the credibility that the West has lacked to date. Before such a congressional endorsement could be forthcoming, consultation between your Administration and Congress would be required on exactly what Serbian actions in Kosovo would trigger a U.S. military response. Such an endorsement could be incorporated into a resolution authorizing a U.S. deployment to Macedonia, Albania, and/or Croatia.

4.) Significantly expand the CSCE teams of monitors in Kosovo, Vojvodina, and the Sandzak. While repression of non-Serbs has been widespread, the presence of international monitors has helped to limit this somewhat. Expanding these Missions of Long Duration could dissuade Serb authorities from taking further actions against non-Serbs, particularly Kosovar Albanians. If the situation could

be stabilized, diplomatic efforts could be pursued to negotiate a sustainable arrangement balancing legitimate Albanian and Serb interests. [E.g., restore Albanian autonomy in Kosovo; obtain the agreement of the parallel, underground Kosovar Albanian government not to seek unilateral merger with Albania; establish international control of sites in Kosovo of cultural, religious and historical importance to the Serbs.]

There has been public discussion of deploying UNPROFOR forces to Kosovo. While such an action might be desirable, it would require acquiescence of the Serbian government. Accordingly, such discussion is premature until the international community succeeds in gaining Serbian acquiescence to the expansion of the current Missions of Long Duration and their impact can be evaluated. In any event, prompt action is needed just to sustain the existing Missions, since their memorandum of understanding with Belgrade expired in April and Belgrade is refusing to issue visas to allow the rotation of monitors.

5.) Support Lord Owen's diplomatic efforts to mediate between Skopje and Athens and encourage resolution of ethnic disputes within the former Yugoslav republic of Macedonia. U.S. and European recognition of Bosnia-Herzegovina and Croatia was badly mishandled, contributing to the current crisis in the former Yugoslavia. If conditioned properly, U.S. recognition of Skopje could contribute to a reversal of the tide away from violent and toward peaceful resolution of conflicting communal interests. While our leverage has been eroded by Skopje's admission to the UN and its recognition by most EC member nations, we should link U.S. recognition to meaningful guarantees of minority rights with Macedonia, as well as satisfactory resolution of the matters of concern to Athens.

6.) Deploy a small international force in Greece to complement those in Croatia, Macedonia and Albania (if one is deployed there). This should be composed of troops from NATO nations, including Germany. This would have at least three benefits. It could help resolve the Macedonia question by providing a strong symbol of the international community and NATO's commitment to the integrity of Greece's borders. It would provide an initial force in place in case the worst scenarios of a Balkan-wide conflagration came to pass. Finally, it could create a means by which Germany could contribute to the international effort in the Balkans.

German and Greek sensitivities to such a German deployment are understandable. But the UN's need for democratic Germany's participation in peacekeeping operations is such that we must seek practical steps to gradually transcend these sensitivities. The deployment to Greece of an unobtrusive German unit in a multinational NATO force, perhaps drawn from the ACE Mobile Force, could be such a step. If the world has changed to such an extent that the eastern Europeans and Russians can seriously discuss joint peacekeeping operations in the NACC, it is surely not incomprehensible for this kind of support between NATO allies half

a century after World War II. In addition, public and congressional support for whatever actions you propose will be greater the broader the participation of European powers.

II. The Long-Term Future of Bosnia

In his February initiative, Secretary Christopher indicated that a primary objective was the "survival of Bosnia as a state." I believe we must determine whether we, in conjunction with our allies, can guarantee its survival over the long term.

Even while advocating Bosnian Serb approval of the Athens agreement earlier this month, Yugoslav president Dobrica Cosic, Bosnian Serb president Radovan Karadzic and Bosnian Serb assembly president Momcilo Krajisnik each made clear their intent to pursue by peaceful means the objectives pursued for the past year by warfare. This is consistent with Serb actions in Croatia, where the Serb side has consolidated its position since the ceasefire was entered into a year ago.

While the more truculent rhetoric regarding Greater Serbia may be set aside, there is little reason to believe that Serb nationalists will abandon their goal of linking Serbs inside and outside Serbia in a political-economic-social entity. The Athens agreement would have impeded attainment of that goal, but it is far from clear that it could have prevented it. Now that the Athens agreement -- if not the Vance-Owen process -- is defunct, we must acknowledge that there is little likelihood that a viable, unitary Bosnian state can be reconstructed.

Under these circumstances, I believe that our efforts in Bosnia should focus on minimizing the violence while diplomacy seeks a politically sustainable outcome.

The creation of safe havens for Muslims is consistent with such an approach, so long as they are not allowed to become a gulag archipelago for refugees, the existence of which could create an excuse for further ethnic cleansing from surrounding areas. Instead, creation and protection of safe havens should be viewed as an interim measure to alleviate suffering while vigorous diplomatic efforts are pursued.

To be politically sustainable, the outcome of such diplomacy may have to involve internationally supervised population relocation to provide each of three major communal groups with a contiguous entity under its control. It may have to allow for some form of association between the Bosnia Croat- and Serb-controlled entities and Croatia and Serbia, respectively, subject to conditions of the type discussed below. It may also need to extend international guarantees to the Bosnian Muslim entity.

One danger in this approach is that it could be misconstrued as condoning or rewarding aggression. This might be mitigated if the U.S. and its allies were to take steps such as:

-- acknowledging errors in past policy, such as premature recognition of Croatia and Bosnia and failure to take into account legitimate Serb interests there;

-- conditioning final, formal international acceptance of the new Balkan map on (a) respect by all parties for minority rights, demonstrated over a period of several years, and (b) departure from power of individuals deemed responsible for war crimes.

Such measures could lend credibility to a more clearly defined policy for dealing with nationalist/ethnic disputes, thereby reducing the risk that the Bosnian outcome would encourage similar conflicts in the future.

While more ambitious objectives, such as rolling back all Serb gains and preserving a unitary Bosnian state, may be desirable, there is little basis for believing they can be achieved under present circumstances, if they ever could. Committing our nation and our armed forces to such objectives, only to be forced to concede failure, would be more likely to inspire new Bosnia-like conflicts threatening our interests in Europe than if we committed ourselves to realistic, albeit somewhat unpalatable, objectives and saw them through to attainment.

III. Lessons from History

In recent weeks the specter of Vietnam has been employed by some wary of military actions in Bosnia. While the past does not predict the future in a new world still in formation, our historical experience cannot be ignored. I would point to two lessons that can be drawn from America's experience in Vietnam.

One is that history judges consequences, not motivations. This judgment could be rendered remarkably quickly, especially if television images shift from the slaughter of innocent Muslims to the slaughter of innocent Croats and Serbs with U.S. supplied arms or, even worse, the slaughter of American soldiers.

A second lesson is one taught in the timeless stage dramas of another Balkan people of two millennia ago: hubris breeds tragedy. We do not have the power to "stop the killing" or resolve communal conflicts rooted in centuries of bloody history. At best, we can facilitate a relatively non-violent accommodation among the local parties once they have decided to pursue such accommodation.

Both of these lessons dictate that our objectives be circumscribed by what is achievable. As described above, I believe these objectives should be to (1) prevent the spread of the conflict and (2) assist the local parties to find a sustainable outcome, while seeking to minimize the violence as this is done.

Just over a quarter century ago, a newly sworn-in President gave an inaugural address resonating with the themes of "the American covenant" and "change" at home and abroad. "If American lives must end and American treasure be spilled in countries that

we barely know," he said, "then that is the price that change has demanded of conviction and of our enduring covenant." With this noble intent, Lyndon Johnson led America into war.

As a result, the ambitious plans he outlined in his inaugural speech to heal America's economic and racial divisions were displaced by corrosive divisions among our people that, even today, have not yet fully healed. And after much blood and treasure were spilled, our Armed Forces came home defeated and damaged and American influence in the world was dangerously diminished.

It would be a tragedy for the nation, Mr. President, if the great hope inspired by you in your campaign and the opening months of your Administration were to suffer the same fate on a distant battlefield pursuing noble but unattainable objectives.

93 MAY 27 P3: 29

May 25, 1993

MEMORANDUM TO JOHN PODESTA

FROM: RICK ALLEN

SUBJECT: ATTACHED MEMORANDUM FROM NICK LOWERY

As you may know, Nick Lowery (7th leading all-time NFL scorer and current All-Pro placekicker for the Kansas City Chiefs) worked with our office during his off-season. Nick has spent his off-seasons in public service for a number of years, and had worked in the Office of National Service under the past administration; he joined us at the recommendation of the Vice President and helped with private sector outreach and attracted other major athletes to assist the national service initiative. Nick led the delegation of sports stars which met with the President last week.

Shortly before his departure for training camp, Nick drafted the attached memorandum, which suggests that the President might enjoy and benefit from regular visits to the OEOB staffs. Nick left the memorandum with me, with the request that I forward it to you for your consideration; if you think that it is something the President might want to review, please pass it on.

TS
MARCIA
Hare

5.27.93

THE WHITE HOUSE

WASHINGTON

May 10, 1993

93 MAY 27 P3:29

MEMORANDUM FOR THE PRESIDENT

FROM: NICK LOWERY, OFFICE OF NATIONAL SERVICE *NL*

SUBJECT: BREAKING THROUGH THE PRESIDENTIAL "BUBBLE"

Having served in the Reagan Office of Drug Abuse Policy and the Bush Office of National Service, I have now experienced three different styles of leadership and communication within the White House staff.

Communication within the West Wing tends to be quite clearly structured; however, Presidential access to the staff in the Old Executive Office Building varies significantly from administration to administration. You have clearly expressed your frustration with staying in touch with the people, and of the difficulty of breaking through the presidential "bubble". In addition, there has also been considerable mention of the need for better coordination within the White House staff. They say that one of the hallmarks of the Lincoln Presidency was his constant visits to "the front lines." In order to help you stay in touch with our front lines, I would like to respectfully suggest that you regularly visit each of the offices in the Old Executive Office Building for half an hour at least once every four months. There are nine White House Offices and eleven executive offices of the President:

White House Offices

1. Cabinet Affairs
2. Communications
3. Counsel to the President
4. Media Affairs
5. National Service
6. Political Affairs
7. Presidential Personnel
8. Presidential Advance
9. Staff Secretary

Executive Offices of the President

10. Vice President
11. Economic Advisors
12. Office of Environmental Quality
13. National Security Council
14. National Space Council
15. Administration
16. Policy Development
17. Science and Technology Policy
18. Foreign Intelligence Advisory Board
19. Intelligence Oversight Board
20. General Services Administration

I would not presume to determine the relative importance of each office; however, it would seem fair that all offices that are remotely connected with policy or the flow of information **within the White House Complex** would significantly benefit from each meeting. More importantly, you would be able to determine **first hand**: a) that the nuances of priorities, protocol, and message are consistent, and b) whether your message is being received the way you think it is. These humble suggestions are consistent with the precepts of Total Quality Management (TQM), which emphasizes nonhierarchical methods. Using the figure of twenty offices (subject to your determination), you would make five Old Exec. Office Building visits a month, or barely more than one per week. These could be combined to two half hour visits at a time, in which case you would only need to do this for **one hour once every two weeks**. One has only to remember the grueling schedule of eighteen events per day during the New Hampshire primaries to know this is eminently possible, but more importantly, this may directly effect the success of your administration.

Possible format for Old E. O. B. Presidential visits:

1. Five minutes of introduction.
2. Fifteen minutes of unstructured discussion focusing on suggestions for better service to you and your agenda.
3. Ten Minute response by President.

Presidents from throughout history have been challenged to stay in touch with the people. You have realized you cannot rely merely on polls, and consistent with the decision to take his program directly to the people, you can make sure you actuate this policy within your own staff. Perhaps, unlike Lincoln, the President's door no longer can be always open; however, these visits will guarantee that it is never closed.

THE WHITE HOUSE
WASHINGTON

DATE: 5/27

NOTE FOR: Alexis

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

Information

☒

Action

☐

Thank you.

JOHN D. PODESTA
Assistant to the President
and Staff Secretary
(x2702)

cc:

THE PRESIDENT HAS SEEN 5/27

THE WHITE HOUSE
WASHINGTON

May 25, 1993

INFORMAL LUNCH WITH CEOs

DATE: May 26, 1993
LOCATION: Old Family Dining Room
East Wing
TIME: 12:00 noon - 1:30 pm
FROM: Alexis Herman
Amy Zisook

I. PURPOSE

To maintain an open dialogue with CEOs on the economic package, health care and other relevant issues.

II. BACKGROUND

This marks your second White House luncheon meeting with CEOs and business leaders. As with the previous luncheon, it will be an informal give and take discussion on the issues.

The ten CEOs are:

Mr. Edwin (Ed) L. Artzt, Chair/CEO, Proctor & Gamble, Cincinnati, OH

Artzt signed the letter to Chairman Rostenkowski in support of the bill that came out of Ways and Means. He also attended the Economic Conference. He joined P & G in 1953 and became Chairman and CEO in 1990. He is also on the board of GTE, Teradyne and Delta.

Mr. H. Brewster (Bruce) Atwater, Jr., Chairman/CEO, General Mills Inc. Minneapolis

Atwater signed the "Rostenkowski Letter" and actively supported it. He started in the General Mills organization in 1958. He has been Chairman since 1982. He serves on the Boards of Merck & Co. and GE.

Ms. Merle Chambers, President, Axem Resources, Inc., Denver, CO

Chambers was a major campaign supporter. She is in the oil and gas business.

Mr. John (Jack) Welch, Jr., CEO, General Electric, Fairfield, CT

Welch was a significant player in the "Rostenkowski Letter." Bob Barrie of GE (a big supporter) has worked very hard to keep Welch from joining any of the anti-economic package groups. He is also a major-player with the Business Roundtable.

With the exception of Bob Crandall who specifically mentioned wanting to talk about your Airline Commission and the airline industry, the CEOs, like everyone else are focussed on reconciliation, health care and NAFTA.

III. PARTICIPANTS

Vice President

Edwin Artzt

H. Brewster (Bruce) Atwater, Jr.

(Ms.) Merle Chambers

Robert L. Crandall

Charles F. Knight

Bruce Llewellyn

James E. Preston

Andrew Sigler

John F. Smith, Jr.

John Welch, Jr.

Bob Rubin

Alexis Herman

IV. PRESS PLAN

Pool spray at beginning only.

V. SEQUENCE OF EVENTS

To be provided by Social Secretary.

VI. REMARKS

None necessary.

Mr. Robert (Bob) L. Crandall, Chairman/President/CEO, American Airlines, Dallas, TX

Crandall was an early supporter of your economic package. He attended the CEO/labor press conference in February. He also attended the Economic Conference. Crandall joined American in 1973 and became Chairman & CEO of both American Airlines and AMR, Inc. in 1985.

Mr. Bruce Llewellyn, Chairman/CEO, Philadelphia Coca-Cola Bottling Company (He is based in New York City)

Llewellyn was also an early supporter of the economic package and attended the February press conference. He owns Fedco, the nation's largest minority-owned retail business (supermarkets); and he is a partner in the firm of Rubin, Baum, Levin, Constant and Friedman. He is also Chairman & CEO of The Coca-Cola Bottling Company of Wilmington, Queen City Broadcasting and Garden State Cablevision. He is on the Board of Chemical Banking Corp., Adolf Coors Brewing, and C-Span. He attended the Economic Conference.

Mr. Charles (Chuck) F. Knight, Chairman/CEO, Emerson Electric Co., St. Louis, MO

You know Knight because he has facilities in Arkansas. Knight signed the "Rostenkowski letter" and has been very active on behalf of the bill. He has been with Emerson since 1973. He is also on the Boards of Anheuser-Busch, Southwestern Bell, Baxter International, Caterpillar, and The British Petroleum Company.

Mr. James (Jim) E. Preston, Chairman, Avon Products, Inc., New York, NY
Preston also signed the "Rostenkowski Letter." He has one of the largest sales staffs in the country, reaching millions of customers. Preston joined Avon in 1964 as a management trainee. He has been President, CEO and Chairman since 1989. He is on the corporate boards of F.W. Woolworth and ARA Services.

Mr. Andrew (Andy) Sigler, Chairman/CEO, Champion International, Stamford, CT

Champion is one of the largest manufacturers of paper for business communications, commercial printing, publications and newspapers; and they manufacture plywood and lumber. They own or control six million acres of timberlands in the US. He has spent his entire career at Champion. He has been Chairman and CEO since 1979. He is also on the Boards of Bristol-Myers-Squibb, Chemical Banking Corp., and GE.

Mr. John (Jack) F. Smith, Jr., Chairman/CEO, General Motors Corp., Detroit, MI

Smith signed the "Rostenkowski Letter." You saw him at the "Drive American Quality" event today. We have not had as much contact with GM as the other auto-makers, but they seem willing to be supportive.

THE WHITE HOUSE
WASHINGTON

DATE: 5/27

NOTE FOR: Bob Rubin

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

Information

☒

Action

☐

Thank you.

JOHN D. PODESTA
Assistant to the President
and Staff Secretary
(x2702)

cc:

THE PRESIDENT HAS SEEN
5.27.93

THE WHITE HOUSE

WASHINGTON

93 MAY 27 P7:48

May 27, 1993

MEMORANDUM FOR THE PRESIDENT

FROM: ROBERT E. RUBIN
SUBJECT: Business Confidence

Jack Welch just told me that he "greatly appreciated" being included in yesterday's lunch, and that you "really knew what you were talking about" with regard to the economic issues. Jack's tone was exceptionally enthusiastic, which is a considerable change from the negative views he expressed to me two or three weeks ago on the phone.

Jack Welch is almost surely the most highly respected mainstream industrial company CEO in the country today, and he is a very vocal participant in the Business Roundtable and Business Roundtable functions. His reaction reinforces my feeling that we can regain a fair measure of confidence in the business community, a confidence which is critical to the functioning of the economy as well as useful for our legislative objectives.

Accomplishing that objective involves being seen as vitally focused on competitiveness in dealing with issues that affect the economy, regaining the initiative in how our economic program is perceived, and avoiding the language of class warfare. (I don't think there is any problem in discussing class warfare-type issues in non-accusatory language, i.e., the cost of our programs should be borne by those who can best afford that cost.)

The final issue is health care reform, where it is critical that we be perceived as providing substantial reduction of societal health costs, the deficit and the health care costs of business.

THE WHITE HOUSE
WASHINGTON

DATE: 05/27/93

NOTE FOR: MARCIA HALE

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

Information ☐

Action ☒

Thank you.

JOHN D. PODESTA
Assistant to the President
and Staff Secretary
(x2702)

cc:

THE WHITE HOUSE
WASHINGTON

THE PRESIDENT HAS SEEN
5.27.93

93 MAY 27 P8:07

May 27, 1993

MEMORANDUM FOR THE PRESIDENT

FROM: MARCIA L. HALE
DAWN M. FRIEDKIN

SUBJECT: OXFORD REUNION

I would like to finalize your plans for your Oxford Reunion weekend. I have regretted the event on Friday night where you were requested to speak. They have now invited you and HRC to attend the Gaudy on Saturday night at 8:00 pm at Georgetown. I have not indicated to them your plans for Saturday, although you expressed to me that you would possibly like to attend the reception at the British embassy which is on Saturday at 5:00 pm.

I know you would like to host your class at the White House. If you plan to do this, the invitations need to be mailed at the beginning of next week.

You could invite your class (and any others) to the radio address and then have coffee and pastries in the Rose Garden after the address. Having them in the morning obviously leaves your afternoon and evening free.

I think you only need to do one of these unless you have strong personal reasons to do otherwise.

What would you like to do?

☐ 5:00 pm Saturday British embassy reception

☐ 8:00 pm Gaudy celebration

☒ host reunion class at radio address and morning reception in Rose Garden

I have attached the lists that you requested of the members of your class planning to attend the reunion as well as those from 1966, 1967 and 1969.

1966 Rhodes Scholars who overlapped with Bill Clinton's first year at Oxford

Stephen Bergman
Michael Buckley
Jonathan Culler
Bernard Gersh
Gerald Hillman
James O'Toole
Douglas Paschall
Wm. Frank White

1967

Charles Abbott
John Alexander
Thomas Allen
Edward Campion
David Hardesty, Jr.
Warren Iwasa
Ron Katz
Mark Killingsworth
J. Michael Kirchberg, Jr.
Kenneth MacKenzie
Kent Price
Robert Randolph
Richard Schaper
James Sheller
Daniel Twomey

1968

George Butte
James Crawford, III
David Durack
Douglas Eakeley
Robert Earl
Darryl Gless
Frederick Alan Grossberg
Robbin Johnson
Boisfeullet Jones, Jr.
Robert Kimberly
Henry Kloppenburg
Keith Marshall
Robert McCallum, Jr.
Paul Parish
Peter Perinchief
Thomas Reinecke
Frederic Ris
David Satter
Michael Shea
Daniel Singer
Strobe Talbott

1969

Tyler Baker
Randall Caudill
Hikaru Kerns
Marc Lackritz
Richard Menaker
Patrick Norton
David Okerson
Steven Pfeiffer
Randel Phillips
Robert Rae
David Roe
Gregory Wilson

The Rhodes Scholarship Trust

OFFICE OF THE
AMERICAN SECRETARY

POMONA COLLEGE
CLAREMONT, CALIFORNIA 91711-6305
TELECOPIER 909 / 621-9609
909 / 621-8138

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attending the Reunion of North American Rhodes Scholars
Georgetown University
Washington, D.C.
June 11-13, 1993**

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Lady Southwood
Duncan Montgomery Stewart, Principal, Lady Margaret Hall, and Mrs. Stewart
Dr. John Roberts, Warden of Merton College, and Mrs. Roberts

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Sir Anthony Kenny, Secretary to the Trust and Warden of Rhodes House, and Lady Kenny
Robin A. Fletcher, former Warden of Rhodes House, and Mrs. Fletcher

David Alexander, American Secretary, and Mrs. Alexander
A.R.A. Scace, Q.C., Canadian Secretary, and Mrs. Scace
J.C. Collis, Secretary for Bermuda
Delroy Chuck, Secretary for British Caribbean and Jamaica, and Mrs. Chuck

Also attending:

Lord Jenkins of Hillhead, Chancellor of the University of Oxford
Sir Robin Renwick, British Ambassador to the United States, and Lady Renwick
(expected)

Robert Rae, Premier, Province of Ontario, and Mrs. Rae

Jack B. Justice, President, Association of American Rhodes Scholars, and Mrs. Justice
Ronald L. Watts, President, Association of Canadian Rhodes Scholars/Association
Canadienne des Boursiers Rhodes, and Mrs. Watts

May 26, 1993



WESTERN DIGITAL

WESTERN DIGITAL CORPORATION 8105 IRVINE CENTER DRIVE
IRVINE, CALIFORNIA 92718 TELEPHONE: 714.932.7800 FACSIMILE: 714.932.7820

ROGER W. JOHNSON
CHAIRMAN OF THE BOARD
AND CHIEF EXECUTIVE OFFICER

93 MAY 26 P2: 45

May 18, 1993

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

Subject: East West Education Development Foundation

Reference: President Clinton Action Notice and Note of April 29, 1993

Dear Mr. President:

There are apparently "fast track" procedures in place for directing surplus equipment to U.S. schools for certain math and science programs. There also appears to be a similar process for contributions to certain foreign programs such as those of interest to the East West organization.

Actions

- 1) I have asked the responsible commissioner, Roger Daniero, to meet with Dr. Randall, the executive director of subject organization, to assure that we and he clearly understand the situation vis-a-vis current available processes and,
- 2) Suggest alternative solutions to me if the ones available are not sufficient.

Sincerely,

Roger W. Johnson
Administrator Designee
General Services Administration

RWJ/mo

cc: The Vice President
✓ John D. Podesta
Roger Daniero



5-26-93

TELECOPIER TRANSMITTAL

TO: COMPANY NAME White House
ATTN OF: Fran Wessel
FAX TELEPHONE # 202-456-2215

FROM: WESTERN DIGITAL CORPORATION - CORPORATE HEADQUARTERS

OFFICE OF: Roger Johnson

8105 IRVINE CENTER DRIVE, IRVINE, CA 92718 (714) 932-6000 X 7801

TOTAL NUMBER OF PAGES (INCLUDING THIS FORM) 11

IF YOU DO NOT RECEIVE ALL PAGES INDICATED, PLEASE CALL NUMBER LISTED ABOVE.

OUR MACHINE IS A BURROUGHS DEX 3600, (714) 932-7820

MESSAGE:

THE WHITE HOUSE
WASHINGTON

DATE: 04/29/93

NOTE FOR: THE VICE PRESIDENT
ROGER JOHNSON/GSA

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

Information ☐
Action ☒

Thank you.

JOHN D. PODESTA
Assistant to the President
and Staff Secretary
(x2702)

cc:



WESTERN DIGITAL

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IRVINE, CALIFORNIA 92718 TELEPHONE: 714.932.7800 FACSIMILE: 714.932.7820

THE PRESIDENT HAS SEEN 5/27

ROGER W. JOHNSON
CHAIRMAN OF THE BOARD
AND CHIEF EXECUTIVE OFFICER

93 MAY 26 P2: 45

May 18, 1993

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

Corasuo
12/21

Subject: East West Education Development Foundation

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Roger W. Johnson
Administrator Designee
General Services Administration

RWJ/mo

cc: The Vice President
John D. Podesta
Roger Daniero

To AGT / cc Roger Johnson

Pls look into this, so
you can do more -

Be

THE PRESIDENT HAS SEEN 4/28/93



Dr. Alexander Randall 5th
Executive Director

East West

Education Development Foundation

49 Temple Place, Boston, MA 02111

617-542-1234 617-542-8333 (FAX)

Dear President Clinton:

Please Change the GSA Disposal Rules

There ~~are~~ tens of thousands of used computers and office equipment coming out of Federal service and much of it is wasted by the GSA disposal process.

Our charity recycles computer technology to schools and we have been contacted by dozens of Federal department heads who would donate excess technology to us for recycling, but they must pass it through the GSA.

GSA's process is slow, cumbersome and very wasteful. Hundreds of personal computers and copiers have rusted to death waiting for the GSA to locate someone in need. We know of warehouses full of excess Federal equipment that is idle.

One Pentagon commander, frustrated to see perfectly good equipment die in the rain, broke the rules and transferred some computers to us. Those machines are now working for NED's democracy projects in eastern Europe, and Africa while others are in American schools and charities. Meanwhile hundreds of comparable computers are going to waste.

Our program works. Our effort to recycle American displaced technology is getting basic tools into the hands of those most in need. We need the American data superhighway, meanwhile we are paving some dirt roads by recycling computers and getting them into our schools where they are sorely needed.

Help us eliminate waste, sponsor schools and engage in good recycling. We need you to issue an executive order to direct Federal department managers authorizing them to dispose of their surplus technology themselves and cut the waste. Local department heads are competent to handle disposal and will be more efficient than the current GSA process.

It is appalling that we have a country that can make a huge fuss over recycling 5 cent aluminum cans but has no plans to recycle IBM AT's that are outgrown by government and business. This technology is far ahead of our schools and can have a full new life in a new setting.

A not-for-profit organization

**Only 2.7% of the people on Earth have ever touched a computer.
We can not afford to allow any computer to go to waste.**

Please help us put the most powerful technology for personal empowerment to use and free these machines of unnecessary government regulation.

Working for you and with you,

A handwritten signature in cursive script that reads "Alex Randall" followed by a five-pointed star.

Dr. Alexander Randall 5th
East West Education Development Foundation

VOL. 6

DECEMBER 14, 1992

NO. 87

FEDERAL

COMPUTER WEEK

THE NEWSPAPER FOR THE GOVERNMENT SYSTEMS COMMUNITY
— IN PERSPECTIVE —

Recycled Technology Opens Doors To Fledgling Eastern Democracies

By ALEX RANDALL

In the House of the People in Bucharest, Romania, 800 legislators are rewriting the nation's laws with five typewriters. They use a phone system that was provided by Adolf Hitler in 1938, and they tally legislators' votes on a chalkboard. They stand on the brink of a new world order, but they are armed with the tools of the past.

The technology to foster change in the East is neither expensive nor hard to find. In fact, it is the technology that American corporations and government offices outgrow every day. The computers that an agency or corporate office finds too limiting would be a godsend to these 800 legislators on typewriters.

The non-profit East West Education Development Foundation works as a middleman, channeling donated computer equipment to Eastern European countries to help them move toward democracy and free markets. Our 2-year-old organization collects, refurbishes and distributes the computers to schools, government agencies, citizens' organizations and others devoted to building democracy.

For countries such as Romania, democracy is still a distant vision. The hammers and sickles may be gone, but the vacuum has not yet been filled with free and open government.

However, technology will fuel the drive to freedom. In Ukraine they call personal computers the "bricks of democracy." They believe it is computers, fax machines, copiers and phones that will open communication channels and give the people the opportunity to speak their minds. To many in Eastern Europe, PCs are the hardware embodiment of the First Amendment. What two words would Stalin have feared more than "desktop publishing"?

One Air Force office recently donated 100 outgrown computers to the East West Education Development Foundation instead of sending them to the crusher. These computers may have been obsolete in the eyes of their owners and may have been replaced with new computers, but they will soon go on duty developing democracy in Eastern Europe. They are being bundled with donated software from Microsoft Corp. and will soon be repackaged and shipped to the East with funds provided by the National Endowment for Democracy.

Computers have gone to the social science department of a Prague university, the Moscow University School of

Journalism and an economic reform project in Ukraine. In Warsaw the Foundation for Education for Democracy uses donated computers to publish the Boy Scout democracy merit badge manual. The Center for Conflict Resolution in Bratislava, Slovakia, teaches negotiation techniques using donated computers. During the shorted Russian coup of August 1991, donated modems helped keep communication lines open.

The incoming Clinton administration must not waste the opportunity to sponsor free government in the East.

For countries such as Romania, democracy is still a distant vision. The hammers and sickles may be gone, but the vacuum has not yet been filled with free and open government.

The task need not be costly. Recycled technology costs pennies compared with the cost of the Cold War.

So this is a call to every government agency that has technology it has outgrown. I have all the resources in hand to make the older computers of the U.S. government the tools for democracy in the East. As that equipment comes out of service, give it to us. It will be scooped up, refurbished and recycled. Our foundation has a mandate to perform this task and is funded to handle all the steps in the process.

A Czech professor said, "In the past, we listened to the radio and sometimes saw Western television, but it wasn't until the video machine, the copy machine and personal computers came to the East that the old system fell apart. Technology is what made the difference." ◀

Randall is the president of the East West Education Development Foundation.

Editor's Note: The East West Education Development Foundation was founded by Patrick McGovern, chairman of International Data Group, PCW's parent company. The foundation can be contacted in Boston at (617) 843-1234.

The New York Times

Sound Bytes/Peter H. Lewis

Nurturing Democracy Through Used Computers

Alexander Randall 5th

Born: Aug. 12, 1951, Philadelphia

Noncomputer reading: "Surely You're Joking, Mr. Feynman!" by Richard Feynman.

Drives: 1986 Jaguar ("Bought it used.")

Education: B.A. Princeton, two master's degrees and a Ph.D. from Columbia, where he studied with Margaret Mead.

Frequent flyer miles: "I don't know. I spend three or four weeks each quarter visiting sites, mainly in Eastern Europe."

Typical workday: "Constant. But it depends on the needs of my two kids. Kids are more fun than motorcycles. They're more exciting than bungee jumping."



ALEX RANDALL saw his first microcomputer in 1979, in a village in Bali where his mentor, the anthropologist Margaret Mead, had worked. It was a homemade rig, in a wooden box, powered by a bicycle pedaled by a scientist trying to calculate how to grow the most rice for hungry people. Mr. Randall decided then that no computer should go to waste. He started the for-profit Boston Computer Exchange in the early 1980's to create a national market for used computers. Then, in 1990, he co-founded the not-for-profit East-West Foundation, also in Boston (617-543-1234), with the aim of fostering democracy in Eastern Europe by giving people computers with which to communicate.

Questions: In Russia, where even Xerox machines were controlled, I imagine computers are heady things.

Answer: You know, they look at us as a paragon of democracy, as a paragon of free speech. We see the flaws here, all day long, but all they see is that it works. I'm not there preaching or telling them what to say or write. I'm just there giving them the tools. Our old XT's and AT's and Mac 512's are awesome tools to people who don't have them.

Q: Is giving away computers more fun than selling them?

A: I'd been recycling computer equipment through the Boston Computer Exchange in the cash market and began to realize that it was running out of money. There was a point where no American wanted to buy an XT anymore. When I created the exchange, the concept was to recycle equipment to people who couldn't afford it otherwise. By the late 80's, it wasn't servicing people. So East-West is in fact what I was trying to do all along. What excites me is people growing their minds. There are so many problems on the planet, no PC should be idle.

Q: Even broken ones?

A: We'll take anything — hardware, software. We triage our equipment. If it works, it goes into a box and goes out the door. If it doesn't work, it gets fixed in our workshop, mainly by Russian expatriates. If it's bad, we disassemble it and build it into a new system. If it's dead, we disassemble it and send it east of the Urals, to an institution that used to build helicopters. There, they disassemble the stuff and build new PC's out of broken parts. Nothing goes to waste. Only the dust is left when I'm done with it.

Q: How do you decide who gets the computers?

A: I spend a lot of time walking the streets in places like Warsaw, Moscow and Kiev, talking to organizations, some dissident, some mainstream; some of them are the main newspapers, some are schools of journalism. I asked them, "What is the next step to make sure that freedom of speech and free government survive?" They all wanted desktop publishing equipment. It dawned on me, "What is freedom of the press if you don't have the press?" The fall of Communism did not axiomatically mean the rise of democracy. This is our people's response to insure that the forces trying to make democracy happen will ultimately succeed. And your donations are tax deductible.

East
West



40 Temple Place Boston, MA 02111

From the Ether / Bob Metcalfe, Publisher

Put your passe PC to good use: Donate it to Dr. Randall

My Apple II is long gone, as is the DisplayWriter used by my wife, Robyn. So, too, are our twice-upgraded 1984 Macintoshes. But I still have my 1982 floppy-only IBM PC and the four Macintoshes we think we share with our kids. This is just at home. At *InfoWorld*, I have an old SE/30 about to be swapped out for a Quadra 950, a Nextstation Turbo Color, and a new Toshiba DOS/Windows T2000SX laptop. And, oh yes, I'm in the market for a 66-MHz OS/2-486 to warm the largest high-res color monitor they can ship in under the Golden Gate Bridge.

This personal PC inventory raises several questions, but let's focus on what happens to "passe" personal computers.

In 1987, after tripping over our dusty old Apple II for several years, Robyn and I got the idea that we would donate it to some deserving (tax-deductible) charity. We called, they were grateful, I dropped it off, and we were filled, for a while, with the self-satisfaction of philanthropists awaiting April 15. Then the phone rang. Our charity wanted to know where the power cord was. Then they wanted the diskettes and manuals. Finally, we took the damn thing back — when they started asking how to use VisiCalc.

Now we only donate PCs to charities that already have several others of the same model.

In 1990, Pat McGovern, founder of our parent company, decided to do something about recycling unused PCs. He wanted to do something that



would benefit emerging democracies around the world and our own ill-equipped schools. Pat recruited Dr. Alex Randall, PC recycling expert and founder of the Boston Computer Exchange, to organize donations of unused PCs, refurbish them, and get them into the hands of people involved in good works. The result: the East West Education Development Foundation, in Boston, of which Dr. Randall is

the executive director.

Dr. Randall's foundation conducts triage on pallets of donated PCs, sorting through those that are working and useful, those that need minor refurbishing (like reformatting their disks), and those that have to await donated spares.

Today, Dr. Randall wonders how many of the estimated 50 million PCs in the United States are no longer in use.

Fact is, many of us will only drive a late-model PC. When the new models come out, we are quick to buy them — to reherzt, if you will. But unlike used cars, used PCs do not get traded in.

Some of us get to take our passe PCs home from work. Our boss approves the move because she thinks we'll boost our output by extending our workday. And when we again reherzt, some very few of us get to take our "passe-passe" PCs out to our dachas so we can work during vacations.

I asked Dr. Randall about my trickle-down theory. Surely, when we grow tired of a PC, we can give it to a coworker who may not need the very latest PC. This sometimes happens, Dr. Randall

admits, but mostly passe PCs sit unused. Seems that most of us won't accept hand-me-downs, and so don't offer them, either.

Where do unused PCs sit? On desks, Dr. Randall sadly reports. And in closets. Sometimes even on pallets in warehouses. And often for several years on somebody's books as depreciating capital equipment. If we hide an unused PC, then our accountants don't have to write it off all at once.

Many accountants have thought about selling passe PCs. But very often the cost of selling PCs exceeds their market value.

And can you imagine the force of will required to throw a computer into a dumpster?

The good news is that in 1991, the East West Foundation recycled 3,000 PCs. The other news is that in 1992, the identified need for donated PCs is now 200 times what Dr. Randall can satisfy.

Lotus recently donated 44 pallets, and the Bank of Boston gave 12 pallets of PC gear to Randall's East West Foundation. I am sure they enjoyed the tax benefits of getting the seeming dunks off their books, and I am sure that they felt good about boosting democracy and education. If you think you might have a few pallets of passe PCs on your books and would like to feel good, give Alex Randall a call in Boston at (617) 542-1234.

Bob Metcalfe is publisher of InfoWorld. He invented Ethernet at Xerox PARC in 1973 and founded 3Com Corp. He receives E-mail via the Internet as Bob_Metcalfe@InfoWorld.com or at 524-1127 on MCI Mail.

DONATING PCs

SAVE THE WORLD WITH OBSOLETE TECHNOLOGY

Your Used PC May Be A Technological Wonder To Someone In Need

The PC in the United States is approaching saturation, at least in terms of business use. First there was the new computer market. Then there was the used computer market. Then there is the too-used computer market. So if you're planning to upgrade and sell that used PC, wouldn't you rather want to do some good than just get pocket change?

You have some options. If you want to go local, fine, but one-way donations don't often help much. People need help with computing if they have no experience with them.

You can basically forget trading it in to a manufacturer. Only a few manufacturers (IBM and DEC, for example) will take used PCs in exchange for new ones. IBM will take in an earlier 286 model when you buy a PS/1, and has an extensive program of donations using some preowned but mostly new machines. DEC will take in old computers of any make. If not marketable but refurbishable, they go to charitable organizations, like AIDS or Alzheimer's groups or to assist the handicapped.

That donation can be worth a lot or a little come April 15th. A personal computer is worth only fair market value at donation time. The fair market value is what you might get for it if you could sell it.

For businesses, your computer is worth whatever remains on the depreciation or your fair market value, depending on whether you sell or donate. What you can GET for it is

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another matter. Suppose your depreciation value on your \$5,000 computer is \$2,500. On the open market it may be worth no more than \$600.

If you donate it, you can claim no more than your remaining investment, \$2,500. If your ancient clunker has depreciated to zero you can only claim as much as the fair market value.

There are good ways to make good use out of that good used machine. A number of groups will match up persons and businesses with "outplaced" equipment and groups in serious need of technology.

NEW DIRECTIONS • Alex Randall, the founder of the Boston Computer Exchange now runs the East West Education Development Foundation. "In 1990, there was lots of technology without buyers because the technology had no cash value," he says. "We [BCE] stopped taking PCs in 1991, XT's several months later and AT's during the 1992 price drop. They are like penny stocks, the money you could make on them doesn't support a sales staff."

Unlike many other computer donation foundations, East West doesn't just match up donors and recipients. It also picks up and refurbishes what it can before they go out the door. And that costs money. Besides that, East West needs sponsors for shipping, and many more parts and units. They have a much higher demand for computers than they can supply.

DONATING PCs

East West is chartered to support both U.S. and foreign "most pressing needs." While individual donations are accepted, large and preferably unrestricted donations from large corporations are welcomed.

"We got 20 pallet loads of computers and parts from Lotus," Randall says. "The stuff works but is in 'miscellaneous condition.'" That means it may have been found in a closet, or scavenged for parts. Cables may be missing, or a monitor switched. East West takes equipment like this and performs what Randall calls "computer triage."

"First we find those that run," he says. "Then we format the hard drives, make trivial repairs. Then we take the in-trouble stuff and build new units out of them. Usable parts and extra boards are kept so that custom units, perhaps needing a modem, are made from these. It ain't done until it's sand!"

Domestically, East West is usually helping schools and charities. One-half of all units donated are given to such organizations. For example, some systems have gone to an Office of Hispanic Affairs, another to a Center for Battered Women. The other half of donated systems goes primarily to Eastern Europe and the former Soviet Union, much of it to Poland, Czechoslovakia, Romania, and the Ukraine. A small amount is starting to head to Africa and South America.

By choice, donations are preferentially made to groups that will help fledgling democracies to take root and grow. Computers have been sent to teach conflict resolution in a democratic model, something totalitarian bureaucrats never got to learn.

Eastern European journalism schools can qualify because freedom of speech there also means freedom to use a PC, a rare and powerful device. Political parties and partisan institutions need not apply.

"Computers do REAL work in Ukraine, to help us be more skilled in our democracy and our lives in general," says Lyuba Shara, a 22-year-old Ukrainian senior at Kiev University. Shara spent this summer at Harvard University. She is a leader of the Ukrainian student dissidents. "Students are very powerful in the Ukraine. I participated in the 1990 hunger strike that made the Prime Minister resign."

Shara works for the Ukraine Center for Independent Research. This organization does research for the Ukrainian Parliament, private academies, and non-governmental organizations. The UCIR puts out as much as 30 to 40 documents a week. Among these are a Ukrainian newsweekly, a military bulletin, and newsletter

for or about trade union problems and non-government unions.

The group has an old XT, a brand new 386 from the AFL-CIO with a laser printer, and a 1985 vintage 512K Mac machine that is so used that the letters are worn off the keyboard. The computers are used 24 hours a day by the staff of 15. It also acts as a communication channel for other dissidents and opposition parties in other institutions. East West Foundation has given them five used Macintosh computers though Shara wistfully wishes for more DOS machines.

"The state has a monopoly on computers," explains Shara. "It can cost \$2,000 for a notebook or laptop. The black market rate is 170 rubles or 270 Ukrainian coupons per dollar. The average salary is 2,000-3,000 coupons per month." That works out to be about \$15. A laptop would take a decade to pay for, if you don't mind not eating.

Supplies are so rare that Shara reportedly once cried "I am rich! I have my own diskette!" On her way home she is carrying as many boxes of diskettes as she can get in her luggage.

by Larry Krumeraker

For More Information:

East West Education Development
Foundation
49 Temple Street
Boston, MA 02111
(617) 542-1234
(617) 542-2345, x100 (Fax)

THE WHITE HOUSE
WASHINGTON

DATE: 5/27

NOTE FOR:

Tony Lake

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

Information ☐

Action ☒

*Do you want to tell him
or do you want me to?*

Thank you.

JOHN D. PODESTA
Assistant to the President
and Staff Secretary
(x2702)

cc:

Reduced U.S. World Role Outlined but Soon Altered

High-Level Disavowals Follow Official's Talk

By Daniel Williams
and John M. Goshko
Washington Post Staff Writers

A1

A senior State Department official set off a flurry of high-level disavowals yesterday with remarks to reporters that the Clinton administration, as it focuses on domestic economic troubles, expects to withdraw from many foreign policy leadership roles customarily assumed by the United States.

"It is necessary to make the point that our economic interests are paramount," the official declared. With limited resources, the United States must "define the extent of its commitment and make a commitment commensurate with those realities. This may on occasion fall short of what some Americans would like and others would hope for."

His remarks, before a large luncheon audience of reporters, caused concern among more senior officials who moved quickly to dispute the notion that either American power or influence was in decline or that the official was expressing administration policy.

President Clinton and Secretary of State Warren Christopher have spoken frequently about their intention to give a high priority to international economic issues and to press U.S. allies to share more of the burden of dealing with crisis situations. But they have not spelled out the limits of U.S. engagement as specifically as the official yesterday.

"There is no derogation of our powers and our responsibility to lead," Christopher said in a brief telephone interview yesterday evening. "In some situations, we will try to involve other countries. We would not be a superpower for long if we have to do everything on our own." Christopher added that the United States would continue to involve itself overseas when U.S. interests are at stake.

"That is not our foreign policy," said a senior White House official in response to the disputed remarks. "The president believes that we cannot be strong abroad unless we

POLICY, From A1

are strong at home and we cannot be strong at home unless we are engaged abroad. It is simply not right to in any way suggest that we do not want to take a strong leadership role abroad."

Yesterday's episode occurred under ground rules common in Washington where officials frequently speak behind a cover of anonymity in order to feel free to express themselves. The State Department declined repeated requests to let the official be quoted by name.

As an example of the new approach he described to America's global responsibilities, the official cited how Washington, in the face of allied opposition, shelved its call for military pressure in Bosnia-Herzegovina and acquiesced to a joint Russian-European plan for settling the conflict there.

"For those who would like this to have become a United States show, there is distinct disappointment out there. We are determined not to go in there and take over Bosnia policy," the official said.

"Are people dying because the United States could do more if we wanted to?" he asked rhetorically. "Yes, the answer is that."

He depicted a post-Cold War landscape of limited American power and influence. His comments appeared to outline the parameters of future American action and intervention in international crises.

The remarks departed from the muscular image of U.S. leadership projected by the Reagan and Bush administrations and harkened back to the more limited exercise of U.S. power characteristic of the Carter administration. The official served in a high-ranking State Department position during the Carter years from 1977 through 1980.

"Friends" of the United States have had difficulty understanding "how much has changed in the U.S. after the Cold War," the official said.

He admitted that the self-imposed limitations can result in policy "that may on occasion fall short of what some Americans would like and others might hope for."

The official stressed that there would be situations so central to U.S. security that the United States would feel it necessary to intervene without its allies. But he said that unlike the Cold War, when Washington paid lip service to the notion of collective security, the new administration really believes in that concept.

"The approach is difficult for our friends to understand. It's not different by accident, it's different by design," he said.

The United States faces the threat of "middleweight powers" in contrast to the heavyweight rivalries of the Cold War era, the official explained. Taming these, he suggested, would also be difficult, given the lack of national resources and will.

"We simply don't have the leverage, we don't have the influence, the inclination to use military force. We don't have the money to bring positive results any time soon," he said.

Asked repeatedly about the course of U.S. policy towards Bosnia, his responses indicated that events there have transformed the former Yugoslav republic into a kind of laboratory for this new approach to international crisis management.

Describing Christopher's pivotal trip to Europe in early May, which was billed at the time as intended to rally support for military action

against Bosnian Serb forces, the official said Christopher's purpose was not to sell Clinton's military plan but to gather European ideas.

On the eve of the trip, Clinton decided on a package of steps to even the balance between Bosnian Serbs and Muslims. The plan involved helping to arm the Muslims while holding Serb forces at bay with U.S. air power. Christopher traveled to Moscow and several Western European capitals to discuss the package.

"People were genuinely disarmed by the fact that he was there to consult," the official said of Christopher's efforts. "He did not have a blueprint in his back pocket. . . . He had some things we favored."

Part of Christopher's goal was to set limits on American involvement, the official said.

Christopher encountered resistance from Russia and major European states to the Clinton plan, which the administration then put aside. Last week, the administration signed on to a European/Russian plan centered on the establishment of U.N.-declared safe havens for besieged Muslims. The United States has agreed to use air power to protect the international troops that will be guarding the safe havens.

The official said he understood the bitter criticism that has been directed at these decisions by the Bosnian Muslims and their sympathizers in Islamic countries. "Any of us involved in this have to feel pain and sympathy," he said.

The official also spoke approvingly of the administration's performance in several other foreign policy areas. He said Washington had managed to restart the Middle East peace talks after a rocky beginning and had provided important financial support to Russian President Boris Yeltsin's reformist government.

He said Clinton is still wrestling with how to maintain sound relations with China while expressing concern and hope for change in China's approach to human rights, trade with the United States and high-tech arms sales abroad.

A decision by Clinton on whether to renew for another year China's trade privileges with the United States is due by June 3. Administration officials say Clinton will place conditions on future annual renewal in order to force progress on the issues of concern to the United States.

THE PRESIDENT HAS SEEN 5/27

Doug

Who did this?

WEDNESDAY, MAY 26, 1993 THE WASHINGTON POST

B

23

To Vice (Bering)

THE PRESIDENT HAS SEEN 5/26

LOUIS F. OBERDORFER
1423 KIRBY ROAD
MCLEAN, VIRGINIA 22101

May 19, 1993

*Personal and confidential,
please
L 20*

The President and Mrs. Clinton
The White House
Washington, D.C. 20500-2000

Dear Mr. President and Mrs. Clinton:

I thought it would be appropriate for me to comment about two of those mentioned as a possible replacement for Justice Byron White on the Supreme Court, Judges Stephen Breyer and Richard Arnold. As you will see I have reservations about Judge Breyer, and recommend that you appoint Judge Arnold.

1. Judge Breyer: I have experience with him in two phases of his career: (1) when he was on the staff of Watergate prosecutors Archibald Cox and Leon Jaworski, and (2) when he was a judge member of the Sentencing Commission.

In the Watergate phase he investigated and tried to make a case against Erwin Griswold and Richard McLaren who had been, respectively, Solicitor General and Assistant Attorney General in charge of the Anti-trust Division. They were suspect to Breyer because they had

approved or not interdicted a merger with respect which Secretary John Connolly had allegedly manipulated. I only know tangentially about the charges against Griswold. I represented McLaren, who was by then a federal judge. At the time of the investigation McLaren was mortally ill. Breyer interviewed him while he was hospitalized at N.I.H. Leon Jaworski caused the charges against both to be dropped, and McLaren passed away shortly thereafter. This experience with Breyer raised grave questions in my mind about his humanity and judgment.

My doubts about his judgment have been confirmed by his role in the formulation of the sentencing guidelines. They are the product of a mind that is too bright by one-half. His subsequent defense of the guidelines have been disingenuous.

In short, I believe Breyer to be a brilliant academic without the rich human experience and contact with reality which you would want to be identified as your contribution to the Supreme Court. In short, he is not your kind of guy.

2. Judge Arnold: On the other hand, while I have never met Richard Arnold, he stands tall in my lexicon of judges. My late colleague Gerhard Gesell was not given

to praising others. Richard Arnold worked for Gesell for several years at Covington & Burling; he referred to Arnold as the ablest understudy he ever had. Gesell's former secretary, Doris Brown, recently told me of Arnold's command of the relevant legal literature (Federal Rules of Civil Procedure, Federal Rules of Evidence, key cases, etc.). As she put it, when Arnold left Covington, the other associates had to go back to using the library!

My own high regard for him came primarily from reading some of his opinions. One in particular, which I commend to you, is his dissenting opinion in United States v. Wise, 976 F.2d 393, 405 (8th Cir. 1992). It evidences an appreciation for the spirit of the Constitution and the clear, direct mode of thought and expression with which I believe you will want to be identified.

On another level, there is no one on the Court or among the identified candidates with Judge Arnold's combination of political experience and geographic qualifications. I hope you will name him.

Sincerely,

Louis Oberdorfer

Enclosure

(5:16 p.m.) or the brief time that the court had to review defense counsel's written objections to the presentence report. Nevertheless, although we do not endorse the manner in which it was conducted, we conclude that the hearing did not deprive Wise of due process. He had an opportunity to voice his objections to the presentence report and to cross examine the probation officer who had prepared the report. We perceive no functional difference between the procedure that was followed and the result that would have been reached had the government been required to proceed to establish the truth of the allegations contained in the report by questioning Sexson in the first instance. The basis of Sexson's information was the important fact to be established, and it was developed as well through the procedure that was followed as it would have been had the procedure been that prescribed by the Federal Rules of Criminal Procedure and by our case law.

X.

Finally, we reject Wise's contention that the district court erred in denying him a two-level reduction for acceptance of responsibility. From what we have said above, and in view of the broad discretion given to the sentencing court in making a finding on this issue, *see, e.g., United States v. Keene*, 915 F.2d 1164, 1170 (8th Cir.1990) (determination regarding acceptance of responsibility not to be disturbed unless it is without foundation), *cert. denied*, — U.S. —, 111 S.Ct. 1001, 112 L.Ed.2d 1084 (1991); *United States v. Nunley*, 873 F.2d 182, 187 (8th Cir.1989) (same), we believe that no further discussion is necessary regarding this issue.

The sentence is affirmed.

RICHARD S. ARNOLD, Chief Judge,
joined by LAY, Senior Circuit Judge, and
McMILLIAN, Circuit Judge, concurring in
part and dissenting in part.

James Michael Wise has been convicted on his plea of guilty to two counts of counterfeiting currency of the United States. The District Court sentenced him

to prison for two years and eight months, or 32 months. The sentence was within the Guideline range of 30 to 37 months. The range was fixed by the Court's holding that the offense level was 19 and the criminal history category I. On appeal, Wise makes two arguments: he should have been given a two-level reduction for acceptance of responsibility, and it was wrong to give him a four-level enhancement for being the leader or organizer of criminal activity with five or more participants. This Court affirms. With respect to acceptance of responsibility, I agree. But with respect to Wise's role in the offense, I dissent. Maybe Wise deserves the four-level enhancement. Maybe the same finding would be made if proper procedures were followed. But the procedures followed here violated the Confrontation Clause of the Sixth Amendment and the Due Process Clause of the Fifth Amendment. Moreover, even if there is no constitutional violation, the judgment should be reversed. The District Court erred in placing the burden of persuasion on Wise and in basing its findings on unreliable information.

I.

First, the facts. Without the four-level adjustment for role in the offense, Wise's offense level would be 15. His Guideline range would be 18 to 24 months. Assuming a sentence at the lower end of the range (by analogy to the sentence actually imposed, 32 months in a range of 30 to 37), his sentence would be in the neighborhood of 20 months. Thus, the enhancement in question is worth about 1 year, the difference between the 32 months actually imposed and the approximately 20 months that would have been imposed without the adjustment. Wise has served 12 additional months.

The only witness called at the sentencing hearing to support this or any other aspect of the sentence was a probation officer. He had no personal knowledge of any facts relevant to the four-level enhancement. Sentencing Transcript (Tr.) 14. The "evidence" with respect to each person poten-

tially involved with Wise in the offense does not take long to summarize.

1. Terry Lankford. The probation officer testified that Lankford was charged "in state court as a result of [his] ... involvement in this offense." Tr. 14. Lankford is presently serving a sentence. No court records were presented to substantiate or explain this testimony. According to the probation officer, Lankford pleaded guilty to a state crime. The probation officer said that he had "information that [Lankford] admitted that he received the [counterfeit] money from Mr. Wise." Tr. 31. So far as the transcript shows, the witness never spoke with or even saw Lankford.

2. Earl Dean Laughlin, Jr. This man also pleaded guilty in a state court. "As far as I know," the probation officer testified, "he [Laughlin] advised that he received money from Mr. Wise." Tr. 31 (emphasis supplied). The witness had never talked to Laughlin. He had no direct information that Laughlin even knew Mike Wise. The information the witness had about Laughlin came from a Secret Service investigative report "and conversation with the prosecuting attorney's office." Tr. 32. (I take it the reference to "prosecuting attorney" is to the state official who prosecuted Laughlin, though the record is not absolutely clear.) We do not know who had the "conversation" referred to, whether the Secret Service, the United States Attorney's office, or the probation officer himself.

3 and 4. Two individuals, unnamed, on federal pretrial diversion. These two persons apparently admitted their own involvement directly to the probation officer, and, in addition, said something to implicate

Wise. The probation officer refused to give their names.¹

5. Another unnamed person. The witness said: "I also have an individual who had his state parole revoked as a result of his involvement in the case. He admitted that he was involved." Tr. 31. Again, we have no state-court records to substantiate this testimony. This person, apparently, is not on federal pretrial diversion and has no other claim to anonymity, but the probation officer still failed to give his name.

In sum, we have the following state of affairs: Wise has served an additional 12 months in a federal penitentiary because a witness with no personal knowledge says that a Secret Service file, or some unnamed person in a state prosecutor's office, says that Earl Dean Laughlin, who is not in court, says that Wise was involved with him in the offense and was its leader or organizer. This is double or triple hearsay at best. We do not know exactly even what Laughlin said, or what anyone who ever talked directly to him says he said.

I am astonished that a court of the United States would order anyone kept in prison on such a basis.

II.

The interpretation of any written document, including the Constitution, should begin with its words, though it will rarely end there. The Sixth Amendment says:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district

fense. One may assume that people will not untruthfully incriminate themselves. But persons on pretrial diversion have a strong incentive to incriminate others. If they tell the authorities what they want to hear about Wise, they may hope for lenient treatment for themselves, perhaps even complete dismissal of charges. Maybe this evidence is "more than unsubstantiated rumor," *ante* at 403-04, but how anyone can characterize it as "more than ... second-hand knowledge," *ibid.*, is beyond me. The best that can be said is that it is "second-hand knowledge."

1. The Court "assume[s]," *ante* at 403, "that any self-incriminatory statements made by [these two persons] ... fell within the definition of a statement against penal interest excepted from the exclusions of the hearsay rule by Federal Rule of Evidence 804(b)(3) (we put aside that Rule's precondition of the witness's unavailability)." To the extent that the two unnamed persons incriminated *themselves*, this may be true. But the important point here is not these persons' own guilt, but whether another person, Wise, was also involved in the same offense, and, more important still, whether that other person was the leader or organizer of the of-

shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

If "plain meaning" is the criterion, this is an easy case. Surely no one would contend that sentencing is not a part, and a vital one, of a "criminal prosecution." To be sure, it is not words in isolation, but words in context, that matter, and the Framers of the Bill of Rights knew nothing of sentencing proceedings separate from the trial itself. Most sentences followed automatically from conviction. In general, the punishment for felony was death. Moreover, a literal reading of the Amendment would require jury trials of facts relevant to sentencing, and the Constitution is not generally thought to contain such a requirement. See *United States v. Galloway*, 976 F.2d 414 (8th Cir.1992) (en banc) (trial by jury not required); but see *id.* at 442-43 (Bright, J., dissenting) (trial by jury required if the facts in issue are themselves a distinct crime). On the other hand, surely defendants in sentencing proceedings enjoy the protection of those portions of the Amendment relating to notice, cf. *Burns v. United States*, — U.S. —, 111 S.Ct. 2182, 115 L.Ed.2d 123 (1991), the assistance of counsel, and compulsory process for the attendance of witnesses. I have heard no one argue, to take one example, that defendants have no constitutional right to counsel at the time of sentencing. So why not confrontation? It seems to me that the words of the Amendment at least point in the direction of recognizing the right to confront adverse witnesses.²

What about the intent of the Framers? If the words' meaning isn't plain, what

evidence do we have of the Framers' purpose? The answer seems to be, very little. What we do know, however, points towards recognizing the right of confrontation. The history is well summarized in Justice Thomas's separate opinion in *White v. Illinois*, — U.S. —, —, 112 S.Ct. 736, 745-46, 116 L.Ed.2d 848 (1992):

In 16th-century England, magistrates interrogated the prisoner, accomplices, and others prior to trial. These interrogations were "intended only for the information of the court. The prisoner had no right to be, and probably never was, present." 1 J. Stephen, *A History of the Criminal Law of England* 221 (1883). At the trial itself, "proof was usually given by reading depositions, confessions of accomplices, letters, and the like; and this occasioned frequent demands by the prisoner to have his 'accusers,' i.e., the witnesses against him, brought before him face to face...." *Id.*, at 326. See also 5 Wigmore, *supra*, § 1364, at 13 ("there was ... no appreciation at all of the necessity of calling a person to the stand as a witness"; rather, it was common practice to obtain "information by consulting informed persons not called into court"); 9 W. Holdsworth, *History of English Law* 227-229 (3d ed. 1944). The infamous trial of Sir Walter Raleigh on charges of treason in 1603 in which the Crown's primary evidence against him was the confession of an alleged co-conspirator (the confession was repudiated before trial and probably had been obtained by torture) is a well-known example of this feature of English criminal procedure. See Pollitt, *The Right of Confrontation: Its History and Modern Dress*, 8 J.Pub.L. 381, 388-389 (1959); 1 Stephen, *supra*, at 333-336; 9 Holdsworth, *supra*, at 216-217, 226-228.

(emphasis added)); *Mempa v. Rhay*, 389 U.S. 128, 134, 88 S.Ct. 254, 256-57, 19 L.Ed.2d 336 (1967) (presence of counsel required at sentencing because sentencing is a "stage of a criminal proceeding where substantial rights of a criminal accused may be affected"); *United States v. Garbett*, 867 F.2d 1132, 1136 (8th Cir.1989) (discussing application of Fed.R.Crim.P. 32 "at the sentencing phase of a trial" (emphasis added)).

2. See *Middendorf v. Henry*, 425 U.S. 25, 38, 96 S.Ct. 1281, 1289, 47 L.Ed.2d 556 (1976) (summary courts martial are not "criminal prosecutions" under the Sixth Amendment because they are not adversarial); *Morrissey v. Brewer*, 408 U.S. 471, 480, 92 S.Ct. 2593, 2599-2600, 33 L.Ed.2d 484 (1972) (parole-revocation hearings are not within the Sixth Amendment because "[p]arole arises after the end of the criminal prosecution, including imposition of sentence"

Apparently in response to such abuses, a common-law right of confrontation began to develop in England during the late 16th and early 17th centuries. 5 Wigmore, *supra*, § 1364, at 23; Pollitt, *supra*, at 389-390. Justice Story believed that the Sixth Amendment codified some of this common law, 3 J. Story, Commentaries on the Constitution of the United States 662 (1833), and this Court previously has recognized the common-law origins of the right. See *Salinger v. United States*, 272 U.S. 542, 548, 47 S.Ct. 173, 175, 71 L.Ed. 398 (1926) ("The right of confrontation did not originate with the provision in the Sixth Amendment, but was a common-law right having recognized exceptions"). The Court consistently has indicated that the primary purpose of the Clause was to prevent the abuses which had occurred in England. See *Mattox v. United States*, 156 U.S. 237, 242, 15 S.Ct. 337, 339, 39 L.Ed. 409 (1895) ("The primary object of the [Confrontation Clause] was to prevent depositions or *ex parte* affidavits, such as were sometimes admitted in civil cases, being used against the prisoner in lieu of a personal examination and cross-examination of the witness ..."); *California v. Green*, 399 U.S. [149] at 156, 90 S.Ct. [1930] at 1934 [26 L.Ed.2d 489 (1970)] ("It is sufficient to note that the particular vice that gave impetus to the confrontation claim was the practice of trying defendants on 'evidence' which consisted solely of *ex parte* affidavits or depositions secured by the examining magistrates, thus denying the defendant the opportunity to challenge his accuser in a face-to-face encounter in front of the trier of fact"); *id.*, at 179, 90 S.Ct., at 1946 (Harlan, J., concurring) ("From the scant information available it may tentatively be concluded that the Confrontation Clause was meant to constitutionalize a barrier against flagrant abuses, trials by anonymous accusers, and absentee witnesses"); *Dutton v. Evans*, 400 U.S. [74] at 94, 91 S.Ct. [210] at 222 [27 L.Ed.2d 213 (1970)] (Harlan, J., concurring in result) (the "paradigmatic evil the Confrontation

Clause was aimed at" was "trial by affidavit").

What is happening to *Wise* in this case is not exactly the same thing, but it's close enough to cause me to suspect that the Framers would easily recognize some of the abuses that concerned them. *Wise* has been tried, so far as sentencing goes, on the basis of prosecution documents: the presentence report (which relies heavily on prosecution sources), investigative reports of the Secret Service, composed of employees of the adverse party, and so forth. Some of these documents he has not even seen. Some of the crucial people mentioned in them are not even named. Such a procedure attacks the core values of the Confrontation Clause.

About all this the Court says nothing. It does not quote the Sixth Amendment, nor does it mention the Framers' intent. Its reliance, instead, is on recent history. Traditionally, the Court says, procedure at sentencing has been informal, and confrontation has not been required. The argument depends entirely on *Williams v. New York*, 337 U.S. 241, 69 S.Ct. 1079, 93 L.Ed. 1337 (1949), and collapses on close examination. *Williams*, in the first place, is not a Confrontation Clause case at all. It is a due-process case from a state court, decided before the Confrontation Clause was held, in *Pointer v. Texas*, 380 U.S. 400, 85 S.Ct. 1065, 13 L.Ed.2d 923 (1965), applicable to the states. And *Williams*'s whole underpinning is the system then obtaining of discretionary sentencing, a system believed, in those days, to represent the best of modern penology—the very system the Sentencing Reform Act of 1984 was passed to destroy! Passages can be cited that seem, if one reads nothing else, to support the Court's position, but such an approach ignores the most basic principle of legal analysis: Case law is based on reason, and if the reason justifying the result of a case ceases to exist, the case loses its authority. *Cessante ratione, cessat ipsa lex*. If this is not enough, consider two more aspects of *Williams*. First, it was decided in a gentler age, when probation officers were supposed "to aid offenders," 337 U.S. at 249, 69 S.Ct. at 1084 (emphasis added), not com-

pile evidence or appear as witnesses against them. Second—and this has been called “the most important line in the opinion,” Saltzburg, *Sentencing Procedures: Where Does Responsibility Lie?*, 4 Fed. Sent. Rep. 248, 248 (1992)—Williams did not contest any of the facts allegedly shown by the hearsay used against him! “The accuracy of the statements made by the judge as to appellant’s background and past practices was not challenged by appellant or his counsel, nor was the judge asked to disregard any of them or to afford appellant a chance to refute or discredit any of them by cross-examination or otherwise.” *Williams*, 337 U.S. at 244, 69 S.Ct. at 1081-82 (emphasis added).

In short, *Williams* was decided in the context of a sentencing “system that focus[ed] on subjective assessments of rehabilitative potential...” Saltzburg, *supra*, 4 Fed.Sent.Rep. at 250. Sentencing was intuitive and impressionistic. The world is very different now. For most defendants in the federal courts, sentencing is what the case is really about. And the process is much more fact-driven, in the sense that specific, identifiable increments of punishment are a legal consequence of specific past conduct, other than the offense of conviction itself. Some discretion remains, it is true. The court is free to choose within the Guidelines range—but the range is fairly narrow; the upper limit may not exceed the lower by more than 25 per cent. The court may even depart from the Guidelines—but only if certain findings are made, the propriety of which, like almost every other question under the Guidelines, is reviewable on appeal at the instance of either side. And the importance of the sentence imposed by the court is much greater. Parole has been abolished. Sentences are diminished only by the accrual of good time, which is limited to slightly less than 15 per cent. The world of sentencing has in fact been “revolutionized.” The word is not mine, but the Supreme

Court’s. *Burns v. United States*, — U.S. at —, 111 S.Ct. at 2184.

Williams is obsolete for other reasons as well. Trial judges no longer have unlimited discretion in either the range of information they may consider or the punishment they may impose. Not only do the Guidelines attach a mandatory penalty to proof of particular facts, but they greatly restrict the type of information a judge may consider. Under U.S.S.G. Ch. 5, Pt. H, age, education, mental, emotional, and physical condition, employment history, and family and community ties are no longer relevant to sentencing.³ The Court decides this is not of great significance since the “sentencing judge still considers information not strictly relevant to a defendant’s guilt or innocence, such as uncharged conduct, when fashioning a sentence.” *Ante* at 398. As to this category, the judge “still requires full and complete information.” *Ante* at 399. Therefore, the Court reasons, the Guidelines have not “fundamentally transformed the search for information at the sentencing phase.” *Id.* I disagree. What the Court appears to be saying is that as long as we still conduct a broad, unlimited search for the information the Guidelines do allow, it is irrelevant that we have eliminated some categories of allowable information. Somehow the deck of available facts seems a bit more stacked against the defendant under this regime. Before, both the defendant and the prosecution contributed information to the process. The defendant played his cards—employment history, mental, physical, and emotional state, potential for rehabilitation, and other favorable policy arguments—and the prosecutor played his. The judge would then consider all of the information and impose a sentence which was fair and reasonable under those particular circumstances. The Court now says there is no need to change the rules, even though the prosecutor has all the cards and the judge is required by law to impose a sentence depending not upon his independent analysis of the facts, but

3. See Daniel J. Freed, *Federal Sentencing in the Wake of Guidelines: Unacceptable Limits on the Discretion of Sentencers*, 101 Yale L.J. 1681, 1715 (1992) (arguing that Ch. 5, Pt. H is incon-

sistent with 18 U.S.C. § 3661, providing that “[n]o limitation shall be placed on the information” to be considered by the sentencing court).

upon what cards the prosecutor chooses to play. In general, the sentencing factors so important under the new scheme all point in one direction: towards longer sentences. The major exception is cooperation of the defendant with the prosecution, and in many cases this fact is relevant only on the prosecution's motion.

Next, the Guidelines have replaced the goals of rehabilitation and individualized sentencing with punishment and uniformity. See 18 U.S.C. § 3553(a)(2) and U.S.S.G. § 1A3. The Court admits this, but states that since the sentencing system still places a premium on obtaining all evidence relevant to the new goals, the absence of the right of confrontation still stands. *Ante* at 399. Once again, the Court misses the mark. We are no longer fitting the punishment to the criminal, but only to the crime. The information obtained is not used to decide how best to rehabilitate the defendant—a goal which is arguably shared by the defendant—but to determine how long he will be imprisoned. Allowing a sentencing judge to conduct an inquiry free from evidentiary strictures was perhaps permissible in achieving this mutual goal and sentencing the defendant individually. It has no place in a system where the goal is no longer mutual. When you change the prosecution's goals to retribution and uniform sentencing, you should add procedural safeguards to ensure that the proceeding remains fair to the defendant.

Furthermore, sentencing is now fully adversarial. Rule 32 "contemplates full adversary testing of the issues relevant to a Guidelines sentence." *Burns*, — U.S. at —, 111 S.Ct. at 2185. "[T]he facts that are now relevant to sentencing are far more susceptible to trial-type proof than those facts relevant under the rehabilitative scheme, because they implicate claims about the offense of conviction or other related offenses rather than claims about the offender's background." Note, *An Argument for Confrontation Under the Federal Sentencing Guidelines*, 105 Harv. L.Rev. 1880, 1886 (1992). (Remember that Congress has now expressly disavowed rehabilitation as a purpose of sentencing. 28

U.S.C. § 994(k)). The Guidelines themselves recognize that a significant change has occurred. "The court's resolution of disputed sentencing factors will usually have a measurable effect on the applicable punishment. More formality is therefore unavoidable if the sentencing process is to be accurate and fair." U.S.S.G. § 6A1.3, commentary. In sum, "sentencing proceedings are arguably the most important judicial business conducted by Article III judges." Becker & Orenstein, *The Federal Rules of Evidence After Sixteen Years*, 60 Geo.Wash.L.Rev. 858, 889 (1992). No reasonable effort should be spared to make these proceedings fair and accurate in perception and reality.

The position I advocate has significant support in pre-Guidelines Supreme Court case law. The closest case is *Specht v. Patterson*, 386 U.S. 605, 87 S.Ct. 1209, 18 L.Ed.2d 326 (1967). There, confrontation rights were required in the context of a state sentencing system that increased the maximum sentence from ten years to life upon a finding by the court that the offender, on the basis of past conduct, "if left at large, constitutes a threat of bodily harm to members of the public, or is an habitual offender and mentally ill." *Id.* at 607, 87 S.Ct. at 1211. The system contemplated an adversary proceeding and "a new finding of fact that was not an ingredient of the offense charged." *Id.* at 608, 87 S.Ct. at 1211-12. The Supreme Court held that the defendant was entitled to "an opportunity to be heard, be confronted with the witness against him, have the right to cross-examine, and . . . offer evidence of his own." *Id.* at 610, 87 S.Ct. at 1212. *Williams* was easily distinguished.

The Confrontation Clause applies, and the case should be remanded for resentencing in a manner consistent with the Clause.

III.

The Court suggests, *ante* at 398 n. 2, that the issue might better be analyzed in terms of due process than under the Confrontation Clause. In my view, this case would come out the same way under the

Due Process Clause. The right to confront and cross-examine witnesses is part of the process that is due before a defendant may be deprived of his liberty for an additional period of time.

First, there is surely no doubt that what the defendant lost in the present case is "liberty" within the meaning of the Due Process Clause of the Fifth Amendment. The Court's opinion assumes as much, and it would be hard to deny. Wise has spent 12 more months in jail because of the contested facts. He has lost liberty in the most basic sense. He has been in jail instead of free. When this sort of loss occurs as punishment for crime or some other sort of infraction, one has been deprived of the sort of "liberty" that derives its protection directly from the Constitution. The "liberty interest" analysis of more recent case law is unnecessary. See *Jones v. Mabry*, 723 F.2d 590 (1983).

Even if a liberty-interest analysis had to be undertaken, the same result would follow. Our opinion in *United States v. Galloway*, 976 F.2d 414, 425 (8th Cir.1992) (en banc), so holds. "'Once convicted, a defendant has a liberty interest in the correct application of the Guidelines within statutory limits....'" *Ibid.* (quoting *United States v. Mobley*, 956 F.2d 450, 455 (3d Cir.1992)).

The real question is, what process is due? Neither *McMillan v. Pennsylvania*, 477 U.S. 79, 106 S.Ct. 2411, 91 L.Ed.2d 67 (1986), nor *Galloway* decides the issue with respect to the right of confrontation. *McMillan* holds that due process does not require the government to prove a sentencing factor by clear and convincing evidence. A preponderance is enough to satisfy due process. And *Galloway* holds that the use of relevant conduct in sentencing does not trigger the rights to indictment, jury trial, and proof beyond a reasonable doubt. There is a distinction between the rights denied in *Galloway* and the right at issue here. The *Galloway* Court held that un-

charged conduct is a sentencing factor, not a new element of the offense and not a separate offense. Therefore, it reasoned, indictment and a jury trial are not necessary. Additionally, the standard of proof is elastic and stretches to fit a particular situation depending upon a balancing of the competing interests. Unlike the right to confrontation, the question with standard of proof is not whether one exists, but where on the sliding scale it lies. The Court in *Galloway* held that a lesser standard of proof was adequate to insure fairness in sentencing. The right of confrontation and cross-examination, on the other hand, has no sliding scale. It is an all-or-nothing proposition. Since *Galloway* itself says that the defendant has a liberty interest in a correct application of the Guidelines, we should be wary of giving him nothing. The very fact that the burden of proof offers little protection to the defendant is one of the best reasons to allow him to cross-examine the prosecutor's sources of information.

We have specific guidance from the Supreme Court on how to decide whether due process requires a given procedure. In *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976), the Court held that three factors must be considered: the private interest at stake; the government's interest, including the cost of the additional procedural requirement; and the extent to which more accurate fact-finding would result from the additional procedural requirement.⁴ A weighing of these factors points decisively in favor of the right of confrontation. The private interest—the interest in being free of unjust imprisonment for crime—is among the highest recognized by the law. In fact, it is the highest, I think, with two exceptions: the interest in not being unjustly convicted in the first place, and the interest in not being unjustly put to death. The government has an interest in preventing defendants from unfairly escap-

4. In *Medina v. California*, — U.S. —, 112 S.Ct. 2572, 120 L.Ed.2d 353 (1992), the Court held that the *Mathews* analysis does not apply to questions of criminal procedure in the state courts. The Court's reasoning draws heavily on

considerations of federalism, *id.* — U.S. at —, 112 S.Ct. at 2577, and it seems that *Mathews* is still generally applicable under the Due Process Clause of the Fifth Amendment.

ing appropriate punishment, but this interest is not at all likely to be harmed by allowing defendants a right of confrontation. The government's major interest is parallel to the defendant's, if not identical: the interest in seeing that the sentence imposed is based on facts accurately found. It is by now a commonplace that the interest of the United States "in a criminal prosecution is not that it shall win a case, but that justice shall be done." *Berger v. United States*, 295 U.S. 78, 88, 55 S.Ct. 629, 633, 79 L.Ed. 1314 (1935) (Sutherland, J.). The only real down side from the government's viewpoint is that sentencing will cost it more time and money. In most cases, though—and this seems to be true here—the additional burden would be light. It could be satisfied by invoking firmly rooted hearsay exceptions or by calling witnesses who will often be either government employees (e.g., Secret Service agents) or other persons easily available (e.g., co-defendants on pretrial diversion). Add to all this the significant increase in accuracy that confrontation and cross-examination bring. In Dean Wigmore's phrase, cross-examination is "the greatest legal engine ever invented for the discovery of truth." 5 Wigmore, *Evidence* 32 (Chadbourn rev. ed. 1974).

The right of confrontation is worth the cost. It is, after all, not a "technicality" serving some extraneous purpose (a view that some take of the Fourth Amendment Exclusionary Rule, for example). It bears directly on and significantly advances the truth-seeking function of sentencing hearings. Confrontation is required by due process. See Note, *supra*, 105 Harv.L.Rev. at 1898.

IV.

Even if I agreed with the Court about the Constitution, I could not vote to affirm this sentence. The procedure followed was indefensible (indeed, the Court does not really try to defend it). And the evidence underlying the District Court's finding was not reliable, if that word is to retain any substance.

The District Court began the sentencing hearing by announcing that it would not read the defendant's objections to the presentence report, even though the objections were timely. It then called as a witness an official of its own, the probation officer who wrote the presentence report, and told the defendant he could cross-examine. The Court warned, however, in a quite extraordinary statement, that

I'm going to assume that the factual statements [in the presentence report] are correct and accurate unless you are able to convince the Court that they are not.

Sent. Tr. 6.

This Court today reaffirms the holding of *United States v. Streeter*, 907 F.2d 781, 791-92 (8th Cir.1990), that a "presentence report is not evidence and is not a legally sufficient basis for making findings on contested issues of material fact." *Ante* at 404. It also repeats the rule that facts relied on at sentencing must be proved by a preponderance of the evidence. *Ante* at 400. The District Court overtly violated these two rules. The burden was put on the defendant to disprove the probation officer's boilerplate assertion that his own presentence report was correct! There is such a thing as harmless error, of course, but the Court's opinion does not say the error was harmless. It does not say that the evidence with respect to the sentencing factor in question was so overwhelming that misplacement of the burden of persuasion clearly made no difference. It says simply that there was "no functional difference between the procedure that was followed and the result that would have been reached" if correct procedures had been followed. Can this be so? Is it really true now in this Circuit that it doesn't matter which side has the burden of proof at sentencing?

The Court also labels the evidence "reliable." I respectfully disagree. In the first place, there is nothing reliable about a system in which a court purports to judge the credibility of one of its own employees. I concede that the record shows no reason to suppose the probation officer would lie.

But what about unintentional mistakes, faulty memory, inaccurate repetition of what others had told him? The Court says the source of the probation officer's information, "the Secret Service and the personnel in the prosecutor's office—gives the information an aura of authenticity..." *Ante* at 404. The Court has a touching faith in governmental authority which I do not share. Have members of a police agency or of a prosecution force ever exaggerated the facts? Have they ever, perhaps, remembered only those portions of a conversation helpful to their position? Have they ever gone so far as to lie? Of course they have. They are not immune from human frailty or free of selfish interest. No doubt outright lying is rare. I have never known the Department of Justice to misrepresent facts in court. But if the mere fact that information comes from the government gives it "an aura of authenticity that renders it sufficiently reliable as the basis of a finding of fact," *ante* at 404, why bother to have any sentencing hearings? Let's just hear the government's statement of facts and dispense with formalities like testimony and burden of proof.

I would reverse.

LAY, Senior Circuit Judge, joined by McMILLIAN, Circuit Judge, dissenting.

Chief Judge Arnold's dissenting opinion reflects an exceptional dissertation on the fundamental fairness missing from the Federal Sentencing Guidelines. Unless Congress and the Sentencing Commission intended to abandon the Constitution of the United States altogether, the dissenting analysis, succinctly and objectively, points up one of the more fundamental weaknesses inherent in the application by district courts of the Sentencing Guidelines.

I am pleased to concur and join in Chief Judge Arnold's dissent.

BEAM, Circuit Judge, concurring specially.

I generally concur in the majority opinion prepared by Judge Wollman except to the extent that it differs with the reasoning in

my dissent in *United States v. Galloway*, 976 F.2d 414 (8th Cir.1992) (en banc). I must confess, however, that the majority opinion in *Galloway* now makes the due process and confrontation issues in this case very close questions. The *Galloway* majority fends off the dissenting view that use of U.S.S.G. § 1B1.3(a)(2) results in manifest injustice, with the following observation:

The commentary makes clear that "[t]he sentencing court must determine the appropriate procedure in light of the nature of the dispute, its relevance to the sentencing determination, and applicable case law." U.S.S.G. § 6A1.3 comment.

When uncharged conduct is alleged as relevant conduct to substantially increase the sentencing range, district judges are authorized to require the United States Attorney to undertake the burden of presenting evidence to prove that conduct. In the final analysis, the determination of what is relevant conduct is a factual question to be decided by the district judge. The record in this case demonstrates that the Assistant United States Attorney was prepared to assume the appropriate burden and to present evidence of the uncharged conduct before the district court in the sentencing proceedings. The district court foreclosed such efforts by its ruling on the constitutional issues. We are satisfied that on remand, the sentencing inquiry will be conducted according to such standards.

Galloway, 976 F.2d at 427-28. I suggest that such fact finding under section 1B1.3(a)(2) puts a different gloss on the nature of the sentencing proceeding. Obtaining information for use under U.S.S.G. § 1B1.4 is one thing, gathering it for the purpose of creating greatly increased sentencing ranges under section 1B1.3(a)(2) is another.

I also differ with the majority opinion in this case if there is any implication in the fourth paragraph on page 399 that the federal district courts were not, pre-guideline, "honest" in carrying out their sentencing responsibilities. Laws enacted by Con-

**THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET**

INCOMING

DATE RECEIVED: MAY 24, 1993

NAME OF CORRESPONDENT: THE HONORABLE BILL BRADLEY

SUBJECT: URGES THE PRESIDENT TO IMPOSE A MORATORIUM ON
OIL AND GAS LEASING ON THE OUTER CONTINENTAL
SHELF OFF THE MID-ATLANTIC COAST UNTIL THE
YEAR 2000

ROUTE TO: OFFICE/AGENCY (STAFF NAME)	ACTION		DISPOSITION	
	ACT CODE	DATE YY/MM/DD	TYPE RESP	C COMPLETED D YY/MM/DD
HOWARD PASTER	ORG	93/05/24		/ /
REFERRAL NOTE:		/ /		/ /
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COMMENTS:

ADDITIONAL CORRESPONDENTS: 3 MEDIA:L INDIVIDUAL CODES: 1210 1230
MAIL USER CODES: (A) D NJ (B) (C)

 *ACTION CODES: *DISPOSITION *OUTGOING *
 * * *CORRESPONDENCE: *
 *A-APPROPRIATE ACTION *A-ANSWERED *TYPE RESP=INITIALS *
 *C-COMMENT/RECOM *B-NON-SPEC-REFERRAL * OF SIGNER *
 *D-DRAFT RESPONSE *C-COMPLETED * CODE = A *
 *F-FURNISH FACT SHEET *S-SUSPENDED *COMPLETED = DATE OF *
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 *R-DIRECT REPLY W/COPY * * *
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FROM OGM

FRANK R. LAUTENBERG
NEW JERSEY

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United States Senate

WASHINGTON, DC 20510-3002

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AND INFRASTRUCTURE
HEALING COMMISSION

May 20, 1993

The Honorable William J. Clinton
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear Mr. President:

We are writing to ask that you reverse the policy of the last Administration and impose a moratorium on oil and gas leasing on the outer continental shelf off the Mid-Atlantic coast until the year 2000.

In 1990, President Bush imposed moratoria through the year 2000 on offshore lease sales off a large portions of the nation's coasts. These moratoria addressed almost all controversial oil and gas lease sales except for the proposed sales off the Mid-Atlantic. Despite our requests, President Bush refused to include the Mid-Atlantic in his moratoria decisions.

The New Jersey coastline is one of our most precious resources. In 1991, 8.8 million people stayed overnight at the New Jersey shore and an additional 59 million made day trips to New Jersey's beaches. Coastal tourism at the shore--fishing, swimming, or just walking along the beach--generated \$8.9 billion in New Jersey in 1991.

New Jerseyans have been working hard to protect our coast and have made significant strides against various forms of pollution. But the threat posed by offshore oil and gas development to our efforts is obvious.

We fail to understand why our coastline is being treated differently from coastlines around the country. New Jersey beaches and coastal waters are every bit as precious and threatened as those waters in which President Bush banned oil and gas activities.

Oil and gas drilling off the New Jersey coast is expected to produce no more than 13 days of the nation's energy needs. We believe that the risks posed to our coast by oil and gas development off our coasts are not worth 13 days of the nation's energy needs.

REPLY TO:

11 506 HART SENATE OFFICE BUILDING
WASHINGTON, DC 20510-3002
(202) 224-4744

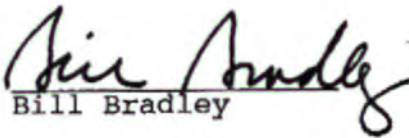
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(201) 645-3030

1 BARRINGTON COMMONS
208 WHITE HORSE PIKE
SUITE 1819
BARRINGTON, N.J. 08007-1322
(609) 757-6353

William J. Clinton
May 20, 1993
Page 2

We urge you to reverse President Bush's policy and establish the same moratoria on outer continental shelf drilling off the New Jersey coast that President Bush established for most of the rest of our coastline.

Sincerely,


Bill Bradley


Frank R. Lautenberg


Frank Pallone Jr.


William J. Hughes

ID# 019569

THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

INCOMING

DATE RECEIVED: MAY 24, 1993

NAME OF CORRESPONDENT: THE HONORABLE SLADE GORTON

SUBJECT: URGES PRESIDENT TO RESOLVE THE SPOTTED OWL
CRISIS WHICH HAS DEVASTATED THE LIVES OF THE
NORTHWEST TIMBER COMMUNITIES

ROUTE TO: OFFICE/AGENCY	(STAFF NAME)	ACTION		DISPOSITION		
		ACT CODE	DATE YY/MM/DD	TYPE RESP	C D	COMPLETED YY/MM/DD
HOWARD PASTER		ORG	93/05/24			
	REFERRAL NOTE:					
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COMMENTS:

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INTELLIGENCE

93 MAY 20 P 3: 45

May 17, 1993

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

Northwest timber communities are depending on your Administration's efforts to resolve the spotted owl crisis which has devastated the lives of their people. I am concerned, however, about information which I received from your Administration and reports I have heard from people meeting with your representatives in the Northwest.

Your Administration seems to be focused primarily on the spotted owl and only secondarily on what is necessary to restore the viability of timber dependent communities throughout the Pacific Northwest. Values associated with spotted owls and the viability of these communities must be given equal weight. Any solution based on the premise that human needs can be attended only after all species concerns are met will sentence timber country to permanent depression and will only serve further to divide the Northwest.

I urge you to give equal weight to each of these values. I hope that your Administration understands that our communities and their people cannot survive without a sufficient and stable timber supply. Any plans or programs to assist the economic diversification of these towns are destined to fail if the overall plan does not assure a predictable and stable timber base sufficient to maintain these communities. I trust that your economic experts will look as much as what is necessary to provide this economic base as they will at programs to fund economic diversification.

I look forward to working with you and offer whatever assistance I can provide. Thank you again for your hard work.

Sincerely,


SLADE GORTON
United States Senate

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THE DIRECTOR

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

cc: The Vice Presiden
Mack McLarty
Bob Rubin
Howard Paster

93 MAY 24 A 8:47

May 21, 1993

MEMORANDUM FOR THE PRESIDENT

FROM: Leon E. Panetta
SUBJECT: OMB Activities

This is your weekly memorandum to summarize OMB's activities and provide a running overview of progress on the administration's major policy initiatives.

Reconciliation: Thursday the House Budget Committee reported the Reconciliation bill on a party-line vote. The Committee's Report is expected to be filed early next week, and Rules Committee deliberations are expected on Tuesday or Wednesday. Floor action on the measure is scheduled for Thursday. Chairman Sabo said that he expected the Armed Services Committee to seek to modify its action on military pay because of the different approach to civilian pay taken by the Post Office and Civil Service Committee.

The amendment to your budget plan announced by Senators Boren, Danforth, Johnston and Cohen yesterday will be subject to a sixty-vote point of order on the floor of the Senate. The reason is that it exceeds the allowable reallocation of reconciled deficit reduction between taxes and mandatory spending cuts. We will continue to follow this situation along with Treasury Secretary Bentsen and Howard Paster and consult with you on legislative strategy.

Investments: The House Appropriations Committee will formally make its 602(b) allocations of discretionary budget authority and outlays among its Subcommittees early next week. We are working with the Subcommittee Chairmen to protect your investment program and find the necessary savings in existing programs to provide room under very tight spending caps. Subcommittees will begin marking-up their bills the week of June 7.

Jobs supplemental: We are continuing to work with the House and Senate leadership and the Appropriations Committee chairmen to advance our supplemental request for summer jobs, wastewater treatment and police. Action next week is a real possibility.

Deficit reduction fund: We are continuing to work with the congressional leadership to ensure that a deficit reduction trust fund is part of the enforcement mechanisms accompanying the reconciliation bill.

Other legislation: The Senate Labor and Human Resources Committee marked up S. 732, the Comprehensive Child Immunization Act of 1993, on Wednesday. Senator Kennedy's substitute amendment essentially mirrors the immunization proposal included in the House Energy and Commerce Committee Reconciliation bill. The bill does not address Federal vaccine purchase or its financing; those issues will be addressed later (possibly in Reconciliation) in a separate bill, S. 733, by the Senate Finance Committee.

THE WHITE HOUSE

WASHINGTON

May 25, 1993

03 MAY 25 A 8:33

MEMORANDUM FOR THE PRESIDENT

FROM: Carol H. Rasco *CHR*
SUBJECT: Family Preservation and Support Legislation

I. SUMMARY

You have asked several times what the Family Preservation Legislation includes. Basically, this is legislation that helps to further, at a federal level, the concept of child welfare and family support programs we covered in our special session in Arkansas just after the New Hampshire Primary. We had at that time certainly counted on this particular legislation which was then moving through Congress. This legislation passed both houses of Congress but was vetoed by President Bush. We are very hopeful that it will pass this time and that you will be able to sign it. We have added significant funding in the family support area for programs like HIPPY.

II. DISCUSSION

Legislative Update

The Administration's Family Preservation and Support bill is now part of the reconciliation package referred out of the House Ways and Means committee the week of May 10, 1993. The House is expected to consider the entire package the week of May 24. The Senate is expected to consider the package shortly thereafter.

Legislative Overview

The legislation creates a new capped entitlement program for:

- o family preservation services broadly defined to include family reunification, and other follow-up services, to work with families to keep them together and help prevent foster care placement; and

- o community-based family support services, to help improve parenting skills and support families.

The legislation also contains a number of provisions to strengthen the foster care and adoption assistance programs.

Funding will total \$50 million in 1994 and rise to \$600 million in 1998 for a five-year budget authority total of \$1.8 billion and outlays of \$1.5 billion.

Need for these Services

Currently, services to help prevent the need for foster care placement and support families are underfunded. In 1993, \$2.7 billion was made available to states under the foster care program on an open-ended entitlement basis, while only \$270 million was authorized for the child welfare services program.

Still, despite tight budgets, states realize the need to invest in preserving and supporting families in order to control the large increases in their foster care caseloads during the 1980's. Thirty-eight states have now developed some form of intensive home-based services programs. However, most programs are small and most families who need them are never served.

How the Legislation will Help to Expand Family Support Programs

- o states will be required to spend significant funds in both program categories (family preservation and community-based family support), ensuring that programs such as HIPPIY or Parents as Teachers will be funded. For instance, Florida, Maryland, Arizona, and Georgia are interested in funding HIPPIY statewide, but currently lack funds to do so. Arkansas and Missouri could expand their statewide programs;
- o a wide range of family support services can be funded, including structured, interactive, parent-child activities; resource and referral; early developmental screening; and family life skills education;
- o the National Resource Center for Family Support Programs, which the Department currently funds will also be used as a resource to inform states of program implementation issues.

Summary of other Provisions

- o one percent of the new funds will be set-aside for evaluation, training, and technical assistance. Part of these funds will be used to provide states with information to develop family support and family preservation programs.
- o authorizes grants to state court systems to assess and modify their court procedures involving children;
- o clarifies Congressional intent in light of the Supreme Court's recent decision in Suter v. Artist M.
- o provides enhanced federal matching for states' start-up costs for automated systems development for a limited time;
- o permanently extends the Independent Living Program to prepare youth graduating from the foster care system, and allows these youth to accumulate reasonable assets for this transition without losing program eligibility;
- o requires graduate students in the child welfare area receiving federal grants to work in that field for an equal period of time;
- o authorizes the Secretary to approve innovative demonstrations proposed by states in the child welfare area.

The Honorable Bill Clinton
President of the United States
The White House
1600 Pennsylvania Avenue
Washington, DC 20001

I just wanted to drop you a note to share with you some observations about how things are going.

First, the folks out in the states are somewhat restless. This is due to a couple of things. One is that they are frustrated over the slowness of the appointment process. They worked very hard during the campaign and they see the good jobs going to folks that either did nothing for the campaign or in some cases worked for your Democratic opponents. Additionally, they worked very hard on the stimulus package. They performed with volunteer phone banks, free press events and personal lobbying. It's defeat has shaken them. It has also frustrated them in that they trace the root of its failure to a series of bad judgement calls.

Building on that point, one of the things that we worked on very hard during the campaign is to not be arrogant. We constantly reminded staff of the Dukakis experience where Dukakis staffers came in and acted like they had all of the answers and didn't need any help. Eventually, that is what they got, no help. We developed a very strong partnership with our friends in the states and they knew that their input was important.

We seem to have lost that. We are continually asking people to do things that their judgement tells them not to do. One current example is the parties in support of the 100 days. Our folks are tired and discouraged and in some cases don't feel like celebrating. They are afraid that they will be put in a situation of defending things (like the failure of the stimulus) that they don't understand.

Another example is health care. We are asking them to set up steering committees to generate support for the health care proposal. When we are asked by them what is in the package, we don't have any answers. People still want to be helpful but it is very cocky to ask someone to put their name on the line for something that we can't give them details about.

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Your supporters out in the states are not puppets, they are people, with their own ideas. We worked very hard during the campaign to let them know that their ideas are important. What I see is the White House staff slipping into an "inside the Beltway" mentality where they have all of the answers and everyone else is just a prop in the show. The partnership that we worked so hard to build is eroding because our folks are treated like they are merely cannon fodder.

When I took this job, one thing that you told me to do was to let folks know that you didn't get elected by yourself and you couldn't govern by yourself. I agree with that. What I am concerned about is that I am not sure that we, by our actions, are sending that message.

One thought that John Broderick had, which I think is a good one, is that maybe we should set up a citizens advisory council of two people from each state that comes down here once a month or so and talks to you about how you are playing out in the states. These would be your key early supporters and friends. We need to take steps to prevent us from becoming too insulated.

Sorry I took up some much of your time but I thought you needed to know.

Sincerely,

Craig

Craig Smith

P.S. One last thing. One of the key reasons that you got elected was that you focused on one thing, the economy. You are now in a situation where 40% of your time is spent dealing with things beyond your control (Russia, Koresh, etc). The other 60% should be tightly controlled. It seems that we are all over the map and trying to do too many things. Remember back home, we did best when we did one thing at a time. While I know that you have a lot of commitments to fulfill, I would rather see you succeed at one thing than fail at four.



THE CHAIRMAN

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL OF ECONOMIC ADVISERS
WASHINGTON, D.C. 20500

93 MAY 19 P5:52

May 19, 1993

MEMORANDUM FOR THE PRESIDENT

FROM: LAURA TYSON AND ALAN BLINDER

SUBJECT: The Economy

There is reason for concern (but certainly not for panic) over the state of the economy.

- * The surprisingly large merchandise trade deficit announced Wednesday morning means that the 1.8% growth rate for 1993:1 will very likely be revised down when the Commerce Department publishes its first revision next Friday morning. (We will have those data next Thursday night.)
- * Furthermore, the large inventory buildup in 1993:1 does not bode well for GDP growth in 1993:2. Even if final sales grow in the 4% range, GDP may come in in the 2% range because the rate of inventory accumulation will almost certainly decrease. Thus, growth in the first two quarters of 1993 may well average below 2%.
- * Such news will further erode confidence, which is already slipping away. While we do expect the second half of 1993 to be better than the first, our official forecast of 3.1% growth for the year as a whole is starting to look rather optimistic. As you will recall that forecast was based on the assumption that our stimulus was passed. Without it, our forecast was for growth in the 2.8% range.
- * Our stimulus package is gone, and it now appears quite unlikely that the starting date of the tax increases will be delayed to January 1994. (As you will recall, the CEA always strongly favored such a delay.) This means that fiscal policy is contractionary right now and will become strongly contractionary in 1994.
- * So the burden of carrying the economy forward rests squarely on interest rates, that is, on the bond market and the Federal Reserve.
- * Here the recent bad (and puzzling) inflation news complicates matters in a most unfortunate way.

- The adverse inflation reports have spooked the bond market. Long term rates have jumped about 25 basis points in the last week or so. We think (and certainly hope) that the recent data are aberrant, and that the market will snap back on better inflation news in the next month or two. But no one can be sure.
 - The high inflation numbers are putting pressure on the Fed to tighten. While the Fed always has a strong "tight money" constituency, it has been held at bay up to now by the pro-growth constituency. However, if inflation stays on the north side of 4%, it will be very hard for the Fed to hold short-term interest rates at 3%. Already, they are hearing a chorus of complaints from Wall Streeters about holding short-term interest rate below the inflation rate.
- * In sum, there is at least a possibility that the economy will go into the second half of 1993 and first half of 1994 carrying little forward momentum, while both fiscal policy and monetary policy tighten. That would not be a good mix.

HUNTON & WILLIAMS

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NEW YORK, NEW YORK
NORFOLK, VIRGINIA
RALEIGH, NORTH CAROLINA
WASHINGTON, D. C.

May 21, 1993

Memorandum to the President

FROM: Gerald L. Baliles

RE: Last Friday's Conversation - The New Clinton Doctrine

I enjoyed having the chance to get together with you in the Oval Office last Friday. Thank you for inviting me - and for the kind words about me and the New American Schools Development Corporation.

I also appreciate your appointing me to chair the National Commission to Ensure a Strong Competitive Airline Industry (National Airline Commission). We have a somewhat daunting challenge to meet in an impossibly short period of time, but we can do it and we have the right people to get the job done.

As we discussed, my plan is to avoid having the Commission spend all of its time reviewing individual items, but rather to keep in mind the true purpose of air transportation - movement of people and goods to destinations and markets around the world. My goal is to have people looking at the recommendations as part of a strategic approach to making our air transportation system, and those who use it, globally competitive - not as a list of seemingly unrelated policy initiatives designed to save this or that segment of the industry. Which brings me to the real purpose of this memo.

Much has been written lately about "focus," as if it were some magic bullet cure-all that would turn a government trying to solve many problems at once into a government zeroing in on one problem - whatever that may be. But Presidents don't have that luxury - they never have and they never will. To think otherwise would be to deny the essential challenge of the job - and your essential nature as a politician and as a leader.

HUNTON & WILLIAMS

The problem with the whole focus discussion is that it implies you will "focus" on an issue that everyone will see as being their top concern. But that is impossible if issues, policies and problems are all seen as being separate and distinct from one another. If your focus is health care, does that leave out those with adequate coverage, not to mention those with disagreements about the approach you adopt? If your focus is deficit reduction, where does that leave those whose ox will be gored to achieve that goal? If your focus is education, where does that leave people without children in school? If your focus is infrastructure, where does that leave people living in districts receiving fewer highway dollars?

The President's main job, it seems to me, is to communicate a sense of national purpose, a national policy into which all of his initiatives fit. Your program, therefore, must be more than a list of issues, it must have a coherent purpose. By gaining consensus on that purpose, then, you - as President - need only show that your individual policy actions advance the achievement of that purpose into which individual programs and initiatives can fit.

Your challenge, and your opportunity, stems from the fact that, for the first time in nearly half a century, we are without an agreed-upon national policy. You are the first president since Truman to have to devise and articulate a national policy framework. Indeed, only a handful of Presidents in history have been faced with this momentous task.

Of course, Truman had a relatively easier task. Having defeated the Axis powers in World War II, we found ourselves confronted with a clear-cut enemy, personified by a particularly odious figure (Stalin). It is always easier to rally Americans to defend our way of life against an aggressive enemy - it is often in those situations that Americans are at their best (World War II) or at their worst (Smoot-Hawley).

This is how I have explained what I believe we face (and I believe it could work for you):

"For the past forty years, the defining concept of our approach to the world has been the containment of Communism. It was a national policy. It drove our budgets, it spawned new initiatives, it affected our thinking. Here in the U.S., in Europe and in Japan.

"The beauty of the containment policy was that it provided an easy guide to the policy makers. It told them

HUNTON & WILLIAMS

what was important and what was not; where to put resources, and where not.

"President Eisenhower persuaded Congress to build an interstate highway system, not for the stated purpose of creating easier travel across the nation, but for the military purpose of moving our tanks and troops in case of a military emergency created by Communists. It was the containment policy in action.

"Hundreds of thousands of students attended college in the '50s, '60s and '70s with the help of aid from something called the National Defense Student Loan Program. Programs in science education and physical fitness were also conceived as part of our containment strategy.

"Now, the containment imperative has vanished. Issues are discussed and debated as if they have little to do with one another; policy decisions are made in their own little vacuums. There is nothing to hold them together, no sense of a common purpose that unites our people and binds their efforts to a common goal.

"Unlike any time in the past half century, we are faced with the challenge of constructing and communicating a new framework, a new national policy which gives meaning to all of our public efforts. A policy which will allow us to see those efforts as more than isolated, special interests; to see them as part of a coherent whole which will have us focusing less on small, individual line items — though they make good news stories — and more on the big picture.

"Let me offer my idea on how to accomplish that.

"If I could change one thing in American public policy, I would replace the old national policy of containment of Communism with a new national policy of competition. Think about it. We understand competition. It is a part of our fabric. It is buried in our psyche.

"I would say: "Ladies and gentlemen, for 40 years we have protected the world. That umbrella of protection has led over that time to a level of economic growth and prosperity unheard of in human history, creating new markets for our goods and making another world war unthinkable. Now, it is time to compete with the world — not against it, but within it."

HUNTON & WILLIAMS

"I would tap into the competitive instinct of American life. I would develop a policy of competition. I would create a tapestry — the threads of which would be the different programs that are so important to the present, as well as to the future, weaving foreign and domestic concerns into a single framework.

"I believe that we must make clear that investments in education and health care, infrastructure and research are not unrelated issues in a vacuum, separate concerns, each to be dealt with solely on their own merits.

"Expenditures for health and education must be understood as something more than the pursuit of some vague ideal of improvement in the human condition.

"Research and development must be understood as something more than support for a legion of impractical white-coats tinkering with futuristic gadgetry.

"Expenditures on infrastructure must be understood as something more than the repair of a crumbling bridge or the building of a new road. And certainly as something more than pork.

"All these issues are linked to work — whether our people can work and at what standard — and whether America will work as a competitive, productive economy. We have to forge an understanding that health care and education are not simply matters of economic justice, but imperatives of economic strength. They are not just fuzzy social programs; they are the seed ground of our 21st Century economy.

"I believe that if we are to solve our economic growth problems in this country, we must begin to make that connection in the public mind — the connection between cause and effect, investment and return.

"That cannot happen until all of the separate programs sold as investments can be seen as part of a coherent whole; a national strategy. As long as infrastructure is seen as nothing more than a countercyclical device against recession, for example, discussion of its value as a public investment will take a back seat to partisan bickering over which district will receive the next highway dollar. As long as infrastructure is seen this way, the temptation will always be to focus on the "golden fleece" type of project to

HUNTON & WILLIAMS

the detriment of any true consideration of a strategic approach."

Enough of this for now.

The point is you don't have the luxury of dropping aid to Russia to concentrate on health care. You don't have the option of dropping NAFTA to focus on deficit reduction. You need to "focus" on all of these things. That is your job. What you must do is give people a way to see that all the issues relate, so that people will know that you are always focused on their concerns. You cannot simply raise an issue and just say it fits into a framework. You need to first sell the framework — then the issues will be much easier to handle.

If you can do this, people will marvel at your new-found focus. The American people will rally behind you. If not, people will become convinced that you are simply dealing with lists of unrelated issues — most of which have little to do with them personally.

This will require you to give the same speech over and over again, no matter what the topic. (You'd be surprised at how Truman worked containment into nearly all of his speeches.) You may get tired of hearing yourself talk. But, if you can get people to buy in, as I know you can, you will have solved your biggest problem.

I know you are receiving lots of unsolicited advice these days, and I do not want to add to your burden. But I truly believe that the answer lies less in narrowing the list of your concerns or shuffling the staff than it does in the development of a new framework — a new way for Americans to look at our purpose as a nation.

Good Luck!


G.L.B.

THE WHITE HOUSE

WASHINGTON

[Handwritten signature]
May 31, 1993

MR. PRESIDENT:

In late March, Bob Reich sent you a think piece on creating high wage jobs in the U.S. That memo received limited circulation as is indicated by the attached note from me. It appears that the memo was leaked by career staff at USTR and ultimately ended up in the press. Bob is understandably upset. He's talked to Mickey and settled things down, but you may want to make the point at the Cabinet meeting that we need to do our fighting inside the house.

[Handwritten signature]

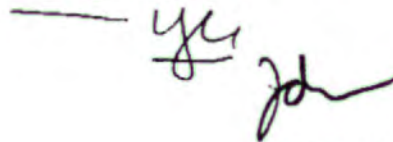
John Podesta

THE WHITE HOUSE
WASHINGTON

March 30, 1993

MR. PRESIDENT:

I've shared this with Mack and the
Vice President and suggested to Bob
that we forward to Ron Brown and
Mickey Kantor.



John Podesta

To Bob Rubin / Bob Rubin

This is very good.
Agree (Bob w/ Rubin
suggestion

BR 4/7/93

THE WHITE HOUSE
WASHINGTON

March 30, 1993 93 MAR 30 P4:42

MEMORANDUM FOR THE PRESIDENT

FROM: ROBERT E. RUBIN *R*

SUBJECT: Memo from Secretary Reich on High-wage Production
in the United States

The attached memorandum from Bob Reich thoughtfully frames certain issues for discussion among the appropriate members of your economic team.

Bob and I thought you might find this memo of interest, although it is just the first stage of a process and some of the conclusions may well be quite controversial.

We will probably form a small group to look at a broad array of related issues, including subsidies for tradable goods, American investment and production abroad, the issues raised in the memo, and the like, leading to a memorandum to you setting forth options and possibly recommendations. The ultimate outcome could provide an intellectual framework for then resolving specific matters as they arise. (I have excluded trade, where a conceptual framework is being developed separately by an NEC group led by Mickey Kantor and Bo Cutter.)

Attachment

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

March 23, 1993

MEMORANDUM TO THE PRESIDENT

FROM: Secretary of Labor Robert B. Reich *RB*
VIA: Robert Rubin
SUBJECT: High-wage Production in the United States
INFORMATION AND DISCUSSION MEMORANDUM

OK
In coming months, you will be considering many microeconomic policies which indirectly have a bearing upon decisions of firms to undertake high-wage production in the United States. (The existing tax preference for licensing of intangible property for use in foreign production, which you are proposing to eliminate, is but one example.) Together, these policies constitute an implicit economic strategy. The purpose of this memorandum is to highlight some of these policies, and to urge you, through the National Economic Council, to consider them systematically.

Trade policy

X Presumably, our trade policy should seek not only to open foreign markets to U.S. goods, but also to eliminate all non-market incentives to U.S. firms to undertake production abroad. Thus, when the United States negotiates market-opening agreements, we should take care that such agreements not inadvertently give special advantage to U.S. firms which shift production into the foreign market. Our efforts should focus on opening foreign markets to American exports, rather than merely to U.S. products.

Japan's agreement to purchase 20 percent of its semiconductors from non-Japanese firms, for example, does not necessarily promote high-wage production in the United States. Close to 75 percent of the chips which Japan purchased last year from U.S. firms were fabricated in Japan. Both Texas Instruments and Motorola have large state-of-the art fabrication facilities in Japan; Texas Instruments is building a major design and research center there as well, in which virtually all engineers, researchers, and designers are native Japanese.

The U.S. shareholders of these firms benefit by this agreement, of course. And to some extent firms like Motorola and Texas Instruments are compelled by the logic of global competition to establish facilities in major markets where they do business. My point is not to criticize the strategies of these firms, but merely to suggest that our strategy of encouraging Japan to purchase more semiconductor chips from U.S. firms may have little to do with promoting high-wage production in the United States. Moreover, to the extent that Japan is reluctant to purchase semiconductor exports from the United States, our policy may give a windfall to U.S. semiconductor firms with production facilities in Japan, and thus unwittingly encouraging other U.S. firms to do so.

Technology policy

X Your economic plan calls for major investments in new technologies. Here, too, we should be mindful of the consequences for high-wage production in the United States. The fruits of research and development--plans, designs, blueprints, and other manifestations of ideas--are transferred around the world quickly, sometimes at the speed of an electronic impulse from a computer in the United States to a computer in another nation. Far slower to diffuse are the insights and experience accumulated by the Americans who develop and utilize the new ideas--insights and experience which then produce other innovations and products. Evidence is readily found in the microelectronic firms clustered around Boston's Route 128, North Carolina's "research triangle," and Silicon Valley." Patents do not cluster; people do.

X Thus, federal support for new technologies should aim more at developing technological expertise than at developing the technologies themselves. Projects should be judged as much, if not more, by the likely value of the on-the-job training, experience, and insights which their participants will gain, and the number of individuals who will gain them, than on the likely value of any idea which may result. Japan and Europe understand this principle: They subsidize design and production experience rather than research per se. Their aerospace subsidies, for example, are directed at giving their people direct on-the-job experience in designing and fabricating advanced jet aircraft (the Boeing 777 and Airbus, respectively). America's great weakness, technologically, lies in our inability to rapidly and efficiently transfer new ideas into first-class production.

Industrial subsidies

Extend the same principle to proposals to aid particular technology-intensive industries. The question we should be asking is not solely whether a given American high-tech industry

is in need of help, or whether a foreign competitor is being unfairly subsidized by its government. We should be concerned as much--if not more--about whether and to what extent high-wage production in the United States is endangered--and whether other nations are unfairly luring that production their way.

Boeing and McDonnell-Douglas, for example, are less critical to the United States than is the high-wage production which they undertake in the United States. We should be worried, I think, that both companies are being lured by foreign governments to shift some of that production abroad. The fuselage and much of the electronics for Boeing's 777 are being produced in Japan, and Boeing is teaming up with Airbus for the next generation of super jumbo jet. McDonnell-Douglas is being lured by Taiwan.

Another, related example: Most of the world's aircraft engines, which account for about a third of the cost of a typical jet airliner and entail among the largest number of best-paying jobs in the industry, continue to be designed and fabricated in the United States. But here, too, the trend is disturbing--not because Pratt & Whitney or General Electric is suffering declining profits, but because their production is likely to move outside the United States. By the end of 1994, Pratt & Whitney plans to cut 10,500 more jobs from its American workforce of 40,700, and I am told that the firm is likely to open a plant in Europe (Pratt & Whitney already makes jets for Airbus).

Regulations and standards

 Making regulations and setting standards is rarely viewed as having anything to do with high-wage production in the United States. In fact, regulations and standards can be designed either to promote or to discourage it. The most obvious example is the failure of the United States to use the metric standards which most of the rest of the advanced industrial world utilizes; production here is thus handicapped in international competition. Other examples can be found in any safety standard which a product must meet in order to be sold in most other nations but which is not required in order for sale in the United States; under these circumstances, foreign production will enjoy economies of scale which American production lacks.

Or consider the standard-setting for high-definition television now being undertaken by the Federal Communications Commission. Each of several world-wide consortia of companies is

seeking to have its own standard of transmittal adopted; the winner will gain a competitive advantage over others. The FCC is considering various economic and technical criteria, but should it not also consider which standard is likely to generate the greatest amount of high-wage production in the United States?

(Interestingly, the only consortium which has pledged to develop and manufacture its high-definition televisions in the United States is the Dutch-French group (Phillips-Thompson-Sarnoff); the AT&T-Zenith group will not do so, because Zenith is moving all its television production to Mexico).

I suggest that these and other issues need to be addressed systematically.

YH
~~YH~~

Reich Says Trade Policy Should Help Create US Jobs

By JOHN MAGGS

Journal of Commerce Staff

WASHINGTON — Labor Secretary Robert Reich has sent a memo to President Clinton outlining his argument that the globalization of manufacturing calls for a new trade policy that is more directed at creating American jobs than at aiding American companies.

The memo directly challenged the argument that trade agreements should only help only American companies and criticized a computer chip trade agreement with Japan that explicitly excludes foreign-owned manufacturers.

U.S. trade officials reacted strongly to the memo, questioning its data and arguing that it is more important than ever to limit trade agreements to American-owned companies.

Mr. Reich's memo is the latest riposte in a debate among President Clinton's top advisers over the proper trade policy for a world increasingly dominated by international competition.

It is a lofty discussion — carried on by some of the high-powered academics that the president has gathered around him — but will have a very practical impact on a new Japan trade policy that the administration has made one of its top international priorities.

The debate is inspired by a basic theme of the Clinton presidential campaign — that the American economy has failed to adapt to great changes in the world economy. It

attempts to define what kind of trade policy is needed when one-fourth of the U.S. economic output comes from trade and international competition and affects more companies and workers than ever before.

Mr. Reich entered the administration as one of the foremost thinkers on this topic, most recently outlined in his book, *The Work of Nations*. He argued that U.S. economic strength has become less dependent on the welfare of traditional American companies. As large corporations extend their reach in a "global web" of specialized manufacturing, the creation of high-wage jobs is equally dependent on foreign investment as on the investment of American companies, which have shifted jobs overseas regardless of their identity as "American," Mr. Reich wrote.

On the other side, among others, is Mr. Clinton's chief economic adviser, Laura Tyson. In a reply to Mr. Reich in 1990, she wrote that "despite the current infatuation with globalization... the competitiveness of the U.S. economy remains tightly linked to the competitiveness of U.S. companies." She concludes that the old saying — "What's good for General Motors is good for the nation" — is still true in the global economy. Overseas manufacturing helps GM and other companies to create high-wage research and design jobs in the United States, she said.

In his memo, Mr. Reich argued

that it is wrong to assume that a trade agreement on behalf of American-owned companies will be good for the United States, according to U.S. trade officials who have read the memo.

To illustrate his point, the labor secretary makes a major error in describing the 1991 semiconductor trade pact with Japan. He said that the agreement has done little to create American jobs because 75% of the chips American companies are selling in Japan are actually manufactured outside the United States.

U.S. officials said the true percentage is probably less than 30%, but one former trade official said the larger mistake is to conclude that overseas jobs are as good as jobs created by the chip industry in the United States.

Alan Wolff, former deputy U.S. trade representative and a lawyer representing U.S. chip makers, said that most of the research, design and high-value-added manufacturing by the industry is still done in the United States. He added that "The agreement applies to American companies because American companies have been shut out of the (Japanese) market, even when they manufacture in Japan."

In the future, more trade agreements will be designed to favor American-owned companies, according to the Clyde Prestowitz, former Commerce Department official and one of the negotiators of the original chip agreement.

THE WHITE HOUSE
WASHINGTON

DATE: 5/26

TO: *Sandy Berger*

FROM: JOHN D. PODESTA
Assistant to the President and
Staff Secretary

*I knew you were
good, but how did
you pass responsibility
for Haiti off to Katie?*

JOHN

5-21-93 ■ DEN ■

(No. 97) A-1



NEWS

White House

CLINTON TO ANNOUNCE NEW INITIATIVE FOR ENVIRONMENT ON JUNE 14, ADVISER SAYS

President Clinton will unveil a new environmental initiative on June 14, his environment adviser said May 20, but she did not elaborate on what the announcement would portend.

Katie McGinty, Clinton's special assistant on the environment, acknowledged to a District of Columbia Bar Association luncheon that her comment was strictly a "teaser" on the president's forthcoming remarks.

Also on June 14, McGinty said, Vice President Albert Gore will open the first substantive meeting of the United Nation's new Commission on Sustainable Development. Previous meetings of the commission have been for organizational purposes (39 DEN A-3, 3/2/93).

In addition, McGinty told the D.C. Bar's Energy, Environment, and Minerals Committee that the United States would sign the international treaty to protect biodiversity within the next two weeks. The deadline for signing the document is June 4.

In his Earth Day address April 21, President Clinton pledged that the United States would sign the treaty, officially the United Nations Framework Convention on Biological Diversity (76 DEN AA-1, 4/22/93). Before the accord gets a U.S. signature, however, Clinton said the administration will put forth a statement of interpretation that is designed to protect patent rights of U.S. biotechnology firms.

McGinty also touched on the Clinton administration's revision of the Bush administration's national action plan on climate change. Earlier this week, Clinton administration officials announced that a new version of the plan would be released in August (95 DEN A-5, A-8, 5/19/93).

This new "blueprint for action," McGinty said, is "a bit of a risk, a bit of an experiment." She said that as the plan is revised the administration would seek the input of industries, such as some electric utilities, that voluntarily are reducing their emissions of greenhouse effect gases.

She reiterated the president's goal of returning U.S. emissions of greenhouse gases to 1990 levels by 2000.

"That's a commitment we will faithfully observe and meet," McGinty stated.

Relationships With Developing Countries

The Clinton administration wants to forge a strong relationship with developing countries as part of its international environmental policies, the president's adviser continued. Even with increased pollution prevention and energy efficiency, industrialized nations need the help of developing countries to protect the Earth's environment as the planet's population continues to increase, she said.

One area of cooperation that the administration intends to pursue with developing nations involves the International Tropical Timber Agreement (ITTA), she said. This deal is being renegotiated in 1993.

Under ITTA, tropical countries that produce timber are asked to convert their cutting practices to sustainable harvesting by 2000, McGinty explained. Malaysia and Brazil, two tropical timber producers criticized for practices that lead to deforestation, have called on the United States to join them in a change to sustainable logging by 2000.

In the ITTA talks, the U.S. position will be to meet a domestic goal of sustainable harvesting by 2000, McGinty stated.

She added that the report on the April 2 forest summit, addressing ecological and economic issues that revolve around logging and endangered species in the Pacific Northwest, will be delivered to the president June 2.

Also regarding developing nations, McGinty said the United States has "powerful national security reasons" for regaining its leadership in international environmental matters, McGinty said.

For example, she said, the political turmoil in Haiti in part is due to the deterioration of that country's natural resource base, which no longer can sustain its population. How to address this natural resource degradation must be part of the U.S. policy toward Haiti, McGinty added.

She said the Clinton administration would keep a sharp eye on the investment policies of the World Bank to ensure that the institution finances only projects that meet the goals of sustainable development—balancing economic development and ecological protection.

The world cannot afford to spend \$26 billion annually—the approximate amount the bank currently lends each year—to fund development projects that harm the environment, McGinty said.

Ocean Resources

GEOLOGIST ISSUES WARNING ON OFFSHORE EXPLORATION MORATORIA

WILMINGTON, N.C. — Moratoria on offshore oil and gas exploration could impede the management of coastal ocean resources by limiting information on the existence of such resources, an expert in marine geology told an ocean conference May 20.

Stanley Riggs, an East Carolina University geology professor, told participants in the two-day conference, "You cannot manage something if you do not know anything about it." Asserting that he is not a proponent of oil companies or of oil development, Riggs said that the United States needs to know where oil resources exist.

5/26

The Congressional Black Caucus

NEWS RELEASE
 Room H2-344
 House Office Building
 Annex #2
 Washington, D.C.
 20515

For Immediate Release

For further information contact:
 Amelia Parker (CBC) 202/226-7790
 Marian Douglass (Owens) 202/225-3261

CBC ISSUES SIX POINT DEMAND FOR SHIFT IN U.S. POLICY TOWARD HAITI

(Washington, D.C. - May 19, 1993).....The forty-Member Congressional Black Caucus today released a six-point list of demands to be presented to the Clinton Administration in a challenge to current U.S. foreign policy impacting Haiti and Haitian refugees domiciled in the United States and Cuba. Calling for the immediate restoration of Haitian President Jean Bertrand Aristide, CBC Chairman Kweisi Mfume released the following statement on behalf of the Caucus:

"It is the belief of the Congressional Black Caucus that President Bill Clinton carried into his election an enlightened position on the political and social conditions on the island nation of Haiti. Unfortunately, the foreign policy establishment has pushed the Administration's Haiti policy to a position of retrenchment. We, who anticipated America leading the global call for the restoration of democracy in Haiti and the immediate return to power of its duly elected President Jean Bertrand Aristide, stand before you today to establish the parameters of what we believe to be necessary and appropriate steps for our nation to maintain its moral integrity as champions for human rights and democracy. An America which has placed the lives of her sons and daughters in harms way to defend our Arab allies -- An America which has made a multi-billion dollar commitment to an emerging Russian economy while its own cities crumble and human misery escalates -- must not be allowed to turn her back on those who suffer a heinous existence at the hands of the international outlaws who control the island nation of Haiti.

The Members of the Congressional Black Caucus fervently believe that the human rights of the Haitian people are no less noble than others who seek freedom and democracy in other parts of the world. The Congressional Black Caucus today released a list of six points which were announced first on May 12, 1993. We reiterate for the Clinton Administration and international organizations of which the United States is a Member nation the elements of this plan to insure the restoration of democracy to Haiti.

POINT ONE -

Because the Haitian coup leaders have made a mockery of the negotiation process by refusing to accept the most generous possible amnesty terms, General Cedras and his corp of military dictators should be given a ten day ultimatum. The illegal military rulers must be told:

- at the end of a time certain they will no longer be accepted at the negotiating table
- a solution will be developed by the OAS and the UN, supported by the United States government to be implemented immediately should the hunta fail to respond within the stated time from of ten days
- The military leaders would be instructed that failure to act by designated deadline forfeits their rights to any consideration of amnesty and they are hereby deemed to be war criminal. This finding is predicated on the illegal overthrow of a lawfully elected government and the commission of more than 3,000 atrocities against the people of Haiti

POINT TWO

Within ten days the U.S. government should take all necessary steps to halt the flow of drugs from Haiti into the United States. Agencies including the Drug Enforcement Administration, the Central Intelligence Agency and the Federal Bureau of Investigation should act in concert with military forces to eradicate the pipeline of poison to the youth of America.

POINT THREE

Within fifteen days the most effective possible enforcement of the embargo on strategic materials, including oil, should be commenced. Ships presently in place to prevent Haitians from leaving their island should be utilized to enforce this embargo. Additional ships and planes should be deployed also to signal to the military dictators that the U.S. government is serious. At the same time the administration should freeze the assets of the coup leaders and revoke the visas of the military and their supporters.

POINT FOUR

Within thirty days the U.S. government should announce a commitment to supply the necessary resources to the United Nations and the Organization of American States to insure the safe return of President Aristide. The U.S., shall not supply manpower for this transition but will provide equipment, supplies and transportation to the international protective force. The US/OAS/UN should immediately commence an information and education campaign directed at the populace of Haiti via radio, television and an air drop of leaflets to outline steps as they are taken to return President Aristide to power.

POINT FIVE

Within 45 days the US/OAS/UN should announce an arrangement for the return of President Aristide

POINT SIX

Within 60 days President Aristide shall return to his legally elected position in Haiti.

We have witnessed the most horrific atrocities visited upon the men, women and children of Haiti -- its peasant movement has been assaulted. In light of these developments, and the continued intransigence of the military coup leaders the Congressional Black Caucus believes it is critical that this nation confront the overwhelming force being used in Haiti to enslave the civilian population. We believe that the coalition of conspirators must be exposed. We believe the aristocracy, whose stolen riches are protected in repositories in this nation and throughout the world, must see their assets frozen or impounded. We demand that the military terrorists and drug smugglers who impose a savage and inhumane oppression on the people of Haiti bring an end to these gross violations of human rights. Lastly, we call upon the President of the United States and the Secretary of State to join in interventions at every appropriate level within the international community to implement these measures."

#

On My Mind

A. M. ROSENTHAL

Preventing
More
Bosnias

Two tragedies are taking place in Bosnia. The first is the slaughter of its people. The second is the failure of the officials responsible to think seriously about how to prevent future slaughters in future Bosnias.

Maybe that is because those officials are still on the job — in all three sides in the civil war, in Europe and in the U.S.

Europe helped set the fire of civil war and it should have been Europe's to put out. But Washington, ranging from silence to utter incomprehensibility, dithers away the one plan for peace.

The record is clear. In December 1991, three men gave separate warnings to the European Community. They were Lord Carrington, the British diplomat; the U.N. Secretary General, Javier Pérez de Cuéllar, and Cyrus Vance.

Germany was then demanding swift recognition of the independence of Croatia, part of the Yugoslav quilt patched together by Tito. Do that, said these men, and there will be war in Bosnia-Herzegovina. Bosnian Muslims sent the same warning.

Germany prevailed — and what the Secretary General had called the Bosnian time bomb went off.

Until then, Serbian and Croatian Christians of Bosnia had been living in the same small area with other Serbs and Croats who had converted to Islam centuries ago — not always in brotherhood but not at war with each other since the Nazis set many Croats and Muslims against Serbs.

Bosnia's present Muslims feared that with quick European recognition of Croatia, expansion-minded Serbia might swallow them. So they tried to get out, with a declaration of independence, even though they were less than half the population.

Christian Serbs in Bosnia preferred war to living as a minority in a new nation in what they had considered their own home. With heavy help from Serbia, they attacked. But they committed such outrages that they convinced the world they were invaders, although they were fighting in their native land.

The only peace plan for creating a mixed Bosnia — the original Muslim hope — came from the U.N. team of Mr. Vance and Lord Owen. It provided for everything the current safe havens idea alone does not — military withdrawals, arms reduction, return of refugees to their homes, a central government.

President Clinton and his aides attacked the plan. Most of American journalism said it was Munich and the solution was a good sound American bombing of the Serbs.

Mr. Clinton threatened that. But fortunately he could not figure out what he would do the day after the bombings. So he finally agreed that Vance-Owen was the path.

By then Bosnian Serbs had fought up from control of 40 percent of Bosnia to 70. They knew they could not be driven out except by the ground war the West did not want — not even the

The warnings
of December
1991.

journalistic and Congressional killer-doves. So they sent a message to Washington, in the clear: Go to hell.

Now Europe, Russia and the U.S. propose safe havens. By themselves they would lead to partition — a slice each for Serbs and Croats and one for Muslims, while it lasts. But if they are made the first step to carry out the phased overall Vance-Owen plan, safe havens could keep alive the dream of the Muslims for one independent Bosnia.

Still now it has to be asked: Did the West really ever care about that dream, or see great self-interest in it? Never — not until Western stumbling and Serbian atrocities made it a stomach issue.

More stomachs will be turned by civil combat in Eastern Europe, the former Soviet Union, Kashmir, the Middle East, Africa. It is not Western business to put out independence movements, or protect each one.

But countries that will have to rescue new nations in trouble should take an advance peacekeeping step: impose a waiting period between declaration of independence and diplomatic recognition or U.N. membership.

During that time, the applicant should be examined for its chances of survival militarily or economically. If that is questionable, an international trusteeship should be created — a specified period of protection and help, with specified goals.

So, to say it again: Since to save lives everybody has to pass an exam to drive a car, why not a test for nationhood, and help in passing it, to save a lot more lives? The need is plain, the warnings of December clear, and the only question is — after how many more Bosnias? □

THE PRESIDENT HAS SEEN
5/26

Tommy
Went to
you
D

Handwritten scribbles and marks.

Handwritten mark.

HUNTON & WILLIAMS

ATLANTA, GEORGIA
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NEW YORK, NEW YORK
NORFOLK, VIRGINIA
RALEIGH, NORTH CAROLINA
WASHINGTON, D. C.

May 21, 1993

*Maule (GS)
cc: P. B. Gule
Fyl-
B*

Memorandum to the President

FROM: Gerald L. Baliles

RE: Last Friday's Conversation - The New Clinton Doctrine

I enjoyed having the chance to get together with you in the Oval Office last Friday. Thank you for inviting me - and for the kind words about me and the New American Schools Development Corporation.

I also appreciate your appointing me to chair the National Commission to Ensure a Strong Competitive Airline Industry (National Airline Commission). We have a somewhat daunting challenge to meet in an impossibly short period of time, but we can do it and we have the right people to get the job done.

As we discussed, my plan is to avoid having the Commission spend all of its time reviewing individual items, but rather to keep in mind the true purpose of air transportation - movement of people and goods to destinations and markets around the world. My goal is to have people looking at the recommendations as part of a strategic approach to making our air transportation system, and those who use it, globally competitive - not as a list of seemingly unrelated policy initiatives designed to save this or that segment of the industry. Which brings me to the real purpose of this memo.

Much has been written lately about "focus," as if it were some magic bullet cure-all that would turn a government trying to solve many problems at once into a government zeroing in on one problem - whatever that may be. But Presidents don't have that luxury - they never have and they never will. To think otherwise would be to deny the essential challenge of the job - and your essential nature as a politician and as a leader.

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The problem with the whole focus discussion is that it implies you will "focus" on an issue that everyone will see as being their top concern. But that is impossible if issues, policies and problems are all seen as being separate and distinct from one another. If your focus is health care, does that leave out those with adequate coverage, not to mention those with disagreements about the approach you adopt? If your focus is deficit reduction, where does that leave those whose ox will be gored to achieve that goal? If your focus is education, where does that leave people without children in school? If your focus is infrastructure, where does that leave people living in districts receiving fewer highway dollars?

The President's main job, it seems to me, is to communicate a sense of national purpose, a national policy into which all of his initiatives fit. Your program, therefore, must be more than a list of issues, it must have a coherent purpose. By gaining consensus on that purpose, then, you - as President - need only show that your individual policy actions advance the achievement of that purpose into which individual programs and initiatives can fit.

Your challenge, and your opportunity, stems from the fact that, for the first time in nearly half a century, we are without an agreed-upon national policy. You are the first president since Truman to have to devise and articulate a national policy framework. Indeed, only a handful of Presidents in history have been faced with this momentous task.

Of course, Truman had a relatively easier task. Having defeated the Axis powers in World War II, we found ourselves confronted with a clear-cut enemy, personified by a particularly odious figure (Stalin). It is always easier to rally Americans to defend our way of life against an aggressive enemy - it is often in those situations that Americans are at their best (World War II) or at their worst (Smoot-Hawley).

This is how I have explained what I believe we face (and I believe it could work for you):

"For the past forty years, the defining concept of our approach to the world has been the containment of Communism. It was a national policy. It drove our budgets, it spawned new initiatives, it affected our thinking. Here in the U.S., in Europe and in Japan.

"The beauty of the containment policy was that it provided an easy guide to the policy makers. It told them

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what was important and what was not; where to put resources, and where not.

"President Eisenhower persuaded Congress to build an interstate highway system, not for the stated purpose of creating easier travel across the nation, but for the military purpose of moving our tanks and troops in case of a military emergency created by Communists. It was the containment policy in action.

"Hundreds of thousands of students attended college in the '50s, '60s and '70s with the help of aid from something called the National Defense Student Loan Program. Programs in science education and physical fitness were also conceived as part of our containment strategy.

"Now, the containment imperative has vanished. Issues are discussed and debated as if they have little to do with one another; policy decisions are made in their own little vacuums. There is nothing to hold them together, no sense of a common purpose that unites our people and binds their efforts to a common goal.

"Unlike any time in the past half century, we are faced with the challenge of constructing and communicating a new framework, a new national policy which gives meaning to all of our public efforts. A policy which will allow us to see those efforts as more than isolated, special interests; to see them as part of a coherent whole which will have us focusing less on small, individual line items — though they make good news stories — and more on the big picture.

"Let me offer my idea on how to accomplish that.

"If I could change one thing in American public policy, I would replace the old national policy of containment of Communism with a new national policy of competition. Think about it. We understand competition. It is a part of our fabric. It is buried in our psyche.

"I would say: "Ladies and gentlemen, for 40 years we have protected the world. That umbrella of protection has led over that time to a level of economic growth and prosperity unheard of in human history, creating new markets for our goods and making another world war unthinkable. Now, it is time to compete with the world — not against it, but within it."

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"I would tap into the competitive instinct of American life. I would develop a policy of competition. I would create a tapestry — the threads of which would be the different programs that are so important to the present, as well as to the future, weaving foreign and domestic concerns into a single framework.

"I believe that we must make clear that investments in education and health care, infrastructure and research are not unrelated issues in a vacuum, separate concerns, each to be dealt with solely on their own merits.

"Expenditures for health and education must be understood as something more than the pursuit of some vague ideal of improvement in the human condition.

"Research and development must be understood as something more than support for a legion of impractical white-coats tinkering with futuristic gadgetry.

"Expenditures on infrastructure must be understood as something more than the repair of a crumbling bridge or the building of a new road. And certainly as something more than pork.

"All these issues are linked to work — whether our people can work and at what standard — and whether America will work as a competitive, productive economy. We have to forge an understanding that health care and education are not simply matters of economic justice, but imperatives of economic strength. They are not just fuzzy social programs; they are the seed ground of our 21st Century economy.

"I believe that if we are to solve our economic growth problems in this country, we must begin to make that connection in the public mind — the connection between cause and effect, investment and return.

"That cannot happen until all of the separate programs sold as investments can be seen as part of a coherent whole; a national strategy. As long as infrastructure is seen as nothing more than a countercyclical device against recession, for example, discussion of its value as a public investment will take a back seat to partisan bickering over which district will receive the next highway dollar. As long as infrastructure is seen this way, the temptation will always be to focus on the "golden fleece" type of project to

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the detriment of any true consideration of a strategic approach."

Enough of this for now.

The point is you don't have the luxury of dropping aid to Russia to concentrate on health care. You don't have the option of dropping NAFTA to focus on deficit reduction. You need to "focus" on all of these things. That is your job. What you must do is give people a way to see that all the issues relate, so that people will know that you are always focused on their concerns. You cannot simply raise an issue and just say it fits into a framework. You need to first sell the framework — then the issues will be much easier to handle.

If you can do this, people will marvel at your new-found focus. The American people will rally behind you. If not, people will become convinced that you are simply dealing with lists of unrelated issues — most of which have little to do with them personally.

This will require you to give the same speech over and over again, no matter what the topic. (You'd be surprised at how Truman worked containment into nearly all of his speeches.) You may get tired of hearing yourself talk. But, if you can get people to buy in, as I know you can, you will have solved your biggest problem.

I know you are receiving lots of unsolicited advice these days, and I do not want to add to your burden. But I truly believe that the answer lies less in narrowing the list of your concerns or shuffling the staff than it does in the development of a new framework — a new way for Americans to look at our purpose as a nation.

Good Luck!


G.L.B.

THE WHITE HOUSE
WASHINGTON

DATE: 05/25/93

NOTE FOR: MACK MCLARTY

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

Information ☒

Action ☐

Thank you.

JOHN D. PODESTA
Assistant to the President
and Staff Secretary
(x2702)

cc:

Lally Weymouth

Lani Guinier: Radical Justice ✓

The nomination of University of Pennsylvania law professor Lani Guinier to head the civil rights division of the Justice Department signals Bill Clinton's abandonment of any pretense that he's a "new Democrat." President Clinton, it would seem, no longer finds it necessary to stress the commitment to equal opportunity rather than pre-ordained results that animated the old-line civil rights movement.

As voting rights expert Abigail Thernstrom puts it, "Guinier is a candidate of the far left, a spokesman for very radical policies. She does not believe in the democratic process as we now understand it." This, obviously, is strong stuff. But Thernstrom is far from alone in her views on Guinier.

Will Marshall, director of the Progressive Policy Institute and a leading "new Democrat," believes that "Guinier's writings call for an unprecedented expansion of judicial supervision of state legislatures and county and municipal councils. . . . This pushes us further down the road toward racial entitlements and away from the broad inclusive view of national community Bill Clinton invoked . . . during the campaign."

Guinier's writings leave no doubt where she stands. In recent articles, she spells out her goal: to do away with the contemporary American electoral system. "We ought to question the inherent legitimacy of winner-take-all majority rule," she writes in the November 1991 Virginia Law Review.

When Guinier says "question," she really means "abolish." And in this instance, she intends to abolish one of the cornerstones of American democracy—majority rule. Why? Because majority rule, she says, assumes "the minority will support the majority's decisions for reasons of stability, efficiency, reciprocity and accountability." Translation? Majority rule democracy is attended by the expectation of stability.

In the interest of increasing black political power, Guinier proposes several specific steps. She would do away with the single-member districts for which the civil rights community long struggled and for which courts have expressed a decided preference over at-large elections. These districts, she argues, place limits on black power: "The single-member district model may contribute to black political visibility but not to black influence on municipal and regional policy."

Guinier, who has been a voting rights litigator for the NAACP Legal Defense and Educational Fund, seeks a society in which a minority can impose its will on the majority. To achieve this result, she would opt for "proportional legislative power" and for a device called cumulative voting—a system in which each voter gets as many votes as there are open seats in a given contest. Her new twist is that voters could cast all their votes in a lump sum for one candidate.

The outcome? Minorities, potentially, would enjoy vastly increased influence. No longer would a candidate need 51

percent of the electorate to win. A relatively small number of voters could ensure their candidate's victory.

Altering the electoral process, however, is only part of Guinier's program for redesigning American political and legal life. She also aims to effect legislative results. Thus, she proposes that a minority be empowered to veto the will of the majority. As an alternative scheme, she proposes cumulative voting within legislative chambers to allow black representatives to practice "both weighted and split issue vot[ing]."

Guinier's backers will reportedly seek to argue during her hearings before the Senate Judiciary Committee that her writings represent merely a set of provocative ideas she proposed in order to stimulate intellectual debate. Many of her advocates will no doubt be the same people who pilloried Judge Robert Bork on a 1971 Indiana Law Review article in which he stipulated that his conclusions were tentative.

But Guinier's effort to distance herself from recent articles will be an uphill fight. Unlike Bork, Guinier litigated cases in which she urged that her views be translated into public policy and into law. Indeed, in 1990 she was the attorney for black plaintiffs who sued the State Democratic Party in Arkansas while Bill Clinton was governor. In *Whitfield et al. v. State Democratic Party*, Guinier argued—unsuccessfully—that under the Voting Rights Act, the use of runoff elections in Democratic Party primaries discriminates

against blacks. This may interest a lot of southern Democratic senators now in office thanks to the runoff system.

Republicans who still nurture bitter memories of the manner in which Democrats fought Judges Bork and Thomas are getting ready to mount a no-holds barred campaign against Guinier. Clint Bolick of the Institute for Justice will be a leader in the battle against her. He says her writings put forward "the most radical notion of government I've seen presented in America in my lifetime. It amounts to the tyranny of the minority."

Clinton, however, is mistaken if he believes the opposition to Guinier comes solely from the precincts of the right. The American Jewish Congress has raised questions about her nomination. And moderate Democrats, both on and off Capitol Hill, are already beginning to squirm.

Among the most outspoken is Rep. Dave McCurdy (D-Okla.), a leader of the pro-Clinton Democratic Leadership Council. "I find the nomination very distressing," says McCurdy. "I just cannot believe her views are consistent with what the president campaigned on or believes in. Her positions are inconsistent with the message of eliminating quotas and reaching out to the middle class."

McCurdy predicts that Guinier won't be confirmed: "I don't think she'll get through. She'll become such an incredible lightning rod that either she or the administration will be discredited. Majority rule is what this country was built on. This is not South Africa."

THE PRESIDENT HAS SEEN THE WHITE HOUSE

5.25.93

WASHINGTON

May 24, 1993

93 MAY 24 P6:21

MEMORANDUM FOR THE PRESIDENT

FROM: HOWARD PASTER HP

Please find attached the materials on Lani Guinier that you requested. This information will be distributed to the Senate tomorrow morning.

Memo 11

pretty impressive

Defense

REGARDING GUINIER NOMINATION

- A) C. Lani Guinier, Biographical Sketch (general biographical information)
- B) Background Information on the Nomination of C. Lani Guinier As Assistant Attorney General for Civil Rights (summarizes Professor Guinier's litigation experience)
- C) The Views of Professor Lani Guinier (quotes anti-quota and other noteworthy remarks)
- D) Analysis Concerning the Wall Street Journal's Criticism of Professor C. Lani Guinier (points out inaccurate or misleading use of Guinier quotations)
- E) Letter to Wall Street Journal of Professors T. Alexander Aleinkoff and Richard Pildes, May 10, 1993 (explains Professor Guinier's articles)

C. LANI GUINIER, BIOGRAPHICAL SKETCH

LANI GUINIER is the first woman and the second African American to be selected as the nation's top civil rights attorney. On April 29, 1993, President Clinton nominated Guinier to serve as Assistant Attorney General for Civil Rights, in charge of the Civil Rights Division of the Department of Justice. Ms. Guinier will be returning to active civil rights enforcement after engaging primarily in teaching and scholarship for the past five years. Prior to her academic career, Guinier spent more than ten years as a civil rights attorney, working as a highly effective voice in the courts and in the Congress to secure equal justice and nondiscrimination.

Raised in Queens, New York, Lani Guinier always wanted to be a civil rights lawyer. Her father, Ewart Guinier, was an attorney, a Professor of History at Harvard University and a pioneer in African American studies. "My father inspired me to think about the world around me critically and to see the unfairness and try to change it. ... From my mother I learned how to get along with people. ... My mother helped me to see the other person's side, not to internalize rejection, and to be able to fight back." (Interview in Esquire magazine, December, 1984, at 490.)

Following graduation from Andrew Jackson High School in Queens, Guinier was able, with scholarship assistance, to pursue an Ivy League education. She was graduated with honors from Radcliffe College in 1971 and from Yale Law School in 1974. She then spent two years as law clerk for the Honorable Damon Keith, then Chief Judge, United States District Court, Eastern District of Michigan. With a prestigious clerkship and an outstanding academic record, Ms. Guinier could have earned a high Wall Street salary or immediately launched a teaching career at one of the nation's premier law schools. She chose, instead, a career of public service in the area of civil rights.

Ms. Guinier has received direct, on-the-job training for the position she has been nominated to fill. From 1977 to 1981, she served as the Special Assistant to Drew S. Days, III, Assistant Attorney General for Civil Rights in the Carter Administration. This position gave her experience with all aspects of the Division's work. During her tenure at the Justice Department, she co-authored a brief for the government which supported the release from prison of the Rev. Benjamin Chavis, a civil rights leader who was wrongly jailed as the result of perjured testimony. The government's argument prevailed and Chavis was recently named head of the NAACP.

In 1981, Guinier became an Assistant Counsel and Director of the Voting Rights Project of the NAACP Legal Defense and Educational Fund, Inc. (LDF), the non-profit, civil rights law firm founded in 1940 by Thurgood Marshall. During her seven and a half years at LDF, Guinier amassed a stunning string of victories and achievements, both in the courts and in Congress.

Guinier's first assignment at LDF was to participate in the effort to extend and amend the Voting Rights Act of 1965. Guinier's contribution was essential in beating back the Reagan Administration's attempt to dilute the legislation. Guinier's skill as a "superb negotiator," her vast knowledge and her hard work were lauded by others with whom she worked on this critical effort. (Esquire, December, 1984, at 491.)

Upon enactment of the 1982 Voting Rights Act Amendments, Guinier set out to make sure that the new law was enforced. She litigated the first case in which the Supreme Court interpreted the key new provisions added to the Act. When this case (Thornburg v. Gingles) reached the Supreme Court, after a unanimous three-judge court ruled in favor of Guinier's clients, a bipartisan group of members of Congress filed an amicus brief urging affirmance. The congressional brief was signed by liberals, moderates and conservatives, including Senators Dennis DeConcini, Robert Dole, Edward Kennedy and Charles Grassley and Representative James Sensenbrenner. The Supreme Court substantially adopted Guinier's arguments about the meaning of amended Section 2 and unanimously affirmed the district court's decision with respect to all but one of the contested districts.

Guinier also developed both the legal theory and a practical litigation campaign to change State systems that made it extraordinarily difficult to register to vote. As a result of her work, LDF filed lawsuits which reformed the voter registration systems in Georgia, Louisiana, Mississippi and Arkansas. For example, after LDF filed its lawsuit in Georgia, that State adopted rules requiring all counties to register voters in locations (such as shopping centers) that are convenient to all members of the community, to conduct such registration on evenings and weekends and to end the practice of appointing all white deputy registrars. After a trial in Mississippi State Chapter, Operation PUSH v. Allain, the federal court found that a prohibition on satellite registration, restrictions on time and place of voter registration and the dual registration requirement were responsible for a statewide 25 percentage point disparity between white and black voter registration rates. The Mississippi lawsuit resulted in the first reported judicial decision applying Section 2 of the Voting Rights Act to statewide registration practices.

Guinier's career has been a series of firsts. In 1983, she litigated the first case challenging a racially gerrymandered district under the amended Voting Rights Act. The case, Major v. Treen, involved a reapportionment plan for congressional districts in New Orleans, Louisiana. Assistant Attorney General for Civil Rights William Bradford Reynolds approved a blatantly discriminatory districting scheme which divided the City's majority black population into two districts in the shape of a duck. After a trial at which Ms. Guinier was co-lead counsel, a three-judge federal district court found that the plan discriminated against black voters and enjoined its use. The case was also the first time a federal court invalidated a districting plan previously approved by the Department of Justice.

During her tenure at LDF, Ms. Guinier successfully litigated scores of other cases, eliminating unfair barriers to the election of African American representatives, enforcing the federal preclearance provisions of the Voting Rights Act and defending civil rights leaders who were wrongly charged with voter fraud.

In 1988, Guinier joined the University of Pennsylvania Law School, where the faculty unanimously gave her an early offer of tenure in 1992. She became a favorite teacher of the Law School's students because of her intellect, her clarity, her fair and balanced presentations, her open-mindedness and her respect for diverse viewpoints. She is widely regarded as an outstanding scholar, and is recognized as a leading figure in the area of civil rights scholarship.

Guinier has been called upon to share her expertise with the U.S. Congress, having testified before two Senate Committees and a House Subcommittee. Guinier serves on the Boards of Directors of the NOW Legal Defense Fund, the Lawyers Committee for International Human Rights and the Juvenile Law Center and on the Board of Trustees of Philadelphia Community Legal Services.

In 1984 Guinier was selected for the Esquire Register of Outstanding Americans Under 40 Who Are Changing America and was profiled in a December, 1984 Esquire article.

B



BACKGROUND INFORMATION ON THE NOMINATION OF C. LANI GUINIER
AS ASSISTANT ATTORNEY GENERAL FOR CIVIL RIGHTS

For the first time in over twelve years, a seasoned civil rights litigator and scholar has been picked as the nation's chief civil rights lawyer. Lani Guinier, nominated last week by President Clinton as Assistant Attorney General for Civil Rights, is nationally recognized as an expert litigator who has won landmark civil rights victories in the federal trial and appellate courts, including the United States Supreme Court. Prof. Guinier is also a distinguished veteran of the Department of Justice division she has been chosen to head--serving as Special Assistant to then-Assistant Attorney General for Civil Rights, Drew Days. She is also recognized nationally as a leading scholar, in the field of voting rights and civil rights. Prof. Guinier's career has been characterized by strong intellectual vision and leadership, a flexible and practical consensus approach to real-life problems of inequality, an emphasis on building consensus and assuring that differing perspectives be heard, and a profound commitment to social justice and fair play in the political process.

Voter Registration

Prof. Guinier was chief architect of an innovative voter registration litigation campaign--a broad effort involving legal challenges by civil rights and civic groups to voter registration barriers for African Americans and others. As a result of her work, civil rights organizations filed lawsuits which reformed the voter registration systems in Georgia, Louisiana, Mississippi and Arkansas, where she successfully sued Governor Bill Clinton of Arkansas to change that state's restrictive voter registration practices.

For example, after LDF's lawsuit in Georgia, that state adopted rules requiring all counties to register voters in locations (such as shopping centers) that are convenient to all members of the community, to conduct registration on evenings and weekends and to appoint deputy registrars who reflect the racial diversity of the county. After a trial in *Mississippi State Chapter, Operation PUSH v. Allain*, a voter registration challenge brought by the Legal Defense Fund and the Lawyer's Committee for Civil Rights Under Law, the federal court found that a prohibition on satellite registration, restrictions on time and place of voter registration and the dual registration requirement were responsible for a statewide 25 percentage point disparity between white and black voter registration rates. The Mississippi lawsuit resulted in the first reported judicial decision applying Section 2 of the Voting Rights Act to statewide registration practices.

Redistricting

In 1984, in *Gingles v. Edmiston*, Lani Guinier teamed up with North Carolina attorneys to challenge successfully the state's racially discriminatory 1980 legislative redistricting plan. For decades, scores of African American candidates actively had run for legislative seats in North Carolina. Although most of these candidates were supported by the majority of black voters, the use of large multimember districts, exclusive candidate

slating practices, overt racial appeals and the reluctance of a majority of whites to vote for African American candidates combined to deny African American voters equal opportunity to elect their preferred candidates. When the lawsuit was filed, there were four black legislators out of 170. In some counties, an African American had never been elected to office, despite overwhelming support from the African American community. According to co-counsel Leslie Winner, who is now a North Carolina State Senator:

The General Assembly was virtually an all-white institution. Not only were the legislators white, but the lobbyists and the legislative staffers were white. Lani saw this as part of the picture of political exclusion and she was right. She had great depth of knowledge about the 1982 [Voting Rights Act] amendments but that is not all. She was tremendously committed to improving the political process and she firmly believed that a more inclusive process was necessary to make sound laws.

In *Gingles*, Prof. Guinier was one of the first to use the newly amended section 2 of the Voting Rights Act to challenge discriminatory electoral practices. North Carolina appealed the trial court victory and was joined by the Reagan Justice Department in the Supreme Court. Despite the Department's position, a bipartisan group of Congress members who had supported the 1982 amendments filed a "friend of the court" brief urging affirmance of Prof. Guinier's trial court victory. The brief was signed by liberals, moderates and conservatives, including Senators DeConcini, Dole, Kennedy and Grassley and Representative James Sensenbrenner. The Supreme Court rejected the Reagan Administration's view of the Act; and in its first substantive interpretation of the 1982 amendments to date, the Supreme Court substantially adopted Guinier's arguments about the meaning of amended section 2 and ruled that legislative districts that result in unequal opportunity to elect black voters' preferred candidates are illegal.

During the lawsuit, Prof. Guinier did not simply focus on what happened to black voters, but rather she looked at the way the multimember districts unfairly treated poor and working class white voters. Although elections were countywide, in most cases *all* of the elected representatives lived within a few blocks of each other in the more exclusive sections of the community. The representatives were inaccessible to both black and working class white constituents. As a result, the suit created opportunity not just for black voters. According to Mr. Gingles, "About thirteen new minority legislators were elected in the wake of the lawsuit. In the end, the lawsuit changed the Assembly throughout and made it into an integrated body that is more responsive overall, not just to African Americans." He noted that the sense of opportunity created by Prof. Guinier's efforts in *Gingles* went beyond the state capital. "Once we saw the barriers come down, the possibilities began. The black legislators elected after the lawsuit worked within the system to create black congressional districts during the 1990 reapportionment. Now we have the opportunity to elect Congress members who can serve the political needs of our community in Congress."

The year before she brought the *Gingles* challenge, Lani Guinier sued to reapportion the New Orleans, Louisiana congressional districts. The Governor of Louisiana, an open supporter of segregationist policies earlier in his career, threatened to veto a plan passed by the State legislature which would have followed the natural boundaries of the City of New Orleans to create one congressional district, with a majority of African American voters. Prompted by the Governor's threat, white legislators and lobbyists met surreptitiously in a basement room locked to black legislators and created a plan eventually adopted by the legislature that divided the city into two districts which formed the shape of a duck's head and beak and became known as the "Donald Duck plan." When asked why black legislators had been excluded from the all-white meeting, one legislative staffer replied:

[T]he feeling in the meeting was that the one group that . . . was not going to come out of the session satisfied was going to be the blacks. [W]ith all of the competing interests ... there was probably going to be virtually no way to satisfy the black members of the Legislature ... insofar as creating a majority black district [was concerned].... They [minority legislators] didn't have enough votes."

The Donald Duck plan made 42 turns through the City's concentrations of black voters and splintered the African American community into two districts -- one with a black population of 30% and the other with 40%. Assistant Attorney General for Civil Rights William Bradford Reynolds approve this blatantly discriminatory districting scheme, over strenuous objections by his staff. Indeed, one of Mr. Reynolds' predecessors during the Nixon Administration, Jerris Leonard, testified under oath that the Donald Duck plan was one of the most blatant gerrymanders he had ever seen. After a trial litigated by a team headed by Prof. Guinier, a three-judge federal district court struck down the plan.

Runoff Primaries

In another innovative challenge to unfair voting barriers, Lani Guinier brought suit against the runoff primary in Phillips County, Arkansas.

As in many other parts of the Delta region of Arkansas, there are deep social, economic and political disparities between African Americans and whites in Phillips County. These disparities are rooted in the antebellum plantation system. In fact, since Reconstruction, no black had ever been nominated or elected to any countywide office, although blacks were 53% of the population and 47% of the voting age population. Almost invariably, African Americans are the most disadvantaged and vulnerable members of the community in Phillips County. For example, 42% of blacks lack any vehicle, while only 9% of the white population are similarly handicapped; 30% of blacks - compared to 11% of whites - have no telephone. This vulnerability is particularly evident in politics, where habits of participation among black voters are relatively new and easily discouraged. Isolated by their poverty, black voters were less able to maneuver around obstacles used

in Phillips County, such as frequent, last minute changes in polling places -- sometimes moving them 15 to 25 miles away, without prior notice.

Prof. Guinier challenged the runoff primary law that in Phillips County requires candidates who win by a plurality to compete in a second primary for nomination to the Democratic ticket. Black plurality winners--who often have more limited financial resources for campaigning and who have constituents who do not always understand that they must come out and vote a second time in virtually the same contest--routinely were defeated in the second primary in Phillips County.

Linda Whitfield was one such candidate. In 1986, she ran against three white candidates for Circuit Clerk and in the first primary handily won with 3,000 votes, only to lose in the second primary. The white candidate who finally won the office took the seat with at least 1000 fewer votes than Whitfield had received in the first primary. Whitfield said that the second time, black voters simply did not turn out, often because they thought she already had won the race:

People were congratulating me for months afterwards, thinking that I was now the Circuit Clerk. When I told them that although I'd won the first primary, I'd lost in the second primary, they thought that the election had been stolen from us. In another recent runoff, by the time the second election came around, less than 50 people cast votes. The candidate [who was virtually the only black to win a runoff] won by only two votes. They call that a majority?"

Whitfield said that she herself did not understand why black candidates kept losing the elections. "Lani was magnificent in the courtroom. She did an outstanding job. She explained how with each runoff, the number of voters who actually cast ballots gets smaller. Its like giving the first-time loser a second chance."

The trial court in the Phillips County case rejected Guinier's contention that the runoff primary is illegal. Though an appeals panel subsequently agreed with Guinier that "there is no doubt . . . that under the present factual situation, the primary run-off requirement dilutes the votes of Phillips County blacks in a manner proscribed by the Voting Rights Act," a divided en banc court vacated this opinion and reinstated the trial court opinion. However, in another Arkansas voting rights challenge three years later, a three-judge federal court held that the municipal majority vote requirement had been enacted for discriminatory purposes and had a discriminatory effect on African Americans.

Unfair Primary Rules

Prof. Guinier mounted another challenge to unfair primary rules in Louisiana in 1984. That year, as soon as Rev. Jesse Jackson announced his candidacy for the Democratic presidential primary, the state party announced that it would not hold a

primary. Rather it would chose a nominee by caucus. In *Valteau v. Edwards*, Prof. Guinier successfully sued the state Democratic Party to require them to preclear this change in the rules.

Criminal Civil Rights Litigation

Prof. Guinier has experience in criminal civil rights enforcement as both a prosecutor and defense lawyer. While Special Assistant to United States Attorney General for Civil Rights, Drew Days, Prof. Guinier was one of two attorneys in *United States v. Booker* who successfully prosecuted a man for holding workers in a migrant farmworkers' camp against their will. Mr. Booker was the foreman of the migrant camp in rural North Carolina, where Prof. Guinier's team proved that it was an established practice to extort money from migrant laborers and physically and psychologically abuse them. These practices resulted in nearly complete psychological and, on occassion, physical domination of the workers. They were forbidden from even leaving the grounds of the camp. A federal jury found Booker guilty of holding the migrant workers in involuntary servitude. The defendant in this case was African American and the victims were white.

Also while at the Department of Justice, Prof. Guinier co-authored a "friend of the court" brief for the Department of Justice in support of a *habeas corpus* petition seeking to overturn the convictions of the Rev. Ben Chavis, imprisoned with nine other people (known as "the Wilmington Ten") on spurious arson charges. The Ten long-time civil rights activists, had been convicted on fabricated witness testimony. Ultimately successful in his appeal to the federal court, Rev. Chavis now serves as the Executive Director of the NAACP.

In 1985, in *United States v. Hogue*, Prof. Guinier successfully defended one of three black voting activists charged with voter fraud. The charges stemmed from a campaign to increase black political participation in rural Alabama. On the heels of this political upswing in an area of historically depressed black participation, the Reagan Justice Department began wholesale investigations of black voter activity in several black belt counties. A Justice Department official admitted that these investigations were brought on by the "arrogance on the part of blacks" in these counties. See *United States v. Gordon*, 817 F. 2d 1538, 1540 (11th Cir. 1987).

In 1984 in Perry County, Alabama, a rural Alabama Black Belt county, Spencer Hogue and other members of the Perry County Civic League (PCCL) mounted an intensive absentee ballot drive among black voters to ensure elderly and housebound black voters the right to vote. When the (PCCL) announced a slate of African American-supported candidates for local office, a full-scale investigation into black political activity was begun. Local law enforcement officers violated black voters' freedom of association and recklessly violated the sanctity of black voters' ballots, spying on PCCL meetings and ultimately seizing, opening and numbering for identification absentee ballots collected by the PCCL.

They turned these spoiled ballots over to federal officials. Federal officials took the ballots door-to-door and interrogated elderly and housebound black voters. Many of these voters subsequently were sent over one hundred miles to testify before a grand jury. Some were so feeble they had to be wheeled before the grand jury on stretchers.

Lani Guinier was part of the team of nine lawyers from a number of civil rights organizations and private firms who defended this case in an atmosphere of extreme polarization, intimidation and fear. This climate intensified when halfway through the trial, the home of Albert and Evelyn Turner, two of the defendants, suddenly caught fire with the Turners and two of their lawyers inside. According to co-counsel, Deval Patrick:

Lani played a critical role in persuading frightened witnesses to testify in court, puzzling out the trial strategy and keeping together the large and diverse trial team. She had great insight into trial dynamics, for example, how jurors were responding to the government's case. She had tremendous ability to listen earnestly to each side of issues raised and debated by the team, and strong tactical instincts. She did not get invested in positions. She kept sight of what was at stake in this case: not just the lives of three individuals, which is weighty enough, but also the ability of African Americans in Perry County to participate in politics without fear of retaliation.

Following the three-week trial, all the defendants were acquitted by a predominantly white jury after only three hours of jury deliberation.

Prof. Guinier then turned her attention to the appeal of the conviction of Spiver Gordon, a voting activist from a neighboring Black Belt County. The appeals court overturned Gordon's conviction and in the process concluded that there was reason to believe the Justice Department's prosecution of Gordon was impermissibly motivated by political and racial considerations.

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THE VIEWS OF PROFESSOR LANI GUINIER

The President has nominated to head the Civil Rights Division an attorney of extraordinary ability and unique accomplishment. As a lawyer for the NAACP Legal Defense Fund, Lani Guinier played a key role in the implementation of the 1982 amendments to the Voting Rights Act. She won the landmark 1986 Supreme Court decision enforcing that critical legislation, and her work led to integration of the previously virtually all-white legislature in North Carolina. After joining the University of Pennsylvania law school faculty in 1988, she quickly amassed an impressive record of scholarship, and was unanimously voted tenure and promotion to full Professor in a mere four years.

Her years in academic life have given Professor Guinier the perspective to recognize the broader issues that an ordinary litigator might miss. "In the end," she has written, "democracy is not about ... arbitrarily separating groups to create separate majorities in order to increase their share."¹ Properly understood, she argues, the Voting Rights Act "is not about electing members of the protected minority,"² (emphasis her own) or "a system of electoral quotas."³ Blacks are entitled to the same opportunity as any other group to have their interests represented in the councils of government, but that does not mean, Guinier insists, that they can or should be represented only by black office holders. On the contrary, she maintains, "[w]hites elected by a majority black constituency can and do represent minority interests."⁴ Voters should be encouraged to join together because they are "of like minds, not like bodies."⁵

There remain all too many localities in which most white voters would not vote for a black candidate, no matter how qualified he or she might be. Yet Professor Guinier candidly recognizes the difficulties that may flow in some instances where the predominantly black districts are created as a remedy for that problem. White officials from overwhelmingly white districts, she warns, may have no political incentive to heed the interests of blacks. Conversely, she points out, precisely because they may represent only

¹ Lani Guinier, "Second Proms and Second Primaries: The Limits of Majority Rule," Boston Review, September/October 1992, p. 34.

² Lani Guinier, "No Two Seats: The Elusive Quest for Political Equality," 77 Va. L.Rev. 1413, 1497 (1991).

³ Lani Guinier, "Voting Rights and Democratic Theory: Where Do We Go From Here?," in B. Grofman and C. Davidson, Controversies in Minority Voting, 291 (1992).

⁴ Lani Guinier, "Keeping The Faith: Black Voters in the Post-Reagan Era," 24 Harv. C.R.C.L.Rev. 393, 423 n.130 (1989).

⁵ Lani Guinier, "Voting Rights and Democratic Theory: Where Do We Go From Here?," in B. Grofman and C. Davidson, Controversies in Minority Voting, 291 n.17 (1992); see also Lani Guinier, "Second Proms and Second Primaries: The Limits of Majority Rule," Boston Review, September/October 1992, p. 34 (noting objection that an Alabama district "'yokes together by violence' areas as geographically different but racially similar as a large section of industrial Birmingham and vast expanses of the rural Black Belt...").

black voters, black officials may be isolated within a legislature. Thus, Professor Guinier fears, if minorities are "simply shunted into 'their own districts,'"⁶ the result may be to reproduce in state legislatures or city councils the very racial polarization which those districts were created to alleviate. At the same time, Guinier observes, the fact that heavily non-white districts are uncontested could reduce participation and interest in the political process on the part of minority voters.⁷ The isolation of minority voters in such districts, she notes with regret, may preclude the development of inter-racial alliances with sympathetic whites.

As a private civil rights attorney, Ms. Guinier fought with considerable skill and success, as was her responsibility to her clients, for districting plans that would increase the number of blacks elected in states across the south. But as an academic, she has candidly recognized that non-black groups can be affected adversely, and at times unfairly, by such plans. Race based districting plans, she has written, "may exacerbate intergroup conflict as minorities are pitted against each other in a fight to be 'the group' who gets the district. In jurisdictions with a complicated racial, ethnic and linguistic mix, the redistricting struggle becomes a source of conflict between blacks and other minority voters."⁸ Thus Professor

⁶ Lani Guinier, "Second Proms and Second Primaries: The Limits of Majority Rule," Boston Review, September/October 1992, p. 34.

⁷ Lani Guinier, "Voting Rights and Democratic Theory: Where Do We Go From Here?," in B. Grofman and C. Davidson, Controversies in Minority Voting, 278-88 (1992) ("majority-black, single-member districts . . . may undermine the prospects of achieving policies responsive to minority needs by isolating black constituents from the white majority, from other blacks who do not reside in the black district, and from potential legislative allies"); Lani Guinier, "Second Proms and Second Primaries: The Limits of Majority Rule," Boston Review September/October 1992, pp. 33 ("race-conscious districting is . . . flawed as a method for ensuring fair political representation"), 34 ("The direct consequence of majority black districts is that fewer white legislators are directly accountable to black interests. In this way, districting may reproduce within the legislature the polarization experienced at the polls [B]lack representatives may be isolated in the governing body"); Lani Guinier, "No Two Seats: The Elusive Quest for Political Equality," 77 Va. L. Rev. 1413, 1433-34 (1991) ("the single-member district strategy may adversely affect black voters' representation.")

⁸ Lani Guinier, "Second Proms and Second Primaries: The Limits of Majority Rule," Boston Review, September/October 1992, p. 33; see also id. ("These groups may compete over how many minority districts should be created and who should control them. Each group is encouraged to assert its superior moral, historic, and pragmatic claim. But in the lottery of competing oppressions, no one wins"); Lani Guinier, Speech, University of Michigan Law School, Jan. 20, 1992, p. 8 ("districting . . . may exacerbate intragroup conflict as minorities are pitted against each other").

Guinier has criticized a 1977 Supreme Court decision which treated Hasidic voters placed in a predominantly black district as "just another group of white voters."⁹

The efficacy and wisdom of all government programs should periodically be reevaluated with an open mind. Civil rights is no exception. But the problems of discrimination and intolerance remain very real and all too serious. It is irresponsible to simply criticize existing solutions to those problems, as some have, without proposing any alternatives. Professor Guinier has argued that, in the area of voting rights, we should look for fresh approaches to remedying continuing discrimination that will encourage "cross-racial coalitions"¹⁰ and "reduce racial polarization by encouraging whites to identify . . . their interests with blacks."¹¹ Voters should be encouraged to "identify their own allegiances and their preferences . . . [i]nstead of having the government authoritatively assign people to groups...."¹² She is committed to the search for more inclusive and effective remedies, rather than to any particular idea or program she has offered to date. She deserves credit for having brought new proposals to the fore, and for having challenged others to do the same.

Professor Guinier will bring to the Civil Rights Division a degree of balance and perspective which will add to the credibility of enforcement efforts. Thus, she has insisted that in enforcing the Voting Rights Act, the Justice Department should "not . . . demand

⁹ *Id.* at 34; see also *id.* ("This argument assumes that voters are interchangeable, that the courts can override voters' self-categorizations, and that the courts know better than the voters when their real interests are represented.")

¹⁰ E.g., Lani Guinier, "Second Proms and Second Primaries: The Limits of Majority Rule," *Boston Review*, September/October 1992, p. 34; Lani Guinier, "The Triumph of Tokenism: The Voting Rights Act and the Theory of Black Electoral Success" 89 *Mich. L.Rev.* 1077, 1139 ("cross-racial electoral coalition"), 1141 n.304 ("cross-racial coalitions"), 1145 n.320 ("intergroup coalitions"); Lani Guinier, "No Two Seats: The Elusive Quest for Political Equality," 77 *Va. L.Rev.* 1413, 1471 n.210 ("cross-racial . . . alliances"), 1475 n.219 ("biracial coalitions"), 1503 ("cross-racial coalitions").

¹¹ Lani Guinier, "No Two Seats: The Elusive Quest for Political Equality," 77 *Va L.Rev.* 1413, 1491 (1991); Lani Guinier, "Second Proms and Second Primaries: The Limits of Majority Rule," *Boston Review*, September/October 1992, p. 34 (prefers "to encourage genuine debate rather than foster polarization").

¹² Lani Guinier, "Second Proms and Second Primaries: The Limits of Majority Rule," *Boston Review*, September/October 1992, p. 3; Speech, University of Michigan, Jan. 20, 1992, p. 8 ("Districting, by assuming that geography works as a proxy for interest, . . . arbitrarily limits electoral choice based on decisions made for voters by commissions or incumbents . . . or . . . federal judges. . .") (emphasis in original).

that the jurisdiction adopt a crazy-guilt, gerrymandered districting plan."¹³ While arguing that white officials not be allowed to strip newly elected black officials of their powers of office, Professor Guinier has also recognized that neither the courts nor the Department "can or should micromanage legislative bodies."¹⁴ And she has argued that the problem of hate speech is best addressed by providing an opportunity for competing speech, rather than "limiting the right of others to say words that wound us."¹⁵ Many of her ideas concern the importance of promoting inclusion and deliberation have direct implications for issues involving women, the disabled and other groups implicated by the civil rights laws.

Above all, the time has come to lower our voices, to put aside ideological preconceptions, and to engage in an ongoing dialogue in search of fresh approaches to the intractable problems of discrimination. President Clinton has done well to nominate to head the Civil Rights Division a skilled attorney who has repeatedly insisted on the need to replace an "adversarial" governing process with "principled compromise" and "openness to multiple perspectives."¹⁶ A new kind of Democrat has wisely chosen a new kind of civil rights lawyer.

¹³ Lani Guinier and Drew S. Days, III, "Enforcement of Section 5 of the Voting Rights Act," in C. Davidson, Minority Vote Division, 171 (1984).

¹⁴ Lani Guinier, "No Two Seats: The Elusive Quest for Political Equality," 77 Va. L.Rev. 1413, 1507 n.329 (1991).

¹⁵ Lani Guinier, "'PC' and the Discourses of Racism, Sexism and Fear," Paper presented at the Penn Mid-Atlantic Seminar Series, Nov. 25, 1991, pp. 10-11, 12-13.

¹⁶ See, e.g., Lani Guinier, "Lines in the Sand: When Ideology Becomes Jurisprudence," speech at Yale Law School, March 29, 1993, p. 11, 18, 25. Lani Guinier, "Voting Rights and Democratic Theory: Where Do We Go From Here?" in B. Grofman and C. Davidson, Controversies in Minority Voting (1992), pp. 289-90 ("democracy by consensus and compromise;" "a consensus model"), 291 ("a more co-operative style of deliberation"); Lani Guinier, "Second Proms and Second Primaries: The Limits of Majority Rule," Boston Review, September/October 1992, p. 32 ("compromise and consensus . . . lie at the heart of the democratic ideal").