Chiron

THE PRESIDENT HAS SEEN
7-15-97

copied
Reed
COS

Clinton: Let the Kids Compute

By Michael Fletcher

WASHINGTON — Forget the hand-wringing about the lack of computers available to inner-city schools. Help may be as close as the nearest federal office building for community-based training programs and technology-starved schools in search of computers and other high-tech equipment to improve their offerings.

A year ago, President Bill Clinton signed an executive order directing all federal agencies to give all their surplus computers and other high-tech equipment, from modems and printers to electronic microscopes, to schools and non-profit educational groups.

The directive, contained in Executive Order 12999, covers thousands of pieces of computer equipment declared surplus by the federal government each year. Government officials say the little-known executive order, issued in April 1996, is a potential boon for underfunded schools and education programs in need of computers.

"I think this is a real opportunity to supply the needs of the most needy schools," says Dr. Samuel E. Massenberg, director of the Office of Education at NASA's Langley Research Center in Hampton, Va.

Massenberg says that the Langley facility has given away 6,000 pieces of equipment in the program's first year. "Most of the equipment is being picked up by K–12 schools," Massenberg says. "We've given away everything from lab equipment to computers to robots."

Langley's donations are but a small fraction of the high-tech gear available to non-profit groups simply for the asking. In his executive order, Clinton assigned the General Services Administration the task of developing guidelines for distributing surplus equipment. In its guidelines, the GSA says schools and non-profits are eligible, so long as the non-profits have education as a primary mission.

The GSA also is responsible for keeping track of what is given away. GSA officials say it is too early to know how much has been given away by the federal government overall, although the GSA office in Washington has given away about 1,000 computers itself, an agency spokeswoman says.

But even with the massive amount of equipment available to be given away, there remain problems. Sometimes equipment is too outdated for some educational programs. Other times, there is a problem matching need with supply.

GSA officials say they are moving to develop a Web site, in conjunction with the White House Office of Science and Technology Policy, where schools and others in need of equipment can post their needs. Federal agencies, in turn, can post the type of surplus equipment at their disposal.

"The Office of the Vice President is hoping to have that Web page up within six to eight months," says Martha Caswell, director of the Personal Property Management Policy Division at GSA.

Another problem has been that computer equipment found to be obsolete for government is sometimes not very useful for educational programs, especially those which want to operate online and access the Internet.

"Some of the schools are finding out the same thing that we are: that technology is moving so rapidly that the equipment can become obsolete in a year or two," Massenberg says.

Nonetheless, some computers are better than none, especially in educational settings where even the most basic units still can be used with software that takes students through repetitive drills or teaches beginning computer skills.

Still another problem is that some groups which have managed to secure equipment are having difficulty finding people who know how to properly install it. While the executive order directs federal agencies to "encourage federal employees to volunteer their time and expertise," the reality so far has been that the volunteer time has been insufficient.

"That's one of the rubs," Massenberg says. "We'd like to be able to install and fine-tune everything. But we can't. We do what we can here. We provide the instruction that we can and occasionally some of our people volunteer to go out evenings and weekends."

"I think this is a real opportunity to supply the needs of the most needy schools."

Samuel Massenberg, director, Office of Education, NASA Langley Research Center

GSA officials say they hope some of those problems can be alleviated with greater cooperation from federal agencies and by encouraging recipients to coordinate efforts with other groups, including local telephone companies, which often volunteer technicians to link computers for non-profit groups and schools through activities such as the annual "Net Day." Net Day, a national activity coordinated by phone companies in the first quarter of each year, is the catchword under which telephone "Pioneers" — retirees and 20-year employees — go to schools and community centers to wire up computer labs and Internet connections.

"It is not like we can just drop equipment at a school and walk away," says the GSA's Caswell. "But we are hoping to address that problem."

For more information about the program, contact the White House Office of Science and Technology Policy at (202) 456-6020. ■

Michael Fletcher is a contributing writer for US Black Engineer and Information Technology *magazine.*

THE PRESIDENT HAS SEEN

7-15-97

Magazines
Conferences
Production

MARSHA REEVES JEWS
Chief Operating Officer

[illegible]

FYI - BC

CAREER
COMMUNICATIONS GROUP, INC.

First Lady Hillary Rodham Clinton, Keynote Speaker for the Annual Women of Color Technology Awards Luncheon, Wednesday, October 1, 1997, from 12:00 pm until 2:00 pm, Sheraton Inner Harbor Hotel in Baltimore, MD. Over 500 in attendance, professional women of color from Fortune 500 corporations, college students and faculty, political and community leaders. Sponsored by *US Black Engineer and Information Technology* and *Hispanic Engineer and Information Technology* magazines.

"Speaking of Success"

THE WHITE HOUSE
WASHINGTON

Date 7/15

To: Elizabeth Drye

From: The Staff Secretary

Another letter on the FDA / EPA dioxin issue. Peterson is close to the President. Someone may want to call him. Needs reply too.

cc: Jim Dorskind

Peterson Enterprises

P. O. BOX 666 ~~PHONE 501 382 2144~~ Phone # 870-382-2144

Dumas, Arkansas 71639 FAX # 870-382-1038

July 11, 1997

President Bill Clinton
The White House
Washington, D. C. FAX 1-202-4560-6703

NUMBER OF PAGES INCLUDED 4

Hope See

Peterson Enterprises

P. O. BOX 666 ~~PHONE 501-382-2144~~ Phone # 870-382-2144
Dumas, Arkansas 71639 FAX # 870-382-1038

July 11, 1997

Merle is very close to this Pres

President Bill Clinton
The White House
Washington, D. C. 20500-2000 FAX: 1-202-456-2461

Dear Mr. President: Bill

Perhaps you are aware of the current situation with regard to a controversy between the fish and chicken industries and the FDA and EPA agencies. This regards the finding of minute particles of dioxin in fish and chicken feed. The source came from one mine in Mississippi and use of that product has been discontinued.

The immediate shut down of these industries would result in the loss of numerous jobs in our state and would bankrupt a good many state businesses, including the fish feed mill and pond owners in the Dumas area.

We would beg of you to prevail on the proper people to delay this drastic and immediate shutdown, allowing the industries 90 to 100 days to clear up and handle the problem on their own.

Since the levels found in the foods post no immediate health threats, we feel the agencies and the industries can work together and arrive at a better solution than a wholesale shut-down would entail.

Best regards.

Very truly yours,

Merle

Merle F. Peterson

MFP/dep

P. S. Attached hereto please find copy of a letter of explanation from Ted McNulty of the Ark Finance Development Agency in Little Rock.

The President

The White House

Washington, D.C. 20500

Dear Mr. President:

On July 8, 1997, the U.S. Department of Agriculture and the U.S. Food and Drug Administration simultaneously issued precipitous directives which effectively shut down much the poultry, egg and catfish industries in Texas, Arkansas, Louisiana and Mississippi.

Providing less than one week's notice, the agencies established a one part per trillion action level for the presence of dioxin in chicken, eggs and catfish products.

The action level is applicable retroactively to millions of pounds of processed product inventory and to the hundreds of millions of pounds of live chickens and catfish in various stages of production on farms throughout the South.

The livelihoods of countless farmers are in jeopardy as are the jobs of processing plant workers who face prospects of immediate lay off.

The action results from discovery of higher than expected levels of dioxin in certain animal feeds, in turn leading to dioxin in poultry, eggs and catfish. The source of the feed contamination has been shut down so the basic problem is solved

The agencies agree the levels found in the foods pose no immediate health threats. Yet the agencies have set a course which will result in wholesale destruction of food, unemployment and extreme financial losses for both small and large farmers and food processors.

We have three major concerns:

1) The action has retroactive impact; food and animals in production for as much as 18 months will now be subject to destruction.

2) Only a few laboratories have the ability to analyze food for dioxin at the parts per quadrillion level; costs are high; capacity to handle the directive does not exist.

3) The one part per trillion action level is not founded on science, nor does it balance risk with cost. There is no consensus whatsoever as to the appropriateness or practically of that level. Data does not exist as to impact of the arbitrary standard.

In summary, the no-notice imposition of a requirement bearing disastrous economic consequences and specious public health benefit is not justifiable.

Please ask the agencies to withdraw these directives and work with the affected state governments and industries to arrive at a better definitions of the problems and workable solutions to them.

Sincerely yours,

copied
Berger
COS

Sandy

Fight

BC

THE PRESIDENT HAS SEEN
7-15-97

THE PRESIDENT HAS SEEN
7-15-97

Excerpts From Stanley Hoffman article on France

New York Review of Books

Indeed, the US has tended to become the scapegoat of French national unhappiness. We are seen by many as the wrong *modèle de société*: a culture dominated by political correctness, by feminist shrillness and multicultural divisions, by a *"capitalisme sauvage"* that creates jobs, to be sure, but many bad ones, and leaves millions in ghettos, in decaying suburbs, and without social protection. The US is accused of violating other states' sovereignty by passing laws preventing trade with them.

The US is suspected of wanting to replace France in Central Africa; it is denounced by French diplomats and politicians alike as a triumphalist, unilateralist, and imperialistic power.

French leaders are aware both of French weakness relative to the US, and of frequent American contempt for France (expressed, last fall, through the leaking of a private communication by Chirac to Clinton concerning the reform of NATO, a leak accompanied by press comments about France's absurd pretensions). Many French politicians and others close to power realize that, here as in other matters, France's reduced influence must be supplemented by that of a more united Europe—especially at a time when France's prestige and opportunities for action abroad are eroded by its domestic failures. Such a

Europe can only be built on the foundations of Franco-German partnership, demonstrated in countless joint statements and initiatives. But here also, the future of Europe poses problems. What the French fear is not German domination. It is true that they resent the *diktats* of the Bundesbank, which force them to defend the franc by harsh fiscal measures; but so far they have little anxiety about Germany controlling the EU. German economic might is still balanced by the weight of Germany's past, and by France's "soft power"[3]—i.e., its diplomatic skills and considerable influence in the EU bureaucracy.

What the French fear is the effect of their own weakness and paralysis on their position in Europe. But, like the British, they find it hard to give up an age-old tradition of acting independently, as in former Yugoslavia or Africa, and they realize that any effective joint European action on foreign or military policy will be extremely difficult because such decisions must be taken unanimously—and even more difficult if the EU is enlarged.

The French also fear a deluge from Eastern Europe of relatively cheap food products, textiles, and steel at a time of high unemployment in France. All in all, they see the prospect of further expansion of the EU to the East as a danger rather than an opportunity.[4]

The result of such fears is that many French feel they are being submerged by a world they can no longer seriously influence. Aware that they live in a period of artistic and literary mediocrity,[5] a time when the intelligentsia (a major part of France's "soft power" in the past) is made up either of specialists in narrow fields or of wordy generalists "condemned to posturing and imposture," they realize that the prestige of their language abroad is slipping, that their culture is a "culture of court, academies and universities," but not a vigorous popular culture, and that the gap between their high culture and popular tastes has been filled by American mass entertainment, whether in movies, television programs, or pop music.

Language and culture were the elements that traditionally integrated the different regions of France and its successive waves of immigration. Hence the formidable defensiveness of French politicians and officials insofar as language and culture are concerned, their passionate defense of the virtues of French and of French cultural products (such as movies) against the "American onslaught," and their determination to get the EU to support them in the name of Europe's own cultural superiority.

THE PRESIDENT HAS SEEN
7-15-97

ABOARD AIR FORCE ONE

Sandy

Have we offered
any aid to the
Venezuelan Quake?

BC

Copied
Berger
COS

Copied
Reed
COS

THE PRESIDENT HAS SEEN
7-15-97

BReed

THE PRESIDENT HAS SEEN
7-15-97

Mir Crew Heard Thumps, Saw Leak From Module

Officials Worry About Planned Spacewalk

Reuter

CAPE CANAVERAL, Fla., July 5—Russian cosmonauts have reported hearing thumps and seeing something resembling little white flakes leaking from a damaged module on the space station Mir, increasing worries among space officials about the risky spacewalk planned to restore power to the orbiting laboratory.

"We are very concerned about what was in that module, what might have ruptured, and what the impact might be on the suited crew members," veteran astronaut Frank Culbertson, who runs NASA's missions to Mir, said at a news conference today.

The space station crew reported hearing thumps Tuesday from inside the Spektr science module that lost pressure and had to be sealed off after a cargo craft plowed into the station on June 25.

In Moscow, a senior official at Mission Control confirmed there had been a leak from the science module, called Spektr, five days ago and said experts were not were what it was although they were convinced it was not fuel.

The specialist said experts were trying to analyze information from the three-man crew. "We do not have any information on the situation inside the Spektr module," he said. "Measurements show there have been no other leaks in the other modules and sections of the station."

Mir commander Vasily Tsibliev and flight engineer Alexander Lazutkin plan to enter the crippled module in their space suits as early as July 17 or 18 to reconnect electrical cables and restore some of the power lost after the crash. NASA's Mir resident, Michael Foale, is to sit out the repair inside the station's emergency escape ship.

There are concerns that the cosmonauts could get toxic materials on their spacesuits during the repair. NASA and the Russian space authorities were trying to determine what dangerous materials might be present inside Spektr, which has been exposed to a vacuum since the crash.

"We've got a few days to continue working on that," Culbertson said. "We want to make sure we get a really good answer."

The white flakes seen escaping from Mir on Tuesday may have been caused by something bursting inside the module and leaking through the station's ruptured hull or could have come from a damaged radiator on the exterior of the module, he said.

NEA Backs Allowing Teachers To Evaluate Fellow Instructors

Associated Press

ATLANTA, July 5—Teachers should be allowed to rate the performance of fellow instructors and aid in dismissals, the nation's largest teachers union agreed today, marking a shift in the union's mission.

The voice vote by the National Education Association's representative assembly was seen as a test of the its effort to change its image. The NEA has been lambasted by politicians and other critics as an industrial trade union concerned chiefly with wages and defending its members jobs at the expense of education.

A majority of the 9,000 delegates agreed that the move was necessary.

"If we don't control this profession . . . we are going to regret it," said Gary Blumenstein, of Virginia Beach, noting the public attention to teacher performance.

This was a major victory for the leadership of Bob Chase, the NEA head who was been promoting a "new unionism" since he took office last year. The union would stress more cooperation with school boards and administrators in exchange for a broader role in decision making.

That also means a role in policing the quality of teachers.

The measure was divisive.

Larry C. Carlin, of Live Oak, Calif., said the 900 California delegates were 54 percent opposed and 46 percent in favor during a test vote within the caucus. The state union represents 269,000 teachers.

"It pits teacher against teacher," said Carlin. "The last thing you need in the schools today are teachers opposing teachers."

Carlin said he favored additional study. "I think its time is come," he said. Others were vehemently opposed, saying peer review would erode member trust in the union's role as worker advocate in a hostile world.

School systems would be allowed to set up peer assistance and review programs, run by union teachers and the school district.

Seattle and a number of Ohio cities have already established them, despite the national union's official opposition.

Under peer review and assistance, all beginning teachers and those veteran teachers who are identified as doing substandard work would be assigned a mentor to coach them.

If the teachers still didn't measure up, they would be encouraged to leave the profession. If that didn't work, the peer review panel would recommend dismissal.

Supporters say very few teachers under existing programs wind up being dismissed.

In advocating the change, Chase stressed that teachers would still have the right to challenge dismissals under state teacher tenure laws.

The Washington Post

SUNDAY, JULY 6, 1997F

Bruce
we need to do
a congrats letter
to Chase — good
move —
BC

THE PRESIDENT HAS SEEN
7-15-97

Copied
HRC
COS

THE PRESIDENT HAS SEEN
7-15-97

What's Left to Squeeze?

Managed-Care Firms Find Health Costs Rising—and Cuts Harder to Come By

By David S. Hilzenrath
Washington Post Staff Writer

Now comes the hard part for health care cost-cutters.

After declining during the mid-1990s, the cost of employee health benefits is beginning to creep up again. Managed care—which revolutionized the industry and helped slow the runaway costs of the early 1990s—appears to have trimmed the obvious fat out of the system, largely by extracting price cuts from doctors and hospitals.

The cost-squeezing strategy is now approaching the point of diminishing returns, some analysts say.

"Most of the savings from managed care that we've seen have been the easy savings," said Harvard economics professor David M. Cutler, who formerly worked on the Clinton administration's health care task force. The pursuit of savings is "only going to get more difficult . . . It's going to be a much more painful set of issues."

To keep costs down, the industry will have to reach for more elusive efficiencies, either by cutting deeper into the care patients receive or by making more fundamental changes in the way health care is delivered, analysts say.

A variety of formidable challenges threaten the continued success of the cost-cutters. Among the pressures that could send the national health care bill soaring:

- The baby boom generation is aging. That promises to drive up the percentage of the population that is elderly and traditionally has high health costs.
- Political pressure against medical cost-cutters is growing nationwide. Consumers and doctors alike are complaining that managed care is making it difficult for patients to get appropriate care. Their protests have inspired dozens of states to adopt laws and regulations restricting managed-care companies' ability to limit services. More state and federal regulation appears likely.
- Congress and the administration are planning to freeze or cut the rate of growth in the fees that Medicare, the program for the elderly and disabled, pays hospi-

See HEALTH COSTS, H9, Col. 1

HEALTH COSTS, From H1

tals and doctors. While that sounds like a cost-cutting measure, it may actually put upward pressure on medical bills in the private sector, which could be forced to take up the slack from Medicare.

Windfalls of the Past

The unfortunate fact, according to many analysts, is that most of the private sector already has reaped the one-time windfall of savings in switching to managed care from traditional insurance plans.

As of last year, 77 percent of private-sector workers at businesses with 10 or more employees were covered by managed-care plans such as health maintenance organizations and preferred provider organizations, according to a study by A. Foster Higgins & Co., a benefits consulting firm. That was up from just 49 percent in 1992.

Analyst J.D. Kleinke of HCIA Inc., a health care information company, put it this way: "Managed care has run out of road in the car it's driving today, and a lot of the HMOs are furiously struggling to build a new car."

Given the profound changes in the health care system during the 1990s, cost increases are unlikely to return to their earlier, frantic pace, analysts said. But they may accelerate, widening the gap between health care inflation and the economy's overall inflation rate, some analysts predicted.

For businesses and workers, that would mean higher monthly premiums.

Richard Ostuw, chief actuary of the employee benefits consulting firm Towers Perrin Co., said premiums probably will rise about 5 percent to 8 percent a year "for, I'd say, the next few years."

The new cost push already is beginning. In 1992, the cost of employer-sponsored health benefits was rising at an annual rate of 10.1 percent, according to Foster Higgins. Just two years later, the cost actually was declining by 1.1 percent. But in 1995, costs edged up 2.1 percent, and last year they rose 2.5 percent.

A similar warning of renewed cost pressure comes from federal data for annual per-capita medical spending. In 1992, that spending grew by 5.3 percent. Two years later, the growth had slowed to 1.6 percent. But in 1995, the most recent year for which data is available, the growth rate was back up to 2 percent, according to a report by Cutler and Louise Sheiner of the Federal Reserve Board.

Workers have borne a disproportionate share of the recent increases, according to Towers Perrin. Their costs have risen more than twice as fast as the share paid by employers, Ostuw said.

Faltering Profit Margins

To some extent, the price relief of recent years reflected the rapid expansion of the managed-care business, rather than any underlying change in the efficiency of health care. Health plans either cut their rates or restrained rate increases in a grab for market share. But the intense price competition took its toll, and some analysts say it was unsustainable.

The HMO industry's financial statements tell the story. In the fourth quarter of 1994, the average operating profit margins of publicly traded HMO companies peaked at 8.7 percent. By the fourth quarter of 1996, the profit margins had evaporated entirely. On average, HMOs were operating 1.1 percent in the red, according to Sherlock Co., an investment bank that specializes in managed-care companies.

To recover their costs, and to regain favor on Wall Street, some managed-care companies are resorting to price increases.

Mid Atlantic Medical Services Inc. is a case in point. MAMSI, based in Rockville, lost $4.9 million before taxes in 1996, after earning $96.3 million before taxes in 1995.

"Last year was a tough year for a lot of the HMOs because costs were rising . . . but premiums had not really kept pace over the past two years or so," MAMSI spokesman Michael Savage said.

For a year to 18 months, MAMSI basically had kept rates flat, Savage said. But, effective Jan. 1, the company raised rates by 5 percent to 7 percent.

Such price increases are improving the industry's bottom line. In the first quarter of 1997, the industry resumed operating in the black, eking out a 0.9 percent operating margin, according to Sherlock Co.

Where to Cut Further?

But HMOs will have trouble boosting margins further by slashing what they pay doctors and hospitals. They've already done that.

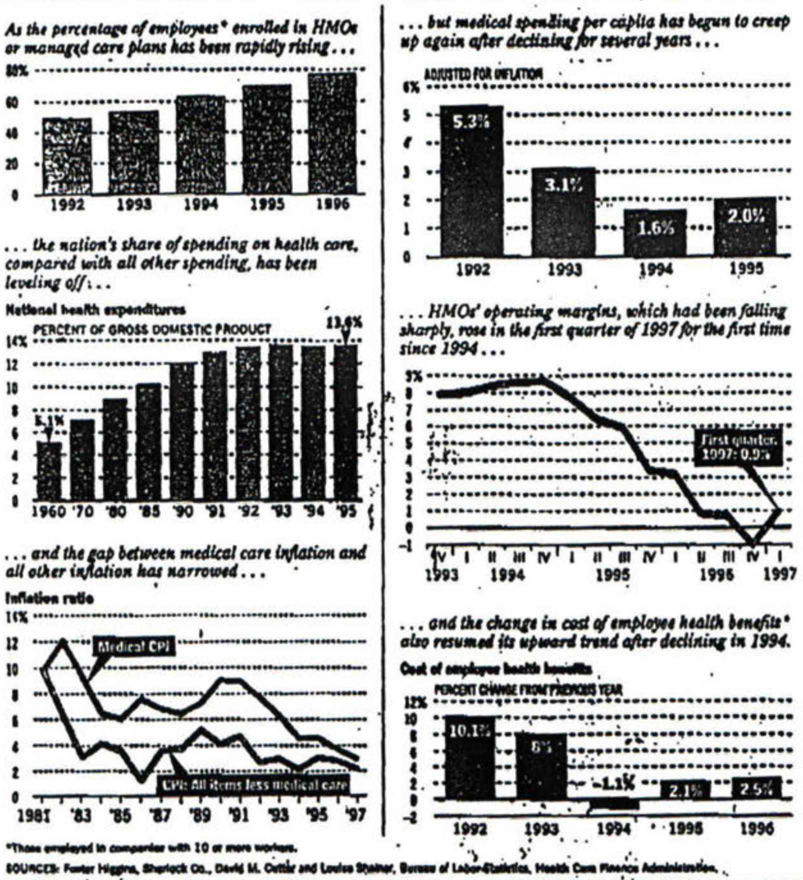
Historically, managed-care companies have relied on discounted doctor and hospital rates for much of their own cost advantage. Unlike traditional health insurers, which essentially paid whatever the health care providers charged, managed-care organizations have driven hard bargains. In many instances, they have been able to dictate what they would pay, because they represented large blocs of patients.

Doctors and hospitals generally have accepted the discounts—in the knowledge that if they don't, someone else will. The glut of doctors and hospital capacity left them with little bargaining power. Many were too

The Washington Post
SUNDAY, JULY 6, 1997

1/2

HEALTH COST PRESSURES



cowed by the power of managed care to protest.

A 1994 study sponsored by the Healthcare Leadership Council, an industry group that supports managed care, found that discounts accounted for almost four-fifths of the savings that the most popular form of HMO offered over typical fee-for-service insurance. The study was based on internal data from Aetna Health Businesses.

The price of magnetic resonance imaging tests illustrates the phenomenon. In the mid-1980s, it wasn't unusual for radiologists to collect $2,000 for an MRI, said Edward R. Lipsit, president of Washington Radiology Associates. Today, MRIs routinely go for as little as $250. Lower equipment costs help explain the decline, but pressure from managed-care plans accounts for the majority of it, Lipsit said.

At Georgetown University Hospital, managed-care companies were paying an average of $11,252 for cardiac bypass cases in the fiscal year ending in June 1994, while fee-for-service insurers were paying an average of $30,501 and Medicare was paying an average of $24,169.

But eventually, there are limits. As Jean Chenoweth, senior vice president of HCIA, put it: "It isn't bottomless."

An Area Revolt

Aetna U.S. Healthcare seemed to bump against the bottom recently in the Washington area.

The company, created by the merger of Aetna Life & Casualty Co. and U.S. Healthcare Inc., began bringing Aetna's doctor fees in line with the generally lower fees that U.S. Healthcare had been paying physicians. In March, Aetna U.S. Healthcare wrote to many Aetna doctors in the Washington area notifying them that a new fee schedule would take effect May 1.

Doctors were outraged at what they said represented a sharp reduction in their compensation. For a change, many of them just said no.

"I have received your ultimatum dated March 27, 1997, with great disappointment and disgust," pediatrician Russell C. Libby, president of Virginia Pediatric Group Ltd., wrote in a response. "My office can not operate at or even close to the fee schedule you have fabricated. . . . We will not accept your mandate."

The company was planning to reduce the payment for an "expanded focus" 15-minute office visit to $38 from about $53, a cut of about 28 percent. The majority of Libby's patient visits fall in that category, he said in an interview.

J. Knox Singleton, president of Inova Health System, joined the protest.

"As the administrator of our health plan for which you receive a sizable administrative fee, your recent actions have compromised our belief that you can deliver a quality health product to our employees," Singleton wrote in an April 21 letter to Jon Glaudemans, general manager of Aetna U.S. Healthcare's operations in the Washington area.

Inova, which runs hospitals in Northern Virginia, had a stake not only because it has invested in physician practices, but also because many of its 12,000 employees receive their health benefits through Aetna.

Last month, Aetna relented, announcing that it would restore fees for its primary care doctors and physicians in selected specialties to their 1996 levels.

"I think it's important to recognize the role primary care physicians play," Aetna's Glaudemans said in an interview.

Resisting New Technologies

And what's the potential for future cost reductions at Aetna?

"My observation is that . . . to the extent that we are going to achieve future cost savings, it will be because we succeed in keeping patients healthy," Glaudemans said.

Aetna isn't alone—Cigna Corp. also retreated, at least partly, from planned fee reductions that would have affected some of its local physicians recently, physicians and corporate benefits managers said.

Doctors don't believe managed-care companies are going to stop squeezing their reimbursements, but they cite these reversals as evidence that the resistance is stiffening.

The great test for managed care may be its ability to contain the spread of expensive medical technologies. Under traditional fee-for-service insurance, the nation's appetite for new technologies was virtually insatiable.

Cutler and Sheiner found evidence that managed care is retarding the spread of new technologies, which bodes well for its ability to restrain costs over the long run.

Robert J. Rubin, president of the Lewin Group, a health care research firm in Fairfax, said that may be harder to do in the future when research in genetics and biotechnology produces important breakthroughs.

"Whether you can do that when you have technology that is demonstrably better than what you currently have is in my mind an open question," Rubin said.

Will HMOs Wither and Die?

In the long run, HMOs may make the ultimate cost sacrifice by simply disappearing, HCIA's J.D. Kleinke said.

Having wrought lasting changes in the culture and economics of the entire health care industry, HMOs are coming to represent a potentially superfluous layer of administrative expense, Kleinke said.

Doctor groups and hospitals already are beginning to eliminate the managed-care middlemen in some parts of the country, internalizing cost-control functions and contracting directly with the employers who pay the bills.

"The commercial HMOs will cease to need to exist. [They] will dry up and blow away," Kleinke said.

"Most of them will eventually go the way of the old-line indemnity insurance companies. . . . That's going to give us another decade of flat or declining health care costs."

The Washington Post
SUNDAY, JULY 6, 1997

2/2

THE PRESIDENT HAS SEEN
7-15-97

Rahm
Should we see
State members
change —
BC

copied
Emanuel
COS

7-15-97

Rules for Bringing In Kin Worry Immigrants

Sponsors Will Be Required to Earn Moderate Income and Pledge Support of Relatives

By Pamela Constable
Washington Post Staff Writer

Cirilo Zavala, a 64-year-old immigrant from El Salvador, hasn't seen his wife Angela since he left their village in 1989. The grizzled Arlington man, a legal resident who cleans office buildings at night, can under law bring Angela here to live through the sponsorship of his daughter, a housekeeper who recently became a U.S. citizen.

But chances are, it will never happen.

Under a provision of the new immigration law due to take effect next month, all U.S. residents and citizens will be barred from sponsoring relatives to immigrate here unless the sponsors can prove their income is at least 25 percent higher than the federal poverty level, or about $19,500 for a family of four.

In addition, the law requires that sponsors sign a legally binding commitment to support anyone they bring in until the immigrants have worked 10 years or become citizens. If an immigrant is discovered using public benefits to which he is not entitled, the sponsor can be fined and prosecuted for repayment. This marks a distinct shift from past practice. Although sponsors have always had to pledge to support their arriving relatives at first, those promises have never been legally enforceable.

The new sponsorship rules result from revisions to welfare and immigration laws passed by Congress last year. They are aimed at reducing the numbers of immigrants who enter the country legally but without money or skills, and who are thus more likely to apply for welfare, food stamps and other public benefits after they arrive.

According to the Federation for American Immigration Reform, a group that advocates stricter controls on immigration, nearly 21 percent of all immigrants use some form of welfare—most often free school meals, Medicaid and supplemental Social Security—compared with 14 percent of American-born residents.

"The purpose of these provisions is to protect the American taxpayer from freeloading relatives of immigrants," said Dan Stein, the group's executive director. "We do not need more newcomers joining the ranks of the impoverished."

But some immigrant advocate groups said the use of welfare by newcomers is much lower, and that the new law unfairly discriminates against low-income families who seek to be reunited. They cite several studies, including one conducted by government immigration analysts, showing that nearly half of U.S. families from Mexico and El Salvador, one-third from Korea and 25 percent from China could not meet the new income test for sponsors.

"We believe this income requirement amounts to a back-door way to limit all immigration. The test is rigid and artificial," said Jeanne Butterfield, an official of the American Immigration Lawyers Association. Butterfield and other advocates met Thursday with immigration officials to discuss proposed new rules that will implement the law. They are pushing for more flexibility, including a provision that would allow total household income, not just that of a single sponsor, to be considered in the calculations.

Jeffrey Passel, a demographer with the Urban Institute, said his group calculates that about 40 percent of immigrant families earn too little to meet the new requirements. He said making sponsors legally responsible for their relatives "corrects a basic flaw" in the system, but preventing them from bringing family members here legally could "encourage illegal immigration."

The greater Washington area is home to tens of thousands of Central American immigrants, many of them unskilled peasants who arrived illegally but were allowed to remain as refugees from civil wars. Now some have been here long enough to become permanent residents or even citizens, giving them the right to petition the government to bring in their parents, children or siblings.

But according to local Latino and immigrant organizations, many of these families are still working in low-level jobs such as cleaning and cooking, and their incomes are not high enough to meet the new requirements for sponsorship. In some cases, even combining several relatives' incomes as co-sponsors may not be enough.

"We are starting to warn people that their incomes won't be sufficient to prove that their relatives won't be a public charge," said Yvonne Vega, director of Ayuda, a legal aid clinic for poor immigrants in Adams-Morgan. "Public charge" is the phrase officials use to describe a person who depends on government charity.

In the Zavala household, for example, three family members work cleaning homes and offices, but the sponsoring daughter earns only $7,000 a year. If her father and another relative could be added to her petition, they might barely qualify to bring in the mother, who could not come to the United States before because the family had neither the money nor the legal right to bring her. But it is not yet clear whether the new regulations will allow multiple sponsorships or count total household incomes.

"I have been working here for a long time. I clean toilets and do whatever I must, but I have never asked anyone for help," said Cirilo Zavala, sitting on a sagging brocade couch in his barren apartment. "If the North American officials would open their hearts and allow my wife to come, I would be very grateful."

Despite their desire to crack down on immigrants' use of welfare, congressional Republicans have recently relented on one controversial aspect of welfare reform that would have cut off supplemental Social Security benefits to half a million elderly and disabled immigrants. Late last month, under a balanced budget agreement with the White House, legislators restored most of those benefits, which were scheduled to be cut off in August.

To advocates of reduced immigration, this political reversal makes it even more important that the sponsorship process be carefully controlled and the final regulations tough. As Stein's group sees it, allowing "surrogate sponsors," such as wealthier but distant relatives, could be an "Achilles heel" that would seriously weaken the law.

Federal immigration officials said last week that the new regulations will be made public within three weeks, after which groups on both sides of the immigration debate will have one month to comment before they take effect. The officials said they are still nailing down some details, such as how to calculate income, keep track of sponsors and define what benefits they must repay.

But one thing is clear: Now, much more than before, an immigrant's right to bring in parents, children or other relatives from abroad will depend on how far that person has moved up the American economic ladder and on how much of a burden he or she is willing to shoulder in order to be reunited with family left behind.

FAMILY PHOTO

Cirilo Zavala last saw his wife Angela, above, when he left their El Salvador village in 1989.

CORRECTION

A picture of the Martian landscape that ran on page A15 in some editions yesterday was transmitted by one of two Viking spacecrafts that landed on Mars in 1976, not by Pathfinder, which landed Friday. The photograph was sent and misidentified by Agence France-Presse.

The Washington Post

SUNDAY, JULY 6, 1997 F

THE PRESIDENT HAS SEEN
7-15-97

VP

Let's discuss

BC

Copied
VP
COS

THE PRESIDENT HAS SEEN
7-15-97

Computer Age Millionaires Redefine Philanthropy

A1

By CAREY GOLDBERG

SEATTLE, July 5 — Among the multitudes of Microsoft millionaires here, something big is brewing.

Something that, though emanating from what many consider the Evil Empire of computerdom, has the potential to do such tremendous good that it reminds philanthropy experts of the turn-of-the-century transformation of New York City by the railroad and oil barons. Or the infusion of civic-minded wealth into the Ford-and-Chrysler Midwest a generation later.

Slowly, scores, if not hundreds, of the several thousand millionaires created by Microsoft's high-technology hegemony, many of them so suddenly flush with rocketing stock shares that they can retire at 35, are coalescing into a network of unusually young, unusually rich people who think along these lines:

"We've been lucky — we've been really lucky," said Trish Millines, a 39-year-old Microsoft retiree who has just created a foundation to help train minority children in computers. "And one of my first instincts as a person who grew up fairly poor is: You have it, you share it."

And sharing it they are, in ways that are beginning to transform the culture of the Seattle area and, experts say, of philanthropy itself.

The Microsoft techno-benefactors include billionaires like Paul Allen, the company co-founder who has given tens of millions of dollars to a variety of causes; Bill Gates himself, who last week announced the donation of $200 million toward connecting libraries here and around the nation with the Internet, and a constellation of mere millionaires backing projects like saving the historic Paramount theater, arming environmental groups with the latest in computer tools and creating a baby blanket company that gives all its proceeds to children's causes.

Charity specialists are watching with fascination as Microsoft disciples begin to try to remake the Puget Sound nonprofit world in their own image, introducing into the sometimes-stodgy world of philanthropy a high-energy, high-tech, hard-core business approach that seems to enter the DNA of employees on the Redmond, Wash., campus.

They are also taking note of the particular orientations of this new generation of givers: They tend to want to support education — their own key to success — and environmental causes, and share a certain

Continued on Page 9

Continued From Page 1

belief in technology as salvation.

If their nascent efforts live up to their promise, said Craig Smith, a longtime philanthropy consultant here, the region will become a showcase for how high-technology patrons "help society make the transition into the information age," from spreading technology across class barriers to using its profits to improve education and help the poor.

The upstart geekocracy of high technology is not known for sharing, and grateful-but-skeptical Seattleites often point out the strings attached to gifts: Mr. Gates's library plan will help promote use of Microsoft software, and Mr. Allen, who recently paid for a statewide vote on a new $425 million stadium, which he will help build, to keep the Seattle Seahawks football team, which he just bought, in their hometown, is expected to make money off the deal. Many of the millionaires also use their donations for tax relief.

A New Generation Of Philanthropy

In general, techno-millionaires, who make up one of the biggest pools of new wealth in the country, have been regarded as one of the stingiest, too caught up in navigating the whitewater change in their industry to focus on helping others. And Mr. Gates, the richest individual in the world, has been seen as the group's alpha ingrate, balking at sharing his billions until he was older.

But the seedlings of a new generosity in the Seattle area, among what is thought to be the biggest crop of quick millionaires that any company has ever produced, has stirred hope that many are getting old enough or burned-out enough to start thinking about personal legacies.

And the giving seems to presage ever greater influence for the city's Microsoft elite, whose flash has already associated Seattle in the minds of most outsiders with, "Oh, Bill Gates!" despite the longstanding dominance here of the Boeing Company, a business behemoth that still dwarfs Microsoft.

What is happening among Microsoft millionaires now in Seattle, said Peter Dobkin Hall, a research scientist in the Program on Non-Profit Organizations at Yale University, is the formation of a "philanthropic community," the kind of network that is needed for large-scale investment in social needs.

And already, he said of the ever-more-sparkling city, "Largely due to the impact of these people on civic life, it's just been transformed."

The signs that the techno-millionaires are reaching a critical philanthropic mass here had begun well before Mr. Gates announced his gift last week.

Earlier in June, at a meeting of more than 130 potential contributors, five high-technology leaders, including two Microsoft retirees and a current executive, founded Social Venture Partners, a sort of donors' circle. Conceived by Paul Brainerd, a pioneer in desktop publishing who sold his Aldus Corporation in 1994 for $450 million, the partnership is set up much like a venture capital firm, with each member "investing" at least $5,000 in its initial stages.

And Microsoft Alumnet, which, among other things, helps Microsoft "graduates" figure out how to donate their money and time, has mushroomed in its two-year existence to more than 1,100 members.

Bill Gates Begins To Lead the Way

Mr. Gates may now begin leading the way with his personal giving, and Microsoft matches employees' charitable contributions with up to $12,000 a year.

But until now, it has been mainly the Microsoft alumni — the hundreds who have thrown off the "golden handcuffs" of deferred stock options and concluded that where they want to go today is out — who have set the examples.

Best known nationally for large-scale philanthropy is Mr. Allen, the bearded, bearish Microsoft co-founder, eighth-richest man in the world, whose estimated $13 billion fortune supports not only a man-in-a-toystore life of sports and jets but a broad array of contributions. They include gifts to hospitals and universities and his plan for a lavish, interactive rock music museum, the Experience Music Project, built in the shape of a smashed guitar.

Locally, a constellation of other former Microsoft employees have become associated with major good works, from Ida Cole, who used some of her millions to save the landmark Paramount theater, to Scott Oki, whose Oki Foundation gives away nearly half a million dollars a year, mainly to children's causes.

When he began the foundation, Mr. Oki said with wry candor, it was largely as a "tax dodge." But he has become so consumed with nonprofit work he is a member of 23 boards, he said, and sees his mission as blending philanthropy with entrepreneurship and persuading former Microserfs and others to do the same.

"Clearly, we're still at the tip of the iceberg," he said of his colleagues' contributions, "as more and more people leave Microsoft and really figure out what they want to do with the rest of their lives."

Not on the same scale of raw wealth, but considered the political star among Microsoft millionaire retirees is Tina Podlodowski, 37, a Seattle City Councilwoman who has championed neighborhood planning, gay rights and technological efficiency, saving the city millions in computer costs.

"Nobody ever thought Microsoft would get this big," Ms. Podlodowski said. "To get this money is a wonderful bonus. For most people it's just a matter of having a safety net — so you start thinking, 'How can we crank that safety net for other people?' "

Then there is a passel of less prominent figures — those beginning their own ventures, like Ms. Millines, whose Technology Access Foundation will train children and teenagers on computers, and hundreds of others joining nonprofit boards and writing checks.

Of Alumnet's 1,100 members, staff members say, about 40 percent are mainly interested in nonprofit work, while another 40 percent have started new businesses and want networking help primarily with that.

New Assertiveness In Charitable Groups

And then there are those who choose to remain anonymous, like the former Microsoft backers of the Wilburforce Foundation, a new fund based in Seattle that gives away $2 million a year mainly to groups in the Pacific Northwest working on habitat conservation. Microsoft alumni say they think — based on purely anecdotal surveys of their friends — that only perhaps one-fifth of rich young retirees have not yet gotten around to doing much beyond lingering over their lattes.

For philanthropy-watchers and the retirees themselves, the most interesting aspect of the influx of Microsoft money is the people who come with it: their desire to throw themselves into some new passion and the habits they bring from their days and nights of cranking code, crunching numbers and quashing competitors.

"I'd expect to see a bunch of very aggressive, assertive foundations because that's the nature of Microsoft people, that they're going to be independent and really think about what they do," said Bruce Jacobsen, who left Microsoft last year. He is now president of Progressive Networks, a start-up founded by Rob Glaser, a fellow Microsoft retiree, that mainly makes RealAudio and RealVideo software but will donate a fixed percentage of its profits to charity and, as a sideline, backs political groups with free technological aid.

Even those like Mr. Glaser, swept up in a new business, demand Microsoft-style measurable results from the charities they support.

"I don't find it satisfying to just write a check when I don't know the money will be used in a positive way," he said. "There should be a hybrid of the purely commercial and purely philanthropic world. You can actually create an economic entity with metrics for measurability."

Fueling the philanthropy is a rise in Microsoft's stock — it is up by a factor of 250 since it went public in 1986 — and the stock option plan that spreads the wealth among thousands of employees. In January alone, employees exercised $400 million in options on $1.3 billion in stock, creating $900 million in net worth, said Tony Audino, the founder of Alumnet.

Estimates of how many millionaires the company has produced range from 3,000 to 10,000 or more; it depends in part on when people sold their stock.

Philanthropy experts say the growing altruistic bent also stems from a natural maturing, one that has gone a bit slower than in other fields simply because of the age of the new rich. Many are still busy having children and buying houses.

"It's a 10-year process of money coming back to the community, even from very wealthy people," said Gib Myers, a general partner at the Mayfield Fund in Menlo Park, Calif., which has been exploring ways to encourage philanthropy among the Silicon Valley's counterparts to the Microsoft millionaires.

Nonetheless, despite widespread criticism that the world cannot afford to wait for technology moguls to mature into giving more, even such a usually sharp-tongued philanthropy analyst as Waldemar Nielsen gets excited when he considers the good they are beginning to do.

"They're not only young and creative, but they're a different generation of newly wealthy people," said Mr. Nielsen, author of "The Dramas of Donorship" (University of Oklahoma, 1997). "I'm very optimistic that their philanthropic work will turn out as creative as their inventiveness in these new fields of electronics and communications." Normally, he said, "I'm a sour and skeptical old man, but I really feel great, great hopefulness about them."

The New York Times
Sunday, July 6, 1997

THE PRESIDENT HAS SEEN
7-15-97

Breed
Fyi - BC

copied
Reed
COS

THE PRESIDENT HAS SEEN
7-15-97

School-choice proposals mount along with public's unhappiness

By Carol Innerst
THE WASHINGTON TIMES

Despite legal setbacks for voucher programs in Milwaukee, Cleveland and Vermont, dissatisfaction with public schools continues to stoke fires for school choice.

"The growing support for school choice is, in many ways, the result of growing dissatisfaction with public school education," said Nina H. Shokraii, education policy analyst for the Heritage Foundation, a conservative think tank.

"Over 43 governors supported some type of public or private choice in education in 1996, and Congress is finally connecting with the grass-roots movement around the country that's been calling for school choice."

Minnesota just increased its state tax deduction for public or private education purposes and instituted a new tax credit that can be used for a variety of educational purposes including private tutoring, textbooks and transportation — but may not be used for private school tuition.

Arizona recently passed a tax credit for citizens who want to contribute to a private scholarship fund.

Proposals at the federal level include a budget amendment offered by Sen. Paul Coverdale, Georgia Republican, that would allow a $500-per-child tax credit to be used for tuition to private schools, and a D.C. school-choice plan offered by House Majority Leader Richard K. Armey of Texas that garnered the support of Rep. Floyd H. Flake, a liberal black Democrat from New York, Miss Shokraii said.

When the Joint Center for Political and Economic Studies in June released an annual poll on blacks' views of various social issues, it showed that support for school choice among blacks aged 26 to 35 was at 86.5 percent. That was up from 60.9 percent last year, Miss Shokraii said.

"Congress is finally connecting with the grass-roots movement."

"I don't think there's majority support for vouchers yet. . . . That's still up in the air. . . . but blacks are shifting toward vouchers," said John J. Jennings, director of the Center on Education Policy, an independent national advocate for public education and improved schools.

"You have an unusual coalition in favor of vouchers that includes conservatives who are free market people and inner-city blacks, and of course the Catholics and other religious school people," said Mr. Jennings, legal counsel to the House Education and Labor Committee when the Democrats controlled the House.

"They're all coming from different perspectives, and we've already seen the beginnings of how it will play with Polly Williams in Milwaukee. Inner-city blacks are so frustrated with the state of inner-city schools they just want out, and it's pretty hard to blame them."

As he sees it, President Clinton, Education Secretary Richard Riley and others "fighting for public schools" hope that public charter schools free of many government regulations in order to spark creativity will channel the energy that is building for school choice in a different direction than vouchers.

By fall, there will be about 700 charter schools throughout the country, and Mr. Jennings says they haven't "peaked."

"They bring flexibility to a very rigid structure," he said. "All of our structures must become more flexible, and public schools may be one of the last to reach that point, but if they don't, they won't survive."

Public-opinion polls provide different readings on school choice, but all show growing support — or at least a lessening of opposition — to the idea of government vouchers over the past five years.

A 1996 poll commissioned by the Center for Education Reform, a free market education clearinghouse and advocacy organization, revealed that 70 percent of the public (82 percent of parents with school-age children and 90 percent of blacks) support giving poor parents tax dollars to send their children to a private, public or parochial school.

The 1996 annual Phi Delta Kappa-Gallup poll showed no clear majority on the government voucher question, with parents with children in public schools split evenly, 49 percent to 49 percent, and 2 percent undecided.

Meanwhile, two studies have shown achievement gains by children in both the Milwaukee and Cleveland voucher programs.

"The reason school choice works is that it shifts the locus of power away from the bureaucracy to students and parents — consumers — who will make better decisions than the bureaucrats in Milwaukee or Cleveland," said Richard C. Leonardi, president of the 3-year-old Buckeye Institute, a research and educational public policy organization in Ohio.

The Washington Times
SUNDAY, JULY 6, 1997

Bruce
need to stay out front
on our emphasis on
charter schools vouchers,
choice position

BC

THE PRESIDENT HAS SEEN
7-15-97

McGinty
— shouldn't I do a
note to Tompkins?
BC

copied
McGinty
COS

Chile, American Agree on Controversial Nature Preserve

By Anthony Faiola
Washington Post Foreign Service
Wednesday, July 9, 1997; Page A17
The Washington Post

THE PRESIDENT HAS SEEN
7-15-97

A millionaire American conservationist won agreement from the Chilean government today to help him create a nature sanctuary on a vast swatch of pristine land he has spent years acquiring in rugged southern Chile.

Douglas Tompkins, creator of the Esprit clothing empire, had faced pressure from the Chilean military and right-wing business interests here who believed that his land holdings -- which are roughly the size of Delaware and essentially cut this long, narrow country in half -- were too vast and strategically important to be in the hands of a foreigner. They also accused him of attempting to stymie economic development.

But the government, after concluding its own investigation into the millionaire's motives, reached an agreement with Tompkins under which he would turn over his land to a private trust in return for President Eduardo Frei's support in protecting the land from development interests and from conservatives who sought to thwart his plans. The aim now is to turn the land into a preserve that showcases the diversity of Chile's ecology.

"The government finally recognized that Mr. Tompkins was only interested in creating a conservation area -- and that he had no other motives," said Sara Larrain, national coordinator of RENACA, a network of environmental groups here.

According to the terms of the agreement, Tompkins will be allowed to appoint four of the seven members of a board that will oversee the reserve, with the others to be named by Chilean religious and academic institutions. The government will give the land sanctuary status, exempting it from property taxes and from all but minimal development.

For his part, Tompkins will guarantee public access to the park and allow roads and power transmission lines to be built on the land.

Tompkins also agreed to stop buying more large tracts of land, at least until Chile enacts new laws on foreign ownership of massive parcels of the country.

Juan Villarzu, Frei's top political adviser, told reporters at a news conference that the government had weighed all the concerns and that "all Chileans can rest easy with the agreement."

At the same news conference, Tompkins said he was happy with the "nature sanctuary" status the government was bestowing on the property. Tompkins, who lives in a cabin on the property, which cost more than $16 million to acquire, began his efforts to create a nature reserve here in the early 1990s with help from Chilean environmental groups.

"This agreement is really just putting on paper some things that are obvious," he said. "It gives us the help of the government -- which we need, because we can't have the government against us."

THE PRESIDENT HAS SEEN
7-15-97

Copied
Emanuel
Smith
Sosnik
COS

Rahm | CTS | Doug

We should have
something like this
for every Dem. & the
person, they contribute
to DNC & campaign
BC

Keep this card and see that we keep our promises.
New Labour's early pledges are:

- **cut class sizes to 30 or under for 5, 6 and 7 year-olds** by using money saved from the assisted places scheme
- **fast-track punishment for persistent young offenders** by halving the time from arrest to sentencing
- **cut NHS waiting lists by treating an extra 100,000 patients** as a first step by releasing £100 million saved from NHS red tape
- **get 250,000 under-25 year-olds off benefit and into work** by using money from a windfall levy on the privatised utilities
- **set tough rules for government spending and borrowing; ensure low inflation; strengthen the economy** so that interest rates are as low as possible.

For your copy of *New life for Britain* call **0990 300 900**

Labour

M/081/96 Published by the Labour Party, John Smith House, 150 Walworth Road, London SE17 1JT.
Designed by GIANT. Printed by HH Associates, Royal Crest House, 22-26 Upper Mulgrave Road, Cheam, Surrey SM2 7AZ.

'97 JUL 14 PM5:09

ARDA

AMERICAN · RESORT · DEVELOPMENT · ASSOCIATION ·

To Jim Dorskind

for reply

coord w/ NEC

July 9, 1997

President William Jefferson Clinton
The White House
Washington, D.C.

Dear Mr. President:

We read with interest and concern Treasury Secretary Rubin's letter to the House-Senate tax conferees.

We were encouraged by Treasury's view that "the Administration strongly believes that any tax-cut package must meet four basic tests to reflect sound policy." We, too, see the wisdom in a tax package that is fiscally responsible, provides a fair balance of benefits for working Americans, encourages economic growth and is of a bipartisan nature.

That is why we were surprised and disappointed to see a provision contained in both the House and Senate Bills pertaining to timeshare homeowners associations characterized in the Secretary's letter as providing "special tax benefits for vacation timeshare associations." On the contrary, the provision, which enjoys bipartisan support in the House and Senate, would correct current inequities in developing I.R.S. policy by permitting timeshare homeowners associations to be treated like other homeowners associations. Simply stated, this bipartisan proposal provides parity for similarly situated taxpayers. No more, no less.

The legislative proposal is profoundly necessary to ensure that many of the 1.7 million American families that own timeshares are not victimized by a new federal tax. Recently, the I.R.S. has developed policy, which if upheld, would substantially increase the cost of long term capital improvements due to the imposition of a new federal income tax.

In fact, most states where timeshare projects are prevalent require timeshare associations to maintain capital reserve accounts, including the States of Florida and Nevada, which have long since mandated this practice. We believe it is entirely appropriate for states to require the maintenance of capital reserves. Requiring timeshare associations to be prepared for long-term capital improvements, such as repairing or replacing a roof, is intelligent government policy that promotes sound business practice. Further, such policy dramatically reduces the likelihood that timeshare owners will have to endure substantial special assessments to pay for inevitable capital improvements.

Without the legislative proposal advanced by Senators Graham, Bryan and Mack, as well as Representative Shaw, timeshare associations will be faced with an unfair and untenable situation.

EDWIN H. MCMULLEN, SR., CHAIRMAN · THOMAS C. FRANKS, PRESIDENT

1220 L STREET, N.W. · SUITE 500 · WASHINGTON, D.C. 20005-4059
202·371·6700 · FAX 202·289·8544

REGIONAL OFFICE
200 S. ORANGE AVENUE · SUITE 2300 · ORLANDO, FL 32802-0112 · 407·649·4078 · FAX 407·872·0771

They could continue to follow sound business practice, and in many cases continue to comply with state law, knowing that their capital reserve accounts may be subject to federal income tax; or, they could choose to discontinue the policy of maintaining reserves, and while assuring they will not pay federal income tax, render their capital reserve accounts inadequate to perform their intended purpose. We strongly believe that federal policy should not place so many working families in such an untenable situation. It is important to appreciate that timeshare associations are comprised of just that, working families, who are able to do collectively for a brief period of time, what they are incapable of doing as individual families.

In addition, with timeshare ownership growing by over 15% annually during the past 8 years, vacation ownership has matured into a thriving industry delivering significant economic benefits to virtually every region of our country. In fact, timeshare owners now spend some $6 billion annually at our nation's resort destinations. Our forecasts indicate that this growth is expected to continue, providing further economic benefits and important tax revenues to local economies.

As the vacation ownership industry continues to grow and flourish, it is vital that any government action encourage the financial integrity and security of existing and new projects. We strongly maintain that developing I.R.S. policy would work counter to these objectives by, in fact, discouraging timeshare associations from maintaining capital reserves.

In our collective 40 years experience in the vacation ownership industry, we have personally participated in the creation, development and maturation of this dynamic business, complete with the growing pains that accompany any developing industry. This experience leads us to a strongly held conviction and conclusion. States that require timeshare homeowners associations to maintain capital reserve accounts are promoting sound business practice, one that protects American consumers by insuring the physical and financial integrity of their humble slice of the American dream.

Over the years, your Administration has built a strong consumer protection record, one in which we know you are proud. Similarly, the vacation ownership industry has matured and flourished because of our complete dedication to pleasing and protecting the American consumer. Further, we believe this proposal is in concert with the goals of the White House Conference on Travel and Tourism which, as you well know, were to strengthen this sector of the economy.

Again, we are pleased this bipartisan proposal is contained in both the House and Senate Bills. We are further gratified that Congress has effectively endorsed the practice of timeshare associations maintaining capital reserves, as many states have previously done.

In conclusion, we sincerely hope you will review Treasury's comments on this important issue and support Congressional efforts to provide a level playing field for all homeowners associations and to help promote sound business practice on behalf of America's 1.7 million families that own timeshares in the United States.

We would greatly appreciate and respectfully request your views on this proposal.

Sincerely,

Edwin H. McMullen Sr.
Chairman

Thomas C. Franks
President

cc: Secretary Robert E. Rubin
John Hilley
Gene Sperling
Senator Bob Graham
Senator Connie Mack
Senator Richard Bryan
Representative E. Clay Shaw

SET CHARLES MOMJIAN
1979 COUNTRY CLUB DRIVE
HUNTINGDON VALLEY, PA. 19006

July 10, 1997

President Clinton
THE WHITE HOUSE
Washington, D.C.

Dear Mr. President,

I am happy to loan you the bronze model of Thomas Jefferson by Rudolph Evans which I understand is now in the Yellow Oval Room of the private quarters of the White House.

This is the actual model of the Thomas Jefferson in the Jefferson Memorial and is part of my Jefferson collection.

Since you are an admirer of Jefferson and your middle name is Jefferson, I think it appropriate that the two of you get to spend some time together. I would be pleased to continue the loan of this model until the end of your administration, January 2001.

Most sincerely,

Set

7/15/97

Send to Dorskind?
Yes ✓
No ____

coord with Counsel, + Gary Walters, C
Jodie Torkelson

Borough of Montoursville

County of Lycoming
12 N. WASHINGTON STREET • P.O. BOX 266
MONTOURSVILLE, PA 17754-0266
Phone (717) 368-2486 • Fax (717) 368-1711
Incorporated 1850

SEAL OF THE BOROUGH OF MONTOURSVILLE 1850

'97 JUL 14 PM 3:36

FACSIMILE COVER SHEET

TO: THE WHITE HOUSE - REBECCA CAMERON/ANA LEE SANCHEZ

FROM: Claire Ann Sharp

DATE: July 11, 1997

RE: Per your request, here is a copy of Mayor John Dorin's letter

7/14/97

Send to Dorskind ?

Yes ✓

no

C

Number of sheets being sent ____ including this cover sheet
If you do not receive all pages, please call immediately.

Borough of Montoursville

[illegible]
[illegible] Street
Montoursville PA [illegible]
[illegible]

[illegible]
[illegible] Weldon Street
Montoursville PA [illegible]
717 368 2924

JOHN DORIN

May 6, 1997

President William Jefferson Clinton
1600 Pennsylvania Avenue
Washington, DC 20501

Dear President Clinton,

It has been nine months since the TWA Flight 800 tragedy. I can recall our phone conversation on July 18, 1996, sharing our thoughts and concerns about Montoursville, the families of the victims and the citizens. One of my first priorities at that time was the recovery of our loved ones and a thorough investigation with a speedy resolution. Mr. President, you shared that belief also. The past nine months have produced astronomical feats which included 95+ recovery of the aircraft and a 98% recovery of the 230 victims. We are indebted to all the brave divers and the recovery teams for this feat.

In our phone conversation in July Mr. President, you advised me that Mr. Panetta would be in charge of the investigation, reporting directly to your office. Since Mr. Panetta departed from your Cabinet, who has been selected to interface with the investigation teams? With all of the news reports, briefings by the investigators, letters from all over the United States theorizing as to what happened, there has been no definite conclusion as to what happened to the aircraft. Our hope for an investigation breakthrough has been like a roller coaster, clinging to every bit of information that was provided almost daily in the past nine months.

Our support continues with the FBI and the NTSB in solving this tragedy. The citizens of Montoursville pray that it will be soon.

Wishing you the best on your recovery of your leg injury.

Sincerely,
BOROUGH OF MONTOURSVILLE

John Dorin

John Dorin
Mayor

JD/cas

THE WHITE HOUSE
WASHINGTON

Milli –
pls. list
this then send to
Staff Sec. for
reply.
RC

Dear Nancy -
Please give this package to the President. I am certain if he has enough information about the situation in Costa Rica involving protective mothers desperately trying to protect their children from abuse, he will be deeply concerned. (We have just heard that hired gunman are there trying to take these children from their mothers).
Thank you for your help.
Dana Rayl West

7/15/97
Send to Dorskind?
Yes ✓
No ____
C

Coord with NSC

NATIONAL COALITION AGAINST DOMESTIC VIOLENCE

Every Home A Safe Home

President William Clinton
The White House
Washington, D.C.

July 14, 1997

Dear President Clinton,

I am writing to ask that you clarify some information I recently heard regarding your position on child custody and domestic violence. As you may know, the National Coalition Against Domestic Violence has been advocating for battered women and their children nationally for nearly 20 years. This year we convened a working group of other national organizations and allied groups to develop some strategy to assist battered women who are losing custody to their abuser. This is an enormous problem that women all over the United States face on a daily basis.

Many, many judges are refusing to hear evidence a mother may have regarding the abuse of themselves or the children by the father, and are increasingly awarding custody to these abusive men. According to a 1989 study of gender bias in Massachusetts courts, fathers who fight for custody in the United States win sole or joint custody in 70% of these contests, and furthermore, violence occurs in at least 70% of all contested custody cases. There are literally thousands of these cases in the country, and NCADV continues to receive calls from women needing help every week. Representatives from the working group on custody and domestic violence have requested assistance from the Department of Justice Violence Against Women office to document this problem nationwide. We anticipate the numbers of these cases to reach shocking levels.

In order to protect themselves and their children, many women are being forced to leave the state, and even the country, to provide safety for their families. The fathers often know the women have left the area, and will then find a judge to award them custody in the absence of the mother. Once they have a valid custody award, the fathers file kidnapping or custody interference charges against the protective parent. We cannot simply use a custody order as a way to determine who may be the best parent for the child(ren). According to 18 U.S.C. 1204, there is now an affirmative defense when a woman is fleeing internationally to escape a pattern of abuse.

It has come to our attention that there are protective parents living in Costa Rica. They all appear to have evidence of domestic violence or child sexual abuse against the father. The Costa Rican government had been very supportive of their plight, and had been willing to assist them. Until May, the mothers felt safe for the first time in a very long time. It has been reported that when you met with the President of Costa Rica, you gave him a list with five

119 Constitution Ave., NE, Washington, DC 20002 • Phone 202-544-7358 • Fax 202-544-7893

women's names on it. Those women were fighting extradition back to the U.S., and the report is that you were supporting their return to this country.

This concerns me greatly, Mr. President, if this happened. NCADV has long believed that your support of battered women and their children was unshakable. Your support of legislation such as the Violence Against Women Act and the Domestic Violence Offender Gun Ban was extremely helpful. The names reported to be on the list were all protective parents or grandparents hiding in Costa Rico, trying to find somewhere on earth they and their children could live in peace and without violence.

As you know, there are organized men's custody groups using various names and hiding behind the banner of "father's rights," which are most often the pawns and creations of abusive men seeking their victims. They use members of the militia and soldiers of fortune, the internet, private investigators and the federal government to track down their victims and have them returned to the United States. You cannot afford to be aligned with these groups, or to unknowingly assist them in their attempts to recover victims who are fleeing their abuse.

Mr. President, I am asking that you take some time to review the enclosed material. The information will help you better understand how prevalent this problem is for women and children in the U.S. NCADV would be honored to bring a group of experts together to brief you and your advisors on how we as a nation are failing the victims of domestic violence and child abuse, and what steps we can take to rectify this problem. Our fear is that you may be used by dishonest and self-serving groups to further an agenda of violence and abuse.

Please do not hesitate to contact me if you have any questions regarding this issue. I can be reached in our main office in Denver, Colorado at (303) 839-1852. Thank you for taking the time to read this, and for caring about women and children who suffer as a result of domestic violence.

Toward peace,

Rita Smith

Rita Smith
Executive Director

enc.

THE PRESIDENT HAS SEEN
7-15-97

4070

Showed go while Mandela there

THE WHITE HOUSE

WASHINGTON

July 2, 1997

ACTION

'97 JUL 8 PM11:02

MEMORANDUM FOR THE PRESIDENT

FROM: SAMUEL BERGER (R) FOR
DANIEL TARULLO DKT

~~'97 JUL 8 PM4:45~~

SUBJECT: Response to Letter from Ernie Green

~~'97 JUL 3 PM3:49~~

Purpose

To respond to a letter from Ernie Green of Lehman Brothers.

Background

Ernie Green wrote to you recently (Tab B) with suggestions related to Africa for inclusion in the Denver Summit agenda. He also recommended you make a state visit to Africa during the next twelve months, before campaigning begins for the early 1999 South African elections. Domestically, he suggested you visit Central High in Little Rock this year on the 40th anniversary of its desegregation and make a comprehensive foreign policy address on Africa.

The attached reply (Tab A) outlines the initiative on Africa you and your summit partners announced during the summit. It highlights your efforts to work with Congress to pass legislation on promoting growth and economic opportunity in Africa, as you announced at the White House on June 17. The reply also tells Ernie you plan to travel to Africa, without committing to a specific date, as the trip has not yet been scheduled. Finally, you agree to take his suggestions concerning a visit to Little Rock into account as part of your expansive initiative on Race in America.

RECOMMENDATION

That you sign the attached response to Mr. Green (Tab A).

copied
Berger
Tarullo

Attachments
Tab A Reply to Ernest Green
Tab B Letter from Ernest Green

cc: Vice President
Chief of Staff

THE WHITE HOUSE

WASHINGTON

Dear Ernie:

Thank you for sharing your thoughts on the Africa agenda for the Denver Summit. Your concerns were central to the New Partnership for Africa which the Eight launched at Denver.

I hope we will look back at Denver as a turning point in relations between Sub-Saharan Africa and the developed world. Each of our Summit partners committed to building a new partnership with African nations -- a partnership based on increased trade and investment and no longer simply on aid. Central to this partnership will be advancing Africa's greater integration into the world economy through expanded multilateral and bilateral debt relief, greater market access for African products and increased efforts to promote trade and investment and reduce corruption in Africa. The recognition that we must work together, through multilateral institutions and concerted bilateral efforts, to decrease Africa's debt burden is a large step on the road to increasing Africa's economic prosperity.

As you know, on June 17, a bipartisan group of Congressional members and I announced our joint commitment to pass legislation to encourage growth-oriented economic reform in Africa. This initiative will increase efforts to reduce Africa's debt burden, enhance technical assistance and capacity building programs, expand market access for African products, and support better policies and governance in Africa. The recognition by such a broad group of the importance of bringing Africa quickly into the world economy inspires hope that we can help Africa build on the successes of the last few years and that it can know the peace, stability and prosperity with which we ourselves are blessed.

I agree with you that a Presidential visit to Africa will be an important signal of our dedication to the continent and will help build on the programs we are now putting into place. I look forward to visiting Africa during my second term, and appreciate your thoughts on the timing of such a visit. I will keep these considerations in mind as we develop the schedule.

The importance of the relationship between the United States and Africa is, of course, far greater than bilateral assistance or trade. The historical links between our continents and the legacies of colonialism, slavery, intolerance and injustice continue to impact us on both sides of the ocean. I was pleased to announce in San Diego on June 14 my new initiative on race in America. I hope this effort will improve understanding and promote greater ties between the diverse communities in our country. Thank you for your suggestion about the 40^{th} anniversary celebration at Central High. I will be in Little Rock, and I'll keep your idea in mind as the schedule develops, especially in the context of my larger initiative on race.

Thank you for your deep involvement and commitment to these issues. I hope to see you soon.

Sincerely,

Bill

Mr. Ernest G. Green
Managing Director
Lehman Brothers
800 Connecticut Avenue, N.W.
Suite 1200
Washington, D.C. 20006

06/02/97 16:01 LEHMAN BROTHERS → 2023953972 NO.335 P002/003

LEHMAN BROTHERS

Ormond Stoss sec

4070

ERNEST G. GREEN
MANAGING DIRECTOR

'97 JUN 4 AM 7:56

June 2, 1997

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

Dear President Clinton:

I understand that the Summit planning team met Memorial Day weekend for final negotiations on the G8 position documents, but I hope that you will consider underscoring two important additional points during the Denver Summit: 1) accelerating debt relief for the African continent, and, 2) making a state visit to Africa within the next 12 months.

The foreign policy and international business communities and others have been very impressed with the Department of Treasury's leadership role in formulating the World Bank/IMF debt reduction plan for highly indebted poor countries (HIPC). US support for reducing debt more quickly will have a measurable impact on poverty alleviation efforts in Africa.

In Uganda--the first African country to qualify for debt relief under the HIPC terms--accelerated relief will literally save lives. In that country the financial costs of delaying debt relief is the equivalent of six times the national health budget. Debt relief in Africa allows poor countries to immediately invest a higher proportion of their resources in their people.

Denver will also provide you a unique opportunity to announce a state visit to Africa, a visit most appropriately timed to occur within the next 12 months. Such a visit will have multiple effects; specifically, the visit can:

- Build on the success of the First Lady's trip, further spotlighting Africa's most successful nations and encouraging Africa's new leaders to press on with the critical political and economic liberalization they have courageously undertaken;

JUN 11 10:1

- Provide an opportunity to consult with African leaders in regard to a wide-range of development, trade and conflict resolution issues. (An announcement in Denver will also immediately address an emergent Congressional Black Caucus concern regarding the lack of African representation, given Africa's prominence on the meeting agenda. Some Members have difficulty understanding how in one case--Russia--efforts were made to consult with political leaders who were not formal G7 members.); and
- Heighten US private sector awareness of the world's last large emerging market.

While several countries can be targeted, South Africa should be the clear central focus of the visit. Ideally, the visit could occur within the next 12 months, well in advance of the Spring 1999 elections in South Africa and the expiration of President Mandela's term in office.

Perhaps the most compelling reason for a state visit relates to a purely domestic agenda. Leaders in the African-American community have consistently communicated the importance of high-level visits by the administration as a vehicle to underscore the important place of Africa policy within your administration. This trip would serve that purpose.

Relatedly, I also recommend that you consider using the upcoming 40th anniversary observance of the Central High School desegregation effort as an opportunity to deliver a comprehensive foreign policy address on Africa. Throughout the 20th century the advancement of African Americans and Africans has been linked. As racial segregation limited the rights of our citizens, colonialism and minority rule limited the rights of Africans. As the civil rights movement advanced political rights for many in the US, Africa's movements for independence and majority rule have allowed growing numbers of citizens to participate in the democratic process. Today, Africa has emerged from its 40 year struggle for political independence and must confront many unresolved issues--much as we in the US continue to confront the legacy of segregation and the existence of racial tension.

There are a number of venues in Little Rock that would be appropriate for such an address, however, I invite you to consider the Winthrop Rockefeller Foundation--of which I am a board member--as a site. Of course, I am available to discuss the above at greater length.

Sincerely,

Ernie

Ernest G. Green
Managing Director

LEHMAN BROTHERS

FACSIMILE COVER SHEET

DATE: **PAGES (including cover):**

TO:

Name Nancy Hernreich

Company The White House

Phone 456-6610

Fax 456-2883

FROM: **Ernest G. Green**

Public Finance
(202) 452-4728 (Direct phone number)
(202) 452-4778 (FAX)

MESSAGE:

Copied
Lindsey
Sperling
Seidman
COS

THE PRESIDENT HAS SEEN
7-15-97

THE WHITE HOUSE

WASHINGTON

July 13, 1997

'97 JUL 13 PM5:41

MEMORANDUM FOR THE PRESIDENT

OK - make a meet

FROM: TODD STERN
PHIL CAPLAN Phil
SEAN MALONEY

SUBJECT: PRODUCT LIABILITY LEGISLATION

Bruce Lindsey and Gene Sperling have sent you a lengthy and detailed memo. *The memo does not seek a decision now, but simply recommends that you convene a meeting to consider three options of responding to S.648, the product liability bill voted out of the Senate Commerce Committee along party lines, and the primary legislative vehicle at this point.*

Overview. The memo arises from an eight-week interagency process and lays out three possible options: (1) deferring to recent state-law reforms by foregoing any federal product liability legislation at this time, in the absence of any national "crisis" in this area; (2) proposing an Administration bill that would reflect your priorities, even if such a bill were unlikely to pass; or (3) staking out a negotiating position that signals movement on some of your current positions, thus facilitating serious negotiations and a possible deal. *A more detailed discussion of these options follows on page 3 of this memo.*

In determining these three options, your advisors reached four general conclusions: (i) that there is no systematic, empirical evidence of reduced productivity or innovation arising from the tort system and the anecdotal evidence is mixed, with most "horror stories" relating to the pharmaceutical sector; (ii) that the states have already enacted significant, pro-defendant reforms; (iii) that federal legislation cannot be justified unless it leads to balanced, uniform national standards; and (iv) that imposing limited product liability preemption on the tort law and civil procedure of 50 states may increase, not decrease, confusion and uncertainty.

Views. Most of the primary interagency participants (NEC, DPC, Treasury, DOJ, SBA, Leg. Affairs and Counsel) favor Option 2 -- i.e., proposing your own legislation. DOJ and Counsel, in fact, prefer to see no legislation at all (Option 1), but believe such a course to be impracticable, and so support Option 2. Leg. Affairs stresses the need to consult with Rockefeller, Breaux and Dingell prior to any public announcement. Commerce and the SBA offer conditional support for Option 3 -- i.e., staking out a negotiating position. Secretary Daley recommends a deal with Rockefeller and private outreach to key business community principals and suggests grounding your position on uniform and balanced preemption as the basis for reform. Rockefeller and Dingell seek negotiations to develop a bill that will pass without a veto. Senator Breaux has developed his own bill that focuses more on reducing frivolous lawsuits than on substantive product liability reform.

Background. Last May, you vetoed a product liability bill, citing eight deficiencies: (1) interference with state tort law prerogatives; (2) "one-way preemption," whereby only pro-plaintiff measures were superseded while pro-defendant measures were not; (3) a cap on punitive damages; (4) "several" liability for non-economic (e.g., "pain and suffering") damages, under which a defendant's liability is limited to its proportionate share of fault; (5) inadequately short "statute of repose" periods, whereby manufactures are excused from liability after a specified number of years; (6) preemption of state "negligent entrustment" statutes, under which makers of dangerous goods (e.g., handguns) can be held liable for their use; (7) failure to toll statute of limitations periods during bankruptcy proceedings; and (8) the extension of biomedical material suppliers' liability limits to negligent suppliers. After the House failed to override your veto (258 to 163), the Senate abandoned any attempt to do so.

S. 648 - Brief Summary. S. 648 fixes the bankruptcy tolling problem and partially addresses the preemption of negligent entrustment statutes. S. 648 does not satisfy your concerns with respect to the extension of biomedical material suppliers' liability limits to negligent suppliers. With respect to the other major issues presented by S. 648, Gene/Bruce's memo provides a detailed discussion.

(A) One- or Two-Way Preemption. This is a "sauce-for-the-goose" issue: specifically, whether federal standards should preempt all state laws ("two-way preemption") or whether they should act merely as a benchmark, with states free to enact or retain more defendant-friendly (or plaintiff-friendly) standards ("one-way preemption"). The bill you vetoed displaced state law only when it was more favorable to consumers. S. 648 corrects these imbalances with respect to statutes of repose, but retains them with respect to punitive damages.

(B) Several Liability for Non-Economic Damages. Recent state-level tort reform has essentially done away with the traditional rule of full joint and several liability regardless of defendants' comparative fault. Both the vetoed bill and S. 648 *federally* limit a defendant's liability for non-economic damages to its percentage of fault when considered against all those responsible. In vetoing last year's bill, you cited this provision's effect of jeopardizing full compensation for injured persons and the problems created by insolvent defendants. You stressed also the equivalence of economic and non-economic damages.

(C) Punitive Damages Cap. Both last year's vetoed bill and S. 648 cap punitive damages. For larger companies the cap equals the *greater* of two times compensatory damages or $250,000. For individuals and smaller companies (i.e., those with fewer than 10 employees and $1 million in revenues), the cap equals the *lesser* of these two sums. Judges are permitted to exceed only the larger-company cap, up to the amount of the jury award, and then only after considering a lengthy, prescribed set of factors. S. 648, like last year's bill, also establishes a uniform "clear and convincing" evidentiary standard of "conscious, flagrant indifference to the rights and safety of others" that proximately caused the harm. The bill also permits parties to request a separate hearing on punitive damages to prevent evidence of a defendant's financial condition from entering the liability and compensatory damages phase of the trial.

(D) Statutes of Repose. Statutes of repose excuse manufactures from liability after their products have been in use for a specified number of years. Last year's bill contained a 15-year repose period for all products and only preempted those state laws that were less favorable to defendants. S. 648 is an improvement; it contains a fully preemptive, 18-year period for nearly all products.

Options Presented. As noted above, the memo presents three possible options for responding to the legislation moving through the Senate:

Option 1 is to take a firm and overt stance against any federal product liability legislation at this time, deferring to the considerable state-level reforms and the absence of any compelling national "crisis." This option may be difficult to square with your stated support for "limited, but meaningful" federal reform.

Option 2 is to develop an Administration bill that would reflect your priorities. The hallmarks of this option are: (a) consistency with your veto message; (b) recognition of state-level reforms; (c) fair and balanced, two-way preemption; (d) an emphasis on reducing frivolous litigation; and (e) the addition of new measures, not found in S. 648, to aid injured plaintiffs. More precisely, such a bill would contain: (i) a breachable punitive damages cap applicable only to small businesses and individuals, which would emphasize the judge's role and be fully preemptive, thereby permitting punitive awards in all jurisdictions; (ii) a narrower, rebuttable, 18-year statute of repose; and (iii) provisions to reduce frivolous law suits (e.g., good-faith affidavits and sanctions). The bill would not include joint and several liability reform with respect to non-economic damages.

Option 3 is to make a negotiation proposal. The memo warns that pursuing option 3 would require some movement away from the specifics of your veto message, and predicts a possible "negative dynamic," in which reform proponents expect a deal after meeting only some of your demands. This option would include: (a) a looser cap on punitive damages that would not preempt states that currently bar such damages (i.e., one-way preemption); and (b) a narrower, rebuttable, 18-year statute of repose. Again, no reform of joint and several liability for non-economic damages would be offered. (The memo nonetheless contains an appendix setting forth optional reforms in this area, if such proposals were deemed necessary.)

THE WHITE HOUSE

WASHINGTON

July 3, 1997

MEMORANDUM FOR **THE PRESIDENT**

FROM: **Bruce Lindsey**
Gene Sperling

SUBJECT: **Product liability legislation**

I. ACTION FORCING EVENT: On May 1, on a strict party line vote, the Senate Commerce Committee reported out S.648, Senator Gorton's revision of the product liability bill you vetoed last year. Senator Rockefeller not only voted against S.648, but has made it very clear that he will not join until your concerns are satisfied, and Senator Gorton understands that without Senator Rockefeller's support, the bill cannot pass. On the other hand, Senator Lott has been pushing to bring the bill to the floor, leading Senator Rockefeller (together with Mr. Dingell) to press us to negotiate changes in the bill to meet your concerns. Senator Lott may well want to move soon after the July 4 recess. Meanwhile, Senator Breaux is urging us to work with him on an alternative to the Gorton bill.

II. BACKGROUND: The 104th Congress passed product liability reform law -- a part of the Contract with America -- by a vote of 259 to 158 in the House and 59 to 40 in the Senate. The bill would have partially preempted state law as to both standards of liability for sellers and manufacturers of products that cause physical harm and measures and allocation of damages. On May 2, 1996, you vetoed the bill, citing eight issues:

- Interference with state prerogatives in tort law
- One-way preemption, where pro-consumer state laws were preempted, but laws that limited consumer rights were not
- The cap on punitive damages, particularly in light of the Statement of Managers, which virtually directed judges not to use the "additur" provision included in the bill under which caps could be superseded
- Several -- not joint -- liability for non-economic damages
- A too-short (15 years), too-broad (all products) statute of repose
- Preemption of state negligent entrustment statutes, which make sellers of dangerous goods (e.g., firearms and liquor) responsible for certain actions of the buyers
- Failure to toll the statute of limitations during the period of a stay issued by a bankruptcy court
- Application of the limits on liability of biomedical materials suppliers to negligent suppliers

The House failed to override your veto by a vote of 258 to 163 to override. The House having failed to override, the Senate never took a vote.

III. CURRENT CONGRESSIONAL ACTIVITY

A. S.648

S.648 fixes the bankruptcy tolling problem, and makes an honest -- although not complete -- attempt to respond to the negligent entrustment issue. Moreover, it lengthens the statute of repose to 18 years, and establishes two-way preemption for the statute of repose, so that shorter state statutes would be lengthened (all state statutes that are set in years are shorter than 18 years). The bill does not respond to the two major problems you cited -- the cap on punitives and several liability for non-economic damages -- nor does it change the biomedical materials provision.

B. Senator Rockefeller and Mr. Dingell

Senator Rockefeller and Mr. Dingell are clearly looking for guidance on how to resolve the remaining issues (punitive damages, several liability for non-economic damages, statute of repose and biomedical materials) to meet both the concerns and fact patterns in your veto message. They have said they will engage in negotiations with us to develop legislation that will pass and will not be vetoed (clearly they do not expect to be able to accept our initial proposal). Senator Rockefeller, in particular, has said he has no interest in another veto.

C. Senator Breaux

Senator Breaux would like to deal with this issue in an entirely different way. He has developed a bill focused far more on reducing frivolous lawsuits and less on substantive product liability standards. Senator Breaux's bill would include a statute of repose that is more flexible than that in S.648, would establish uniform federal standards for punitives damages but no cap, and would do nothing to change state law concerning joint and several liability for non-economic damages.[1] His bill would also require affidavits of good faith to accompany pleadings and impose sanctions for bad faith pleadings, restrict multi-state product liability class actions, enact a very weak form of alternative dispute resolution, and require a study by the Attorney General of the product liability system. It is unclear how far Senator Breaux can get in moving Senators away from the Gorton bill without the Administration's support for his approach.

III. MAJOR ISSUES PRESENTED:

Over the past eight weeks, we have jointly run an interagency process to consider whether there are ways to alter S.648 to respond to the concerns in your veto message in a manner that could be acceptable to at least Democratic proponents of the legislation. Participants in the process

---

[1] As discussed below, many states, including California, already have several liability for non-economic damages.

included: OVP, NEC, DPC, OMB, CEA, White House Counsel, White House Legislative Affairs, Justice, Treasury, Commerce, and SBA and the Consumer Product Safety Commission as an advisor. FDA is participating in the ongoing discussion of biomedical materials. The working group surveyed the law in all the states on the critical issues of punitive damages, joint and several liability and statute of repose, and developed a number of alternatives in each area that we believe could move the bill closer (and in some cases, all the way) to your goals but may have a chance of not being rejected out of hand by proponents.[2] Two meetings of the NEC principals were held, on June 24 and 26.

Although product liability has been analyzed primarily as a legal issue, with a focus on victim compensation, it can also be viewed in economic terms. As Treasury and CEA have noted, product liability essentially creates an insurance system in which consumers pay a premium in the price of the product to cover losses suffered by those injured when a product is defective. From an economic perspective, the primary question to ask in evaluating changes to product liability law is whether the system provides too little insurance, with too little incentive to produce safer products, or too much insurance, where consumers would rather have less expensive products and less protection in case they are injured.

A. Whether there should be federal legislation in this area at all

The arguments of the business community in favor of national legislation rest on three propositions:

- Concern about product liability litigation, and particularly concern about disproportionate awards for non-economic damages and punitive damages, is sapping American productivity by misdirecting management time, energy and capital, and by putting an excessive -- and frequently non-insurable tax -- on innovation. This is true even as to cases that settle, and cases that are threatened but not brought.
- In a national economy, subjecting products and manufacturers to 50 different liability regimes is not only inefficient but also -- because of the opportunities for forum shopping by plaintiffs, particularly in class actions -- unfair.
- Manufacturers are the deep pocket focus of liability suits that are in fact generated by the activities of those who repair and service products. Making manufacturer liability more limited and predictable -- as occurred when you signed the 18-year statute of repose for general aviation -- will put the burden of care of those most responsible for and able to accomplish it.

---

[2] Based on discussions with the Center for Violence Policy, we have also crafted a more complete fix to the negligent entrustment provision. We believe there will be no problem getting the proponents to adopt this. A sub-group, consisting of Justice, FDA and CPSC, is working on the biomedical materials issue. We expect to have a recommendation on that shortly.

Consumer groups, as well as lawyers (the ABA as well as ATLA), argue against the need for federal legislation based on:

- The lack of any explosion of product liability suits, and in particular, excessive punitive damage awards that survive judicial remittitur, suggests there is no problem to be fixed.
- The fact that all recent proposals in this area would cut back on traditional principles of tort law that benefit plaintiffs, suggests that what the manufacturers want is not uniformity but a tilt in their direction.
- The traditional role of the states in tort law, combined with the fact that all existing proposals would only partially preempt state tort law, could lead to even more non-uniformity and uncertainty as this law is overlaid on, e.g., state medical malpractice law and state law concerning joinder and defenses.
- States have been experimenting with tort law reforms that generally favor defendants. We should give these experiments time to play out and evaluate the results before considering preemptive pro-defendant federal reform of the system.
- Plaintiff-friendly limitations that are initially included in federal product liability legislation will be vulnerable to cutbacks in future Congresses; the time to stop erosion is before it starts.

B. One-way or two-way preemption

One of the most contentious issues that runs through the legislation is whether federal standards should preempt all state laws ("two-way preemption") or whether they should function solely as a floor, with states free to establish more defendant-friendly standards ("one-way preemption"). For example, if the federal statute of repose were 18 years, two-way preemption would both lengthen shorter statutes and impose the 18-year limitation in states that have no statute of repose; one-way preemption would only shorten longer statutes and impose a limit where there was none. Similarly, if the federal government were to enact standards for awarding punitive damages, two-way preemption would both tighten the standard in states that, for example, allow punitives to be awarded for reckless behavior and require states that do not allow punitives at all to allow them according to the federal standards. One-way preemption would only tighten standards in some states, leaving others free to bar punitives entirely.

The bill you vetoed last year was almost entirely one-way preemptive. In your veto message you said, "As a rule, this bill displaces State law only when that law is more favorable to consumers; it defers to State law when that law is more helpful to manufacturers and sellers. I cannot accept, absent compelling reasons, such a one-way street of federalism." As noted above, S.648 is two-way preemptive as to the statute of repose (as well as with respect to the general standards of manufacturer and seller liability and the statute of limitations) but retains one-way preemption on punitive damages.[3]

---

[3] In form, S.648 is two-way preemptive on several liability for non-economic damages. However, since it imposes the least plaintiff-friendly rule possible (totally several liability), it is

While one of the arguments manufacturers and sellers make in favor of national legislation is the desire to create uniform federal standards, which would support uniform two-way preemption, on the two issues where they have made serious headway in the states -- limitations on punitive damages and imposition of several liability -- they are far more interested in a federal floor than in uniformity. We have been told, for example, that establishing by federal law the right to punitive damages in states where it does not exist, or limiting several liability for non-economic damages where state law has established it, would be totally unacceptable.

Consumer groups argue in favor of two-way preemption, ostensibly on the ground that the only good reason to override a traditional state function with federal standards is uniformity. However, many of these same groups regularly argue that federal environmental and consumer protection standards should function only as a floor, allowing states to impose more rigorous rules. It is conceivable that the consumer argument for two-way preemption is more an effort to highlight the inconsistency in the manufacturers' position -- and perhaps to raise an insurmountable barrier to legislation -- than a firmly held constitutional principle.

C. Several liability for non-economic damages

Over the last several years, tort reform at the state level has essentially done away with the traditional rule of no comparative fault and full joint and several liability. (Only Alabama, Maryland, North Carolina and Virginia retain this combination.) Nine states[4] have full joint and several liability, but include comparative fault, thereby reducing the defendants' joint responsibility by the measure of the plaintiff's responsibility. Thirteen states[5] have pure several liability, for both economic and non-economic damages, and 24 states have various hybrid forms.

Both last year's vetoed bill and S.648 limit a defendant's responsibility for non-economic damages "in direct proportion to the percentage of responsibility of the defendant for the harm to the claimant." The trier of fact is required to assign this percentage taking into account the responsibility of all persons responsible, including those not before the court, such as settling defendants.

In vetoing last year's bill with respect to this issue, you cited the provision's general effect of preventing "many persons from receiving full compensation for injury," noting in particular the problems created by insolvent defendants. You also cited the particular impact of a several rule for non-economic damages as unfairly discriminating against "the most vulnerable members of

---

effectively one-way preemptive.

[4] Arkansas, Delaware, Maine, Massachusetts, Michigan, Pennsylvania, Rhode Island, South Carolina and West Virginia

[5] Alaska, Arizona, Colorado, Illinois, Indiana, Kansas, Kentucky, North Dakota, Tennessee, Utah, Vermont and Wyoming

our society." You said, "Noneconomic damages are as real and as important to victims as economic damages."

Manufacturers assert that the problem with joint liability for non-economic damages is that such damages -- unlike economic damages -- are totally unpredictable and subject to the whim of the jury, thereby making any assessment of the risk, or the purchase of insurance against the risk, virtually impossible. They are particularly concerned about the potential for a large award against the only solvent defendant in a case in which that defendant is only marginally at fault. Opponents make the argument that non-economic damages are as real and as important -- particularly to the poor, the young and the old -- as economic damages, and should not be treated differently. Some also contend that the different state standards represent the innovation and experimentation that is the role of the states, and this should not be preempted.

D. Punitive damages

The process of awarding punitive damages and the amount of such damages have been the subject of some of the most intense controversy. Both last year's vetoed bill and S.648 cap punitive damages -- at the **greater** of two times compensatories (including non-economic damages) or $250,000 for most companies and the **lesser** of these two amounts for individuals and small businesses. Upon consideration of eight listed factors[6], a judge could award damages in excess of the large business cap (but not the small business cap), up to the amount awarded by the jury, which would not be informed of the cap.[7] The "additur" provision explicitly constitutes one-way preemption -- it does not permit additur where state law otherwise limits punitive damages.

The vetoed bill and S.648 would also: (i) establish a uniform federal standard of proof of "clear and convincing"; (ii) establish a uniform standard for award that conduct "carried out with conscious, flagrant indifference to the rights or safety of others was the proximate cause" of the

---

[6] The factors are: "(i) the extent to which the defendant acted with actual malice; (ii) the likelihood that serious harm would arise from the conduct of the defendant; (iii) the degree of the awareness of the defendant of that likelihood; (iv) the profitability of the misconduct to the defendant; (v) the duration of the misconduct and any concurrent or subsequent concealment of the conduct by the defendant; (vi) the attitude and conduct of the defendant upon the discovery of the misconduct and whether the misconduct has terminated; (vii) the financial condition of the defendant; (viii) the cumulative deterrent effect of other losses, damages, and punishment suffered by the defendant as a result of the misconduct, reducing the amount of punitive damages on the basis of the economic impact and severity of all measures to which the defendant has been or may be subjected . . ."

[7] The judge would be required to hold a separate proceeding on awarding an additional amount, consider each of the items, and state the court's reasons for an award above the cap in findings of fact and conclusions of law. A separate finding on each factor is not explicitly required. The conference report on last year's bill, of course, virtually directed judges not to use this authority.

harm; and (iii) authorize any party to request that punitive damages be considered in a separate proceeding (generally so that evidence of the defendant's financial condition would not be allowed into evidence during the liability and compensatory damages phase of the trial). While these rules are meant to apply in all states that have punitive damages, they would not apply in states where punitive damages are prohibited by law.[8]

In vetoing last year's bill, you stated that you "oppose arbitrary ceilings on punitive damages, because they endanger the safety of the public. Capping punitive damages undermines their very purpose, which is to punish and thereby deter egregious misconduct." You noted that the additur provision might have mitigated this concern, but the Statement of Managers virtually directing it not be used made it ineffective in that respect.

Manufacturers assert that unpredictable and unjustifiably large (and sometimes multiple) punitive damage awards -- as well as the threat thereof -- have driven them out of markets and impinged on innovations. Consumer advocates assert that only potentially unlimited punitive damages can deter harmful misconduct by large companies. Surveys suggest that neither the award of punitives nor the amount is skyrocketing in products cases.[9] Consumer groups cite this as evidence that there is no problem; manufacturers assert it is the result of in terrorem settlements of meritless suits.

E. Statute of repose

At its starkest, a statute of repose bars litigation after a product has been in service a specified period of time. Twenty-two states and the District of Columbia currently have statutes of repose for product liability; 17 of the states and the District restrict lawsuits after a specified number of years (ranging from 5 to 15) and the remainder use some variation of "useful life" as the bar. In 1994, you signed legislation establishing a preemptive 18-year statute of repose for general aviation.

---

[8] In seven states punitive damages are generally forbidden; in 16 others, they are capped in one way or another. Twenty-seven states allow unlimited punitive damages in product liability cases. Most states that allow punitive damages have adopted the "clear and convincing" evidentiary standard. While the liability standards are less uniform, only a few states allow the award of punitive damages for reckless behavior without some other aggravating factor. We have not found any state that requires that the conduct leading to the punitive damages be the "proximate cause" of the plaintiff's harm, although the words "cause" and "result" are used. Bifurcated trials -- at least on the issue of the defendant's financial condition -- are allowed or required in 15 states.

[9] A recently-released Rand study has found an increase in the number and amount of punitive damage awards in financial fraud cases, such as cases involving insurance or financial products misrepresentation. This does not appear to extend to cases involving products as defined in the bill, which is limited to physical goods.

The bill you vetoed last year included a preemptive 15-year statute of repose for all products. The statute would, however, only have preempted states without any statute of repose, or with a statute **longer** than 15 years. Shorter state statutes would have remained effective. Your veto message referenced the length of the statute, the fact that it was broadly inclusive (you cited handguns), and the fact that the preemption was only one way. The Senate bill from the 104th Congress had covered only durable goods in the workplace and had an 18-year one-way preemptive statute.

S. 648, as reported out of the Senate Commerce Committee on a voice vote, includes a fully (two-way) preemptive 18-year statute of repose, covering all products except: (i) motor vehicles, vessels, aircraft and trains used to transport passengers for hire; (ii) products that cause toxic harm; and (iii) products with express written warranties that exceed 18 years.

Manufacturers assert that a firm, and broad, statute of repose is necessary not only to provide them some certainty, but also to put the risk of injury from long-lived products on those most able to prevent it -- owners, upgraders and servicers. They argue that the 18-year statute of repose for general aviation you signed in 1994 has not only increased the willingness of manufacturers to produce the aircraft, but has made owners and servicers far more careful, because they understand the deep pocket of the manufacturers will not be available to bail them out.

Consumers, on the other hand, argue that injuries from long-lived products -- including those that have not been altered or do not need service -- are common, and often the manufacturer should have foreseen and prevented the problem that caused the injury. They argue it is particularly important that those injured by long-lived consumer goods (such as camping equipment and cedar chests) not be barred from court completely by a strict statute of repose. Workers, they note, at least can collect worker's compensation for injuries caused by long-lived defective goods in the workplace.

IV. ALTERNATIVES

After looking at the alternatives developed by the working group in each of the three major areas identified, your advisors concluded that the choice of alternatives really depends on another decision, whether the Administration should:

- take the position that state law developments, and the lack of strong evidence of major problems that are caused by lack of national standards, lead us to conclude that no federal legislation is appropriate at this time;
- put forward a series of proposals that are fully consistent with both your veto statement and the principle of promoting national uniformity, even if such proposals have little or no chance of leading to a bill that can be enacted; or
- put forward a series of proposals that product liability legislation proponents will regard as an acceptable place to **start** negotiations and that can, albeit with some difficulty, be squared with your veto message.

Some of your economic advisors believe the business community may be correct in asserting that the current tort liability system, and in particular the issues raised in this legislation, over-deter businesses in their development and production of innovative products. In our discussions with the business community, we have asked them to provide empirical evidence that innovation has been stymied by litigation in general or the issues that particularly concern us: punitive damages and several liability for non-economic damages. Unfortunately, empirical evidence is not available, and the anecdotes relate to pharmaceuticals or related products, and often to the issues raised by mass tort claims for **economic compensatory** damages, not non-economic damages or punitive damages..

As your advisors looked into the issue, we came to the following conclusions:

- While logically there might be some impact on manufacturing innovation and productivity from the tort system, the evidence is mixed
  - there is no systematic empirical evidence of reduced innovation and productivity arising from the tort system (in part, of course, because of the difficulty of developing and collecting such evidence)
  - all the anecdotal evidence is primarily from one sector -- pharmaceuticals (including vaccines) and medical devices -- but the legislative proposals are far broader
  - there is no explosion of either litigation or punitive damages
  - the economy is booming and productivity is rising
  - on the other hand, the legal system appears to be both costly and time-consuming to plaintiffs and defendants, and anecdotes suggest that the threat of litigation -- and the resulting payment of unjustified settlements -- may have a dampening effect on innovation
- Over the past several years -- indeed, even since the start of the 104th Congress -- the states have made major moves toward making the tort system more defendant-friendly, ranging from the virtual abandonment of traditional principles of joint and several liability to the imposition of caps on punitive damages
- If federal legislation is not to lead to uniform national standards, there is little justification for it; there is little or no justification for one-way preemption
- Overlaying limited product liability preemption on the tort law and civil procedure of 50 states may increase confusion and uncertainty, not decrease it

In addition, there are concerns, particularly in light of the Supreme Court's recent decision on the Brady bill in Printz v. United States (June 27, 1997), that certain provisions included in S.648, as well as the options discussed below, may invite serious constitutional challenge on federalism grounds, causing the Supreme Court to restrict further the exercise of federal power. Although the Justice Department is unaware of any cases that specifically address the constitutionality of such provisions, and although it believes reasonable arguments can be made in support of these provisions, the risk of invalidation is significant. In this regard, the Justice Department is particularly concerned that the Court would invalidate purely procedural rules (e.g., bifurcation, pleading requirements and sanctions, and the biomedical provisions) as are contained in S. 648 and some of the proposals that follow. However, Justice emphasizes that, despite what the courts may ultimately rule, it believes acceptable constitutional arguments can be made in defense of the procedural rules in the proposals and **that it is important for the Administration not to construe the Printz decision broadly in taking a public position on product liability reform.**

Thus, while there continues to be sentiment among your economic advisors for improving the tort system, it is mild and tempered by the recognition that ongoing reform in the states weaken the need for federal action. Your legal advisors do not believe S.648 or relatively minor modifications of it should be supported. Both groups of advisors feel strongly that if there is to be any federal legislation, it should establish uniform national standards, and should -- in the areas explicitly covered -- completely preempt the field. There is no justification for one-way preemption in this area.

This position can be manifest in two ways: taking a strong position against any legislation, or developing an Administration bill that is consistent with both the veto statement and the current state of the law, even if that bill cannot be reconciled with the prime tenets of the Gorton bill.

A. Oppose federal product liability legislation at this time

One option is to take a firm and overt stance against any federal product liability legislation at this time. Recent changes in state law as well as in federal constitutional law, combined with the lack of evidence of serious widespread problems, suggest that the burden of proving that traditional state prerogatives in this area should be overruled and state law overlaid with potentially incompatible federal law has not been met. If legislation is needed in the area of pharmaceuticals (including vaccines) and medical devices, then it should be pursued on a targeted basis, taking advantage of -- and protecting and enhancing -- a strong federal regulatory system for drugs and device approval. A major disadvantage of this option is that you have stated a number of times that you support "limited, but meaningful" federal product liability legislation.

B. Develop an Administration bill we can support, consistent with both the veto statement and developments in state law

The hallmarks of this option are: (i) full two-way preemption, such that states with currently more defendant-friendly laws would be brought to a uniform national level as well as states whose laws are currently more pro-plaintiff; (ii) consistency with your veto message in all respects; (iii) tools for reducing frivolous lawsuits; and (iv) inclusion of items that were not part of either the vetoed bill or S.648 that can enhance the effectiveness of the legal system for injured plaintiffs. This option is unlikely to lead to a bill that will be enacted, but would produce an affirmative statement by the Administration of the appropriate parameters of reform.

This option does not include any provision on joint and several liability for non-economic damages. Since part of the focus of your veto message was on the unfairness of distinguishing between economic and non-economic damages, any provision that deals only with non-economic damages cannot be fully consistent with the veto message. Moreover, we have reason to believe some proponents of legislation would be willing to put forward an alternative without any change in joint and several liability. However, we also know the business community regards this as an important issue but, given current trends in state law toward several liability, they will be extremely unlikely to accept two-way preemption in this area. Appendix A contains alternative formulations of joint and several liability for non-economic damages that were developed by the working group, together with pros and cons.

This option would consist of the following:

Punitive damages - Advisory jury opinion with judicial determination and a breachable cap for small businesses, two-way preemption

- Establish a uniform federal evidentiary standard for award of punitive damages of "clear and convincing evidence," a substantive standard "conscious indifference (excluding recklessness)," and require bifurcation of the damages determination if requested by any party
- The jury would render a solely advisory opinion on liability for and amount of punitive damages
- The actual determination of punitive damages would be made by the judge
- The judge would be required to consider the factors in S.648, and would be required to explain why the judge's award differs (either higher or lower) from the jury's advice
- The judge could allocate a portion of punitive damages to the state rather than to the plaintiff
- Punitive damages would be capped at the lesser of twice compensatories or $250,000 for firms that have 10 or fewer employees **and** annual revenues of $1 million or less. The jury would not be told of the cap (or would be told to disregard it), and the judge could award damages in excess of the cap only upon a specific finding that damages in excess of the capped amount were not only needed "to punish or deter," but also that the financial impact of the higher award had on the defendant and its employees had been explicitly considered by the judge[10]

<u>Pros</u>

- Is analogous to criminal law, in that the jury is involved, but the final decision on what is essentially a punishment is in the hands of the person most experienced in deciding such issues, the judge
- Since historically, punitive damage awards that seem unjustified have stemmed from jury decisions, may increase rationality in the system
- Provides some protection for truly small businesses, responding to one of the complaints about the capriciousness of punitives

---

[10] CEA and CPSC argued that the case for reducing punitive damage awards for small businesses is not compelling when those awards are intended to punish willful and wanton misconduct, established with clear and convincing evidence. On the other hand, punitive damages are very rarely sought against firms this small, mainly because such firms rarely would be able to pay them.

- Since businesses of the size described are rarely assessed significant punitive damages, because in most states the defendant's financial condition is already taken into consideration and plaintiffs do not bother to litigate punitives against firms this small, there may be little practical negative effect.
- Allows the Administration to agree with some sort of cap
- By adopting the S.648 factors, may be seen as a good faith offer

Cons

- Agreeing to any cap at all breaks through a clear line we established last year of "no caps on punitives"; it may be difficult to hold the line against expansion of this cap, either to larger businesses, or by limiting the judge's discretion
- Any proposal that limits punitive damages in any way may be seen as tipping our hand -- or limiting our options -- with respect to the tobacco settlement
- Takes away from the jury what has been regarded as a traditional jury function
- While judges may determine punitive damages in many states in cases where they are the trier of fact, only Connecticut and Kansas provide for initial judicial determination (in contrast to appellate review or remittitur) where a jury has sat
- Unlikely to solve concerns of either proponents or opponents of caps; consumer groups and lawyers have not favored judicial determination
- May raise difficult Seventh Amendment issues ("no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law")
- Making it fully two-way preemptive, thus forcing some states to allow punitive damages that do not currently do so, is likely to be regarded as both unacceptable and inflammatory by the business community

Statute of repose

- Two-way preemption of state law (as in S.648)
- 18 year statute of repose (as in S.648)
- Which a plaintiff may overcome by clear and convincing evidence that the product had a longer useful safe life (not included in S.648, and responsive to the victim of the hay-baler accident cited in the veto message and to accidents involving products clearly intended to be longer-lived, such as elevators and most firearms)
- Covering only durable goods in the workplace (narrower than S.648, retaining plaintiff rights concerning consumer goods in states without any statute of repose and responding to your concern about handguns)
- With further exceptions for toxic substances, vehicles used in transportation for hire, and express warranties (as in S.648)
- And with a provision that extends the statute to allow full benefit of the two-year statute of limitations after injury or discovery of harm in, for example, year 17 (not in S.648, but not expected to be a problem)

Pros

- By building on S.648, demonstrates good faith to proponents of that legislation

- Two-way preemption is responsive to principles of veto message, and also lengthens statute of repose in the 22 states that have them
- Number of years is longer than in any current state statute denominated in years
- Rebuttable presumption protects workers injured by products clearly intended to be longer-lived
- Bright line number of years, combined with clear and convincing standard, means manufacturers will be free from arguments about whether something was intended to have a useful life slightly longer than 18 years
- By restricting statute to durable goods in the workplace, consumers in states without statutes of repose retain their access to court for injuries from long-lived or intermittently-used consumer goods such as cedar chests and camping and baby products
- Until late last year, all formulations of this statute had been limited to durable goods in the workplace, in part because those injured in such an accident will at least have received some compensation through workers compensation
- Expands on an already-existing federal liability scheme -- workers compensation
- Exceptions protect access to court in latent defect cases

<u>Cons</u>

- Opponents of product liability reform will oppose any federal statute of repose as limiting plaintiffs' rights in states without such statutes
- Combination of two-way preemption and bright line (even with rebuttable presumption and limitation only to durable goods in the workplace), will restrict the access of some injured parties to court
- Proponents of S.648 may regard rebuttable presumption and limitation to durable goods in the workplace as unacceptable limitations, particularly given that they extended the statute from 15 to 18 years and made preemption two-way in response to the veto message

In addition to these proposals, we recommend that option B include items the would tend to reduce frivolous litigation and items plaintiffs believe could make a real difference in their ability to recover:

- Provision for alternative dispute resolution for small claims that both defendants and plaintiffs would find appealing
- Limitations on the use of protective orders where disclosure of the information is relevant to the public health or safety unless disclosure is clearly outweighed by a substantial interest in maintaining the confidentiality of the records
- Require affidavits of good faith to accompany pleadings and impose sanctions for bad faith pleadings
- A requirement for a study of the product liability system by the Attorney General

The first of these items might -- depending on how it is drafted -- gain the support of both plaintiffs (who cannot find lawyers to take small claims through the traditional legal system for a contingency fee) and defendants. The second (based on a bill that has been introduced by Senator Kohl) would be strongly supported by consumer groups and -- in light of the tobacco revelations -- probably could generate strong public support, but would certainly be opposed by defendants and perhaps even by the plaintiffs' bar. The third and fourth provisions are from the Breaux draft. The class action provision may not be giving up much from the plaintiffs' perspective because of the Supreme Court's recent decision overturning the asbestos settlement.

This option is recommended by the Treasury Department, the Department of Justice, the SBA, White House Legislative Affairs, White House Counsel, DPC and the NEC.[11] Both Justice and White House Counsel emphasize that their policy preference is Option A, but they do not believe that option is viable as a practical matter. Legislative Affairs would want to discuss Option B, if chosen, with both Senator Rockefeller and Mr. Dingell (understanding they are very likely to turn it down cold) and Senator Breaux before making it public.

C. Make a proposal that has a viable chance of starting negotiations with proponents

As described in the specific pros and cons below, the items in this option cannot be completely squared with your veto statement. On the other hand, they represent real movement toward responding to your objections. However, it is critical to recognize that **once these options are on the table, negotiations may take them even farther afield, and lead to a negative dynamic in which bill supporters think they've come "most of the way" toward your position and assert that refusal to support their bill amounts to "moving the goalposts."** The danger with this option rests far less in its particular parameters than in the slippery slope it sends us down.

Again, no provision on several liability for non-economic damages is included, based on indications some proponents may be willing to move without such a provision. Appendix A contains options developed by the working group, of which only Proposal 2B is likely to be acceptable at all to the business community.

This option would consist of:

Punitive damages - Cap with easier breakthrough, one-way preemption

- Establish a uniform federal evidentiary standard for award of punitive damages of "clear and convincing evidence," a substantive standard "conscious indifference (excluding recklessness)," and require bifurcation of the damages determination if requested by any party
- Cap punitive damages at the greater of $250,000 or twice compensatories (the lesser of the two for small businesses, defined as in option B as businesses with 10 or fewer employees and not more than $1 million in annual revenue)
- Do not tell the jury of the cap
- Allow the judge to award punitive damages above the cap (for both small and large businesses) without an additional proceeding and on a finding that the capped amount is

---

[11] While CEA and OMB participated in the discussions, they have not chosen an alternative.

"insufficient to punish or deter," the standard in S.648, with no required consideration of specified factors

- Insist that there be no legislative history suggesting this authority is to be used more sparingly than implied by the statutory standard
- This would be two-way preemptive, except with respect to states that do not allow punitives in products cases at all

Pros

- Closest to both S.648 and earlier versions of bill, and thus likely to be most easily regarded as acceptable by proponents
- Particularly given that there are few punitive damage awards in excess of the cap and that judges now have remittitur authority, this would likely have little practical impact on actual awards
- The procedural changes may produce more uniformity across the country

Cons

- This looks like a cap on punitive damages, which you said you opposed; "no caps on punitives" has been used as a shorthand description of the Administration's firmest position
- It may actually be a cap with judges reluctant to award punitives
- Holding the line on the legislative history can be very difficult, particularly if the statute is acceptable in all other respects

Statute of repose
The proposal would be the same as under option B, which we believe will be regarded as a good faith offer to negotiate.

The primary dangers with this strategy are (i) the likelihood that opponents will not believe even the initial positions are consistent with the veto statement, and (ii) that it will be relatively easy for the other side to make what look like cosmetic changes that may in fact be quite significant. For example, deleting the plaintiff's option to breach the 18-year statute of repose by a clear and convincing showing that the useful safe life was intended to be longer -- a likely demand of the manufacturing community -- would look minor, but in fact would work a major change in that it completely shut the courtroom door on plaintiffs in the many states with no statute of repose.

Secretary Daley recommends a private attempt to reach a firm agreement with Senator Rockefeller along the lines set forth in this option, coupled with private outreach to key principals in the business community to explain the Administration's commitment to meaningful but fair reform, which justifies only limited federal action in the face of state reforms. If a deal is impossible, Secretary Daley recommends that the Administration publicly state its commitment to two-way preemption as the basis for fair and equitable reform. The SBA would also find Option C acceptable.

Several of your other advisors also believe Option C would, as a policy matter, be an acceptable endpoint. They believe, however, that legislative dynamics make it virtually impossible -- even if Senator Rockefeller were to agree to stick to Option C -- that this would remain the endpoint. Movement away from it can be both subtle and important, and such movement would be extremely hard to explain credibly as the basis for a veto. Moreover, these advisors observe that those opposed to this legislation are strong, united and very public in their opposition. These groups will not buy the argument that Option C is acceptable even as an end point, and will assert that you have deserted your principles. Your other advisors are therefore aligned with Option B.

V. DECISIONS:

____ Please set up a meeting in the near future with the relevant principals to discuss

APPENDIX A
Options on Joint and Several Liability for Non-Economic Damages

The formulations described below reduce the negative impact of imposing several liability for non-economic damages. However, any formulation that does not guarantee the plaintiff 100% of non-economic damages (where there is any solvent and available defendant) is discriminatory against non-economic damages in those states that retain joint liability for economic damages. Assuming you do not want to put several liability for **economic** damages into play, you should be aware that all of the options described -- except pure reallocation -- have this flaw.

Informed by various state law provisions concerning joint and several liability, your advisors considered formulations for federal preemption involving the following concepts:

- Several liability with reallocation among remaining defendants (and plaintiff, if the plaintiff is at fault) in the event the amount allocated to any defendant is uncollectible (thus guaranteeing plaintiffs 100% recovery for the portion of the damage not their fault, but sparing low-fault, deep-pocket defendants the need to sue for contribution)
- Setting a level of fault below which only several liability will apply (thus responding to the concerns of low-fault deep-pocket defendants)
- Setting a threshold of fault below which several liability will apply, but with a multiplier (thereby guaranteeing the plaintiff some recovery where only the low-fault defendants are solvent)
- Guaranteeing the plaintiff a specified percentage of recovery of non-economic damages
- The extent to which plaintiff fault will be taken into account to reduce recovery for non-economic damages
- Special rules for small businesses, particularly as to responsibility for more than their share of damages
- Two-way preemption, which would be meaningful if federal law were less pro-plaintiff than some state laws

Working on the assumption that you wished us to develop proposals that include several liability for non-economic damages -- so as to be able to convince those favoring product liability of our good faith -- but that are least restrictive of the rights of plaintiffs, your advisors developed the following alternative formulations relating only to non-economic damages:

Proposal 1 - Reallocation[12]

- Joint and several if the plaintiff is fault-free

[12] This is based on the statute currently in effect in Missouri.

- If the plaintiff is at all at fault, liability is several, but if the plaintiff cannot collect from one or more defendants after a specified period of time[13], the plaintiff can petition the court for reallocation of damages not attributable to the plaintiff among the remaining defendants, but no defendant less at fault than the plaintiff may be charged with more than twice his proportionate share of damages
- This would be two-way preemptive

Pros

- Preserves balance between faultless plaintiff and defendant with any fault in favor of the plaintiff
- Is generally consistent -- or at least not less pro-plaintiff -- with the laws of most states[14]
- Where plaintiff is at fault, less culpable defendants -- even if they are deep pockets -- will have their damages limited
- Of all the potential limitations, is most likely to retain 100% recovery for non-economic damages in many cases
- By retaining joint and several liability in many situations, should encourage settlement

Cons

- May be viewed as excessively pro-plaintiff, and thus not a good-faith offer, particularly if it is two-way, thus increasing defendants' responsibility in states, such as California, with several liability for non-economic damages
- May limit plaintiff's recovery where plaintiff is at fault and there are multiple defendants
- Requires fact-finders in the 13 states that currently do not have comparative fault or several liability to assign degrees of responsibility
- Shifts from defendants to plaintiffs the responsibility for collecting from each defendant, potentially adding to delay in recovering and increased expense
- As among defendants, it is unclear why the extent of the plaintiff's responsibility should have an impact on defendants' responsibility to pay the judgment
- It is very complicated

Proposal 2A - Guaranteed recovery, two-way preemption

- Joint and several liability of any defendant who is more than 30% at fault (taking into account the fault of the plaintiff and settling defendants)
- If any defendant is less than 30% at fault, that defendant's responsibility would be limited to a maximum of twice the defendant's proportionate share of non-economic damages except where a greater multiplier was needed to ensure the plaintiff recovery of at least 50% of the assessed non-economic damages.

---

[13] In Missouri it is 30 days, which may be too short to actually encourage the plaintiff to try to collect; in Connecticut it is one year, which may be too long.

[14] Only plaintiffs with some degree of fault in the four states that retain traditional no comparative fault/joint and several liability would be significantly disadvantaged; plaintiffs in the nine states with comparative fault and joint and several liability could be somewhat disadvantaged. Plaintiffs in states with any further restrictions would likely benefit.

Proposal 2B - Guaranteed recovery, one-way preemption

- Joint and several liability of any defendant who is more than 10% at fault (taking into account the fault of the plaintiff and settling defendants)
- If any defendant is less than 10% at fault, that defendant's responsibility would be limited to a maximum of twice the defendant's proportionate share of non-economic damages except where a greater multiplier was needed to ensure the plaintiff recovery of at least 60% of the assessed non-economic damages.

Pros

- Should be seen by proponents of limitation as a good-faith offer, with real limits
- Preserves joint and several liability for defendants with significant degree of fault
- Ensures that no low-fault defendant will have to pay more than 50% (or 60%, if one-way) of total non-economic damages, and that in most cases they will be limited to their proportionate share
- Although it limits responsibility of low-fault defendants, it guarantees that plaintiff will collect substantial portion of assessed non-economic damages (if there are any solvent and available defendants)
- The two-way preemption version would increase plaintiff's guaranteed level of recovery in states with several liability for non-economic damages (such as California and Illinois), and thus might be considered an acceptable tradeoff for limitation on guaranteed recovery in other states

Cons

- Setting the guaranteed recovery level at 50% or 60% (or, in fact, any level lower than 100%) may be viewed as non-responsive to both of the objections in the veto statement -- not full recovery, and discrimination against non-economic damages
- Will require fact-finders in the 13 states that don't have both comparative negligence and several liability to make additional determinations
- Defendants who view themselves as likely to be low-fault deep pockets will object that their potential for payment of non-economic damages is so high they cannot take the limitations into account in either settlement discussions or purchase of insurance
- Small degrees of differentiation of fault -- e.g., between 9% and 11% -- could have major repercussions on responsibility to pay damages

THE WHITE HOUSE

WASHINGTON

Date 7-17-97

To: Sylvia Mathews
Bob Nash
Janis Kearney

From: The Staff Secretary

The attached is forwarded for your information.

cc: w/ incoming:
Bruce Reed
Re: History Class Info
Sylvia Mathews
Ernie Green
Bob Nash
James Kearney
Cheryl Mills

THE WHITE HOUSE

WASHINGTON

The President really wants him invited

July 16, 1997

David L. Evans
Harvard and Radcliffe Colleges
Office of Admissions
and Financial Aid
Cambridge, Massachusetts 02138

Dear David:

Thank you for your fine letter and for sending your post-World War II American History Course proposal, which I have passed along to my domestic policy staff.

I was deeply touched by your life's story and by all that you and your siblings have overcome. While I'm not sure yet who will be included at the Central High anniversary, I have made my advisors who are helping to organize the event aware of your background and your interest in attending the observance.

As we move forward with our efforts to create "one America," I appreciate all that you are doing and hope that we'll have the chance to meet again.

Sincerely,

Bill Clinton

I really enjoyed your letter — especially the account of your life —

HARVARD·RADCLIFFE

OFFICE OF ADMISSIONS AND FINANCIAL AID
BYERLY HALL • 8 GARDEN STREET • CAMBRIDGE, MASSACHUSETTS 02138

DAVID L. EVANS
Senior Admissions Officer
(617) 495-5375

June 24, 1997

The Honorable William J. Clinton
President
THE WHITE HOUSE
1600 Pennsylvania Avenue
Washington, DC 20500

Dear Mr. President:

As a native Arkansan, I write with two objectives: (1) To seek an invitation to the formal observation of the fortieth anniversary of the Little Rock Crisis in September and (2) to ask that you, as an Arkansan and former Governor, use that occasion to advocate the required teaching of post-World War II history in American secondary schools.

I graduated from Eliza Miller High School in West Helena three months before the Little Rock Crisis and have been an admissions officer here at Harvard for more than twenty seven years. Accordingly, I have enclosed two relevant documents for your perusal. The one is autobiographic, while the other argues for the systematic teaching of American History of the last fifty years. This advocacy is especially *à propos* in that you have already suggested a national conversation on race.

Though important, race would not be the only topic of discussion in such a course. Surely, the increasing availability of affordable technology would be discussed, *e.g.*, today a $1200.00 computer is many times more powerful than a $12,000,000 computer was thirty years ago. And no such course would be complete without discussing the vital rôle government has played in health care delivery and educational opportunity. Your educational record as Governor of Arkansas is a prime example.

Also, Mr. President, I would hope that in learning about our country since 1945, African American children would come to know the names and deeds of the likes of Jack Greenberg and of martyrs such as Andrew Goodman, Viola Liuzzo, Rev. James Reeb, and Michael Schwerner. In so doing, they would learn that white Americans of many ethnicities and religions gave their life's work (**and their lives**) for the constitutional rights of black folk.

I met you at the **"HELENA 150 Celebration"** on November 6, 1983 when Helena honored seven of us from Phillips County. You were a newly-elected Governor with an impressive record and an even more promising future, especially in support of education. God willing, perhaps, I shall meet you again.

With kindest regards, I remain,

Sincerely,

David

David L. Evans

Enclosures(2)

16 July 1971

Dr. Calvin O. Atchison
Office of Development
Tennessee State University
Nashville, Tennessee 37203

Dear "Doc:"

On December 27, 1939 I was born, the fourth of seven children, to sharecropper parents at Wabash (Phillips County), Arkansas. The county seat is Helena and it was in that small town that I grew up.

My father never went to school and he died when I was ten years old leaving my mother with the unwieldy tasks of sharecropping and raising seven children. She soon despaired of her situation, abandoned tenant farming, and moved the family to Helena.

When a black woman is widowed, has seven children, and has completed only six grades of school, this society usually relegates her to the farthest edges of human existence. My mother's fate was no exception. Pepperlite Quarters--our new "home"--was just that, an outpost at the very edge of human existence. The daily struggle for life was so immediate and demanding that the many rats, roaches, and mosquitoes that infested our house were treated the way most Americans treat ants in their yards. There was no running water in or near the house; it had to be fetched in a bucket from afar. Kerosene lamps were our only source of light and we would all huddle around a potbellied heater in winter vainly trying to keep warm. The fact that I knew so few friends in the Quarters who had not had whooping cough, parasitic worms or rickets led me to think that a child was somehow abnormal if he didn't have at least one of those diseases.

Our mother was able to obtain a job as a maid and the two oldest children (both girls) found similar work on a part-time basis after school. In that capacity a loving and dedicated woman literally worked herself to death: She was stricken with a cerebral hemorrhage in her employer's kitchen on April 26, 1956 and never regained consciousness. Her salary was $19.00 per week and although we had moved several times since Pepperlite Quarters, very little had changed for us.

In looking around the house that Thursday afternoon of our mother's death and seeing only the humblest possessions, the world seemed so terribly cruel. It had now ground out the lives of **both** parents and had given so little in return. Gone were two honorable and kind human beings whose only "sins" had been that they were poor, black, and unschooled in a society that gives prime advantage to those who are affluent, white, and educated.

Our parents' tangible bequest to us was negligible, but they left us some **intangibles** that have sustained us when all else seemed lost. What were these sources of strength? There was first an abiding faith in God followed closely by family unity, self-confidence, and a life-long appreciation of our origins. To these sometimes elusive convictions we owe all that we are.

Today all seven of the children have gone to college and three of us have post graduate degrees. In fact, two of us had the good fortune of being graduate teaching fellows at Princeton and U.C.L.A.. This was accomplished through a boot-strap effort on the part of the older children and then a combined effort to assist the younger ones through college.

Personally, I graduated from Tennessee State University in March 1962 with a B.S. in Electrical Engineering. I was employed by the Boeing Company of Seattle, Washington and during the next two and a half years worked in the aerospace industry.

In 1964 I applied and was admitted to the graduate school at Princeton, entered and in 1966 earned the Master of Science in Engineering Degree. I then went to Huntsville, Alabama with the IBM Corporation.

While working in Huntsville I noticed that very few talented and deserving black students from hardship backgrounds were getting to college. I, therefore, set out to find one or two such students and to personally recruit and counsel them for college. In looking for those two, I found many. My efforts were successful beyond my fondest dreams. A little more than two years of spare-time effort produced recruits who were admitted to Amherst, Brown, Brandeis, Boston University, University of Chicago, Cornell, Columbia, Dartmouth, Harvard, Hampshire, Pembroke, Princeton, St. Mary's (of South Bend, Indiana), Smith, Stanford, Washington State, Wisconsin, U.C.L.A., and a dozen or so historically black colleges in the South.

The news of my success got around and I was made formal job offers by Harvard, M.I.T., and the College Entrance Examination Board. I was most impressed by Dr. Chase N. Peterson, Dean of Admissions at Harvard, accepted the offer, and am now entering the second year of a two-year leave-of-absence from IBM serving as Assistant Director of Admissions.

Sincerely,

David L. Evans

A Need for a Post-World War II American History Course
("Those who cannot remember the past are condemned to repeat it."[1])

by David L. Evans

The median age of the U. S. population is 34.8 years. Moreover, the typical high school course that is supposed to chronicle American history from the Colonial Period to the present, seldom gets to the Truman Administration. And when a course **does** reach the present, the years since World War II are often covered in three or four weeks. It is, therefore, not surprising that the average-age American has no historic or intuitive sense of the political, social, and economic conditions that produced the civil rights laws of the 1960s and the need for affirmative action. It is understandable that a person so young might perceive affirmative action not as it was originally intended (an attempt to level a cruelly tilted playing field), but as an unfair reward for one group at the expense of another. How could we expect otherwise, when the average-age American has not experienced nor has he been taught some of the most profound lessons of the last half century?

A person born thirty five year ago was only fourteen when Jimmy Carter was elected President. Maybe we are blessed that such a person can't conceive of a period **in his lifetime** when African Americans were legally denied the right to drink from the same water fountain as whites, to use the same bathroom, to be served at the same lunch counter, *etc*, in this "... land of the free and home of the brave." Perhaps there is something good in his not knowing that in 1964, U. S. Attorney General Robert Kennedy's staff found

---

[1] George Santayana

more than fifty hotels and motels between Baltimore and Washington that would permit a dog to spend the night but not an African American citizen. It might be traumatic to remind him that he was ten years old when the United States Public Health Service ended the deceitful, forty-year, Nazi-like "Tuskegee Experiment" on black men with untreated syphilis. So monstrous was the deed that President Bill Clinton formerly apologized[2] to all African Americans with these words: "... I am sorry that your federal government orchestrated a study so clearly racist; that can never be allowed to happen again..."

Even in death, black remains were thought somehow to defile those of whites. As late as the 1970s, in Alabama, a court order was necessary to bury the body of a decorated black Vietnam War veteran in a racially segregated graveyard.

Not being old enough to comprehend the Jim Crow laws that President Lyndon Johnson and the Congress sought to eradicate in 1964, such a person might be more impressed by a contemporary and familiar analogy. A graphic example from this decade that still sears in the human conscience, might help him understand just how deep and ugly the wounds of *de jure* racial humiliation can be. There is probably no better example on earth to teach the desired lesson than the recently-abolished *apartheid* policy of South Africa. Although officially ended in 1991, that policy of absolute racial separation was eerily similar to what the 1964 Civil Rights Act outlawed in the United States. South Africa, indeed the world, is still reeling from the horrors unveiled when the lid was removed

[2] The White House, Friday, May 16, 1997

from that cauldron of oppression. The "Truth and Reconciliation Commission," headed by Archbishop Desmond Tutu, seems to disclose a more unbelievable atrocity at its every meeting. It is interesting that a similar committee was appointed in the U. S. by President Johnson after the bloody urban racial upheavals of 1967. That committee (popularly known as the "Kerner Commission"[3]) offered the following conclusion: "Our nation is moving toward two societies, one black, one white--separate and unequal."

South Africa is about as far removed in time from the abolition of *apartheid* as the United States was in 1970 from the 1964 Civil Rights Act. If South Africa's timeline follows ours, there should soon be "reverse discrimination" law suits in that country alleging that less-qualified blacks are being favored over more qualified whites. We must remember that Marco DeFunis filed his "reverse discrimination" suit against the University of Washington Law School in 1971 alleging that less-qualified minorities were admitted ahead of him. His case went all the way to the United States Supreme Court (*DeFunis vs. Odegaard*) but was declared moot in 1974 because he had already graduated from law school.

Although the laws have changed in South Africa, the gap between black and white, rich and poor, skilled and unskilled remains frighteningly wide. And when the adjectives *black*, *poor*, and *unskilled* combine to describe one person, the gap between him and his countrymen is almost unbridgeable and will not close anytime soon. Much more than political, economic, and educational

---

[3] The National Advisory Commission on Civil Disorders

redress is needed to overcome the effects of *apartheid*. Special efforts must also be made to heal deep psychological wounds to assure the victimized blacks and their children that they have a viable chance to compete in the mainstream.

How long and how much effort will it take? Who knows? But what fair-minded person believes that thirty or forty years of special attention to education, health care, job training, *etc.*, will level the racial playing field in South Africa?

Affirmative action was begun in this country some thirty years ago in an atmosphere much like post-*apartheid* South Africa, but fewer than half of the American people can remember its beginning. Essentially no students have been taught a history course in which the social policies and laws that brought about affirmative action in the first place, were systematically discussed. Because of this unfamiliarity, there is a critical need to teach the history of the United States **since World War II** to all citizens, but especially to the children. Failure to do so could lead us again (via Santayana's prophecy) to the embarrassing dilemma of having the world's most promising democracy thoroughly shackled by the issue of race.