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JAMES A. HARMON
PRESIDENT AND CHAIRMAN

EXPORT-IMPORT BANK
OF THE UNITED STATES

January 24, 1998

Dear Mr. President,

Having just returned from Jakarta,
Manila and Seoul early
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of E-Im Bank... to &
to assist these critical
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Although this too will pass, it
surely painful for you.

If I can be of any assistance
I know how to reach me.

Sincerely,

J. H.

Send to Beekhardt

Yes ☒
No ☐

1-26-98



JAMES A. HARMON
PRESIDENT AND CHAIRMAN

EXPORT-IMPORT BANK
OF THE UNITED STATES

7-1-10192

Dear Mr. President,

January 24, 1998

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If I can be of any assistance
I know how to reach me.

Sincerely,

Jim

J.A. Harmon



EXPORT-IMPORT BANK
OF THE UNITED STATES
811 VERMONT AVENUE, N.W.
WASHINGTON, D.C. 20571

President Clinton

Tab A
Burkhardt for
reply
COS

THE WHITE HOUSE

WASHINGTON

January 24, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: SEAN MALONEY

SUBJECT: Recent Information Item

Tab A
+ cover page 1

Burkhardt
COS

Tab B
+ cover page 1

Berger
COS

Tab C
+ cover page 1

Emanuel
COS

Tab D - not returned

Tab E -

Podesta

+ cover page 2

Trombentano
COS

Tab F

+ cover page 2

Yellen
COS

Tab G -

+ cover page 2

Mathews
Maylock
COS

Tab H -

+ cover page 2

McCarthy
COS
Burkhardt

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Did I write him
on this? not
I should not
PK

Tab I
Bulk hand to
coordinate
reply with
ISA + DPC



THE CHAIRMAN

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

'97 DEC 17 10:09

*copied
COS
original to
Burkhardt*

December 10, 1997

The Honorable Erskine Bowles
Chief of Staff
The White House
Washington, D.C. 20500

DAN BURKHARDT:

please coordinate the
reply.

Dear Erskine:

In response to the President's important and timely question about whether we are doing enough to fight fraud in our securities markets, I am attaching a briefing paper prepared by SEC staff. The short answer is that, while we can never eliminate all abuses, I believe the SEC is doing everything it can and should do to protect investors. While experience reveals that the best markets breed the worst elements, the Commission has been hard at work with its limited resources to aggressively combat fraud and maintain public confidence.

We use a three-prong strategy. We employ the two traditional tools available to us: enforcement and regulation. But we've also embarked on a new and innovative approach designed to help investors protect themselves: prevention through education. The specifics of this anti-fraud program are detailed in the attached paper. Briefly, they are:

Enforcement: Over the past three years we have brought a record number of enforcement cases, and, working with the Department of Justice and local U.S. attorneys, we have been involved in an unprecedented number of criminal cases as well. You can expect to hear more results of these new partnerships soon. We have also formed a Working Group on Microcap Fraud to coordinate with other regulators and the states, and we are currently considering designing a new unit within our Enforcement Division that will centralize our staff and expertise on this important sector of the marketplace. I believe our enforcement program is a strong deterrent to fraudulent activity.

Regulation: Earlier this year we embarked on a comprehensive review of the rules that govern listing standards on stock exchanges to ensure that we are striking the proper but delicate balance between encouraging efficiency in our markets and protecting investors. We are also examining both 'cold calling' practices and the role of clearing brokers. To ensure that our rules and regulations that seek to facilitate capital formation for small businesses do not provide loopholes that can be manipulated, we will meet with investor and small business advocates within the next 30 days to review provisions of the securities laws that we believe are most frequently exploited in the microcap area.

Prevention: The idea behind our prevention program is simple. Although there is a limit to what government can do, educated investors can protect themselves from fraud before any damage occurs to their interests or the interests of others. At the outset of my tenure at the SEC, I established an office called Investor Education and Assistance, and I have personally held investor town meetings in 21 cities around the country. We have created one of the most popular

investor-oriented websites on the Internet, as well as a toll-free phone line to make the SEC and its resources fully available to the public. Our campaign to educate investors on how to prevent fraud is an important complement to the enforcement and regulatory programs we put in place.

The United States capital markets are the economic envy of the world. As I hope the attached briefing paper conveys, the SEC will continue to do all in its power to see that they remain so. I would welcome the opportunity to meet with you or the President to talk about this program.

Sincerely,

A handwritten signature in dark ink, appearing to be 'AL' or a stylized 'A' followed by 'L'.

Arthur Levitt

Attachment

P.S. Paul Carey briefed Rahm Emanuel last week for the purpose of including the SEC's investor education program as one of the President's initiatives for 1998.

THE EXPLOSIVE GROWTH OF CAPITAL MARKETS

It is an unfortunate irony of history that the best markets bring out the worst elements. The higher the market rises, the greater investor optimism grows, the more opportunities exist for outright fraud. The SEC is well aware of the abuses described in the November 30, 1997 New York Times article, and has been actively working to combat this fraud.

An appreciation for the growth in today's market is essential in evaluating the current problems in our markets, especially in the area of low-priced stocks. During the last year alone, the Dow Jones Industrial Average has repeatedly broken new records, reaching the 7,000 and 8,000 levels for the first time. In 1980, only 6% of American households invested in mutual funds; by 1996, over 33% of all American households owned mutual funds directly or through a retirement plan.

While our markets remain remarkably safe, efficient and liquid, this growth has been accompanied by an increase in the opportunities for fraud. The government's oversight of the marketplace is limited because our securities regulatory system was designed in the 1930s as a self-regulatory one, with concepts like full disclosure, the presence of independent auditors and the role of self-regulatory bodies such as the NASD and NYSE being critical. The SEC's total staffing currently stands at approximately 2800 people and the current budget is \$330 million.

THE NATURE OF THE PROBLEM

The SEC staff has seen an increase in abuses in the market for low-priced stocks or "microcap" stocks, which are issued by companies with lower capitalizations and are usually quoted on the NASD's Over-the-Counter Bulletin Board and the Nasdaq SmallCap Market. This part of the market provides opportunities for small and new businesses to raise capital, but also provides opportunity for criminals to prey on innocent investors.

Fraud in microcap stocks follows a fairly predictable pattern, with two different, but often related problems. The first problem is high pressure, and sometimes fraudulent, sales practices, such as abusive cold calling and unauthorized trading in a customer's account. The second problem involves manipulation of microcap stocks by brokers, company insiders and promoters to benefit themselves while harming innocent investors. Addressing microcap stock fraud presents the difficult challenge of controlling the fraud without damaging the market for securities issued by legitimate small businesses.

THE SEC'S RESPONSE TO MICROCAP FRAUD

Aware of this problem, earlier this year the SEC created a Working Group on Microcap Fraud. The Working Group provides a forum where abuses uncovered by the enforcement and examination staffs can be coordinated and addressed by the SEC staff who write the rules for stock markets, for brokers and for raising capital. For example, with the input of the Working Group, the SEC's Division of Market Regulation is amending the rule

which sets out the information that brokers must have about a microcap company before they can publish quotations for its securities. This proposal will make it harder for brokers to manipulate the market for microcap stocks. The Group is also working with other regulators, such as the NASD and the states, and with the criminal authorities in sharing intelligence and devising coordinated solutions to microcap fraud.

Enforcement

- **The SEC's Examination and Enforcement Program** As fraud in the microcap market has expanded, the SEC has focused its examinations and allocated its limited enforcement resources more directly to this problem. During the last several years, we have brought an increasing number of cases against fraudulent microcap companies, promoters and brokers, seeking remedies such as permanent industry bars, suspensions, registration revocations, fines and cease-and-desist orders.

- **Cooperation with Criminal Authorities** The SEC has leveraged its resources by working closely with the U.S. Department of Justice, the F.B.I. and other criminal authorities to charge or prosecute close to 100 individuals in the past year alone. The SEC is particularly concerned with any suggestion that there might be any elements of organized crime in this market. Some of the more recent efforts include:

- **November 25, 1997 -- Seventeen individuals indicted for stock fraud:** The SEC suspended trading in the stock of HealthTech and obtained an injunction requiring correction of the company's fraudulent financial statements. The SEC staff also worked with the U.S. Attorney in indicting 17 individuals associated with the brokerage firm Meyers Pollack, including two high-level members of organized crime families, for securities fraud by the company and several brokers.
- **May 13, 1997 -- Brokerage firm and principals indicted:** The SEC brought emergency administrative action against the firm A.R. Baron for fraudulent sales practices, revoked Baron's broker-dealer registration and recovered significant investor funds. The Manhattan District Attorney is pursuing criminal actions against many of the principals.
- **October 10, 1996 -- Forty-eight individuals arrested:** Together with the U.S. Attorney for the Southern District of New York and the F.B.I., the SEC assisted a year-long undercover operation of promoters bribing brokers to sell microcap stocks to their customers. The SEC and the U.S. Attorney are cooperating to bring a large number of actions arising out of the sting.
- **November 1995 and May 1997 -- Twenty-eight "rogue brokers"**

arrested: The SEC and the Justice Department have worked together to address the problem of rogue brokers. The SEC and Department of Justice filed charges against rogue brokers throughout the country for engaging in a wide range of fraudulent conduct, including forging investor checks, engaging in unauthorized transfers of client funds, selling securities of nonexistent companies and creating false account statements.

Regulatory Initiatives

The SEC is working with other securities regulators to craft practical rules which will bring information about problem brokers and companies to the attention of regulators as quickly as possible. In particular, the staff is currently considering NASD and NYSE rules for broker-dealers that clear trades for other, generally smaller, brokerage firms. The staff will also propose to the Commission in the near future amendments to capital formation rules to close "loopholes" that have been used for fraud.

Investor Education

Fundamentally, we recognize that, as with most problems that confront the public, the best protection against securities fraud involves steps that individuals can take themselves. The SEC is committed to giving investors the tools they need to protect themselves from fraud, and Chairman Arthur Levitt has personally hosted more than twenty-one town meetings around the country on this very topic. The SEC offers information through publications (like the recently released "Cold Calling" Alert, a copy of which is enclosed), a toll free hotline (1-800-SEC-0330) and an Internet website (www.sec.gov).

The SEC is organizing a national public awareness campaign for Spring 1998 to educate the American public about saving, investing, and avoiding securities fraud. The SEC's campaign is part of an investor education and protection campaign that will cover the entire Western Hemisphere during the same week. The participating countries recognize that their future economic growth and stability depend in large part on educating their citizens on how to invest wisely and recognize securities fraud.

CONCLUSION

Securities fraud has become a more serious problem in connection with microcap securities and a certain segment of the broker-dealer community that deals almost exclusively in low-priced stocks. The SEC is taking regulatory steps to minimize the opportunities for such fraud. The SEC's use of criminal investigatory techniques and the well publicized prosecutions which have followed have given this problem a certain prominence in the financial press. While the publicity has alerted the public to the issue and pointed out damage to investors, we should be cautious in the conclusions we reach from these cases. Fundamentally, our markets remain sound, extremely liquid, efficient and safe for investors.

Tab A
Burkhardt for
reply
COS

THE WHITE HOUSE

WASHINGTON

January 24, 1998

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FROM: SEAN MALONEY

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Tab A
+ cover page 1

Burkhardt
COS

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+ cover page 2

Podesta
+ Triamontano
COS

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*Tab I
Burkhardt to
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THE WHITE HOUSE
WASHINGTON

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COS
Berger

JAN 19 1998

January 19, 1998

INFORMATION

MEMORANDUM FOR THE PRESIDENT

FROM: SAMUEL BERGER 

SUBJECT: Your Note Concerning the Legal Status of Liberian President Taylor

In December we sent you a memorandum responding to a letter from Representative Payne concerning an outstanding arrest warrant for Liberian President Charles Taylor stemming from his 1987 escape from the Plymouth, Massachusetts jail. On the memo, you asked whether we can get help from the Massachusetts Attorney General.

We understand that dropping the outstanding jailbreak charge against Charles Taylor would be a matter for the District Attorney and Sheriff of Plymouth County, Massachusetts. The Massachusetts Attorney General does not have the authority to drop the charges or require the local authorities to do so, and the local authorities apparently are not prepared to act on their own initiative. The Criminal Division of the Justice Department has advised the State Department that there is no U.S. law enforcement interest in having the charges dropped. We understand, however, that the Criminal Division would be prepared to ask Attorney General Reno for approval to intercede with the Massachusetts authorities if State requests them to do so for foreign policy reasons. The State Department is not prepared, at this time, to make such a request, due to the extraordinary character of such an action and President Taylor's very mixed record on human rights and democracy-building since his inauguration in August. We agree with State.

In the meantime, the Plymouth authorities have removed the arrest warrant from the nation-wide computer system. The State Department has also informed President Taylor and the Government of Liberia that, as head of state, Taylor would be entitled to immunity from arrest and other legal process in the United States.

Attachment
Tab A December 3 Memorandum

cc: Vice President
Chief of Staff

THE WHITE HOUSE

WASHINGTON

December 3, 1997

THE PRESIDENT HAS SEEN
12-5-97

8355

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: SAMUEL BERGER
JOHN HILLEY

SUBJECT: Response to Letter from Representative Donald
Payne Concerning Liberia

*Can we
get help
from Mass AG
this*
*Copied
Berger
Hilley
COS*
*CAN WE GET HELP
FROM MASS AG ON
THIS*

Purpose

To respond to a letter from Representative Donald Payne.

Background

Representative Payne wrote expressing concern over the impact on our bilateral relations of an outstanding arrest warrant in Massachusetts for Liberian President Taylor.

Taylor escaped from a Massachusetts jail in 1987 while he was awaiting extradition to Liberia on embezzlement charges. The new Government of Liberia, headed by President Taylor, has dropped the extradition request, and all U.S. federal charges against Taylor have also been dropped. Massachusetts, however, continues to maintain an arrest warrant for Taylor stemming from his prison break. President Taylor cancelled a planned trip to the UN General Assembly for fear he would be arrested.

This is a significant irritant in our relations and our efforts to work with Taylor's government to solidify Liberia's peace and help it rebuild. The State Department and the Department of Justice are working to resolve this issue. Because this involves a state law enforcement matter, we have not become directly involved in its resolution, but have worked through the Departments of State and Justice.

RECOMMENDATION

That you sign the attached response to Representative Payne.

Attachments

- Tab A Response to Representative Payne
- Tab B Letter from Representative Payne

DEC11 6:31

cc: Vice President
Chief of Staff

Time 2
Burkhardt + for
12/18
1998

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SUBJECT: Recent Information Items

We are forwarding the following recent information items:

- Erskine* (A) **Arthur Levitt Letter on SEC's Efforts to Combat Securities Fraud** -- Erskine forwards a letter from Levitt (apparently prompted by an inquiry you made) on the SEC's efforts to fight fraud in the securities markets; Levitt writes, "the short answer is that, while we can never eliminate all abuses, I believe the SEC is doing everything it can and should do to protect investors;" sets forth his three-prong strategy of enforcement, regulation and prevention; *please see letter for details.*
- Q* (B) **Berger Memo on Legal Status of Liberian President Taylor** -- you asked Sandy whether we could seek assistance from the Massachusetts Attorney General to resolve an outstanding arrest warrant for Liberian president Charles Taylor stemming from his 1987 escape from a Plymouth, Mass. jail; Sandy responds that it's a matter for the Plymouth County DA and Sheriff; the Mass. AG doesn't have authority to drop the charges; DOJ has advised the State Department that it would intercede with local authorities if doing so were desirable on foreign policy grounds; State is not prepared to have DOJ do so; would be highly unusual and Taylor has mixed record on human rights and democratization; NSC concurs; Sandy notes that, as a head of state, Taylor is entitled to immunity from arrest and other legal process in the U.S.
- Q* (C) **Survey on School Modernization forwarded by Rahm** -- Greenberg Research survey suggests education is a major national priority driven by the quality of public education; there is strong bi-partisan support for a \$30B, 10-year federal school modernization proposal; public's concern about class size, technology, academic standards and discipline drives support for the proposal; voters choose school modernization overwhelmingly over other federal priorities; Rahm believes issue of school construction should not be about the problems of the inner city but rather about the opportunities it provides to improve learning, discipline, and class size; issue must be positioned in larger context to garner greatest public support.
- (D) **Stephen Cohen Memo on Middle East Peace Process forwarded by Rahm** -- Rahm sends you *another* Cohen memo on the Middle East (we understand Sandy gave you one last week); Cohen says U.S. must express the urgency, danger, and hope welling up in the people of the region and the expectations they have that their leaders will rise above tactical considerations to act now; *please see memo for details.*

(E)

Karen Tramontano Memo on Labor Dinner -- Karen and John Podesta held a working dinner with labor and Administration officials before the holidays; John Sweeney (AFL-CIO), Jay Mazur (UNITE), George Becker (Steelworkers), Bob Georgine (Bldg/Construction Trades), Andy Stern (Service Employees), Doug Dority (Food/Commercial Workers), Sandy Feldman (Teachers), Sec. Herman, Sec. Daley, Kitty Higgins, Frank Raines and Gene Sperling attended; the VP dropped by at the start; had 3½-hour discussion on issues like why organized work force has been declining despite 10% income premium enjoyed by union workers; group agreed on importance of organizing; need for wages to reflect productivity gains; benefits to workers of organizing; possibility of greater union support for issues like climate change and fast track in a society where more workers were organized; Karen attaches background info.

(P)

Yellen Memo on BLS Methodological Improvements -- says BLS methodological improvements have lowered annual CPI increase by 0.28 percentage points since 1995, and will lower it by a further 0.41 points by 1999, for a total of 0.69 points; Boskin Commission anticipated 0.36 drop and may lower its estimate by the additional 0.33; the Social Security projection may also be lowered by about the same amount; *please see memo for tables and additional details.*

(G)

Mathews/Glickman Follow-Up on Minority Farmers Meeting -- Sylvia forwards, with a detailed cover memo, Sec. Glickman's update and report following your Dec. 17 outreach meeting; Sylvia summarizes White House activities, covering legal and policy issues, legislative affairs and farmers' requests; Glickman describes USDA's efforts on civil rights and small farm issues; says it'll take time to heal wounds; many complaints are old and present statute of limitations issues; resolved about 200 complaints in 1997; restaffed civil rights office to full strength; brought in 10 outside contractors to investigate claims; new associate general counsel for civil rights is putting his office together; mediators will begin meeting 3 times/week starting in February to resolve the pending class action lawsuit discussed in your meeting; *please see memos/report for details.*

(H)

Hershel Gober Response to Patricia Clowers concerning Husband's Death -- Hershel forwards his response to Patricia Clowers of Percy, Arkansas concerning the death of her husband following surgery at the VA Medical Center in Little Rock; results of clinical review confirm that Mr. Clowers died when he did not respond well to the usual treatment for respiratory failure and pneumonia; death was the result of multi-system organ failure directly related to his respiratory failure; no major problems were found with the Center's cardiac surgery program, but recommended improvements are being made.

Note from Mack to Gov. Zell Miller -- congratulates Gov. Miller on his new program to make classical music available to some 100,000 Georgia newborns each year; Mack attaches copy of news article.

Did I write him
on this? not
I should be
OK

Tab I
Burkhardt to
coordinate
reply with
ISA + DPC

1 - 20 11

THE WHITE HOUSE

WASHINGTON

January 20, 1997

Copied
Emanuel
COS

MEMORANDUM TO THE PRESIDENT
FROM RAHM EMANUEL
SUBJECT SCHOOL MODERNIZATION

Attached is a survey on school modernization done by Greenberg Research that I thought you would find interesting. I believe that the issue of school construction should not be about the problems of the inner city but rather on the opportunities school construction provides to improve learning, discipline and class size. This initiative must be positioned in a larger context in order to garner the greatest public support.



1-26-98

GREENBERG QUINLAN RESEARCH

THE TARRANCE GROUP

A National Bipartisan Survey on School Modernization

Key Findings

Sponsored by the
American Federation of Teachers
and the
National Education Association

Research by
Greenberg Quinlan Research
and
The Tarrance Group
January 1998

Introduction

The American Federation of Teachers (AFT) and the National Education Association (NEA) commissioned Greenberg Quinlan Research and The Tarrance Group to conduct a national bipartisan survey of registered voters on the issue of school modernization (renovating existing schools, building new schools due to enrollment increases, and upgrading all schools for educational technology). Telephone interviews with 1,001 registered voters were conducted between January 5-10, 1998, with a margin of error of +/- 3.1 percentage points.

The survey surfaced six key findings:

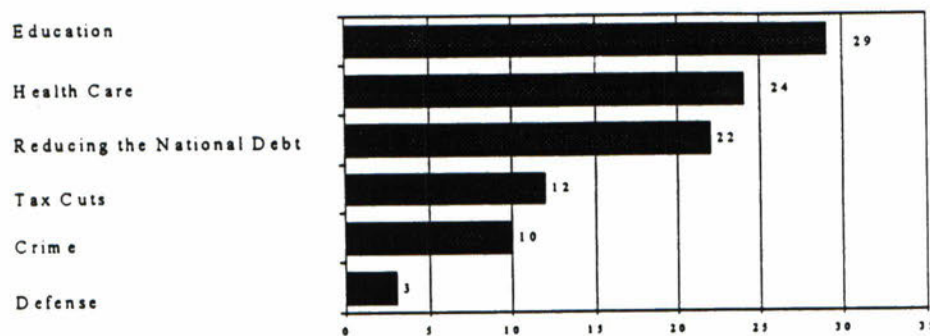
- Education is a major national priority, driven by public concerns about the quality of public education.
- There is strong bipartisan support for a \$30 billion, 10-year federal school modernization proposal.
- Public concerns about class size, technology, academic standards and discipline drive public support for the proposal.
- Voters choose school modernization overwhelmingly over a number of other potential federal spending priorities.
- Support of school modernization will benefit both Republican and Democratic members of Congress.
- While there is strong public support for the proposal, a number of obstacles in public attitudes remain to be overcome.

I. Education as a National Priority

The survey found that meeting the educational needs of the country stands among the top concerns of voters: (33 percent) – along with crime and drugs (41 percent), the decline in moral values (37 percent) and health care and Medicare (37 percent).

When it comes to the federal budget, education is the top priority for additional national spending: 29 percent, compared to 24 percent for health care, 22 percent for reducing the national debt and 12 percent for tax cuts.

Balanced Budget Context



The budget debate

In the context of the new budget debate – *What should the country do as it faces the prospect of a balanced budget?* – the public is seriously entertaining increased spending on education:

- 48 percent favor increased spending on education (alone or in combination with tax cuts)
- 44 percent favor tax cuts (alone or in combination with increased spending on education)
- 35 percent favor reducing the national debt

The desire for new spending on education is rooted in a broad dissatisfaction with the job that is being done in American education. The dissatisfaction is highest at the national level (67 percent) and still very high for people's own state (58 percent). Voters are divided on the job being done by local schools: 48 percent satisfied and 46 percent dissatisfied.

Public concerns

When the public looks at the schools today, the biggest problems they see are students who are undisciplined and disruptive (44 percent see it as a "very big problem" and 78 percent as a "very big" or "serious" problem). After discipline, the main problems are overcrowded classrooms (28 percent and 57 percent) and a lack of academic standards for promotion and graduation (27 percent and 58 percent). There is less concern with the health and safety of the schools and with unequal educational opportunity.

Increased spending on education

The result of the current national mood on education is strong support for increased spending on education.

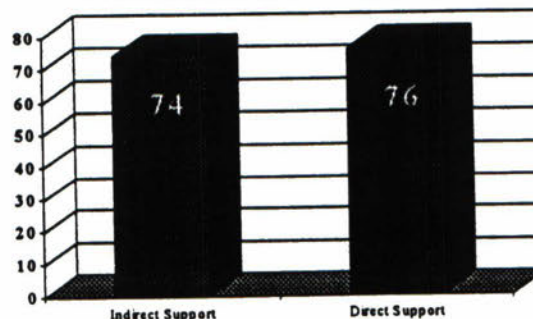
- When thinking about education in the United States:
 - 58 percent say the federal government is spending “too little”
 - 9 percent think “too much.”
- While support for education is broad, it draws its principal energy from women and particularly from people under 50 years of age. A remarkable three-quarters of those under 30 and two-thirds of those 30 to 50 years of age say the country is spending too little on education.
- The support for increased spending on education carries across the “center” of the American electorate in 1998: 64 percent of both conservative Democrats and moderate Republicans say we are spending too little – as well as 72 percent of Ross Perot supporters.
- Finally, support for increased national spending on education is indeed national. A large majority in every region of the country, including the South (54 percent), says we are spending too little.

II. Bipartisan support for a \$30 billion, 10-year federal school modernization proposal

The AFT and the NEA have developed a federal legislative proposal to provide \$30 billion over 10 years to help states and local school districts modernize public schools.

Proposal Support

The proposal would provide 30 billion dollars over 10 years to help local school districts pay for repair, renovation and modernization of their schools (Indirect Support). The federal government would provide grants directly to local school districts to fund local school renovation and modernization (Direct Support).



- Three-quarters of voters (74 percent or 76 percent depending on whether aid is indirect or direct) favor the idea, while just under 20 percent oppose it.
- The proposal earns two-thirds or more majority support among nearly every major voter group including independents (65 percent) and Republicans (73 percent).
- 60 percent of conservative Republicans and 64 percent of Republican men (the lowest support groups) favor the idea, although strong support with both groups drops below 30 percent.
- Women (79 percent favor) are more likely than men (69 percent) to support the idea. In fact, Republican women appear to be among the strongest support groups with 81 percent overall approval and 38 percent strong approval of the plan.

III. The importance of class size, technology, academic standards and discipline

There is a broad range of arguments that voters respond to when considering the AFT/NEA proposal for school modernization, but two stand out because they relate so closely to the public's underlying concerns about education. These arguments emphasize some very basic issues – reducing class size so discipline can be restored and learning improved, and modernizing schools so children can have access to computers. *

The survey found that the following specific arguments were the most convincing for supporting the proposal:

- “This school repair and modernization program is needed to reduce class size which will mean less discipline problems and higher student achievement.” (50 percent found it either an “extremely convincing” or “very convincing” argument).
- “Nearly one half of all school buildings lack the basic wiring needed to give our children access to computers in the classroom.” (47 percent) “This school repair and modernization program is needed if all classrooms are to have the basic wiring to support computers.” (46 percent)

In addition, the survey found that the following global themes around the proposal were the most convincing:

- **Schools and the New Technological Age:** “This program will mean that our children and our schools will be able to compete in this new era of global, technological change. We need modern, well-equipped schools where our children can learn to meet these challenges.” (81 percent found it “very” or “somewhat convincing”) *

- **Every District Can Improve Its Schools:** "This program will mean that all school districts, not just the wealthiest ones, will be able to improve their school buildings. The wealthiest districts will be fine, but this program makes it possible for poorer and overtaxed districts to make improvements." (77 percent)
- **Class Size, Discipline and Learning:** "This program will help students learn better. It will increase the numbers of classrooms and reduce class size. Teachers will be able to spend less time disciplining students and more time teaching." (75 percent)
- **Local Responsibility:** "We can use federal funding to repair, renovate and modernize our nation's school buildings as long as state and local government make the decisions on how the money is spent." (77 percent)

IV. School modernization and other potential federal spending priorities

When asked to rate the proposal against other potential federal spending priorities, voters chose "school renovation and modernization" over:

- "Loans to the International Monetary Fund to stabilize Asian economies" by a margin of 84 percent to 9 percent;
- "Prison construction" by a margin of 82 percent to 13 percent;
- "Highway construction" by a margin of 79 percent to 15 percent; and
- "Capital gains tax cuts" by a margin of 70 percent to 25 percent.

At least a two-thirds majority of every voter group, including conservative Republicans (except when compared with a capital gains tax cut, which drops to a 56 percent majority) put modernization and renovation over IMF loans, prisons, highways, and capital gains expenditures.

V. Congressional Impact

To assess the potential advantages and liabilities in this issue, the survey asked voters how they would respond to a Democratic or Republican member of Congress who voted for the AFT/NEA proposal to modernize the schools. Such a vote mainly *helps* the members, particularly Republican members.

Republican Members

In a follow-up to a series of arguments for and against the proposal, Republican respondents were asked whether knowing that a Republican member of Congress voted for the \$30 billion dollar proposal would make them more or less likely to vote for that member. Approximately 75 percent of voters indicated they would be more likely to vote for a Republican candidate for Congress who voted for the plan (though just 22 percent say "much more likely").

While the effects are not dramatic, support for this legislation clearly helps the Republican member. The generic ballot contest narrows marginally in favor of the Republicans: from +3 points for the Democrats at the outset of the survey to an even contest after respondents are informed of the vote in favor of the program. The shift toward the Republicans comes from key swing groups, such as independent women (14 percent toward the GOP), single women (13 percent), rural area voters (16 percent), and those from the Border states (13 percent).

At the same time, the Democrats' overall advantage on the education issue narrows to just 6 points, suggesting a small but consistent movement toward Republicans open to this kind of education initiative.

Democratic Members

Overall, 72 percent of Democratic voters say they are more likely to vote for a candidate who supported this initiative – and that is after hearing all the arguments against it. Only 23 percent say they are less likely to support the member.

Additional findings

A vote for the AFT/NEA proposal wins a dramatic endorsement from younger voters (88 percent more likely), all voters under 50 (73 percent), and younger non-college voters (81 percent). It wins big majorities among independents (69 percent), and particularly among conservative Democrats (87 percent) and moderate Republicans (76 percent). Perhaps more important, 76 percent of the undecided voters in the race for Congress say they are more likely to vote for the Democrat because of their vote on this issue.

In the congressional contest nationwide, Democratic congressional candidates hold their 4 percent margin. The Democratic candidate, after his or her support for school modernization, enjoys an 11-point advantage on handling education.

VI. Obstacles in public attitudes

While the AFT/NEA proposal demonstrates support that is broad, there are some cautionary findings in this survey:

- While spending on education alone (19 percent) overtakes all other priorities among large city voters (34 percent), Democrat men (35 percent), and Liberal Democrats (41 percent), paying down the national debt alone (35 percent) has much broader appeal. Men overall (41 percent), voters over fifty years old (43 percent), Republicans (42 percent), independents (37 percent), Catholics, Protestants and whites overall (37 percent) -- all have a plurality of their voters prioritizing the debt. A large bloc of voters (29 percent) want to increase spending on education and cut taxes.
- Voters are much more focused on the issues of student discipline, academic standards, school overcrowding, and modernizing schools for computers than they are on the of health and safety of school buildings.

- The public will clearly listen to both sides of this debate. The arguments against the AFT/NEA proposal for school modernization score at least as well as the arguments for it – despite the large overall majority for the program.
- A majority (51 percent) of the public finds extremely or very convincing the argument that rather than spending money on “fancy equipment in the schools,” we would be better off putting more effort into involving parents and teaching the basics.
- A majority of most voter groups also find convincing the contention that state and local governments know what’s best for schools (52 percent extremely or very convincing).

These arguments against the proposal lose some of their strength among women and blacks and among voters under age 50, particularly under 30. Indeed, age overshadows both gender and race in explaining preferences on this issue. But both arguments against the proposal – getting back to the basics and local/state control – gain increased support with older, and therefore higher propensity, voters.

Conclusion

Still, it is striking that a large majority – 76 percent –support the AFT/NEA proposal after hearing the arguments for and against it. The public may be open to the debate and may not have intense views, but they are inclined to support this initiative.

**NATIONAL SURVEY
of
Registered Voters**

***Public School Renovation, Construction,
and Modernization***

**for the
National Education Association
and the
American Federation of Teachers**

**by
Greenberg Research, Inc.
and
The Tarrance Group**

January 5-10, 1998

NEA-98.Q1
January 5-10, 1998
1001 Respondents

FREQUENCY QUESTIONNAIRE

Q.2 First of all, are you registered to vote at this address?

	Total
Yes	100
No	-

(ref:JOHN)

Q.4 Many people weren't able to vote in the 1996 election for president between Bob Dole, Bill Clinton, and Ross Perot. How about you? Were you able to vote, or for some reason were you unable to vote?

	Total
Voted	99
Ineligible/too young	1
Did not vote	-
(Can't remember/Don't know/Refused)	-

(ref:VOTE96)

Q.5 Now, I am going to read you a list of concerns that people have. Please tell me which TWO of these you personally worry about the most?

	Total
Crime and drugs	41
Decline in moral values	37
Health care and Medicare	37
Education	33
Taxes and government spending	31
The economy and jobs	19
(No second concern)	1
(Don't know/refused)	1

(ref:CONC1)

Q.10 Even though you are not supporting the Democrat now, what are the chances that you might support the Democratic candidate in the election for Congress this year?

	Total
Fair Chance	22
A small chance	9
Just a slight chance	10
No chance at all	9
(Don't know/refused)	5
Democratic Supporter	44
(ref:GC3)	

Q.11 Even though you are not supporting the Republican now, what are the chances that you might support the Republican candidate in the election for Congress this year?

	Total
Fair Chance	23
A small chance	11
Just a slight chance	10
No chance at all	11
(Don't know/refused)	5
Republican Supporter	41
(ref:GC4)	

Q.12 Let me ask something different. When you think about education in the United States today, are you satisfied or dissatisfied with the job that is being done?

	Total
Very satisfied	5
Somewhat satisfied	23
Somewhat dissatisfied	34
Very dissatisfied	33
(Mixed/depends/neither satisfied nor dissatisfied)	3
(Don't know/refused)	2
Total satisfied	28
Total dissatisfied	67
(ref:SCHOOLS1)	

Q.16 When you think about education in your area today, where children here go to school, are you satisfied or dissatisfied with the job that is being done?

	Total
Very satisfied	18
Somewhat satisfied	30
Somewhat dissatisfied	23
Very dissatisfied	23
(Mixed/depends/neither satisfied nor dissatisfied)	2
(Don't know/refused)	3
Total satisfied	48
Total dissatisfied	46
(ref:SCHOOLS3)	

Q.17 Do you think the local government in your area is spending too much, too little or about the right amount on education?

	Total
Too much	8
About the right amount	41
Too little	46
(Don't know/refused)	6
(ref:SCHOOLS3A)	

Q.18 I am going to read you a list of potential problems in the schools today. Please tell me whether each one is a very big problem, a serious problem, a minor problem, or not much of a problem at all.

	Very Big Prob	Serious Prob	Minor Prob	Not Much Prob	DK/ Ref	Very Big/ Serious	Minor/ Not Much
18 Students who are undisciplined and disruptive	44	34	15	4	3	78	19
19 Overcrowded classrooms	28	28	23	16	4	57	39
20 Public school buildings that are in unsafe or unhealthy condition	21	23	26	26	3	45	52
21 Unequal educational opportunity for all students ..	19	22	26	30	3	41	56
22 A lack of academic standards for promotion and graduation.	27	31	23	17	3	58	40
(ref:PROB1)							

(475 Respondents)

Q.26 (SPLIT D) I am going to read you a new proposal that will be considered by the Congress this year. The proposal would provide 30 billion dollars over 10 years to help local school districts pay for repair, renovation and modernization of their schools. The federal government would provide grants directly to local school districts to fund local school renovation and modernization. Do you favor or oppose this proposal?

	Total
Strongly favor	43
Somewhat favor	34
Somewhat oppose	7
Strongly oppose	12
(Don't know)	5
Total favor	76
Total oppose	19
(ref:INFRAD)	

Q.27 When you think about school renovation and modernization, which of these problems seems to be greatest in the country and most in need of attention?

	Total
Overcrowded schools that undermine teaching and student learning ...	36
Older schools, not wired for computers, that can't prepare students for college and the job market	31
School buildings which are unsafe and unhealthy	14
School classrooms in poor physical condition that provide a bad learning environment	12
(Don't know/refused)	8
(ref:INFRA2)	

(491 Respondents)

Q.29 (SPLIT E) For the most part, state government and local school districts pay for school renovation and modernization.

Do you think that the needs for increased spending for school renovation and modernization should be funded entirely by state and local school districts or do you think the federal government should provide some funding too.

	Total
Funded entirely by state and local	29
Some federal funding	70
(Don't know/refused)	2
(ref:INFRA4E)	

	Extrem Conv.	Very Conv.	Smwht Conv	A Little Conv	Not At All Conv	DK/ Ref.
36 The federal government and bureaucrats will direct the money to the poorest cities, and not very much will go to the school districts where the majority of children attend school.	9	15	33	14	26	3
37 Thirty billion dollars for the nation's schools is a drop in the bucket and will not really solve the problem.	11	18	29	14	24	4
38 The federal government and bureaucrats will direct the money to mismanaged urban school districts, like Washington, D.C., that will only waste the taxpayer's money. (ref:DOUBTS)	12	19	27	13	27	3

Q.39 Let me read you a series of statements made by supporters of the school renovation and modernization program. For each statement, please tell me whether you find it extremely convincing, very convincing, somewhat convincing, a little convincing, or not at all convincing?

	Extrem Conv.	Very Conv.	Smwht Conv	A Little Conv	Not At All Conv	DK/ Ref.
39 It will cost 112 billion dollars nationally to make our school buildings safe and healthy for our children.	9	22	35	12	17	5
40 6,000 new schools will have to be built in the next decade to handle the increased student enrollment.	13	27	32	11	13	4
41 One third of all school children in America go to schools needing extensive physical repairs.	11	27	34	11	12	5
42 Nearly one half of all school buildings lack the basic wiring needed to give our children access to computers in the classroom.	13	34	30	9	11	4
43 30 billion dollars will help state and local governments significantly address the need to repair, renovate, and modernize the nation's school buildings.	9	24	39	13	14	2
44 This school repair and modernization program is needed if all schools are to be accessible to the handicapped.	17	34	26	10	12	2

(526 Respondents)

Q.51 (SPLIT C: REPUBLICAN) Now I'm going to read you a series of statements about a Republican member of the Congress. Please tell me whether each description, if it were accurate, would make you much more likely, somewhat more likely, somewhat less likely or much less likely to vote for that member of Congress.

	Much more likely	Smwt more likely	Smwt less likely	Much less likely	DK/ Ref.	Total more likely	Total less likely
51 The member voted in favor of the proposal for school building renovation and modernization.	22	53	13	8	4	74	21
52 The member voted in favor of the proposal because it will encourage and assist local, state and private efforts to meet our local school needs.	24	53	12	7	3	77	20

(ref:PARTISAN1)

(526 Respondents)

Q.53/54 (SPLIT C) Let me ask again about Congress. In this year's election, do you plan to vote for the Democratic candidate or the Republican candidate in your district?

	Total
Democratic candidate	32
Lean Democratic candidate	8
Republican candidate	30
Lean Republican candidate	11
(Undecided)	19
Total Democratic candidate	41
Total Republican candidate	41

(ref:PARTISAN2)

(475 Respondents)

Q.58/59 (SPLIT D) Let me ask again about Congress. In this year's election, do you plan to vote for the Democratic candidate or the Republican candidate in your district?

	Total
Democratic candidate	33
Lean Democratic candidate	10
Republican candidate	30
Lean Republican candidate	9
(Undecided)	19
Total Democratic candidate	43
Total Republican candidate	39
(ref:PARTISAN2B)	

Q.60 (SPLIT D) Let me ask now, do you think the Democrats or the Republicans would do a better job on education?

	Total
Democrats much better	17
Democrats somewhat better	24
Republicans somewhat better	19
Republicans much better	12
(Both)	5
(Neither)	4
(Don't know/refused)	20
Total Democrats better	41
Total Republicans better	30
(ref:PARTISAN3B)	

Q.61 Now, let me read you a series of reasons to support increased federal action on school renovation and modernization. Please tell me whether this is a very convincing, somewhat convincing, a little convincing or not at all convincing reason to support increased federal funding for school repair, renovation and modernization.

	Very Conv	Smwht Conv	Little Conv	A At All Conv	Not DK/ Ref.	Very/ Smwht Conv	Little/ Not Conv
61 This program will help students learn better. It will increase the number of classrooms and reduce class size. Teachers will be able to spend less time disciplining students and more time teaching.	40	35	12	12	2	75	24

Q.67 I am going to read you a series of choices facing the Congress in the budget. Please tell me, for each choice, which choice you would make.

	1st Str	1st Not Str	2nd Str	2nd Not Str	DK/ Both	Neither	Ref	Total 1st	Total 2nd
(494 Respondents)									
67 School renovation and modernization									
OR Prison construction	71	11	5	7	2	2	2	82	13
(507 Respondents)									
68 School renovation and modernization									
OR Highway construction	65	14	6	9	4	1	1	79	15
69 School renovation and modernization									
OR Capital gains tax cuts	58	12	10	15	1	2	3	70	25
70 School renovation and modernization									
OR Loans to the International Monetary Fund									
to stabilize Asian economies	74	9	5	4	0	3	4	84	9
(ref: CONTRASTS)									

Q.71 Finally, I would like to ask you a few questions for statistical purposes. Generally speaking, do you think of yourself as a Republican, a Democrat or what?

	Total
Strong Democrat	20
Weak Democrat	17
Independent-lean Democrat	9
Independent	6
Independent-lean Republican	11
Weak Republican	18
Strong Republican	15
(Don't know/refused)	3
Total Democrat	37
Total Republican	33
(ref:PTYID1)	

Q.77 In the presidential election last November, did you vote for Republican Bob Dole, Reform Party Ross Perot or Democrat Bill Clinton?

	Total
Republican Bob Dole	36
Reform Party Ross Perot	10
Democrat Bill Clinton	46
(Didn't vote: ineligible, too young)	1
(Didn't vote)	1
(Can't remember/don't know)	1
(Refused to tell how voted)	6
(ref:VHISTORY4)	

Q.78 In the 1996 election for the U.S. Congress, did you vote for the Republican candidate or the Democratic candidate in your own district?

	Total
Democratic candidate	43
Republican candidate	43
(Independent/3rd party)	0
(Didn't vote: ineligible, too young)	-
(Didn't vote)	2
(Can't remember/don't know)	9
(Refused to tell how voted)	3
(ref:VHISTORY5A)	

Q.79 How would you describe the area in which you live--Do you live in a city with over a million people, in a smaller city, in a suburban area outside a city, in a small town, or in a rural area?

	Total
City (1 million +)	11
Smaller city	21
Suburban area	24
Small town	23
Rural area	19
(Don't know/refused)	2
(ref:CITYSIZE)	

Q.80 What is your religion?

	Total
Protestant	51
Catholic	25
Jewish	2
(Other/none/refused)	22
(ref:RELIG1)	

Q.85 What is your race?

	Total
White	83
Black	10
Hispanic	2
Asian	0
(Other)	3
(Don't know/refused)	2
(ref:RACE)	

Q.3 Sex of respondent

	Total
Male	48
Female	52
(ref:GENDER)	

THE WHITE HOUSE

WASHINGTON

January 24, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: SEAN MALONEY

SUBJECT: Recent Information Item

We are forwarding the following recent

Arthur Levitt Letter on SEC's
forwards a letter from Levitt (ap
efforts to fight fraud in the secu
while we can never eliminate all
should do to protect investors;"
regulation and prevention; ple

Berger Memo on Legal Statu
whether we could seek assista
outstanding arrest warrant for
escape from a Plymouth, Mass
County DA and Sheriff; the M
has advised the State Departm
were desirable on foreign polic
be highly unusual and Taylor I
NSC concurs; Sandy notes tha
arrest and other legal process i

Survey on School Moderniza
suggests education is a major i

there is strong bi-partisan support for a \$50B, 10-year federal school modernization
proposal; public's concern about class size, technology, academic standards and
discipline drives support for the proposal: voters choose school modernization
overwhelmingly over other federal priorities; Rahm believes issue of school construction
should not be about the problems of the inner city but rather about the opportunities it
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context to garner greatest public support.

Stephen Cohen Memo on Middle East Peace Process forwarded by Rahm -- Rahm
sends you *another* Cohen memo on the Middle East (we understand Sandy gave you one
last week); Cohen says U.S. must express the urgency, danger, and hope welling up in the
people of the region and the expectations they have that their leaders will rise above
tactical considerations to act now; *please see memo for details.*

Tab A
+ cover page 1

Tab B
+ cover page 1

Tab C
+ cover page 1

Tab D - not returned

Tab E -

Tab F
+ cover page 2

Tab G -
+ cover page 2

Tab H -
+ cover page 2

Tab I -
+ cover page 2

Burkhardt
COS

Berger
COS

Emmanuel
COS

Podesta
Triemontano
COS

Yellen
COS

Mathews
Maylock
COS

McCarthy
COS
Burkhardt

George
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THE WHITE HOUSE

WASHINGTON

January 24, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: SEAN MALONEY *SM*

SUBJECT: Recent Information Items

We are forwarding the following recent information items:

- Erskine* (A) **Arthur Levitt Letter on SEC's Efforts to Combat Securities Fraud** -- Erskine forwards a letter from Levitt (apparently prompted by an inquiry you made) on the SEC's efforts to fight fraud in the securities markets; Levitt writes, "the short answer is that, while we can never eliminate all abuses, I believe the SEC is doing everything it can and should do to protect investors;" sets forth his three-prong strategy of enforcement, regulation and prevention; *please see letter for details.*
- Ge* (B) **Berger Memo on Legal Status of Liberian President Taylor** -- you asked Sandy whether we could seek assistance from the Massachusetts Attorney General to resolve an outstanding arrest warrant for Liberian president Charles Taylor stemming from his 1987 escape from a Plymouth, Mass. jail; Sandy responds that it's a matter for the Plymouth County DA and Sheriff; the Mass. AG doesn't have authority to drop the charges; DOJ has advised the State Department that it would intercede with local authorities if doing so were desirable on foreign policy grounds; State is not prepared to have DOJ do so; would be highly unusual and Taylor has mixed record on human rights and democratization; NSC concurs; Sandy notes that, as a head of state, Taylor is entitled to immunity from arrest and other legal process in the U.S.
- OK* (C) **Survey on School Modernization forwarded by Rahm** -- Greenberg Research survey suggests education is a major national priority driven by the quality of public education; there is strong bi-partisan support for a \$30B, 10-year federal school modernization proposal; public's concern about class size, technology, academic standards and discipline drives support for the proposal; voters choose school modernization overwhelmingly over other federal priorities; Rahm believes issue of school construction should not be about the problems of the inner city but rather about the opportunities it provides to improve learning, discipline, and class size; issue must be positioned in larger context to garner greatest public support.
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Mathews/Glickman Follow-Up on Minority Farmers Meeting -- Sylvia forwards, with a detailed cover memo, Sec. Glickman's update and report following your Dec. 17 outreach meeting; Sylvia summarizes White House activities, covering legal and policy issues, legislative affairs and farmers' requests; Glickman describes USDA's efforts on civil rights and small farm issues; says it'll take time to heal wounds; many complaints are old and present statute of limitations issues; resolved about 200 complaints in 1997; restaffed civil rights office to full strength; brought in 10 outside contractors to investigate claims; new associate general counsel for civil rights is putting his office together; mediators will begin meeting 3 times/week starting in February to resolve the pending class action lawsuit discussed in your meeting; *please see memos/report for details.*

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Tab I
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coordinate
reply with
ISA + DPC

Did I write him
on this? I should not
PK

1 - 2 - 48
December 30, 1997

MEMORANDUM TO THE PRESIDENT

THROUGH

JOHN D. PODESTA

FROM

KAREN A. TRAMONTANO

SUBJECT

LABOR DINNER



copied
Podesta
Tramontano
COS

On December 17, 1997 John Podesta and I arranged a working dinner for labor and administration officials. In addition to John Sweeney, who cut short his European trip to attend, we had union leaders representing every industry: Jay Mazur, UNITE; George Becker, Steelworkers; Bob Georgine, Building & Construction Trades; Andy Stern, Service Employees; Doug Dority, Food & Commercial Workers; and Sandy Feldman, Teachers.

In addition to John your administration was represented by Alexis Herman, Bill Daley, Kitty Higgins, Frank Raines and Gene Sperling. The Vice President dropped by at beginning to encourage the dialogue.

The purpose of the dinner was to engage in a dialogue with labor about organizing workers and step away from our usual discussion about lists of issues and promises.

Podesta facilitated the three and one-half dialogue during which we learned about labor's efforts to organize industries and the tremendous challenges workers face just to have the opportunity to be represented by a union. Given that your Council of Economic Advisors has determined that there is at least a 10% premium for workers who are organized, we wanted to know in the face of getting higher wages and benefits why the organized work force has declined in the past twenty years.

As you know, the answer is not a simple one. But, one factor above all others came through in the evening's conversation; when employers oppose a union election, workers generally will not have the opportunity to be represented by the union, *even when they vote for the union.*

In the end we agreed upon several economic principals that will guide our next steps:

1. Ronald Reagan did more to discourage organizing among workers than any other sitting President. As a Democratic Administration that supports organizing, we are committed to investigating the opportunities we may have to support the right of workers to exercise their free choice to vote for a union;

2. Since workers who are organized get paid at least 10% more than non-organized workers, it is in our interest to see whether organizing will result in more workers receiving a greater share in the growing economy;

3. Forty years ago when unions represented 1 out of 3 workers, unions set the wage and benefit rates and workers wages reflected productivity gains. Now, unions represent only 14% of all workers, they are not setting wage and benefit rates and wages do not fully reflect today's productivity gains.

4. Unions serve a number of roles in society, one of which is to redistribute wealth by correcting for an imbalance of power between capital and labor. In redistributing wealth, unions have been an effective tool in taking some members of society from poverty to the working and middle classes.

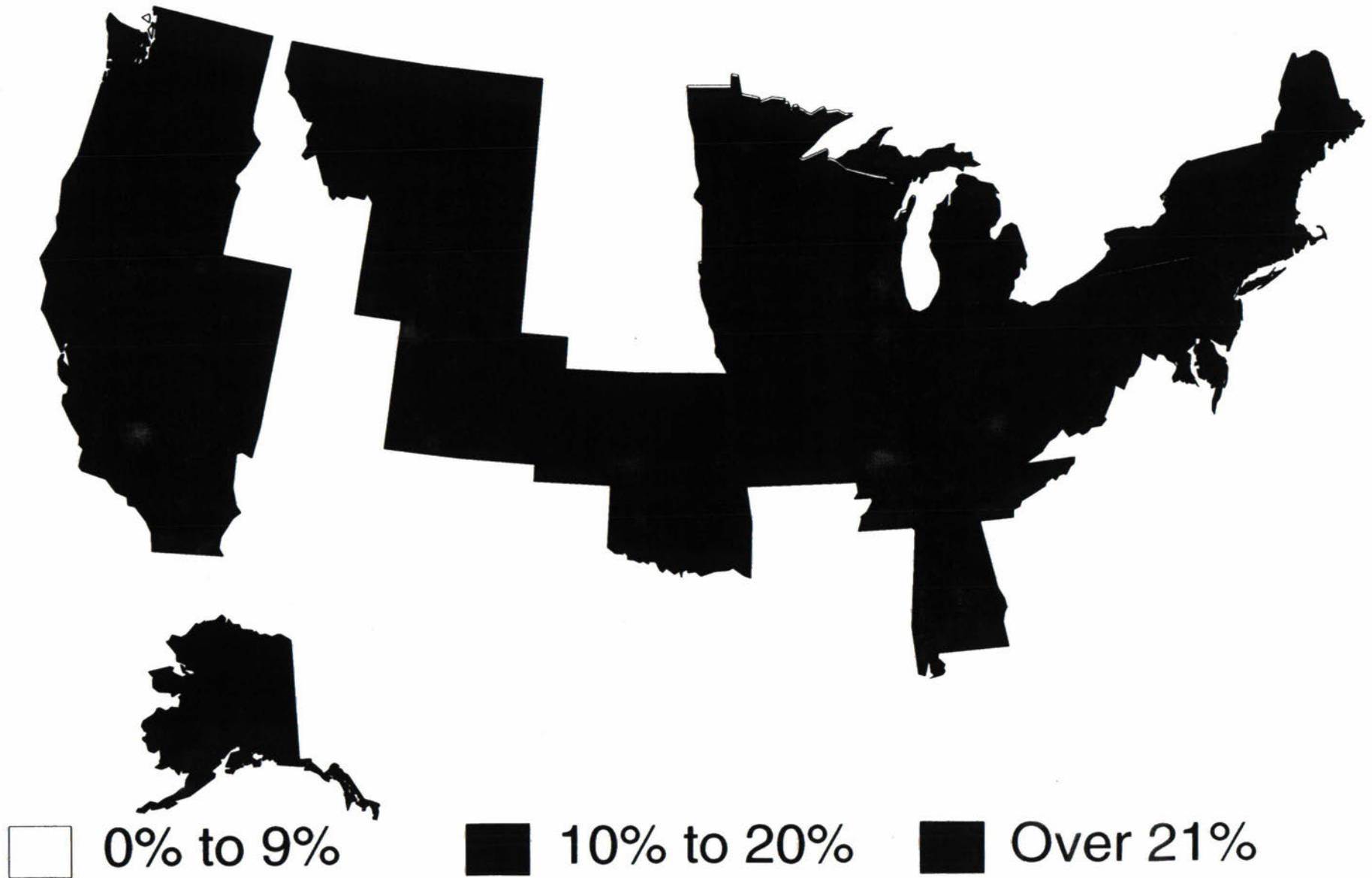
One last thought, the premium for organizing workers is very high, unofficial estimates are as high as \$5,000 per worker. With this high cost, it is difficult for labor to examine proposals that they fear will result in fewer organized workers e.g. climate change and fast track. If the culture for organizing were sufficiently changed such that society valued a workers' free right to chose over employers' efforts to impede that right, it may be far easier to bring labor to the table on issues that impact the future economy.

I have attached some information that was distributed at the meeting for your review.

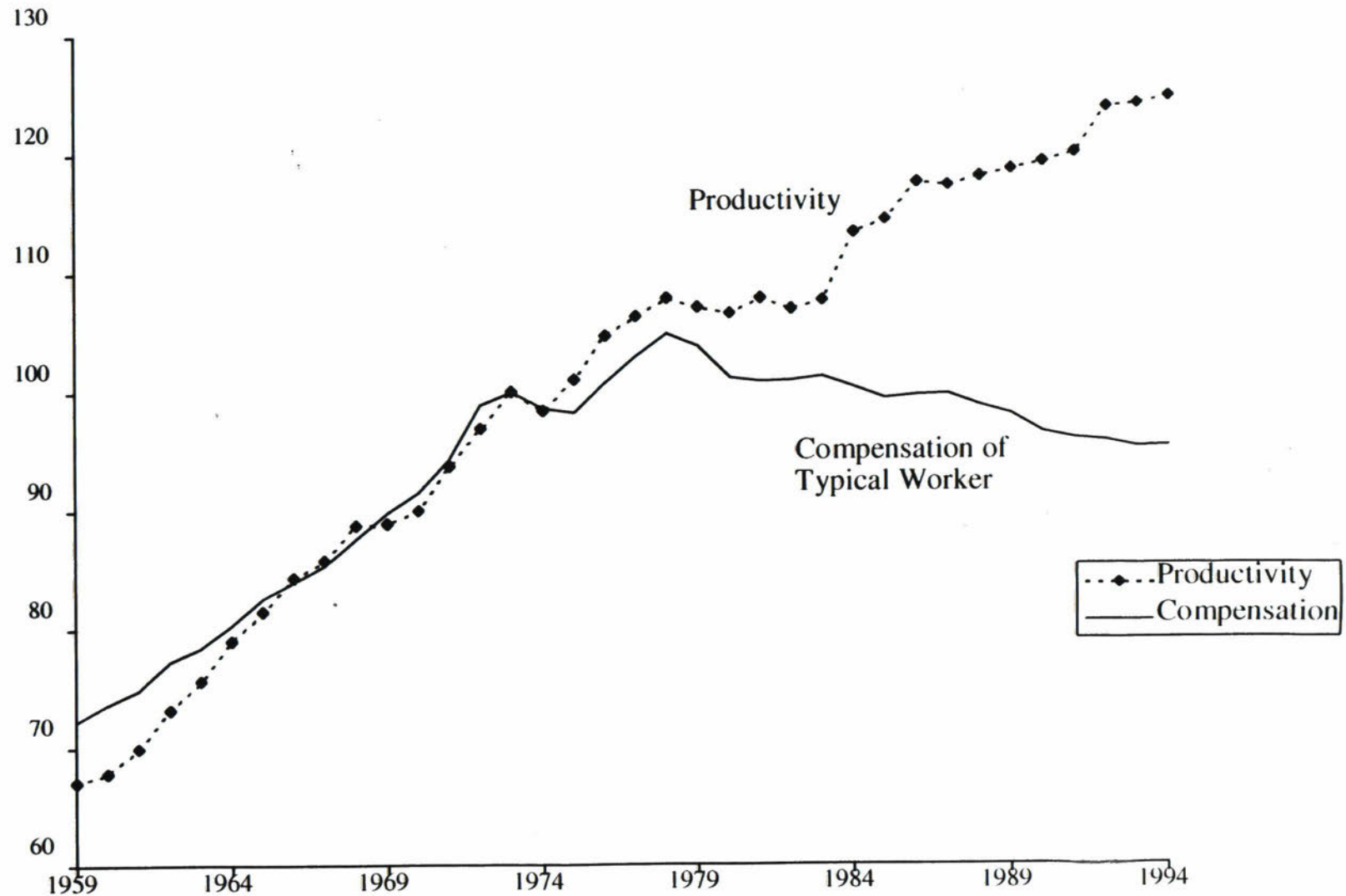
Union Density by State - 1983



Union Density by State - 1996



Declining Density = Declining Bargaining Power



1995

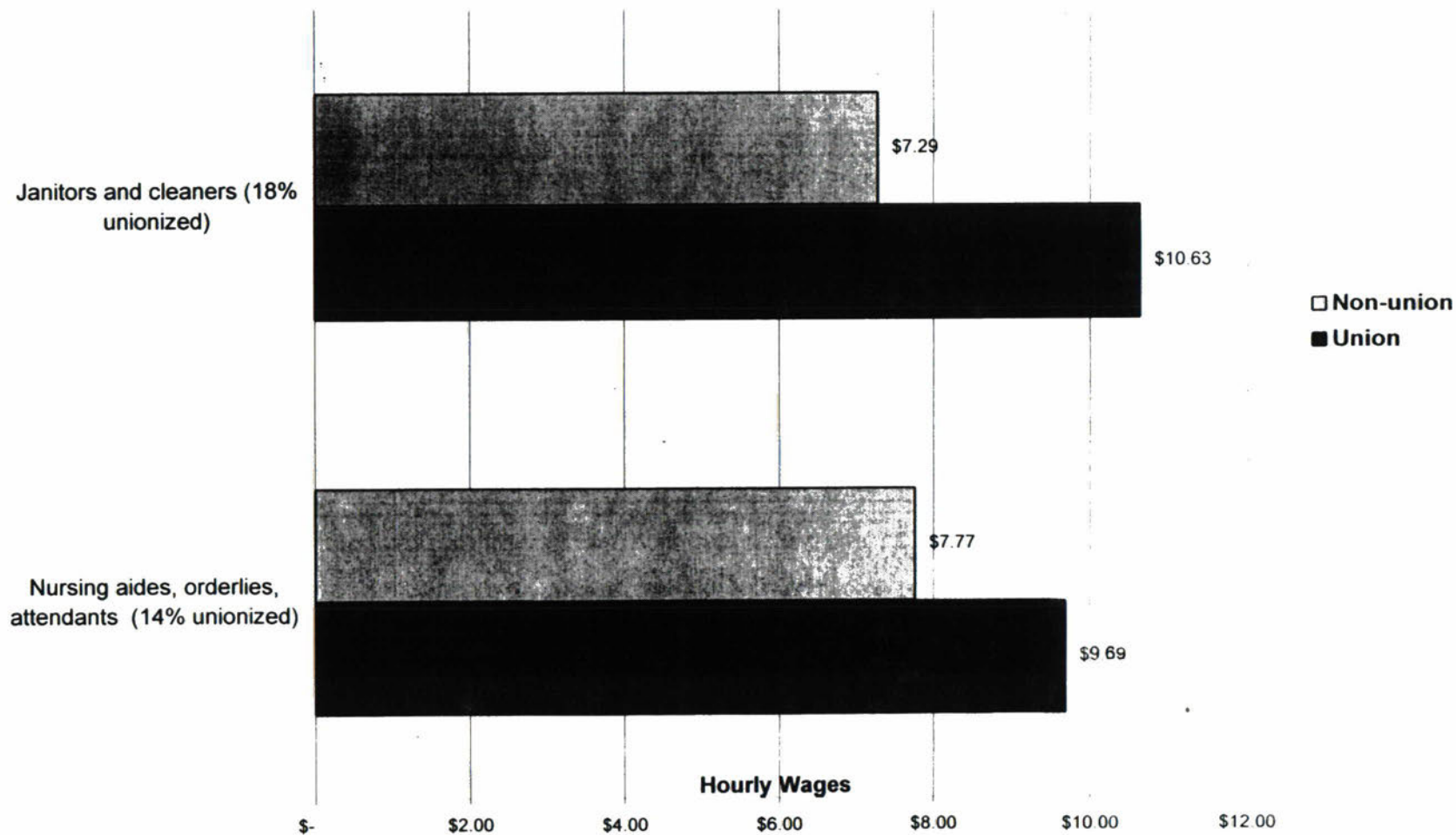
Union Wage and Benefit Premium

(1995 Dollars)

All Workers	Wages	Insurance	Pension	Total
Union	\$16.69	\$2.24	\$1.15	\$22.40
Nonunion	\$13.35	\$0.98	\$0.42	\$16.26
<i>Union Premium</i>				
Dollars	\$3.34	\$1.26	\$0.73	\$6.14
Percent	25.0%	128.6%	173.8%	37.8%

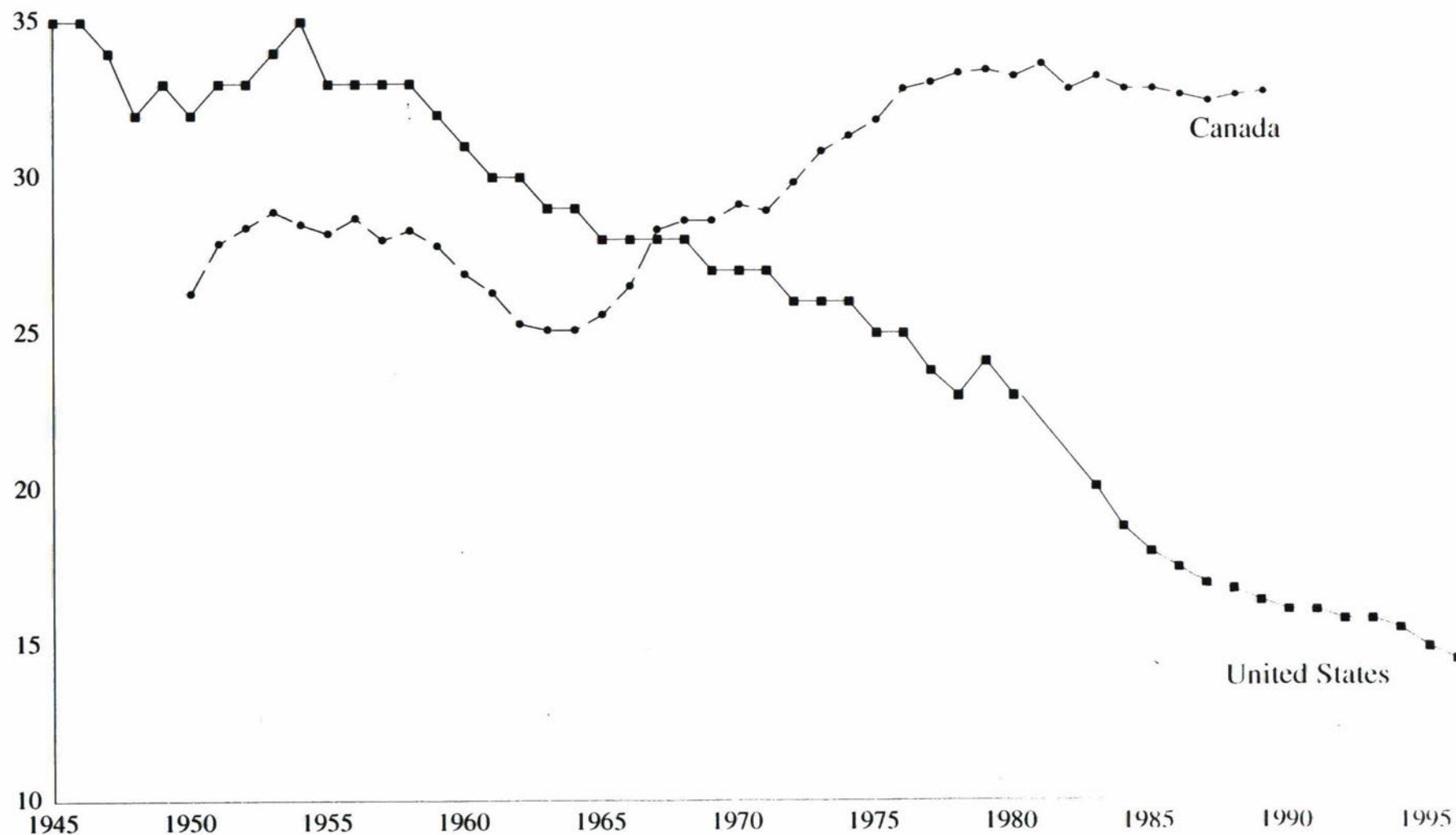
Source: EPI

Wage Premiums for Unionized Nurse Aides and Janitors

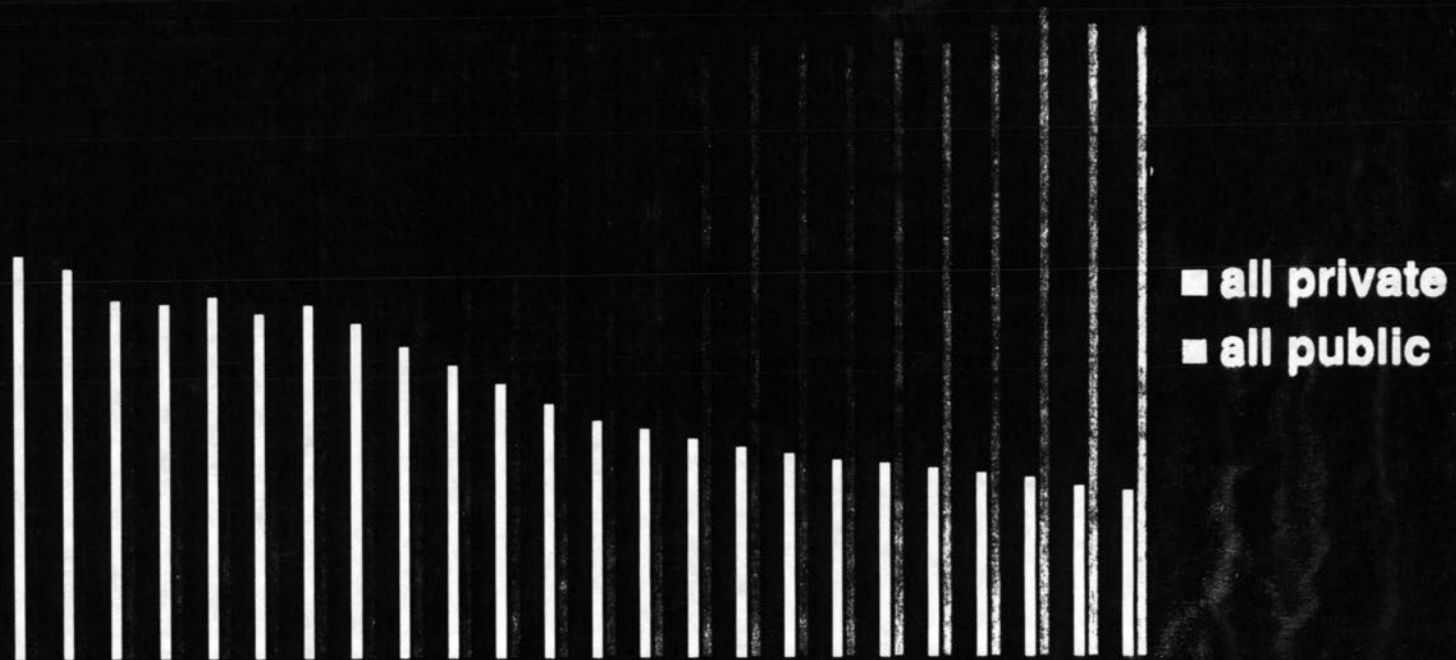


Source: 1997 Current Population Survey. Data compiled in "Union Membership and Earnings Data Book," c. 1997 by the Bureau of National Affairs.

Union Density (Membership as % of Employment) **U.S. (1945-1996) vs. Canada (1950-1989)**



Source: 1945-76 data from BLS Handbook of Labor Statistics, Dec. 1980; 1977-1996 data from CPS May 1970-1980; Annual Averages, 1983-1996. Note: 1945-76 and 1977-96 data are not comparable due to differences in data collection. 1945-76 data self-reported to DOL by unions. 1977-96 data from CPS. 1981 and 1982 figures not available because CPS data was not compiled. Canadian data from Jelle Visser, gross density series (1992a), Amsterdam School for Social Science Research



Source: BNA

Our Impact

Close Race - OH-06

	<u>1994</u>	<u>1996</u>
Cremeans (R)	91,263	111,907
Strickland (D)	<u>87,861</u>	<u>118,003</u>
Margin:	-3,402	+6,096

Union Members Make a Difference

Union Membership	50,974	50,974
Registered	32,114	32,930
Turnout	18,626 (58%)	23,051 (70%)
Dem Vote	11,364 (61%)	15,675 (68%)
Rep Vote	7,264 (39%)	7,376 (32%)
Union Margin:	<u>4,097</u>	<u>8,299</u>

AFL-CIO

Republicans Take 10 Percent of the Vote in 1996 If Union Members Vote

		Who By	Would Have Lost By
PA	Reagan	8.5	-3.567
WA	Strom	8.87	-4.090
IL	Strom	12.38	-5.686
KY	Norman	12.00	-4.037
OR	Johnson	1.68	-2.040
WA	Vander	2.02	-3.133
PA	English	2.87	-2.568
VI	Adenholz	3.491	-2.61
IN	Hostettler	3.659	-4.027
WI	Neumann	4.260	-2.343
IL	Weller	7.508	-7.53

Source: AFL-CIO

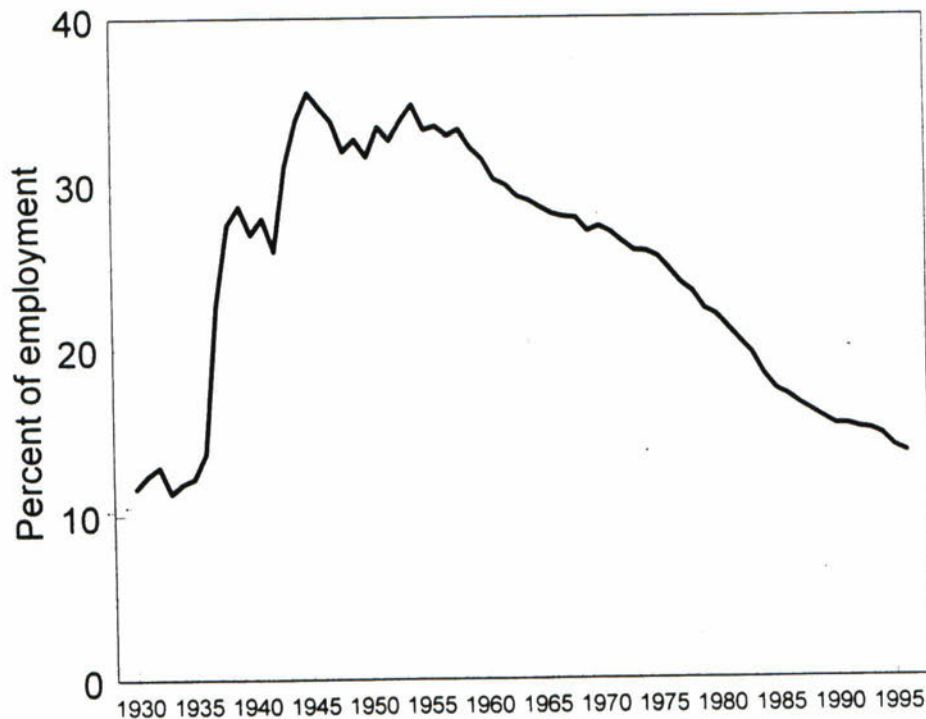
WEEKLY ECONOMIC BRIEFING OF THE PRESIDENT OF THE UNITED STATES

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

February 14, 1997

CHART OF THE WEEK

Long-Term Trends in Union Membership

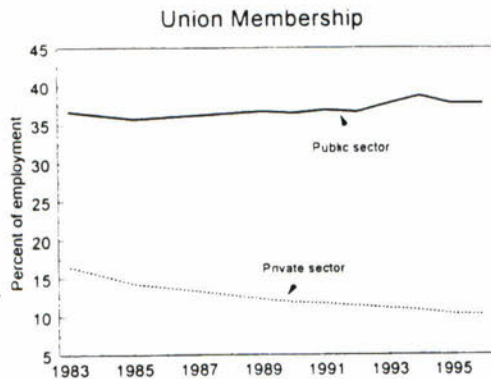


Unions represented about a third of all employed workers in the decade following World War II, but they represent only about 14 percent today. Through the 1960s and 1970s, union membership continued to grow, but more slowly than employment. More recently, membership has been falling. In 1996, 16.3 million workers were union members, down from a peak of 20.2 million in 1978. Reasons for the decline include increasing employment in less-unionized sectors (services), regions (the South), and demographic groups (women), as well as intensified management opposition to unions (see *Weekly Economic Briefing*, September 12, 1994).

CURRENT DEVELOPMENT

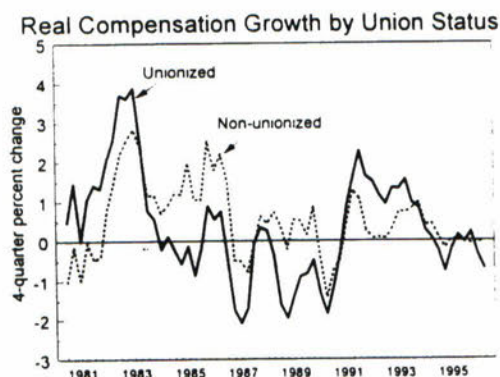
Trends in Union Membership and Earnings

At least three aspects of trends in union membership and earnings are noteworthy.



Membership trends. The overall decline in membership has been concentrated in the private sector (see upper chart). While the share of private sector workers who are union members fell from 16.5 percent in 1983 to 10.2 percent in 1996, the share of public sector workers has remained roughly constant at about 37 percent.

Compensation trends. Compensation has often changed at different rates in the unionized and non-unionized sectors of the economy (see lower chart). During much of the 1980s, for example, compensation grew more slowly in the unionized sector than in the rest of the economy, and more slowly than inflation. More recently, the trends have been similar in both sectors.



Wage premium. Weekly earnings for the typical unionized worker were about a third higher than those of the typical non-unionized worker in 1996. Part of this difference reflects the fact that unionized workers tend to be concentrated in higher paying jobs (in larger firms, urban areas, and manufacturing and public utilities industries). Unionized firms faced with higher wages may also have the ability to

screen for and select workers with better-than-average skills and training from the queue of workers seeking union-wage jobs. Nevertheless, econometric studies that try to control for these other factors suggest that working in a unionized firm raises a worker's earnings by 10 to 15 percent. In short, being in a union matters, even after taking other factors into account.

(E)

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Did I write him
on this? I
should not,
PK



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

1-2-98
198 JAN 20 12:33

THE CHAIRMAN

January 21, 1998

copied
Yellen
COS

See PS
RZ

MEMORANDUM FOR THE PRESIDENT

FROM: JANET L. YELLEN *Janet L. Yellen*
SUBJECT: BLS Methodological Improvements

As shown in the attached table, the BLS has made methodological improvements that we estimate to have lowered the annual increase in the CPI by 0.28 percentage point since 1995. More improvements are in train through 1999, and we estimate that these will lower the CPI by a further 0.41 percentage point. In sum, BLS actions since 1995 have or are expected to lower the increase in the CPI by 0.69 percentage point by 1999. Of this total, 0.36 percentage point had been anticipated by the Boskin Commission and by those responsible for the long-run Social Security projection. The Boskin Commission would probably lower their estimate of the CPI bias by 0.33 percentage point. Similarly the Social Security projection of the CPI might also be lowered by this same 0.33 percentage point--give or take a bit reflecting disagreement on how to score these effects.

The BLS has requested further budget authority to fund programs that would increase the agency's ability to measure substitution and quality changes, as detailed on the last page of the table. The upper-level substitution effects (about 0.15 percentage point per year) would be incorporated in a separate annual index. (The BLS already produces measures of upper-level substitution bias; these new programs would produce a more accurate estimate.) However, new legislation would be required for this--or the existing-- index to be used in the Social Security indexation formula.

Attachment

How many yr.
would this add to
the life of the fund?
What will this do to
projected budget
numbers?

Table 1: Recent and Prospective Methodological Changes to the CPI

Change	Date	Effect on CPI	Reduces Boskin est.	Reduces SS proj.	Description
Generic prescription drugs	1/95	-.01	yes	yes	Generic drugs had been considered different drugs than the proprietary brands that they replaced. With this change, generic drugs are now considered perfect substitutes.
Food-at-home seasoning	1/95	-.04	no	no	Fixed the so-called “formula bias” in the food category where it caused the most problems. Already accounted for in Boskin & SS estimates.
Owners’ equivalent rent formula	1/95	-.10	no	no	The BLS follows the rent of renters who live in neighborhoods that are primarily occupied by homeowners. After it was discovered that the old formula for aggregating these rents was biased upwards, the aggregation formula was revised to eliminate this bias. Already accounted for in Boskin & SS estimates.
Rent composite estimator	1/95	+.03	no	no	Rents had been measured at both 1- and 6-month intervals, and both changes were used in estimating the CPI. But after it was discovered that the 1-month changes were biased towards showing no change, only the 6-month changes were used. Already accounted for in Boskin & SS estimates.
General Seasoning	6/96	-.10	no	no	Fixed the so-called “Formula bias” in the non-food categories. Estimated to have lowered the CPI by 0.1 percentage point. Already accounted for in Boskin & SS estimates.

Change	Date	Effect on CPI	Effect on Boskin est.	Reduces SS proj.	Description
Hospital Services Index	1/97	-.06	yes	yes	In contrast to previous procedures which measured the list price of medical inputs (such as an hour of physician's time), the BLS changed to a system of measuring transaction prices on patients bills. Because transaction prices have not been increasing as fast as list prices, we estimate that this aspect of the new procedures will lower the increase of the CPI by 0.06 percentage point per year. However, even larger effects are possible if the items on billing records turn out to be outputs rather than inputs--thereby allowing productivity growth to reduce medical price inflation. In addition, the BLS has now grouped inpatient and outpatient surgery into the same category. At present, the agency is aggregating these with fixed weights, but if the agency ever decides that (much cheaper) outpatient surgery is a substitute for inpatient surgery, the effect on hospital inflation would be raised considerably.
Personal computer hedonics	1/98	-.06	yes	yes	The BLS will switch to measuring computer prices by the price of intrinsic characteristics (like speed and memory) rather than by following price declines among selected models.
Updated market basket	1/98	-.15	no	no	Update the market basket from 1982-84 to 1993-95. Already accounted for in Boskin & SS estimates.

Change	Date	Effect on CPI	Reduces Boskin est.	Reduces SS proj.	Description
Geometric means	1/99	-.15	yes	yes	BLS will announce in February 1998 which of the 214 categories (such as apples, or "prescription drugs") will be aggregated using the current system of arithmetic weighting (which assumes the consumer always buys, say, 3 Delicious and 2 Macintosh apples) or geometric weighting (which assumes that the consumer buys more Delicious apples when they become cheaper). Geometric aggregation is clearly appropriate for apples, but probably not for prescription drugs. If geometric aggregation were to be used for every category, it would lower the CPI by 0.25 percentage point per year, but the BLS is likely to consider it appropriate for only about half the categories.
Rotation by item	1/99	-.05	yes	yes	The "Point-of-purchase survey" (POPS) selects which within-category items (such as which apple variety) consumers purchase and where they buy them. Currently, the (POPS) is done once every five years on a regional basis--so that one-fifth of the regions are updated every year. The BLS will switch to national updating by item--a change that will allow more frequent item selection in the categories with the most new-product introductions, such as consumer electronics.
Total of past & announced		-.69	-.33	-.33	

Change	Date	Effect on CPI	Reduces Boskin est.	Reduces SS proj.	Description
Proposed:					
Data collection for hedonics	1/99	?	?	?	Would fund the collection of data to support hedonic quality adjustment.
Consumer expenditure survey expansion	1/00	?	?	?	Would increase the sample size for the Consumer Expenditure Survey, Although not strictly required, this would facilitate 1) a shorter lag for incorporating new market baskets, and 2) superlative indexes.
Accelerated update system	1/01	?	?	?	Would reduce the lag in incorporating new market baskets. (For example the 1993-95 basket is not being implemented until 1998. With a larger CE sample, only a 2-year CE sample would be required this shortening the lag required for a new market basket.
Superlative Indexes	1/02	-.15	see comment	see comment	BLS would issue a second superlative index in October for the annual average of the previous year. Would not lower the published CPI, but, with new legislation, could be incorporated into government programs.

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1-23-98

THE WHITE HOUSE
WASHINGTON

January 23, 1998

MEMORANDUM FOR THE PRESIDENT

THROUGH: SYLVIA MATHEWS *SM*

FROM: ANDREW MAYOCK *AM*

SUBJECT: Small Farmers

②
Can't let Secretary
know status of
in favor of
farmers.
BC

On December 17, 1997, you met with a group of small farmers and congressional members. This memo provides an update on the follow-up items to your meeting. Also, attached is a letter and a report from Secretary Glickman on follow up steps taken by the United States Department of Agriculture (USDA).

LEGAL ISSUES

Chuck Ruff and Dawn Chirwa have had regular meetings with USDA and the Department of Justice (DOJ) to coordinate efforts to resolve discrimination complaints filed by African-American farmers. Ruff and Chirwa focused particular attention on resolving the outstanding legal issues involved with the Eddie Ross administrative settlement. The following paragraphs provide details on the status of the complaints:

DOJ/USDA Coordination. Ruff and Chirwa are working with Justice and USDA to set up a high-level, DOJ-USDA working group to coordinate discrimination issues at USDA. The group will include the DOJ Civil Rights Division, which has not been involved in the matter to this point. USDA will continue to investigate cases and work on negotiating settlements in appropriate cases. Last week, David Harris, the new USDA Associate General Counsel for Civil Rights, started work. This addition should help intensify efforts within USDA's General Counsel's office.

Congressional Black Caucus. On January 13, Chuck Ruff and Dawn Chirwa met with Representatives Clayton and Thompson and other CBC members' staff to: 1) reinforce your commitment to making the issues of small farmers a priority, particularly the egregious cases of discrimination against African-American farmers; 2) update them on the status of African-American farmers' cases; and 3) brief them on White House Counsel's efforts regarding these cases. The meeting was constructive, and Representatives Clayton and Thompson appeared pleased with our efforts in this area.

Ross Case. A final resolution has not been reached with regard to the legal issues of the Ross' case. Ross is an African-American farmer with whom USDA had reached a settlement after determining that he was the victim of discrimination. However, his settlement was held by DOJ, pending resolution of statute of limitations issues. Over the past few weeks, DOJ has been working to determine whether the facts in Ross' case demonstrate that an equitable remedy is available. DOJ believes that they will reach a final resolution shortly, hopefully this week.

Mediation. To date, Justice has agreed to enter into mediation with the farmers who have filed a class action lawsuit. The first mediation hearings will be held on February 4 and will involve 12 individual cases for which the statute of limitations has not tolled. DOJ intends to mediate these cases without statute of limitations problems first. Next, they will work with the plaintiffs with statute of limitations issues. Additionally, the mediation order allows farmers who are part of the putative class to choose to have their claims processed through the USDA administrative process, if they so desire.

Antitrust. During your meeting with the small farmers, you discussed antitrust issues. Following the meeting, White House Counsel contacted DOJ to inquire about farming antitrust issues. DOJ provided information on a number of antitrust actions the agency has taken in aid of small farmers and rural America. These actions include: 1) enforcement action against individuals attempting to suppress prices paid to farmers; 2) enforcement action against a proposed dairy cooperative merger; and 3) the establishment of a Meat Monitoring Group in response to concerns over undue concentration in the livestock and meatpacking industries. In fact, the Meat Monitoring Group efforts led to a criminal indictment in one case. Ruff and Chirwa are working with Justice to determine other actions which can be taken in this area.

POLICY

Working Group on Farm Policy. The Domestic Policy Council (DPC) has established a working group to research and promote high-profile issues of interest to farmers. DPC's Tom Freedman is coordinating the working group, which includes representatives from USDA (Carl Whillock), the Treasury Department and the following White House offices: National Economic Council, Council of Economic Advisers and Public Liaison. The first meeting of the group focused on significant rural issues that are suitable for Presidential announcement, including: 1) IRA-style accounts for family farmers to guard against losses; and 2) whole farm insurance, which is insurance that covers not just a crop, but an entire farm's revenue.

LEGISLATIVE AFFAIRS

Legislative Plan. Legislative Affairs is working with USDA to prepare a plan that will address the program and budget issues raised during your meeting. The draft legislation includes the following provisions: 1) provide farmers with increased access to credit; 2) modernize the Farm Service Agency by federalizing county workers; 3) address the repeal of harsh restrictions in the Freedom to Farm Bill; and 4) increase budget allocations for loans and loan guarantees. Legislative Affairs is working with Representative Clayton, Senator Robb and other Members to ensure that this legislation receives serious consideration during this session.

Legislative Correspondence. At your meeting, Senator Robb submitted a tobacco farmer proposal to you. On January 12, 1998, a response was sent from you to Senator Robb. Representative McKinney sent you a letter regarding the discrimination complaints. On January 16, 1998, a letter was sent from Ruff to Representative McKinney.

FARMER'S REQUESTS

At your meeting a number of farmers personally brought letters for you. Barbara Woolley of the Office of Public Liaison coordinated the follow-up actions on these items.

Meetings With Tobacco Farmers. Ralph Paige requested to meet with you on tobacco issues. Bruce Reed and/or Elena Kagan will hold meetings with Paige and other tobacco farm representatives to explain the Administration's position on tobacco and discuss ways to meet the needs of tobacco farmers. Karen Armstrong-Cummins requested that you participate in a "Tobacco Summit" in Kentucky. Secretary Glickman will travel to Kentucky to meet with Armstrong-Cummins and other tobacco representatives. (Armstrong-Cummins will also be part of the upcoming DPC meeting on tobacco issues.)

1898 Centennial Foundation. Bolton Anthony and Bertha Todd requested that you attend opening ceremonies for a community-wide race dialogue sponsored by 1898 Centennial Foundation in Wilmington, North Carolina. You were unable to attend the event. On January 17, 1998, a Presidential message was sent to the 1898 Centennial Foundation to be read at the ceremonies.

Business Plan for Native American Bank. At your meeting, Bob Miller submitted a business plan for a bank owned by Native Americans. A thank you note was sent from you to Miller, and USDA will follow up with Miller on the business plan idea.

Hmong Farmers. Toulou Thao submitted a proposal for additional funding for a finance project administered by the Hmong American Community. A thank you note is being sent from you to Thao. The plan was forwarded to Carl Whillock and is being evaluated by USDA. Furthermore, in Fresno, California, USDA has hired a temporary county office employee who is fluent in Hmong to help the Farm Services Agency communicate with Hmong farmers in the region. Thao farms in the Fresno area.

Dairy Operation Notebook. Doug Henderson submitted a notebook on his dairy operation. A thank you note from you is being sent to Henderson.

Small Farms Commission. Harold Volkmer submitted draft excerpts from the report of the Small Farms Commission. A thank you note is being sent to Volkmer. The final report was issued on January 22, 1998.

Gary Cornelius. You received a letter, t-shirts and gourmet okra from Gary Cornelius. A thank you letter is being sent to Cornelius from you.

THE SECRETARY OF AGRICULTURE
WASHINGTON, D. C. 20250-0100

January 16, 1998

MEMORANDUM FOR THE PRESIDENT

From: Secretary Dan Glickman



Subject: December 17, 1997 Meeting with Small and Minority Farmers

Following up on the December 17, 1997 meeting you had with small and minority farmers, we prepared the attached report describing the wide range of Departmental actions on civil rights and small and socially disadvantaged farm issues that we are pursuing. I also want to take this opportunity to share my perspectives on the meeting and the issues that were raised.

It will take time to heal fully the wounds caused from the Department's historic failure to address its civil rights problems. I am determined that righting that record will be one of my legacies and I have devoted, and continue to devote, an enormous amount of my personal time to this effort.

Many of the new complaints we have received this year are in fact complaints based on alleged USDA discrimination years ago. Civil Rights Commission Chairwoman Mary Frances Berry told me this would happen when I met with her last year about these issues. Now that we have confronted the past, and rebuilt a system that was dismantled in the 1980's to handle these complaints and are working our way through the backlog, people are coming forward and have faith that USDA will treat them fairly.

But there may be obvious legal barriers to our ability to resolve every complaint. The most vocal complaint raised in the meeting was from a gentleman who believes he was discriminated against in the early 1980's. Yet the sad, and difficult, fact is that we may not have the legal ability, even in court, to compensate him if we caused him harm. We are working with the Department of Justice and White House Counsel on problems raised by the statute of limitations and I am working on legislation that would waive the statute to enable me to settle these complaints.

Nonetheless in 1997, we resolved about 200 program complaints. Of those, about 60% were either withdrawn by the complainant or were dismissed because we did not find enough evidence to substantiate a finding of discrimination. We were able to do so because our Office of Civil Rights has restaffed itself to full strength and brought in 10 outside contractors to investigate claims. We have a new associate general counsel for civil rights and he is putting his office together. I am confident that over the next several months, we will begin to show real progress towards working down the remaining backlog.

Meanwhile, we have begun mediating the pending class action discrimination lawsuit, which was discussed during our meeting. Judicial proceedings have been stayed for 6 months, and mediation sessions, under the supervision of an independent, court-appointed mediator, will be conducted 3 days each week beginning in February.

Notwithstanding the progress we have made and are making, the Department will continue to be criticized until people see that we have cleaned up the messes from the past and have institutionalized a civil rights system with teeth and integrity. That's going to take some time. It is simply not possible to fix in one year the problems that have occurred over decades. But I am firmly committed to getting the job done.

During the meeting, I was struck by how the discussion of the needs of small farmers resonated with every farmer in the room. Discrimination obviously adds a deeper difficulty for small minority farmers, but everyone seemed to agree about the needs of small farmers on the issues we discussed.

Fixing the credit provisions of the Farm Bill is essential. During the farm crisis of the 1980's, Congress encouraged farmers to take write-offs and other forms of debt relief to help them stay on their farms. Then it turned around in the 1996 Farm Bill and made everyone who ever had a write-off of USDA debt ineligible for any new loans. That is more onerous than bankruptcy law, since it is a lifetime ban. As lender of last resort, USDA only provides loans to people who cannot get credit anywhere else. So we have thousands of farmers, many of them small and socially disadvantaged, who lack access to any credit as a result of this provision.

I strongly support repeal of this provision and have gone on record several times, including in testimony before Congress, asking that Congress overturn this part of the Farm Bill.

We also need to ensure that USDA engages in aggressive outreach and technical assistance efforts to ensure that small and socially disadvantaged farmers have access to our credit programs. That is why I believe it is so important that we have established an Office of Outreach in USDA and will be seeking full funding for our outreach program, which will be included in your FY99 budget.

But credit and outreach alone are not enough. Small and socially disadvantaged farmers may have a variety of other needs that must be addressed for them to be successful, ranging from conservation assistance, risk management, to business planning for a farmers market or farmer owned cooperative or market development for new crops or products.

The fundamental challenge, then, is to do better outreach not just on credit, but to deliver an integrated package of information and assistance to help small and socially disadvantaged farmers not only survive, but expand. A bureaucratic, stove-pipe approach will not work. We need to develop a seamless web of assistance.

The National Commission on Small Farms is presenting its report to me on January 22, 1998. I am going to appoint Deputy Secretary Rominger to head up an interagency action team that will develop an integrated Departmental response to the report. I will keep you posted on our progress.

I have been actively engaged in addressing the concentration issue, particularly in meatpacking, and we have taken a number of actions both on the enforcement front and in terms of providing producers with better market information to try and level the playing field.

Four firms control about 80 percent of the market, but the most comprehensive studies do not find a significant adverse effect on prices or competition. We've also been supportive of efforts to establish marketing alliances and farmer-owned beef cooperatives, and I suspect there will be growing interest in this area. Senator Daschle is very interested in this issue, which is likely to heat up again if beef prices remain low.

There's no easy answer to the dairy issue. Congress gave other producers payments as an incentive for the transition to a market-oriented farm policy, but left dairy producers out in the cold. Congress also told us in the Farm Bill to reform the milk marketing order system, but took away virtually all of the other traditional tools we had in the past to support dairy prices.

Next Friday, January 23, 1998, we are going to propose a transition to a more market-oriented and consolidated milk marketing order system as well as a mechanism to provide producers with extra income as we make this transition. We will get tremendous criticism from many areas of the country, but we will be criticized no matter what we do. I expect Members of Congress and Senators, and others, will pressure the White House to weigh in as we go through this process.

On the tobacco front, we are going to continue working with Congress in an attempt to ensure that the interests of tobacco farmers are adequately addressed by the tobacco settlement. It's a tricky issue, since farmers get a much greater return per acre from tobacco than from any other crop, most tobacco farmers are small, and many of them are African-American.

Your FY99 budget request includes a strong package of assistance in response to the concerns that have been raised about civil rights and small farmers and that were included in the Department's February, 1997 Civil Rights Action Team report. The Administration's 1998 supplemental budget request also contains critical funding for our civil rights program. We are going to push hard to see that Congress meets our needs on these issues.

We are working on legislation to address many of the civil rights concerns. Rep. Larry Combest, who is chairman of the subcommittee with jurisdiction, is interested in fixing the credit problem, but Chairman Lugar is likely to be reluctant about changing the Farm Bill. We will also continue to work closely with Rep. Clayton and the entire Congressional Black Caucus on these issues.

I will continue to keep you posted on our efforts.

U. S. DEPARTMENT OF AGRICULTURE
INITIATIVES TO SERVE SMALL
AND MINORITY FARMERS

JANUARY 19, 1998

EXECUTIVE SUMMARY

This report is a snapshot of U.S. Department of Agriculture (USDA) efforts to improve services to traditionally under-served and under-represented groups -- small and minority farmers and ranchers.

In December 1996, Secretary Glickman appointed the USDA Civil Rights Action Team (CRAT) to examine civil rights at USDA. In February 1997, CRAT released its report, and as of today eighty-five of the report's 92 recommendations have been or are being implemented.

One of the CRAT's recommendations was forming commission to develop a national policy on small farms and in July 1997, the Secretary appointed a 30-member National Commission on Small Farms, chaired by former Congressman Harold Volkmer. The Commission will release its findings and recommendations on January 22, 1998.

This report addresses the many initiatives underway to provide information and access for the Nation's small and minority farmers to USDA programs and to sustain an environment which treats all employees and customers with dignity and respect.

I. Civil Rights Action Team Initiatives: The civil rights action team initiatives have resulted in a tough new civil rights policy, a reorganized Office of Civil Rights, civil rights performance reviews for administrators, creation of an Office of Outreach, hiring an Associate General Counsel for Civil Rights, halting foreclosures of USDA farm loans pending a civil rights review, improving the Census of Agriculture to count accurately Native American farmers, and increased minority representation on Farm Service Agency (FSA) state committees.

II. CRAT Funding and Legislation: The Administration will propose a supplemental appropriation for fiscal year 1998 to support civil rights work in USDA's Office of Departmental Administration and the Office of the General Counsel. The President's FY 1999 budget request contains \$252.1 million to fund civil rights initiatives. USDA is working on legislation which would authorize additional civil rights initiatives.

III. Small Farms Commission: The Secretary appointed a National Commission on Small Farms in July 1997. The Commission will be releasing its report on January 22, 1998. Deputy Secretary Rominger will lead an interagency team to use the Commission's recommendations to develop a comprehensive strategy to assist small farmers.

IV. Agriculture Credit: The President's Fiscal Year 1999 budget will support the maximum authorized levels Farm Ownership Loans and Farm Operating Loans; FSA has issued regulations to streamline farm loan forms and procedures; and USDA supports legislation to change provisions of the 1996 Farm Bill which bar farmers from receiving additional credit from

USDA if their previous loans were written down -- a provision that severely limits access to credit for small and minority farmers.

V. Market Access and Concentration: To ensure small farmers have the tools they need to compete, USDA is taking or has already taken several actions. Secretary Glickman established an Advisory Committee on Agricultural Concentration in 1996, and many of its recommendations have been implemented. The Grain Inspection, Packers and Stockyards Administration is being reorganized; USDA is using its rural development funds to foster cooperative development; USDA has proposed legislation to ensure that small farmers are treated fairly in the marketplace; USDA has stepped up monitoring of meat packing trade practices; farmers markets are being sponsored; and USDA is creating opportunities for small farmers to increase sales to agencies that sell and distribute commodities.

VI. Information and Outreach: USDA established an Office of Outreach to lead Department-wide outreach efforts; farmers are being educated about new market strategies, and agencies are developing plans to reach the under-served.

VII. Dairy: To assist dairy farmers, USDA has expanded dairy exports and purchases for nutrition programs. As part federal milk marketing order reform, USDA will propose a temporary floor on milk prices to protect small dairy farmers from further price declines; and USDA will be implementing a pilot project which will allow farmers to lock-in minimum prices for their milk.

VIII. Tobacco: Small and minority farmers would suffer severe economic dislocation if the current tobacco price support is eliminated. As part of the debate over a national tobacco settlement, Congress is studying several bills to provide assistance to tobacco farmers and communities dependent on tobacco production. The Administration has stated that it will work with Congress in an attempt to ensure that the needs of tobacco farmers are addressed adequately.

U.S. Department of Agriculture

Initiatives to Serve Small and Minority Farmers

The U.S. Department of Agriculture (USDA) has a comprehensive plan for helping small and minority farmers and improving the civil rights climate at the Department, based in large part on Civil Rights at the United States Department of Agriculture -- A Report by the Civil Rights Action Team (CRAT) released February 28, 1997.

The CRAT Report provided an ambitious blueprint for USDA to follow in addressing civil rights issues in the areas of organizational structure, management commitment, program delivery and outreach, and workforce diversity and employment practices. For the past year, a comprehensive USDA-wide effort has made significant progress and 85 of the 92 recommendations contained in the CRAT report have been or are being implemented; significant progress has been made, but there is still more work to be accomplished.

I. CRAT INITIATIVES TO INSTITUTIONALIZE CHANGES

- USDA has reorganized and strengthened the Office of Civil Rights. This has included developing and implementing a plan to investigate and adjudicate the backlog of cases, hiring qualified staff, tracking complaints, monitoring accountability and compliance, and streamlining the program and employment discrimination complaints process.
- New legal resources have been devoted to civil rights with the establishment of an Associate General Counsel for Civil Rights. That position was filled in January 1998; however, funding under a supplemental appropriations request is needed for this office to be staffed fully.
- Since January 1997, USDA resolved 201 of the 1,088 backlog program discrimination complaints, including some cases which dated back to the mid-1980's, for total settlements over \$3 million. There have been 11 major financial settlements. Of the pending complaints, a little more than one-half allege discrimination based on race; the rest involve other factors such as age, gender, or national origin. Of the race-based complaints pertaining to all USDA programs, African Americans represent about 60% and about 12% of the cases involving USDA's farm credit programs
- A class action lawsuit was filed against USDA in August of 1997, alleging discriminatory practices against all black farmers between January 1, 1983 and February 21, 1997. The suit now includes about 201 named plaintiffs in about 20 states. On December 19, all parties agreed to a six-month mediation process to try to settle the complaints.

- In the Eddie Ross discrimination complaint, another high profile case, USDA reached a settlement with Mr. Ross, which is currently under review by the Department of Justice.
- The Secretary established a new Office of Outreach in August 1997. This new office will coordinate program delivery and outreach efforts throughout USDA, focusing on reaching small and socially disadvantaged farmers. USDA will appoint outreach liaison positions in each agency and outreach councils will be appointed at the National and state levels. The President's 1999 budget will request full funding of \$10 million for the Small Farmer Outreach Training and Technical Assistance Program, the Section 2501 program.
- In April 1997, USDA halted all foreclosures of all USDA farm loan pending a review of each case. An independent review team reviewed 3,148 of the 4,500 pending foreclosures. Actions were halted on 116 cases, pending investigations of possible civil rights violations. USDA has now directed each state to appoint a diverse Civil Rights Independent Review group, representative of the state's population, to review each case and future cases to determine if discrimination or inequitable treatment contributed to the failure of each farming operation.
- Effective October 1, 1998, all agency administrators will be rated on their civil rights accomplishments by the Assistant Secretary of Administration, a process which will evaluate the extent to which administrators are meeting USDA's civil rights goals and objectives contained in a civil rights implementation plan developed for each agency head or staff office director.
- USDA's Civil Rights Policy requires all employees to treat co-workers and customers fairly and equitably, with dignity and respect. There are no exceptions and no excuses.
- USDA's Risk Management Agency (RMA), Natural Resources Conservation Service (NRCS) and Farm Service Agency (FSA), have established outreach offices. RMA has entered into cooperative agreements with minority community-based organizations to provide outreach activities to under-represented groups that are not normally reached by traditional methods. The Forest Service has developed a Memorandum of Understanding (MOU) with the National Association of Black Farmers and the USDA Coalition of Minority Employees. The Office of Outreach will coordinate efforts to ensure that small and socially-disadvantaged farmers have access to all USDA programs.
- USDA has increased the minority representation on its FSA state committees. In 1997, 46 percent of the 222 FSA state committee members were women and minorities, an increase of 10 percent from 1996. These committees serve as advisors to the State Executive Director and hear appeals of county office decisions.
- To ensure an accurate picture of minority farm ownership, USDA is creating a voluntary

registry of minority land, that will establish a baseline of minority farmland ownership which can be monitored over time. To ensure that the Census of Agriculture accurately counts minority farms, USDA has designed a procedure to estimate the number of Native American farm operators on every reservation instead of counting a reservation as one farm, which has occurred in the past.

II. CRAT FUNDING AND LEGISLATION

- USDA is seeking a 1998 supplemental appropriation of \$5.0 million to support Departmental Administration (DA) as well as the civil rights unit in the Office of General Counsel. Without these funds, the civil rights efforts supported by DA will be in jeopardy and would require reductions-in-force in human resources management and procurement.
- Several legislative proposals were introduced by Congress last year addressing some of the recommendations contained in the CRAT report. Secretary Glickman is working on a legislative proposal for civil rights initiatives that would modernize the Farm Service Agency state and county committee system, improve access to credit, increase opportunities for participation in environmental and conservation programs, and help ensure equity in funding for minority-serving educational institutions.

In addition, the President's FY 1999 budget contains provisions for \$252.1 million for funding the following civil rights initiatives recommended by the CRAT, including --

Civil rights activities	\$20 million
Small Farms Research Initiative	\$4 million
Minority-Serving Educational Institutions	\$18 million
Outreach to Socially Disadvantaged Farmers and Ranchers	\$10 million
Extension Indian Reservation Program	\$5 million
Farm Ownership and Farm Operating Direct Loan Programs	\$47 million*
Farm Labor Housing Program	\$30 million
Address the Needs of Farm Workers	\$7 million
Civil Rights Division within the Office of General Counsel	\$1.1 million
Environmental Quality Incentives Program	<u>\$100 million</u>
Total:	\$252 million

(*A \$47 million appropriation will support a direct and guaranteed farm ownership and loan program at the fully authorized levels.)

III. SMALL FARMS COMMISSION

- The Secretary appointed a 30-member National Commission on Small Farms, chaired by former Congressman Harold Volkmer, in July, 1997. On January 22, 1998, the

Commission will release its recommended national strategy for small farms and ranches, that will include steps for USDA to take on research, credit, outreach, rural development, marketing, and other USDA programs.

- An interagency action team, headed by Deputy Secretary Rominger, will utilize the Commission's report to develop and implement a nationwide initiative to assist small and socially disadvantaged farmers.

IV. AGRICULTURE CREDIT

USDA has implemented several initiatives to serve better traditionally under-served constituencies, and supports legislation to overturn the restrictive and onerous provisions of the 1996 Farm Bill that prohibit farmers from receiving additional credit from USDA if their previous loans were written down and to fund fully its farm ownership and operation loan programs. The following credit initiatives and the efforts outlined in other sections of this report detail USDA activities to achieve this end.

- USDA has increased the use of farm loan programs by minority and women farmers. In FY 1993, USDA direct lending, ownership and operating loans to minority and women farmers totaled \$46 million. In FY 1997, this total increased to \$81 million, an increase of 74 percent from the 1993 level. In FY 1996, USDA made 1,987 direct loans to minority or women farmers, 14% of all direct loans. In FY 1997, USDA made 2,111 direct loans to minority or women farmers, 16.3%, a 6 percent increase from FY 96.
- The President's 1999 budget will request funding to support the maximum authorized levels for Farm Ownership Direct Loans and Farm Operating Loans; \$85 million and \$500 million, respectively.
- The 1996 Farm Bill unfairly excludes farmers from USDA credit by providing that any farmer who has had a write-off of farm debt to USDA is ineligible for USDA's loan programs. As a result, many small and socially disadvantaged farmers are not eligible for USDA loan programs. USDA strongly supports the repeal of this provision.
- To promote guaranteed lending for small farmers and to reduce barriers to guaranteed lending, FSA will be proposing rules to implement the Preferred Lender program and the Short Form Application for guaranteed loans. Regulations are being drafted by FSA which will streamline forms and procedures for borrowers and simplify programs.
- USDA is developing a pilot program with a consortium of minority owned banks to increase access to the guaranteed loan program by entities participating in the USDA Small Farmer Outreach, Training and Technical Assistance Program.

V. MARKET ACCESS/CONCENTRATION

Farmers and ranchers are concerned that Increased concentration among buyers of agricultural products, particularly livestock buyers, reduces competition and depresses prices received by farmers. Today, only 4 companies control about 80 percent of the livestock slaughter in the U.S. USDA has taken a variety of steps to address concerns about concentration.

- USDA established an Advisory Committee on Agricultural Concentration in 1996 and has implemented many of the Commission's recommendations to improve market price information and to ensure that small farmers can compete fairly in today's marketplace.
- The Grain Inspection, Packers and Stockyards Administration (GIPSA) is restructuring its headquarters and regional offices to pursue more effectively anti-competitive investigations in the livestock, meat and poultry industries and will be developing additional regulatory proposals to ensure small producers are treated fairly in the marketplace. GIPSA has been working closely with the Department of Justice to investigate antitrust issues in the livestock industry.
- USDA has intensified monitoring of trade practices in the meat packing industry to protect farmers from unfair trade practices. To this end, USDA brought an administrative enforcement action against IBP, the largest meatpacker, and recently appealed an adverse decision to USDA's judicial officer. USDA also has three major on-going investigations into possible unfair trade practices in various sectors of the livestock industry.
- USDA has proposed legislation which would provide an important tool for those sellers who have not been paid for their goods to recover money owed them. USDA has proposed legislation to protect poultry growers by giving USDA the authority to take administrative enforcement action against poultry companies as well as legislation to strengthen the rights of farmers under the Agricultural Fair Practices Act.
- The Agriculture Marketing Service (AMS) has recently proposed rules defining organic agriculture. When final, this program will permit farmers to meet consumer demand for organic products. Because of its relatively higher costs and greater production requirements, organic agriculture is well-suited for the small farmer -- and the greater returns enable the small farmer to stay on the farm.
- In FY 1997, USDA funded 17 projects targeted at value-added cooperative development utilizing \$1.1 million from the Fund for Rural America. In FY 1998, USDA will reserve \$200 million in business and industry guaranteed loans for cooperative development, to offer farmers opportunities to gain access to new and expanded markets in an increasingly concentrated market.

- USDA sponsors and conducts research and surveys on farmers' markets throughout the U.S. Today, there are over 2,400 farmers' markets, compared with just 100 two decades ago. Farmers' markets have become an extremely successful marketing tool for many local communities, with sales rivaling those of small- or medium-sized grocery stores. One recent success partnership is the Thomasville, Georgia collection market, which links 862 growers from two dozen counties in Georgia and Florida to sell to full time and seasonal brokers on the Thomasville market. Over 4 million packages of produce, valued at nearly \$35 million moves through this market annually.
- The AMS is working to create opportunities for small and minority producers to sell products to the agency for use in schools participating in the National School Lunch Program. AMS is working with the Georgia Department of Agriculture and farmers in Florida to develop pilot school lunch purchase programs that introduce local, small, or limited resource farmers and school districts.
- USDA's Office of Small and Disadvantaged Business Utilization (OSDBU) has been meeting with minority farmers and minority businesses who have partnered to sell food commodities to USDA agencies. OSDBU is developing procedures for these farmers and businesses to sell a variety of commodities to AMS and FSA.

VI. INFORMATION AND OUTREACH

One of the major concerns addressed by the USDA Advisory Committee on Agricultural Concentration was that farmers, especially small and minority farmers, do not have enough information about the market forces affecting prices for agricultural commodities. Limited-resource and minority farmers often have a difficult time participating in USDA programs because they do not receive basic information about the programs for which they may be eligible. Many initiatives are underway throughout the Department to remedy these situations.

- On August 22, 1997 the Office of Outreach was established to lead and coordinate Department-wide outreach responsibilities and strategies, including utilizing community-based organizations, and historically black colleges and universities, to ensure that all small and socially disadvantaged farmers have information about and access to USDA programs. A guide for USDA employees on how to communicate with under-served populations will soon be available.
- AMS is now issuing publications intended to close the information gap between small and large producers. These include a weekly Forward Contract Slaughter Cattle Summary Report, a National Carcass Premium and Discount Report and an Expanded Boxed Beef Report, among others. USDA worked with the land grant university system to develop a planning program for cattle producers called "Marketing for Today's Cattle Market and Beyond." Twenty nine livestock and farm management experts from 15

states have cooperated to produce a series of materials to aid producers in comprehensive planning. To date, workshops have been conducted in over 12 states.

- USDA kicked off its Risk Management Education Initiative with a national forum in Kansas City in September 1997 with plans underway for a more comprehensive conference in early 1998 using an "expert team approach." In 1998, RMA is expecting to award \$3 million in grants to support the Risk Management Initiative. RMA will be meeting with crop insurance industry leaders to develop plans to ensure that under-served populations are reached by the crop insurance and other risk management programs and that minority agents are recruited by these companies.
- To ensure that USDA research develops opportunities for small and medium-sized farming operations, USDA's Research, Education, and Economics mission area arranged for the National Academy of Sciences to conduct an independent review of the Department's research program.
- FSA and NRCS are working cooperatively to increase small and minority farmer participation in the Conservation Reserve Program (CRP). A ten step procedure has been developed to ensure that more small and minority farmers are aware of and understand the procedures for CRP sign-up.
- NRCS is reviewing all of its conservation programs to improve information and outreach to small and minority farmers. It has taken special efforts to provide program information to small and minority farmers who may be eligible for the Farmland Protection Program; training is being provided to state and regional office employees to ensure that the environmental justice program is properly implemented and, efforts are underway to increase substantially the number of NRCS offices on reservations.
- USDA has decided not to fund the outreach proposal, for a grant of \$190 million to the National Small Family Farm Alliance, from the National Black Farmers Association because it duplicates existing USDA programs while creating another layer of bureaucracy between USDA and community based organizations, 1890s institutions, and other current recipients of USDA assistance and partnership, many of whom are facing severe funding constraints.

VII. DAIRY

Dairy policy is one of the most controversial farm policy problems currently facing the Department. Although milk prices have rebounded somewhat from their 1997 levels, the dairy sector has undergone extreme dislocations over the last several years, losing almost one-third of the dairy farmers since 1990. At the same time, production has actually increased slightly, as relatively large dairy farms in the south and west have come into the business, further pressuring

the smaller farmers in the traditional milk belt. Also, while Congress provided substantial transition payments to grain, cotton, and oilseed farmers in the 1996 Farm Bill, that legislation contained no comparable assistance for dairy farmers and in fact phases out the dairy price support program by 2000.

- Throughout 1997, USDA acted to improve dairy prices by expanding dairy exports and purchases for nutrition programs. Thus far in the current marketing year, USDA's use of export subsidies to facility dairy product exports is running significantly ahead of last year's pace.
- In the very near future, the Department will issue a proposed rule to reform the Federal Milk Marketing Order Program in accordance with the 1996 farm bill, proposing no more than 14 orders. In addition, USDA will propose provisions for reforms to the classified pricing system which should enhance a more level playing field for all dairy producers and will be considering a proposal to prevent milk prices from falling during the implementation of the milk marketing order reforms.
- The Risk Management Agency recently announced the Dairy Options Pilot Project which will allow producers to lock-in a minimum price for their milk. The Agriculture Marketing Service (AMS) will work with RMA in providing information about this program to dairy farmers and others in the sector.

VIII. TOBACCO

Tobacco is the sixth largest cash crop in the U.S. Sales at the farm gate in 1997 will total \$2.85 billion. Consumers spent about \$50 billion, and Federal, State, and local tax revenues on tobacco products amounts to \$13.4 billion in 1996. Tobacco is produced under the provisions of the Agricultural Adjustment Act of 1938, which establishes quotas on how much tobacco may be marketed without penalty. These quotas restrict the marketing of tobacco such that tobacco has been very profitable for farmers over many years.

Tobacco production is very important to small and minority farmers. In tobacco growing States, the proportion of African-American operated farms producing tobacco is nearly three times that of all farms. This is especially true in the flue-cured tobacco states of North Carolina, South Carolina, Virginia, Georgia and Florida. In South Carolina, Virginia and Florida, about one-fourth of the quotas are owned by African-Americans. Sixteen percent of flue-cured quota is owned by African-Americans or Native Americans.

Flue-cured tobacco quotas are set under a statutory formula for the following marketing year in December. Primary considerations in setting the quota are the purchase intentions of the tobacco companies and carryover stocks. Purchase intentions are dramatically lower for the 1998 marketing year, and under the statutory formula, quotas should be reduced by 19.5 percent. To

mitigate the negative effect a reduction of almost 20 percent would have on producer income. Secretary Glickman used his discretionary authority to only allow a 16.5 percent quota cut.

- Several proposals have been made and at least four bills (the basic features are contained in two bills -- the Ford and Lugar bills) have been introduced to provide assistance to tobacco growing communities. These bills would provide up to \$8 per pound to quota owners and tenants for production losses from tobacco. Annual economic assistance grants are included in the bills that range from \$100 million a year to over \$1 billion annually for 3 to 25 years.
- The Administration has publicly stated it will work with Members of Congress from the tobacco region in an attempt to ensure that the concerns of the tobacco farmers are adequately addressed.

(E)

Karen Tramontano Memo on Labor Dinner -- Karen and John Podesta held a working dinner with labor and Administration officials before the holidays: John Sweeney (AFL-CIO), Jay Mazur (UNITE), George Becker (Steelworkers), Bob Georgine (Bldg/Construction Trades), Andy Stern (Service Employees), Doug Dority (Food/Commercial Workers), Sandy Feldman (Teachers), Sec. Herman, Sec. Daley, Kitty Higgins, Frank Raines and Gene Sperling attended; the VP dropped by at the start; had 3½-hour discussion on issues like why organized work force has been declining despite 10% income premium enjoyed by union workers; group agreed on importance of organizing; need for wages to reflect productivity gains; benefits to workers of organizing; possibility of greater union support for issues like climate change and fast track in a society where more workers were organized; Karen attaches background info.

(F)

Yellen Memo on BLS Methodological Improvements -- says BLS methodological improvements have lowered annual CPI increase by 0.28 percentage points since 1995, and will lower it by a further 0.41 points by 1999, for a total of 0.69 points; Boskin Commission anticipated 0.36 drop and may lower its estimate by the additional 0.33; the Social Security projection may also be lowered by about the same amount; *please see memo for tables and additional details.*

(G)

Mathews/Glickman Follow-Up on Minority Farmers Meeting -- Sylvia forwards, with a detailed cover memo, Sec. Glickman's update and report following your Dec. 17 outreach meeting; Sylvia summarizes White House activities, covering legal and policy issues, legislative affairs and farmers' requests; Glickman describes USDA's efforts on civil rights and small farm issues; says it'll take time to heal wounds; many complaints are old and present statute of limitations issues; resolved about 200 complaints in 1997; restaffed civil rights office to full strength; brought in 10 outside contractors to investigate claims; new associate general counsel for civil rights is putting his office together; mediators will begin meeting 3 times/week starting in February to resolve the pending class action lawsuit discussed in your meeting; *please see memos/report for details.*

(H)

Hershel Gober Response to Patricia Clowers concerning Husband's Death -- Hershel forwards his response to Patricia Clowers of Percy, Arkansas concerning the death of her husband following surgery at the VA Medical Center in Little Rock; results of clinical review confirm that Mr. Clowers died when he did not respond well to the usual treatment for respiratory failure and pneumonia; death was the result of multi-system organ failure directly related to his respiratory failure; no major problems were found with the Center's cardiac surgery program, but recommended improvements are being made.

Note from Mack to Gov. Zell Miller -- congratulates Gov. Miller on his new program to make classical music available to some 100,000 Georgia newborns each year; Mack attaches copy of news article.

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1-26-98

MACK McLARTY

WASHINGTON, D.C.

98 JAN 20 10 24

January 19, 1998

DAN BURKHARDT:

please coordinate the
reply.

The Honorable Zell Miller
Governor of Georgia
203 State Capitol
Atlanta, GA 30334-0900

Dear Zell:

Donna and I read with interest about the wonderful
program for newborn children that you recently
proposed in Georgia. We both commented that it
was vintage Zell Miller.

Congratulations on your continuing strong
leadership of Georgia, with a wonderful balance
of vision, creativity, and common sense. You
continue to make a real and positive difference in
your home state and beyond.

Personally,



cc: The President

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He said that he had a stack of research on the subject, but also that his experiences growing up in the mountains of north Georgia had proved convincing.

During his budget address on Tuesday, Mr. Miller played a bit of Beethoven's "Ode to Joy" on a tape recorder and then asked the lawmakers, "Now don't you feel smarter already? Smart enough to vote for this budget item. I hope."

Spending state money on CD's for newborn children.

Why not distribute music by Georgians like Hoagy Carmichael, Otis Redding or Johnny Mercer?

Legislators, as is their wont, have ideas of their own.

"Having never studied those impacts too much," Mr. DeLoach added, "I guess I'll just have to take their word for that at the moment."

THE PRESIDENT HAS SEEN
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THE WHITE HOUSE

WASHINGTON

January 23, 1998

Stay w/ SS/SS message

MEMORANDUM FOR THE PRESIDENT

FROM: PHIL CAPLAN
SEAN MALONEY *SM*

SUBJECT: State of the Union/Social Security

As you know, it has been proposed that your State of the Union speech contain a three-part Social Security message (*i.e.*, no surplus spending until we address Social Security; a national dialogue in 1998; and bi-partisan negotiations in 1999). The attached *Sperling* memo asks you to decide: (1) whether to organize a year-long, national dialogue and White House conference on Social Security; and (2) whether to name two, prominent bi-partisan co-chairs to lead the effort.

44 **National Dialogue.** All of your advisers recommend that you encourage your cabinet and all Americans to participate in Social Security forums and conferences planned for 1998; that you ask the AARP, the Concord Coalition, and perhaps the Pew Foundation, to host four regional, bi-partisan conferences, which you or the VP would attend; that you commit to holding a White House conference at the end of the year; and that you commence bi-partisan Social Security reform negotiations in January, 1999. Involving AARP/Concord lets you work with people we trust; offers a healthy distance between the dialogue and the White House; and provides some cover for both Democrats and moderate Republicans. However, the conferences would burden your schedule, and *Stephanie* is uncomfortable locking you into them and with planning a big White House event during the holidays.

Approve ☒ Disapprove ☐ Discuss ☐

Bi-Partisan Co-Chairs. *Erskine* and *Ron Klain* oppose bipartisan co-chairs; they think it's "redundant validation," might allow Republican extremists too much influence, and could undermine our efforts. They feel involving Concord and/or Pew is sufficient. *Gene* thinks co-chairs (*e.g.*, George Mitchell and Bob Dole/Warren Rudman) would boost the bi-partisan influence of the dialogue. *OMB* suggests *Lloyd Bentsen*; notes *Sam Nunn* might resent your choosing Rudman and not him.

Approve Co-Chairs ☐ Disapprove Co-Chairs ☐ Discuss ☒

40 **Principles.** Your advisers also raise the idea of including in your speech a recitation of Social Security "principles" (*e.g.*, strengthen/protect Social Security for the 21st Century; maintain universality/fairness; provide a benefit people can count on; help lift retirees/disabled/survivors out of poverty; preserve fiscal discipline). *Bruce Reed* and *Erskine* think you could stay general. *Gene* notes that principles add substance and would aid testimony and press inquiries, but might also upstage the surplus/bi-partisan dialogue announcements. They ask you to think about it.

THE WHITE HOUSE
WASHINGTON

January 23, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: GENE SPERLING
SUBJECT: Social Security process

As we have discussed in previous meetings and memos, your State of the Union address will include a three-part message on Social Security reform:

1. We should not spend any of the projected surpluses until we have addressed Social Security;
2. We must engage in a national dialogue during 1998, to explore and discuss the issues with bipartisan regional forums and a White House Conference in December 1998
3. You will call for bipartisan Social Security negotiations to begin in January 1999.

The purpose of this brief memorandum is to obtain your guidance on the second step -- the national dialogue -- as well as on one other remaining issue about our approach.

I. NATIONAL DIALOGUE DURING 1998

The challenge during your State of the Union address is to provide enough specificity to the national dialogue to make it credible, without committing the White House to excessive administrative burdens or substantive entanglements.

Proposal

Your advisers recommend that in your State of the Union address, your statement about the 1998 process would be something like:

1. I recognize and applaud the wide variety of forums and conferences planned across the country during 1998 on this important issue.
2. I call on every American to participate in one of these forums, or to host one yourself if none is planned in your local area.

3. I have asked the Concord Coalition and the AARP [along with the Pew Foundation], to host four bipartisan regional conferences. I pledge that either I or the Vice President will attend each of these conferences.
4. I have also asked my Cabinet over the coming year to participate actively in a wide variety of discussions across our nation on this issue.
5. And to wrap up our year-long dialogue, I will host a White House Conference in December, at which we will bring together a wide variety of views gleaned from the national discussion over the next year.
6. Finally, after the culmination of the national dialogue with the White House Conference in December, we will begin bipartisan negotiations over Social Security reform in January 1999.

Background

In our previous meetings on this issue, we had discussed the possibility of naming a few prominent Americans to lead a series of regional forums. In subsequent discussions, many of your advisers have become concerned that without the sponsorship of some outside institution, we would inevitably become ensnarled in choosing delegates, preparing or editing presentations on controversial issues, and other contentious activities. In particular, the concern is that without some outside structure, the discussions could either become stultified, or any of the topics discussed could carry some implicit Administration imprimatur -- and too politicized.

The Concord Coalition, the AARP, and the Pew Foundation are already planning to hold bipartisan forums across the nation in 1998. Your advisers therefore recommend that you highlight four bipartisan regional forums that would be organized and staffed by the Concord Coalition and the AARP (and potentially the Pew Foundation). The groups would be eager to do so. You would commit that either you or the Vice President would attend the four regional forums, which would lead up to the White House conference.

The benefits of this approach are that it relies on two people we trust (Martha Phillips and John Rother), that it provides cover for Democrats (through the AARP) as well as moderate Republicans (through the Concord Coalition, which includes Pete Peterson and Warren Rudman), and that it provides an acceptable amount of distance between the White House and the discussions to ensure that politics doesn't undermine the effort from the beginning. The principal cost of the approach is your time: it commits you to attending some of the conferences (you could attend two, and the Vice President could attend the other two). (In addition, we will be sponsoring the White House Summit on Retirement Security in July -- which will deal with non-Social Security retirement issues).

Your advisers also recommend that you should challenge the American people, by encouraging them to attend one of the many forums or conferences that are being organized to discuss this critical issue. You would be showing the way by attending some of the conferences yourself, as well as hosting the final one at the White House in December.

Recommendation

Your advisers recommend that you approve the basic approach outlined above (which will be wordsmithed to fit appropriately into the speech).

- _____ Approve
- _____ Disapprove
- _____ Discuss

II. NAMING PROMINENT AMERICANS TO LEAD THE EFFORT

To boost the prominence of the educational process, the AARP and Concord Coalition may be willing to name two prominent co-chairs for the series of regional forums. For example, you could ask Bob Dole and George Mitchell or Warren Rudman and George Mitchell to act as hosts of the first forum, and then ask other bipartisan sets of leaders to act as hosts of subsequent forums.

Ron Klain is opposed to this step, which he believes provides redundant validation and could possibly allow Republican extremists to influence Dole and others in a way that would undermine our efforts. Erskine fully agrees with Ron. He thinks Concord and Pew gives us enough bipartisanship without the headaches that could be caused if Bob Dole participates. Frank also notes that Nunn might be offended if we chose Rudman and not him.

Gene believes that the additional bipartisan validation provided by having prominent bipartisan honorary co-chairs, such as Rudman and Mitchell, as hosts of the first conference would work and strengthen the bipartisan validation message -- particularly since many Americans will better see bipartisanship reflected through two ex-Senators of different parties rather than trying to understand the politics of the Concord Coalition.

- _____ Ask Bob Dole and George Mitchell to play key role in first forum, and other leaders to host subsequent forums
- _____ Do not name them as leaders
- _____ Discuss further

III. PRINCIPLES

Another issue that we have discussed is whether you should promulgate principles for Social Security reform in the State of the Union. On one hand, such principles provide more substance to the effort -- and allow Administration officials to field a wide variety of questions on the topic. On the other hand, principles could put the focus more on your substantive direction for Social Security instead of your surplus announcement and the bipartisan national dialogue message. Many of your advisors believe that even if you do not announce principles in the State of the Union, we will need to have them soon to assist in testimony or respond to the press. Bruce Reed and Erskine think that they could even be more general, though several of your other advisors think they are about the right level of specificity. All agree that the principles should rule out a radical privatization of Social Security but leave open the possibility of a small individual account within the structure that preserves the basic progressive and universal structure of Social Security.

The principles we have been considering include:

- Strengthen and protect Social Security for the 21st century;
- Maintain universality and fairness;
- Provide a benefit people can count on;
- Help to lift the retired, the disabled, and their survivors out of poverty;
- Preserve fiscal discipline.

THE PRESIDENT HAS SEEN

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THE WHITE HOUSE

WASHINGTON

January 22, 1998

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MEMORANDUM FOR THE PRESIDENT

FROM: PHIL CAPLAN *PC*

SUBJECT: Class size initiative -- decision on one issue

The attached memo from Bruce Reed and Mike Cohen memo provides a good summary of the design of your class size initiative. It details the consensus recommendations reached among the VP's office, OMB and Education and I recommend that you read it. There is one issue for your decision -- whether to require basic skills testing (reading and math) for new teachers.

Skills Testing. Among the principles on which your initiative rests is that, for reductions in class size to result in improved reading performance, newly hired teachers and existing teachers must be fully qualified and have the knowledge and skill to teach reading effectively in small classes. The memo outlines several steps in the initiative -- which all of your advisors agree upon -- to address this issue (e.g., a 10% set aside for teacher testing/training, a requirement for teachers to meet state certification standards and incentives to upgrade the standards).

Your advisors, with the exception of the Education Department, believe basic skill testing should be part of your initiative, with the test selected by each state. Such testing will give parents confidence that teachers in the elementary grades have the necessary basic skills and would build upon your efforts in Arkansas. Forty states already have testing, and states would retain the ability to let teachers who fail teach with an emergency certificate. Furthermore, Rep. Paxon's education package and the Senate GOP package encourage such testing, although these proposals do not make it mandatory. Your advisors rejected a stronger proposal that would have required all prospective teachers to pass a test before they could do any teaching; they decided such a requirement would have had too great an impact on poor school districts. Education opposes including skills testing arguing that it is no assurance of teacher quality, sets the bar too low, and undermines your long-standing push for higher education standards by sending the wrong message to the public about the quality of teachers. The civil rights community is likely to raise concerns that such requirements would have a disparate impact on minorities. Bruce and Mike are meeting with Bob Chase and Sandy Feldman this afternoon. They expect the unions to be supportive of the overall initiative, but lukewarm on the basic skills testing for new teachers.

The plan is for this initiative to be announced Monday just prior to the State of the Union. Sylvia and Rahm concur with Bruce/Mike and believe your initiative should include skills testing. Maria notes that there will be some protest from the civil rights community, but the criticism will be muted if the appropriate briefings can be conducted prior to the announcement.

☒ Require teacher testing in basic skills ☐ No requirement ☐ Discuss

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THE WHITE HOUSE
WASHINGTON

January 21, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED
MIKE COHEN

SUBJECT: Class Size Design Issues

Over the past several weeks, we have worked with the Vice President's Office, OMB, and the Education Department to develop recommendations on the design of your class size initiative. This memorandum explains our consensus recommendations and asks for a decision on the single issue on which we have not reached agreement -- whether to require basic skills testing for new teachers.

I. Background

The purpose of this initiative is to reduce class size and provide qualified teachers in the early grades, so that all 8 year olds learn to read. More specifically, this initiative will help bring down class size across the nation from an average of 22 to an average of 18 in grades 1-3. In designing the initiative, we have been guided by several considerations.

First, as you know, the best research suggests that the benefits of smaller classes accrue especially to the most disadvantaged students, and occur most powerfully when classes are no larger than 15-18 students. To be both credible and effective, the initiative must get the majority of classes into that range, especially in high-poverty schools. Second, California's recent experience demonstrates that programs to reduce class size lead to the hiring of unqualified teachers, particularly in urban areas, if safeguards are not built in. Third, efforts to reduce class size can exacerbate and be frustrated by shortages of space. Fourth, because this is a new area of federal involvement in education, the requirements placed on state and local grant recipients in order to ensure effective use of the funds must be especially well justified.

There are a number of other proposals to provide federal support to recruit or hire teachers, primarily to respond to the need to hire an estimated 2 million teachers over the next decade. Senator Kennedy proposes to help recruit 100,000 teachers per year over the next decade by forgiving up to \$8,000 in loans for each person who becomes a teacher. Rep. George Miller has also advanced a proposal to provide loan forgiveness for an-as-yet unspecified number of individuals who enter teaching.

In contrast to the Kennedy and Miller proposals, your proposal provides funds to hire teachers rather than forgive loans, since the primary cost of reducing class size is salaries for additional teachers. There is little evidence that loan forgiveness is an effective tool for attracting additional people into the profession. Moreover, you have already proposed a scholarship program (not loan forgiveness) to steer people who have decided to enter the profession toward high poverty schools.

Rep. Bill Paxon has also announced a proposal to help school districts hire 100,000 teachers, by funding teacher salaries. His proposal would pay for these new teachers by eliminating Goals 2000, Americorps, the National Endowment for the Arts, and a number of other programs. While these additional teachers could be used to lower class size, Paxon does not require that funds be used for this purpose. In addition, Senate Republicans announced an education package yesterday which they claim would fund 50,000 new teachers by block granting other programs.

We believe the existence of Republican proposals for the federal government to pay teacher salaries -- a proposal that both attaches conditions (under Paxon's plan, teachers hired with these funds could not be tenured) and requires states and local school districts to share the total cost of the initiative -- provides some protection for your proposal against charges of federal intrusion. It may also form the basis of a bipartisan achievement.

II. Funding Issues

Your budget will include \$12 billion over 7 years to hire 100,000 teachers, enough to reduce class size in grades 1-3 to an average of 18 nationwide. The table below shows the annual budget, number of teachers communities would hire each year, and the impact on class size.

Fiscal Year	Budget (in billions)	Number of Teachers Hired	Average Class Size in Grades 1-3
1998			21.9
1999	\$1.1	35,714	20.3
2000	\$1.3	42,208	20.1
2001	\$1.5	48,701	19.8
2002	\$1.7	55,195	19.6
2003	\$1.74	56,331	19.5
5 Year Total	\$7.34		
2004	\$2.3	82,143	18.6
2005	\$2.8	100,000	18.1
7 Year Total	\$12.4		

A. Distribution of Funds to States

We would distribute funds to states on the basis of the Title 1 formula, which is based on the number of students in the state, weighted by poverty and the cost of education. We also considered distributing the funds based on the number of new teachers needed to reduce class size to the target of 18, also weighted by poverty and cost. Although this formula is somewhat more efficient in targeting funds for the program purposes, it would penalize California because of that state's own class size reduction initiative. Further, while a handful of states receive either "windfalls" or "shortfalls" under the Title 1 formula when measured against the number of teachers they need to reach the class size target, most states receive a comparable percentage of the total funds under either formula.

With this formula, we will be able to reduce average class size in grades 1-3 to 18 nationwide. Once a state has reached an average of 18 in grades 1-3, it could use these funds to reduce class size in those grades still further, or to reduce class size in other grades.

B. Targeting Funds Within States

Though this proposal is universal in scope, we want to drive the funds to school districts with the largest class sizes, and to give priority to high-poverty districts. To accomplish this objective, we would require states to guarantee high-poverty school districts at least the same share of the state's class size funds that they receive of the state's Title 1 funds. States would allocate the remaining funds on the basis of class size within the state.

This approach ensures that major urban school districts and other high-poverty areas will receive their fair share of the funds, while still leaving states with the ability to target funds to school districts with large classes, regardless of their income levels.

C. Cost-Sharing Requirements

We would require matching funds from participating school districts on a sliding scale that would average 80% federal and 20% local. High-poverty school districts would be required to provide a 10% match, while the wealthiest would be required to provide a 50% match. School districts could use other federal funds for the match, which would primarily benefit high-poverty school districts that receive substantial amounts of Title 1 funds. This approach would encourage districts to use Title 1 funds for class size reductions, rather than continuing to hire classroom aides or resource teachers who pull Title 1 students out of the classroom.

D. Duration of Program

Because we will be presenting a five year budget, many will assume that we expect this initiative to end after five years. This expectation will heighten concerns that local school districts will be stuck with higher personnel costs once the program ends. (Rep. Paxon's proposal would end federal funding after 5 years.) We believe that the best way to deal with this concern is to make clear that we see this initiative as a continuing part of federal aid to education -- not a one-time effort.

This longer approach will also be necessary in order to fund 100,000 teachers; the funding levels in the first five years will pay for approximately 56,000 teachers. Because we are paying for this initiative through tobacco legislation, we will have a revenue source that can support a long-term program.

III. Teacher Quality

For reductions in class size to result in improved reading performance, we need to ensure that both newly hired and existing teachers are fully qualified, and have the knowledge and skills to teach reading effectively in small classes. Considerable research and recent experience in California demonstrate that many existing teachers need help to alter their teaching practices to capitalize on small classes. In addition, many school districts in California, particularly in high-poverty areas, have hired teachers on emergency certificates, who lack even basic preparation for teaching. We propose a number of steps to deal with these challenges.

A. 10% Set-Aside for Teacher Testing and Training: The overall budget for this initiative is based on the average cost of newly hired teachers (assuming that 75% are beginning teachers and 25% are experienced teachers returning to the classroom or moving between districts) plus a 10% increment in the first 5 years to address teacher quality issues. This increment will give every school district funds that can be used for a number of purposes, including (1) testing new teachers before they are hired and developing improved tests for teachers; (2) training existing teachers in effective reading instruction practices and/or in effective practices in small classes; (3) providing mentors or other support for newly hired teachers; (4) providing incentives to recruit teachers to high poverty schools; and (5) providing scholarships or other aid to paraprofessionals or undergraduates and to expand the pool of qualified teachers.

We will permit districts to carry over unspent funds, which will enable them to invest in the first couple of years in recruiting and training qualified teachers, before reducing class size on a large scale. In addition, we will require districts to develop an overall strategy for improving teacher quality including a plan to use other funds, such as those from Title 1, the Eisenhower Professional Development Program, America Reads, and Goals 2000.

B. Require Teachers to Meet State Certification Standards: We would require states and school districts to ensure that individuals hired to fill these new positions must be either fully certified or making satisfactory progress toward full certification. School districts could use the teacher quality funds to provide teachers with the additional training needed to meet certification requirements.

C. Encourage States to Adopt Rigorous Professional Tests and Upgrade Teacher Certification Requirements: As part of this initiative, we would allow states to use some of the teacher quality funds to make their teacher certification requirements more rigorous and performance-based, reflecting what beginning teachers must know and be able to do. There is widespread agreement that current teacher certification requirements are not a good indicator of teacher quality and need to be upgraded. The National Commission on Teaching and America's Future, chaired by Gov. Hunt, has recommended that states toughen their licensure requirements. The Commission recommended that prospective teachers be required to pass rigorous tests of subject matter expertise and professional knowledge before they start teaching, and that beginning teachers not be fully certified until they have taught for several years and can demonstrate that they have met rigorous standards of classroom teaching, through classroom observations and other forms of performance assessment.

Twenty states have already adopted performance-based standards along these lines. Sixteen states are working together to develop common assessments for beginning teachers, and additional states are likely to join this effort over time. Permitting states to use a portion of their funds to improve their licensure systems is likely to accelerate these trends and to improve the quality and preparation of people entering the profession. In addition, performance-based certification will make it easier to promote "alternate route" programs that do not require prospective teachers to attend teacher education programs.

D. Teacher Testing:

All of your advisors agree on the three steps outlined above. There is disagreement about one additional component -- requiring new teachers to pass state basic skills tests. All of your advisors feel strongly that the above measures are not sufficient to persuade the public that new teachers would be able to measure up in the classroom. Existing teacher certification requirements are generally not viewed as an effective means of ensuring quality, and the tougher standards and testing requirements we are encouraging states to adopt will not be implemented for some time. Many of your advisors believe that this initiative also should require states to use basic skills testing for new teachers, with the particular test selected by each state.

The argument for a teacher testing report is that it will give parents the confidence that new teachers in the elementary grades have basic reading and math skills. It also

builds on your landmark efforts on teacher testing in Arkansas. A tough, clear message on teacher competency would make it difficult for Republican opponents to paint this initiative as simply a way for the Administration to help teachers' unions expand their memberships. The Paxon proposal takes a "tough on teachers" approach by prohibiting the teachers hired from gaining tenure. The Senate Republican education package announced this week encourages states to test elementary and secondary teachers, and allows them to use federal funds for teacher testing (activities already permitted under Goals 2000). The proposal, however, does not make this testing mandatory.

Under this proposal states would give prospective teachers basic skills tests at some point before they enter the classroom. Approximately 40 states already have such a requirement in place.¹ States would retain the ability to let teachers who fail the test teach with an emergency certificate. We considered and rejected a stronger proposal, which would require all prospective teachers to pass a test before they could do any teaching. We decided, however, that such a requirement, might well have too great an impact on poor districts, which already have a hard time finding qualified teachers. It could also drive states to lower the passing score on the tests.

The Education Department opposes this proposal, and recommends that we limit ourselves to encouraging states to adopt tough new state tests of subject matter and professional knowledge for beginning teachers, as part of our effort to upgrade teacher certification requirements. Education would be willing to require states to implement these new tests by 2003.

You are quite familiar with the arguments against a teacher testing requirement. The Education Department argues that a basic skills test is no assurance of teacher quality, and sets the bar too low for teachers, undermining your long-standing push for higher standards for both students and teachers. The Education Department believes such a test will send the wrong message to the public about teachers, reinforcing the notion that academically weak people go into teaching. Education also points out that states will be able to get around a testing requirement by granting emergency licenses.

Finally, you should know that many in the civil rights community are likely to raise concerns that any new testing requirements, especially without proper validation, are likely to have disparate impacts on minorities.

_____ Require Teacher Testing in Basic Skills _____ No requirement _____ Discuss Further

¹ According to the most recent state-by-state data, the following states would have to institute basic skills testing for teachers under this proposal: Alaska, Georgia, Idaho, Iowa, Maryland, Missouri, New Jersey, New York, Utah, and Vermont.

IV. Facilities

The need to find additional classrooms to reduce class sizes will increase existing facilities needs. This impact will not be evenly distributed. Some areas, particularly cities with increasing immigrant populations (e.g., Los Angeles, South Florida) have schools that are already extremely over-crowded, while other cities, particularly in the Northeast (e.g., Baltimore, Washington, D.C.) have more capacity than the student population demands.

We propose several steps to address facilities issues, including (1) Use our \$10 billion school construction initiative to provide incentives for communities to invest in local school facilities; (2) Make facilities changes needed to reducing class size an allowable use of school construction funds; (3) Phase in implementation of the class size reduction proposal to allow for enhanced state/local facilities planning; and, (4) Allow districts that have no space available for additional classes to use some of their class size reduction funds to implement proven reading instruction practices.

V. Accountability

School districts receiving these funds will be held accountable both for using them to reduce class size, and for improving student performance in reading. We propose three forms of accountability.

First, a school district receiving these funds must show it is actually reducing class size, by reporting class size in grades 1-3 to parents and to the state each year. Second, as is the case with other federal education programs, we will incorporate a "maintenance of effort" provision, requiring states to keep up their overall investments in K-12 education. Third, we will use existing Title 1 accountability and reporting requirements to ensure that every school district and individual school makes measurable progress in improving reading achievement within three years. If a school fails to make adequate progress, it must develop and implement a corrective action plan. If the school fails to show improved reading achievement after implementing the corrective action plan, the state could withhold the equivalent of the school's share of the district's funds.

VI. Rollout

Over the next few days, we will begin more extensive discussions with possible allies on this initiative. So far, Congressional Democrats have been enthusiastic.

1-26-98
THE WHITE HOUSE
WASHINGTON

January 25, 1998

MR. PRESIDENT:

The attached Sperling/Reed memo asks you to decide among options for proposing extensions to the Family and Medical Leave Act in the State of the Union. We have not yet received the views of your senior advisors, beyond what is reflected in the underlying memo. But we understand you have discussed the issue during your SOTU preparation and thought you should have a chance to see the memo today.

The memo presents two primary options: (1) lowering the FMLA's employer coverage threshold, all at once or incrementally, from 50 to 25 employees; or (2) extending the amount of leave time available to employees under certain circumstances: (i) from 3 to 6 months for everyone; (ii) from 3 to 6 months for employees with 2 years of service; or (iii) from 3 to 6 months for new parents only, but only once every 2 years.

Phil Caplan *Phil*

Sean Maloney *SM*

*I say go back to
last proposal*

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1-26-98

THE WHITE HOUSE
WASHINGTON

January 23, 1998

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MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED
GENE SPERLING

SUBJECT: Family and Medical Leave Expansions

This memorandum presents options to expand the Family and Medical Leave Act (FMLA) for your consideration before a possible announcement on this issue in your State of the Union Address. Expanding FMLA would further enable American workers to take protected time off to spend with a new or adopted child, or for medical emergencies. It would build on your strong record of helping parents meet their responsibilities to their families and their jobs, and, specifically, would complement two pieces of your current child care proposal that also help parents who wish to stay at home: (1) support for home visitation and other parent education programs in your Early Learning Fund, and (2) demonstration projects to test policies to help parents stay at home.

As you know, your advisors initially believed that a proposal to expand FMLA could help inoculate your child care initiative against conservative attack by allowing parents to spend more time with their children. Your recent child care announcement has generated overwhelmingly positive support; several leading Republicans, however, have been working on alternative proposals aimed entirely at helping parents to stay at home with their children. While an announcement on FMLA expansion would be an important marker in this area, given the nature of the proposals under active Republican consideration -- such as income splitting, income averaging, and expansion of the \$500 per-child tax credit -- it is unlikely that any proposal to expand FMLA could stand up fully to these costly options. We therefore will continue our work with the Treasury Department to explore possible tax-related measures to support stay-at-home parents, in addition to any expansion of FMLA.

FMLA currently requires employers with 50 or more employees to provide up to 12 weeks of unpaid leave to eligible employees for certain family and medical reasons, including the care of a new child. Employees are eligible if they have worked for the employer for at least 12 months and for at least 1,250 hours over the previous 12 months, and if the employer has at least 50 employees working within 75 miles of the employee's worksite. Public agencies are covered by FMLA regardless of size, but employees must still meet the eligibility requirements, including working at a site where at least 50 employees are employed within 75 miles.

Options to expand FMLA include: (1) applying FMLA to businesses with 25 or more employees, either in one step or incrementally; or (2) extending the permissible leave period to 24 weeks for parents with newborns. Over the last few weeks, we have worked to determine the costs to businesses and the benefits to workers of pursuing either or both of these options. Unfortunately, we have found that useful data in this area does not exist. It is impossible to determine, for example, how many people currently taking leave to care for a newborn or adopted child would take additional leave or how additional leave would benefit people of particular income levels. Similarly, it is impossible to quantify the likely costs to small businesses.

Option 1: Expanding Coverage to Businesses with Fewer Employees. You could call for lowering FMLA's employer coverage threshold from 50 to 25, either in one step or incrementally (for example by lowering it to 40, then 35, and finally 25). Senators Kennedy and Dodd have proposed to lower the threshold to 10 employees, but your advisors believe that FMLA would be too great a burden on employers of that size.

According to the Department of Labor, 67 million employees are currently eligible for FMLA. Lowering the threshold to 40 would add 3.4 million people; lowering it to 35 would add 5.4 million people. Lowering the threshold all the way to 25 would add about 10 million people, increasing by 15 percent the number of employees covered by FMLA, and doubling the number of employers covered by the Act (from 330,000 to 690,000).

This proposal would give FMLA protection to more people at no cost to the federal government. It would receive strong support from labor, women's groups, and other core Democratic constituencies. The proposal, however, would provoke strong business opposition. Many Republican and some Democratic Members of Congress would likely criticize any attempt to lower the threshold as detrimental to small business. (According to a survey by the Family and Medical Leave Commission, however, the great majority of businesses that have implemented FMLA report little or no cost increases.)

Extending FMLA Leave from Three to Six Months

Below are three variations on this theme. The first is the most inclusive. The second limits the workers eligible to the full six months to those with two full years of job tenure with their current employer. The third limits the extent of the new benefit *and* makes it available only to new parents.

Option 2A: Extending FMLA from Three to Six Months. This option would allow workers who are currently eligible for FMLA to take longer leave. Approximately 12 million workers take FMLA leave. According to the FMLA Commission's survey, about 12.5 percent or 1.5 million workers take the full 12 week leave. Of these, 450,000 workers took 12 or more weeks leave for maternity, disability, or the care of a newborn, adopted or foster child.

This proposal would give parents additional time to spend with their new babies (again at no cost to the federal government). It might help respond to the charge that our child care proposal helps only working parents, not those who -- with a little help -- can and want to stay home with their children for a period of time. However, any family leave policy would not fully respond to that criticism because leave is by definition geared toward people who have been in the workforce and will return to it. In addition, this proposal would not help workers who currently cannot afford to take even the full 12 weeks of FMLA leave. According to the Commission's survey, 65 percent of those who would have liked to take leave to care for their newborn, foster, or adopted child could not do so for economic reasons. Because this proposal would not help such workers, FMLA advocates would likely give it only lukewarm support. Finally, businesses already covered by FMLA would oppose the extension because guaranteeing *six months* of leave would disrupt their operations.

Option 2B: Extend FMLA from Three to Six Months for Workers with Two Years Tenure. Although there is no data available, your advisors generally feel that extending FMLA to six months is a non-trivial burden on business. While businesses can arrange for other employees or temporary help to cover a co-workers' *three* month absence, a *six* month absence is harder to manage. Employers may have to hire replacement workers, thus increasing their costs significantly. Moreover, employers faced with the possibility of having to offer six months of job-protected leave to workers with only one year's tenure may be less likely to hire employees they suspect will take this leave. This option is intended to mitigate these problems by limiting eligibility for the extended leave to employees with two years of tenure.

Option 2C: Allow New Parents Up to 24 Weeks Leave in a Two Year Period. To eliminate the possibility that an employee could work only six months *each year* by taking six months of job protected leave annually, this proposal would instead allow new parents only to take six months of job protected leave *every two years*. Under this option, by taking the full six months to care for a newborn, the employee would forego any right to paid leave in the following year. Current law allows six months every two years, but restricts it to two three month periods. This proposal simply gives employees additional flexibility in taking their leave while adding only minimally to the business burden.

Recommendations: Your advisors agree that lowering the employee threshold will provoke significant opposition, but some of your advisors, including the First Lady, believe that it is a fight worth having. The First Lady believes strongly that lowering the threshold to 25 will make a real difference in people's lives, covering about 10 million more American workers with this significant benefit. She believes that, politically, it is an important thing to be for.

Some of your advisors feel that a decision about lowering the threshold must be made in the context of the impact of your overall agenda on the business community. Secretary Herman, for instance, believes that if you decide to call for an increase in the minimum wage, you should not also lower the threshold. If, however, you do not propose raising the minimum wage, then she feels you could call for lowering the threshold. Administrator Alvarez opposes any changes

to current law because she feels they will engender significant business opposition and may undermine gains we have already made.

Secretary Herman supports extending the length of FMLA leave. Secretary Rubin and Janet Yellin oppose Options 2A and 2B. Secretary Rubin feels that because businesses may need to hire replacement workers to cover six month absences, the cost to business of longer leave could be greater than the cost of initial implementation of the FMLA. He is also concerned that higher income workers are more likely to benefit from longer leave, while empirical evidence would suggest that all workers will pay for this in the form of lower wages. Janet Yellin shares Secretary Rubin's concerns about Options 2A and 2B, but supports Option 2C because she feels it is a very minor change from current law. The First Lady worries that the six month leave extension will make only a marginal difference, and will disproportionately assist higher-income workers.

The NEC has concerns about six months leave, but on the whole would support Option 2B -- extending the FMLA to six months for workers with two years tenure. The NEC fears, however, that lowering the limit to 25 will cause too much opposition from Southern Democratic Senators, especially if we also propose to raise minimum wage.

The DPC recommends that you propose Option 2B -- extending the FMLA to six months for workers with two years tenure -- and if you are willing to take on a larger fight, that you propose to lower the employee threshold to 25 as well. In addition, your advisors recommend that you continue to fight for the 24-hour extension of FMLA for school visits, doctor appointments and other family responsibilities.

1. Expand FMLA Coverage to Businesses with 25 Employees

☐ YES ☐ NO ☐ DISCUSS

2A. Extend FMLA Leave from Three to Six Months

☐ YES ☐ NO ☐ DISCUSS

2B. Extend FMLA from Three Months to Six Months for Workers With Two Years Tenure

☐ YES ☐ NO ☐ DISCUSS

2C. Allow New Parents Six Months Every Two Years

☐ YES ☐ NO ☐ DISCUSS

THE PRESIDENT HAS SEEN
1-26-98

1/25/98 12AM

PRESIDENT WILLIAM J. CLINTON

STATE OF THE UNION ADDRESS

UNITED STATES CAPITOL

January 27, 1998

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Second, we must make it possible for hardworking families to meet their most important responsibilities.

Two years ago, we guaranteed that Americans won't lose health insurance when they change jobs. Last year, we extended health care to up to 5 million children. This year, I challenge Congress to take the next historic steps.

160 million Americans are in managed care plans. CAM
These plans can save money and improve care. But medical decisions should be made by medical doctors, not insurance company accountants. I challenge Congress to write into law a Consumer Bill of Rights that says: You have the right to know all your medical options -- not just

~~But~~ we must do more to make government work better. We have already slashed 16,000 pages of regulations, transformed HUD and the Federal Emergency Management Agency, reduced the federal payroll by 300,000 workers. Yet there is more to do.

Like every taxpayer, I am outraged by the reports of abuses by the IRS. We need new citizen advocacy panels, a stronger taxpayer advocate, phone lines open 24 hours a day, relief for innocent spouses. Last year, by an overwhelming bipartisan margin, the House passed sweeping IRS reforms. Months later, that bill still languishes in the Senate. Tonight I challenge the Senate: as your first order of business, pass our bipartisan package of IRS reforms. Do it now.



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

January 15, 1998

By Hand

DAN BURKHARDT:

The President of the United States
The White House
Washington, D.C.

please coordinate the
reply.

Dear Mr. President:

It has been a great honor and privilege to serve you these past five years as the Comptroller of the Currency and I am proud of what we have been able to achieve in that time. However, my term of office is drawing to a close and much of what your Administration set out to do in the banking area has been accomplished. In order to give you ample time to choose a successor to carry on this work, I am advising you today that I intend to resign when my term expires on April 4, 1998. It is time for me to pursue my goals in the private sector and to spend more time with my family, whose love and support have been a constant source of strength to me.

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Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

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During my time in office, I have tried to implement the Administration's policies in the financial services sector to assure that a strong and healthy banking system would continue to play a vital role in the health of the nation's economy and the lives of each of its citizens.

Given how far we have come in the past five years, it is hard to believe that you took office at a time in which banks were failing weekly and entire regions of the country were gripped in a severe and crippling credit crunch. You responded in the early months of your Administration by asking us to devise a new supervisory plan that would deal with these serious problems and help bring about an economic recovery that would benefit all Americans.

Working with other offices in the Department of Treasury, we devised an eleven-part program that was quickly adopted by each of the federal bank and thrift regulatory agencies. The results were dramatic. The credit crunch abated, the economy began to grow again and the banking industry returned to good health.

At the same time we were working to alleviate the credit crunch, we were putting in place a long-term bank supervision program that rests on four strong pillars. Each of the four pillars has been marked by solid accomplishments.

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January 15, 1998
Page 2

The first pillar -- Ensuring Fair Access to Financial Services for All Americans -- was implemented through several programs. Most notably, the Office of the Comptroller was given responsibility for one of your Administration's early top priorities, revising the much criticized Community Reinvestment Act. The Comptroller's Office spearheaded a two-year effort to revise the regulations under this Act, which revision was also adopted by each of the federal depository institution regulatory agencies. The results speak for themselves.

Lending commitments under the CRA have increased 15-fold from the pre-1993 era, from roughly \$3 billion a year to \$43 billion a year. These commitments represent new credit availability for low- and moderate-income urban and rural communities, including loans for housing, small farms and small businesses. At the same time, equity investments by national banks in community development corporations and projects were six times greater in the last four years than during the previous 28 years combined. Home mortgages to African Americans and Hispanic Americans have increased more than 50 percent over the last four years -- almost three times the rate of increase for the population as a whole. In some chronically underserved communities the change has been even more dramatic.

Moreover, it is a source of considerable pride for all of us at the Comptroller's Office that we have been able to achieve these results while substantially reducing the supervisory and paperwork burdens that the CRA had previously imposed on the banking industry.

Also under the first pillar, we completely revised our fair lending procedures and pioneered blind testing programs and self-assessment programs in the fair lending area. Since 1993, our Office has conducted over 4,000 fair lending examinations, and referred 25 times more lending discrimination cases to the Departments of Justice and HUD than in the previous history of the Office.

The second pillar of our program -- Improving Bank Safety and Soundness -- was designed to make sure that the national banking system remains strong and able to support a strong and growing economy. To that end, we devised and implemented a new model for supervision, "Supervision by Risk". This model focuses our supervisory efforts on the most critical risks in the banking system. It has been adopted in substance by the other federal depository institution regulators and by banking supervisors abroad. In a further effort to improve bank supervision, we pioneered the use of economists to assist in bank examinations. And we established a separate cadre of specialists to focus on capital markets activities, placing an early emphasis on the supervision of derivatives.

When your Administration took office in 1993, we were experiencing approximately 50 bank failures a year. There has not been a single national bank failure now for nearly two years. Bank profitability has been higher in the last six quarters than at any time in the history of this country, and bank capital is at the highest level in 30 years.

Our third pillar -- Promoting Competition -- is closely related to our efforts to ensure bank safety and soundness as well as increasing product and service availability for consumers. For decades, banks had been squeezed out of many of their traditional markets, thereby dangerously concentrating their

January 15, 1998

Page 3

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risk in fewer products and customers. Today, through a series of rulings by our Office, upheld in four unanimous U.S. Supreme Court decisions, as well as in dozens of lower federal courts, national banks are serving their customers with a broader array of financial products and services than at any time in their history. Allowing banks to diversify their financial services activities strengthens the banking system, reduces risk to the nation's taxpayers and promotes competition that lowers costs for consumers and makes financial products and services more widely available.

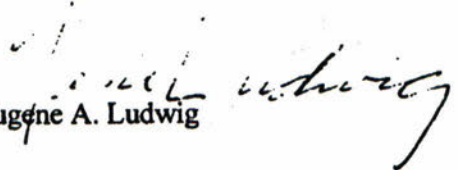
The final pillar of our program -- Improving the Efficiency of Bank Regulation -- is the pillar that most reflects your Administration's focus on "reinventing government." Most notably, we completely reviewed and rewrote every rule under which the national banking system operates -- a first in the history of our agency. In the process we halved the number of filing requirements for banks and significantly reduced other paperwork burdens. We also lowered assessments on national banks on three separate occasions and eliminated or cut most of our fees -- again a first in the history of the agency. We reduced the size of the Comptroller's Office by over 25 percent in response to the continued consolidation of the banking system. And we pioneered an Ombudsman program that has now been required by law of all other federal depository institution regulators. Our reinvention efforts have been praised by both banks and the general public.

Finally Mr. President, I commend to your attention the fine group of dedicated men and women who work at the Office of the Comptroller. During your Administration, they have demonstrated how much they can accomplish for the good of the country. Whether it has been reversing the effects of the credit crunch, revitalizing the Community Reinvestment Act, eliminating lending discrimination, reducing unreasonable regulatory burdens, pioneering risk based supervision, or modernizing the banking system, the staff of the Office of the Comptroller have worked diligently and successfully. I can't tell you how proud I am or how honored I feel to have had the opportunity to serve with them. They demonstrate each day just how noble a calling public service can be.

The past five years have been challenging ones for your Administration and for me. I am confident that, with your leadership, our nation will continue to make great strides forward. I also am confident that the Office of the Comptroller of the Currency will continue to carry out its responsibilities fully and enthusiastically.

Thank you again for giving me the privilege to serve our country as part of your Administration.

Sincerely yours,


Eugene A. Ludwig

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THE WHITE HOUSE
WASHINGTON*Million in print sent*

November 6, 1997

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MEMORANDUM FOR THE PRESIDENT

FROM: FIRST LADY HILLARY RODHAM CLINTON
ELLEN McCULLOCH-LOVELL

SUBJECT: Save America's Treasures Act of 1998

When you announced the Millennium Program at the National Archives, you said we would, as a nation, seek ways to "honor the past and imagine the future". One way to translate that theme into practical action is for you to champion a national, bipartisan, public-private effort to save America's treasures.

Our past is literally crumbling, chipping and disintegrating away in our libraries, museums, archives, historic sites and private holdings. There is a truly urgent need to save the papers, art, publications, artifacts, buildings and sites that tell our history and preserve our identity as Americans -- from the Star Spangled Banner, to the Declaration of Independence, to the archives of historically black colleges, Native American archeological sites, and ancestral portraits in unheated New England historical societies.

As the White House Millennium Program and Congress plan for ways to mark both the 200th anniversaries of the White House and Capitol and the millennium, there is a unique opportunity to create a new preservation program to "Save America's Treasures".

A compelling list of records, monuments, sites and other artifacts that need to be "saved" could be quickly compiled, and a strong case made for the urgency of the need. For example:

- The Declaration of Independence, the Constitution and Bill of Rights are at risk if their storage problems are not solved within three years.
- The restoration of the Star Spangled Banner, the flag that flew over Fort McHenry that inspired Francis Scott Key's poem, is the first preservation priority for the Smithsonian Institution, at a cost of \$15 million.
- The National Park Service, which manages Thomas Edison's laboratory and house in New Jersey, describes their condition as dire -- all of his papers must be catalogued and conserved. Large numbers of artifacts at the Gettysburg Battlefield site are undocumented and disintegrating for lack of proper storage. At Gettysburg, twenty-nine monuments and

outdoor sculptures, some designed by renowned artists, are in grave danger. Some have fallen, like those they commemorate: others are worn by weather and defects. Together they comprise the largest collection of sculpture at any Civil War battlefield and they must be saved.

- The National Endowment for the Humanities reports that 80 million brittle books in libraries and other collections need to be saved through repair and digitization; NEH has set a goal of preserving three million of the most valuable by 2010.
- Both the Library of Congress and the National Endowment for the Arts describe the urgent need to save America's classic films, as well as photos and historic field recordings, by transferring them to more stable media.
- The Library of Congress must find ways to conserve their collections from historic figures, such as Ralph Ellison and Leonard Bernstein.
- Among the "eleven most endangered historic places" listed by the National Trust of Historic Preservation in 1997 are: the Ellis Island National Monument, where decay and lack of maintenance threaten the historic buildings of the main gateway to America from 1892-1954; Congressional Cemetery in Washington, DC, the final resting place of American tribal chiefs, Revolutionary War heroes and members of Congress -- which is in serious decline from neglect, vandalism and theft; and Vicksburg Campaign Trail, where landmark buildings are crumbling and development threatens unprotected areas surrounding the Military Park.
- The non-profit National Institute for Conservation reports instances of pending loss all over the country. For example, 50,000 glass plate negatives of major sites in Egypt that no longer exist are in need of preservation at the Museum of Fine Arts in Boston. Over half our outdoor sculptures in major parks and small towns across the nation are in need of repair, including the statue of Wyoming Territory's equal rights advocate, Esther Hobart Morris, in Cheyenne.

Federal agencies are currently carrying out preservation programs but at a lower level of activity than what is urgently needed.

NEH has invested \$50 million since 1989 in preserving brittle books. IMLS spends \$2.5 million annually on conservation grants for museum collections, one of its major programs. The Library of Congress has the largest conservation lab in the world -- and spends \$5 million a year. The Library also runs the largest film preservation lab and is the major restorer of our motion picture heritage. The Library recently restored its two copies of Lincoln's Gettysburg address and the Thomas Jefferson draft of the Constitution. The National Endowment for the Arts allocates about \$4.5 million a year for preservation funding projects, such as grants to restore historic adobe churches, conserve a Rembrandt Peale portrait housed in Ohio, resurrect old musicals that would be lost, and save archival tapes of legendary performances by Woodie Guthrie and Jelly Roll Morton. The 20th century was the American century in dance, but without preservation the

works of master choreographers will die with them.

The General Services Administration is a major conservator of buildings and art. Among its holdings are 200 buildings that are listed on the National Register of Historic Places; GSA also maintains the government's collection of WPA art and the works commissioned with new construction.

The National Archives and Records Administration presents a special challenge, as there is a backlog of work needed to salvage deteriorating records, convert many to more stable media, expand storage and renovate facilities. It has submitted a strategic plan with a significant budget increase that should be considered on its own. The needs of the National Archives, however, are entirely consistent with this recommendation of a major administration preservation program and could be presented with other urgent needs. For example, to save the Declaration of Independence, the Constitution and the Bill of Rights, Archives proposes a series of steps -- removing the Charters from their deteriorating cases, placing them in new state-of-the-art cases, renovating the vault system and renovating the National Archives building. The cost estimate for FY 99 is \$87 million; for FY '00 it is \$121 million. In addition, Archives proposes to save electronic records (\$2.3 M); improve storage and preservation (\$3.6 M); expand public access to collections (\$5.6 M); and promote records management by federal agencies (\$2.3 M).

The needs of the National Park Service are compelling; the National Park System that President Roosevelt created a century ago now suffers from neglect in maintenance and in preservation -- needs that must begin to be addressed. NPS owns 15,000 buildings and 35 million artifacts; only about seven percent receive conservation each year. Work on even a selective list of endangered sites would cost at least \$64 million. Yet, work must begin -- and with the federal impetus and the spotlight of attention, many of the projects could attract private support. 280020
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We could have a major impact by including at least \$100 million in the FY 99 budget and between \$100 million and \$200 million in the FY '00 budget to "Save America's Treasures". These amounts would be allocated proportionate to need, and capacity to regrant new funds, through the federal agencies and the major preservation non-profits. Because a number of agencies and NGOs are already "in the business" of preservation, we should be able to begin a well-organized preservation program on October 1, 1999.

Federal funding should be made available to institutions and citizens' groups on at least a one-to-one matching basis. There is strong evidence that there would be substantial support in the private funding sector: corporate, foundation and individual donors. One recent example of the private focus on preservation is the five million dollars granted by the American Express Foundation to help create the World Monuments Fund. The J. Paul Getty Trust has invested \$24.8 million in 1996 alone in national and international preservation projects. (Yesterday, the Getty and the World Bank signed an agreement whereby the foundation will provide expertise on the role of cultural heritage in the Bank's sustainable development funding.) Just last week a major U.S. foundation called to say that, inspired by the White House Millennium Program, they were ready to commit at least \$5 million to the Smithsonian and the National Archives for their preservation priorities.

A national "Save America's Treasures" program could stimulate a private fund-raising campaign to capture the commitment and dollars of citizens. A non-profit organization, such as the National Trust for Historic Preservation, which already has state chapters and thousands of members, could help launch both the national campaign and local versions. School children could learn their history as well as the value of philanthropy by participating in fund-raising: perhaps by collecting 2,000 pennies.

A national preservation program will link strongly to a public-private partnership to digitize intellectual and cultural material, to enrich the content of the national information infrastructure. While digitization is not the only -- nor permanent -- method of preservation, it does capture images and content, making records and objects accessible to a wide public of students, parents, teachers, writers and researchers. Additional funding for digitization would help the Smithsonian Institution digitize parts of its collection and allow other federal institutions with collections, such as the National Archives, to enrich the content of the Internet. In addition, small amounts (\$2 - \$4 million each) to NEH, NEA, and IMLS will stimulate projects in non-profit institutions to digitize their own collections, and to develop curricula around this material. A national digitization project is similar to, although not identical to, a preservation program; however, one supports the other. Together they would be a significant gift to the nation: to save and create access to our history and culture.

JAN 7 1998

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

January 7, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: KATHLEEN A. MCGINTY

SUBJECT: OFFSHORE OIL DRILLING MORATORIUM

[This memo is for informational purposes only. If you decide that you would like to pursue this issue further, we will need to engage in a policy process.]

This is in response to your request for information on the possibility of a permanent moratorium on new leases for offshore oil drilling off the coast of California. It sets out the current status of California offshore drilling, the legal authorities available to you, relevant policy considerations, and options for action.

Summary

Current moratoria preclude any new leasing off California until at least 2002. You have broad legal authority to withdraw areas from leasing. However, policy considerations and Administration policy to date would suggest that a permanent withdrawal should not be done without, at a minimum, a factual record from the Interior Department about the impacts of such a withdrawal. Another option, which also should await a factual record from the Interior Department, would be to extend the current moratoria for a fixed time period, but to stop short of a permanent withdrawal. You should be aware, however, that polling data from October 1996 is surprisingly negative on this action -- nationwide, 34% believe we should ban offshore drilling for environmental reasons, while 50% say we should permit offshore drilling to keep energy prices low and reduce our dependence on foreign oil. In California and Florida, roughly 53% support a permanent ban and 43% oppose. New Jersey was also polled, with only 31% supporting and 64% opposing.

Current Status

It is my understanding that Senator Boxer has proposed a permanent moratorium on new oil or gas leases off the California coast. The practical effect of this action would be to make permanent the current time limited moratorium on such leases, and reduce the risk that later Administrations will fail to continue the moratorium now in place. (Of course, later Administrations could revoke any withdrawal you put into effect, and Congress could always overturn such a withdrawal.)

The Administration's five year Outer Continental Shelf Leasing Program, issued pursuant to the Outer Continental Shelf Lands Act, precludes any new leases off the California coast through 2002.

In addition, President Bush in 1990 withdrew the California Outer Continental Shelf from new leasing through 2000, and this moratorium has been included in Interior Appropriations bills ever since.

Prior to either of these actions, the Reagan Administration had entered into 83 leases off the shore of Southern California. Those leases are contractual obligations of the government that cannot be rescinded. Of these, 43 are producing leases and production has doubled over the last 5 years to approximately 200,000 barrels per day. The other 40 non-producing leases are the subject of an ongoing study involving the federal and state governments and the oil companies, to be completed in spring 1998. No production will begin until that study is completed, and all these leases expire in December 1998 unless production plans are submitted prior to September 1998.

Legal Authority

Section 12(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1341) provides that the President "... may, from time to time, withdraw from disposition any of the unleased lands of the outer Continental Shelf." The provision clearly authorizes the President to withdraw areas not currently subject to a lease from leasing. There is no instructive legislative history on the provision.

The Interior Department's Solicitor's Office believes that, while the provision does not directly address revocation of a withdrawal, the language implicitly allows the President to revoke a withdrawal so issued. That office also notes that there is no specific procedure required by law for effectuating such a withdrawal, but that an Executive Order would be one appropriate means for doing so.

The authority has been invoked only twice -- in 1960 by Federal Register notice to establish the Key Largo Coral Reef Preserve; and in 1992 by a memorandum to the Secretary of Interior from President Bush confirming an earlier withdrawal pursuant to this authority, to remain in effect through 2000 "subject to revocation should the President determine the scheduling of a lease sale to be required in the interest of national security."

Policy Considerations

The Administration's general policy with respect to development of the nation's oil and gas resources has been that decisions with respect to leasing and moratoria should be based on sound science and environmental protection. Within those constraints the Administration has supported production of its energy resources. Decisions with respect to leasing have been made on an area-by-area basis through the use of Interior's five year leasing plans, and have been done in an open process involving the affected parties with a concerted effort at consensus building.

Making permanent the existing five year moratorium in California without additional process or impact analysis by the Interior Department would be a departure from Administration policy. In addition, it would set a precedent that could be problematic for two reasons. First, it could increase pressure on the Administration from opponents of offshore drilling in other states to take Presidential action without the normal scientific/public process. (For example, large natural gas deposits in the

Norfolk Trench off the Gulf coast of Florida are estimated to contain enough natural gas to provide for Florida's needs for the next 40 years, and the issue of production of that gas is expected to be controversial). Second, this action could serve as precedent for later Administrations to revoke existing withdrawals without factual or scientific analysis to the detriment of the environment.

Should you wish to pursue a moratorium but mitigate potential conflicts with current Administration policy, there are at least two variations on Senator Boxer's proposal to consider. First, any executive action to withdraw lands from leasing could (and in my view should) be preceded by a direction to the Secretary of Interior to provide an analysis of the impact on oil production and the environment of an extension of, or a permanent, moratorium. It seems most practical to request information on both a time limited extension of the present moratorium as well as a permanent moratorium. Any moratorium proposal or request to the Secretary should include a proviso such as that used by President Bush that the moratorium could be revoked if the President believed it to be a threat to the national security.

Such a report from Interior would provide a factual record on which to base your decision (albeit one that stops short of the public process typically used by Interior). Interior believes that such an analysis could be done very quickly upon request, easily within 30 days. However, Interior has expressed concerns in the past about the consistency of permanent moratoria on drilling with our national security interests, and does believe that the public process it has used to make these determinations during this Administration has significant value. Thus, it is not clear that Interior's analysis would result in a blanket endorsement of moratorium extensions.

THE WHITE HOUSE
WASHINGTON

January 20, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: SIDNEY BLUMENTHAL *SB*

SUBJECT: Idea Papers

Many of the participants in the Thinkers Dinner have been inspired and enclosed them here. They are:

1. Barbara Whitehead writes on how the opposition to the childca recent research on breastfeeding and infant brain development to d
2. Cass Sunstein, in a forthcoming Georgetown Law Journal, argu repealing the Independent Prosecutor Act. I believe this article will
3. Dani Rodrik suggests using the Asia financial crisis to make the forecasts a decrease in world trade demand if current trends are no
4. Michael Lind writes about the Party of Hope, the Party of Fear : conclusion to his suggested State of the Union (page 28) contains : and 21st centuries that may be rhetorically useful.
5. Paula Rayman urges putting a human face on globalization in order to demystify it and to focus attention on the work-family connection.
6. Richard Rorty underlines the notion of making globalization work for all.
7. Patricia Williams writes that images of separate communities disenfranchises the majority of Americans.
8. I've included a lovely old piece by Sam Beer, which he gave me, about Whitman and the idea of the union. Among other things, Beer shows that the idea is in the marrow.
9. I've also included a short memo sent to me by Richard Leone, the president of the Twentieth Century Fund, about Social Security and the baby boom generation, in which he suggests a ppositive way of discussing our generation's contributions to the building of America.

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Entire package:

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1. Reed

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THE WHITE HOUSE
WASHINGTON

January 20, 1998

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MEMORANDUM FOR THE PRESIDENT

FROM: SIDNEY BLUMENTHAL *SB*

SUBJECT: Idea Papers

Many of the participants in the Thinkers Dinner have been inspired to write papers to you. I have enclosed them here. They are:

1. Barbara Whitehead writes on how the opposition to the childcare proposal may try to use recent research on breastfeeding and infant brain development to discredit it.
2. Cass Sunstein, in a forthcoming Georgetown Law Journal, argues a strong case in favor of repealing the Independent Prosecutor Act. I believe this article will receive wide attention.
3. Dani Rodrik suggests using the Asia financial crisis to make the case for international trade. He forecasts a decrease in world trade demand if current trends are not reversed.
4. Michael Lind writes about the Party of Hope, the Party of Fear and the Party of Fantasy. His conclusion to his suggested State of the Union (page 28) contains a formulation about the 20th and 21st centuries that may be rhetorically useful.
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BARBARA DAFOE WHITEHEAD

15 FOREST EDGE ROAD • AMHERST, MA • 01002
PHONE: (413) 549-6112 • FAX: (413) 549-1835

Memo To: Sidney Blumenthal

From: Barbara Whitehead

Re: A strategy for using family and medical leave to win the
childcare debate

Date: January 12, 1998

This memo is inspired by a brief parting exchange I had with the President. I told him that a recent study in the medical journal *Pediatrics* supports his hugely popular family and medical leave program and also bears upon the new childcare proposal. Its bottom line finding: for infants, breast milk acts as brain food, boosting IQ and school performance. (More on this later.)

I'm also attaching a piece that ran in the *Wall Street Journal* on the day after the dinner. An attack on institutional child care in general, it rests heavily on research evidence of the risks of institutional care for children in the first six to twelve months of life.

As it happens, the evidence for the risks to infants is quite robust. And now pediatric evidence on the benefits of maternal care for infants is appearing. For the President's childcare initiative, this poses both peril and opportunity.

The peril is this: The opposition will try to use the recent research on breastfeeding and infant brain development to discredit the proposal. It will argue that the President's proposal is at odds with what the White House itself was telling us last April about early brain development. It will say that the proposal is not designed with the best interests of infants in mind. It will say that the proposal rewards women who work during the early months of a child's life, but neglects those who choose to remain at home literally to pour their mother's milk into their child's cognitive capacity. And as the recent NBC/WSJ poll shows – granted, your polls may tell a different story

– the public's view of child care (and especially infant care, I suspect) is ambivalent.

The opportunity is this: The President can preempt the opposition by adding a feature to his State of the Union exposition of his child care plan. The purpose of the addition: affirming the principle that working mothers of newborns deserve the opportunity to nurture their infants before they return to their place of employment.

The policy vehicle for providing this opportunity already exists: The Family and Medical Leave Act. It now offers up to 12 weeks of unpaid leave for varied family purposes. What if parents of newborns were provided with more than 12 weeks of unpaid leave? Ideally the number of weeks might rise incrementally to 36 weeks, but you know better than I how many weeks might be appropriate for the first incremental expansion.

This puts the President on the offense and keeps him there. He can say:

I have long recognized the importance of giving parents the option of caring for newborn babies at home. This is one reason why I faced down Republican opposition and signed the Family and Medical Leave Act. The latest research on infant well-being only confirms the importance of providing new parents with this opportunity.

Thus, he can use a wildly popular achievement not only as the policy vehicle but also for rhetorical and political leverage. This puts the opposition in a corner: You'll get the option of at-home maternal care for infants in the early months of life, but the price you pay for it is an expansion of a signature achievement of the Clinton administration (and one you fought against.)

This also enables the President to present his childcare initiative in a way that is sensitive to the developmental needs of the child: expanded family leave for working parents of infants, followed by quality day care for children beyond infancy, followed by afterschool care for school-age kids. Again the emotional and cognitive needs of children – rather than what some might disparage as the convenience desires of parents and employers – are the linchpin rationale.

Of course, some parents, especially single mothers who are leaving welfare for work, will have to rely on childcare for their infants and toddlers. (Some states require new mothers to return to school or work as early as twelve weeks after the birth of a baby, I believe.) But the point remains that the President has already fought, against Republican opposition, for the right of working parents to stay at home with a newborn. Now he can call for an expansion of that right.

.....

A brief summary of the attached article:

This well-designed longitudinal study by New Zealand researchers indicates that children who are breast fed for up to eight months have higher IQs and better school performance than those who are fed infant formula. The researchers hypothesize that a fatty acid present in breast milk but not in formula may be responsible for the advantage. Another hypothesis is that eight months of breastfeeding makes for stronger attachment between infant and mother, and stronger attachment enhances cognitive and emotional functioning. Importantly, the positive effects of breastfeeding persist over time. Partly in response to the research and partly in response to clinical experience, the American Academy of Pediatrics recently revised its advisory on breastfeeding and called for a full year of maternal breastfeeding wherever possible.

THE WALL STREET JOURNAL THURSDAY, JANUARY 8, 1998

A Dangerous Experiment in Child-Rear

By ANDREW PEYTON THOMAS

A harmful social phenomenon is fast gaining popular acceptance—a vice so common that the problem is rarely even discussed, and almost never forthrightly. A new Census Bureau study makes clear the magnitude of the problem. Examining nearly 57,000 households across the U.S., the bureau found that 55% of new mothers return to the work force *within one year* of giving birth. In 1976, by contrast, the figure was only 31%. Ours is now a day-care culture. And the Clinton administration appears determined to keep it that way. Yesterday the president proposed a \$21.7 billion program of new spending and tax breaks to subsidize day care.

It is one thing for both parents to work outside the home when their kids are older. But for both parents in a majority of families to be employed before their children can even walk is startling. We are witnessing a momentous experiment in the raising of children. Yet there are few stirrings in the culture suggesting anything but a complacent acceptance of this revolution in child rearing. Few political, cultural or religious leaders have spoken out against the growing practice of abandoning infants to paid strangers. Yet recent research, not to mention common sense, tells us that this quiet overhaul of American families is a profound tragedy whose bitter fruit will be reaped for decades to come.

'Psychological Thalidomide'

Social science confirms that babies raised in day-care centers and similar institutions are often emotionally maladjusted. Child development expert Edward Zigler of Yale has gone so far as to call day care "psychological thalidomide." Research beginning in the early 1970s has found that such children are more likely to be violent, antisocial and resistant to basic discipline. A 1974 study in the journal *Developmental Psychology* reported that children who entered day care before their first birthday were "significantly more aggressive" and more physically and verbally abusive of adults than other children.

A 1985 study by Ron Haskins in *Child Development*, another scholarly journal, compared two groups of day-care children and found that those who had spent more time in day care suffered from proportionately greater ill effects, regardless of the quality of care. Teachers were more likely to rate these early-care children as "having aggressiveness as a serious deficit of social behavior." Similarly, Jay Belsky of

Pennsylvania State University warns, based on his research, that full-time day-care babies are at risk of "heightened aggressiveness, non-compliance and withdrawal in the preschool and early school years."

Other studies have concluded that lengthy stays in day-care centers impair children's mental ability. In 1995, the National Institute of Mental Health published

lieve that a stranger can care for your child as well as you can?

Defenders of day care often say it is essential for women's equality in the work force. This simplistic notion, however, ignores the experiences of real men and women. Often it is fathers who are the biggest fans of day care: They like the extra income their wives can bring in by depositing children in institutions during the

Social science confirms that children raised in day-care centers and similar institutions are often emotionally maladjusted and mentally impaired.

a joint U.S.-Israeli study that found children raised in Israeli communes known as *kibbutzim*, who received 24-hour day care, were at significantly greater risk of developing schizophrenia and other serious mental disorders. Last April the National Institute of Child Health and Human Development released a long-term study of 1,364 children from 10 states. The study,



They don't belong in day care.

which examined children from diverse ethnic and socioeconomic backgrounds, reported that a child's placement in day care provided a "significant prediction" of poorer mother-child interaction and reduced cognitive and linguistic development.

These are remarkable findings, especially given that social scientists, in the main, hold no brief for traditional family values. But if you are a parent skeptical of this social science, ask yourself this straightforward question: Do you truly be-

lieve that a stranger can care for your child as well as you can?

day. It is mothers who usually feel the sting of guilt, that despised but just gadfly of conscience. Americans today are sophisticated at rationalizing vice, but the justifications offered for day care are surprisingly thin. The most common excuse is that young couples need the extra money. But U.S. News & World Report found that the median income for two-earner families is \$56,000, compared with \$32,000 for male-breadwinner homes. At neither salary is a four-member family lacking for necessities. Per capita disposable income, adjusting for inflation, is more than twice as high today as it was in 1950, and three times as high as in 1930. Families are spending much of this money on luxuries like bigger homes (new homes are 38% larger now than in 1970)—not on their kids.

The notorious au pair trial presented this reality in stark relief: Two physicians imported a teenage indentured servant, paid her slave wages, entrusted her with raising their two children and then were outraged when many Americans did not entirely sympathize with them after one of the children died in the young woman's care.

Childhood was never perfect. Small children were once forced to sweep chimneys and pick grapes, and often children lost parents entirely to disease and war. But that is precisely why the destruction of the 1950s nuclear family is so tragic. The 1950s set a standard for family life that probably has never been equaled anywhere. Children were raised by two parents in a safe, comfortable home, and Mom was almost always there to look after them when they were young. The self-centered popular culture unleashed in the 1960s mocked and ultimately shattered this paradigm. Now we are institutionalizing

the worst aspects of this cultural revolution by warehousing infants merely so that we might accumulate ever-nicer possessions.

If these dire trends are to be reversed, our leaders must assert themselves. To begin with, religious leaders should decry the selfishness and materialism that lead parents to put their careers ahead of their children.

Politicians always do well to leave moral condemnations to the pulpit, and such a sermon would not win them many votes today. Yet they would likely become heroes to many working mothers if, instead of simply ignoring this issue, they handled it with sincerity and skill. A Roper poll this year reported that 76% of Americans think that mothers who work outside the home and have children under age three threaten family values. A survey of American women this year by the Pew Center found that 81% thought the job of mothering is more difficult today than it was 20 or 30 years ago, and 56% thought they did a less capable job than their own mothers. Even among women who work full time, only 41% were confident that their situation was good for their children.

Can't Have It All

There are several policy changes that elected officials should consider. The federal child care tax credit, which subsidizes day care at the expense of stay-at-home parents, should be reassessed. In a growing number of jurisdictions, judges are pressuring divorced mothers, even those with small children, to go to work, by reducing child-support payments based on their potential income. This practice should be ended legislatively. Lawmakers should also consider offering tax credits for businesses that accommodate mothers or fathers who leave the work force during their child's critical first five years. And, of course, Congress should reject Mr. Clinton's ill-considered plan to subsidize day care.

Above all, we must see through the canard that tells us that when it comes to the ancient clash between career and family, we are now clever enough to be able to "have it all." For when we knowingly sacrifice our children's well-being for the sake of money or careers, are we even truly worthy of our children's love?

Mr. Thomas is an attorney in Phoenix and the author of "Crime and the Sacking of America: The Roots of Chaos" (Brassey's, 1994).

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PEDIATRICS Vol. 101 No. 1 January 1998, p. c9

ELECTRONIC ARTICLE:

Breastfeeding and Later Cognitive and Academic Outcomes

L. John Horwood and David M. Fergusson

From the Christchurch Health and Development Study, Christchurch School of Medicine, Christchurch, New Zealand.

► **ABSTRACT**

Objective. This study examines the associations between duration of breastfeeding and childhood cognitive ability and academic achievement over the period from 8 to 18 years using data collected during the course of an 18-year longitudinal study of a birth cohort of >1000 New Zealand children.

Method. During the period from birth to age 1 year, information was collected on maternal breastfeeding practices. Over the period from 8 to 18 years, sample members were assessed on a range of measures of cognitive and academic outcomes including measures of child intelligence quotient; teacher ratings of school performance; standardized tests of reading comprehension, mathematics, and scholastic ability; pass rates in school leaving examinations; and leaving school without qualifications.

Results. Increasing duration of breastfeeding was associated with consistent and statistically significant increases in 1) intelligence quotient assessed at ages 8 and 9 years; 2) reading comprehension, mathematical ability, and scholastic ability assessed during the period from 10 to 13 years; 3) teacher ratings of reading and mathematics assessed at 8 and 12 years; and 4) higher levels of attainment in school leaving examinations. Children who were breastfed for ≥ 8 months had mean test scores that were between 0.35 and 0.59 SD units higher than children who were bottle-fed.

Mothers who elected to breastfeed tended to be older; better educated; from upper socioeconomic status families; were in a two-parent family; did not smoke during pregnancy; and experienced above average income and living standards. Additionally, rates of breastfeeding increased with increasing birth weight, and first-born children were more likely to be breastfed.

Regression adjustment for maternal and other factors associated with breastfeeding reduced the associations between breastfeeding and cognitive or educational outcomes. Nonetheless, in 10 of the 12 models, fitted duration of breastfeeding remained a significant predictor of later cognitive or educational outcomes. After adjustment for confounding factors, children who were breastfed for ≥ 8 months had mean test scores that were between 0.11 and 0.30 SD units higher than those not breastfed.

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Conclusions. It is concluded that breastfeeding is associated with small but detectable increases in child cognitive ability and educational achievement. These effects are 1) pervasive, being reflected in a range of measures including standardized tests, teacher ratings, and academic outcomes in high school; and 2) relatively long-lived, extending throughout childhood into young adulthood.

Key words: *breastfeeding, cognitive ability, academic achievement, longitudinal study.*

► INTRODUCTION

Over the last 2 decades, there has been an accumulation of evidence suggesting that breastfeeding may lead to small but detectable improvements in childhood cognitive ability or educational achievement. Three lines of evidence support this conclusion.

First, evidence from longitudinal studies of general child samples¹ has shown repeatedly that children who are breastfed show small increases over bottle-fed children in mean test scores on measures of intelligence and academic achievement, with these differences persisting after control for confounding factors. Typically, these studies suggest that in comparison with bottle-fed children, children who are breastfed for a minimum of 3 to 5 months have an advantage of between 0.15 and 0.25 SD units in mean test performance, even after control for confounders.¹

Second, data from an experimental study of feeding practices among preterm infants showed that children whose mothers chose to express their own milk to feed their infant had higher developmental scores at 18 months and higher intelligence quotient (IQ) assessed at 7.5 to 8.0 years than those whose mothers chose not to do so.^{2,8} These differences persisted after control for confounding factors, and there was evidence of dose-response relationships between the amount of breast milk supplied and developmental or cognitive gains. These children had taken part in a randomized trial of nutrition in neonatal diet. Among the children whose mothers had chosen not to express their breast milk, those randomized to donor breast milk, with low nutrient content, performed as well as those fed with nutrient supplemented preterm formula and significantly better than those fed a standard term formula.² These data raise the possibility that some components of breast milk ameliorate the effect of poor nutrition.⁸

Finally, neurodevelopmental research has suggested that the factors in breast milk that may be responsible for the improved cognitive abilities of breastfed children may involve long chain polyunsaturated fatty acids and, particularly, docosahexaenoic acid (DHA),¹⁰ with some clinical studies in which infant formula was supplemented with DHA suggesting possible improvements in visual acuity and cognitive ability in preterm infants given the DHA-supplemented formula.¹³

Collectively, the evidence from longitudinal research, clinical trials, and neurodevelopmental research is beginning to provide a compelling case for the view that breastfeeding may have longer-term effects on individual cognitive ability and educational achievement. There are, nonetheless, a number of issues about the associations between breastfeeding and cognitive outcomes that require clarification.

One important issue concerns the extent to which the benefits of breastfeeding on cognitive development persist beyond middle childhood. To date, most studies have examined these benefits in preschool children^{1,4,2,16} or in children studied in the early school years.^{1,6,8,17,18} Less is known about the extent to which the benefits of breastfeeding on cognitive ability extend into adolescence and young adulthood. This issue is clearly important because it is possible that the benefits of breastfeeding on cognitive development may wash out over time, with these benefits being confined to only a relatively short period of the individual's life.

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A second issue concerns the assessment of educational achievement. To date, only a few studies appear to have assessed measures of academic achievement, as opposed to measures of cognitive ability,^{1,2,6} and of these, the majority have used methods of standardized testing to assess educational achievement. Although such measures have obvious psychometric advantages reflected by their standardization, reliability, and validity data, the extent to which performance on standardized tests reflects real life academic achievement remains to be assessed. For these reasons, it would be desirable for cognitive benefits of breastfeeding to be assessed using a range of indices that could include performance on standardized tests, teacher-based evaluations of academic achievement, and levels of achievement in school examinations or in tertiary education.

To address the issues above, this paper reports on the results of an 18-year longitudinal study of the relationships between infant feeding practices and later cognitive ability and academic achievement in a birth cohort of >1000 New Zealand children studied from birth to age 18 years. The design of this study made it possible to examine 1) the extent to which benefits of breastfeeding on cognitive ability and achievement were evident throughout middle childhood, adolescence, and into young adulthood; and 2) the extent to which breastfeeding was related to a range of indices of academic achievement that included performance on standardized tests, teacher ratings of academic achievement, and levels of success in examinations on leaving school.

► METHODS

The data were gathered during the course of the Christchurch Health and Development Study. The Christchurch Health and Development Study is a longitudinal study of a birth cohort of 1265 Christchurch, New Zealand, children born in 1977. The cohort was an unselected population sample comprising all children born in all hospitals in the Christchurch urban region during the period from April 15, 1977 to August 5, 1977. These children have been studied at birth, at 4 months, at 1 year, at annual intervals to age 16 years, and again at age 18, using information gathered from a combination of sources including parental interview, teacher report, standardized testing and interviews with the children, and medical records.¹⁹

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Measures Used in the Study

Breastfeeding When children surveyed were 4 months and 1 year of age, mothers were questioned in detail concerning breastfeeding practices, use of milk formulas, and other aspects of infant diet. Maternal reports were supplemented by evidence on breastfeeding practices recorded in the developmental records completed by community health nurses. In addition, information was available from medical records of the mother's breastfeeding practices in the maternity unit at the time of the child's birth. Using this information, the following measures of breastfeeding were constructed. The first measure was duration in months for which the child was breastfed. For the purposes of data display, this measure has been classified into four groups: child was not breastfed; child was breastfed for <4 months; child was breastfed for 4 to 7 months; child was breastfed for ≥8. The second measure was duration in months of exclusive breastfeeding. This was defined as the number of months, to age 4 months, that the child was reported to have been breastfed without receiving any additional cow's milk, milk formula preparation, or solid food.

Although the two measures of breastfeeding were derived independently and used different criteria, they proved to be highly correlated ($r = 0.84$; $P < .001$).

Measures of Cognitive Ability and Academic Achievement

To describe the child's cognitive ability and academic achievement during the period from 8 to 18 years of age, the following measures were selected.

Measures of Cognitive Ability At ages 8 and 9 years, children were administered the Revised Wechsler Intelligence Scale for Children (WISC-R).²⁰ For the purposes of the present analysis, the child's total IQ scores were used. The reliabilities of these scores, assessed using split-half methods, were .93 at age 8 years and .95 at age 9 years.

Teacher Ratings of School Performance When children were 8 and 12 years of age, teacher ratings of the child's performance in reading and mathematics were obtained. Teachers were asked to rate the child's performance in each area relative to other children of the same age, and ratings were made on a five-point scale ranging from 1 = very poor to 5 = very good.

Standardized Tests of Achievement During the period from 10 to 13 years of age, children were administered a series of standardized tests of achievement including 1) tests of reading comprehension based on the Progressive Achievement Test of Reading Comprehension,²¹ administered at ages 10 and 12 years; 2) tests of mathematical reasoning based on the Progressive Achievement Test of Mathematics,²² administered at age 11 years; and 3) tests of Scholastic Abilities,²³ administered at age 13 years. The Test of Scholastic Abilities is a broad-based measure designed to assess those verbal and numerical reasoning abilities deemed to be requisite for success in academic aspects of the school curriculum.²³ The reliabilities of these measures, assessed using coefficient α , ranged from .83 for the measures of reading comprehension to .87 for the measure of mathematical reasoning and .95 for the measure of scholastic ability.

High School Outcomes At 18 years of age, study participants were assessed on the following two measures of high school success. The first was the number of passing grades achieved in School Certificate examinations. School Certificate is a national series of examinations that New Zealand children may attempt at the end of their third year of high school. School Certificate examinations are the first of a series of public examinations that provide young people with the eligibility requirements to enter universities. Students typically undergo School Certificate at 15 or 16 years of age and attempt examinations in between four and six subjects. The results of School Certificate examinations are graded from A to E, with grades A, B, and C considered passing grades. The second measure was leaving school without qualifications. Students who had left school by age 18 without at least one passing grade in School Certificate were classified as having left school without qualifications.

Confounding Factors

To control for potentially confounding and selection factors associated with breastfeeding, a range of measures of social, family, and other factors was selected from the database of the study. These measures were chosen on the basis of being known to be associated with the mother's breastfeeding history and/or with the cognitive and academic outcomes.

Measures of Social and Family History Maternal age at the time of the survey child's birth and maternal education at the time of the child's birth were the first two measures of social and family circumstances. Education was coded on a three-point scale reflecting the highest level of qualification obtained, with 1 = no formal qualifications, 2 = high school qualifications, and 3 = tertiary level qualifications. The third measure was family socioeconomic status at the time of the child's birth. This was assessed using the Elley/Irving scale of socioeconomic status for New Zealand.²⁴ This scale categorizes families into six classes on the basis of paternal occupation. The fourth measure was the

child's family placement at birth. This was a binary measure reflecting whether the child entered a single-parent family or a two-parent family at birth. The fifth measure was maternal smoking during pregnancy. This was a binary measure reflecting whether the mother smoked during pregnancy.

The sixth measure was family living standards (0 to 5 years). Each year until survey children were 5 years of age, survey interviewers were asked to rate the family's living standards on a five-point scale ranging from 1 = very good to 5 = very poor. These ratings were summed and then averaged over the 5-year period to provide a global measure of the general quality of living standards experienced by each family during this period. The seventh measure was averaged family income (0 to 5 years). Each year, estimates of the family's gross annual income were obtained from parental report. To provide a measure of the average level of income available to each family for the period from the child's birth to age 5 years, the income estimates for each year were first recoded into decile categories and the resulting measures then averaged over the 5-year period to produce a measure of the family's averaged income decile rank.

Measures of Perinatal Outcome These were measures of gender, the child's birth weight in grams, the child's estimated gestation in weeks, and the child's birth order in the family.

Sample Sizes

Although this study is based on a birth cohort of 1265 children, the sample sizes studied in this paper are smaller, ranging from 772 to 1064. There were three reasons for these variations in sample size. First, during the study period, there was attrition in the sample attributable to the combined effects of subject refusal, outmigration from New Zealand, and death. The result of this attrition was that by age 18, the number of cohort subjects had been reduced to 1025 subjects, with these subjects representing 81.0% of the original sample and 92.3% of the sample still in New Zealand. Second, for standardized testing, sample size was reduced further because of logistic reasons that made it necessary to confine standardized tests to the sample of children resident in the Canterbury region. Canterbury residents represented ~80% of the cohort in any year. Finally, there were small amounts of missing data for some measures. The sample sizes studied for each outcome measure are shown in Table 1.

TABLE 1

View this table: [in this window] [in a new window]	Associations Between Duration of Breastfeeding and Measures of Cognitive Ability, Teacher Ratings of School Performance, Standardized Tests of Achievement, and High School Success
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The variations in sample size raise the possibility that the results reported here could have been influenced by the effects of nonrandom sample attrition. However, whereas previous analyses of educational outcomes for this cohort suggest a slight bias in the samples available for analysis toward underrepresentation of children from more disadvantaged family backgrounds, analyses that incorporate statistical corrections for such bias produce conclusions essentially identical to those that do not incorporate such correction.^{25,26} These findings suggest that sample loss processes are unlikely to influence the conclusions drawn from the analyses reported here.

► RESULTS

Associations Between Duration of Breastfeeding and Measures of Cognitive Ability and School Achievement

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Table 1 presents the relationships between the duration of breastfeeding classified into four groups (not breastfed, breastfed <4 months, breastfed 4 to 7 months, breastfed ≥8 months) and mean scores on a series of measures of cognitive ability and school achievement including the WISC-R IQ test; teacher ratings of performance in reading and mathematics; standardized tests of reading comprehension, mathematics, and scholastic ability; and success in School Certificate examinations. Table 1 also shows the percentage of children in each group who left school without qualifications. For ease of comparison, all standardized tests have been scaled to a mean of 100 and an SD unit of 10, and teacher ratings have been scaled to a mean of 3 and an SD unit of 1. Each comparison is tested for statistical significance, with continuously distributed measures being tested by one-way analysis of variance and the dichotomous measure by the χ^2 test of independence. The strength of association between duration of breastfeeding and each outcome is described by the product moment correlation.

Table 1 shows clear and highly significant ($P < .0001$) tendencies for increasing duration of breastfeeding to be associated with higher scores on measures of cognitive ability, teacher ratings of performance, standardized tests of achievement, better grades in School Certificate examinations, and lower percentages of children leaving school without qualifications. On average, children who were breastfed for ≥8 months 1) scored between 0.35 and 0.59 SD units higher on standardized tests of ability or achievement and teacher ratings of school performance than children who were not breastfed, and 2) were considerably less likely than nonbreastfed children to leave school without qualifications (relative risk = 0.38; 95% CI: 0.25, 0.59).

Tests of linearity applied to the associations in Table 1 suggested that in all cases, the association between duration of breastfeeding and the outcome measure was well approximated by a linear model. The product moment correlations between duration of breastfeeding and the outcome measures were generally similar across all outcomes, ranging from 0.14 to 0.24, with a median value of 0.20, suggesting that from middle childhood to the point of leaving school, there were moderate but consistent tendencies for increasing duration of breastfeeding to be associated with increasing levels of cognitive ability and academic success.

The pervasive associations found between breastfeeding and measures of cognitive ability and academic achievement were, in part, explained by the fact that the outcomes described in Table 1 were all significantly correlated. Correlations between different measures ranged from as high as 0.88 to as low as 0.32, with the median intercorrelation between measures being 0.61. Given the correlations between cognitive ability and academic achievement throughout childhood and into young adulthood, it is evident that if breastfeeding is associated with one of these outcomes, it is likely to be associated with others.

Associations Between Duration of Breastfeeding and Social, Family, and Perinatal Factors

Table 2 shows the relationships between duration of breastfeeding and the potentially confounding social, family, and perinatal factors described in the "Methods." For ease of data display, measures of family factors and social background have been expressed as dichotomous variables. The rules for constructing these dichotomies are reported in Table 2. The significance of the associations between the duration of breastfeeding and the variables in Table 2 was tested using the χ^2 test of independence for dichotomous measures and one-way analysis of variance for continuously distributed variables (ie, birth weight, gestation).

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TABLE 2
Associations Between Duration of Breastfeeding and Social, Family, and Perinatal Factors

Table 2 shows clear tendencies for increasing duration of breastfeeding to be associated with decreasing levels of social and family disadvantage and improved child perinatal outcomes. In particular, there were detectable tendencies for women who did not breastfeed to be younger ($P < .001$), to have poorer educational qualifications ($P < .001$), to have smoked during pregnancy ($P < .001$), to be more likely to come from families of lower socioeconomic status ($P < .001$), families with below-average living standards ($P < .001$), or families with low income ($P < .001$); and to have been a single parent at the time of the survey child's birth ($P < .001$). In addition, women who did not breastfeed were more likely to have had infants of lower birth weight ($P < .001$) and to be primiparous ($P < .001$). However, the duration of breastfeeding appeared to be unrelated to the child's gender ($P > .30$) or gestation ($P > .20$).

Associations Between Duration of Breastfeeding and Cognitive Outcomes After Adjustment for Confounding

To examine the associations between duration of breastfeeding and cognitive and educational outcomes after adjustment for the social, family, and perinatal factors presented in Table 2, the data were reanalyzed by fitting multiple regression models in which each outcome measure was modelled as a function of the duration of breastfeeding and the potentially confounding or selection factors. For continuously scored outcomes, multiple linear regression models were fitted, whereas for the dichotomous outcome, multiple logistic regression methods were used. In fitting these models, the social and family factors were not scaled as dichotomies as shown in Table 2, but rather were scored as described in "Methods."

From the parameters of the fitted regression models, estimates of the dose-response functions between the duration of breastfeeding and the outcome measures adjusted for confounding factors were obtained. These adjusted associations are given in Table 3, which shows for each outcome 1) the covariate adjusted mean scores or percentages for each level of the breastfeeding factor; 2) the test of significance of the breastfeeding factor based on the ratio of the regression coefficient for the breastfeeding measure to its SE; and 3) the confounding covariates that were found to be significant in each equation. The adjusted mean scores and percentages were obtained using the methods described by Lee (1981).²⁷ The adjusted means and percentages give estimates of the mean test scores and percentages that would have been observed had all subjects been exposed to comparable levels of the confounding covariates in shown for each equation.

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TABLE 3
Associations Between Duration of Breastfeeding and Measures of Cognitive Ability, Teacher Ratings of School Performance, Standardized Tests of Achievement, and High School Success After Adjustment for Covariates

Examination of Table 3 leads to the following conclusions:

1. In all cases, control for confounding factors reduced the strength of association between the duration of breastfeeding and later outcomes. This result suggests, in part, that the apparently

superior performance of children exposed to lengthy duration of breastfeeding reflected the presence of confounding factors and/or selection processes that were associated with both breastfeeding and later cognitive achievement. Inspection of the significant covariate factors suggests that these confounding factors included both measures of social/family advantage (maternal age, education, family socioeconomic status, family income, and living standards) and measures of perinatal outcome (birth weight, birth order, gender).

2. Of the 12 comparisons made, however, 10 show statistically significant ($P < .05$) associations between duration of breastfeeding and later outcomes, one comparison is marginally significant ($P < .10$), and one clearly nonsignificant ($P > .15$). Of particular note is the fact that both the individual's levels of success in School Certificate examinations and his/her risk of leaving school without qualifications were significantly related to duration of breastfeeding even when allowance was made for confounding factors.
3. In general, the results suggest that after adjustment for confounding, there were small but consistent tendencies for increasing duration of breastfeeding to be associated with increased IQ, increased performance on standardized tests, higher teacher ratings of classroom performance, and better high school achievement. The size of this influence can be seen by comparing the adjusted mean test scores of children who were not breastfed with those of children who were breastfed for ≥ 8 months. These comparisons show that children who were breastfed for ≥ 8 months had mean scores that were between 0.11 and 0.30 SD units higher than the scores for those who were not breastfed. Similarly, children breastfed for ≥ 8 months were only two thirds as likely as nonbreastfed children to have left school without qualifications.

Supplementary Analyses

To examine the robustness of study conclusions to changes in analytic approaches, the following supplementary analyses were conducted.

1. The data were reanalyzed using a classification of breastfeeding based on the number of months for which the child was exclusively breastfed. This analysis produced conclusions that were consistent with those drawn above: increasing duration of exclusive breastfeeding was associated with increasing levels of cognitive ability and academic achievement, and adjustment for confounding tended to reduce the size of these associations but, even after adjustment, significant ($P < .05$) associations remained between the duration of exclusive breastfeeding and 9 of the 12 outcomes studied. In particular, there were significant adjusted associations between duration of exclusive breastfeeding and high school outcomes measured at age 18.
2. To examine whether the effects of breastfeeding varied for boys and girls, the analyses were extended to include tests of interactions between gender and measures of breastfeeding in their effects on cognitive and educational outcomes. However, in no instance was there any detectable evidence to suggest that the association of breastfeeding with the outcome measures varied with the child's gender.
3. Exploration of additional possible confounding factors was conducted by examining the extent to which such factors as maternal work force participation patterns explained the associations. There was no evidence to suggest that the associations between breastfeeding and academic achievement or cognitive ability could be explained further by the inclusion of such confounding factors into the models.

DISCUSSION

This study has examined the statistical linkages between duration of breastfeeding and later cognitive outcomes in a birth cohort of New Zealand-born children studied to 18 years of age. The findings of this study may be summarized as follows.

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Increasing duration of breastfeeding was associated with small, detectable, and generally consistent increases in childhood cognitive outcomes from the age of 8 to the age of 18. Breastfed children had higher mean scores on tests of cognitive ability; performed better on standardized tests of reading, mathematics, and scholastic ability; were rated as performing better in reading and mathematics by their class teachers; had higher levels of achievement in school-leaving examinations; and less often left school without educational qualifications. There seems to be little doubt on the basis of this evidence that patterns of infant feeding were consistently related to levels of educational attainment from middle childhood to the point of young adulthood.

Subsequent analysis revealed that, in part, the cognitive and academic superiority of breastfed children was explained by the fact that they tended to be born into socially advantaged families characterized by having older, better educated mothers, who did not smoke during pregnancy, higher socioeconomic status, better living standards, and higher family income. However, even after control for confounding and selection factors associated with infant feeding practices, increasing duration of breastfeeding was associated with small but significant increases in scores on standardized tests of ability and achievement, teacher ratings of classroom performance, and greater success at high school. The size of this effect may be illustrated by comparing the mean test scores of those who were breastfed for ≥ 8 months with those who were not breastfed. This comparison showed that even after statistical adjustment, children exposed to ≥ 8 months of breastfeeding had mean test scores that were between 0.11 to 0.30 SD units higher than those not breastfed. These effect sizes appear to be very similar to the effects found in other studies of general child samples.¹ Similarly, after adjustment for confounding factors, children who were breastfed for ≥ 8 months had only an approximate two-thirds risk of leaving school without qualifications compared with children who were not breastfed. These results were found to be resilient to a change to an alternative measure of the duration of breastfeeding based on the number of months of exclusive breastfeeding.

Although the results above suggest that associations between duration of breastfeeding and later outcomes persisted when allowance was made for a range of confounders, the possibility remains that the association between breastfeeding and longer-term outcomes found in this study is noncausal and arises from the effects of confounding factors that have not been controlled adequately in the analysis. Nonetheless, when taken in conjunction with the existing literature on this topic,^{1,16} the weight of the evidence clearly favors the view that exposure to breastfeeding is associated with small but detectable increases in childhood cognitive ability and educational achievement, with it being likely that these increases reflect the effects of long chain polyunsaturated fatty acid levels and, particularly, DHA levels on early neurodevelopment.¹⁰ The present study extends these conclusions by showing that the effects of breastfeeding are 1) pervasive and reflected in a range of measures including standardized tests, teacher ratings, and success in high school examinations; and 2) relatively long-lived, extending throughout childhood into young adulthood.

Clinical Implications

These findings add to a growing body of evidence that has suggested breastfeeding may have multiple health and other benefits for children.^{12,28} The particular significance of the present findings is that they show the cognitive benefits that are associated with breastfeeding are unlikely to be short-lived and appear to persist until at least young adulthood. These findings underwrite the need to encourage

breastfeeding and/or to continue to develop improved infant formulas with properties more similar to those of human breast milk that may lead to improved developmental outcomes in children.¹¹

► FOOTNOTES

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► ABBREVIATIONS

DHA, docosahexaenoic acid. WISC-R, Revised Wechsler Intelligence Scale for Children. IQ, intelligence quotient.

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Bad Incentives and Bad Institutions

Cass R. Sunstein¹

The Independent Prosecutor Act is a case study in the law of unintended consequences. The Act was designed to increase trust in government. But it actually reduces trust in government, not because of serious misconduct on the part of high-level officials, but because of scandal mongering, and because of the transformation of political disputes into criminal allegations. The Act should be repealed.

The fundamental problem with the Act is that it imposes harmful incentives on members of Congress, the media, and the independent counsel itself. An important effect of these harmful incentives is to damage processes of democratic deliberation, by deflecting attention from serious issues involving the effects of policy on human lives and focussing people -- representatives, media, and citizens alike -- on scandals that are often imaginary and that, even if real, are most unlikely to deserve the prominence that the Act gives them.

One of the most central problems of American democracy in its current form consists in its emphasis on sensationalistic anecdotes, eye-catching accusations, dehumanization of political opponents, accompanied by insufficient focus on the nature of actual problems and how they might be solved. It would be good to attend far more attention to measures to alleviate poverty and far less attention to questions about where, exactly, the Vice President was when he engaged in fund-raising. This problem is especially serious in Congress, which should be less focussed on alleged law-breaking and more fundamentally concerned with the effects of existing and proposed laws on citizens. The principal effect of the independent counsel act is to fortify bad tendencies in current practice. The Act does a great deal of harm and little good. It should be repealed as soon as possible.²

I. The General Problem

The American constitutional tradition aspires to be a deliberative democracy, in which issues are debated by reference to reasons and principles.³ Officials are supposed to be accountable to the people, but they are also intended to be in a position to reflect and to deliberate on appropriate policies, rather than mechanically to implement some aggregation of preexisting desires. The institutional safeguards of the original Constitution, including both national representation and checks and balances, were designed to implement this

¹ Karl N. Llewellyn Distinguished Service Professor, University of Chicago, Law School and Department of Political Science. I am grateful to Jack Goldsmith, Dan Kahan, Martha Nussbaum, and Judy Shih for excellent comments, and to Shih for valuable research assistance as well.

² This is not an endorsement of the constitutional attack on the Act, urged in Justice Scalia's dissenting opinion in *Morrison v. Olson*, U.S. On the constitutional issues, see Lessig and Sunstein, *The President and the Administration*, 94 Colum L Rev 1 (1994). But many of Justice Scalia's objections do point to serious problems in the Act, and I stress those problems as a policy matter here. See Steven Calabresi, *Some Normative Arguments for the Unitary Executive*, 48 Ark. L. Rev. 23 (1995).

³ See William Bessette, *The Mild Voice of Reason* (1996).

deliberative ideal.⁴ In particular, the framers wedded an understanding of likely incentive effects to the basic topic of institutional design, attempting to ensure that institutions would have created the appropriate incentives.⁵ Attention to the relationship between institutions and incentives was in fact one of their central preoccupations. The basic goal was to ensure that the structure of the national government would permit representatives to act in a reasoned fashion, above the fray of factions and (misplaced) passions.⁶ Thus national institutions would have a comparative advantage over smaller bodies, and the system of checks and balances would permit ambition to check ambition.⁷

It should not be controversial to say that in current politics, a general and pervasive problem is that deliberation and reason-giving are too frequently absent.⁸ Many of those concerned with institutional reform have attempted to produce solutions to precisely this problem.⁹ On the part of the media, many politicians, and many interest-groups, there is particular pressure toward sensationalism. Real or imagined scandals therefore play a significant role in coverage of political issues. Emphasis on scandals can of course be in the political self-interest of elected representatives, who may be able to achieve a large name for themselves by identifying and attacking corruption whether or not it actually exists — particularly if the call is for further or more independent investigation. Emphasis on scandals can also be in the economic self-interest of the media, especially when a basic concern is inevitably to attract viewers, readers, and sponsors.¹⁰ Indeed, market pressures often lead away from substance and firmly in the direction of media sensationalism, and thus can produce sensationalism even if individual journalists, acting individually, would seek a better route. And coverage of this kind may even be consistent with the public-spirited convictions of both representatives and the media, if it is believed that the real or imagined scandals bear on governance, or otherwise contain and produce illumination of one kind or another. But it can have a damaging effect on democratic self-government, especially if scandalous charges are frequent. Part of the problem is that it tends generally to breed cynicism and distrust, whether or not these are merited.

A conceivable result is a form of “cascade,” as people tend to believe that a scandal is important or real simply because others believe, or appear to believe, that it is important or real.¹¹ Individual citizens, even individual representatives and media members, often have little information about an apparent scandal, and any belief on each individual’s part is likely to be much affected by what others say, or seem to believe. Without much in the way of individual information, it is possible that millions of people will come to believe in the possibility of a scandal whether or not it is real. The worst possible outcome is a general, falsely held view that government officials are corrupt or criminal, and that effective improvements are improbable or impossible, so that government is less able to do anything at all.

In any case, coverage of this sort tends to crowd out discussion of other issues and to divert the attention of public officials. When the question is whether the Vice President committed a criminal act by raising funds from the White House, it is harder to discuss whether the Administration’s welfare policy is producing good results, or how to handle the problem of global warming, or whether the well-being of Americans is getting better or

⁴ See *The Federalist* No. 10; *The Federalist* No. 51.

⁵ See *The Federalist* No. 51, for the most self-conscious example.

⁶ See Bessette, *supra* note 1; Cass R. Sunstein, *The Partial Constitution* ch. 1 (1993).

⁷ See Bessette, *supra* note, for general discussion.

⁸ See Kuku Addatto, *Sound-Bite Democracy* (1995).

⁹ A prominent example is Stephen Breyer, *Breaking the Vicious Circle* (1993).

¹⁰ See Robert Frank and Cook, *The Winner-Take-All Society* (1996).

¹¹ See Sushil Bikhchandani et al., *Informational Cascades*, *J. Polit. Econ.* (1992).

worse. Substantive discussion of issues actually affecting American citizens becomes replaced by questions, often impossibly technical, about official criminality. The time of public officials becomes spent less on solving public problems and more on scandals and their public management. It is hard to monetize this cost, but there can be no doubt that highly publicized congressional hearings cost a nontrivial amount of simple dollars.

A focus on the possibility of technical illegality is unquestionably costly to the extent that it means that substantive questions of governance received less or little attention. But it is possible to go further. To be sure, official law-breaking is almost always objectionable, and sometimes it is far worse than that. But at least under ordinary circumstances, the likely forms of official law-breaking in the United States are relatively trivial, and far less important, and far less worthy of public attention, than questions involving the direct effects of government policy on human lives. The central question for American government, almost all of the time, is not whether some official has acted improperly, but whether current policies are making lives better or worse, and how they might be improved. Attention to the question whether the Attorney General or the Secretary of Commerce has committed some technical violation of the law is far less urgent. This is not to deny that sometimes official law-breaking can be a serious problem. Nor is it to deny that in some nations, official corruption may indeed be enmeshed with government performance harmful to ordinary lives. But in the United States, it is far more probable that any official illegality will involve technical violations, not serious criminality. I return to the significance of this fact below.

II. The Independent Counsel Act

A. Motivations

The original goal of the Independent Counsel Act was simple, laudable, and entirely appealing: To ensure that the decision whether to prosecute high-level government officials would not be made by high-level government officials. In the aftermath of the Watergate scandal, a genuine constitutional crisis, the Act seemed indispensable as a way of promoting public trust in government, by giving an assurance that high-level officials would be investigated by people who were not controllable by their hierarchical superiors. The idea that no person should be judge in his or her own cause is deeply rooted in American constitutional traditions¹²; it seems only natural to think that those investigating high-level criminality should be insulated from control of the highest executive officers. In this way, the independent counsel act might be seen as continuous with the founders' effort to design institutions so as to respond to the natural incentive effects of different governmental arrangements. It might even be seen as a Madisonian effort to ensure that "ambition will counteract ambition."

A possible response to this concern is that impeachment is the appropriate remedy for high-level official misconduct. But in the context of the Watergate era, it seemed sensible to reply that impeachment is extremely difficult and unnecessarily strong medicine, and that it should be used very rarely. The Act seemed far more precisely targeted. It would create an assurance, *ex ante* and *ex post*, that a disinterested person would investigate and if necessary prosecute high-level officials, in such a way as to give the public assurance that the investigation would be entirely neutral, and unaffected by politics. The question, hardly an unfamiliar one, is whether legislation driven by particular events might not have

¹² See The Federalist No. 78.

unintended consequences and create problems more serious than those that it was meant to prevent.¹³

B. Structure -- and Observations on Structure

1. **Law.** As a matter of law, what sort of structure has emerged? Every year, of course, many complaints are made by people asserting that a high-level official has violated the law and that an independent counsel should be appointed. The Independent Counsel Act specifies a rigid procedure for handling these complaints.

More specifically, the Attorney General is required to act in accordance with three simple steps. First, she must conduct a "preliminary investigation" whenever she receives "information sufficient to constitute grounds to investigate whether any" covered person may have violated the federal criminal law. Covered persons include (but are not limited to) the President and Vice President, the Attorney General, any Assistant Attorney General, the Director of the CIA, the Deputy Director of the CIA, and the Commissioner of Internal Revenue, and the chairman and treasurers of the principal national campaign committees seeking the election or reelection of the President.¹⁴ To consider whether a preliminary determination is warranted, the Attorney General is allowed to consider only two factors: the specificity of the information received and the credibility of the source of information. The Attorney General has thirty days in which to make the key decision.¹⁵

If the Attorney General decides that a preliminary investigation is warranted, the Attorney General must, second, decide within 90 days whether "there are reasonable grounds to believe that further investigation is warranted."¹⁶ During the preliminary investigation phase -- and this is a crucial provision -- the Attorney General is not authorized to convene grand juries, plea bargain, grant immunity, or issue subpoenas. Moreover, the statute was amended at the end of the Bush Administration, so that the Attorney General cannot decline further investigation because the defendant lacked the necessary state of mind, "unless there is clear and convincing evidence" of that fact.¹⁷

If the Attorney General concludes that "there are reasonable grounds to believe that further investigation is warranted," the Attorney General must apply to the court for the appointment of an independent counsel; this step is mandatory. The independent counsel, once appointed, has "full power and independent authority to exercise all investigative and prosecutorial functions and powers of the Department of Justice, the Attorney General, and any other officer or employee of the Department of Justice."¹⁸ Among the expressly enumerated authorities are the power to receive appropriate national security clearances, to apply for grant of immunity for any witness, to inspect, obtain, and use the original or copy of any tax return, and to bring indictments. The independent counsel is also authorized to hire, fix the compensation, and assign the duties of "such employees as such independent counsel considers necessary."¹⁹ The independent counsel may be removed by

¹³ Compare the discussion of crisis-driven legislation in A. Wildavsky, *But Is It True?* (1995). This is a frequent problem with legislation based on anomalous recent events; often the events are not likely to be replicated in anything like the same form, and the solution introduces a host of new problems.

¹⁴ 28 USC 591.

¹⁵ 591(d).

¹⁶ 592(a).

¹⁷ 592(A)(2)(B)(ii).

¹⁸ 594(a).

¹⁹ 594(c).

the Attorney General "only for good cause, physical disability, mental incapacity, or any other condition that substantially impairs the performance" of his duties.²⁰

2. Observations. Let us make a few observations about this simple and quite rigid structure. How can the process of appointing an independent counsel be stopped if it is undesirable? There are several methods. The first is via a preliminary determination that the charges are insufficiently credible and specific. But credibility may be hard to deny if, as is often the case, the allegation has been reported in the newspaper and members of Congress think that there is reason for concern. If so, a preliminary inquiry must be undertaken.

The second possible step is to conclude that there are no reasonable grounds to believe that further investigation is warranted. This is indeed a possible safeguard; Attorney General Reno's controversial decision not to seek an appointment of an independent counsel for certain campaign-related activities by President Clinton and Vice President Gore attests to the fact. Judgments of law can indeed stop the investigation at this stage. But under the Act, any such judgment must be reached without convening grand juries, granting immunity, or issuing subpoenas, and without considering, in the normal fashion, the issue of intent. Often, of course, a prosecutor will drop a case at an early stage, after issuing subpoenas, or considering the defendant's state of mind, or simply deciding, after an "all things considered" judgment, that this is not the kind of case that calls for a formal criminal investigation, even if there was a technical violation of law.

This -- it should be emphasized -- is a major if overlooked safeguard of liberty under law. Not every technical violation of law is subject to criminal prosecution, or even serious criminal investigation. Indeed, it is likely that a large percentage of American citizens have, at one point in the last decade, committed an action that would subject them to a jail sentence if the law books were taken extremely seriously. For high-level public officials, the percentage is probably even higher, if only because of the complex network of statutes that regulate their behavior. The fact that criminal prosecutors have limited budgets, and exercise common sense in deciding to which cases to allocate their limited resources, is an important protection against liberty-threatening intrusions on human beings whose frailties produce criminality that ought not to result in an actual jail sentence, or even the realistic fear of a jail sentence.

As it has operated in practice, the Act offers several examples; let me discuss just a few. It was alleged that Hamilton Jordan used cocaine, and an independent counsel was appointed to investigate the allegation. It was alleged that Theodore Olson lied before Congress in the context of a hotly disputed set of issues involving the behavior of EPA Administrator Anne Gorsuch, and an independent counsel was appointed to investigate. Is it really reasonable to think that an Assistant Attorney General should have to fend off a criminal indictment because of the possibility that he has acted as something of -- or very much -- an advocate in discussing constitutional issues relating to executive privilege? It is conceivable, though highly debatable, that Vice President Gore violated an old statute, the Pendleton Act, by making certain phone calls from the White House. But no reasonable criminal prosecutor would bring an indictment in such a case, unless he was attempting to grandstand, or to make a name for himself. It is not worth belaboring the point that in cases like this, calls for an independent counsel are politically motivated, and have nothing to do with a realistic claim that people should actually face criminal charges.

These points raise an important question of law and fact: To what extent is the independent counsel within the technical control of the Department of Justice? As a matter

²⁰ 596((a).

of law, the question is not easy to answer. The counsel can be dismissed for "good cause," as the Supreme Court emphasized in Morrison v. Olson,²¹ and indeed the basis for discharge was broadened from the original "extraordinary improprieties" to that current language. It would therefore be reasonable to think that the Attorney General has considerable authority to discharge an independent counsel, and perhaps also to control the counsel's performance. Certainly the Court did not rule otherwise in Morrison v. Olson. But however the legal issues might be resolved, the practical reality is that any Attorney General will inevitably give a great deal of autonomy to the independent counsel. An Attorney General who discharged a counsel, or attempted to control a counsel's operation, would face enormous political pressure, and any Attorney General will know this. Thus it is clear that while the technical law leaves room for dispute, in practice the independent counsel is an independent agent.

C. Practice

Since the 1978 enactment of the Ethics in Government Act of 1978, every administration has been investigated by an independent counsel. There have been sixteen total investigations. Taxpayers have paid out over \$100 million on these investigations. Thus far ten of the sixteen produced no indictments. These include the following "scandals."

-- As noted, Hamilton Jordan, President Carter's chief of staff, was accused of using cocaine.

-- Timothy Kraft, President Carter's national campaign manager, was said to have used drugs.

-- As also noted, Theodore Olson, an assistant attorney general under President Reagan, was said to have committed perjury in testimony before Congress.

-- Members of the Bush administration were said to have searched President Clinton's passport files.

-- HUD Secretary Henry Cisneros was said to have lied to the FBI about his private life.

In each of these cases, an independent counsel was appointed, and in each of them the independent counsel decided not to indict the prospective defendant. But the investigations cost the taxpayers significant sums of money. Surely one of the most revealing, and absurd, was the investigation of Theodore Olson, who was subject to an extended criminal investigation growing out of his testimony defending the Department of Justice's position in connection with the refusal to hand over to Congress the EPA's law enforcement files. This intensely political debate, over the environmental policies of the Reagan Administration, produced an utterly ridiculous charge -- that Olson had committed the crime of perjury and should be indicted -- and the result was a multimillion dollar investigation.

One of the most successful set of investigations was undertaken by Lawrence Walsh, who managed to obtain seven guilty pleas and four convictions as a result of the "Irangate" scandal (at a cost to taxpayers of \$47.9 million). Arlin Adams and Larry Thompson have done even better, obtaining seven guilty pleas and eleven convictions from the HUD scandals of the Reagan Administration (cost: \$25.8 million). Kenneth Starr's

²¹ U.S. (1991).

ongoing investigations have produced six guilty pleas and three convictions (at a cost of \$17.3 million). Of course it is unclear what will ultimately emerge from these investigations. (See Appendix for details.)

III. Small Benefits, Large Costs, and the Problem of Incentives

A. Benefits?

Has the Act produced more good than harm? It would not be unreasonable to answer this question by saying very categorically that the Act has produced no good at all. But this would be too harsh. It is possible, even likely that the Act has discouraged official illegality, by letting high-level officials know of the seriousness with which any such illegality will be treated. To the extent that the Act has reduced criminal behavior, it must be counted as doing some good as a deterrent. Moreover, some of the allegations under the Act cannot be dismissed as trivial, and the record suggests that in some cases the availability of the Act has ensured that justice has been done, by forcing people to face criminal liability for their crimes.

Are these gains worthwhile? If we look only at the investigations themselves, it is not at all clear that the Act has made things better on balance. A large number of them appear to have been a waste of taxpayer resources, in the process frightening public servants, and possible defendants, with the prospect of a jail sentence and in any case tarnishing their reputations. It is not clear that the twenty total convictions, and the twenty-four total guilty pleas, offset these costs. It is clear that the independent counsel act makes it more hazardous for someone to agree to a high-level position in government. But the more important point is that the Act breeds distrust of government and in the process diminishes substantive discussion of real questions, by focussing attention on imagined scandals or wrongdoing.

B. Incentives

What incentives are created by the Act? What are the likely effects of the Act on the behavior of politicians, the media, citizens, and any counsels themselves?

1. Politicians. Consider first the incentives of politicians as they are altered by the Act. It is hard to imagine any presidential administration in which there will not be at least a colorable claim of official illegality by someone covered by the Act—a proposition supported by the fact that every administration has been subject to at least one independent counsel since the Act's passage. And among political opponents of any administration, a number are likely to find it very much in their political interest to call for an independent counsel to investigate some real, possible, or even wholly imagined wrongdoing. Every political opponent of any administration knows this, and that knowledge increases each opponent's incentive to move first, or to join any bandwagon, or to speak cautiously about the value of future investigation of improprieties and illegalities. (As an illustration, consider former Senator Bill Bradley's cautious comments about Vice President's Gore's allegedly unlawful campaign behavior; to say that the caution was in Bradley's eventual electoral interest is not to deny its sincerity.)

Any call for criminal investigation has the appearance of neutrality and statesmanship; how can a mere investigation do any real harm? From the standpoint of political self-interest, such a call is far more likely (under normal circumstances) to produce attention than silence, or a reasoned objection to a policy initiative. And if most politicians know that eventually, some politician is likely to call for an independent counsel, is it not likely that for a nontrivial number of politicians, there is special advantage in being among

the first to do so? Once one or two politicians have done this, cascade²² or bandwagon effects may well arise -- and those who do not favor an independent counsel in the particular case, especially in the opposing party, may seem timid, or unduly allied to the interests of the current administration.

Thus it is likely that members of an opposition party may well find themselves in the seemingly odd position of publicly favoring -- and by significant numbers -- no less than a sustained criminal investigation and a possible jail sentence for their political opponents. What is especially important is that everyone knows this before any scandal begins, and this knowledge will make the unfortunate scenario all the more likely.

2. Media. From the media's standpoint as well, there are likely to be substantial and damaging incentive effects. If members of Congress have asked for an independent counsel, there is reason to think that **high-level officials have actually committed crimes, and perhaps some of them should, or will, go to jail**. That is certainly newsworthy; to say the least, it is worth considerable attention. Here are the critical points: A large part of the job of newspapers is to sell newspapers and advertisers, and corruption, in some quarters, sells. A large part of the job of television broadcasters is to attract viewers and sponsors, and a news program that is focussed on a "growing scandal," or a call for official investigation of high-level criminality, is likely to attract viewers.

It is far easier and far more likely to attract readers and viewers if attention is focussed on a call for an independent counsel -- on the ground that a high-level official may deserve to go to jail -- than on some issue of policy, such as the effects of minimum wage legislation, or the consequences of the recent welfare reform.²³ Thus there is a kind of

²² See the discussion of informational cascades in David Hirschleifer, in *The New Economics of Human Behavior* (1996).

²³ Consider the following: "Since the 1960s, bad news has increased by a factor of three and is now the dominant tone of news coverage of national politics. [Patterson, *Out of Order* (1994); Lichter & Amundson, "Less News is Worse News: Television Coverage of Congress, 1972-92," *Congress, the Press, and the Public*, ed. Mann & Ornstein (1994)]." Patterson, "Bad News, Period," 29 *PS* 10, 17 (March 1996) .

"Unlike the situation in the 1960s, increased news exposure is now positively correlated with a heightened mistrust of government." [Miller, Goldenberg & Erbring, "Type-Set Politics: Impact of Newspapers on Public Confidence," 7 *Am. Pol. Sci. Rev.* 67 (1979); Patterson, "More Style than Substance: Television News in U.S. National Elections," 8 *Pol. Communication & Persuasion* 145 (1991)]. *Id.* at 19.

"By the rules of attack journalism, the mere whiff of a controversy or scandal is grounds for a story. Although there is no persuasive evidence that official corruption has risen in Washington [Garment, *Scandal: The Crisis of Mistrust in American Politics* (1991)], scandals increasingly fill the headlines. In the last decade, ethical lapses have accounted for a fourth of the coverage of Congress compared with less than a tenth in the previous decade [Lichter & Amundsen, *supra*; Rozell, "Press Coverage of Congress, 1946-92," *Congress, the Press, and the Public*, *supra*]." *Id.* at 18.

"There are now more than 40 firms specializing in opposition research, and their number has grown by 200 percent in the 1990s. [Sabato & Simpson, *Dirty Little Secrets: The Persistence of Corruption in American Politics* (1996)].

vicious circle, in which politicians and media members follow their self-interest, to the detriment of the public as a whole. The problem seems to be getting worse over time. Consider the following evidence, reporting reference to the independent counsel in the New York Times and Washington Post in the relevant years:

Front page stories mentioning Independent Counsels

1978	0
1979	0
1980	3
1981	15
1982	12
1983	11
1984	12
1985	13
1986	40
1987	91
1988	41
1989	19
1990	12
1991	10
1992	22
1993	1
1994	39
1995	72
1996	108
1997 (as of 11/9/96)	120

To be sure, this is not the whole story. Responsible editorial writers also seek to be, or to appear, statesman-like, and it is quite easy to assume the posture of the concerned outsider favoring appointment of an independent counsel on the ground that otherwise there can be no assurance that justice will be done. This is, for example, the typical stance of the New York Times editorial page, which is often focussed, with all imaginable seriousness and sobriety, on the legitimate concerns raised by the allegations and the need for "the air to be cleared." (The utter predictability of these editorials, admittedly, can make them appear a bit hilarious to long-time readers.) Of course politicians are aware of this fact. No one really loses from a call for an independent counsel. Thus a kind of cycle is likely to build, in which political and media incentives fortify the interest in scandal-mongering. Thus the Independent Counsel Act creates extremely damaging incentives, in a kind of bizarre parody of the founders' effort to match incentives to institutional design.

In this light it should not be at all surprising that the Act is used in a partisan manner. The problem is that it enlists the criminal justice system in partisan maneuvering. Such charges are easy to make and hard to rebut. They tend to stick.

3. The independent counsel. What about the standpoint of the criminal justice system itself? What incentives are placed on the independent counsel? The best way to

Clark, "Political Consultants: Are Advisers and Handlers Harming Democracy?"
8 CQ Researcher 867, 868 (1996).

answer such questions is by comparing the independent counsel to an ordinary prosecutor. As I have noted, any ordinary prosecutor has a large set of actual or potential targets of investigation. Thus the prosecutor herself has a **wide rather than narrow focus**. Every prosecutor also knows that criminality of some sort or another is extremely widespread. In any law school class, for example, the vast majority of students, perhaps all students, are likely to have committed some crime within the last decade.

The Act eliminates some of the key safeguards built into the ordinary role of the prosecutor, safeguards that are frequently overlooked, but that operate as crucial contributors to liberty under law. It thus creates an incentive toward zealotry. An independent counsel who uncovers nothing is likely to look as if he has more or less wasted his time, or done nothing, whereas an independent counsel who brings a prosecution, or several prosecutions, is likely to look, at least some circles, like another Archibald Cox, a kind of hero of democratic ideals. Thus the Act creates an incentive for independent prosecutors to do what prosecutors should not be unduly ready to do: to prosecute.

One of the great achievements of the framers of the American Constitution was to link the analysis of institutions to the analysis of incentives. As noted, the system of national representation was designed to protect against the influence of factions, creating an incentive to serve the public good, and the system of checks and balances was designed to ensure that "ambition" would "check ambition." Some of the most valuable developments in institutional reform -- including the oversight role of OMB with respect to both the budget and regulation -- have also attempted to link incentives to institutions. From this point of view, the Independent Counsel Act is especially poorly designed, because it creates, predictably, the wrong incentives for everyone involved.

C. Nondeliberative Democracy and the Citizenry

What are the aggregate results of all this? We do not have sufficient information to know for certain or with precision. But some speculations seem reasonable. The Act contributes to a general aura of distrust of government, distrust grounded not on an assessment of what existing or potential policies actually do, but instead on a belief that officials are basically corrupt. Hence it is possible for Americans to be doing relatively well, in part because of government policies, while also believing that their government is very bad, in part because they "know" that every recent administration contains likely criminals. Political deliberation is likely to be crowded out if the national news is focussed on whether the Vice President should be investigated for crime. And political alienation is extremely likely if officials on both sides are accused of criminality. Such accusations can easily be exploited by conspiracy-mongers and third party candidates such as Ross Perot, themselves subject to character assassination, but able in the process to draw ordinary officials into a skeptical cloud.

It cannot be said that the Independent Counsel Act is the basic cause of the American people's "distrust of government." But it defies belief to think that the Act has done anything to relieve that distrust, and it is also ludicrous to suppose that it has not contributed to it.

IV. How to Handle High-Level Illegality, With A Note on the Future

The most obvious question raised by these suggestions is how to handle the problem of high-level criminality. If not the Independent Counsel Act, then what? For most of the nation's history, this problem was handled without any special procedures, and it is not at all clear that special procedures are indispensable or even desirable. The vigilance of

opposing parties and the press are likely to be obstacles to official wrong-doing and corruption. Until the enactment of the independent counsel statute, scandals were handled in successful ways, through such initiatives as the appointment of an investigator known to be relatively impartial and free from partisan control. Political checks worked reasonably well.²⁴

Disgrace and ultimately impeachment are of course available for the most serious wrongs, and public opinion, in a highly politicized, two-party system filled with incentives to ferret out corruption, the possibility of disgrace and impeachment are likely to do most of what needs to be done. Indeed, it is plausible to think that the rise of "attack journalism" has rendered independent prosecutors far less necessary. Because the relevant investigations generally begin with suspicions voiced by the press in any case, it may well make sense to require the press to do its own investigation work, especially if markets reward such investigations. If journalists are able to amass enough inculcating evidence, either political safeguards or legal reprisal is highly likely. This argument carries particular force if the primary purpose of these investigations is to deter wrong-doing. Reputational effects of press investigations are already high (especially compared to a long, dry investigation).

If the choice is between the continued use of the Independent Counsel Act and its repeal, the appropriate course is repeal. But an intermediate step is possible. It may well make sense to create a particular, highly professionalized institution, with a degree of independence, one of whose functions is to explore questions of this kind.

The simplest approach would therefore be to establish an office within the Department of Justice, perhaps modelled on the FBI, and entrusted with several sensitive jobs, including that of investigating reports of illegality involving a small band of officials: the President, the Vice-President, and the Attorney General. Crucially, people in such an office would have a history to draw on and a basis for reasonable comparisons. They would also have a menu of past cases, and as career officials, rather than one-shot special appointees, they would have no special tendency toward zealotry. It is not necessary to discuss this proposal in detail; it has multiple analogues in existing offices in the Department of Justice, dealing, in a highly professional manner, with ethical issues and Freedom of Information requests.

Might a reform of this kind happen in the near future? At first glance there is every reason to think that it will. Almost everyone who has thought about it -- including almost everyone in Washington -- knows that the Act has been a dismal failure, that it creates bad incentives, and that it would be a great service to the nation were it to be repealed. Privately, most members of Congress firmly believe that repeal would be desirable. If a secret vote were possible, I speculate that the Act would be repealed by a substantial majority.

On the other hand, most people now agree that the Act is unlikely to be repealed. There is a real paradox in the fact that while people privately agree that the Act should be eliminated, they tend to support it in their public capacity. What account for this? The answer is illuminating and complex. First, there is an intriguing kind of collective action problem here; any particular official who calls for the Act's repeal might appear to be signalling a lack of concern with violations of the public trust, an excessive alliance with the current administration, perhaps even his own corruption. Thus each official, acting in

²⁴ A good discussion is Terry Eastland, *Ethics, Politics, and the Independent Counsel: Executive Power, Executive Vice 1789-1989* (1989).

his self-interest, will not call for repeal, even when all officials, if able to act in concert, might well support exactly that.

But there is a further point. It is very hard to repeal any statute designed to produce "ethics in government" after that statute is in place. Public opinion is likely to stand firm against any such repeal, or at least influential elements of the public sector might well be mobilized in opposition. It is for this reason that even if the collective action could be solved, and all members of Congress could make their positions public at the same time, the statute might be preserved. A public outcry, from repeal of the Act, is highly predictable. Certainly such an outcry is to be expected from the media, which predictable damaging effects. In this way we have come full circle.

V. Conclusion

The principal problem with the Independent Counsel Act is that it imposes predictable and harmful incentives on members of Congress, the media, and the independent counsel itself. By so doing it makes all relevant institutions work less well. The Act was to increase trust in government; instead it has diminished trust in government. The Act aggravates some of the most serious problems in Congress, by deflecting attention from substantive issues, and turning disputes about policy into allegations of criminality.

There are other problems too. From the standpoint of the prospective defendant, the Act eliminates one of the principal safeguards of liberty under law, the fact that a prosecutor has a full agenda, cannot easily focus on any single person, and will not initiate proceedings against everyone who has committed a technical violation of the law. By contrast, an ordinary prosecutor has a menu of possible crimes to pursue, and must proceed only in the most serious cases. This is an important and overlooked guarantor of personal freedom. The Independent Counsel Act is thus a kind of cruel parody of the achievement of the founders of the American Constitution, who merged an understanding of incentives and an understanding of appropriate institutions.

This is not to deny that the Act is a response to a legitimate concern: favoritism in the criminal prosecution of high-level wrongdoing. The problem is genuine. In some democracies, it is a fundamental problem. It is not, however, one of the more serious problems facing American government, either now or in the foreseeable future. The most serious problems involve the effects of policies on people's actual lives; the Act deflects attention from those problems. In any case official wrong-doing can and should be handled through other, less destructive means. These include impeachment, political controls of the ordinary sort, threats of prosecution from executive authorities, and perhaps new institutions not creating the risks of the independent counsel.

Almost everyone who has explored the subject knows that the Act is a disastrous failure and that it should be repealed. On the merits there is no serious question. The only serious questions are how many people who have explored the subject will be willing to say that this is so, and how many members of Congress will have the courage to say it publicly as well as privately.

Appendix (to be finalized and reorganized, detailing the investigations thus far)

There have been 17 special prosecutors or independent counsels appointed to investigate wrongdoing by senior government officials since the Ethics in Government Act was passed in 1978. Their jurisdictions, durations, and expenses have grown over the years. As of Sept. 30, 1996, the total cost of the probes, including three still under way, was \$ 128.8 million.

Carter administration

Subject: Hamilton Jordan, White House chief of staff

Duration: 1979-1980

Counsel: Arthur Christy

Issue: Cocaine use

Outcome: No charges filed

Cost: \$ 182,000

Subject: Timothy Kraft, White House aide

Duration: 1980-1981

Counsel: Gerald Gallinghouse

Issue: Cocaine use

Outcome: No charges filed

Cost: \$ 3,300

Reagan administration

Subject: Raymond Donovan, Labor secretary

Duration: 1981-1982

Counsel: Leon Silverman

Issue: Lying about ties to organized crime

Outcome: No charges filed

Cost: \$ 326,000

Subject: Edwin Meese III, White House counselor

Duration: 1984

Counsel: Jacob Stein

Issue: Incomplete financial disclosure

Outcome: No charges filed

Cost: \$ 312,000

Subject: Theodore Olson, assistant attorney general

Duration: 1986-1989

Counsel: Alexia Morrison

Issue: Lying to Congress

Outcome: No charges filed

Cost: \$ 2.1 million

Subject: Michael Deaver, White House deputy chief of staff

Duration: 1986-1989

Counsel: Whitney North Seymour

Issue: Lying about lobbying activities

Outcome: Convicted

Cost: \$ 1.6 million

Subject: Iran-Contra affair

Duration: 1986-1994

Counsel: Lawrence Walsh

Issue: Lying to and obstructing Congress, destroying documents

Outcome: 7 guilty pleas; 4 convictions (Oliver North's and John Poindexter's overturned); Confidential

Duration: 1989

Counsel: Sealed

Issue: Confidential

Outcome: Confidential

Cost: \$ 15,000

Subject: Department of Housing and Urban Development

Duration: 1990-1996

Counsel: Arlin Adams (1990); Larry Thompson (1995)

Issue: Influence-peddling by senior HUD officials and others

Outcome: 16 convictions

Cost: \$ 26.4 million

Subject: Confidential

Duration: 1991-1992

Counsel: Sealed

Issue: Confidential

Outcome: Confidential

Cost: \$ 93,000

Subject: Janet Mullins and Steven Berry, State Department aides

Duration: 1992-1995

Counsel: Joseph DiGenova (1992); Michael Zelden (1996)

Issue: Privacy invasion in search of Bill Clinton passport files

Outcome: No charges

Cost: \$ 2.9 million

Clinton administration

Subject: President and Mrs. Clinton

Duration: 1994-present

Counsel: Robert Fiske (1994); Kenneth Starr (1994)

Issue: Whitewater; White House travel office firings; misuse of FBI personnel files

Outcome: 9 plea agreements; 3 convictions; 2 acquittals; ongoing.

Cost: \$ 27.3 million

Subject: Mike Espy, former secretary of Agriculture

Duration: 1994-present

Counsel: Donald Smaltz

Issue: Illegal gifts

Outcome: 1 guilty plea; 9 convictions; 3 indictments, including Espy's on 39 counts; ongoing.

Cost: \$ 7.9 million

Subject: Henry Cisneros, former secretary of Housing and Urban Development

Duration: 1995-present

Counsel: David Barrett

Issue: Lying to FBI about payments to a former mistress

Outcome: Ongoing

Cost: \$ 1.9 million

Subject: Ron Brown, late Commerce secretary

Duration: 1995-1996

Counsel: Daniel Pearson

Issue: Financial improprieties

Outcome: Probe closed after Brown's death

Cost: \$ 2.5 million

SOURCES: General Accounting Office, CQ research Globe staff chart