

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

#9

~~MM~~

November 23, 1982

TO: KEN DUBERSTEIN
THRU: PAM TURNER *PT*
FROM: BOB KABEL *Bob Kabel*
SUBJECT: Legal Services Board Nominees in the
Lameduck Session

Background:

As of the October recess, the status of our nine Legal Services nominees is as follows:

- 6 were reported unanimously from the Senate Labor Committee (Howard Dana, Ann Slaughter, Bob Stubbs, Hal DeMoss, Clarence McKee, Bill Earl). A time agreement was entered into for Senate floor consideration of these six.
- 2 were reported from Committee with negative votes (Bill Harvey 13/3 and Bill Olson 8/7). Senator Quayle apparently succeeded on the last day of the session in having Bill Harvey added to the list of those nominees subject to the time agreement.
- 1 -- George Paras -- remains pending before the Committee.

During the current recess period, two recess appointments were made to fill an open seat and to replace the last remaining Carter holdover. Frank Donatelli, a D.C. lawyer, was named to the Republican seat and Daniel Rathbun, a student at Christendom College in Virginia was named to the "income qualified" seat vacated by Josephine Worthy.

These recess appointments were made so that a full Reagan appointed board would be in place for the November Legal Services Board meeting. At that meeting, Bill Harvey was re-elected Chairman until the first board meeting after confirmation.

The Board also selected a new President, Don Bogard, a protege of Harvey's.

Shortly after these latest recess appointments were made, thirty-two Senators (23 Democrats and 9 Republicans) wrote to the President to protest these recess appointments as political interference immediately before an important board meeting.

Recent Developments

I am advised by Senator Hatch's staff that a bipartisan letter (probably with a larger number of Republicans) will be sent to Senator Baker requesting that the Senate act expeditiously in the lame duck to confirm the six nominees covered by the time agreement. Apparently any prior understanding to add Harvey to this list is no longer operative.

This development creates a dilemma for Senator Baker. As you know, only through significant pressure from the White House did he refrain from calling up the six nominees pursuant to the time agreement. Senator Baker's staff has indicated that Baker and other "interested Senators" were highly irritated by this White House request. In light of these factors, Baker might feel compelled to act on the six nominees who are covered by the time agreement. Other staff have advised that Senator Baker intends to call up the six subject to the time agreement early next week, perhaps on Monday.

Alternatives

A dilemma also exists for the White House. Three alternative options exist. One, continue to press for confirmation of all eight nominees currently on the Executive Calendar and risk confirming only six nominees, two, keep all eight on the Executive Calendar and allow the nominations to die when Congress adjourns (this clearly would require Baker's help), or three, withdraw all of the nominees and be prepared to recess appoint a new board as soon as the Congress adjourns sine die.

Under option one, we run the risk of having only the six confirmed. It is possible, however, that Howard Baker, if asked, might secure separate record votes on Olson and Harvey in addition to the six. It is unclear to me whether we presently have the votes to confirm Olson and Harvey, but especially Olson.

It may be helpful to bear in mind that the terms for three or four of the nominees expire in July, 1983 with the balance expiring in July, 1984. Consequently, more compatible board members could be named before the end of the current Presidential term.

It is my understanding that Ed Meese feels that option one is unacceptable.

Choosing the second option, i.e. leaving the eight nominees on the Executive Calendar would require Senator Baker's assistance. We do not believe that Senator Baker would agree to help here. He will be under substantial pressure from Senators to confirm the six subject to the time agreement.

Choosing the third option, i.e. withdrawing the nominees would infuriate certain Senators and probably make it more difficult to confirm a Reagan Legal Services Board, and make it unlikely that any reforms of the legal services statute will be enacted.

Senators who would be upset would include Senators Baker, Hatch (who has devoted considerable time to these nominations), Senator Quayle (Harvey was a law school professor of his), and Senator Cohen (Howard Dana is a personal friend of his who also chaired the Reagan-Bush Campaign in Maine). You may recall that Hal DeMoss is a friend of the Vice-President, Jim Baker, and Senator Tower.

At this point we have not talked with Senator Baker about these options, partly because of a concern that it might become more widely known that we are actively considering withdrawing all of the nominees.

Recommendation

Senior staff should immediately make a decision regarding these nominations and that decision should be communicated to Senator Baker.

In light of the intelligence we have gathered regarding the pressure on Senator Baker and his probable action to confirm only the six, and the White House's determination to see that such a result does not occur, it appears that option three is the preferred course of action.

f97-054/5 #10

THE WHITE HOUSE
WASHINGTON

file
JAM

September 30, 1982

Judge Clark

Subject: Grey Nomination

Pam Turner (Ken Duberstein's Senate Assistant) called to say the the Grey deal is coming unstuck.

Specifically Howard Baker has asked her for a letter from the President saying that he wants the Grey nomination moved. Howard wants to use that with the Conservatives (Symms, East, Thurmond and Helms) who oppose both Grey and Terrell.

I think that a letter would be unwise. It would become public and the President's cave and Helms' victory would be apparent.

Even a phone call would be wrong. I think it is time our Senate Leader stood up for his President. We cut a deal; now it is up to him to enforce it.

The bottom line is that if we do nothing the nomination will not be moved. Frankly that isn't all bad either--I'm very uncomfortable lobbying for people I don't believe are worth the effort. Still, I believe Jim Baker ought to know that if this falls through, Howard Baker owes us one.

Bud

Bud

THE WHITE HOUSE

WASHINGTON

#11

November 8, 1982

MEMORANDUM TO: JIM BAKER
FROM: KEN DUBERSTEIN *Ken D.*
SUBJECT: Chairman of National Labor Relations Board

Based on my office's initial check re Donald Dotson for Chairman of the NLRB, Senators Hatch and Nickles will be strongly in support of his nomination. On the Democratic side---with the AFL-CIO's strong opposition, we're told---the only possible Democratic Senator who would support is Jennings Randolph. He's described as having "an open mind" about the nomination but would be pleased to hear from the CEO of Wheeling Pittsburgh Steel Company where Dotson was the chief labor lawyer. Randolph, we understand, works closely with Wheeling Pittsburgh.

Personnel says it is possible that an intention to nominate a specific individual to the non-Republican seat might be announced at the same time Dotson is sent up. Several staffers thought this was a very good idea as long as that individual was at least acceptable to the Democrats.

On the Republican side, preliminary indications are that Weicker and perhaps Stafford have problems with Dotson's nomination.

Our initial judgement, therefore, is that Dotson would be difficult if not impossible to confirm. We should expect all Democrats, except perhaps Senator Randolph, to oppose him. This alone would be reason to predict that a series of delays should be expected making confirmation in the lame duck academic.

cc: Helene Von Damm
Dec: *Ann Turner*

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

November 5, 1982

TO: Ken Duberstein

THRU: Pam Turner *pt*

FROM: Bob Kabel *Bob Kabel*

SUBJECT: Possible Nomination of Donald L. Dotson
to be Chairman of the NLRB

White House Personnel has indicated that the lead contender for the NLRB Chairman nomination is Donald L. Dotson, who currently serves as Assistant Secretary of Labor for Labor Management Relations. I have contacted the Labor Committee Republicans and Senator Randolph regarding Dotson and Jim Range has talked with Kennedy's staff.

Except for Hatch and Nickles, no staffer was willing to give a clear reading. Almost everyone wanted to know more about him and whether there was any opposition to him. Senator Hatch has called Jim Baker to request that we send the nomination up as soon as possible. Nickles is a strong advocate of Dotson's. Larry Horowitz told Jim Range that he did not know of Dotson but would check on him and talk with Kennedy about him and advise Range of the results. Senator Randolph has "an open mind" about the nomination but would be pleased to hear from the CEO of Wheeling Pittsburgh Steel where Dotson was the chief labor lawyer. Randolph works closely with Wheeling Pittsburgh.

Insert A | Personnel says it is possible that an intention to nominate a specific individual to the non-Republican seat might be announced at the same time Dotson is sent up. Several staffers thought this was a very good idea as long as that individual was at least acceptable to the Democrats.

Jim Baker discussed this nomination with Bob Bonitati who told me of their conversation. Baker appears concerned about Dotson and for good reason. Dotson, however, has strong support from Secretary Donovan and senior White House staff.

The AFL-CIO has told Personnel that they will strongly oppose Dotson. He is perceived as strongly anti-labor. Bonitati advises that labor rarely takes a position on any nominee. John Vandewater was an exception to that general rule and as Dotson would be.

our *there*
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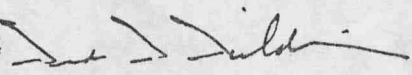
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After the election and given some comments we have heard from Republican Senators, the Committee Republicans should not be taken for granted. Weicker and perhaps Stafford may have problems and others may begin to display greater independence on nominees before the Committee.

THE WHITE HOUSE
WASHINGTON

January 14, 1982

MEMORANDUM FOR EDWIN MEESE III
JAMES A. BAKER III
MICHAEL K. DEEVER
✓KENNETH M. DUBERSTEIN
E. PENDLETON JAMES

FROM: FRED F. FIELDING 
SUBJECT: Nomination of F. Keith Adkinson
to the Federal Trade Commission

Counsel's Office attorneys who have worked on the Adkinson nomination have reviewed in detail the confirmation hearing transcript, Senator Cannon's charges against Adkinson at a subsequent executive session of the Commerce Committee, and the proposed responses to those charges Adkinson has submitted to our office for review.

Senator Cannon's main charges boil down, in essence, to these:

- o Adkinson lied about how long the book contract lasted between him and Gary Bowdach, an organized crime figure who testified before the Senate Subcommittee on Permanent Investigations when Adkinson was a lawyer on the Subcommittee staff;
- o Adkinson lied about whether he was aware of Bowdach's problem involving possible reincarceration, and whether he took steps to help Bowdach in this regard, while the book contract was in effect; and
- o Adkinson lied when he testified he had never discussed a book or movie contract with anyone else while working with the Subcommittee.

Based on the information available, our attorneys believe that these charges would not stand up in any formal prosecution for "perjury," and that a careful, dispassionate observer would not conclude, after detailed review of all the relevant evidence, that Adkinson attempted deliberately to mislead the Committee. Specifically, a fair, careful reader of the record should probably conclude that:

file.
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question
B/K

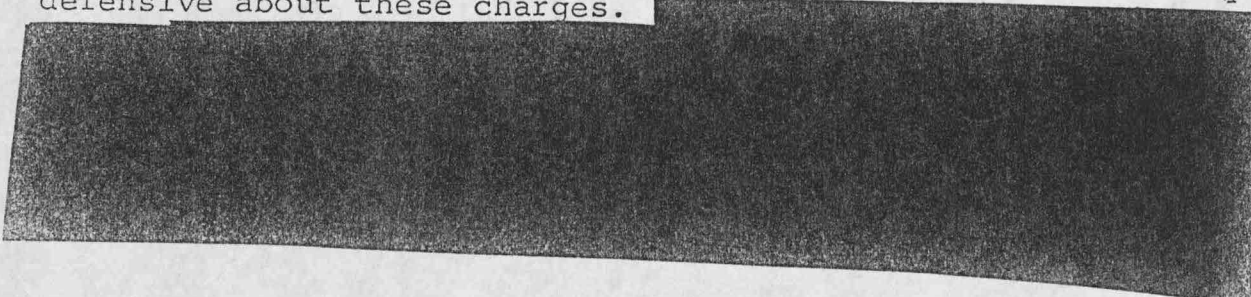
- o There is a dispute as to how long the book contract lasted. Adkinson says three or four weeks; Bowdach doesn't really remember (and refused to be coaxed by Minority Staff into a more definite answer that would contradict Adkinson); Marty Steinberg (Chief Counsel to the Investigations Subcommittee when Adkinson worked for it, and no friend of Adkinson's) says Adkinson told him the contract was still in effect long after the three-to-four week period, which Adkinson vehemently denies. It is undisputed, however, that no money changed hands between Adkinson and Bowdach, and that Adkinson never did any work on the book after the three-to-four week period.
- o Whether Adkinson was aware of Bowdach's problems and took steps to help him while the contract was in effect depends in large part on resolution of the first controversy. Accepting the three-to-four week period as truthful, however, the indications Cannon relies on in claiming that Adkinson and Bowdach may have discussed during that period the latter's possible reimprisonment are tenuous at best. Adkinson is again vehement in his denials. Further, there seems to be no real evidence indicating that anything Adkinson ever did on Bowdach's behalf was inconsistent with Subcommittee representations to Bowdach, in exchange for his testimony, made long before Bowdach and Adkinson ever talked about a book.
- o The charge that Adkinson lied about other book or movie contract discussions is based on his saying "no" to that question when asked by Senator Cannon. However, that question came at the end of a series of questions dealing specifically with the Bowdach matter, and could easily be seen, in context, as referring to whether Adkinson ever discussed the Bowdach contract with others -- which is precisely how Adkinson says he viewed it. Moreover, the "other" book or movie contract to which Cannon claims he was referring involved earlier discussions with persons in Hollywood, at their instigation, about the Investigations Subcommittee assisting with a possible television show. Senators Jackson and Ribicoff eventually refused

to allow such Subcommittee assistance. It would be silly to assume, however, that Adkinson was trying to "hide" this matter from the Commerce Committee, since the discussions he had about it are memorialized in Investigations Subcommittee documents (including an Adkinson memo), and (from what we have seen) there doesn't appear to have been any suggestion at the time that those discussions were improper.

Notwithstanding these conclusions, however, it is plain that the atmosphere in which Adkinson's nomination is being judged in the Senate is less than dispassionate, and the facts relevant to Senator Cannon's charges are sufficiently murky and complicated that it will be difficult to refute those allegations in any decisive way that will definitely put them to rest. In short, Cannon may well have succeeded in creating enough smoke, with enough superficial plausibility, that many Senators may decide either that there must be some fire or that the Adkinson nomination isn't really worth the battle it would take to save it.

One other factor should be noted. Adkinson, as my staff and persons in Legislative Affairs can testify, is combatively defensive about these charges.

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MEMORANDUM

THE WHITE HOUSE
WASHINGTON

July 20, 1982

~~MM~~ #12

TO: Ken Duberstein
THRU: Pam Turner
FROM: Bob Kabel *B. Kabel*
SUBJECT: Status of the LSC Nominees and Request for Guidance
on George Paras

Last Thursday, July 15, the Senate Labor and Human Resources Committee reported out 8 of the 9 LSC board nominees. At the White House's request, Chairman Orrin Hatch removed George Paras' name from consideration at Thursday's mark-up.

As the Committee convened the mark-up, the vote on Paras was 7 ayes and 8 nays. This vote assumed Senators Weicker and Randolph voting "no" and Senator Humphrey abstaining. All Committee Democrats other than Randolph were firmly locked in as "no" votes. Senator Humphrey committed himself to voting in favor of Paras only if his vote would make the difference. Clearly, it did not as the mark-up commenced.

Before the Committee actually turned to the LSC nominees on the agenda, the President talked with Senator Randolph to encourage him to vote for George Paras. I am advised that Senator Randolph was friendly but non-committal on Paras.

Shortly after his phone conversation with the President, Senator Randolph departed the Committee room and left behind his proxy to vote "no" on Paras and Bill Olson. After advising Ed Meese of this result, the decision was made to pull Paras' nomination from the agenda. Chairman Hatch did so and stated that the White House had given no reason for making the request and declined to speculate as to the reason for it.

Six of the eight nominees reported were done by voice vote. Bill Harvey was approved by a 13-3 vote and Bill Olson was approved, as I expected, by a 8-7 vote. All Democrats, including Randolph voted "no" on Olson. Senator Weicker abstained.

The nominations were reported to the Senate on Friday, July 16 and are now on the Senate calendar. No Committee report was filed.

On Monday, Senator Baker began to negotiate a time agreement for Senate floor consideration of the eight nominations. Baker was informed that Labor Committee Democrats would object to any time agreement on the eight nominees reported from Committee until the White House withdraws the Paras nomination or the Committee actually votes on Paras. I was advised that a White House promise to ask the Committee to vote on Paras would not suffice.

I am further advised by Baker's staff that, given the tight floor schedule, Senator Baker would not bring up the nominations without a specific time agreement. I seriously doubt that pressure from the White House would make any difference with Senator Baker on this scheduling matter.

From the beginning of this difficult confirmation process, time has been of the essence. The recess appointed board members are finding it difficult to run the LSC, e.g. all efforts to select a new President have ceased pending final confirmation.

Finally, after having had numerous conversations regarding George Paras and in light of Senator Randolph's rejection of the President's personal plea on behalf of George Paras, I simply do not see the votes for him at any time.

I recommend that Paras' nomination be withdrawn promptly so that the eight other nominees can be confirmed, perhaps as early as next week.

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

#13

September 23, 1982

TO: Ken Duberstein
THRU: Pam Turner
FROM: Bob Kabel *Bob Kabel*
SUBJECT: Update on Legal Services Corporation Board Nominees

BACKGROUND

Eight of the nine LSC nominees were favorably reported from the Senate Labor and Human Resources Committee on July 15, 1982. The tenth nominee, Marc Sandstrom, withdrew. Six of the eight were reported by an unanimous vote. William Harvey was reported 12-3; Bill Olson was reported 9-7.

Chairman Hatch deferred consideration of George Paras' nomination at our request. All Democrats plus Senator Weicker were committed to voting against Paras. Despite a call from the President to Senator Randolph to urge his support for Paras, Randolph provided his proxy to vote against him at the mark-up.

Senator Baker's staff went to the Democrats to work out an unanimous consent time agreement on the eight nominees reported from Committee. The Democrats said they would agree to 2 hours of debate on the eight, with a roll call on Bill Olson. The remaining seven would be voice voted. In exchange, however, the Democrats demanded that Paras' nomination be withdrawn and that he resign as a recess appointee. Baker's staff advised me today that the Democrats had restated this same demand as recently as last week.

In early August efforts began to convince Senator Randolph, who normally supports most Presidential nominees, to change his vote on Paras. Randolph had indicated an interest in having a friend of his reappointed to the Postal Rate Commission. Powell Moore spoke to Senator Randolph about this. Randolph was offered his nominee in exchange for his vote either on John Vandewater or George Paras. A few weeks later, Vandewater was no longer a possible trade.

Randolph delayed in giving Powell a response. After much prodding, Randolph at last indicated an interest in focusing on it. Last evening, Randolph's AA, Phil McGance, called to indicate that Randolph "probably" would change his vote and wanted our assistance in developing the rationale for changing his vote.

I expressed concern that there did not appear to be any chance for the Committee to schedule a mark-up under the 7 day notice rule and take the nomination to the floor by Friday, October 1. McGance agreed, and in fact, expressed doubts about confirming Paras by October 8.

McGance suggested that Randolph try to meet today with Hatch to discuss the situation with him. We were to talk this morning.

In the meantime, the suggestion was made that we go back to the Democrats with the offer to schedule a Committee vote on Paras but proceed to confirm the eight reported nominees as soon as possible.

I called McGance this morning at 10:15 to advise him of this strategy and to ascertain whether Randolph in fact would vote for Paras. He told me that he would be back with me in one hour. At 2:30 p.m., I spoke to him again and he still had not talked to Randolph. I hesitate talking to Kennedy's staff about scheduling a Committee vote on Paras until Randolph is on board for certain. McGance said he would call as soon as he had talked to Randolph.

I talked to Jim Range this morning to seek his advice on floor action and strategy. He said that there still was time to confirm the eight if a time agreement of one hour or so was involved. He thought it was a good idea to go to Kennedy with a promise to have a Committee vote on Paras in exchange for earlier action on the eight reported nominees.

My problem is that Senator Randolph continues to delay this matter and time is ticking away.

RECOMMENDATION

We need to know today whether Randolph will in fact vote for Paras. If so, we need to know by tomorrow whether the Democrats agree to Senate floor action on the eight if we schedule a Committee vote on Paras.

If Randolph will not tell us for certain, or, assuming he agrees but the other Democrats refuse to let the others be confirmed, I do not see any choice but to pull Paras and have him resign his recess appointment.

We really must act one way or the other by tomorrow afternoon.

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

July 31, 1982

TO: Ken Duberstein

FROM: Bob Kabel *Bob Kabel*

THRU: Pam Turner *P*

SUBJECT: Ex-Im Nominees

Pen James asked for Legislative Affairs recommendation regarding how to proceed on the Ex-Im nominees and Rita Rodriguez, who is almost through clearance.

The other two nominees are Heldridge and Yonge. Heldridge is currently working as a consultant at the bank. Yonge apparently has not been heard from in months.

John Draper has started to involve himself in these matters. Most recently he took it upon himself to set up an appointment to take Rita Rodriguez to see Heinz again. The White House insisted that he cancel that meeting, which he did with considerable reluctance.

Draper apparently has suggested to White House personnel and, I suspect, to Heinz that Yonge may be disposable. The theory being that we would agree to withdraw Yonge and indicate to Heinz that we would reconsider his suggested candidates in return for approval of Heldridge and Rita Rodriguez. Draper has advised me that he could accept one of Heinz's suggested individuals (Roberts with the Bank of America).

Senator Garn has suggested that we have the Vice President call Heinz and make one final effort to persuade him to move the two existing nominees as well as Rita. Garn infers that he will act on the nomination despite Heinz objections, if the Vice President's call does not work. Garn will not talk to Heinz about this matter at this time because Garn needs his vote on the banking legislation which goes to mark up this Wednesday and Thursday. Heinz to date has been exceedingly unhelpful to Garn in the development of this banking legislation.

Recommendation

Frankly, I see merits and problems in either strategy.

It would be highly unusual to pull a nomination without proof that he simply did not have the votes. I would recommend this strategy only if we made it clear to Heinz that the Heldridge and Rodriquez nominations would have to be acted upon before we nominated a "mutually acceptable" individual for the vacancy made available by the withdrawal of Yonge

I still feel the Vice Presidential call has considerable merit. It was suggested by the Chairman of the Banking Committee. In addition, the Vice President and Heinz are more philosophically compatible, etc. If the call does not persuade Heinz to move the nominations through committee, we will have to go to Garn and Howard Baker to move them in committee and on the floor, despite Heinz's objections.

MEMORANDUM

~~Gene Posters~~
THE WHITE HOUSE
WASHINGTON

July 12, 1982

~~FOR:~~
~~THROUGH:~~
FROM: KENNETH M. DUBERSTEIN
PAMELA J. TURNER *pl*
SHERRIE M. COOKSEY *smc*
SUBJECT: Status of Nomination of Jim Malone,
Ambassador to the Law of the Sea

Since this issue was last discussed the difficulties in obtaining Senate confirmation for Malone have increased. Despite additional conversations with Senator Percy, he remains determined to vote against the nomination. Additional efforts with Senator Pell by the State Department Inspector General to clarify and defend Malone's actions have been equally unsuccessful. The root of the problem remains that the Senate Foreign Relations Committee believes that Malone breached the written commitments, regarding his avoidance of conflicts of interests, which the Committee obtained as a prerequisite to confirmation for his present position.

No votes have changed on this nomination since the last discussion, but the count has hardened. There are 9 hard votes against (all the Democrats and Percy). Additionally, Senator Percy has intimated privately that at least 2 other Republicans (Kassebaum and Boschwitz) will vote against confirmation.

Senator Percy has asked the following question: Do we want the Committee to vote down the nomination, or are we going to pull it? The Committee will plan to consider and vote on the nomination the week after it reports out Schultz.

Recommendation: Pull the nomination.

Attachments: (June 15 memo on Malone)

F97-054/5 #15

~~Malone's defense~~

Looked in
Jim is no
way felt
to be wrong

DID NOT
DO
that former
Tolson
generally
if mandated
future contact

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

June 15, 1982

TO: KENNETH M. DUBERSTEIN
THRU: PAMELA J. TURNER *pt*
FROM: SHERRIE M. COOKSEY *smc*
SUBJECT: Senior Staff Personnel Discussion

Pen James has requested that you be present for the Senior Staff Personnel Discussion on Wednesday, June 16, at 4:00 p.m. At that time three subjects will be discussed which will require your assessment and recommendation. Those issues are detailed below.

Fred Malek

A memo on the last assessment of Malek's nomination is attached. In a nutshell the problems are:

- (1) Roth will not schedule a markup unless we can show him a committed majority for the nomination with no possibilities of a tie vote. The vote count currently is as follows:

For: 8
Against: 6

Not Voting: 2: Schmitt and Stevens
Uncommitted/Leaning Against: 2:
Nunn and Jackson

Schmitt is the swing vote on the nomination and he has indicated that he will not vote at all. Schmitt believes that a vote for Malek will hurt his re-election chances and that even if it is voted out of Committee the nomination will be filibustered on the floor.

- (2) The two major postal unions, the National Association of Letter Carriers and the American Postal Workers Union, have decided to oppose the Malek nomination. Senator Mathias was committed to defend Malek if we had the votes to move forward with the nomination, but with the postal unions objections Mathias' enthusiasm (which was never great) for this role has waned considerably.

Recommendation: Either prepare to strongly pressure Schmitt (with a Duberstein or Jim Baker phone call) and to seek Senator Baker's commitment to wage a floor fight on this nomination; or withdraw it.

FCC - Steve Sharp

Senator Packwood is prepared to go to Senator Stevens to seek Stevens' approval to hold a hearing on the Sharp nomination. However, Packwood wants to offer Stevens something to obtain his approval. Packwood's proposal is to reduce, by legislation, the size of the FCC from seven Commissioners to five. In doing this Sharp's term would be reduced from 5 years to 1½ years: to January 1984, when the next Democratic seat expires. Thus you would eliminate the seat of Sharp and the next seat vacated by a Democrat from the FCC.

We need policy guidance as to whether or not the Administration would support this legislation. The pros are that it could get Sharp confirmed, it would reduce the size of a regulatory agency, and would save \$700,000 in the budget. The cons are that Mark Fowler, FCC Chairman, is opposed to any reduction in the numbers of FCC Commissioners. He believes that since the FCC deals with 1st Amendment freedoms it needs 7 rather than 5 views.

James Malone: Ambassador to Law of the Sea

The problem with this nomination is that the Senate Foreign Relations Committee believes that Malone breached commitments, regarding conflicts of interest, he made to them in order to get confirmed for his present position (Assistant Secretary for Oceans) and thus a majority are not inclined to vote favorably for his present nomination. (A letter from Senator Percy to Haig on these concerns is attached.)

State Department Legislative Affairs informs us that at best, if an all out effort is waged, Malone would fail to be reported favorably on a tie vote. All the Democrats, including the two who voted for it previously are opposed and Senator Mathias will not vote on the nomination (rather than voting against it). At present count there are only four Republicans who will vote for the nomination: Percy (which is really a maybe), Baker, Hayakawa, and Helms.

Malone is convinced that the objections to his nomination are really objections to the President's nuclear policy. That may be true for the 6 Democrats who voted against him last time but it is not true for the other votes: they believe Malone breached an agreement he made in writing to the Committee.

Recommendation: Pull the nomination. Consider retaining him in his present position.

Attachments: Malek memo
Percy letter to Haig regarding Malone nomination

MEMORANDUM

#16
THE WHITE HOUSE
WASHINGTON

June 23, 1982

Bob Kabel
good work --
reassure Rita.
Ken D.

TO: Ken Duberstein

THRU: Pam Turner

FROM: Bob Kabel

SUBJECT: Rita Rodriquez's Meeting with Senator Heinz

Rita Rodriquez, our leading candidate for the fifth and final Ex/Im Bank board nomination, met Tuesday afternoon with Senator Heinz to discuss her probable nomination.

Heinz continues to hold up confirmation of the two pending Ex/Im nominees, Holdridge and Yang, both of whom have had their hearings before the Senate Banking Committee. So far, Banking Committee Chairman Jake Garn has supported Heinz in this matter. Heinz chairs the International Finance Subcommittee. Heinz has suggested four names to the White House for consideration for the final seat, two of whom have withdrawn their names. The remaining two are an officer with the Bank of America and a woman who currently works for an insurance association. Strictly on the merits, Rita Rodriquez is better qualified than the others.

The meeting did not go well. Heinz did just about everything he could to antagonize Rita Rodriquez, including reading to her from the Ex/Im Act, inaccurately interpreting her statements, interrupting her in mid-sentence, etc. He concluded that she was not qualified for the job, and that she would require on the job training which Ex/Im could ill-afford. Rita held firm and responded forthrightly and with considerable intelligence.

I informed Heinz that the White House felt Rita was exceptionally well qualified for the job, and was considerably more qualified than most who had been suggested to us. In addition, I indicated that given Heinz's serious problem in dealing with Bill Draper, that Rita would prove to be a valuable asset at the board for him and other Senators, given Rita's more open approach and interest in listening to others.

Heinz staff said afterwords that the meeting may not have been as bad as it seemed given Heinz's style. They suggested that I be in touch with them in a few days to see further what Heinz might have to say. In advance of the meeting, Heinz's staff indicated that they were trying to suggest some ways out of this situation for Heinz, such as some face saving action for Heinz and for a nominee he wants for the ITC.

I will talk further with the staff. I will also speak to Dan Wall, Senator Garn's staff director on the Senate Banking Committee. So far, Garn has let Heinz have a free reign, and I do not know if this latest event will help to change his mind or not.

In the meantime, I feel it is important for White House personnel and myself to be in contact with Rita to confirm our continued interest in her as a nominee. She could use some reenforcement. She will be out of the country for two or three weeks as of this upcoming weekend.

F97-054/5 #17

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

June 15, 1982

TO: KENNETH M. DUBERSTEIN
THRU: PAMELA J. TURNER *pt*
FROM: SHERRIE M. COOKSEY *smc*
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Schmitt is the swing vote on the nomination and he has indicated that he will not vote at all. Schmitt believes that a vote for Malek will hurt his re-election chances and that even if it is voted out of Committee the nomination will be filibustered on the floor.

- (2) The two major postal unions, the National Association of Letter Carriers and the American Postal Workers Union, have decided to oppose the Malek nomination. Senator Mathias was committed to defend Malek if we had the votes to move forward with the nomination, but with the postal unions objections Mathias' enthusiasm (which was never great) for this role has waned considerably.

Recommendation: Either prepare to strongly pressure Schmitt (with a Duberstein or Jim Baker phone call) and to seek Senator Baker's commitment to wage a floor fight on this nomination; or withdraw it.

FCC - Steve Sharp

✓ Senator Packwood is prepared to go to Senator Stevens to seek Stevens' approval to hold a hearing on the Sharp nomination. However, Packwood wants to offer Stevens something to obtain his approval. Packwood's proposal is to reduce, by legislation, the size of the FCC from seven Commissioners to five. In doing this Sharp's term would be reduced from 5 years to 1½ years: to January 1984, when the next Democratic seat expires. Thus you would eliminate the seat of Sharp and the next seat vacated by a Democrat from the FCC.

We need policy guidance as to whether or not the Administration would support this legislation. The pros are that it could get Sharp confirmed, it would reduce the size of a regulatory agency, and would save \$700,000 in the budget. The cons are that Mark Fowler, FCC Chairman, is opposed to any reduction in the numbers of FCC Commissioners. He believes that since the FCC deals with 1st Amendment freedoms it needs 7 rather than 5 views.

James Malone: Ambassador to Law of the Sea

The problem with this nomination is that the Senate Foreign Relations Committee believes that Malone breached commitments, regarding conflicts of interest, he made to them in order to get confirmed for his present position (Assistant Secretary for Oceans) and thus a majority are not inclined to vote favorably for his present nomination. (A letter from Senator Percy to Haig on these concerns is attached.)

State Department Legislative Affairs informs us that at best, if an all out effort is waged, Malone would fail to be reported favorably on a tie vote. All the Democrats, including the two who voted for it previously are opposed and Senator Mathias will not vote on the nomination (rather than voting against it). At present count there are only four Republicans who will vote for the nomination: Percy (which is really a maybe), Baker, Hayakawa, and Helms.

Malone is convinced that the objections to his nomination are really objections to the President's nuclear policy. That may be true for the 6 Democrats who voted against him last time but it is not true for the other votes: they believe Malone breached an agreement he made in writing to the Committee.

Recommendation: Pull the nomination. Consider retaining him in his present position.

Attachments: Malek memo
Percy letter to Haig regarding Malone nomination

THE WHITE HOUSE

WASHINGTON

June 11, 1982

TO: Ed Meese

THRU: Ken Duberstein *Ken D.*

FROM: Bob Kabel *B. Kabel*

SUBJECT: Update on Legal Services Corporation (LSC) Board
of Directors Nominees

Background:

As of yesterday, the Senate Labor and Human Resources Committee had tentatively scheduled a mark-up on the LSC nominees for next Thursday, June 17. This was subject to two conditions -- that Senator Kennedy agree to the date and that the White House sign off on an individual that George Pritts, the Committee Counsel says the Committee Members want at legislative affairs at the Department of Labor.

I am checking into the personnel matter but have expressed real concern for this demand as a matter of policy and given the extensive difficulties already experienced in confirming these nominees. Although Pritts could produce a letter from Senator Hatch and other Republicans, Pritts is acting alone at this point in making this demand.

This morning, I was advised that Senator Kennedy refused to agree to the June 17 mark-up date because he did not want any mark-up until after the Voting Rights legislation was off the Senate floor. He did agree to schedule a mark-up on June 29, a few days preceeding the 4th of July recess. Committee action on this latter date would push Senate floor consideration at least into July. A mark-up next week would provide some possibility of Senate floor action before the 4th of July recess.

Justice advised yesterday that the Federal District Court Judge who has retained jurisdiction over the LSC case has scheduled a hearing for June 18 on cross motions for summary judgment. While Justice does not expect the Judge to rule on that date, the litigation has started up again. Justice believes that an indication of additional progress on the nominations, i.e. a scheduled Committee mark-up, would be of considerable help in the case.

Regarding your request that I ask Senator Hatch to move the LSC nomination en bloc in Committee, I have pursued this both with the Committee counsel and the Senate Parliamentarian. In short, voting en bloc is not possible under existing Senate rules. Doing so in Committee mark-up and on the Senate floor requires unanimous consent. Committee Democrats would object to any unanimous consent request and, therefore, each nominee will have to be voted on individually.

Comments:

Senator Hatch clearly has caved into Senator Kennedy. Hatch feels the Democrats will boycott the mark-up, thereby denying a quorum. I disagree. Senator Randolph told me that he would cooperate at any mark-up. This means that, even if we lose Senator Weicker for quorum purposes, we can still obtain a quorum if Randolph and all other Republicans appear.

Except for Randolph, the Committee Democrats are never going to be helpful in anyway. They have nothing to gain in doing so.

On the White House personnel issue, I think this is reprehensible that a staff person can make such a demand. Given all the problems surrounding this confirmation process, particularly Senator Hatch's lackluster support at key points, this demand really is outrageous.

Recommendation:

I recommend that you call Senator Hatch to request that he schedule a Committee mark-up for early in the week of June 21. (This will give adequate time for notice under the 7 day notice rule.)

Talking Points:

1. I strongly request that you schedule a mark-up on the LSC nominees for early in the week of June 21. Your staff has advised that the Committee has tentatively scheduled a mark-up for June 29.

An earlier Committee mark-up is important for the following reasons:

- The Federal District Court Judge has scheduled a hearing on the LSC case for June 18. More momentum on the nominations would serve to forestall a decision in the litigation.
- The LSC nominees have indefinitely postponed further meetings of the Presidential Search Committee due to the absence of final confirmation. The LSC board really cannot get control of the Corporation until a President is chosen and he has an opportunity to select other key staff.

--The LSC board cannot make the hard decisions necessary to reshape LSC within the context of current law.

The Democrats, other than Senator Randolph, will never be helpful on these nominees. Delay only operates to their political benefit with the legal service network.

Senator Randolph has indicated to the White House that he would cooperate at any mark-up and, therefore, a quorum is possible even if Senator Weicker and the remaining Democrats do not appear. Weicker, however, also has indicated to the White House that he has no fundamental problem with moving forward on the LSC nominees.

2. If Senator Hatch raises the matter of Harry Donahue to be Don Shasteen's assistant at DOL in legislative affairs, indicate that the White House is currently looking into this individual.

MEMORANDUM

#19

THE WHITE HOUSE

WASHINGTON

May 19, 1982

TO: KEN DUBERSTEIN
THRU: PAM TURNER
FROM: SHERRIE M. COOKSEY *smc*
SUBJECT: Fred Malek Nomination

I. LATEST DEVELOPMENTS

A. Visit with Senator Schmitt

With the addition of Senator Schmitt to the membership of the Senate Governmental Affairs Committee we obtained another opportunity to nail down sufficient votes to favorably report the nomination of Fred Malek from the Governmental Affairs Committee. Malek met with Schmitt last week and in that meeting we made it very clear that Schmitt was the swing vote on the nomination. Unfortunately, upon reviewing the record Schmitt has indicated that he does not want to vote on the Malek nomination at all. Schmitt believes a vote for Fred Malek could be used against him in New Mexico.

B. Postal Unions Objections

The two major postal unions, the National Association of Letter Carriers and the American Postal Workers Union, have decided to oppose the Malek nomination. The American Postal Workers Union has informed Mathias of its objections. Senator Mathias had agreed to defend Fred Malek in Committee. With the objections of the Postal Unions, Mathias' enthusiasm, which was never great, for supporting Malek has disappeared.

II. CURRENT COMMITTEE VOTE COUNT

<u>For</u>	<u>Present</u>	<u>Against</u>	<u>Non-committed/ Leaning against</u>
8	2	6	2
(All Republicans except Stevens & Schmitt)	(Stevens & Schmitt)	(Democrats)	(Jackson & Nunn)

III. POSSIBILITIES FOR CONFIRMATION

- A. Committee Vote: Chairman Roth will not reschedule a vote on Malek's nomination unless we can show him a committed majority for the nomination with no possibilities of a tie vote. Given Schmitt's decision and the non-commitments of Nunn and Jackson we cannot do this.
- B. Floor Action: Even if a Committee vote were scheduled and Nunn and Jackson did not vote, the nomination would face stiff and time consuming opposition on the Senate floor. Senators Pryor and Levin have indicated their intent to work diligently against the nomination on the floor and make the nomination a party line issue.

IV. RECOMMENDATION

- A. Either make Malek's confirmation a major issue by (1) seeking Senator Baker's commitment to push the nomination through on the floor; and (2) pressuring Senator Schmitt into a commitment to vote for the nomination; or
- B. Inform Malek of the increasing difficulties on his nomination and request that he withdraw.

THE WHITE HOUSE

WASHINGTON

5/13/82

Ken:

BT just called from the car on the way to the airport to report on his meeting with Sen Rudman:

a large portion of the meeting focused on this HUD transfer. Rudman feels that in this May 6 letter, Pierce is all but calling the Senator a liar. Rudman thinks that Assistant Secretary Dan Hughes is the real culprit in the matter. Hughes was formerly a realtor in N.H., and Rudman as former Att'y Gen in the State feels he knows the lay of the land and that this transfer was totally unnecessary. He asked that BT brief JAB on the matter, saying "it would be to the President's best interests if he knew what was going on in his departments."

NK

#20

#21

THE WHITE HOUSE
WASHINGTON

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NK

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

#22

[Handwritten signature]

April 23, 1982

TO: Ken Duberstein
THRU: Pam Turner *P*
FROM: Bob Kabel *Bob Kabel*
SUBJECT: Suggested Strategy on the George Paras Nomination

Background

On Wednesday, April 21, George Paras and six other Legal Services Corporation (LSC) board nominees appeared at their confirmation hearing before the Senate Labor and Human Resources Committee. The hearing went remarkably well except for Paras.

Both Senators Metzenbaum and Eagleton questioned Paras about the letter in which he called Judge Cruz Reynoso a professional Mexican and his St. Louis Post Dispatch interview. Paras effectively handled the Metzenbaum questions. Eagleton, on the other hand, concluded after intensive questioning that Paras was a "14-K bigot. . .and was a disgrace to the bar, the bench and the President. . ."

I believe Eagleton said this for two reasons: First, Paras' conservatism is obviously anathema to Eagleton and most of the Committee Democrats. Second, the hearing was going so well that Eagleton felt compelled to dramatize his support for the LSC and its phenomenal network of liberal organizations, many of whose leaders were in the audience.

Current Status

Paras is seeking letters of support from his former colleagues on the bench and from Tom Erlich, a personal friend and a highly regarded former president of LSC.

Recommended Strategy

I suggest that George Paras continue to gather letters of support. He has at least a week to do so as no further Committee action will occur until all seven nominees respond in writing to several questions submitted to them during the hearing. After all answers have been received, Hatch intends to attempt polling out the nominees. The alternative, of course, is to schedule a

Committee mark-up. I am doubtful that the polling approach will succeed. However, the hearing went well enough for the other six nominees that it might work for them. On an 11 member board, six, of course, is a majority.

Polling would mean separating Paras from the other six and require that he be considered at a mark-up later after the three remaining nominees have had their hearing on May 18.

I recommend that we agree to try the poll in an effort to expedite gaining a majority on the board in order to dispose of the pending litigation. Paras would then join Harvey, Sandstrom and Slaughter. I seriously doubt that a poll could work for the remaining three in light of the board composition issue invoked at that point as well as other issues.

If the polling attempt fails, Hatch will schedule a mark-up (one Democrat must appear for quorum purposes). Prior to any mark-up, I will do a vote count and recommend a list of Senators to be called by Ed Meese. I can foresee that this list could include Jennings Randolph given his usual support for Presidential nominees.

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

April 2, 1982

#23

[Handwritten signature]

TO: KEN DUBERSTEIN
THRU: PAM TURNER *[initials]*
FROM: SHERRIE M. COOKSEY *[signature]*
SUBJECT: Status of Fred Malek Nomination

It now appears that we may be unable to get Fred Malek's nomination reported favorably by the Senate Governmental Affairs Committee. The magic number for a favorable report from the Committee is 9 votes. We have peaked at 8 committed votes and now appear to have lost one of those.

On Tuesday, March 31, the Committee vote on Malek was postponed. At that time there were 8 firm votes for Malek, 6 firm votes against, 2 votes leaning against/uncommitted, and 1 abstention. The Committee vote was postponed for two reasons. (A) We were not guaranteed that our 8 committed votes would be physically present, and the Committee rules preclude counting proxies on final votes. (B) We knew the opponents intended to raise allegations of perjury against Malek, and that Senator Mathias (the one Republican Senator to attend both Malek hearings) was unprepared to defend against those charges; and as a result we were uncertain as to where the 2 leaning against/uncommitted votes (Nunn and Jackson) would come down.

Since that time Senators Nunn and Jackson have agreed to meetings with Malek after the Easter recess; however, they have not indicated any change in their positions on the nomination. (Senator Jackson had informed others that he would not be the only Democrat to vote for Malek; and has indicated that he was leaning against. Senator Nunn has told Senator Warner, who went to Nunn at our request, that he is leaning against but would review the record out of deference to Warner.) Additionally, Senator Mathias has agreed to defend Malek against any allegations of perjury at the next mark-up if we believe we have the votes.

However, Senator Mathias has informed me that it will be a very long time before Senator Percy appears at any mark-up on Fred Malek. Mathias did not inform me as to the reasons of Percy's decision not to appear for a vote on Malek, but suggested that I knew of Percy's displeasure with the White House on nominations. (To me that meant that Percy will not be with us as long as his daughter is unhappy over her nomination.)

The loss of Senator Percy's vote for the foreseeable future means we no longer have a solid Republican front on the Malek nomination. (The fact that Senator Stevens was going to abstain was viewed as a personal matter, rather than as a break in Republican unity for Malek.) Accordingly, it is highly unlikely that Senators Nunn or Jackson will go against a strong Democratic push for a party line vote against Malek.

RECOMMENDATION:

1. Explain to Malek the problem on the Republican votes for his nomination and recommend to him that he consider withdrawing his candidacy.
2. Before a final decision to withdraw the nomination, await the final outcome of Senator Percy's appeal to the President on Sharon Rockefeller; unless we are convinced that there will be no change in our present position and his response to that.
3. Withdraw the nomination.

MEMORANDUM

#24

THE WHITE HOUSE

WASHINGTON

February 4, 1982

TO: FRED FIELDING

THRU: KENNETH M. DUBERSTEIN *Ker D.*

FROM: PAMELA J. TURNER *P*
SHERRIE M. COOKSEY *smc*

SUBJECT: Fifth Circuit Court of Appeals

In preparation for your memorandum to the President regarding recommendations for the Fifth Circuit Court of Appeals, we have touched base with Senator Thurmond and Senator Baker. Outlined below are their views on the likely consequences in the Senate should the President choose to nominate someone other than Senator Cochran's candidate for the Fifth Circuit Court of Appeals. Senator Cochran previously had discussed this issue with both Senator Thurmond and Baker.

I. Ability to get Another Candidate Through the Senate Judiciary Committee

Senator Thurmond advised that if we were to nominate someone from another state for the vacancy on the Fifth Circuit Court of Appeals that it would take a Presidential phone call to each Republican member of the Senate Judiciary Committee to confirm that individual. Thurmond states that Senator Cochran is a former member of the Senate Judiciary Committee and is very close with the Republican members on that Committee. As a matter of courtesy to Senator Cochran the Republican members of the Judiciary Committee would be reluctant to report out an individual whom he opposed.

II. Ability to Confirm Individual Reported by the Senate Judiciary Committee

Senator Baker stated that if the President does not go with Senator Cochran's choice for the Fifth Circuit Court of Appeals he will create "irreparable harm and seriously rupture" his relations with the Senate as an institution. He emphasized that the institutional question of the prerogatives of a Senator as opposed to the prerogatives of a Congressman vis a vis judicial recommendations is one on which Senator Cochran will receive universal Senate sympathy. Baker further stated that "I do not know that even if you get him out of the Judiciary Committee that you could get him confirmed. In fact, I would work with Senator Cochran on this issue." Senator Baker wanted to emphasize that he was not throwing the gauntlet down to the President but stating the facts of the very serious nature of the problem which he would be buying if he did not go with Senator Cochran.

III. Effect on Relations with Senator Cochran

As has previously been discussed, should we nominate someone other than Senator Cochran's choice for the Fifth Circuit Court of Appeals, this Administration's relationship with Senator Cochran would be seriously damaged. Cochran has expressed his feelings on this with numerous members of the White House staff and with the President. Senator Cochran would be personally embarrassed and hurt if anyone other than Grady Jolly were nominated for the Fifth Circuit Court of Appeals at this time. Senator Cochran has consistently voted with the Administration on every issue of significance to us. Should we nominate someone other than his candidate for the Fifth Circuit Court of Appeals we would no longer be guaranteed his support on any issues.

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

#25

February 25, 1982

TO: KEN DUBERSTEIN
FROM: PAM TURNER *PT*
SUBJECT: Sam Hart's Visit with Senators Heinz and Specter

Following is a rundown of a conversation among Senators Heinz and Specter and Sam Hart. Also attached is a list of information which the Senators have requested from Hart. I am forwarding a copy of the attachment to Mike Farrell so that he may assist Hart in complying with these requests.

Hart's meeting essentially went well, but there were a number of detailed questions, and it is clear that while Specter would like to help the President on this, he still has some reservations about Hart and wants very much to review additional information before making a final decision. Senator Heinz is less enthusiastic about the nomination, and although he is not ready to make any decisions, my guess is that he remains negative.

There was a good deal of discussion about Hart's educational background, i.e., despite the fact that Hart spent a number of years in several educational institutions, he does not have a formal degree. During the discussion on civil rights for blacks, Hart mentioned that he had first been approached by the Administration to serve as Chairman of the Civil Rights Commission. He indicated that part of the reason he agreed to become a candidate for a member of the Commission was because he has been assured that it will not require him to spend too much time away from his ministry. He indicated that he viewed this commitment to be approximately two or three days a month. Hart indicated to Specter that he tends to "run counter to the NAACP" in the sense that they tend to be more activist than he. Specter is very interested in this question and will undoubtedly follow up with a line of questions regarding the level of advocacy which Hart intends to pursue should he be confirmed.

On the subject of the tax exempt status, Hart indicated that he preferred legislation to court action. Heinz got into a long series of questions about interracial dating in schools and whether or not the prohibition of same should be considered tantamount to discrimination. Hart's response was to define his own perception of what constitutes genuine segregation. Hart indicated that

he thinks Reagan should have waited for Congress to act legislatively before repealing the IRS regulations. On the subject of the ERA, Hart says he supports equal rights for women but not the Equal Rights Amendment. He indicated strong support for the traditional family and said that he had anticipated some opposition from feminists and gays.

On the matter of compulsory prayer in public schools, Heinz got into a long and somewhat convoluted series of questions about who should compose the prayers, etc. Hart said he favored prayer in schools as long as it was not compulsory and that any prayer should be a non-denominational one which would not be objectionable to anyone. He finally suggested that silent prayer might be the answer.

On the Voting Rights Act, Heinz laid out the differences between the effects test and the intent test and asked Hart which he preferred. Hart said he thought the effects test would be better. I am not sure how much briefing Hart has had on this issue, but we had better be prepared for this question during the hearings. There was a good deal of discussion about Hart's lack of personal political activities (i.e., registering to vote). Hart said he was indeed embarrassed by his lack of participation and that he became discouraged because the candidates he supported were losing. Since the outcome of elections, in Hart's view, represent God's will, he reached the conclusion that he was voting contrary to God's will. He has registered recently (November) and told the Senators that he had decided to re-register even before he was approached about this job. Heinz's comment was that this issue could cause Hart "unmitigated hell."

On the subject of gays, Hart said he does not believe in legalizing homosexuality (we need to do some research here because Specter raised the point that homosexuality is not necessarily illegal in many states). Hart thinks that gays should be able to live anywhere they want, with the exception of a situation where it might involve renting a room or a part of someone's private home. In the work place, Hart is concerned about the gays working as teachers with young children or in a religious capacity where the preponderance of the religious community is opposed to homosexuality. Otherwise, Hart thinks there should be no restrictions on employment for gays.

The subject of the Fair Housing Act came up but Hart indicated that he was not familiar with the details of this subject. He did suggest the idea that federal assistance could be made available for minorities moving into segregated neighborhoods. Specter suggested that Hart review carefully his (Hart's) 1974 testimony before the Philadelphia Commission on Human Relations (we have a copy of this testimony).

At the conclusion of the meeting, Specter suggested that the Judiciary Committee should definitely hold a hearing on this nomination (in some cases, hearings have not been necessary on these nominations). Specter says he has mixed feelings about Hart's views. Hart volunteered that one of the reasons he had been chosen for this position was to create "balance" on the Civil Rights Commission.

In a follow-up conversation I had with Paul Michel of Specter's staff, he indicates that Specter thought Hart "presented himself well" and is not so much troubled by Hart's views as he is about the absence of civil rights experience, legal understanding, and general lack of knowledge of the subject matter. Specter will try to help the President on this, but will require further information.

Attachment

THE WHITE HOUSE
WASHINGTON

#26

February 18, 1982

MEMORANDUM TO: Jim Baker
Pen James
Helene Von Damm

FROM: Ken Duberstein *KD.*

SUBJECT: Senator Percy's Recommendation for the
U.S. Representative to UNICEF.

Attached is a memo detailing the depth of Senator Percy's personal interest in the retention of Mrs. Marjorie Benton as the U. S. Representative to UNICEF. In a nutshell, Senator Percy believes that the replacement of Mrs. Benton would be a repudiation of all his efforts on behalf of the Administration and a direct and personal slap in the face to him as an active Administration Congressional supporter.

RECOMMENDATION:

1. Appoint our candidate, Rita de Martino, to the #2 U.S. position with UNICEF.
2. Retain Mrs. Benton throughout this year (this Congress).
3. Inform Senator Percy of the retention of Mrs. Benton and offer to work with him to appoint her to another appropriate position at the end of this year.
4. We will appoint Rita de Martino to the #1 position with UNICEF at the end of this year (this Congress).

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

February 18, 1982

TO: KEN DUBERSTEIN
THRU: PAM TURNER *PT*
FROM: SHERRIE M. COOKSEY *SMC*
SUBJECT: Conversation with Senator Percy on Marjorie Benton's UNICEF Appointment

Senator Percy called to inform us that he "very, very strongly" supports the retention of Mrs. Benton as the U.S. Representative to UNICEF. Percy stated that if it had not been for Phil Klutznick and Marjorie Benton who organized and very successfully ran Independents and Democrats for Percy in 1978, he would not be in the Senate today.

He stated that this is the single most important request he has made, or will make, of this Administration. His record of support for the President is very clear; he would view the appointment of someone else for this position as a personal affront which obviously would effect his future enthusiasm for support of Administration initiatives. Furthermore, he had thought there was an understanding that nothing would happen to Mrs. Benton without consultation with him (i.e. sitting down and talking with him before a decision was made).

As for reasons, other than his personal request for the retention of Mrs. Benton, Senator Percy stated the following:

- She is recognized as very competent for this particular post. She has international standing, as Chairman of the Board of the Save the Children Federation.
- UNICEF is not a partisan political position. While she is an effective Democratic partisan, we are removing her from the partisan political arena by keeping her in this position.

Senator Percy's closing remark was: Who is so important and qualified for this position that the President would want to personally hurt me by removing Mrs. Benton for their appointment? Why not appoint whoever you have in mind for this position to some other post?

RECOMMENDATION: 1. Request that Personnel, in its presentation of this issue to the President, indicate the damage that removal of Mrs. Benton will do to the President's ability to rely on Senator Percy's future support of Administration proposals.
2. Recommend that, in view of Senator Percy's strong personal request, we retain Mrs. Benton in her present position throughout this Congress and work with Senator Percy to appoint her to a different position (where a Democrat is required) next year.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

December 9, 1981

#27

TO: JIM BAKER
THRU: MAX FRIEDERSDORF
FROM: POWELL MOORE *P.M.*
SUBJECT: Van de Water Nomination

Senator Laxalt stopped me outside the Senate Chamber the other evening and said he has been approached by Senator Danforth, who has expressed concern about the Van de Water nomination. He said Senator Danforth's concern is shared by other Republican Senators from industrial states facing re-election in 1982 like Senators Chafee, Heinz and Lugar. Before my conversation with Senator Laxalt was finished, Senator Danforth joined us.

They asked me to assure them that the President would be advised of the political consequences for our narrow margin in the Senate that go with an all out fight between management and labor over the Van de Water nomination. Lobbying activities involving business interests and organized labor are becoming intense on this issue and they are beginning to feel the heat. Danforth said they are facing a choice they would rather avoid. The implication is that they would stick with us on this nomination, but the cost in terms of their political strength at home would be substantial. Danforth said his level of support with labor is currently very high.

I told them that we were not interested in fighting over this nomination either, but the fight has been started by organized labor, not us. I told them labor has chosen to oppose him in spite of the fact that they have no evidence to raise any questions about his qualifications for the job. I reiterated the President's support for this nomination pointing out that the President has known John Van de Water for over thirty years and has implicit confidence in his integrity, competence and ability to be impartial. I gave them no hope that the fight would be avoided, but I did assure them that the President would get this message.

Incidentally, I have also talked to Senator Chafee about this nomination, and I can vouch for the fact that Danforth was reflecting his point-of-view.

cc: Ken Duberstein

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

Handwritten: #29
Handwritten: RMH
Handwritten: file

March 11, 1982

TO: Kenneth Duberstein
FROM: Dave Swanson *DS*
THRU: Pam Turner *AT*
SUBJECT: Keith Adkinson Nomination

The Keith Adkinson nomination is currently pending before the Senate Commerce Committee. Working with Adkinson, we have been trying to obtain some support from the Democratic side of the aisle. In order to hold our Republicans we must break the partisan nature of the nomination. Several Senators are pivotal to this confirmation and some progress has been made as follows.

Senator Nunn (Former employer not on the Commerce Committee)

After many tries, Adkinson has finally met personally with Senator Nunn. Nunn has indicated to Keith that if Hollings or Heflin, or any other Democrat Senator asks him about the nomination, he will indicate that Keith should be confirmed and that he will vote for him on the floor.

Senator Heflin

Keith has met personally for the first time with Heflin. Heflin, through word from staff, is very open minded on the nomination, has no predisposition to voting against him but does not, because of the partisan nature of the nomination, want to be the deciding vote. We have some unconfirmed reports that Heflin will, in fact, vote for the nomination. We think we have a good chance of getting him but cannot get that commitment until the nomination is scheduled for a vote and until the Williams trial is over (Heflin is the chief Democratic prosecutor on the Senate floor).

Senator Hollings

Senator Hollings had previously indicated that he was prepared to vote for Keith if he wasn't the deciding vote. We have not been able to update this but Keith is continually pressing for a meeting. Because of the close family ties, we think it unlikely Hollings will vote no, so long as there is another Democrat.

Other Democrats

We are told by Riegle's staff that Riegle does not share the "cause" with Cannon in this case. We are not counting on him but his is a possible vote so long as there are other Democrats.

And, early indications were that Exon was opposed. Keith met with him, after staff had repeatedly put him off, and the session was productive. Keith was able to answer a number of questions for Exon. While neither of these can be counted on, it does provide further indication of some disagreement with Cannon's efforts and tactics.

Republicans

Most Republicans are not delighted with the nomination but will support it if there are Democrats and if the rest of the Republicans hold together. Senators Schmitt and Gorton are our biggest question marks. Gorton has indicated through staff that if we get Democrats, he wants to see Keith again. He might be willing to change his previous position and vote for him. Senator Schmitt, because of his position on the Ethics Committee is reluctant to vote for any nominee who has violated the Senate Rules. However, with some work, we should be able to hold him.

Summary

If we can get some breakthrough on the Democratic side, it appears as though there could be a comfortable margin on the nomination. We cannot firm up that position until two things happen; (1) the Williams trial is finished, and (2) the nomination is scheduled for a vote. The earliest date for a vote is March 29, 1982. If we do not get Democrats to support, the nomination is a very close call and would probably be defeated.

Following is a best case/worst case summary of how the Committee might vote.

BEST CASE

AYE

NAY

Republicans

Democrats

Republicans

Democrats

Packwood
Goldwater
Schmitt
Danforth
Kassebaum
Pressler
Gorton
Stevens
Kasten

Hollings
Heflin

Cannon
Long
Inouye
Ford
Riegle
Exon

6

11

WORST CASE

AYE

NAY

Republicans

Democrats

Republicans

Democrats

Packwood
Goldwater
Danforth
Pressler
Stevens
Kasten

Gorton

Cannon
Long
Hollings
Inouye
Ford
Riegle
Exon
Heflin

6

9

UNDECIDED

Schmitt
Kassebaum

2

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

#30

[Handwritten signature]

April 26, 1982

TO: Ken Duberstein
FROM: Pam Turner *p* Sherrie Cooksey *smc*
SUBJECT: Voting Rights

I. Current Status

--There are insufficient votes in Committee to retain the Subcommittee bill which was a straight 10-year extension of current law.

--The Administration has floated a compromise which retains the intent language of current law and defines the standard for proving intent along the lines of White v. Register.

--Senator Dole has floated a different compromise which allows individuals to use either an intent or effects test and then defines the effects test so as to preclude courts from construing it as requiring proportional representation.

A. Reactions to Administration Proposal

Without commitment from Dole or Heflin we cannot force a coalition in line behind this proposal. The reactions have been as follows:

Heflin: had been receptive but is now reviewing the Dole language.

Grassley: was prepared to support and offer the amendment.

Laxalt: was prepared to support.

Simpson: was reluctantly prepared to support.

Thurmond, Hatch and East: had strong reservations, but if Dole and Heflin would support it, they were willing to consider it.

DeConcini: was receptive but non-committal.

Baucus and Specter: were prepared to strengthen the House-passed bill to guard against proportional representation but not prepared to move as far as this proposal would go.

B. Reaction to Dole Compromise

It appears that a coalition of liberal Democrats and conservative Southerners may be built around this if, for the liberals, the Leadership Conference on Civil Rights agrees to it and, for the Southerners there are changes made in Section 5 and included in the package. Specific responses have been as follows:

Heflin: is very receptive; is looking for any compromise that would achieve a majority of votes.

Thurmond, East and Denton: would be advised to vote against it unless there are sweeteners for changes in Section 5, then they would consider voting for it.

Baucus: was receptive to the concept, had not seen the language.

II. Anticipated Action in Committee on Tuesday

Mark-up is scheduled to begin at 11 a.m. Heflin will not be present until later; DeConcini will not be present at all. Although votes could occur, they appear unlikely at this time.

III. Recommendation

Without the support of Dole and Heflin for the Administration's proposal it appears that we have no choice but to support the Dole compromise. It would be best if that compromise included sweeteners for changes in the bail-out provisions (however, this would get the Administration directly involved in subjects which we had said we would leave to the determination of Congress). Support of the Dole compromise is recommended because of political realities and the fact that it does address the problem of proportional representation.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

April 23, 1982

#31

TO: KEN DUBERSTEIN
THRU: PAM TURNER
FROM: SHERRIE M. COOKSEY
SUBJECT: Voting Rights Legislation

As of Thursday afternoon the Administration is actively seeking support of a compromise on the "intents" test language of Section 2 of the Voting Rights Act. The compromise which we are supporting has been drafted by Brad Reynolds and uses the language of White v Register, the Supreme Court case which the proponents of the House-passed bill have said they support.

The goal of this effort is to obtain 10 votes, if not more, in support of compromise language which is acceptable to the Administration and not an anathema to the Civil Rights Groups. The swing votes are Senators Dole, Grassley, Heflin, and DeConcini. However additional attention must be paid to Senators Denton and East to insure that they will not reject a compromise in favor of the intents test.

Meetings with interested parties in this issue have gone as follows:

Senator Thurmond: Reluctantly recognized the need for a compromise. Wants to be kept informed of the progress and reactions of other Members of the Committee.

Senator Hatch: Retains hope for avoiding a compromise in Committee but recognized the need to work on one. Would prefer tighter language than what is in our compromise but accepts the strategic logic of using the very language which the proponents of the effects test have stated they would support. Wants to introduce the compromise if it is a known winner; we agreed to revisit that issue closer to the markup.

Senator Laxalt: Will support us, and do whatever he can to help. We asked him to shore up the conservative (East and Denton) support for this compromise and he said he would try to help.

Senator Grassley: Was receptive to the compromise. Had been working on his own compromise which contained a listing of factors which could prove intent; however he was receptive to Brad Reynolds' arguments against listing factors. He agreed to work on Senator East to support a compromise. He has been informed of Senator Heflin's reactions. He wants to be a principal player in the compromise and will be talking with Senator Dole to seek his support for our language.

Senator Dole: Originally stated that the compromise was "more Hatch language" which he did not wish to discuss. Has since discussed the compromise with Jim Baker. Was somewhat hostile to this compromise rather than that which was being offered by his staff and agreed to read it Thursday night and get back to Baker on Friday. The caveat here is that Dole's staff is taking a liberal "effects oriented" approach to a compromise and appears to be holding support of a compromise to the standard of acceptability of the civil rights groups.

Senator Heflin: Was very receptive to the compromise, but would not commit at this time. He asked if his staff could shop our language with the civil rights groups and we agreed. Although he had been considering a different approach he seemed to become more enthusiastic about our language if a consensus could be built around it. He suggested additional provisions to make it clear that the courts, in ordering relief for violations of Section 2, should look to all other alternatives first before resorting to proportional representation. Brad Reynolds said we could work with him on that if he chose to pursue that issue. Heflin will talk again with us on Monday.

Other Members of the Judiciary Committee have not been approached directly to date. A meeting with Specter is being set up for Monday. Bob McConnell plans to discuss the compromise with DeConcini and Simpson while in Arizona Friday through Monday. Senator DeConcini will not be present at the markup on Tuesday but will direct his staff how to vote his proxy. Meetings are also being set up with Senators Baucus and East.

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

April 16, 1982

#32

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file

TO: Ken Duberstein
FROM: Pam Turner *[initials]*
Sherrie Cooksey *smc*
SUBJECT: Voting Rights Legislation

I. Background

The House-passed Voting Rights Act contained a 10-year extension, modifications in the Section 5 bail-out provisions, and an effects test rather than an intents test in Section 2 of the Act. This bill has been introduced in the Senate as S. 1992 and has 64 co-sponsors (including 2 Republicans and all Democratic members of the Senate Judiciary Committee except Senator Heflin). S. 1992 is pending for floor consideration on the Senate calendar.

The Senate Judiciary Subcommittee on the Constitution has reported S. 1992 as a straight 10-year extension of the present law (thus it contained the intents test in Section 2). This vote was 3-2 with Senators Thurmond, Hatch and Grassley in favor and Leahy and DeConcini opposed. At the Subcommittee mark-up, Senator Grassley asked DeConcini about a compromise and DeConcini expressed interest. The Subcommittee has filed a report which has been published for the Senate.

II. Current Status in the Senate Judiciary Committee

The Senate Judiciary Committee is scheduled to mark-up the voting rights legislation on Tuesday, April 27 and continue to mark-up on a daily basis until completed. It is anticipated that the first vote in Committee would be on a motion to substitute the original House-passed bill. The vote count on this substitute appears to be 9 in favor, 7 opposed and 2 leaning against the substitute. Of those 2 leaning against votes, Senator Dole has a compromise which he intends to offer at some point; and Senator Heflin remains truly non-committed, having expressed objection to both options (intent and effects). In view of Senator Heflin's discomfort with both options there is the possibility that he may offer alternative language in the full Committee and such votes could occur prior to any vote on the motion to substitute the House-passed language.

The parliamentary situation in Committee requires a majority vote (i.e. 10 votes) for the Committee to report any bill to the Senate. If the Committee were deadlocked the pending bill

before the Senate would be the House-passed bill which is being held at the desk. The only report of the Judiciary Committee would be the Subcommittee report in favor of the intents test.

III. Possible Language for Compromise

Senator Baker has indicated that he wants to avoid a divisive fight on the Senate floor over this issue and he has requested DOJ to develop compromise language. DOJ has developed such language but has not circulated it. Senator Dole has a compromise which has language problems both for Justice and other members of the Senate Judiciary Committee. In fact, other Republican members of the Committee have indicated an interest in hanging tough on the intents language in the first Committee vote. To date, there has been no definitive Administration or Senate positions on the language necessary for a viable compromise.

IV. Options

1. Hang tough on the intents test all the way through the Committee and Senate floor consideration.

Pros: This is consistent with the Administration's stated position.

Cons: This would place us in an intractable position, thereby making us an easier target for defeat. Furthermore, such a position will inevitably lose.

2. Hang tough in Committee, press for a 9 to 9 vote on retaining the Subcommittee bill with the intents test and an additional tenth vote to report this bill from the full Committee, but compromise on the Senate floor.

Pros: This is the most positive position available: it preserves our ability for compromise on the floor and satisfies those Republican members of the Committee who would insist on the intents test until no other options were available.

Cons: If we lose the vote on the substitute to re-instate the House-passed language in the Committee, we are faced with the probability of an overwhelming vote to report the House-passed bill from Committee. If there is a strong Committee vote to report the House-passed bill our ability to successfully formulate a compromise on the floor is, perhaps fatally, undermined.

3. Compromise in the full Committee mark-up.

Pros: This would be the safest option in terms of a successful Committee vote.

Cons: If the compromise fails, the odds of resurrecting an Administration-backed alternative on the floor are slim to none. A compromise in Committee would reduce our flexibility during the floor debate by forcing action to protect this language against further amendments or compromise.

Recommendation

The optimum strategy is to pursue passage of the Subcommittee bill by the full Committee and offer a compromise on the Senate floor. This will require commitments from Senators Dole and Heflin as well as one additional vote in Committee to report the bill. A compromise should be offered in Committee only if we are unable to obtain a tenth vote to report the bill, or if Senators Dole and Heflin will not support us.

MEMORANDUM

#33

THE WHITE HOUSE

WASHINGTON

October 16, 1981

FOR: EDWIN MEESE, III
FROM: MICHAEL M. UHLMANN, OFFICE OF POLICY DEVELOPMENT
SUBJECT: Voting Rights Act Options ESO

1. Highlights of House-passed bill

- o extended the pre-clearance and language-minority provisions until 1992.
- o modified the bail-out procedures.
- o postponed the date (from 1982 until 1984) when jurisdictions might apply for a bail-out.
- o added an "effects" test to the Act's permanent provisions.

Comment:

- a. The changes in bail-out are more cosmetic than real. The sponsors claim to have ameliorated some of the complaints of the current Act's bail-out procedures, but upon close examination the new requirements are equally as strong, perhaps even stronger, than current law.
- b. The addition of an "effects" test to the Act's permanent provisions is a major change in the law, far more so than the bail-out changes.

The permanent provisions, which apply nationwide, generally proscribe denials of the right to vote on account of race, color, national origin, linguistic minority status. The Supreme Court has ruled that proof of discriminatory intent is prerequisite to a violation of this generic provision.

The principal result of an "effects" test will be to invite litigation almost anywhere in the country where minority political strength is deemed to be less than

what it should be. The argument will be that certain electoral arrangements have a "dilutive effect on minority political power. Multi-member districts and at-large systems will be targeted for attack as per se discriminatory.

Whatever the final outcome of such litigation, it will encourage the view already too far advanced that the Act creates a right to be represented by a member of one's own race, or that only a fixed minimum registration can effectively guarantee the rights sought to be protected by the Act.

It will also tempt a Democrat-dominated federal bench to redraw a large portion of the American political map in the name of protecting "voting rights", when in fact the issue has less to do with the right to vote than it does with raw political power.

2. Possible Options

a. Endorse the House bill.

Pro: Will be hailed by the civil rights community as an act of statesmanship.

Con: Will be attacked, heavily in private, to a lesser extent in public, by conservatives who view the House bill as worse than current law.

b. Support extension of the Act's special provisions, but seek further modification of the bail-out procedures and elimination of the "effects" test in the permanent provisions.

Pro: Will please conservatives mightily. Will prevent enactment into law of certain principles that over time could work considerable mischief in the courts.

Con: Will be attacked by the civil rights community as "watering down" a bi-partisan House bill which passed by an overwhelming majority.

c. Endorse extension of current law.

Pro: From a legal standpoint, a preferable position compared to the House bill. Much more difficult to attack as a "watering down" of legal protections. Perhaps the easiest way to avoid enactment of the "effects" test.

Con: Because of the House action, may be considered a moot question. May make life more difficult for Southerners who voted for the House bill, using the change in bail-out as a political fig-leaf. May be attacked as a weakening of the new "protections" provided by the House bill.

- d. (1) Strong presidential statement endorsing the Act and setting forth certain guiding principles that ought to govern its extension;
- (2) Make favorable reference to, without specifically endorsing, the House bill; and
- (3) Announce that the subject is too important to become a political football and that therefore, what the President wants is a bi-partisan bill which will unite all races and regions of the country and which can be agreed upon by both Houses in fairly short order.

Pro: If the rhetoric is right, will make it difficult to attack as a weakening of either current law or the House bill. Will enable Senate conservatives to fashion a better bill without directly involving the White House in high-risk negotiations over detail. Will in fact produce a bill that will be generally acceptable to the civil rights community.

Con: Depends on the willingness of Senate Republicans to fashion a bill that does not differ radically from current law and/or the House bill. If, e.g., Baker and Thurmond cannot reach agreement, the White House may be drawn into detailed no-win negotiation.

Comment:

It is politically imperative that the President favor extension of the Act. The question for some time has been not whether, but how that is to be accomplished. For the President to seek major changes in the Act, or in the House-passed bill, will open him to the charge that he seeks to undercut the Act's protections.

At the same time, we should not blink the fact that the House bill goes far beyond current law. The addition of the "effects" test to the permanent provisions transforms the Act from a statute concerned with equality of rights into a litigative weapon concerned with guaranteeing minority political power. If it is at all possible to do so without jeopardizing the President's dedication to protecting voting rights, the "effects" test should be stricken from the House bill.

cc: Martin Anderson
Craig Fuller



U.S. Department of Justice
Office of Legislative Affairs

#34

Office of the Assistant Attorney General

Washington, D.C. 20530

October 17, 1983

MEMORANDUM

TO : Kenneth M. Duberstein
Assistant to the President
for Legislative Affairs

FROM: Robert A. McConnell
Assistant Attorney General

RE : Thurmond/Laxalt Letter to the President
Regarding Anti-crime Legislation and Issues

Purpose of Meeting

In their letter of September 14, Senators Thurmond and Laxalt set out their purpose for requesting a meeting with the President--to urge that the President personally become more closely identified with the issue of crime and this Administration's response to that problem. They want to explore ways by which the President can emphasize our rather impressive record in federal law enforcement. Further, they believe such personal involvement by the President is most important in ensuring the passage of the President's Comprehensive Crime Control Act.

We agree strongly with each of the Senators' points. From our own experience we know that the American people can be both impressed and pleased with the significant advances this Administration has achieved in law enforcement. No one can focus the nation's attention on the issue or "galvanize public support" for his efforts more effectively than the President himself. Likewise, such focus and support can significantly help other Administration efforts to prod the House of Representatives indeed, the Congress, to enact the President's needed legislative proposals.

Status of Anti-Crime Legislation

Senate:

In the Senate, the President's Comprehensive Crime Control Act of 1983 has been favorably reported by the Senate Committee

on the Judiciary. However, it is important substantively and procedurally to understand how the President's bill has been handled since introduction on March 16, 1983.

As you will recall, the Comprehensive Crime Control Act (President's bill) sent to Congress on March 16, was a 42 point "package". It is important to keep in mind that the Senate is not using the President's bill as the vehicle to process the President's proposals. From the President's 42-item "package" new bills were introduced to implement an agreement reached between Chairman Thurmond and Senators Laxalt, Biden, and Kennedy. The basis for the agreement between the Senators developed due to several major concerns:

1. All four Senators want to have a consensus (noncontroversial) bill--so that they can act against crime, and move forward a number of proposals on which they have worked a long time.
2. Senators Thurmond and Laxalt want the "controversial" proposals (i.e. "death penalty, exclusionary rule reform, habeas corpus reform, and the federal tort claims amendments") to receive floor consideration.

Based upon these factors the four Senators agreed to co-sponsor a "core", or uncontroversial package which includes all of the provisions of the President's bill except the four listed above as controversial. They also agreed to stand together against all efforts to amend the "core" bill. Obviously, this could well require these individuals to vote at times against amendments they would otherwise support.

In exchange for Thurmond and Laxalt agreeing to move an "uncontroversial" bill and thus allowing all senators to record a strong anticrime vote, Biden and Kennedy have agreed to work actively to move the bill and push for its enactment. They also agreed to support Thurmond and Laxalt's efforts to have the "controversial" items considered by the Senate as separate, individual bills. This includes an agreement to fight against any effort which might be launched to filibuster against the floor consideration of these "controversial" proposals. So, although Biden and Kennedy will vote against restoration of the death penalty, for example, they have agreed to work with Thurmond and Laxalt to assure that the proposal will be voted upon on the Senate floor.

Pursuant to this agreement the Senators worked together to get the Committee on the Judiciary to report out the "core

bill", S. 1762; exclusionary rule reform S. 1764; habeas corpus reform, S. 1763; and capital punishment, S. 1765. The separate bill providing amendments to the Federal Tort Claims Act is still in committee under an ongoing agreement providing for negotiations between the Department and several Senators as to the exact provisions of the legislation.

It must also be noted, however, that at the time the four bills (the core bill; habeas, death penalty and exclusionary rule) were reported, the committee also reported, as separate bills, Senator Biden's drug tsar bill, and separate bills on sentencing and forfeiture reform. Sentencing and forfeiture are two major titles in the "core" bill. Nevertheless, the committee passed separate, individual bills on each. The provisions of these two bills are identical to the respective titles of the President's bill, and the "core" bill which is being used as the comprehensive reform "vehicle". These separate bills carry the names of Biden and Kennedy as sponsors.

Thus, in the Senate the current status of the anti-crime proposals (plus the drug tsar proposal) is that the Committee on the Judiciary has reported favorably on the following bills:

1. S. 1762 - sponsored by Thurmond (14 co-sponsors have been added since introduction) containing 37 of the 42 items* proposed by the President (plus 4 congressionally initiated proposals to which we do not object);
2. S. 1765 - sponsored by Thurmond (12 co-sponsors have since been added) which is now the vehicle for the President's reinstitution of the death penalty;
3. S. 1763 - sponsored by Thurmond (12 co-sponsors have since been added), habeas corpus reform;
4. S. 1764 - sponsored by Thurmond (5 co-sponsors have since been added), reform of the exclusionary rule.
5. S. 668 - sponsored by Kennedy, a bill on sentencing reform.
6. S. 948 - sponsored by Biden, a bill on forfeiture reform.
7. S. 1787 - Senator Biden's drug tsar proposal.

* One part of the President's crime package, product tampering (the "Tylenol" bill) has been approved by the Congress as a separate measure leaving 41 of the original 42 items still pending before the Congress.

All of these proposals await Senate floor consideration. We believe that the "core" bill will pass the Senate with an overwhelming majority. We also believe that the other separate bills also will pass.

Observations: (1) Despite the fact that Thurmond and Laxalt are anxious for the President to come out and "push" anti-crime initiatives in the hope of securing meaningful reforms and in the hope of putting political pressure on the House, the Senate has not yet acted. In fact, the Majority Leader has not yet scheduled floor time for this important action. (2) The drug tsar proposal will pass the Senate despite Administration opposition. Pursuant to today's Cabinet meeting, the Administration will continue to voice strong opposition to the concept. However, we really need to be working with Thurmond, Biden and Laxalt to negotiate an acceptable version. We believe that a bill could be structured to provide for a Drug Policy and Operations Board chaired by the Attorney General and made up of members of the Cabinet Council on Legal Policy. Such a board would set drug policy and oversee drug enforcement operations through a participatory process that respects the powers of Cabinet officers to supervise the internal affairs of their departments. This is not to say that Biden would agree with this, we only emphasize the need to make an effort in this regard. (3) When the Senate does act, the agreements on the procedure to be followed will apparently result in the passage of a tremendous, bipartisan package of meaningful reforms (S. 1762) but also separate Democrat-sponsored bills on sentencing, forfeiture and drug tsar. Thus, the potential is available for the House to pass bills in the areas of forfeiture, sentencing reform and drug tsar and send the Senate and House to conference on a far smaller anti-crime package with two important reforms (forfeiture and sentencing), and a drug tsar without 39 of the President's original 42 proposals.

It should be noted that the last scenario suggested above would be the bleakest result. A strategy along these lines would most likely also include certain other pieces of the President's proposal such as some type of justice assistance authorizations, pharmacy robbery, some increased drug penalties and perhaps a few others with insanity defense reform an outside possibility. Certainly such a package would provide critical reforms for the criminal justice system. At the same time, the enactment of such legislation would leave pretty much completed the anticrime agenda that has the strong support of Democrat members. It would leave the broader, more pro law enforcement, Republican agenda for future action but without consensus proposals to which our items can be affixed.

I do not mean to overemphasize partisan considerations. Nevertheless, it appears clear that the stage is being set for us to see the enactment of only a small percentage of the President's initiatives while the remainder die in the House because of procedural superiority by the Democrats. We must do everything possible to keep ahead of the procedural traps. We believe that there is broad bipartisan support for virtually all of the President's proposals if we can just get them to the Floor.

House of Representatives:

In the House, the President's crime package was introduced as H.R. 2151 by Representative Fish. No action whatsoever has been taken by the House Judiciary Committee on H.R. 2151. There has, however, been piecemeal action on some of the issues in the President's package, as follows:

1. Justice Assistance legislation -- the Judiciary Committee has reported and the House has approved H.R. 2175 (Rep. Hughes) which is a defective version of Title VIII of the President's bill.
2. Insanity defense reform -- the Subcommittee on Criminal Justice has reported H.R. 3336 (Rep. Conyers) which is generally consistent with Title V of the President's bill. Full Judiciary Committee mark-up is expected in early November.
3. Child pornography -- the House Judiciary Committee has reported H.R. 3635 (Rep. Hughes) which is generally consistent with Title XV, Part B of the President's bill.
4. Extradition reform -- the House Judiciary Committee has reported H.R. 3347 (Rep. Hughes) which is similar to Title XIV, Part M of the President's crime bill.
5. Forfeiture reform -- the Subcommittee on Crime has held two hearings on H.R. 3299 (Rep. Hughes) which would accomplish most of the purposes of Title IV of the President's crime bill but the Hughes' bill must be considered a weakened version.
6. Drug tsar -- the House Judiciary Committee has reported H.R. 3364 (Rep. Hughes) to establish a federal drug tsar. Hughes' bill builds upon an existing structure (White House Drug Abuse Policy Office) rather than creating a new structure as is the case in Biden's bill.

As you can see, the House has only dealt with five of the items found in the President's bill plus the drug tsar. Further, among the items considered in the House you do not find the big ticket items of sentencing or bail reform. However word has been passed that Chairman Rodino plans to introduce a sentencing bill very soon. This could add more support for the idea that the House will try to get off the "do nothing against crime" hook by passing sentencing, forfeiture and drug tsar and asking for a conference.

Recommendations for the Meeting with Senators Thurmond and Laxalt

The President should urge strongly that the Senate schedule floor time for the core bill, habeas corpus reform, death penalty and exclusionary rule reform as soon as possible. In addition, the President should acknowledge the support of both Thurmond and Laxalt in fighting the drug tsar proposal and ask their counsel on whether the bill can be defeated and, if not, what strategies the Senators would suggest.

We also believe the President should ask the advice and assistance of the Senators on seeing to it that the House not be given the opportunity to pass a smaller or weaker piece of legislation. At least he should urge that any such effort be resisted through the conference process. Emphasizing his support for the entire package we would urge that the President seek the Senators' advice, counsel and support to see that it is the full package that reaches his desk.

Obviously we would appreciate any commitment the President wishes to make regarding his public activity in this regard.

Finally, I would suggest that any such meeting should include the Attorney General.

4/24/84

Roarum Room

#35

EM, Spectre, Hughes, Fish

Hughes - wants to make some crime legis.
~~sentences~~ extrajudicial

forfeiture

insanity

computer crimes - blind spots

trademark counterfeiting

armed pierce bullets / machineguns, silencers

S. 1962 - has been referred to sub.

Rodino - maj. block dist - fears Congress would campaign
ag. him if tried to pass. some crime legis.

→ Spectre - suggests being in Rodino / Howard / Harsh

* EM

- make every effort to pass core bill / Senate strategy
- also appreciates Hughes view of not waiting 2 yrs work

by Fri or
Tues of next

talk - VP to convene meeting

- Rodino &/or Congress leave to Rodino to decide
Thurmond / Harsh / Biden

Hughes

- Anti tamper

- Justice Armstrong

- being held by Senate
- objects to that -

Leewood 822-9444

3:30 Wed 45 Min

Roosevelt Room

Thurman ✓

Loxalt

Bider ✓

Specter

Ken Cribb

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

36

February 19, 1982

TO: KEN DUBERSTEIN

FROM: M.B. OGLESBY, JR.
JOHN DRESSENDORFER
PAMELA J. TURNER
DAVE SWANSON

SUBJECT: Caribbean Basin Initiative

In preparation for your NSC meeting today, we suggest the following options in terms of Congressional briefings on the CBI package. As a result of our Enders meeting yesterday, we were asked to make determinations on the following four questions:

1. Who should receive one-on-one briefings prior to the day of the speech, and who should do these briefings;
2. Who should attend the Cabinet Room briefing with the President the morning of the speech;
3. Who should attend the larger (Family Theater) briefing, and who should do the briefing; and
4. Who should be invited to the OAS speech?

Our suggestions are outlined on the following pages.

1. Briefing Prior to the Day of the Speech

Members of the bi-partisan leadership as well as certain Committee Chairmen and ranking members should receive some notification of our intentions prior to the formal briefing session with the President. In the case of the leadership, these briefings should be very general and simply a "prelude" to the more formal briefings at the White House (otherwise the members will not want to come down here and sit through the same briefing again). In terms of the Committee leadership, these members should be briefed mainly on those aspects of the plan which fall within their Committee jurisdiction. These discussions will primarily be briefings but should also serve as consultations, and any feedback resulting from these conversations should be funnelled back to the White House Legislative Affairs Office.

The list of members to be briefed, as well as indications of who should do the briefing, is attached.

MEMORANDUM

#37

THE WHITE HOUSE

WASHINGTON

December 1, 1982

TO: Ken Duberstein
THRU: Pam Turner *PT*
FROM: Bob Kabel *BK*
SUBJECT: CFTC Conference

Pam / Bob Kabel
OK on your recs.
Go ahead!
Ken D.

The purpose of this memo is to discuss briefly two issues in the CFTC conference from the perspective of the Senate and not to be redundant of Dave Wright's memo to you. The two issues are user fees and contract sanctity. The conference is tentatively scheduled for next Tuesday, December 7.

OMB issued various veto threats during the Committee and floor consideration of the CFTC bill. The issue was never voted on in the Senate Agriculture Committee, partly because it would have been soundly defeated. The Senate floor vote was devastating (27-66). This vote was a tribute to the impressive lobbying efforts of the futures industry.

Senator Lugar, the Senate floor leader on the bill, has urged that the Administration avoid a veto if at all possible. He, and I strongly suspect other Senators, feel that this would be an unfortunate fight to pick in the lameduck.

A framework for compromise could include: (1) an increase in existing CFTC fees to cover about 1/3 of the Commission's budget; (2) a focused study on the newly chartered National Futures Association and user fees; and (3) a 2 year (as opposed to a 4 year) reauthorization so that this Administration has another shot at user fees in this agency.

The contract sanctity provision in the Senate version poses a different problem. Failure to delete or satisfactorily compromise it would bring State and NSC recommending a veto. Senator Durenberger, who offered this amendment on the floor, is not a conferee nor is he an Agriculture Committee member. Several Senate staff have suggested that an indication on Durenberger's part to compromise on this provision would influence the Senate conferees.

I recommend that Secretary Block call Senator Durenberger to express how troublesome this provision continues to be and to review the administrative action taken. The Administration's "contract sanctity" period expires today, December 1. It has been suggested that a 30-day or longer extension of the existing period would be helpful in resolving this matter.

Fred Khedouri advises that no discussions have occurred to his knowledge regarding such an extension. Fred did, however, suggest that Dick Darman may have had conversations about such an extension.

Should Durenberger express a willingness to compromise, then discussions with Senate Conferees should begin promptly.

THE WHITE HOUSE
WASHINGTON

#38

December 15, 1983

MEMORANDUM FOR EDWIN MEESE III

THROUGH: JACK SVAHN
FROM: ^{CSA} CARLTON TURNER
SUBJECT: DRAFT DRUG CZAR BILL

I have reviewed the proposed DOJ compromise bill and disagree with the approach and the language. It would bring the entire Federal drug abuse program under the Attorney General and would satisfy Biden at the expense of much of our other Congressional support. I fail to see why we should compromise with Biden in an area where we have been successful and have a clear lead over the Congress. I also question Biden's ability to get this bill if we say no compromise. However, I also question whether we have the ability to send a clear "no" to Biden. DOJ and Biden seem to be supporting each other.

This proposal will present an immediate and obvious conflict with NNBIS and with the Vice Presidential leadership which has been of major benefit to the program. By compromising on Biden's or DOJ's drug czar proposal we will be tarred with the inevitable problems because we "agreed" to the concept. It will be perceived as the President favoring a solution which relies solely on law enforcement. This is contrary to his previous statements and we simply could not defend this approach on the Hill. Contrary to DOJ's position, I believe this proposed legislation is unlikely to survive conference. We can get assistance in making certain it does not if you desire.

An important question is whether the President should agree to a legislative action which dictates his staff support in a key area with high public interest. Even if the Administration's compliance was in the form of a Cabinet Council, it seems unwise to allow the Congress to dictate the requirement, much less the form, membership, scope of operation, etc.

I do not believe that a Board such as contained in the DOJ draft could effectively develop, review, implement, and enforce U.S. policy on illegal drugs; direct and coordinate all U.S. efforts

to halt the flow into, and the sale and use of illegal drugs, and prepare reports to the Congress. The provision that my office should provide support and assistance to the Board, in addition to our other duties, is certainly interesting.

Several options:

Option 1: Accept the concept. However, insist that legislation be clearly limited to drug law enforcement matters, including specific acknowledgement that the non-law enforcement aspects of the program are not included, particularly the international and health-related programs. This would move the operational policies and coordination to DOJ and would leave national policy matters at the White House. It does not resolve the potential conflict with NNBIS. A surprise ending would be to name the Vice President, instead of the Attorney General, as the over-all coordinator.

Option 2: Reject the concept of a drug czar and make our position absolutely clear to Biden and our people in the Senate. This would require strong words with Justice to insure the Administration's position is not perceived to be ambiguous. I would rather continue to work with other proposals and live with the eventual result than to cave-in on the Biden approach and accept the transfer of EOP prerogative to DOJ.

Option 3: Take the initiative and acknowledge a need for a drug law enforcement coordinator, but reject a legislative solution. Assign the job to the Attorney General by Executive Order or substitute a Cabinet Council on Drug Law Enforcement, chaired by the Attorney General.

Option 4: Accept the concept of an overall program coordinator, but not a czar and accept a legislative approach which includes an Office of Drug Abuse Policy as a separate agency within the EOP, headed by a person of the President's choice and provided a budget appropriation for staff. This could have an effective date of early in the second term. The Hughes approach is similar to this option. This is a more practical approach and establishes a workable concept.

I recommend Option 2; Options 3 and 4 are acceptable. I also recommend you meet with Congressman William Hughes (D-NJ). I believe he is a statesman and despite Party affiliations you can deal with him to reach a reasonable solution.

FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

#39

OFFICE OF
CONGRESSIONAL RELATIONS
(202) 523-3620

April 24, 1982

Pam:

I've enclosed a copy of the April 22 Kasten draft FTC authorization bill, along with a summary his staff prepared. Our strong areas of interest are the following, corresponding to the numbered section-by-section summary:

2. Generally, the definition of "unfair acts or practices" is acceptable. It tracks pretty much the official Commission position, as well as the proposal out of the business community. However, the Kasten proposal as it now stands does not go far enough.

The Commission's mandate to police against "unfair acts or practices" is contained in Section 5 of the FTC Act. This section is the heart of the FTC's authority. The section also declares "deceptive acts or practices" unlawful, however; and Jim Miller has proposed that "deceptive acts or practices" as well as "unfair acts or practices" be defined. After much dialogue, the business community, including the advertisers, agrees.

It's my feeling that we can get Miller's definition of "deceptive acts or practices" in the Commerce Committee, though it will be close. This feeling is based upon an assumption -- always dangerous -- that the business community, headed by a coalition led by Al Bourland (General Motors) will get its lobbying act together, as Al and others have assured me they will.

Packwood is against us on this, as is Danforth & Gorton, probably Stevens, and likely also Cannon and Inouye. Packwood & Gorton would probably be the only ones to fight, though. I would like to convince Kasten, who is waiting to see business community and probably White House support, to put the definition in the bill, forcing Packwood et al. to get it out. A fallback would be a statutorily-mandated one year study and report to Congress from the Commission on "deceptive acts or practices," which, ideally, we would go to if Packwood had enough votes to get our definition out of the Kasten bill, during markup.

page two

One more point: the reason I want to fallback to a statutorily-mandated study is because then, arguably, the Miller changes to Section 5 -- addressing the definition of both "unfair" and "deceptive" acts or practices -- are adopted, which was the condition in the Stockman letter for the Administration's opposition to immunity for the professions. The study in statute would be a requirement in law on deception, as opposed to a paragraph on the subject in report language or a letter asking for such a study from Kasten, Packwood and others. The latter two alternatives are favored by Kasten's staff. They don't understand why we would want a study mandated by statute, and since they are against us on the professions issue, we haven't told them.

3. This is the professions provision. Briefly, we would go along with the provision if everything on page two of the bill after section (n) is dropped, as well as everything on page three of the bill going down to line 15. This would leave us with the Cannon proposal on "state action" which he made in his FTC authorization bill, applying Sherman Act "state action" principles to FTC's antitrust activities.

I think we can get Cannon behind this effort. Packwood is solidly with us, as is Gorton & Danforth, and Inouye, probably Riegle. Kasten, Goldwater, Pressler, Heflin & Exon are pretty firmly with the AMA. Schmitt has committed to help the AMA in some way, but can be convinced I think to go with a Cannon compromise. Kassebaum hasn't decided. Stevens is leaning towards the AMA, but will decide finally by Monday. Ford hasn't decided, but I think will go with a Cannon compromise. If Cannon asks him, Long will probably go with Cannon (Cannon is supposed to talk to Long early next week). Hollings is undecided, but leaning to the AMA.

The AMA is unhappy with the Kasten version as well, simply because, I suspect, they know they have a shot for the McClure-Melcher blanket immunity, total exemption approach, and they want the whole ball of wax. So we'll probably have to defeat an AMA amendment (don't know yet who will offer); and if we can't get Kasten to back off, we'll have to pass a Cannon amendment (perhaps with Danforth's cosponsorship). Finally, if a vote on the AMA

amendment turns out all right, we may try to beat the professions altogether, using a Cannon-Danforth amendment as a fallback.

Going into next week, until we have a firmer headcount, we're all-out opposed to anything for the professions, and are feeling out the votes for a compromise. The important thing is that the Committee understand that the Kasten provision, as presently written, is not a compromise. It would totally decimate the FTC's activities to deregulate the professions.

4. Good
5. Don't care.
6. Don't care. (The business community is going to press hard for a repeal of section 5 (m) (1) (B), not satisfied with the Kasten approach here.)
7. If you guys don't care, we don't care, though all the other Commissioners oppose.
8. Original Miller proposal. Fine.
9. All right. Strong business community interest.
10. Miller proposal. Good.
11. Some details need to be worked out, but in principle good.
12. We oppose, but recognize that we can't avoid it.
13. Same as 12.
14. This is a tricky one: an exemption for commercial advertisers from the FTC's rulemaking unfairness jurisdiction, plus a similar exemption under FTC's adjudication authority. Ford wants this badly. Miller in hearings indicated that if his changes to Section 5 weren't made, he might favor these exemptions, and Ford will try to hold us to that. Although in principle we oppose any special exemptions, we would keep quiet on this if Ford would go along with us on the professions votes. Incidentally, the rulemaking exemption is in our current authorization which is expiring, so this one is a question of renewing the rulemaking exemption plus extending the exemption to adjudications.

page four

15. We oppose this one, but its small change next to the professions & unfairness/deception.

16. We oppose, but not much.

17. Its a big mistake to go with a two-year authorization, rather than a three-year. Kasten suggested a two year so it would track better with the deception study he would request the Commission to make. I think he'll go with a three year since we don't care on the two year/deception study angle.

One other issue that may come up is presented by our decision to close four regional offices in a management/budget move. One of those offices was Seattle (others: Boston, Los Angeles and Denver). Gorton is excited.

I'll send over first thing Monday a chart with Senators' known positions on these issues indicated.

Bill introduction is Tuesday, with Kasten making final decisions on Monday. He needs to hear personally of the White House interest (praying it exists!) for "deceptive acts" as well as "unfair..."; and against immunity for the professions.

Sure hope you good folks can help, Pam. I sure need it.

Let me know anything I can do to provide more info, etc.

Warmest personal regards.

Lamy

P.S. Also enclosed our comments on the McClure-Muliken
S. 1994 (thought Sherill would be interested),
plus a newhampton issues booklet.

Beth
(I can be reached at 523-3711 or home 404-1000)

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

June 10, 1983

#40

FOR: MICHAEL M. UHLMANN
FROM: STEPHEN H. GALEBACH
SUBJECT: School Prayer

I. Situation

Yesterday Senators Hatch, Thurmond, and Grassley reported out from the Constitution Subcommittee both the President's school prayer amendment and Hatch's own amendment providing for silent prayer and equal access. The two could be taken up by the full Judiciary Committee as early as June 23.

II. Problem

- o The President's amendment probably cannot win in committee next week. While a possible majority exists on the committee for our amendment -- given maximum lobbying effort and additional time -- we are at a disadvantage with Hatch's alternative amendment on the table and Senators Thurmond and Hatch saying publicly that our amendment cannot pass.
- o Hatch's amendment, if brought to a Senate floor vote, will generate very little support from school prayer advocates, because it accomplishes so little -- some groups say they will publicly oppose it, and many fear that it will lend credence to the ACLU argument that the Constitution needs to be changed before equal access can be provided.
- o If Hatch's amendment is the only measure to emerge from committee, our school prayer constituency will be demoralized and the issue will cease to be a potent political factor.
- o The bottom line is that we need to get some measure through Judiciary Committee that will be a major accomplishment and that school prayer advocates will think is worth working for.

III. Proposed Solution

One possible solution is to arrive at a compromise amendment acceptable to Senators Hatch and Thurmond as well as to the President and the school prayer coalition. The alternatives suggested thus far would raise as many problems as they solve, and have not garnered broad support. But it would be helpful to ask a third party such as Senator Laxalt to convene talks about compromise language.

A more promising solution is the statutory approach already endorsed by the President. An equal access bill (Denton's) could be considered at the same Judiciary Committee markup as the two constitutional amendments. The full committee has already held hearings on this bill, and Senator Denton is prepared to ask Senator Thurmond to put it on the committee's agenda for next week. This move has a number of advantages:

- o The President has already asked Senator Thurmond to move quickly in committee with a separate equal access bill.
- o The hearings on this amendment were very successful, and a broad range of religious groups support it enthusiastically.
- o The major supporters of our amendment believe that an equal access bill would be a major achievement; it would immediately reverse the widespread success of the ACLU in driving all religious groups out of the schools.
- o It should not be difficult to gain majority support for such a bill in the Judiciary Committee and on the Senate floor; moreover, Senator Denton is flexible and willing to compromise on statutory language in order to ensure a majority.

IV. Recommendation

Push the equal access bill as a fallback position to our amendment, taking the following steps:

- o Give Senator Denton the go-ahead to ask Senator Thurmond to include the equal access bill on the agenda with the two amendments.
- o Repeat to Senator Thurmond, privately, the President's request that an equal access bill be considered as a separate item on the agenda, and explain why we would like it to be included in the same markup in the two amendments.

- o Coordinate with Senator Denton to make modifications in the bill as necessary to ensure passage.
- o Coordinate with Republican leaders in the House (where Congressmen Lott, Kemp, Dannemeyer, and Hyde have already introduced a bill similar to Denton's).

With this strategy, our supporters can continue to lobby Senators on the committee to vote for both the President's amendment and the equal access bill. Even if Senator Hatch's amendment prevails over the President's, we will have a bill which will generate enthusiastic support among our school prayer constituency, and which can provide an important victory.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

May 23, 1983

#41

TO: Ken Duberstein
THRU: Pam Turner *PT*
FROM: Bob Kabel *BK*
SUBJECT: The President's School Prayer Amendment

BACKGROUND

The President's school prayer amendment is in considerable trouble in the Senate Judiciary Subcommittee on the Constitution which now has rescheduled its mark-up for this coming Thursday, May 26. The Subcommittee was to have met last Friday, but at the request of myself and Steve Galebach, the Subcommittee postponed the mark-up in order to give the White House an opportunity to explore more thoroughly the wholeschool prayer issue. Had the Subcommittee met on Friday, Senator Hatch's substitute amendment calling for a silent prayer as well as an additional feature calling for equal access would have passed the Subcommittee. Steve and I met on Friday with Senators Hatch, Grassley and Thurmond. All three Senators shared the view that the President's amendment could not be reported from the full Judiciary Committee and they felt compelled to propose an amendment which could be reported. I am convinced that the silent prayer approach is Hatch's and he has brought Grassley and Thurmond on board arguing that it is the only measure that could pass.

There is a running dispute over what the school prayer coalition believes. OPD has conducted a survey of the various coalition members and believes that most oppose a silent school prayer amendment, most continue to support the President's amendment and most strongly support an equal access bill. Steve and I met this morning with staff for the three Republicans on the Subcommittee. In essence, we really got no where with them beyond where we were last Friday. We reiterated the request that the Subcommittee report out the President's amendment which could be done only with the support of all three Republicans (DeConcini and Leahy are the Democratic members). Should the Subcommittee report out the President's amendment the burden would then be on the Administration and the coalition to convince the full Committee to approve the President's amendment. We have also asked that the equal access legislation be dealt with separately and not as part of the constitutional amendment.

De Lide, Senator Thurmond's staff director, suggested that only the President himself could turn around three Republicans on the Subcommittee. Senator Grassley last Friday indicated that he wanted to meet with the President on this matter.

It is my view that the votes are not there in the full Committee to report the President's amendment. The Committee has 10 Republicans and 8 Democrats. Mathias and Specter would oppose the President's amendment. Assuming we could hold all remaining Committee Republicans, we would have to pick up 2 Democrats to win. DeConcini, Heflin and R. Byrd are potential but not likely votes. I hold this view despite any potential pressure that the coalition could bring to bear on the Committee Senators. The fundamental problem with the amendment is that it does not protect "minority" children, i.e., those whose parents would object to a specific school prayer. In addition, many establishment churches such as the Baptists and the Episcopalians strongly oppose the President's amendment.

Steve Galeback and I have reported to Ken Cribb the results on our meetings both on Friday with Senators and this morning with staff. Ken said that Ed Meese would like your advice whether a legislative strategy meeting should be called or in the alternative whether Ed should call the Subcommittee Senators, Thurmond in particular.

ALTERNATIVES

1. Call a legislative strategy group meeting more for the purpose of discussing the political realities of the substitute rather than for a specific strategy discussion.
2. Have a high level Administration decision on the policy issue involved so that any decision to stick with the President's amendment or agree to modify along the lines of the Hatch silent prayer would be considered at a high level.
3. Seek assistance from the coalition members to talk with the Subcommittee Senators regarding their support for the President's amendment and opposition to a silent prayer amendment. Hatch in particular advised us that he would not appreciate receiving any pressure from the coalition on this issue and that it would be counter-productive.
4. Perhaps in conjunction with alternative number 3, ask Ed Meese to talk with Senator Thurmond at a minimum and perhaps Senator Grassley to encourage them to support the President's amendment at the Subcommittee level.

Pam recommends that Ed Meese call Thurmond, Hatch and Grassley as soon as possible to discuss this matter. Depending on the outcome of those conversations, pursue a legislative strategy group meeting.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON
May 23, 1983

#42

FOR: T. KENNETH CRIBB

FROM: BOB KABEL
STEVE GALEBACHSUBJECT: School Prayer Situation in the Senate

We have major trouble in the Senate Judiciary Subcommittee on the Constitution, concerning the President's school prayer amendment. As of Friday morning, Senators Hatch, Thurmond, and Grassley were prepared to report out of Subcommittee a substitute amendment that would merely allow for a "moment of silence" at the beginning of public school classes and also require that "equal access" be given to all student groups.

We persuaded the Senators to postpone their markup until this Thursday. At a meeting with staff this morning, however, Steve Markman for Hatch and John Maxwell for Grassley appeared adamant in favor of their silent prayer/equal access amendment. D. Lide for Thurmond was more open to the possibility of reporting out the President's amendment to give the school prayer coalition a chance to lobby the full committee, and simultaneously push for an equal access statute. But Lide says the Senators are unlikely to back off their silent prayer amendment unless the President talks to them personally.

Our discussions with Morton Blackwell and advocates of school prayer convince us that a silent prayer/equal access amendment is a very bad idea:

- o Most groups still favor the President's amendment and are opposed to any amendment that is too watered down.
- o Writing silent prayer and equal access into the Constitution seems silly; the Supreme Court has never ruled against either of these concepts.
- o An equal access statute would be a real accomplishment (the President has endorsed this concept, and most school prayer groups supported it enthusiastically); but proposing it as an amendment merely plays into the ACLU argument that equal access is unconstitutional.

Senator Grassley has said that he desperately wants something that will turn back the tide of secularization in the public schools. Senators Thurmond and Hatch seem to agree, but we need to convince them that, even if the President's amendment cannot muster enough votes in Judiciary, that is not a reason to take a

leap in the dark with a silent prayer amendment. All three Senators should be open to the equal access statutory concept, but Hatch's and Grassley's staffers do not seem to give it serious credence.

Our best course of action is to ask the Senators to give our amendment a chance in full Judiciary Committee, and simultaneously to support an equal access bill.

Recommendation

Phone calls from Ed Meese to Thurmond, Grassley, and Hatch, making the following points:

- o Thank you for your help in postponing the markup on school prayer so we can have some much-needed discussions.
- o We want to work closely with you to devise a strategy that can give us a victory.
- o But we don't see nearly enough support for a silent prayer amendment to make it worth pushing.
- o An equal access statute appears far more promising, and the President has already endorsed this concept.
- o At the same time, the President would like his amendment to have a chance in full committee.
- o Can we work together to agree on wording for an equal access bill to bring to a vote in full committee, and will you vote the President's amendment out of subcommittee?

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

#43

January 10, 1984

TO: M.B. Oglesby
THRU: Pam Turner *PT*
FROM: Bob Kabel *BK*
SUBJECT: Update on S. 1660, the Phone Rate Legislation

This memorandum is to bring you up to date on a few developments and to review briefly the Commerce Department's vote count and analysis.

The effort by Congressman Broyhill, et. al. to petition the FCC for a reconsideration of its access charge decision has gained the support of at least Senators Percy and Dole. I am advised that both Tribble and Hatch have told their operating companies that they also would sign the petition. Rodney Joyce has also indicated that Domenici and Lugar might be interested in signing this petition which in order to be effective should be submitted this week to the Commission. Knowledge of this petition is growing in the Senate and a number of people appear to be interested in watching it develop.

Dave Markey and I met yesterday with Jim Range and Dan Crippen to discuss this legislation at some length. What they sense is considerable confusion both on the part of Senators as well as the industry. No one to date has stepped forward to assume any leadership role in opposition of the Packwood bill, S. 1660. They also sense, as do I, a great deal of frustration both with Packwood's representation of the issue and the legislation in order to gain cosponsors. This is accompanied by a fairly widespread desire to look at alternatives. To date, the petition for reconsideration is not necessarily an alternative for most Senators. Some form of legislation appears to be. A suggestion mentioned most often to Commerce Department staff is a one year moratorium plus a cap on the access fees of perhaps \$4.00. While we were in Range's office, he called Gerry Kovach, General Counsel to the Commerce Committee and indicated that we were with him. Gerry said that he felt the Administration's position opposing S. 1660 would be helpful to Packwood in securing all Democrats to vote with him. He indicated that AT&T had told Packwood that if Packwood could guarantee a few changes in the legislation that they would "have no problem with it". I have not talked to AT&T about this but others, including Randy Davis seriously dispute this. I will try to discuss this with AT&T today.

Range's reaction to Kovach's statement about AT&T was that AT&T was playing everyone against everyone in hopes of finding a champion on the Senate floor who would fight to kill the bill. They have not found that person as of yet. Kovach did state that Packwood would leave the door open to talk to Mark Fowler about renegotiating the FCC access charge decision. This seems to me to be a significant posture on Packwood's part which ultimately could be helpful if Fowler takes the initiative. A final point about the Range/Crippen meeting -- Rod DeArment stopped by to talk about another matter with Range and mentioned that he had just been with Dole when he was speaking with his staff about this bill. Dole, a cosponsor of S. 1660, has told his staff that he will vote against it now.

Dave Markey's shop has surveyed the entire Senate. His staff has reported to me that they spent anywhere from 20 minutes to an hour with each office in both explaining the legislation and getting a feel of where each individual Senator happens to be. All of these contacts occurred prior to last week's decision to oppose S. 1660. I attach a copy of this vote count so that you can see the details. In addition, I have a copy of a 15 page memorandum enumerating comments after each conversation with individual Senate staffs. I think the most significant point that one can deduce from this information is that while support for the Packwood legislation remains strong, Senators, at least according to their staff, are concerned enough about its implications to give consideration to alternative amendments.

In the longer memorandum, Markey's staff indicates that Senator Dixon will offer the Illinois Commerce Commission plan. Also Hatch is considering offering amendments and Helms indicated an interest in keeping the bill off the floor. I have talked with Laxalt's staff. Although he is a cosponsor of S. 1660, he felt he received bad advice about its impact on Nevada. An interesting twist here is that on the issue of subsidies to rural telephone companies, Nevada does better under the FCC's formula than it does under the Senate Commerce Committee formula. In Nevada's case, it is a matter of several million dollars.

Despite all these comments and this vote count, no one has actually stepped forward to be the main opposition leader or compromiser on this issue. This could be because Senators are out of town and not in the mix of things. However, most of them will not be in town until Senator Baker seeks to call up this legislation.

Pam, Nancy and I are proceeding with our calls today after receiving the final position statement and talking points from OMB.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

#44

March 30, 1983

TO: Ken Duberstein
THRU: Pam Turner
FROM: Bob Kabel
SUBJECT: Tuition Tax Credits and Enterprise Zones

Tuition Tax Credits

Background

Senator Dole with Packwood, Roth, D'Amato and Moynihan joining him, introduced the Administration's tuition tax credit legislation this Congress. It is identical in most respects to the bill reported out of the Senate Finance Committee last year. Most notably the anti-discrimination language is the same.

The Supreme Court will announce its decision not later than July on the Bob Jones case where the issue is whether the IRS, without specific statutory authority, can deny tax exempt status to schools which racially discriminate. Some question has been raised regarding the impact that the Court's decision could have on this legislation. In fact, it should have no impact on the legislation itself, but could have a delaying effect on any credits enacted. The legislation states that no credit will be available until either a final decision of the Supreme Court or an Act of Congress prohibits the granting of a tax exemption under Section 501(c)(3) to private educational institutions maintaining a racially discriminatory policy or practice as to students.

It is conceivable, however, that should the Court rule that the IRS cannot deny tax exempt status because of racial discrimination, opponents of tuition tax credits would attempt and might succeed in tying the two issues together. Our response should be that, given the language in the bill, the tax credits and the IRS's authority to deny tax exempt status are separate issues.

Nancy Risque and I met recently with the coalition group. The meeting focused on the need for a specific strategy for the legislation. The various coalition members are experiencing problems with their grass roots in believing that the President is serious about this legislation. Specifically, some argued that too many "good" vehicles have passed without an effort to add this legislation to it, thereby getting the issue into conference.

The coalition hopes to meet with Senator Dole to talk about strategy. Dole's staff also feels that a specific strategy should be developed by the White House and Senate supporters.

Enterprise Zones

Senator Boschwitz has added 37 cosponsors to the Administration's enterprise zone legislation, S. 863. Congressman Conable has 111 cosponsors in the House on H.R. 1955. This legislation closely resembles the bill from last year with minor differences. Hearings have been scheduled for April 23 in the Finance Committee on S. 863. Secretary Pierce will be the lead-off witness.

Senate supporters and a coalition of business and labor also request that a specific strategy be developed.

Comments

The future success of these two Administration proposals, but particularly tuition tax credits, depends on our developing a legislative strategy which can be shared with the coalition members.

While Education and HUD have the lead on tuition tax credits and enterprise zones, respectively, Treasury needs to be brought into action on both of these issues. From the Secretary on down the line at Treasury, support for these two Presidential priorities has been lukewarm at best. HUD, for example, feels that Treasury could be more helpful on its revenue estimates of enterprise zones.

Suggested Action

1. Develop a specific strategy for both of these bills. That might involve convening a Legislative Strategy Group meeting, if you think that would be appropriate.

I have a specific suggestion which might be considered. Both of these bills result in revenue loss and the President frequently is criticized for recommending additional tax expenditure items at a time of large deficits. It is likely that the budget resolution will mandate a reconciliation bill. My suggestion is to add these two measures to the revenue reconciliation bill in the Finance Committee, and pay for them by raising enough revenue to meet the amount mandated by reconciliation plus enough to cover the revenue loss resulting from enactment of these two bills.

I believe we must deal with the revenue loss issue. To specify a particular revenue source to pay for tuition tax credits, for example, might add more opponents to tuition tax credits

(e.g. one suggestion has been to change current federal liquor taxes from a volume basis to a price basis. This seems a fair proposal but would be opposed by the liquor lobby and would be certain to bring certain Senators to oppose this tax as well as tuition tax credits.)

Alternative strategies are possible, but the objective should be to find a vehicle on which the House must go to conference. Congressman Rostenkowski's comments regarding no Ways and Means Committee action on any of the President's tax bills requires that we target a major bill as the vehicle for these 2 measures. Anything short of this will risk open criticism by elements of the coalitions, particularly the tuition tax credit coalition.

2. I may have mentioned before that it would be helpful to have either you or Craig Fuller or Jim Baker call Secretary Pierce to advise him that the enterprise zones legislation is his issue and the President is expecting real progress on it this year.

3. Someone should speak to Secretary Regan to inform him that both of these are Presidential priorities and he and his staff are expected to help in whatever way possible.

4. Someone from Faith Whittlesly's staff should be designated to deal directly with these coalitions so that legislative affairs does not have to do so. All meetings should be scheduled if at all possible, with enough notice so that Departmental legislative affairs representatives can attend. Attendance by Departmental personnel should be mandatory.

THE WHITE HOUSE

WASHINGTON

#45

June 3, 1983

MEMORANDUM FOR FAITH RYAN WHITTLESEY

FROM MORTON C. BLACKWELL *MB*

SUBJECT: Tuition Tax Credits

It is clear that we will get little cooperation from the U. S. Catholic Conference people. They were the only ones throwing out excuses for inaction. I expected the meeting to go much better, underestimating the venom of this group. Their concern seems to be to arrange to blame us for their inaction and for the eventual failure of the bill they may cause.

I suggest one way to settle the matter of "real" White House support for this amendment: ask Ken Duberstein to call Packwood and Moynihan and say the President would strongly support their motion to amend the Withholding Bill by adding Tuition Tax Credits. Bear in mind that Packwood and Moynihan are really closer to the U.S.C.C. than to the Administration on most issues. I would not be surprised to see Packwood and Moynihan find a way to scuttle Tuition Tax Credits if they can blame us. Packwood and Moynihan have been shamed into cooperating this year; neither has any more reason than the U.S.C.C. to want President Reagan to get any political benefit for passing Tuition Tax Credits.

Therefore, there is a great danger in giving Packwood and Moynihan the lead on Tuition Tax Credits. I suggest we take out an insurance policy. I am told that, if asked by the White House, Senator Grassley will introduce Tuition Tax Credits as an amendment to the withholding repeal bill. Duberstein (or Meese) might ask Grassley also to offer what we are asking Packwood and Moynihan to offer. Then if Packwood and Moynihan should happen to want to back down for any reason, Grassley still has a vehicle we can support and which Packwood and Moynihan would have at least to vote for. This will give us a much stronger position.

In summary, someone high on the White House staff should call Packwood and Moynihan as well as Grassley to make it clear that the President wants Tuition Tax Credits on the withholding bill.

Finally, someone must tell Treasury Assistant Secretary Buck Chapoton and Secretary Regan as soon as possible that the President wants Tuition Tax Credits added to the repealer bill. Chapoton was a problem on the Tuition Tax Credits from the outset, nearly preventing us from uniting the Tuition Tax Credit coalition last year on a single bill. We must not be scuttled by some statement from Treasury uncoordinated with our strategy.

Despite all of our problems, we may be on the verge of winning this battle if we don't lose our nerve or get caught napping by some who are ostensibly our friends.



#46

Pam - FYI

THE SECRETARY
WASHINGTON, D.C. 20202
August 31, 1983

BT
FBI
file

MEMORANDUM TO THE HONORABLE CRAIG L. FULLER
ASSISTANT TO THE PRESIDENT
FOR CABINET ADMINISTRATION

SUBJECT: Tuition Tax Credits

This is a response to your Cabinet Affairs Staffing Memorandum of August 30.

As you know, we have suffered some political damage in the public school community because of the President's strong commitment to tuition tax credits. That damage is acceptable as long as we gain comparable or greater political benefit in the pro-tuition tax credit community--particularly among Catholics and conservative Protestants.

Unfortunately, it now appears we may be in danger of losing that political benefit. The reason is a perception that the Administration is not really serious about passing the tuition tax credit bill. This growing perception led to an August 22 letter to the President by the National Coalition of Tuition Tax Credits. Although this Coalition does not represent the U.S. Catholic Conference, the Hebrew day schools, and the CAPE-type schools, I believe there is a significant chance that the U. S. Catholic Conference and the others will attack the President for a lack of good faith on this issue. The political impact will be devastating.

From our assessment of the situation on the Hill, we do, indeed, need to mount a much more vigorous and highly visible effort to get our legislation passed. We agree that we should find a suitable bill to which we can attach our legislation. We cannot hope to meet the opposition without taking this strategic move.

I recommend that we decide on the bill to use for this purpose. We should then make our specific plans before we respond to this letter. Then, I would recommend that the President meet with the tuition tax credit coalition. We need to have specific strategies at the time that we meet with them. So, let's respond with a meeting, but we should have something definite to report to the group when we meet.

We have a group in ED, under the leadership of Under Secretary Gary Jones, that has been working constantly on this matter. We would be pleased to meet in a legislative strategy session to help prepare for a meeting of the President with the Coalition.

This matter is urgent, and we should give it high priority.

Ted
T. H. Bell

THE WHITE HOUSE

WASHINGTON

#47

September 30, 1983

TO: Ken Duberstein
THRU: Pam Turner
FROM: Bob Kabel
SUBJECT: Tuition Tax Credits

--Expansion of the bill to include public school parents. Senator Durenberger has indicated that he will offer an amendment to expand tuition tax credits to public school parents. Packwood will support him in this effort. Dole at this point opposes expansion for two reasons: his staff has advised him that the Supreme Court case does not require this action; and doing so would reduce the value of the credit to \$25.00 or perhaps \$50.00 depending on the cap that might be placed on the program, i.e., \$1 billion or \$2 billion revenue loss cap. The Catholic Conference has endorsed including public school parents, however, the real "muscle" in the Catholic section of the coalition, the Knights of Columbus, strongly oppose expansion to public school parents. A concerted effort is underway to get the Catholic Conference to back off on their suggestion of expansion to public school parents. I think in any event it is wise for us to agree to a cap on revenue loss. Danforth suggested this in Committee, and we opposed it at the time, however, agreeing to a revenue loss of perhaps \$1 billion would assure Senators that this program will not be another open ended entitlement. Reducing the credit to \$25/\$50.00, I think, would be a devastating blow to any chance on the Senate floor for passage. Who is going to fight for that minimal credit?

--Improving the bill from a constitutional standpoint. There are a number of suggestions here which can be helpful. The suggestions in the Fielding memo should be considered as well as others that Dole and Packwood might have and are holding in reserve.

--Refundability. Although we have consistently opposed refundability of any kind, it is clear that presently the votes are there in the Senate for refundability. We should continue to oppose refundability and make a very strong case against it based on the Supreme Court case. Some analyses I have seen indicates a real problem for unrefundability in light of the Supreme Court case, i.e., it could be viewed as a direct payment out of the Treasury to private school parents and result in the bill being declared unconstitutional.

--Justice Department testimony and response to Congressional inquiries. I am advised that there will be no legal opinion forthcoming from the Justice Department on the constitutionality

issue raised under the Supreme Court decision. I think this is the right posture on this point.

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

October 12, 1983

TO: KEN DUBERSTEIN
FROM: BOB KABEL *BK*
THRU: PAM TURNER *PT*
SUBJECT: Tuition Tax Credit Vehicle

Don Moran reportedly has advised Ed Meese at his management meeting that the only House passed revenue bill to which tuition tax credits could be added is H.R. 2163, The Federal Boat Safety Act. Don apparently had talked with Ways and Means staff regarding vehicles for tuition tax credits and was told that Rostenkowski views H.R. 2163 as the only House passed revenue vehicle pending before the Senate.

This is not an accurate statement as there are a number of House passed tariff measures which would qualify as vehicles. There are other bills which will be coming along, in particular the reconciliation packages.

I met earlier today with Don Moran, Steve Galebach and Mike Uhlman as a result of Moran's comments to Meese. Don further suggested the possibility that tuition tax credits could be attached to a bill such as H.R. 2163 and transmitted to the House where, he thought, a member could move to recede and concur in the Senate tuition tax credit amendment. John Scruggs has advised me that while this scenario is possible under the House rules, it would require a pre-arranged agreement between the Speaker and Rostenkowski. The rules require that a Committee of jurisdiction formally authorize the calling up of a House bill with Senate amendments. In addition the Speaker has authority to refer Senate passed House bills as he does any newly introduced legislation.

I commented at today's meeting that if a vehicle is not found and Senate action taken soon that the Administration would face the difficult choice of seeking a tuition tax credit amendment to the reconciliation package which may not be acceptable to the President. Letting this opportunity pass, if it is viewed as the last tax bill of the year would invite the wrath of the coalition.

THE WHITE HOUSE
WASHINGTON

#48

April 13, 1982

TO: Ken Duberstein

FROM: Bob Kabel *Bob Kabel*

SUBJECT: Comments on Proposed Tuition Tax Credit Legislation

I have talked mostly with tuition tax credit proponents on the Senate Finance Committee. Their fundamental objective is to enact the concept of tuition tax credits. Given the severe revenue constraints on the Finance Committee, the prevalent thought is that only a minimal tax credit could be enacted this year, if any at all. Such an approach is not unlike Congressional action on the Individual Retirement Account provisions which were minimal in their application and cost in the original legislation but have been expanded over time.

An additional concern is that the phase-in idea is not palliative in the present context of rising deficits. In other words, the thought that the Congress would enact a potentially expensive tax break because it was structured so as to have no current revenue effect just won't wash anymore. The out years are more important than ever and all tax programs are being scrutinized in this new light.

Others have commented that the tax credit should roughly equal the federal per pupil expenditure for elementary and secondary students. I am advised that this is about \$200 at this time. Obviously the \$500 credit more than doubles this amount. Some have observed that doing so might assist in the constitutionality challenge.

The family income qualification cap and phase-out also are generally thought to be too weighted to the upper-middle class. Despite Washington standards, \$50,000-\$70,000 is perceived to be "rich" outside of D.C.

In light of these comments from the Senate, I suggest that the proposal be scaled back to about \$200 per pupil and the phase-out income levels reduced to around \$30,000. By reducing the tax benefits, the revenue costs and makes it a more credible proposal for both proponents and opponents. Such a proposal would indicate the President's commitment to the tuition tax credit concept while expressing a sensitivity to the revenue impact.

Timing is the other crucial factor. I hope to talk directly to Senator Dole today about any proposal. His Finance Committee staff already has informed me that he would feel compelled to walk away from it if the White House sent it up during the upcoming debate in the Committee on revenue measures. Therefore, the decision to postpone sending the legislation to the Hill until after Memorial Day is correct, so long as Congressional action on any tax revenue portions of any budget package are already moving along in the legislative process.

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

May 13, 1982

TO: Ken Duberstein
THRU: Pam Turner *jt*
FROM: Bob Kabel *B. Kabel*
SUBJECT: Tuition Tax Credit Legislation

BACKGROUND

Following the President's Chicago speech to Catholic educators, teams consisting of White House, Treasury and Education Department staff met with key Senators and selected staff to consult on both the substance of the draft legislation and the strategy necessary for passage this year.

Specifically we met with:

Senator Roth
Senator Armstrong
Senator Grassley
Senator Long
Senator Stafford

We also met with Senate Finance Committee staff, Senator Packwood's staff and Senator Helms staff.

I spoke early on with Senator Dole who advised me that he "could not even hold hearings" on it until after the Finance Committee's portion of the budget was in place. It is helpful that extensive hearings have occurred already this Congress on S. 550 the Packwood-Moynihan bill. Consequently, the pressure for immediate hearings on the President's proposal is reduced.

Senator Baker also was contacted but declined to meet with Secretary Bell on the issue.

Basic provisions of the President's draft proposal.

--applies only to elementary and secondary school tuition.

--non-refundable credits of a maximum of 50% of tuition paid for each child of:

\$100 in 1983
\$300 in 1984
\$500 in 1985

--tax credits fully available to families with adjusted gross income of \$50,000 with a phase-out between \$50,000 and \$75,000.

--eligibility of schools is dependent on nondiscrimination policy.

Reactions by Senators:

We found fundamental support for the tuition tax credit concept among all Senators with whom we met, except for Senator Stafford who is opposed. Most felt the \$100, \$300, \$500 phased-in levels were acceptable, but would be willing to accept considerably lower levels if that were necessary for enactment. Senator Long expressed particularly strong support for the full \$500 level.

More controversial was the family income cap of \$50,000 with a phase-out at \$75,000. Most Senators were philosophically opposed to income caps but Republicans were particularly sensitive to the "elitist" label Republicans carry. Senator Grassley in particular urged that the income cap be reduced. Senator Long, on the other hand thought there should be no cap at all, both for philosophical and political reasons.

Clearly the most troublesome issue is the nondiscrimination language. None of the Senators with whom we met had strong feelings about the language concerning nondiscrimination but did advise that we make every effort to minimize this issue in the tuition tax credit debate. Helms' staff stated strong concerns regarding the correct approach on this language.

Concerning legislative strategy, each Senator who addressed this issue suggested that the legislation be clearly separated from the current budget debate. Only Senator Roth suggested that the most we could hope for this year was hearings. Despite his strong advocacy in the past of tuition tax credits for post-secondary school costs, he made it clear that he did not want to vote on it this year during his reelection year.

Recommendations

--Keep the \$100, \$300, \$500 levels in the legislation we send up in order to keep the private educators interested but recognize in advance that we might have to agree to reduce these levels in order to enact it.

--Help Republican members by reducing the family income cap to something on the order of \$35,000 with a phase-out at \$50,000 and recognize that the cap may be lifted altogether in committee.

--Bring the various education groups on board on our nondiscrimination language first and let them help sell it to members of Congress.

--Sponsors--No one Senator stands out as the principal sponsor. Roth is out because he won't push it this year. Armstrong would do it only if we would agree to a program cut somewhere to balance the revenue loss. Packwood, other matters aside, would lead only if the anti-discrimination language were acceptable to him. Neither Danforth nor Heinz nor Symms were interested enough to meet. Senator Grassley was very thoughtful in our meeting with him. Although he is not a key figure on the Committee, he does have good ties to the religious groups.

Senator Dole said he would give thought to who should lead in the Senate. I will speak with him this week.

On the Democratic side, Moynihan would not meet on the issue, and I still believe he would like to walk away from it. Senator Long could provide real help.

In any event we should seek Packwood's help and include D'Amato as an original cosponsor.

After consulting with Senator Dole, and other Senators as appropriate, regarding the principal sponsor, I will forward a recommendation.