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AFL-CIO Convention Briefing
September 18, 1997
Agenda

I. Review Schedule

- AFL-CIO (See Attached)
- Vice President
- Secretary of Labor
- President

II. Message

- VP's remarks
- Secretary of Labor's
- President's
- Others

III. Announcements

- Procurement
- Team Act
- FLSA
- Privatization
- Other

IV. Fast Track

- AFL-CIO
- Administration
- Congress

V. Other issues

- Firefighters
- Climate control

AFL-CIO -- 1997 Pre-Convention Conferences

Friday, September 19

Workers Investing in America: A Conference for Union Pension Trustees

9:00 AM to Noon Hilton Hotel

A national conference of union leaders who serve as pension fund trustees will discuss new pro-worker investment initiatives and strategies. The conference — conducted by the federation's Office of Investment — will focus on the AFL-CIO's Capital Stewardship Program. The Capital Stewardship program seeks to promote pension investment strategies that foster retirement security and long-term economic growth and development.

Building a Political Voice for American Workers: A Conference for Political Activists

1:00 PM to 5:00 PM Doubletree Hotel

The AFL-CIO's Political Department presents a working session for leaders and executive staff from unions as well as community labor bodies. The conference will focus on labor's strategies for increasing workers' political voices and approaches in the fight for the right to organize.

Saturday, September 20

Building a Movement of American Workers: A National Conference on Organizing

1:00 PM to 5:00 PM Doubletree Hotel

This conference will focus on the ways labor is successfully changing to organize. Unions and community labor bodies will share strategies for organizing as the cornerstone of labor's comeback effort. Participants will hear from leaders and strategists as well as important allies — including Vice President Al Gore.

Sunday, September 21

Building a Voice for Workers in Our Communities: A Conference for State and Local Central Bodies

10:00 AM to 4:00 PM Hilton Hotel

Participants will discuss the growing partnership between international unions, state federations, central labor councils and local unions in community-based programs. The conference will focus on the role of the state and local labor communities in educating, motivating and mobilizing union members, defending the right of workers to join unions, organizing new members as well as creating a powerful political and legislative voice for labor. The conference will also focus on ways to leverage labor's influence with political and community allies to increase union membership.

AFL-CIO Convention Calendar (draft as of 8/1)

David L. Lawrence Convention Center / Pittsburgh, PA / September 1997

Wed 9/17

FAST Board Mtg.

Maritime Trades Board Meeting

Thu 9/18

8:00 A AFL-CIO Policy Resolutions Breakfast Meeting

Noon AFL-CIO Program Resolutions Full Committee Lunch Meeting

Noon AFL-CIO Constitution Committee Lunch Meeting

1:00 P AFL-CIO Resolutions Subcommittees:

- Organizing
- Politics
- Global Economy
- Community

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FAST Convention

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Maritime Trades Convention

ILCA Exec. Council

Sat 9/20

8:30 A Registration Continues

9:00 A AFL-CIO Executive Council Meeting

1:00 P ***Building a Movement of American Workers*:** A National Conference on Organizing

ILCA Convention

Sun 9/21

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9:00 A Service at St. Nicholas Croatian Church

10:00 A ***Building a Voice for Workers in our Communities*:** A Conference for State & Local Central Bodies

1:30 P Pittsburgh Teach - In Sponsored by local labor community

5:00 P **Welcome to Steel Town Block Party**

ILCA Convention

Mon	Tue	Wed	Thu
9/22	9/23	9/24	9/25
Day 1: ***Building a Movement of American Workers***	Day 2: ***Building a Political Voice for Workers***	Day 3: ***Providing a New Voice for Workers in a Changing Economy***	Day 4: ***Creating a New Voice for Workers in our Communities***
Opening Ceremonies Recognition of Union Organizing Victories Keynote Address: President Sweeney *LUNCH RECESS* Senator Tom Daschle Report of the Committee on Program Resolutions: Subcommittee on Organizing Presentation of the Murray-Green-Meany-Kirkland Community Services Award Report of Committee on Policy Resolutions Report of Committee on the Constitution *Evening*: Boat Ride Hosted by Steel Workers	Representative Dick Gephart Report of Committee on Program Resolutions: Subcommittee on Political Action Bob White, President, CLC* *LUNCH RECESS* Secretary of Labor Alexis Herman Report of Committee on Policy Resolutions Report of Committee on the Constitution Kweisi Mfume, President, NAACP*	President Bill Clinton Recognition of GE workers from around the globe Presentation of George Meany Human Rights Award to Muchtar Pakpahan Report of the Committee on Program Resolutions: Subcommittee on Representing Workers in the Global Economy Margaret Prosser, National Organizer, British Transport and General Workers' Union Report of Committee on the Constitution Report of Committee on Policy Resolutions *LUNCH RECESS* & lunch for international labor guests & council members Report of Committee on Policy Resolutions Recognition of significant labor strikes Nominations for Office Evening:Labor Rock Concert	Senator Ted Kennedy Kent Wong, APALA Salute to Union Cities Report of the Committee on Program Resolutions: Subcommittee on Workers in the Community Reverend Jesse Jackson Report of the Committee 2000 Report of Committee on Policy Resolutions *Noon Adjournment* AFL-CIO Executive Council Meeting

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Communications Workers of America
AFL-CIO, CLC

501 Third Street, N.W.
Washington, D.C. 20001-2797
202/434-1110 Fax 202/434-1139

Morton Bahr
President

July 14, 1997

Mr. Vice President Albert Gore, Jr.
Office of the Vice President
Old Executive Office Building
Washington, D.C. 20501

Dear Mr. Vice President:

I don't know if you have had a chance to read the article on our "mutual relations" with Sprint in the June 30 *The Nation*.

Today is the third anniversary of the company shutting down the facility in San Francisco, and Eliza Lopez and her colleagues still wait for justice.

Sincerely,

Morton Bahr

Morton Bahr
President

Attachment

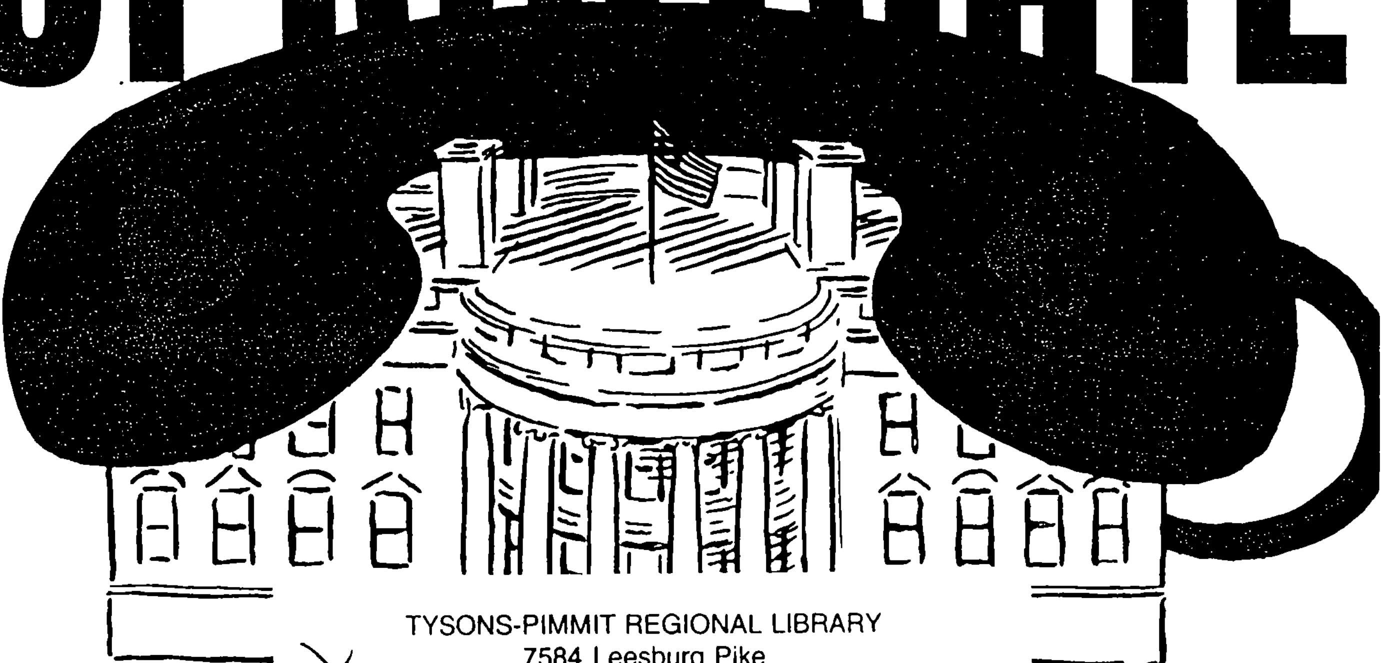
cc: Alexis Herman
Gene Sperling
John Podesta

JUNE 30, 1997

$2.75 U.S./$3.75 CANADA

The Nation.

SPRINTGATE



SPRINT'S HOTLINE TO THE WHITE HOUSE
BY BILL MESLER

HANDCUFFING THE PRESIDENT
Herman Schwartz

PRIVATIZING PHILANTHROPY
Vince Stehle

FOUCAULT, SARTON, MOMADAY, HOAGLAND, KLAWANS

John Walters, formerly head of the New Citizenship Project, where he was a harsh critic of President Clinton's AmeriCorps program. The group has also transformed its quarterly newsletter into a sharp and glossy magazine packed with provocative articles calling for radical changes, such as a dramatic reduction in estate taxes.

The Heritage Foundation has also taken a keen interest in philanthropy in recent years. In the 104th Congress, Heritage led the effort to defund the left, providing much of the intellectual firepower in the debate over the Istook amendment to limit nonprofit advocacy activities. In addition, *Policy Review*, the organization's bimonthly magazine, has devoted considerable attention to charities, applauding conservative, religious groups that provide social services at no cost to the government and criticizing nonprofit groups that accept government funding.

With Arianna Huffington, the peripatetic socialite/comedienne at the helm—when she is not appearing on *Politically Incorrect*—the Center for Effective Compassion also works to promote faith-based groups that do not accept government funds. As a project of the Progress & Freedom Foundation, lauded by Newt Gingrich, the center is another forceful voice in the chorus singing the praises of purely private charity.

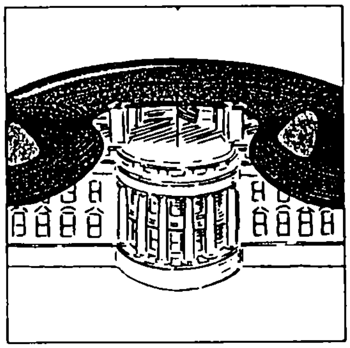
Those who defend public/private partnerships believe that charities are vulnerable to the conservative assault and that public opinion could be swayed against them. Despite the long history of government involvement in and financing of the nonprofit sector, charities have generally stressed the importance of private contributions, perhaps as a way to encourage greater giving. But that may backfire. "Having failed to make clear to the American public what its role should be in a mixed economy," says Salamon, "the sector has been thrown on the defensive by revelations that it is not operating the way its own mythology would suggest." ■

SPRINT, BLATANTLY ANTI-UNION, HAS DRAWN N.L.R.B. CENSURE BUT BILL CLINTON'S PRAISE.

Hotline to the White House

BILL MESLER

It was the most exciting day of Eliza Lopez's life. This past February at the ritzy Biltmore Hotel in Los Angeles, the 29-year-old single mother from Guadalajara met with Vice President Al Gore to talk about the shutdown of San Francisco–based La Conexion Familiar. Three years ago, that Hispanic-oriented marketing subsidiary of Sprint was abruptly closed, leaving its 235 workers jobless just days before they were to vote on joining a union—an election the union was expected to win easily. The A.F.L.-C.I.O. has called the case the most glaring violation of workers' right to unionize in decades. Gore was using the Biltmore Hotel meeting to cultivate his new post-NAFTA, "labor friendly" image well before the race for the Democratic presidential nomination in 2000 heats up.



ROBERT GROSSMAN

Lopez told Gore about harsh working conditions at La Conexion Familiar ("The Family Connection"), where access to drinking water and toilets was strictly limited. She told him about commissions promised but never paid. And she told him how the loss of her job left her trapped in a violent relationship because she didn't have the resources to care for her two children on her own. "He seemed very moved," said Lopez. "He said he was going to talk to Bill Clinton and figure out how the government can force employers to respect employees' legal rights. He also said he was going to try to not let any government employee use Sprint."

Gore wasn't the first Administration official to show concern over the La Conexion case. Almost immediately after the 1994 firings, Labor Secretary Robert Reich said he would try to revoke Sprint's contract to handle the Labor Department's long-distance telephone service (the company is under contract to carry 40 percent of the federal government's long-distance calls). But three years after the La Conexion workers were fired, and months after an order by the National Labor Relations Board to rehire the employees and pay them back wages, they still haven't seen a dime from Sprint, said to have the "worst labor record of any telecommunications company in the world" by a spokesperson for the 4.6-million-member Postal, Telegraph and Telephone International union. And despite the Administration's promises to labor to take on Sprint, it has yet to lift a finger against the company. Sprint was even singled out for praise by President Clinton. In his 1997 State of the Union Message, Clinton called Sprint a company that is leading the way to "create jobs so that people can move from welfare to work."

A closer look at Sprint's relationship with the Democrats shows that at the least, Clinton's kid-gloves treatment looks like a political trade-off: Kansas-based Sprint (led by its conservative Republican chairman, Bill Esrey) gave Clinton a surprise endorsement in the presidential campaign, and people associated with Sprint gave more than $25,000 to the Clinton campaign; the President then gave the telecommunications giant an endorsement on national television better than any commercial. There may be even more to the relationship between the White House and Sprint, involving one well-known Democrat on the Sprint payroll. No, not Murphy Brown—Webster Hubbell.

It's still unclear why the company agreed to pay the former Associate Attorney General and Clinton chum from Arkansas

Bill Mesler is a reporter working with the Investigative Fund of The Nation Institute.

$90,000 in November 1994, just a month before Hubbell pleaded guilty to felony tax evasion and mail fraud. But it did. Congressional investigators, and special prosecutor Kenneth Starr, are now trying to determine if any of the payments were hush money to keep Hubbell from cooperating with the Whitewater investigation.

Sprint supported the Clinton campaign and made payments to Hubbell. In its other dealings with the government, it has received preferential treatment from the Labor Department; won surprising approval of a controversial merger with German and French companies in 1994; and gained a substantial rewrite—and delay—of a NAFTA report on the impact of plant shutdowns that was commissioned because of La Conexion (the report was finally released this month). Sprint could even win approval of a newly proposed alliance with Teléfonos de México (better known as TelMex), Mexico's telecommunications company, which is owned by notorious financier Carlos Slim, believed to have amassed the largest fortune in Mexico through his political ties.

Like many of the Democrats' financial-scandal woes, the Sprint relationship bears the imprimatur of the late Commerce Secretary Ron Brown. In January 1991 Brown, then chairman of the Democratic National Committee, announced a new working arrangement between the party and Sprint. "The Democratic Party has entered into an agreement with Sprint that provides for payment of a commission by Sprint to the Party for introducing Sprint long-distance service to Democrats," wrote Brown in a letter sent out with Sprint marketing pamphlets to party activists. "When you sign up for the Democratic program, Sprint will pay to the Party five percent of the charges on every long-distance call you make." The agreement was killed after it met fierce opposition from the A.F.L.-C.I.O. and the Communications Workers of America (C.W.A.), which was then in the midst of a drive to unionize Sprint's U.S. workers.

But Sprint's relationship with the Democrats didn't end there. In 1994 the company began negotiating with Deutsche Telekom and France Telecom to form a $4.2 billion alliance under the name Global One. The deal first had to win approval by the Federal Communications Commission and the Clinton Justice Department. It was vehemently opposed by AT&T and other international competitors, which claimed Sprint would have an unfair advantage in the closed long-distance markets of Germany and France.

Enter Webster Hubbell. According to a letter sent by a Sprint attorney to the House Committee on Government Reform and Oversight, the company hired Hubbell to provide legal advice on the proposed Global One alliance.

"We were not approached by anybody from the Administration or friends of Webster Hubbell," Sprint spokesman Bill White told *The Nation*. After first claiming Hubbell was hired because "he opened an office right across the street from our office," White said the company "had heard from people that [Hubbell] was a very bright lawyer and had a good reputation the Department of Justice." Other connections between the company and Democratic politicos include Sprint lobbyist James Lewin, a former chief investigator for the House Judiciary Committee who served as a deputy leader of the Clinton transition team in 1992.

It is still unclear what, if any, work Hubbell did for Sprint.

Nobody involved in the Global One proceedings can recall his name ever being mentioned. Sprint spokesman White would say only that Hubbell worked "as a lawyer and not a lobbyist," and did not contact any of his old friends at Justice. The alliance was eventually approved by the Justice Department in July 1995 and by the Federal Communications Commission that December. (While it was retaining Hubbell, Sprint also retained Latham and Watkins, the former law firm of outgoing F.C.C. chairman Reed Hundt.)

In the meantime, Sprint had become embroiled in controversy over the fate of the 235 workers at La Conexion laid off without warning just before the vote to join the C.W.A. The shutdown wasn't surprising considering the company's fierce opposition to unions; two plants that had been targeted by the union for organizing drives had been shut down by Sprint over the previous two years, and the company still distributes a "Union-free Management Guide." Of the "myriad of challenges" Sprint faces in the nineties, reads the Dickensian instruction manual, paramount "is the threat of union intervention in our business."

Sprint claimed the shutdown was for financial considerations and had nothing to do with union activity. But a Sprint newsletter published just weeks before the La Conexion shutdown boasted that the subsidiary had "grown at an astounding rate in the last three years." The C.W.A. contends that the shutdown sent a message to the company's other workers nationwide that they could lose their jobs if they try to unionize (about 20,000 would be eligible).

During the course of the proceedings on the unfair labor practices complaint filed with the National Labor Relations Board, a Sprint attorney was forced to admit that a company officer committed perjury by drawing up a fake letter that purported to prove the company had planned to close La Conexion long before any union activity took place.

While the N.L.R.B. case went forward, Labor Secretary Reich reportedly promised "to do something public" to put pressure on Sprint to resolve the situation—a tactic the Labor Department has increasingly turned to in lieu of any other effective enforcement mechanisms. Though Reich said he would tear up long-distance phone cards Sprint provides the department as part of its government contract, a ranking source at the department who asked not to be identified said no action was ever taken despite widespread support for it in the department. "Many of us were certainly pissed off that nothing was done," said the source.

It was last December when the N.L.R.B. ruled that Sprint must rehire the workers and pay them three years' back wages ($12 million by union estimates). Sprint has so far managed to bog down the ruling in a lengthy appeals process that may eventually go to the Supreme Court. The C.W.A. again turned to the Administration to apply some kind of pressure.

But the N.L.R.B. decision came several months after Sprint had begun shoring up the President in the midst of his re-election campaign. On October 7, Clinton attended a campaign rally in Stamford, Connecticut, where he received the endorsement of 2,500 mostly Republican C.E.O.s. Leading the pack was registered Republican and champion of conservative causes Bill Esrey, chairman of the board of Sprint, the largest employer in Bob Dole's home state. There is, Esrey told reporters, a "growing realization in corporate America that Democrat Bill Clinton has been good for American business."

The mood was captured best by *Wired* columnist John Heilemann, who described dazed White House spokesman Mike McCurry wandering around muttering: "Big, big, big—this is really big—I mean big, like, bigger than anything since the Fraternal Order of Police endorsement—big." Three months later, Clinton, far from criticizing Sprint's labor record, was lauding the company in his State of the Union Message. Sprint spokesman White denied any quid pro quo between the company and the Administration, saying Esrey's decision was a "personal" and "very difficult" one.

At the same time, the Labor Department, according to sources inside it, was quietly working to soften the impact of its report on unfair labor practices in the United States, which was drawn up after a complaint against Sprint filed by a Mexican union under NAFTA's labor side agreement—the first and so far the only complaint filed in Mexico under the guidelines.

In the complaint, lodged after the La Conexion shutdown, Mexico's Union of Telephone Workers accused Sprint of implementing a "vicious anti-union policy." In February 1996 labor ministers from the United States, Canada and Mexico met to review the case. They commissioned a report on the effect of plant closings on workers' rights to organize. The final report (which had been due last fall) was so soft on Sprint that one C.W.A. official said, "It looked like it had been written by Bill Esrey."

Both the Labor Department and the NAFTA officials who drew up the report officially denied the charge. But sources in both offices admitted off the record that the department forced those who worked on the document to rewrite the sections that were most critical of U.S. labor practices. "The report was delayed and changed because it would have made Gore [a supporter of NAFTA] look bad to labor," said a source close to the report who asked not to be identified. Kate Bronfenbrenner, Cornell's director of labor education research and one of the authors, agreed, but added that there was also "pressure from the business community that does not want the government to put out a report showing they are wantonly breaking the law. NAFTA has created a climate that has emboldened employers who want to violate labor rights. Sprint's La Conexion case is the most obvious example."

Score another victory for Sprint and big business and Al Gore. Score another loss for workers like Eliza Lopez. "How could Sprint be telling people to get off of welfare?" Lopez aid when asked about Clinton's praise for the firm. "They tried to send us on to welfare. Bill Clinton and all those high people should try working like we did for $7 an hour—and [management] telling you not to go to the bathroom, saying they are going to count that as 'low production.'"

"I came from Mexico thinking America is a country of justice," said Lopez. "But I find it is the same as it is in Mexico. People with money get away with anything." ■

FOR MANY AFRICAN-AMERICAN WOMEN, ABUSE IS EVERYDAY: EXPECTED, EVEN ACCEPTED.

When Violence Strikes Home

MARCIA SMITH

One evening in the spring of 1995, at the height of the long national nightmare known as the murder trial of O.J. Simpson, my phone rang. On the line was a volunteer from the National Organization for Women (NOW), trolling for dollars. I do not belong to NOW, but I do support several feminist organizations and was not surprised to find myself on their list. "We'd like your support," the caller said. "Two hundred dollars, $100, anything you can afford—so that NOW can continue to work on issues like domestic violence. We don't want another woman face the atrocities that happened to Nicole Brown Simpson."

oa. Was this NOW's only frame of reference on the issue of domestic violence? I wondered. NOW either didn't anticipate having a Harlem resident as a fundraising target or must have thought that the issue of domestic violence plays the same way for African-American as for white women. "You've got to be kidding," I said, and hung up. The only pledge I made that night was not to support NOW unless they figured out how to talk to me.

Summer 1995. Boxer Mike Tyson came home to New York after serving a jail sentence for raping Desiree Washington, a teenage black beauty queen. He was ready to resume his multimillion-dollar career, and promoter Don King, Al Sharpton and others organized a rally to welcome him. The pro-Tyson crowd cloaked the event in nationalist rhetoric, shamelessly playing on African-Americans' alienation from the legal system to build support for Tyson.

Activists, led by a group of African-American women, agitated against the Tyson rally. The organization African Americans Against Violence rightly argued that Tyson, having been duly convicted of sexually assaulting a black woman, should be rehabilitated, not honored; and that domestic violence in the African-American community is a pressing issue. I stood with the opposition on 125th Street that August, in a small demonstration against domestic violence and the Tyson rally. Most leaders of the African-American community were nowhere in sight.

Spring 1997. A few weeks ago a New York City Health Department study revealed that a majority of female murder victims die at the hands of their husbands or boyfriends. In a five-year period in this decade, 52 percent of all female homicide victims in New York were African-American, although black women

GAYLE HEGLAND

make up only 25 percent of the city's female population. Two-thirds of the women who died at the hands of their loved ones lived in Brooklyn or the Bronx; most, it can be assumed, were poor. They were stabbed, strangled, punched and sometimes—if they weren't dead after the first round—thrown out of windows.

The horrifyingly high level of domestic abuse is not exactly news. The Surgeon General starkly announced five years ago that violence was the number-one public health risk to adult women, and the Department of Health and Human Services reported early this decade that 60 percent of female homicide victims were killed by someone they knew—most often by someone with whom they'd been intimate.

And the death rate from domestic abuse may be just the tip of the iceberg. A groundbreaking study sponsored by the New York–based Institute on Violence found that in a three-year period in the early nineties, more than 60 percent of women discharged from city-owned hospitals with violent injuries were black; half of all female victims of reported violent crime were black; and black women were more likely to be victims of felonious, rather than misdemeanor, assault. In the lives of many African-American women, violence is not only a life-or-death struggle but an everyday affair: expected, if not accepted.

Violence against African-American women exists against the backdrop of mainstream U.S. culture, which tolerates, and at times embraces, violent resolutions to problems; it is also rooted in the patriarchal culture that prevails in African-American communities as elsewhere, which results in the relative powerlessness of black women and public silence about what is seen as a private concern. But because African-American communities as a whole—women and men, young and old—are experiencing the multiple effects of economic and political disfranchisement, ranging from joblessness to substance abuse, from crises in housing and education to the impact of welfare reform, violence against women is not seen by many political leaders as a top priority. Nor is it seen as integral to other community concerns.

Yet the pervasiveness of violence against women presents a clear imperative for African-American leaders. We need to open the public space within the community to hear women's voices and validate their experiences. Putting domestic violence on the front burner would allow the community to rally *all* the troops for the tough battles ahead. Failure to do so not only abandons

Marcia Smith is a writer living in New York City.

FAX TRANSMISSION

AFL-CIO
815 16TH STREET, N.W.
WASHINGTON, DC 20006
202/637-5237
FAX: 202/508-6946

To:	Ken Apfel, 395-5730 Gene Sperling, 456-1213	**Date:**	March 20, 1997
		Pages:	10, including this cover sheet.
From:	Gerald Shea		
Subject:	Attached		

COMMENTS:

American Federation of Labor and Congress of Industrial Organizations

815 Sixteenth Street, N.W.
Washington, D.C 20006
(202) 637-5000

March 20, 1997

Mr. Bruce Reed
Advisor to the President for
Domestic Policy
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. Reed:

Thank you for arranging the opportunity for us to present our views on the privatization of the Medicaid and Food Stamp programs. It should be clear from our discussion that we think the federal government would be ill-advised to permit the deputation of private companies to administer these public welfare programs for at least the following reasons:

<u>The Food Stamp Act and Medicaid Place Broad Restrictions on Delegation of Administrative Functions to Non-Public Employees, and a Waiver of These Protections Would be Vulnerable in a Legal Challenge.</u>

Discretionary decisionmaking in these two programs is to be performed by public officials and employees. For example, the statutory language governing certification of eligibility for food stamps is clear that eligibility determinations must be made by public employees. Specifically, the Food Stamp Act states that "the State agency personnel utilized in undertaking . . . certification shall be employed in accordance with the current standards for a Merit System of Personnel Administration . . ." 7 U.S.C. § 2020(e)(6). The Department of Agriculture's regulations reinforce the fundamental principle that public employees must conduct certification interviews and certify households for food stamps:

> State agency employees [employed in accordance with a merit system of personnel administration] shall perform the [eligibility] interviews required in § 473.2. **Volunteers and other non-State agency employees shall not conduct certification interviews or certify food stamp applicants.**

7 C.F.R. § 272.4(a)(2) (emphasis added).

Similarly, Medicaid requires that States establish or designate a single State agency for administering their Medicaid plans, and provides that "the determination of eligibility for medical assistance under the plan shall be made by the State or local agency administering the State plan" -- that is, by public employees. 42 U.S.C. § 1396a(a)(5). The accompanying regulations echo this point, directing that the State agency "must not delegate, to other than its own officials, authority to (i) [e]xercise administrative discretion in the administration or supervision of the plan, or (ii) [i]ssue policies, rules, and regulations on program matters." 42 C.F.R. § 431.10(e).[1]

The foregoing statutory and regulatory provisions plainly demonstrate Congress' and the Executive Branch's clear expectation that administrative functions in the Food Stamps and Medicaid programs are to be handled by public employees -- an expectation which we believe is firmly grounded in compelling policy arguments, set forth below, in favor of public administration of public benefits programs. The Administration should not act in a manner contrary to legislative intent in evaluating proposals implicating these provisions.

Waiver authority under these programs is limited, and privatization of discretionary administrative functions will in most instances exceed that authority. Both the Food Stamps and Medicaid programs authorize waiver of certain requirements under certain limited circumstances.[2] The scope of administrative waiver authority is

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[1] It is worth noting, as we discuss in greater detail below, that one area where HHS has permitted privatization -- i.e., outstationing of intake functions at hospitals -- remains overwhelmingly public.

[2] It is our understanding that no waiver request has been submitted in connection with the proposed privatization of numerous programs by the State of Texas. Given the clear statutory language mandating eligibility determinations by public employees in the Food Stamps and

constrained by important elements of these programs. Only limited changes in the provision of services are permitted, subject to individual assessment and approval of a particular state's waiver request.

The Secretary of USDA may waive requirements of the food stamp program only for pilot projects of a limited duration and only "to the extent necessary for the project to be conducted." 7 U.S.C. § 2026(b)(1)(A), as amended by P. L. 104-193, § 850. "[I]mprov[ing] program administration" and "allow[ing] greater conformity with the rules of other programs" are among the permissible purposes of a waiver arguably relevant to the issue at hand, id., but any such initiative "must be consistent with the food stamp program goal of providing food assistance to raise levels of nutrition among low-income individuals." House Rep. 104-725, accompanying H.R. 3734, at 479. Thus, in order to justify a waiver of the public eligibility determination requirement, the Secretary would need to demonstrate (1) that the waiver was necessary for the project in question; (2) that the project furthered a permissible purpose, e.g., that is, that the project would actually improve program administration; (3) that the project furthers the goal of providing food assistance to low-income individuals; and (4) that the project is of a limited duration. For the reasons set forth below, we believe a studied review of an actual request to privatize eligibility determinations will reveal that contrary to improving program administration, privatization will in reality have a detrimental effect on program administration as well as on benefit recipients. Consequently, we believe approval of a waiver request seeking to privatize eligibility determinations will be vulnerable in any subsequent judicial review.

Similarly, while the Secretary of HHS is permitted to waive requirements of the Medicaid statute for an "experimental, pilot, or demonstration project" which is "likely to assist in promoting [statutory objectives]", 42 U.S.C. § 1315(a), that authority is not without its limits. Rather, "§ 1315(a) plainly obligates the Secretary to evaluate the merits of a proposed state project, including its scope and its potential impact on [benefit] recipients." Beno v. Shalala, 30 F.3d 1057, 1068 (9th Cir. 1994). In other words, "[o]n its face, the statute allows waivers only (1) for experimental, demonstration or pilot

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Medicaid programs, it is manifest that no privatization is permissible in those programs unless the federal government approves a State waiver request following notice, comment, and agency evaluation of any such request. In any case, we do not believe a waiver permitting privatization of eligibility determinations would be permissible under the standards set forth in the statutes, as described in more detail above.

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TANF did not alter these fundamental principles. When the Congress passed, and the President signed, the most sweeping repeal of an entitlement program since the Social Security Act was passed, Congress stopped short of expanding private administration and eligibility determinations in the Food Stamp and Medicaid programs even as they were allowing private actors to play a greater role in former AFDC functions. For all the changes in administrative procedures which the new law allowed, it made precious few changes in Food Stamp and Medicaid administration. In fact, while one version of the 1995 welfare bills struck the merit-based requirement for food stamps, it was restored in the conference committee. Given this legislative history, it would be particularly distressing if the Administration now chose to move in a policy direction which Congress rejected in favor of public provision of services.

Publicly-Funded Benefit Programs Deserve Public Accountability

Federal benefit programs funded by taxpayer dollars, and especially programs of the magnitude of Food Stamps and Medicaid, deserve full public accountability, which we believe is best provided through public administration by public employees. Private contractual arrangements cannot sufficiently assure the requisite level of public accountability. Moreover, privatization of public benefit eligibility determinations raises numerous other problems, described in greater detail below. For these reasons, as State waiver requests are received, we believe the Administration would be well advised to disapprove requests for private administration and eligibility determinations.

Privatization of Public Benefit Programs Faces an Array of Problems

Discretionary control over access to public programs. As we illustrated in our discussion, the intake processes around Medicaid and Food Stamps are replete with instances where personnel are making judgements about the validity of information and the weight of various factors. Under private determinations, this discretion is exercised under the direct influence of financial incentives which may work counter to public goals.

During our discussion, the issue of private control over distribution of public benefits in the Pell Grant and Guaranteed Student Loan programs was raised. However, these programs, and the types of private activities conducted under them, are in no way comparable to Food Stamps and Medicaid. First, it is important to point out that Congress expressly contemplated significant activity by private actors in these programs, contrary to the Food Stamp and Medicaid programs. Furthermore, the Pell Grant and Guaranteed Student Loan programs are extremely small compared to the billions of dollars spent under Food Stamps and Medicaid. Unlike student loans, food and medicine are fundamentally more important to survival than are other categories of benefits. The types of clients and the nature of the decision being made are more complex. What is more, the incentives under Pell Grants and Guaranteed Student Loans would encourage <u>oversupply</u> of loans, not restrictions on benefits as would be the case for food stamp or Medicaid eligibility under private determinations. It is worth noting that just two days ago Pell Grants were the subject of a Wall Street Journal article highlighting fraud problems involving overpayment by colleges.

Unlike student aid, the private entities which would be asked to determine Food Stamp and Medicaid eligibility have no particular expertise in these programs and are being asked to enter a policy area undergoing dramatic change. Finally, the food stamp program includes specific, detailed provisions governing the behavior of eligibility workers (<u>e.g.</u>, face-to-face interviews, etc.) and even the facilities in which interviews can occur (in order to preserve privacy). This detail suggests that the framers of the legislation understood that the benefits and information they were dealing with are uniquely sensitive and must be protected through merit-based personnel. Taken together, the combination of discretion, financial incentives, lack of expertise, and vitally important benefits argues strongly against private eligibility determination in these programs.

Eligibility determination related to appeals process. It is important to remember that the lead staff person on eligibility is also responsible for informing clients of their appeal rights. We believe that allowing private contractors to stand between clients and the right to appeal will raise serious issues around due process. We fear that private contractors are both more likely to deny clients due to financial incentives and less likely to be forthcoming about appeal rights than are public servants.

Private internal accounting process can disadvantage clients. Particularly in social service areas, measurement issues influence outcomes. For example, President Nixon used administrative authority instead of legislation to reduce welfare payments by changing "quality control" measures to look only at overpayments. Even if states make no legislative changes, private firms have every reason to monitor themselves only in ways that reduce payments. Sometimes this will match public goals and sometimes it will not. These issues are extremely difficult to specify in advance through contract arrangements, given the control over internal accounting which private firms will always enjoy.

Contractual boundaries are not as protective as direct public accountability. Privatization advocates will argue, in the abstract, that private contracts can capture all contingencies. We don't believe this. It is simply untenable that a written agreement with private firms can adequately safeguard against all contingencies. The essence of public, merit-based service provision is the emphasis on public accountability, procedural guidelines, and extensive written records. Complete protection of public trust through contract language is unrealistic. Public provision of services acknowledges that all contingencies cannot be predicted, replacing the rigidity of contracts with direct democratic accountability. Privatization places supervisors and auditors outside the process of determinations, forcing them to evaluate reports without being able to assess the capabilities of the individuals who compiled the information or the validity of the documents upon which they are based. Line supervisors, on the other hand, are in direct contact with the individuals responsible for eligibility determination. The accountability is direct, personal, and informed by practice. In private settings, ultimate accountability is to shareholders, not elected leaders. Taxpayers don't elect the CEO of Lockheed. It is the combination of discretion over vital benefits and financial incentives to limit their distribution that troubles us.

Accurate accounting requires vast monitoring expense. We do not believe it is possible to effectively monitor contracts in a manner that is less costly than public provision. Cost estimates for private contracts never fully account for the cost of public monitoring. Moreover, private contracts run the risk of generating both public and private layers of management, auditing, and processing functions. If the federal action allows states to hand off contracts, the federal government will end up spending more on administrative oversight or risk political and financial problems.

The potential for fraud and cost over-runs appears high. Current practice proves that contract monitoring must be taken very seriously. As mentioned in our meeting, Canadian experience with the same contractors that are pursuing contracts in Texas raises serious questions about cost over-runs and performance. The Department of Public Works and Government Services canceled their $44.5 million contract with Andersen when the company failed to meet its obligations and demanded a doubling of the contract cost.

Experience in the U.S. also encourages caution. Lockheed and Martin Marietta, for example, have paid millions of dollars in fines related to bribery lawsuits. In December, Lockheed Martin paid over $5 million to settle a lawsuit involving overcharging. In Texas, former state officials have left public service specifically to pursue more lucrative private contracts. Andersen Consulting's contract for the Child Support Enforcement Tracking System is currently four years behind schedule and the contract cost has grown 600 percent. The Texas auditor's report noted that Andersen underestimated the complexity of the tasks and made insubstantial provisions for a changing environment.

From the individual level all the way to corporate policy, public monitoring of private contractors would have to be extremely vigilant -- and even then there will be problems which involve misuse of federal dollars. Moreover, the cost-sharing relationships which exist in these programs open the federal government to greater financial and legal exposure when contracts go awry.

Confidentiality issues. We are concerned that the full extent of confidentiality problems have not been addressed. Eligibility determiners enter social security data, unemployment insurance databases, and other public program benefit files. Allowing private individuals connected to private firms to access these databases raises a wide range of confidentiality issues, some of which will be unforeseeable.

Private encroachments into Medicaid already go too far. We acknowledge that private firms are entering new areas related to Medicaid right now. But these incursions only illustrate the negative consequences. We believe the Administration has gone too far in allowing private actors to encroach upon the Medicaid program. For example, new positions called Health Benefits Manager should be public, not private. The honest broker role may not be "honest" if private, self-interested parties are involved. Mathematica's evaluation of Medicaid managed care in California (May 1996) illustrates this problem. They describe the privatized enrollment process as "chaotic and problematic". The solution proved even worse:

> Recognizing the confusion, DHS allowed providers to assist individuals to enroll but this actually led to even greater problems. Doctors (and clinics) worked with patients to complete enrollment forms designating themselves as primary care provider (in whatever plan they belonged to). Unfortunately, however, since many clients visit more than one provider, many clients enrolled in several plans, selected several doctors as their primary care physicians, or both.

Ultimately, DHS had to step in to untangle the problems and the study notes that "DHS admits it had too few staff to fully monitor the conversion." With crucial health and nutrition benefits on the line, we believe it is inappropriate to risk similar problems on a national scale.

The Outstationing Experience. HCFA has acknowledged the constraints placed by the Medicaid statute on eligibility determinations. It did so in the context of promulgating regulations to enforce the requirements of OBRA 1990 that states provide for the receipt and initial processing of applications of certain persons at locations other than welfare offices. Such "outstation" locations include certain hospitals and health clinics. In interpreting what "initial processing" means for purposes of this requirement, HCFA explained that "[i]f we were to define initial processing to include making a determination of eligibility, the definition would conflict with the requirement of [42 U.S.C. § 1396a(a)(5)]. Under [that] section, the plan must be administered by a single State agency and determination of eligibility is restricted by this section to the Medicaid agency, the title IV-A agency, or SSA when administering the SSI program." Medicaid and Medicare Guide, para. 42,662 at 41,820.

We question whether HCFA exceeded its authority by bifurcating initial processing and eligibility determinations in this way, and by permitting initial processing to be performed by private actors. These eligibility functions are closely related, and do not lend themselves to such an artificial division of labor, as indicated by the apparent reluctance of states to utilize private actors at outstations. In any case, outstationing remains overwhelmingly public. Only a handful of states have health care provider staff trained to be outstationed eligibility workers. (Medicaid Source Book, CRS, 1993). Two of the largest programs, Los Angeles County and New York City, use public workers for these functions. The State of Ohio outstationed these functions to county public health providers who were public employees. Similarly, in New Mexico, even though private workers are involved in application intake, a public welfare worker is on-site and involved in the process. In other words, even when given the opportunity to privatize, states are quite reticent, for good reasons, to permit private providers to engage in eligibility functions.

As the foregoing discussion demonstrates, we believe any decision to expand private functions within the Medicaid and Food Stamps programs will put federal dollars, federal agencies, important federal programs, and recipients of federal benefits at risk.

While our discussion last Friday did not focus on the severe impacts on the almost 500,000 public employees whose jobs potentially are in danger, I would like to close this letter by noting that these are enormous issues in their own right. The public employees who currently administer the Food Stamps and Medicaid programs are commited public servants who have devoted their energies and talents to important social programs. They deserve our appreciation and respect. Privatization of the administration of these programs could well result in dedicated employees losing their jobs and job-related benefits, to the advantage of private corporations with an incentive to maximize profits by keeping wages and benefits as low as possible. However, because we believe proposals to privatize the administration of Food Stamps and Medicaid fail for the reasons detailed in this letter, we have not focused here on the extensive worker protections, standards, and programs that would be required in any privatization initiative.

I would appreciate your prompt consideration of these points.

Sincerely,

Gerald M. Shea /kes

Gerald M. Shea
Assistant to the President

cc: Gene Sperling
Ken Apfel

(2-1)

FAX TRANSMISSION

AFL-CIO
815 16TH STREET, N.W.
WASHINGTON, DC 20006
202/637-5237
FAX: 202/508-6946

To:	Ken Apfel, 395-5730 Gene Sperling, 456-1213	**Date:**	March 20, 1997
		Pages:	10, including this cover sheet.
From:	Gerald Shea		
Subject:	Attached		

COMMENTS:

American Federation of Labor and Congress of Industrial Organizations

815 Sixteenth Street, N.W.
Washington, D.C 20006
(202) 637-5000

March 20, 1997

Mr. Bruce Reed
Advisor to the President for
Domestic Policy
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

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The Food Stamp Act and Medicaid Place Broad Restrictions on Delegation of Administrative Functions to Non-Public Employees, and a Waiver of These Protections Would be Vulnerable in a Legal Challenge.

Discretionary decisionmaking in these two programs is to be performed by public officials and employees. For example, the statutory language governing certification of eligibility for food stamps is clear that eligibility determinations must be made by public employees. Specifically, the Food Stamp Act states that "the State agency personnel utilized in undertaking . . . certification shall be employed in accordance with the current standards for a Merit System of Personnel Administration . . ." 7 U.S.C. § 2020(e)(6). The Department of Agriculture's regulations reinforce the fundamental principle that public employees must conduct certification interviews and certify households for food stamps:

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We question whether HCFA exceeded its authority by bifurcating initial processing and eligibility determinations in this way, and by permitting initial processing to be performed by private actors. These eligibility functions are closely related, and do not lend themselves to such an artificial division of labor, as indicated by the apparent reluctance of states to utilize private actors at outstations. In any case, outstationing remains overwhelmingly public. Only a handful of states have health care provider staff trained to be outstationed eligibility workers. (Medicaid Source Book, CRS, 1993). Two of the largest programs, Los Angeles County and New York City, use public workers for these functions. The State of Ohio outstationed these functions to county public health providers who were public employees. Similarly, in New Mexico, even though private workers are involved in application intake, a public welfare worker is on-site and involved in the process. In other words, even when given the opportunity to privatize, states are quite reticent, for good reasons, to permit private providers to engage in eligibility functions.

As the foregoing discussion demonstrates, we believe any decision to expand private functions within the Medicaid and Food Stamps programs will put federal dollars, federal agencies, important federal programs, and recipients of federal benefits at risk.

While our discussion last Friday did not focus on the severe impacts on the almost 500,000 public employees whose jobs potentially are in danger, I would like to close this letter by noting that these are enormous issues in their own right. The public employees who currently administer the Food Stamps and Medicaid programs are commited public servants who have devoted their energies and talents to important social programs. They deserve our appreciation and respect. Privatization of the administration of these programs could well result in dedicated employees losing their jobs and job-related benefits, to the advantage of private corporations with an incentive to maximize profits by keeping wages and benefits as low as possible. However, because we believe proposals to privatize the administration of Food Stamps and Medicaid fail for the reasons detailed in this letter, we have not focused here on the extensive worker protections, standards, and programs that would be required in any privatization initiative.

I would appreciate your prompt consideration of these points.

Sincerely,

Gerald M. Shea /kas

Gerald M. Shea
Assistant to the President

cc: Gene Sperling
Ken Apfel