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MEMORANDUM TO THE PRESIDENT

DRAFT - 7/18/95

FROM: ABNER MIKVA, PAT GRIFFIN, CAROL RASCO,
GEORGE STEPHANOPOULOS

THROUGH: LEON PANETTA

CC: ALICE RIVLIN, ALEXIS HERMAN

The House Judiciary Committee is now marking up a controversial bill introduced by Congressman Canady (R-Fla.) known as the "Partial Birth Abortion Ban Act." The bill was voted out of Canady's subcommittee last month on a straight party-line vote [check]. The Office of Legal Counsel at DOJ believes the bill is "constitutionally flawed." Given your own opposition to most post-viability abortions and the intense emotions the bill has aroused on both sides of the choice issue, we thought you should decide how to respond to this bill.

Background

As you know, Roe v. Wade and its progeny forbid most restrictions upon abortion access prior to viability but permit the government to ban post-viability abortions except when needed to protect the life or health of the mother. As governor, you signed an Arkansas law that made abortion illegal after the 25th week of pregnancy, with an exception for life and health (as well as one for rape or incest, in the case of minors).

The Canady bill criminalizes the conduct of any doctor who performs (but not of the mother who obtains) what the medical community refers to as a "dilation and extraction" abortion. D & X abortions are usually performed only after 20 weeks of pregnancy. At least some doctors regard it as the safest method of late-term abortion under certain circumstances. The procedure involves bringing the lower part of the fetus out of the uterus before the abortion is completed. We are not aware that the medical community regards this method of abortion as morally distinct (or medically different in any meaningful way) from other late-term methods. Nevertheless, abortion foes have given the procedure a new, emotionally charged name of "partial birth abortions" in order to suggest otherwise. Pro-choice activists warn that the bill interferes with a doctor's choice of medical procedure, and they accuse the right-to life movement of targeting this method of abortion in order to display disturbing diagrams and pictures that will arouse general opposition to abortion.

Only three or four doctors in the United States perform this specialized procedure, and the total number of D & X abortions annually is probably under 500. By contrast, about 1.5 million abortions are performed each year in the U.S., of which about 13,000 are performed after 20 weeks. We do not know what proportion of D & X abortions are pre-rather than post-viability, but it seems clear that D & X abortions comprise a higher percentage of the latter category. The more traditional method of performing late-term abortions is known as the D & E procedure, in which the fetus is dismembered within the uterus and then removed.



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Although the D & X procedure is sometimes used in pregnancies with health-threatening complications such as for a mother who has severe diabetes, it is also used for purely elective abortions as well as for abortions when a severely deformed fetus is discovered late in the pregnancy. During a subcommittee hearing on the Canady bill, the most emotional testimony was given by a mother whose severely deformed fetus was detected late in pregnancy. She decided to have a D & X abortion because the trauma of watching a young child die a certain and painful death after birth was more excruciating.

Discussion

Mother's Health: The most significant constitutional objection to the Canady bill is that it permits D & X procedures only if the *life* of the mother is threatened. Extending the exception to include the *health* of the mother would be consistent with the bill that you signed in Arkansas and would probably be required by the Supreme Court, which has affirmed that "*Roe* forbids a State from interfering with a woman's choice to undergo an abortion procedure if continuing her pregnancy would constitute a threat to her health." The Court indicated that such health threats would have to be "substantial," which might include threats to mental health but only of a particularly serious nature. To the extent that barring D & X abortions would force women who needed abortions for health reasons to forgo what may be the safest abortion method, OLC believes the ban is constitutionally invalid.

Pre-Viability Abortions: A second constitutional problem is that the Canady bill bars D & X procedures even in the pre-viability period. The Court has held that states may not place an "undue burden" on a pre-viability abortion decision, including any regulation that "has the purpose or effect of placing a substantial obstacle in the [woman's] path." OLC expresses its "concern" that barring access to a particular method of safe abortion would constitute an "undue burden." It is difficult to predict whether a court would find this to be an "undue burden," both because the contours of this recently announced legal standard are not fully known and because the risks of using other abortion methods instead of the D & X procedure are unclear. However, excluding pre-viability abortions from the scope of the Canady bill would be consistent with the abortion views you expressed as governor. In 1990, for example, you stated: "While I have ... supported restrictions on public funding and a parental notification requirement for minors, I think the government should impose no further restrictions. Until the fetus can live outside the mother's womb, I believe the decision on abortion should be the woman's not the government's."

Post-Viability Fetal Deformity: Even if the Canady bill were amended so as not to ban abortions for the health of the mother or pre-viability, the bill would still bar D & X abortions in certain cases of severe fetal deformity, which is sometimes not detected until the third trimester and which may not substantially threaten the mother's health. Although OLC has outlined a possible constitutional argument against the Canady bill even if it were limited to barring post-viability non-therapeutic abortions, that argument is weak. We believe, therefore, that if you wanted to oppose the Canady bill on the additional ground that it could prevent a woman from aborting a severely deformed fetus, you would have to base your opposition on policy grounds --that is, a policy of not requiring a mother to carry such a

fetus to term. It is unclear whether such an exception would be consistent with your prior positions. The Arkansas law that you signed contained no exception for fetal deformity. On the other hand, you framed your view on viability in terms of the ability of the fetus to survive outside the womb.

Recommendation

(1) We believe you should take a position on the Canady bill. Many members of the Judiciary Committee -- including a number of pro-choice members supportive of the Administration -- have now asked for such a statement, and it is likely that the bill in some form will progress through the House and may well succeed in the Senate.

(2) We also believe you should oppose the bill as drafted but should at this point emphasize the strongest and narrowest constitutional objection: the bill's failure to permit D & X abortions for the health of the mother. Probably, the statement should also include a reference to the constitutional problem posed by the bill's application to pre-viability abortions. One way of combining both concepts would be to write the "health of the mother" exception so that it also permitted pre-viability D & X abortions when the doctor believed this method was safer for the mother. By framing the issue as one of health and safety for the mother, you should be able to keep the debate at the appropriate level of principle. On the other hand, by adopting this focus you will be relying heavily on a factual predicate -- the medical superiority of the D & X method -- for which we do not have much evidence.

(3) It is possible that, in defending D & X abortions in the pre-viability period (when most such abortions are by other methods), you may be placed in the position of defending a particular *procedure* that is publicly controversial. If, however, you decided not to defend pre-viability D & X abortions at the outset, you could encounter greater difficulties later on. The bill might well be amended to protect the woman's health. You would then face the question whether to object to the pre-viability bar and, if you did not object, whether to sign a bill that might well be unconstitutional. It would be more difficult to raise the pre-viability objection at this later point if you have not even mentioned it in an initial statement.

Given all of these considerations, we recommend issuing a statement along the lines outlined in the second paragraph immediately above (option #3, below). Because a defense of post-viability fetal deformity abortions would cloud your position with a separate and substantial controversy, we do not recommend addressing that issue.

1. ☐ Take no position on the bill
2. ☐ Oppose bill solely on grounds of mother's health
3. ☐ Oppose bill on grounds of the mother's health and of the need for safety, pre-viability
4. ☐ Let's discuss

June 28, 1995

MEMORANDUM FOR LEON PANETTA, HAROLD ICKES, ERSKINE BOWLES, PAT GRIFFIN, ALICE RIVLIN, GEORGE STEPHANOPOULOS, MARK GEARAN, AND BILLY WEBSTER

**FROM: ALEXIS HERMAN
CAROL RASCO**

RE: MEDICARE ANNIVERSARY

A scheduling proposal was submitted several weeks ago regarding the President's involvement in the 25th Anniversary of Medicare on July 30. However, we felt it was necessary to bring to your attention several additional factors relevant to an event recognizing the Medicare anniversary.

Our offices and others have received calls during the past two weeks from both Senator Daschle's staff and Representative Gephardt's staff regarding our plans for the anniversary and they are anxious for us to come to some conclusion if there is going to be a joint event. The Democratic Congressional leadership is already planning an anniversary event on July 25 at the Capitol to recognize congressional passage of Medicare.

They are suggesting a joint event in Independence, Missouri on Sunday, July 30 which would include the President, Democratic Leaders, senior groups, etc. July 30th is the anniversary of President Johnson signing into law the Medicare Act (he signed it in Independence, Missouri 25 years ago at the Truman Library).

Independence is the only really symbolic site for Medicare, and it also seems to hold some importance for Gephardt that we do the event there.

Obviously, the other option would be to hold an event at the White House on Sunday, July 30, but with an event earlier in the week at the Capitol it may seem less climatic.

Either way, the senior groups want to organize individuals to attend an event with the President, and especially if we choose to do the event in Missouri the senior groups need several weeks advance notice to individuals get low fare flights. We need to resolve the location of this event as soon as possible.

JUL - 5 1995

THE WHITE HOUSE

WASHINGTON

March 7, 1995

PROPOSAL

MEMORANDUM FOR LEON PANETTA
HAROLD ICKES
ERSKINE BOWLES
CAROL RASCO

From: Doris O. Matsui *DSH*
Deputy Assistant to the President
Deputy Director of Public Liaison

Re: Public Liaisoning with the Non-Profits

BACKGROUND

At this particular time, as the role of government is under increasing public and Congressional scrutiny and evaluation, what is increasingly being referred to as the devolution of the federal government, can be viewed in a positive sense, as a transformation, a window of opportunity, to create a new and effective partnership between government and the nation's citizenry. The whole notion of the "role of government," and the role of committed Americans is at the forefront of being explored. In this, there is an enormous role for a partnering between the vast array of the U.S. non-profit organizations, which touch the lives of millions of Americans, and the government.

There can be created a strong, workable and successful pairing between the administration and the world of non-profits, which collectively provide a forum for and address many of the issues which concern all aspects of American life, and which have national, regional, state, city and grass roots access, input and support. A large percentage of Americans belong to these organizations. This can be an avenue of enormous potential for the government to reach out and touch the lives of its citizenry.

Last year the Clinton administration created an interagency non-profit liaison network. During this past year, these liaisons of the different agencies have been interacting with the non-profit world. In the last two months, our office has organized a core group from the non-profit liaison network with which we have been meeting on a weekly basis. The reason for establishing this core group is that we want to form a vehicle via the non-profits

March 7, 1995

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to get our message out to the grass roots and community level. The non-profits are generally viewed throughout our communities as a positive and non-partisan force, as playing a respected, well thought of role, and one in which many local community and business leaders participate. If we can get the non-profit world to resonate our message, this can be employed in a powerful way to link us to the local community level.

PROPOSAL

As the first step in the creation of such a forum, we are proposing that the administration co-host, with some of the local non-profits, 4 meetings in strategically selected cities and regions throughout the U.S., possibly culminating in a meeting in Washington. It is tentatively proposed that the first meeting be held in late April, possibly in Cleveland. The criteria used to select a particular city or regional site will be: (1) whether it is of key strategic importance; (2) is it a locale where the administration has had demonstrated success working with the community; and (3) is it one where the non-profit community is strong and well organized, and can effectively arrange the meeting and provide the resources and structure for follow-up.

These meetings can provide an excellent forum for the President or Vice President to come and be the focal point for opening remarks and discussion, if their schedules permit, which can be decided at the last minute. If their scheduling proves impossible, the meetings are strong enough to stand on their own. It is envisioned that a secretary or other administration official participate in each of the programs.

Fostering this pairing between the administration and the communities through the non-profits is especially timely. It can provide a forum for the administration to show that it is sensitive to the needs of the communities, that it cares and can commiserate and offer suggestions and a base of support, a sounding board, to the various state and local government officials and community leaders. This is especially useful now that due to Congressional initiatives the local communities will increasingly be taking on the responsibility of the administration of massive programs that for many years were under the auspices of the federal government. In many instances, local leaders will be ill-equipped to deal with their new roles.

This format will provide a forum for the dialogue of what should be the appropriate "role of government," with which the nation as a whole is grappling. It can provide grass roots examination of the new Congressional agenda, especially now that the local leaders are seeing first hand how such changes are directly affecting their lives and communities. It also can

March 6, 1995

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provide a valuable means of creating good will and grass roots support for the administration, provide a means of identifying key members in each of the local communities, which possibly can lead to the formation of a national leadership coalition.

It is envisioned that the meetings will provide a forum for the administration to hear first hand what is desired and envisioned at the grass roots level as to what should be the role of the federal government, and to evidence administration concern and support for local concerns and the local non-profits, as well as shape a framework for the non-profits to get together and try to solve some of the common problems which confront them.

This role for the non-profits is a vast and up-to-now a largely untapped resource. It is one of enormous potential. A strong bond can be created between government and the people via this connection. As ideas emerge from these meetings, a framework can be formulated which can include a clear, concise message and theme that can have broad-based national recognition and appeal.

We ask you to support this proposal. I believe that it can open up vast opportunities for the Clinton Administration to communicate its views to the citizenry.

cc Alexis Herman

THE WHITE HOUSE
WASHINGTON

June 16, 1995

MEMORANDUM FOR LEON PANETTA

FROM: Alexis Herman 
RE: Hispanic Business Leaders

According to my schedule, I was meeting with the Dario Marquez group on Tuesday, June 16 at 2:30 p.m. This meeting was subsequently cancelled by the group. I was under the impression that this meeting was with Dario Marquez. It was, however, another group of Hispanic business leaders which I had been scheduled to meet and they were not able to keep the appointment.

Upon learning of the confusion, we have moved immediately to schedule the Dario Marquez group next week and we will also be following up with the other group.

cc: Harold Ickes
cc: Kate Carr
cc: Suzanna Valdez

RL's cc

THE WHITE HOUSE
WASHINGTON

June 5, 1995

MEMORANDUM FOR LEON PANETTA

FROM: Alexis Herman

SUBJECT: Office of Public Liaison Goals and Objectives: June through December 1995

You have asked the Office of Public Liaison to provide an outline of our goals for the next six months. As requested, for your review is an outline of our six month plan. As you will note, our plan deviates slightly from our original management plan submitted to Erskine Bowles in January of 1995. We have modified the plan as we achieved a number of short term objectives. Our effort in the first five months has focused on developing and implementing detailed outreach plans for base constituency groups. We briefed Harold Ickes in late May on the status of those plans, as well as our accomplishments to date. We are now focused on developing the same or similar processes for our outreach to key non-base constituency groups.

GOAL

Positively position key constituency organizations and leaders, both national and state, to support the President's 1996 reelection.

OBJECTIVES

- I. Identify key constituencies, determine how they will be coordinated, and establish realistic levels of engagement. (Director of the Office of Public Liaison)
- II. Develop a strategic framework for each constituency aligned with state targets. (Director of the Office of Public Liaison)
- III. Execute proactive monthly outreach program for each constituency, incorporating strategic choices in Objective II. (Deputy Director of the Office of Public Liaison)
- IV. Identify legislative priorities and develop public support in key states as required. (Deputy Director of the Office Public Liaison)
- V. Develop list and participate in the planning, implementation and follow up for White House conferences and events. (Deputy Director of the Office of Public Liaison)
- VI. Identify new groups and new networks at the community level to expand support for President. (Deputy Director of Public Liaison)

I. Identify key constituencies, determine how they will be coordinated, and establish realistic levels of engagement. (Alexis Herman)

- Prioritize constituencies based on political impact. (Completed)
- Identify resources and internal management coordination (June)
- Establish mechanism via DNC and Political to assess appropriateness and support of these as targets on an ongoing basis. (June)
- Bi-monthly meetings with the DNC to monitor polling, calendar, and lists of key contacts for base constituencies. (June)

II. Develop a strategic framework for each constituency aligned with state targets.

- Identify specific voter participation goals. (June)
- Identify targets within each constituency. (June)
- Analyze issues inventory of positives and negatives for base constituencies. (Completed)
- Analyze issues inventory of positives and negatives for non-base constituencies. (June)
- Organize sub-cabinet teams to delegate responsibilities and facilitate outreach for base groups. (June)
- Organize sub-cabinet teams to delegate responsibilities and facilitate outreach for non-base groups. (July)
- Compose speech guidance/talking points for each constituency. (June)
- Develop specialty press strategy with Media Affairs. (July -- Flo McAfee)

See attached list of staff constituency assignments.

III. Execute proactive monthly outreach program for each constituency, incorporating strategic choices in Objective II.

- Compile list of administration surrogates for base constituencies. (Completed)
- Compile list of administration surrogates for non-base constituencies. (June)
- Develop calendar of administration participation in local and national events through 1995 with recommendations for level of administration participation for base groups. (June)
- Develop calendar of administration participation in local and national events through 1995 with recommendations for level of administration participation for non-base groups. (July)
- Amplify POTUS events through faxing talking points and speeches to national and local networks; organizing op ed pieces, letters to the editor and mass mailings of letters, proclamations and issue papers. (Ongoing)
- Establish constituency networks of top 20 organizations and leaders in key states for base groups. (June)

- Establish constituency networks of top 20 organizations and leaders in key states for base groups. (July)
- Regularize communications with networks at least on a monthly basis; i.e. faxing, conference calls, etc. (Ongoing)
- Identify structure for maintaining and following up on constituency outreach. (August)

IV. Identify legislative priorities and develop public support in key states as required. (Marilyn Yager)

- Coordinate with Legislative Affairs to determine timeframe for activity. (Ongoing)
- Continue to organize issue briefings around the legislative and policy agenda as appropriate. (Ongoing)

V. Develop list and participate in the planning, implementation and follow up for White House conferences and events.

Past:

- Determine, track and assist with follow up:
White House Conference on Ireland (July -- Marilyn DiGiacobbe)
White House Conference on Aging (July -- Marilyn Yager)
Rural Summit (July -- Marilyn Yager)
- White House Conference on Central and Eastern Europe (December -- Marilyn DiGiacobbe)

Upcoming:

- White House Conference on Civility (July -- Flo McAfee)
- White House Economic Conferences (Kate Carr -- Ongoing)
- White House Conference on Small Business (June/July -- Kate Carr)
- VJ Day (September -- Steve Hilton/Dana Wyckoff)
- Korean War Memorial (July -- Steve Hilton/Dana Wyckoff)
- White Conference on Trade and Tourism (TBD -- Kate Carr)

VI. Identify new groups and new networks at the community level to expand support for President.

- Organize monthly luncheons to cultivate new contacts in women's community. (Ongoing -- Betsy Myers.)
- Reach out to new trade publications. (August -- Flo McAfee)
- Design mechanisms in Sub-Cabinet teams to expand networks. (August/September)

See attached list of staff constituency assignments.

OPL Constituency Contacts

Women--Betsy Myers/Barbara Woolley
Jewish Americans--Jay Footlik
African Americans--Ben Johnson
Hispanic Americans--Suzanna Valdez
Non-profits--Doris Matsui
Asian Americans--Doris Matsui
European Ethnics--Marilyn DiGiacobbe
People with Disabilities--Debbie Fine
Religious Community--Flo McAfee
Veterans--Steve Hilton/Dana Wyckoff
Law Enforcement--Steve Hilton and Chris Wayne
Youth--Jeff Shulman
Business--Kate Carr
Seniors
Catholics
Gays and Lesbians