

# WITHDRAWAL SHEET

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[1 of 2] Box 911Z 5

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. Letter	Robert McConnell to William Roth Re: S. 1325 (p1-6), 6p	11/3/82	P5
2. Memo	Mike Horowitz to Dave Stockman, Ed Harper Re: Fairness Issue (p 1-39), 39p	7/19/82	P5 (CIS 10/18/00)

### RESTRICTION CODES

**Presidential Records Act - [44 U.S.C. 2204(a)]**

- P-1 National security classified information [(a)(1) of the PRA].
- P-2 Relating to appointment to Federal office [(a)(2) of the PRA].
- P-3 Release would violate a Federal statute [(a)(3) of the PRA].
- P-4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA].
- P-5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA].
- P-6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA].

C. Closed in accordance with restrictions contained in donor's deed of gift.

**Freedom of Information Act - [5 U.S.C. 552(b)]**

- F-1 National security classified information [(b)(1) of the FOIA].
- F-2 Release could disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA].
- F-3 Release would violate a Federal statute [(b)(3) of the FOIA].
- F-4 Release would disclose trade secrets or confidential commercial or financial information [(b)(4) of the FOIA].
- F-5 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA].
- F-6 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
- F-7 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA].
- F-8 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA].

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[1 of 2] box 9112

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*OMB memo*



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

November 3, 1983

MEMORANDUM FOR JIM CICCONI

FROM: JOHN COGAN *jc*

SUBJECT: UNITED MINE WORKERS

In response to your request, this memo describes issues of importance to the UMW. I understand that Ford B. Ford has supplied you with a laundry list of issues. Mine, therefore, is brief and hopefully not duplicative.

Old Issue

The UMW vigorously opposed the coal slurry pipeline initiative. Last summer, with active UMW opposition, the House defeated a coal slurry pipeline bill (H.R. 1010) that would have promoted coal mining in the West.

Current Issues

- o The Administration proposed eliminating the requirement in the Federal Mine Safety and Health Act that (1) surface mines be inspected twice annually, (2) miners receive a specific number of hours of training annually, and (3) minor, non-serious violations be assessed fines. It also supported allowing voluntary, non-penalty assistance visits during active mine operations and the exemption from MSHA coverage of mines owned or operated by state or local governments. Last summer there were hearings on the Administration bill (S. 1173) at which the UMW strongly opposed the bill. Senator Nickles' Subcommittee on Labor has not marked up or reported. Because 1984 is the year for major contract negotiations, further Congressional action is not likely this Congress.
  
- o The Interstate Commerce Commission recently decided to deregulate the transportation of export coal, a decision that could lead to higher rates. The coal industry and the UMW

believe this will make US coal less competitive in the international markets. We know of no legislation already introduced that would overturn the effects of the ICC decision.

- o Last year MSHA amended its monetary penalty regulations to allow a minimal \$20 fine for minor violations. This was designed to meet the legal requirement that every violation receive a monetary penalty but provided only a token fine for non-serious violations. (The legislative proposal above would eliminate the requirement for fines in such cases.) The UMW has criticized not only the concept of reducing or eliminating fines for such violations but also MSHA's classification of certain violations as non-serious. In testimony before Congress, the UMW has presented and criticized specific examples of MSHA \$20 fines that involved allegedly serious hazards.



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

July 27, 1983

MEMORANDUM

TO: Jim Cicconi  
FR: Pete ~~Martinez~~ / Legislative Affairs  
RE: Request

Per request of your office I have taken the liberty of contacting our General Counsel's office regarding background material on Product Liability.

Attached is a memo from Rob Willmore who has been working on this issue for sometime. I have also attached two additional pieces of information that should prove helpful.

If you have additional needs or questions please contact me, or you can call Rob Willmore direct.

Attachments:

ABSTRACT OF SECRETARIAL CORRESPONDENCE

TO:  The Secretary  The Deputy Secretary

Date: APR 20 1983

INFORMATION MEMORANDUM

From: *AM*  
*8/1* General Counsel

Prepared by: H. Stephen Halloway/Assoc. General Counsel/377-1328

Subject: Status Report on Product Liability Legislation

Background:

On September 9, 1982, you signed a letter to Senator Robert Kasten expressing the views of the Administration on certain provisions of his product liability bill, S. 2631. A copy of this letter is attached at Tab A.

On October 1, 1982, S. 2631 was ordered reported by the Senate Commerce Committee. Senator Kasten has now reintroduced the bill in substantially identical form as S. 44 (the Kasten bill).

Neither S. 2631 nor the Kasten bill completely reflect the changes the Administration requested in your letter to Senator Kasten. In particular, the Kasten bill adopts positions different from ours in the areas of worker compensation, preemption of state law, collateral estoppel, and jury determination of punitive damages. I have attached to this memorandum at Tab B a brief analysis of how the Administration position differs from the Kasten bill on each of these issues.

Control No. \_\_\_\_\_

SUPNAME AND ORGANIZATION (Typed)	PREPARED BY	CLEARED BY	CLEARED BY	CLEARED BY	CLEARED BY	CLEARED BY
	Margulies Dep GC					Exec Sec
INITIALS AND DATE						

Discussion:

Our experience last year unmasked two major problems with which we will be confronted again this Congress. First, the Administration is deeply divided regarding the specific provisions of a Federal product liability bill. Second, even after the Administration forges a position, we cannot sufficiently influence the Congressional outcome because of Senator Kasten's needs to accommodate his fragile coalition of support among industry groups and fellow members.

Administration position. -- The Administration position on S. 2631 was reached through a process characterized by sharp disagreement on the issues discussed at Tab B, as well as others. You presided over two Cabinet Council meetings on this subject, and the Product Liability Task Force reached a consensus only with great difficulty. Even at the Cabinet meeting on July 15, 1982, the President made the decision only after spirited discussions of the issues.

Many of the difficulties experienced last year resulted from institutional interests that are not easily changed. The Departments of Labor and Justice and the White House policy staff all harbor parochial views that make it difficult to achieve an agreement.

Controlling the final product. -- Support within the business community for the Kasten bill is based upon agreements made with and among various segments of that community, and the coalition supporting the bill has been put together, in large part, by tying the support of each of its members to specific provisions in the bill. Thus, the original concept behind the legislation has been expanded to accommodate individual concerns.

The deletion of any one of these provisions necessarily jeopardizes the coalition. Moreover, the deletion of any provision at the insistence of the Administration will necessarily be seen as an attempt to defeat the legislation.

The difficulties we will face in attempting to alter the Kasten bill are disclosed by the events of last year, when the Administration offered a series of recommendations to Senator Kasten which were an implicit condition of Administration support for the bill. Although Senator Kasten agreed to many of our recommendations, he was ultimately forced to reject many of them, in large part because of the need to hold together his coalition in Committee. A number of groups threatened to withdraw their support of the bill if their

particular provision was negotiated away. Such withdrawal would in turn have resulted in erosion of support by other Committee members.

Conclusion:

For the reasons discussed above, we will encounter difficulty in obtaining product liability legislation that reflects our views. In terms of determining an Administration position, we have done all we can with the CCCT. Your continuing to manage this issue in that forum will require a major commitment of time and resources, and will provide no better result than last year.

However, the business community places enactment of product liability legislation high on its agenda, and the Commerce Department should continue to play a key role. At this juncture, we can best play this role by advancing passage of product liability legislation through the standard OMB legislative clearance process. This process is tailor-made to hashing out inter-agency differences of opinion on issues that have been around a long time. Many of the differences can be resolved in this process at the Staff level and so conserving Secretarial involvement for critical decisions. Your personal involvement need not necessarily be reduced, and the Department will be better situated to respond to problems as they arise.

September 9, 1982

Honorable Robert W. Kasten, Jr.  
Chairman, Subcommittee on Consumer  
Committee on Commerce, Science and  
Transportation  
United States Senate  
Washington, D.C. 20510

Dear Bob,

As Chairman Pro Tempore of the Cabinet Council on Commerce and Trade, which has been charged by the President with responsibility for reviewing all matters within the Executive Branch pertaining to Federal legislation on product liability, I am pleased to provide you with the Administration's position on the August 2, 1982 Staff Working Draft of S. 2631, the Product Liability Act.

On the whole, the draft fairly and equitably balances the rights and obligations of all interested parties and should contribute significantly to ending the product liability crisis currently facing so many companies. By establishing clear and uniform standards of responsibility and by placing liability on the party best able to protect against the harm, it should increase predictability, ensure that injured persons receive fair compensation, promote safety and reduce transaction costs.

In addition, the draft is generally consistent with the basic principles which the President established to guide the Cabinet Council in implementing his decision of July 15 to support the concept of Federal legislation establishing uniform product liability standards. These were that there be no changes in jurisdiction, no new Federal enforcement powers or machinery, and no changes to unrelated areas of law, such as Worker Compensation.

The Cabinet Council's review, however, did identify a number of areas in the August 2, 1982 Staff Working Draft of S. 2631 which the Administration believes should be clarified, modified, or deleted. Section 11 of the bill (EFFECT OF WORKER COMPENSATION BENEFITS) raises extremely difficult issues of fairness because of differences between the rules and procedures in product liability law and those in worker compensation schemes. The Administration seriously questions whether or not Section 11 represents an equitable solution for employees, employers and manufacturers. We look forward to a legislative solution on this issue.

I appreciate your willingness to compromise on many of these issues and will be pleased to assist you in drafting the language necessary to implement these recommendations. All of us in the Administration are grateful to you for your leadership on this important initiative. I want to assure you of our continued assistance and urge prompt consideration of S. 2631 by the full Committee.

Sincerely,



Secretary of Commerce

Areas of Disagreement Between  
the Administration and S. 2631

I. Worker Compensation

S. 2631 contained provisions, not supported by the Administration, that would:

- reduce employees' product liability damages by the amount attributable to employer negligence,
- prohibit actions by manufacturers against employers,
- prohibit subrogated actions against manufacturers, employers and their insurance carriers, and
- prohibit actions by employees covered by worker compensation plans against their employers.

Each of these provisions would to some extent overrule existing state laws, to the benefit of manufacturers and employers and at the expense of injured employees. In addition, they arguably go beyond the limits of the Administration policy on product liability in that they would have indirect effects on the operation of state -- and federal -- worker compensation laws.

In your letter of September 9, 1982, to Senator Kasten, you indicated that these provisions raised "extremely difficult issues of fairness".

II. Preemption of State Law

The Administration urged clarification of provisions in S. 2631 providing for the preemption of state law with respect to "matters governed by this Act". The Administration's concern was that these could have an undue impact on the vitality of state tort law. This result would be inconsistent with the Administration's principles of federalism. The Kasten bill retains these provisions without change.

III. Collateral Estoppel

The Administration recommended the deletion of provisions barring the use of the doctrine of collateral estoppel in product liability actions. Under this doctrine, it is

possible to establish a fact by showing that a previous court had accepted it, without relitigating the issue. Clearly, use of the doctrine operates in favor of plaintiffs in those instances where the causes of injuries are complex and proof is expensive and difficult. The Department of Justice opposed a prohibition of the use of this rule because it found insufficient evidence that a problem existed in this area for which a federal solution was appropriate.

#### IV. Jury Determination of Punitive Damages

The Administration opposed provisions removing from the jury the responsibility of setting punitive damages in product liability action. S. 2631 provided that while the jury would determine whether or not such damages were called for, the actual amount of such damages would be determined by the trial judge. This provision responded to the concerns of product liability defendants that punitive damage awards were excessive, and that juries were unduly swayed by prejudicial evidence. The Administration position reflected the strongly held view of the Department of Justice that there was no evidence of the existence of a national problem in this area, and furthermore that, in light of the quasi-criminal nature of punitive damages, a jury trial on the issue may be required by the Constitution.



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

GENERAL COUNSEL

July 26, 1983

MEMORANDUM

TO: Jim Cicconi  
FROM: Robert Willmore *Willmore*  
SUBJECT: S. 44, Product Liability Act

Attached are the following materials on Senator Kasten's Product Liability Act (S. 44).

- (1) A letter of July 20, 1983, from Baldrige to Packwood expressing Administration support for S. 44 (similar letters sent to Kasten and Hollings).
- (2) A letter of June 24, 1983, from Packwood, Hollings and Kasten to Stockman requesting the Administration position on S. 44 (similar letters sent to Commerce, Justice, Transportation, Labor and CEA).
- (3) A note of June 28, 1983, from Kasten to Stockman regarding the June 24th letter.
- (4) An article from the National Journal of June 4, 1983, describing the events that lead to the the June 24th letter.

There have been some suggestions that the Administration's position on S. 44 should be tied to its on-going efforts involving toxic torts and compensation for exposure to toxic substances. It is our judgment that relating the two efforts could be used by opponents of the bill to substantially delay consideration of S. 44 in the Senate.

I will be meeting in the near future with the agencies (primarily Justice and Labor) that still have concerns regarding S. 44 to identify whether and how those concerns should be discussed with Kasten's staff. Kasten has indicated that he wants his staff to meet with the agencies prior to Committee mark-up.

Please do not hesitate to give me a call if you have any questions.

Attachments



THE SECRETARY OF COMMERCE  
Washington, D.C. 20230

JUL 20 1983

Honorable Bob Packwood  
Chairman  
Senate Committee on Commerce,  
Science and Transportation  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

On behalf of the Administration, I am replying to your recent letters to the Attorney General, the Secretaries of Labor, and Transportation, the Director of OMB, the Chairman of the Council of Economic Advisers and me which requested our views on the need for federal product liability legislation, the wisdom of federal preemption of state product liability laws, and the approach to federal product liability law taken by the "Product Liability Act" introduced by Senator Kasten.

Last year the Administration, through the Cabinet Council on Commerce and Trade, carefully reviewed the need for federal product liability legislation, as well as the basic principles that such legislation should incorporate. The Administration's position on the need for federal product liability legislation, and its conclusions regarding the provisions of Senator Kasten's bill, are embodied in my letter of September 9, 1982, to Senator Kasten.

In that letter, I indicated that the "Product Liability Act" "fairly and equitably balances the rights and obligations of all interested parties and should contribute significantly to ending the product liability abuses currently facing so many companies." I also noted that the bill "is generally consistent with the basic principles which the President established to guide the Cabinet Council in implementing his decision of July 15 to support the concept of Federal legislation establishing uniform product liability standards."

There is nothing in the latest draft of the "Product Liability Act" that diminishes our support for federal product liability legislation or the approach taken by Senator Kasten's bill. The Administration continues to support the enactment of federal product liability legislation, and believes that the "Product Liability Act" reflects the basic principles any such legislation should incorporate.

*Robert Williams*

The Administration believes that federal product liability legislation is consistent with the principles of federalism. Because of the interstate movement of products, any one state's product liability law uniquely affects producers and consumers throughout the entire nation. Presently, however, state forums cannot entirely balance the diverse and competing interests in this area -- including the interests of interstate commerce. Thus, manufacturers and consumers in one state may find their own choices limited by the product liability law of another state, even though they may have no opportunity to participate in the latter state's lawmaking process. Moreover, because states ultimately realize that they cannot in their product liability law protect their own manufacturers, but can only advance the interests of those citizens who may be potential plaintiffs, state product liability law may at times be skewed in a manner that does not reflect the actual interests involved. The availability of a federal forum to balance all these competing interests thus is consistent with the aims of federalism. These considerations argue strongly for federal legislation in the product liability area.

Our review of the latest draft of Senator Kasten's "Product Liability Act" has revealed some questions regarding the technical adequacy and the effects of certain of its provisions. But none of these considerations jeopardize the Administration's support for the approach taken by Senator Kasten's "Product Liability Act", and our confidence that our questions can be resolved quickly.

This Congress presents a real opportunity for the enactment of federal product liability legislation. We hope that this opportunity can be realized, and we urge you to proceed with consideration of this important piece of legislation as expeditiously as possible.

I have been advised by the Office of Management and Budget that there is no objection to the submission of this letter to the Congress from the standpoint of the Administration's program.

Sincerely,



Secretary of Commerce

Identical Letter Hand Delivered to: Honorable Ernest Hollings  
Honorable Robert Kasten

cc: Secy  
ES, HR, GC, TC  
Bill Maxwell, Mike Horowitz, Wendell Gunn, Bill Niskanen, Alden Abbott (DOJ)  
Geoffrey Stewart (DOJ), Peter Galvin (Labor), Bob Coplan (Labor),  
Jeffrey Miller (Transportation), Harry Katriches (SBA), Robert Willmore (OMB)

BOB PACKWOOD, OREG., CHAIRMAN  
HARRY GOLDWATER, ARIZ.  
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NANCY LONDON KASSEBAUM, KANS.  
LARRY PRESSLER, S. DAK.  
SLADE GORTON, WASH.  
TED STEVENS, ALASKA  
BOB KASTEN, WIS.  
PAUL S. TRIBLE, JR., VA.  
ERNEST F. HOLLINGS, S.C.  
RUSSELL B. LONG, LA.  
DANIEL K. INOUE, HAWAII  
WENDELL H. FORD, KY.  
DONALD W. RIEGLE, JR., MICH.  
J. JAMES EXON, NEBR.  
HOWELL HEFLIN, ALA.  
FRANK R. LAUTENBERG, N.J.  
WILLIAM M. DIFENDERFER, CHIEF COUNSEL  
RALPH B. EVERETT, MINORITY CHIEF COUNSEL

# United States Senate

COMMITTEE ON COMMERCE, SCIENCE,  
AND TRANSPORTATION

WASHINGTON, D.C. 20510

June 24, 1983

The Honorable David A. Stockman  
Director  
Office of Management  
and Budget  
Executive Office Building  
Washington, D.C. 20503

Dear Director Stockman:

During the last session of the 97th Congress, the Committee was pleased to receive testimony from Secretary of Commerce Baldrige on the general concept of Federal product liability legislation. Subsequently, on July 15, 1982 the full Cabinet directed the Cabinet Council on Commerce and Trade, chaired by Secretary Baldrige, to form a working group to study the merits of S. 2631, the "Product Liability Act." By letter of September 9, 1982, Secretary Baldrige wrote to Senator Kasten indicating that the Cabinet Council working group had identified a number of areas in S. 2631 which the Administration believed should be clarified, modified or deleted.

As you know, S. 2631 was subsequently amended in accordance with a number of the Administration's recommendations and was then reported favorably from the Senate Committee on Commerce, Science and Transportation on October 1, 1982. On January 26, 1983 Senator Kasten reintroduced the "Product Liability Act" (S. 44), a bill identical to S. 2631 reported by the Committee.

Recently, it has been reported that the Administration is divided at this time concerning the desirability of Federal product liability legislation. We are therefore requesting your comments on the need for Federal legislation in this area, the wisdom of Federal preemption of state product liability laws, and the approach taken by S. 44. In addition, we would appreciate your views on the following specific provisions:

- (1) the standards of responsibility relating to products that may be unreasonably dangerous in design or because of a failure to warn;

DIRECTOR  
OFFICE OF MANAGEMENT  
AND BUDGET

JUN 28 10:22

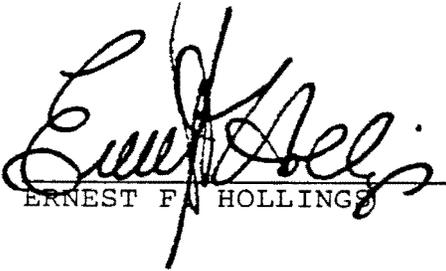
161-29

The Honorable David A. Stockman  
Page 2  
June 24, 1983

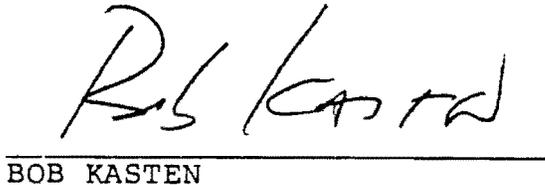
- (2) the elimination of subrogation and indemnification rights and the potential cost to the Federal government;
- (3) the requirement that judges, rather than juries, determine punitive damage awards in product liability actions;
- (4) the statute of repose for capital goods;
- (5) the elimination of collateral estoppel in product liability actions;
- (6) the standard of responsibility for retailers and distributors;
- (7) the treatment of liability where more than one defendant is responsible for harm; and
- (8) the expansion of the definition and application of the defenses of misuse, alteration, modification, contributory negligence, and assumption of risk.

Thank you for your cooperation. We look forward to receiving your response as quickly as possible.

Cordially,

  
ERNEST F. HOLLINGS

  
BOB PACKWOOD

  
BOB KASTEN

RECEIVED  
UNITED STATES SENATE  
WASHINGTON, D. C.

ROBERT W. KASTEN, JR. JUN 29 A 8:39  
WISCONSIN

June 28, 1983

SENATOR'S  
CORRESPONDENCE UNIT

Dear Dave:

On Monday, June 27, a letter co-signed by Senators Packwood, Hollings and myself was delivered to your office regarding my product liability bill.

Last year the Administration supported S. 2631 which is identical to the current legislation S. 44.

It's my hope, Dave, that we can receive your input by July 15 but hopefully not later than July 29. There is substantial interest among my colleagues in moving S. 44 through the Senate this session.

I appreciate your cooperation in this effort, and will call you personally - very soon.

Best regards,

*RW*

The Honorable  
David A. Stockman  
Director, Office of  
Management and Budget  
Executive Office Building  
Washington, D.C. 20503

X ref. 16129  
L.R.D.  
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## REGULATION

### Administration questions product liability bill

Few were surprised when consumer and labor lobbyists began blasting away this spring at a bill that would replace the patchwork of state product liability laws with a single, sweeping federal statute. After all, the most pointed criticism of the measure is that it would free businesses of much liability for the injuries that their products cause to workers and consumers.

What may be surprising is that the normally pro-business Reagan Administration shares at least some of those doubts. Evidence can be found in an internal Commerce Department memo, now circulating on Capitol Hill, which depicts an Administration "deeply divided" on both the need for federal legislation and the merits of the Senate proposal.

The product liability bill (S 44), sponsored by Sen. Robert W. Kasten Jr., R-Wis., is expected to reach a committee vote this summer. The legislation is similar to a bill that won the Administration's support and passed the Commerce, Science and Transportation Committee on a voice vote last year but died when Congress adjourned.

The Commerce Department memo, sent on April 20 to Secretary Malcolm Baldrige, indicates that the Administration still supports passage of federal legislation, a position taken by President Reagan last July 15 in a session of the Cabinet council on commerce and trade.

But the Commerce memo outlines

four major differences between the legislation favored by Reagan and the provisions of the Kasten bill.

In its present form, the Kasten bill would replace state tort laws with a set of procedural steps that plaintiffs would have to clear before winning a product liability suit. Under most current state laws, a person injured by a defective product can collect damages merely by proving that the product was unreasonably dangerous. (See *NJ*, 4/9/83, p. 748.)

The bill would also revise state laws governing workplace injuries, primarily by reducing a worker's award in a liability suit by the amount collected under workers' compensation.

According to the Commerce memo, some Administration experts—principally in the Justice Department and the Office of Management and Budget—believe that the Kasten measure goes too far both in preempting state tort laws and in tinkering with workplace-related suits. Specifically, the memo objects that:

- workplace-injury provisions in the bill "arguably go beyond Administration policy" by overriding state and federal worker compensation laws;
- the bill's broad preemption of state product liability law "could have an impact on the vitality of state tort law" and run counter to the Administration's policy of federalism;
- the provision barring the use of collateral estoppel in product liability suits, by which the parties in a trial may establish a fact by showing that another court had accepted the fact, is based on "insufficient evidence that a problem exists";
- a clause that would let trial judges—not juries—set the size of awards in

product liability trials raises constitutional questions and is not supported by evidence of a national problem needing correction.

Removing those thorns from the Kasten bill may be difficult, the memo states, because each provision is supported by a business interest, and "the deletion of any provision at the insistence of the Administration will necessarily be seen as an attempt to defeat the legislation."

The Commerce Department issued a statement saying that "it continues to be the position of this Administration that uniform product liability legislation is needed." And the Administration's endorsement of the Kasten bill, offered last September in a letter from Baldrige to Kasten, still stands, the department stated.

Privately, a Commerce official called the revelations of internal debate "embarrassing" but noted that such debates occur on almost all issues.

A Senate staff member said Kasten had already agreed to 16 Administration-backed changes in the legislation and had declined to make the 4 others because he viewed the issues as important to the intent of the bill. The Senate staff and the Administration are working toward compromises on the four sticking points, the staff member said.

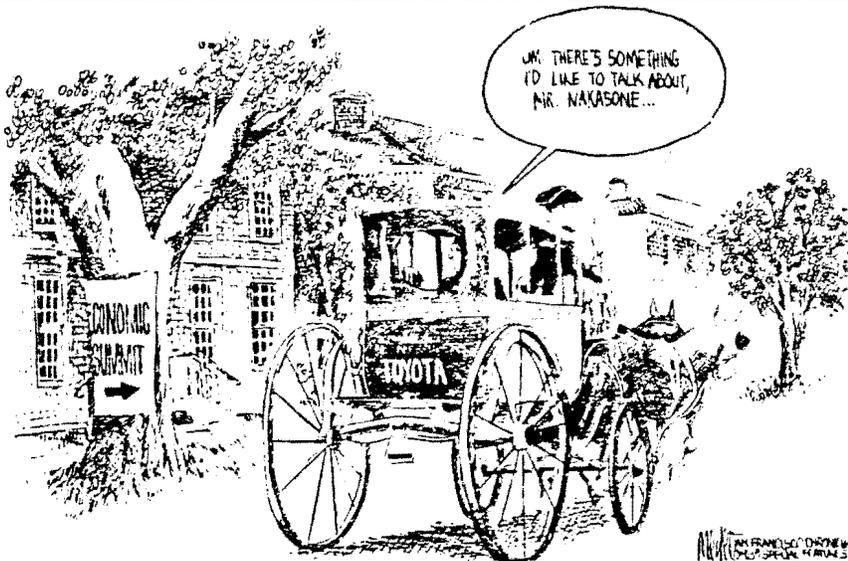
Even if the Administration's qualms are smoothed over, the Commerce Committee is reported to be split on the issue, with Kasten dependent on the backing of chairman Bob Packwood, R-Ore., to win committee approval. So far, Packwood has not taken a stand.—Michael Wines

## POLITICS

### Early disclosure sought for independent spending

People for the American Way, an organization founded by Norman Lear that opposes independent expenditures in federal elections, has proposed that political action committees (PACs) making such spending should inform the Federal Election Commission and the candidates against whom the expenditures are made at the time the advertising is ready to be placed.

Intensive pre-election concentration of negative spending "leaves little or no opportunity for the voters to question the veracity of the charges or for the attacked candidates to respond," said executive director Anthony T. Podesta. (See *NJ*, 4/16/82, p. 782.)





*OMB  
memos*

4790

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET

ASSISTANT DIRECTOR  
FOR LEGISLATIVE AFFAIRS

May 10, 1983

NOTE FOR JIM CICCONI

FROM: MIKE HUDSON

A handwritten signature in dark ink, appearing to read "MH", written over the name "MIKE HUDSON".

SUBJECT: PRESIDENTIAL LIBRARIES BILL

Per our discussion, attached is correspondence on last year's bill, S. 1325.

As soon as I can obtain a copy of this year's version, I will forward it over to you.

The Chiles bill, S. 563, has 15 cosponsors.



U. S. Department of Justice  
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

NOV 03 1982

Honorable William V. Roth, Jr.  
Chairman, Committee on  
Governmental Affairs  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

This letter presents the views of the Department of Justice on sections 101, 102 and 303(c) of S. 1325, a bill "to reform the laws relating to former Presidents." We understand that the Department of Treasury, the General Services Administration and the Office of Management and Budget have previously communicated with you concerning this legislation. Our comments are confined to the constitutional issues raised by S. 1325.

The Department of Justice strongly opposes enactment of this legislation.

Title I - Section 101

Title I contains a number of legislative veto provisions which impermissibly interfere with the powers vested in the President by the Constitution. In brief, Title I provides that the Administrator of General Services (Administrator) may accept as a gift or establish by agreement a presidential library for each former President. The Administrator is required to submit a prospectus for the proposed presidential library to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives. The Administrator would be authorized to accept or establish a presidential library unless within 60 days of the submission of the prospectus both the House and Senate Committees adopt resolutions disapproving the prospectus. If the proposed library fails to comply with architectural and design standards promulgated by the Administrator pursuant to the bill, however, it would be necessary, in addition, that the Congress adopt a concurrent resolution approving the acceptance or establishment of such a library. A similar mechanism is established to govern proposed changes in, or additions to, existing presidential libraries.

Thus, this bill would provide: (1) that the affirmative vote of both committees would be sufficient to disapprove a prospectus and thereby prohibit the Administrator from proceeding with the acceptance or establishment of a presidential library under authority which he would otherwise possess; and (2) that a concurrent resolution of approval would authorize the Administrator to proceed with the acceptance or establishment of a library despite the fact

that he would not otherwise enjoy the discretion to do so. In both cases, the congressional action -- taken by joint action of two committees or both Houses would have the effect of altering the discretion otherwise vested in the Administrator by law, in the one case by limiting that discretion and in the other by extending it. Substantive modifications of these types in a statutory delegation of discretionary authority to an Executive Branch official have the force and effect, even if not the traditional form, of legislation. Under Article I, § 7, cls.2 and 3 of the Constitution, all congressional actions having the force and effect of legislation must be presented to the President for his approval or veto. However, in neither case does the bill require presentation to the President: in the one, the action of two congressional committees is thought to be sufficient; in the other, the joint action of both Houses is required but presidential approval or veto is not provided for. The bill therefore unconstitutionally infringes on the role of the President in the legislative process that is established by the Constitution.

Moreover, this bill would impermissibly interfere with the President's power and responsibility to execute the law, in violation of the principle of separation of powers. It permits Congress, through the affirmative vote of two committees, to prohibit the President, through the Administrator, from taking certain actions to execute the law. The bill would establish the two committees as partners with the Administrator in determining whether a proposed presidential library is in the "public interest" or "proper" as those terms are used in the bill. This is pure execution of the law, and therefore is beyond the power of Congress to delegate either to its committees or its Houses. It is, of course, within Congress' power to pass bills or joint resolutions authorizing or disapproving projects in individual cases. Such bills or joint resolutions would have legal effect if approved by the President or if passed over the President's veto. As mentioned above, however, Title I does not require that the congressional action be in the form of legislation presented to the President for approval or veto.

We note that the Department's legal position regarding such provisions has been embraced by the Court of Appeals for the District of Columbia Circuit. See Consumers Union of the United States v. Federal Trade Commission, No. 82-1737 (D.C. Cir., Oct. 22, 1982) (en banc); Consumer Energy Council of America v. Federal Energy Regulatory Commission, 673 F.2d 425 (D.C. Cir. 1982), pending before the Supreme Court as Nos. 81-2008, 81-2020, 81-2151, 81-2171, 82-177 and 82-209. Under these decisions, such legislative veto devices are clearly unconstitutional. See also Chadha v. Immigration

and Naturalization Service, 634 F.2d 208 (9th Cir. 1980), pending before the Supreme Court as Nos. 80-1832, 80-2170 and 80-2171 (argued Feb. 22, 1982). 1/

### Title III - Section 303

Section 303 of S. 1325 authorizes the Secretary of the Treasury to provide for the extension or reinstatement of protection to a former President, his spouse or children beyond the period provided for in section 302(b) of S. 1325. Section 303(a) permits the Secretary of the Treasury to authorize protection for a period of one year in the case of a former President and six months in the case of a former President's spouse or minor child upon a finding that "a serious threat warranting such protection exists." However, protection can be extended beyond these initial periods only upon:

the written request of the individual desiring such protection and upon the approval of the advisory committee established by the first section of the joint resolution entitled "A joint resolution to authorize the United States Secret Service to furnish protection to major Presidential or Vice Presidential candidates" approved June 6, 1968 (82 Stat. 170; 18 U.S.C. 3056 note). (Emphasis added)

The advisory committee referred to in the quoted language of section 303(a)(2) consists of the Speaker of the House, the minority leader of the House of Representatives, the majority leader of the Senate, the minority leader of the Senate and one additional member selected by other members of the advisory committee. The evident intent of this provision is that the advisory committee should play an active and possibly determining role in providing for extensions of Secret Service protection to former Presidents and their families.

1/ We note that the D.C. Circuit's decision in Federal Energy Regulatory Commission, supra, is presently before the Supreme Court on jurisdictional statements filed by several intervenors in that case as well as on petitions for a writ of certiorari filed recently by counsel for the Senate and House of Representatives. The Solicitor General has filed appropriate papers with the Supreme Court in support of the judgment of the Court of Appeals.

It is fundamental that officers who perform Executive duties must be appointed pursuant to the Appointments Clause of the Constitution. Art. II, section 2, cl. 2, Buckley v. Valeo, 424 U.S. 1 (1976). Those who are vested with authority that amounts to "the performance of a significant governmental duty exercised pursuant to a public law," Buckley v. Valeo, supra at 141, must be appointed in a manner consistent with that clause. In brief, such individuals must be appointed by the President by and with the advice and consent of the Senate, or if authorized by Congress, by the President alone, the courts or the heads of departments. Buckley v. Valeo, supra, at 124-41.

The Secret Service, as part of the Department of the Treasury, is an Executive Branch agency. It carries out basic law enforcement activities assigned to it by federal law. To the extent that the advisory committee, which consists of members of the Legislative Branch, will exercise effective control over decisions about Secret Service activities and thus will perform significant Executive functions, section 303 of S. 1325 is constitutionally objectionable. This is the case because the advisory committee members are not appointed in a manner consistent with the Appointments Clause.

We would add that 303(c)(1) establishes an "Advisory Panel on Secret Service Protection," the nine members of which are appointed by the Comptroller General. The role of the Advisory Panel appears to be limited to making recommendations, and not exercising "significant Executive functions." To the degree that the Advisory Panel's functions are so limited, the objections raised to the advisory committee are not pertinent to the panel.

#### Title I - Section 102

Section 102 of S. 1325 would amend present law, 44 U.S.C. 2203(c), to read as follows:

"(c) During his term of office, the President shall substantially complete the disposal of his Presidential records which no longer have administrative, historical, informational, or evidentiary value. Prior to disposing of any such records, the President shall obtain the written views of the Archivist concerning the proposed disposal of such Presidential records and may not dispose of any records with respect to which the Archivist notifies the President that he intends to take action under subsection (e)."

Present 44 U.S.C. 2203(c) is similar to section 102 and provides:

(c) During his term of office, the President may dispose of those of his Presidential records that no longer have administrative, historical, informational, or evidentiary value if -

(1) the President obtains the views, in writing, of the Archivist concerning the proposed disposal of such Presidential records; and

(2) the Archivist states that he does not intend to take any action under subsection (e) of this section.

Section 102, like present law, appears to place in the Archivist the authority to make decisions concerning disposal of Presidential records. We believe that both the present and proposed provision must assume that the Archivist, in performing this function, is guided by the President and subject to his authority.

The Archivist is an appointee of the Administrator of the General Services Administration. See 44 U.S.C. 2102. The Administrator is himself a Presidential appointee who occupies a position within the Executive Branch and serves at the pleasure of the President, see 40 U.S.C. 751(b), as do other heads of Executive departments and agencies. As is true in general regarding such officials, they are ultimately responsible to the President and the President may instruct them in the performance of their duties in a manner consistent with applicable law.

Officials, such as the Archivist, who perform Executive functions must report ultimately to the heads of their respective departments and agencies, who, in turn, must report to the President. In order to fulfill his constitutional duty to take care that the laws are faithfully executed, the President must be able to supervise the execution of the laws within the Executive Branch. This follows from the principle, embodied in Article II of the Constitution, that the Executive power is vested in the President. See Myers v. United States, 272 U.S. 52, 163-64 (1926). In order to be consistent with the Constitution, section 102 must be interpreted to recognize the principle that the President is the ultimate authority in determining the disposal of records.

#### SUMMARY

In summary, for the above reasons, the Department of Justice strongly opposes enactment of S. 1325.

The Office of Management and Budget has advised this Department that there is no objection to this report from the standpoint of the Administration's program.

Sincerely,

SIGNED

Robert A. McConnell  
Assistant Attorney General -

*James memo*



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

April 22, 1983

MEMORANDUM FOR: EDWIN MEESE III  
JAMES A. BAKER III  
DAVID A. STOCKMAN

FROM: FREDERICK N. KHEDOURI *FK*  
ALTON G. KEEL, JR.

SUBJECT: Budget Review Board Consideration of  
Department of Agriculture Request for  
Additional FY 1983 Funding

Agency Request:

- USDA is requesting increased authority for the balance of FY 83 in each of its three major export-related programs: CCC direct loans and loan guarantees and P.L. 480 concessional sales:

<u>Program</u>	<u>Current Budget</u> (OMB Rec.)	<u>USDA Add-On</u>	<u>Proposed Total</u>
Direct Loans	\$350M	+\$100M	\$450M
Guaranteed Loans	\$4800M	+\$1626M	\$6426M
P.L. 480 Title I	<u>\$859M</u>	<u>+\$419M</u>	<u>\$1278M</u>
Total	\$6009M	+2145M	\$8154M

OMB Recommendation:

- OMB recommends adhering to the Current Program, which already reflects an increase since the beginning of the fiscal year of \$350 million in direct loans for blended credits along with \$1.4 billion in guarantees.

Arguments in Support of Agency Recommendation:

- The \$100 million increase in direct loans is matched with \$400 million in additional guarantees to expand the "blended credit" program begun last October.
- The program has been extremely popular and has accomplished its goal of promoting farm exports.

- The remaining \$1.226 billion in loan guarantee authority is necessary for two reasons: \$480 million will be used to match with direct loans made out of the existing \$350 million in blended credit direct loans; the balance is to meet increased demand for loan guarantees caused by the weak credit of certain traditional U.S. market countries.
- The additional P.L. 480 concessional sales will maintain U.S. markets and dispose of U.S. surpluses.

#### Arguments in Support of OMB Recommendation:

- Direct loans for blended credit were approved at a \$100 million level for FY 83 last October with a \$400M increase in guarantees; this direct loan level has already been increased by \$250 million at USDA's request in January with another \$1.0B increase in guarantees.
- So long as subsidized sales represent a small fraction of U.S. agricultural exports (about 5 percent before this year), demand for subsidies in the form of direct and guaranteed loans will be almost infinite; we must be able to simply draw a line and say "this is what we budgeted and this is what is available."
- The P.L. 480 sales are not supported by the necessary planning in the field, are not needed in some cases, would probably take export markets from some key U.S. aid recipients, and would subvert foreign policy objectives in certain countries.
- Many of the countries that USDA proposes to assist with the guarantees and P.L. 480 represent very bad credit risks at present.
- This means that we should expect a significant share of the loans to default, which will create huge additional outlays in two to three years.

#### Funding History

<u>Program</u>	<u>FY 80</u>	<u>FY 81</u>	<u>FY 82</u>	<u>FY 83</u>
CCC Export Direct Loans.....	720	--	--	350
CCC Export Guaranteed Loans.	740	1500	1625	4800
P.L. 480 Title I...	<u>908</u>	<u>846</u>	<u>832</u>	<u>859</u>
Total.....	2368	2346	2457	6009

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

March 28, 1983

f OMB memos

TO: JOE WRIGHT  
FROM: Pete Modlin *cpm*  
SUBJECT: Grants: Discretionary and non-discretionary

You asked for a list for tomorrow's Senior Staff Meeting of grants classified by those that are discretionary and those that are non-discretionary.

The best way to provide the information in the time available is to list all grants and identify on the list those grants that are non-discretionary. The attached table from Special Analysis H, "Federal aid to State and local governments," is a list of grant programs and the outlays and budget authority amounts for them for fiscal years 1982-1984. The table is annotated to identify those that are non-discretionary.

"Non-discretionary" in this context means "entitlement and other mandatory programs." Most of the "other mandatory programs" are financed from permanent appropriations and, generally, the use of the funds is dictated by substantive legislation.

The list of non-discretionary programs is relatively short and, in fact, consists of the following.

- o Entitlement (Identified by "E" in the table)
  - Medicaid
  - Child nutrition
  - Supplementary security income (a very small amount)
  - AFDC
- o Other mandatory programs (Identified by "M" in the table)
  - Fish and Wildlife Service grants, which are earmarked receipts;
  - Commodity Credit Corporation (commodity distribution);
  - National recreational boating safety, which are earmarked receipts;
  - Regional development commissions, which are being phased out;

- General revenue sharing;
- and a series of earmarked receipts that are paid to States and localities:
  - . Forest service,
  - . Corps of Engineers,
  - . Bureau of Land Management,
  - . Payments to U.S. territories,
  - . U.S. Customs Service collections paid to Puerto Rico, and
  - . IRS revenue collections paid to Puerto Rico.

This classification ignores payments resulting from prior year obligations of appropriated funds. The payment of these funds is, of course, non-discretionary, but new budget authority for these programs is not.

Attachment

cc: Don Moran  
Dave Gerson

Table H-11. FEDERAL GRANTS TO STATE AND LOCAL GOVERNMENTS—OUTLAYS AND BUDGET AUTHORITY

(In millions of dollars)

1982 actual	1983 estimate	1984 estimate	Function, agency and program	Func- tional code	1982 actual	1983 estimate	1984 estimate
<b>OUTLAYS</b>			<b>BUDGET AUTHORITY</b>				
			<b>National defense:</b>				
			Department of Defense—Military:				
29	30	30	National Guard centers construction.....	051	29	30	30
39	46	73	Federal Emergency Management Agency.....	054	80	91	141
<b>68</b>	<b>76</b>	<b>103</b>	<b>Total, national defense.....</b>	<b>050</b>	<b>109</b>	<b>121</b>	<b>171</b>
			<b>Energy:</b>				
			Energy Activities: Energy conservation grants.....	272			
346	404	174	Tennessee Valley Authority.....	271	129	176	75
163	188	193					
<b>509</b>	<b>592</b>	<b>368</b>	<b>Total, energy.....</b>	<b>270</b>	<b>129</b>	<b>176</b>	<b>75</b>
			<b>Natural resources and environment:</b>				
			Department of Agriculture:				
144	91	15	Watershed and flood prevention operations.....	301	140	65	28
13	7	7	Resource conservation and development.....	302	11	3	
10	5	4	Forest research.....	302	10	5	5
32	33	2	State and private forestry.....	302	34	35	
			Department of Commerce:				
33	15	11	NOAA—Coastal zone management.....	302	3	4	
50	68	12	NOAA—Operations research and facilities.....	306	50	68	12
			Department of the Interior:				
148	163	168	Fish and Wildlife Service Grants.....	303	157	153	171
1	1		Operation of the National Park System.....	303			
1	2		National recreation and preservation.....	303		2	
2	7		Park Construction.....	303	2	7	
31	36	30	Urban park and recreation fund.....	303	8		
211			Land and water conservation fund.....	303			

See footnotes at end of table

SPECIAL ANALYSIS H

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Table H-11. FEDERAL GRANTS TO STATE AND LOCAL GOVERNMENTS—OUTLAYS AND BUDGET AUTHORITY—Continued

(In millions of dollars)

1982 actual	1983 estimate	1984 estimate	Function, agency and program	Func- tional code <sup>1</sup>	1982 actual	1983 estimate	1984 estimate
	197	169	Land acquisition.....	303	6	5	
36	24	14	Historic preservation fund.....	303	25	26	
*	*	*	Miscellaneous permanent appropriations.....	303	*	*	*
66	62	109	Office of Surface Mining, Reclamation, and Enforcement.....	302	84	165	232
6	11	1	Bureau of Mines.....	306	9		
6	*		Youth conservation corps.....	302			
			Environmental Protection Agency:				
320	250	241	Abatement, control, and compliance.....	304	239	233	173
3,756	3,100	2,800	Sewage treatment plant construction grants.....	304	2,400	2,430	2,400
3	37	75	Hazardous substance response trust fund.....	304	32	58	95
<b>4,871</b>	<b>4,110</b>	<b>3,658</b>	<b>Total, natural resources and environment.....</b>	<b>300</b>	<b>3,209</b>	<b>3,259</b>	<b>3,115</b>
			<b>Agriculture:</b>				
			Department of Agriculture:				
129	132	136	Cooperative State research service.....	352	92	98	96
307	328	295	Extension service.....	352	316	329	287
548	937	688	Commodity Credit Corporation.....	351	548	937	720
1	2	0	Agricultural Marketing Service.....	352	1	1	0
<b>986</b>	<b>1,399</b>	<b>1,119</b>	<b>Total, agriculture.....</b>	<b>350</b>	<b>957</b>	<b>1,364</b>	<b>1,103</b>
			<b>Commerce and housing credit:</b>				
1	1		Department of Agriculture: Rural housing supervisory assistance grants.....	371			
2	2	2	Department of Commerce: Minority business development.....	376	2	2	2
<b>3</b>	<b>3</b>	<b>2</b>	<b>Total, commerce and housing credit.....</b>	<b>370</b>	<b>2</b>	<b>2</b>	<b>2</b>
			<b>Transportation:</b>				
			Department of Transportation:				
8	15	11	Highway beautification.....	401	1	1	0
16	269	389	Interstate transfer grants—highways.....	401	401	518	0

7,590	8,216	11,303
21	12	13
		9
		4
130	80	71
138	119	122
80	207	25
3,782	3,740	3,416
	55	242
339	527	745
	5	15
2	3	3
65	66	67
<b>12,171</b>	<b>13,315</b>	<b>16,436</b>

304	248	201
•	1	
110	133	132
3	1	•
210	208	165
6	5	2
3	3	2
323	235	147
40	30	30
•		
10	8	5
16	3	1
1	5	4
10		
<b>3,792</b>	<b>3,525</b>	<b>3,526</b>

See footnotes at end of table

Federal aid highways (trust fund).....	401	8,137	12,425	13,542
Highway related safety grants.....	401	10	•	10
Motor carrier safety grants.....	401			10
Appalachian highway system.....	401			79
Other highway aid.....	401	27	3	0
National Highway Traffic Safety Administration.....	401	203	141	148
Federal Railroad Administration.....	401	70	2	
Urban mass transportation fund.....	401	3,464	3,494	2,600
Mass transportation capital fund.....	401		779	1,250
Airport and airway trust fund.....	402	476	800	994
National recreational boating safety.....	403		45	45
Research and special programs.....	407	2	4	4
Washington Metropolitan Area Transit Authority.....	401	52	52	52
<b>Total, transportation.....</b>	<b>400</b>	<b>12,843</b>	<b>18,263</b>	<b>18,732</b>
<b>Community and regional development:</b>				
<b>Funds appropriated to the President:</b>				
Appalachian regional development programs.....	452	150	150	
Appalachian housing fund.....	452			
Disaster relief.....	453	150	78	
<b>Department of Agriculture:</b>				
Rural development planning grants.....	452			
Rural water and waste disposal grants.....	452	125	125	90
Rural development grants.....	452			
Rural community fire protection grants.....	452	3	3	
<b>Department of Commerce:</b>				
Economic development assistance programs.....	452	199	10	
Local public works program.....	452			
Drought assistance program.....	453			
Regional development programs.....	452			
Regional development commissions.....	452			
NOAA: Coastal energy impact fund.....	452			
<b>Energy Activities:</b>				
Energy conservation grants.....	452			
<b>Department of Housing and Urban Development:</b>				
Community development grants.....	451	3,456	3,456	3,500

SPECIAL ANALYSIS H

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Table H-11. FEDERAL GRANTS TO STATE AND LOCAL GOVERNMENTS—OUTLAYS AND BUDGET AUTHORITY—Continued

(In millions of dollars)

1982 actual	1983 estimate	1984 estimate	Function, agency and program	Func- tional code	1982 actual	1983 estimate	1984 estimate
101	71	50	Urban renewal programs.....	451			
6	6	3	Other categorical programs replaced by block grants.....	451			
388	488	512	Urban development action grants.....	451	474	440	196
			Rental rehabilitation grants.....	451			150
20	4		Planning assistance.....	451	-1		
4	1		Neighborhood self-help development program.....	451			
1	1		New Community Development Corporation.....	451	-1		
17	17	19	Department of the Interior: Bureau of Indian Affairs.....	452	17	17	19
4	13	13	Federal Emergency Management Agency.....	501	1	13	13
14	16	16	Neighborhood Reinvestment Corporation.....	451	14	16	16
<b>5,379</b>	<b>5,022</b>	<b>4,829</b>	<b>Total, community and regional development.....</b>	<b>450</b>	<b>4,587</b>	<b>4,307</b>	<b>3,984</b>
			<b>Education, training, employment, and social services:</b>				
			Department of Commerce:				
1			Job opportunities program.....	504			
12	24	23	Public telecommunications facilities, planning and construction.....	503	18	15	
			Education Activities:				
2,939	3,008	3,010	Compensatory education for the disadvantaged.....	501	3,028	3,028	3,008
546	572	499	Impact aid.....	501	466	475	465
636	461	463	Special programs and populations.....	501	495	458	509
74	70	28	Indian education.....	501	78	51	1
110	92	84	Bilingual education.....	501	92	62	64
1,131	1,120	1,148	Education for the handicapped.....	501	1,061	1,099	1,100
780	1,038	1,012	Rehabilitation services and handicapped research.....	506	952	1,037	1,037
802	752	776	Vocational and adult education.....	501	728	809	475
57	63	14	Student financial assistance.....	502	74	60	
3	3		Higher education.....	502	3	3	
101	135	48	Libraries.....	503	80	80	
5	5	5	Special institutions.....	501	5	5	5

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THE BUDGET FOR FISCAL YEAR 1984

222	299	26
2,567	2,571	2,500
1,531	1,660	1,951
13	9	7
389	565	590
240	352	98
5	5	5
3,295	2,912	2,843
56	61	47
38		
24	11	26
685	778	832
131	38	
172	137	130
23	29	28
<b>16,589</b>	<b>16,768</b>	<b>16,193</b>
•	•	
29	32	35
595	553	161
120	179	90
656	492	110
		954
<b>E - 17,391</b>	<b>19,326</b>	<b>20,799</b>
42	56	54
5	4	5
<b>18,839</b>	<b>20,644</b>	<b>22,207</b>

See footnotes at end of table

<b>Department of Health and Human Services:</b>				
Work incentives.....	504	267	257	
Social services block grant.....	506	2,400	2,450	2,500
Human development services.....	506	1,621	1,674	2,120
Research and demonstration.....	506	8	8	3
Family social services.....	506	465	560	601
Community services.....	506	340	348	
<b>Department of the Interior:</b>				
Operation of Indian programs.....	501	5	5	5
<b>Department of Labor:</b>				
Training and employment services.....	504	2,382	3,030	3,469
Community service employment for older Americans.....	504	62	62	
Temporary employment assistance.....	504			
State unemployment insurance and employment service operations.....	504	19	22	31
Unemployment trust fund: Training and employment.....	504	716	778	1,014
Community Services Administration.....	506			
Corporation for Public Broadcasting.....	503	172	137	130
National Foundation on the Arts and the Humanities.....	503	29	28	26
<b>Total, education, training, employment, and social services.....</b>	<b>500</b>	<b>15,564</b>	<b>16,539</b>	<b>16,565</b>
<b>Health:</b>				
Special Action Office for Drug Abuse Prevention.....	554			
Department of Agriculture: Food Safety and Inspection Service.....	554	30	32	35
<b>Department of Health and Human Services:</b>				
Health resources and services <sup>2</sup> .....	553	421	415	6
Disease control.....	551	142	153	71
Alcohol, drug abuse, and mental health <sup>2</sup> .....	551	432	439	
Grants to States for health <sup>2</sup> .....	551			1,358
Medicaid <sup>2</sup> .....	551	18,014	14,795	20,738
<b>Department of Labor:</b>				
Occupational Safety and Health Administration.....	554	47	52	54
Mine Safety and Health Administration.....	554	4	5	6
<b>Total, health.....</b>	<b>550</b>	<b>19,091</b>	<b>15,890</b>	<b>22,266</b>

Table H-11. FEDERAL GRANTS TO STATE AND LOCAL GOVERNMENTS—OUTLAYS AND BUDGET AUTHORITY—Continued

(In millions of dollars)

	1982 actual	1983 estimate	1984 estimate	Function, agency and program	Func- tional code <sup>1</sup>	1982 actual	1983 estimate	1984 estimate
				<b>Income security:</b>				
				Department of Agriculture:				
		280		Rural housing block grant <sup>2</sup> .....	604			850
	20	20	15	Rural housing for domestic farm labor <sup>2</sup> .....	604	14		4
	8	7	8	Mutual and self-help housing <sup>2</sup> .....	604	4	13	
	379	415	365	Agricultural Marketing Service <sup>2</sup> .....	605	457	395	410
	752	769	689	Food stamp program <sup>2</sup> .....	605	686	622	690
		780	825	Nutrition assistance for Puerto Rico <sup>2</sup> .....	605		825	825
	22	19	19	Special milk program <sup>2</sup> .....	605	27	19	11
F	- 2,853	3,021	2,786	Child nutrition programs <sup>2</sup> .....	605	2,690	3,004	2,771
	928	1,115	1,090	Special supplemental food programs (WIC) <sup>2</sup> .....	605	933	1,090	1,090
	121	165	77	Food donations program <sup>2</sup> .....	605	141	160	50
				Department of Health and Human Services:				
				Supplemental security income program <sup>2</sup> .....	609	20	12	5
	7,947	7,734	7,059	Assistance payments programs <sup>2</sup> .....	609	5,961	7,719	7,060
		435	413	Child support enforcement.....	609		450	394
	1,685	1,961	1,396	Low income home energy assistance <sup>2</sup> .....	609	1,872	1,984	1,298
	878	554	452	Refugee and entrant assistance <sup>2</sup> .....	609	623	545	466
	1	1	*	Payments to States from receipts for child support.....	609	1	*	*
				Department of Housing and Urban Development:				
	3,883	4,388	4,815	Subsidized housing programs <sup>2</sup> .....	604	12,215	5,821	-2,343
			40	Indian housing <sup>2</sup> .....	604			76
	1,008	1,551	1,520	Payments for operation of low income housing projects <sup>2</sup> .....	604	1,491	1,282	1,637
	3	5	6	Congregate services program <sup>2</sup> .....	604		4	
	1,422	1,968	1,889	Department of Labor: Unemployment trust fund.....	603	1,541	1,953	1,889
	<b>21,930</b>	<b>24,918</b>	<b>23,752</b>	<b>Total, income security</b> .....	<b>600</b>	<b>28,696</b>	<b>25,896</b>	<b>17,183</b>
				<b>Veterans benefits and services:</b>				
				Veterans Administration:				
	42	44	45	Medical care <sup>2</sup> .....	703	42	44	45

	6	6	Medical administration and miscellaneous operating expenses.....	703	12		4
15	16	15	Grants for construction of State extended care facilities <sup>2</sup> .....	703	16	18	18
5	3	*	Assistance for health manpower training institutions.....	703			
1	4	5	Grants for the construction of State veterans cemeteries.....	705		3	3
<b>63</b>	<b>73</b>	<b>71</b>	<b>Total, veterans benefits and services.....</b>	<b>700</b>	<b>70</b>	<b>64</b>	<b>70</b>
<b>Administration of justice:</b>							
2	11	6	Department of Housing and Urban Development: Fair housing assistance.....	751	5	6	5
<b>Department of Justice:</b>							
9	9	9	National Institute of Corrections.....	754	4	4	5
159	99	104	Justice assistance.....	754	73	68	90
17	17	19	Equal Employment Opportunity Commission.....	751	18	19	18
<b>187</b>	<b>136</b>	<b>139</b>	<b>Total, administration of justice.....</b>	<b>750</b>	<b>99</b>	<b>96</b>	<b>118</b>
<b>General government:</b>							
<b>Department of the Interior:</b>							
115	76	63	Administration of territories.....	806	88	70	59
131	148	112	Trust Territory of the Pacific Islands.....	806	99	96	88
7	1		Office of Personnel Management: Intergovernmental personnel assistance.....	806			
<b>252</b>	<b>226</b>	<b>175</b>	<b>Total, general government.....</b>	<b>800</b>	<b>186</b>	<b>166</b>	<b>147</b>
<b>General purpose fiscal assistance:</b>							
M - 243	145	269	Department of Agriculture: Forest Service permanent appropriations.....	852	243	145	269
M - 5	6	6	Department of Defense—Civil: Water resources permanent appropriations.....	852	6	6	6
.	1	1	Energy activities—Payments to States under Federal Power Act.....	852	1	1	1
<b>Department of the Interior:</b>							
96	96	96	Payments in lieu of taxes.....	852	96	96	96
M - 639	601	58	Bureau of Land Management permanent appropriations.....	852	639	601	58
12	12	13	National wildlife refuge fund.....	852	13	13	13
		995	Payments to States from receipts under the Mineral Leasing Act.....	852			995
M - 66	60	60	Payments to U.S. territories.....	852	66	57	60
.			Internal revenue collections for the Virgin Islands.....	852			
<b>Department of the Treasury:</b>							
M - 4,569	4,567	4,567	General revenue sharing.....	851	4,567	4,567	4,567

See footnotes at end of table

SPECIAL ANALYSIS H

H-33

Table H-11. FEDERAL GRANTS TO STATE AND LOCAL GOVERNMENTS—OUTLAYS AND BUDGET AUTHORITY—Continued

(In millions of dollars)

	1982 actual	1983 estimate	1984 estimate	Function, agency and program	Func- tional code <sup>1</sup>	1982 actual	1983 estimate	1984 estimate
M -	69	72	75	U.S. Customs Service.....	852	63	72	75
M -	245	270	275	Internal revenue collections for Puerto Rico.....	852	239	270	275
	402	427	461	Federal payment to the District of Columbia.....	852	402	427	461
	<b>6,347</b>	<b>6,257</b>	<b>6,874</b>	<b>Total, general purpose fiscal assistance.....</b>	<b>850</b>	<b>6,336</b>	<b>6,253</b>	<b>6,875</b>
	<b>88,194</b>	<b>93,537</b>	<b>95,926</b>	<b>Total, grants-in-aid.....</b>		<b>91,878</b>	<b>92,398</b>	<b>90,405</b>

\*\$500 thousand or less.

<sup>1</sup>For a description of these codes, see Table 14 in the *Budget of the United States Government, 1984*.<sup>2</sup>Programs included in the "Grants for payments to individuals" category shown in Table H-7.



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

MEMORANDUM

September 17, 1982

To: Jim Cicconi

From: Mike Horowitz //

1. Attached is the Lambro piece. I've talked to Lambro and Lofton and think they wholly accept my word that the West Wing has had nothing to do with the matter.

2. Also attached is the "fairness" memo I vented myself on a few months ago. It is somewhat dated and has been fairly well circulated. Comments have run the gamut, and, if you can find the time to read it over, I'd love to hear your reaction.

3. Finally, re the fee cap bill, these are the most recent developments:

- ° Trent Lott has volunteered, from somewhat out of the blue, to serve as the prime House sponsor. As you know, Dole is likely to do so in the Senate.
- ° There is considerable sentiment to amend the draft with a section increasing payments to criminal defense attorneys — unchanged since 1970 — under the Criminal Justice Act. Substantially increasing CJA fee awards (from their statutory \$20-\$30/hour rate) should make the bill hard to portray as an attack on legal representation for the poor. It could also split current opposition to the bill, as we can expect strong support from the criminal defense bar for increased CJA payments. It could also serve as a counterpoint to the President's anti-crime package, making clear that we favor revision of unacceptable legal doctrines, but are also committed to providing able counsel to indigent defendants.

# Reagan Retreats on Defunc

Donald Lambro

In another retreat from confrontation politics, the White House has quietly shelved plans to defund liberal political and social advocacy groups.

Key aides to budget director David Stockman had been secretly at work drafting proposals to restrict the hundreds of millions of tax dollars in grants and contracts funneled each year to an army of activist and lobbying organizations—



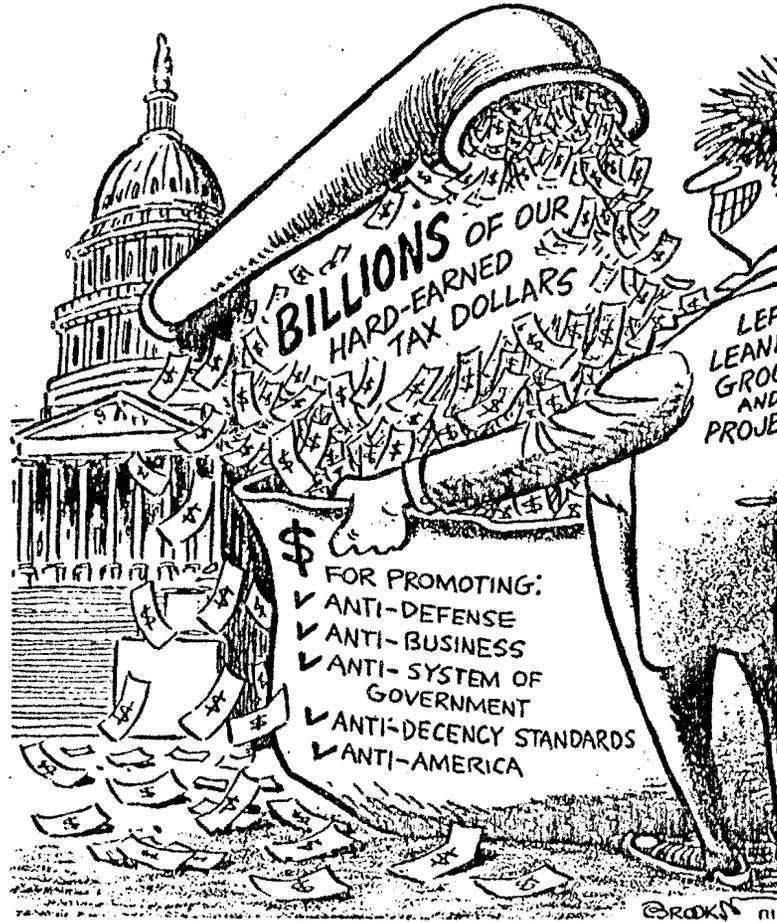
from pro-abortionists to organized labor. Indeed, strategists in the Office of Management and Budget talked last month about having their legislative attack plan ready within "a matter of weeks."

But even a watered-down proposal prepared by Stockman's draftsmen—which New Right critics labeled "very inadequate"—was apparently still too strong for the president's chief of staff, James Baker, and others in the Reagan high command. The plan has been "put on ice," OMB officials now sheepishly admit.

That is good news for the hundreds of left-leaning political and social-advocacy organizations that, for years, have been feeding at the federal trough. It is deeply disappointing news for the New Right and other Reaganite groups who have been trying to cut off this source of funding to their political enemies.

Even his right-wing critics think Stockman was sincere in his original intent to choke off federal funding for these groups. But his April 26 memorandum to all department and agency heads on "improper uses of federal funds" betrayed the intrinsic weakness in his attack.

Cutting our own throat



Stockman's memo, drafted by top aide Michael Horowitz, ordered the agencies to bar any use of funds by grant or contract recipients "for the purpose of attempting to influence legislation or appropriations."

"Use of federal grant or contract funds for partisan or political advocacy purposes is inappropriate and should not be permitted," he said, noting this was a "high administration priority."

But Stockman's directive became virtually impotent one paragraph later, when

he added "that the administration will continue to award grants and contracts to those parties who are most fulfilling statutory purpose." Political advocacy groups may receive grant and contract awards.

This enormous loophole left the bureaucracy to continue supporting the political advocacy groups that have been supporting for years.

In an illuminating series called "Spotlighting Federal Spending," The Heritage Foundation



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

MEMORANDUM

July 19, 1982

To: Dave Stockman  
Ed Harper

From: Mike Horowitz **MH**

Subject: The Fairness Issue and the Administration's Fortunes

I. OVERVIEW.

We are being savaged by the fairness issue. Our moral and, correspondingly, our political base has been badly eroded. The toll has been acute:

- Recent decline in Administration support by women voters has been precipitous and has stripped the Republican Party and the President of majority support. That decline is significantly rooted in the perception of this Administration as uncaring, perhaps even cruel.
- The political fortunes of the three Democrats most deeply associated with the failed policies of the past decade — Walter Mondale, Ted Kennedy and the Speaker — appear to be sharply ascendent. The banner under which they spoke at the Philadelphia Convention — "And Fairness for All" — asserts, in almost Orwellian parody, the theme with which they and many Congressional candidates expect to win.

That this should have come to pass is ironic. For it is the poor and the minorities who, most of all, have been victimized by the past decade's indifference to inflation and private sector productivity, its fiscal profligacy and its creation of armies of middle class "tribunes" of the poor.

- ° During the 1970s, the number and percentage of poor people increased.
- ° During the 1970s, black median family income fell.
- ° During the 1970s, the unemployment gap between whites and blacks widened.
- ° During the 1970s, the purchasing power of core welfare payments declined — by one-third in the case of AFDC, the program most targeted to the poor.

These are just a few of the economic outcomes. These losses do not take into account the massive social disintegration that occurred in our poorest and minority communities.

- ° In the 70's a new class came into being, an underclass of unemployable male adults who have not responded to even the most radical programs of job training and support.

- ° By 1979, following deterioration that occurred during the 70's, 55 percent of black children were being born to unmarried mothers, and 42 percent of all black families were headed by single, increasingly teen-age women, thereby trapping many into lives of meanness that no budget program levels will ever abate.

The results of liberal programs in the 1970s are such as to make liberal posturing over "compassion" a sad mockery of an increasingly tragic reality.

Our political difficulties come in part from the current recession, and are exacerbated by the expectations we created of an instant recovery. Still, voters can discount political puffery and be patient enough to follow leadership with which it identifies.

Franklin Roosevelt produced no instant turnaround -- unemployment in 1934 was almost as high as it had been in 1932 and the American economy failed to achieve significant recovery until the onset of World War II. But, his leadership achieved what ours still has not -- a sense that the country was moving in a just direction. His vision of social justice inspired, while our policies risk becoming trapped by an image of meanness.

It is an American strength that people will opt for policies that they believe to be caring. We cannot and should not want this

impulse to be abated. The fairness issue is our issue; social justice is to be found in the directions in which we seek to move.

- ° Our budget proposals have repeatedly sought to reduce benefits to middle and upper income persons, and to businesses; we have in fact challenged persons and interests at the heart of our political constituency more than any Administration in recent history.
  
- ° Our budget proposals have been directed at preserving the government's ability to maintain social welfare support for the poorest Americans; it is demagoguery to suggest that the rates of federal spending growth inherited by the Administration could have been sustained.
  
- ° We have sought to reform such unfair and undemocratic failings as "uncontrollable" spending generated without vote by entitlements, massive tax increases generated without vote by inflation-driven "bracket creep," increasing centralization of federal power, and increasing power over public policy ceded to unelected regulatory bureaucracies; without such reform the very legitimacy of our governing processes were coming under increasing attack.

- ° Our priorities — to control inflation and revitalize private sector productivity -- are the two areas of reform without which the poor are denuded of hope or prospects.

The prevailing view of this Administration is something with which we need not live. Our failings result from two causes, both understandable, but not excusable:

- ° We have not talked to the right people.
- ° We have not said the right things about what we do nor accepted the proper standard by which our policies should be judged.

## II. THE WRONG AUDIENCE.

"Fairness," "compassion," and "decency" — catchwords eroding our support — are not defined by the bond traders and CEOs to whose sensibilities we have exquisitely attended. They are defined by people to whom we have not spoken, whose hostility we have assumed and therefore abetted.

When Wall Street expresses disquiet about the direction of our policies, their leaders are often given full access to senior Administration officials and the President. In contrast,

statements from consortia of religious leaders, academic figures and other like persons and groups, are at times ignored. We do not rebut their inaccuracies; perhaps worse, we do not openly acknowledge points with which we can agree. We have often come perilously close to responding to the concerns of America's religious and academic leaders by asking how many divisions they command. It is not a question that the President considers legitimate, nor can members of his Administration.

Of course, large numbers of religious leaders and academics have tended to equate social compassion with the size of income transfer and welfare budgets. Of course, dialogue with them often entails political risk, because the ingrained ideologies of many will tempt them to distort what is said and to exploit opportunities to embarrass us. Still, it is a fact of American life, rooted in our national character, that persons who shape ideals and values possess raw political power. "Tough-minded realists" who think otherwise are neither.

In an article in Commonsense, the extraordinary RNC publication initiated by Bill Brock and Mike Baroody, Michael Novak anticipated the problems we now face and the price we now pay for our inattention to the people and the issues whose power we cannot wish away. Novak asked whether "Republicans [were] ready to face the

new power ... in American life," and then made the following point:

The politics of the future will be decided by the battles currently being waged ... less between leaders of the economic system ... or between leaders of the political [and party] systems than among various leaders in the world of ideas.

This has heretofore been the point of greatest weakness in the Republican party. Oddly enough, Democratic activists tend to love the combat of ideas and symbols, and prefer the fields of journalism and the arts as proper fields for political activism. Republican activists do not do so in commensurate numbers. Losing these battles, Republicans may lose everything. For the health and welfare of the entire nation, it is crucial during the coming years that this battle become more equal.

The purpose of responding to and talking with the members of the "moral-cultural system," as Novak calls it, is not just to compete with them for newspaper space. The more important point is that minds can be changed. Again, Novak's analysis is compelling:

[I]f the war of ideas is to be fought out in the media, the task is not so overwhelming as it sometimes appears. The number of truly influential voices is very small... The battle for the minds of those who hold these strategic places of power is far narrower in scope than some suppose. ... Privately, many such influential journalists express many more doubts about their own mental preconceptions than is evident on camera or in their writings. They, too, change their minds. A great many, to choose but one example, have quite different judgments about the efficacy of school busing, about urban crime, and about welfare dependency than present conventions permit them to voice in public.

It is not that thoughtful liberals have heard and rejected the moral validity of the President's program and his actions, but that they have not often heard that side put by people who speak "their language" -- in terms that indicate both conviction and coherent analysis of the moral issues at stake.

A party which assumed office on the cutting edge of ideas and a President who promised never to cede the moral high-ground now see their Administration often silent in the face of challenges to the very decency of its policies.

### III. THE WRONG MESSAGE.

The "fairness" issue is being fought over priorities, not policies. We have said, "Our social goal of enhancing personal freedom and our economic goal of a healthy economy are good for the poor too." The theme is true, but as long as we insist on putting it that way we will be perceived as expecting the poor to catch the crumbs from our table. We have not succeeded in putting the debate in terms of whether our means for helping the poor are the best ones because spokesmen for the policies of the past have managed to keep the debate fixed on whether the well-being of the poor even has an important place on our agenda.

If we are to free ourselves from this pass, we must not only speak to the people described by Novak but must also accept and indeed welcome the standards they regard as proper by which to judge us. We must declare forthrightly that this Administration is prepared to be judged, not by gains among the comfortable and secure, but by the degree of hope and opportunity that our policies offer the poor and disadvantaged.

In dealing with a perception of our policies as mean and uncaring, nothing is more critical than for the Administration to welcome the above standard at the earliest and every succeeding opportunity. Having done so, we then can more credibly present cogent, articulate explanations of why our policies best offer real prospects for poor people — why they can retrieve poor people from the vicious spiral on which they had been descending when we took office. Further, acceptance of that standard as the proper focus of political debate is the sole means by which a full review of the Democratic Party's domestic policies can take place. At one stroke, it can remove from the Kennedys, Mondales and O'Neills their present ability to assert a moral monopoly for their policies. It changes the dialogue from a debate over whether we "care" enough, into a debate over means to reach a common goal.

As Michael Novak has indicated, conservatives do not take easily to the articulation of moral themes. Rooted as many are in the practical world, and properly aware as many are of the excesses

committed in the name of morality, there is much that is understandable in such discomfort. But the price of abandoning moral themes and of ignoring the intellectual communities that shape ideas and values is to deprive conservatives of the ability to generate enthusiasm for what they do and to become the country's majority party. Jeane Kirkpatrick has made the point well:

... while the Republican Party has proposed candidates whom estranged Democrats could support, it has offered no alternative conception of the public good to Democrats who are today offended by their own Party's public philosophy. The Republican record is better than the case Republicans make for themselves. In office Republicans act as though they had broad concerns with human dignity and well-being, with national defense, and so forth. Both these concerns are ... poorly explained [and] inadequately related to a broad vision.... Only when it offers an inclusive vision of the good society will the Republican Party be able to attract converts as well as voters.

In the following pages, specific themes and actions are suggested. None of the specifics are as important, however, as the two underlying changes just urged. Unless we start talking to neglected audiences and ~~and~~ acknowledge new standards by which we are prepared to be judged, all of the fact books we produce will not change the nature of the political battle in which we are engaged nor to any serious degree its outcome.

#### IV. MAJOR THEMES.

There are powerful themes available to us if and as we take the right steps to make them heard:

A. We Call for Sacrifice.

Within a month of the day we took office we moved to cut highway construction by 20 percent, airport construction by 33 percent and synfuel subsidies by \$4 billion. The first budget test and victory of the Administration involved sharp cutbacks in the dairy subsidy program. We have sought user fees from a broad variety of powerful interest groups, and to cut back on Rural Electrification Administration benefits and support levels for such disparate programs as Conrail and water projects and EDA and Impact Aid. As no previous Administration, we have sought to sharply cut back on federal loan and loan guarantee programs. We sought to reform federal employee pay and retirement benefits. In dealing specifically with social welfare programs, our policy has been animated by two principles, both of which are directed at preserving benefit levels for the very poorest:

- First, we have been significantly more critical of programs offering services rather than cash to the poor. A major scandal of the past decade is the extent to which programs said to provide services for the poor have subsidized bureaucracies, middle class professionals and armies of public sector vendors. Such programs have given relatively little of their resources to the poor. Examples abound:

— The Section 8 housing program, which taxpayers subsidize at levels approaching and in some cases exceeding \$10,000 per unit per year, is a developer subsidy program whose high costs have always limited its availability to only about 10 percent of the eligible population.

— Spending on Medicaid is literally out of control and by far the most rapidly growing social welfare entitlement program; no improvement in health care obtained by Medicaid beneficiaries can explain the fact that, over the past four years, per capita costs under the program rose 50 percent more rapidly than did health care costs for the population as a whole.

° Next, we have cut back on a growing universalization of eligibility for program benefits, often in order to preserve, intact, benefit levels for the core group of poor people for whom the programs were originally intended.

Examples again abound:

— In the school lunch program, the Administration sought to eliminate subsidies for families of four with annual incomes approaching \$16,000, while preserving free meal

benefits for families at 125% of the poverty level.

-- Without the reforms proposed by the Administration, the federal government would be providing grants and loans to nearly 50 percent of all undergraduate students attending two and four year institutions of higher education.

Precisely contrary to much of what passes for conventional wisdom, we have sought to take on politically powerful constituencies, including many that supported the President, and have often done so while seeking to preserve benefit levels for the poor. In articulating this theme, we must differentiate between what we proposed and Congress ultimately adopted. The perception of our success last year has obscured the concessions we had to make in order to save major elements of our program. Many of these concessions to powerful interests groups were forced on us by the alleged tribunes of the poor in the Democratic Party. Establishment of the moral premise of our program will also permit this point to be made.

B. Liberals Have Subsidized the Powerful and the Middle Class.

Two laws of American politics have been made manifest over the term of this Administration. The first is:

- ° Programs begun in the name of the poor invariably become middle-class benefit programs.

Great Society programs and "reforms" of New Deal programs enacted during the 70's were ostensibly to help the poor; all have steadily spilled into the hands of people who have jobs that put them above the poverty level (often well above the poverty level). If we rearticulate priorities and the standards by which we are prepared to be judged, the Administration can challenge the prevailing perceptions of the bloated programs we have sought to reform and restrain. The authentic portrait, involving millions of lower-middle class Americans, is of the secretary or assembly-line worker whose paycheck — the government has decided — is big enough to subsidize others whose paychecks — the government has decided — are too small. And never mind that many recipients may often be better off than the donors. The Democrats are making impassioned attacks on cuts in income transfers from workers to workers, not cuts in help from the wealthy to the destitute, and this underlying nature of their argument can be exposed.

The second law is:

- ° When given a choice between programs targeted for the poor and middle class subsidy programs, so-called spokesmen for the poor invariably choose the latter.

The politics of subsidy inevitably leaves the poor in the lurch. The President vetoed an Urgent Supplemental bill supported by almost all Democrats, not to prevent restoration of programs even ostensibly for the poor, but to prevent a housing bailout program that would have subsidized mortgages on houses selling for as much as \$90,000. A midnight amendment of Senator Levin protected loan guarantee programs from sharp reductions proposed by the President. The House Majority Leader led the attack on proposed reductions in synfuel subsidies -- hardly a program for the poor -- and the Speaker's greatest adamancy has been in repeatedly seeking to preserve large numbers of middle class subsidies. In the real world, each of the above actions make it difficult to bring finite public resources to bear on behalf of the poor. Yet, our lack of moral credibility has permitted those prepared to subsidize everything to act as if they have given their priority concerns to the poor. Lip service aside, they have repeatedly sold them out.

C. We Believe In and Support the Social Safety Net.

In his March 1982 speech before the National Conference of Christians and Jews, the President cited examples of support levels

we proposed under our FY 83 budget for a broad variety of safety net programs:

[W]e've proposed that 28 percent of all federal spending go to the elderly, an average of \$7,850 per individual [above the age of 65] in payments and services.

The federal government subsidizes approximately 95 million meals per day. That's 14 percent of all the meals served in the United States.

Almost seven million post-secondary awards or loans will be available to students or their parents through federal student assistance programs.

Through increased funding for Medicaid and Medicare, the federal government will provide medical care for some 47 million aged, disabled and needy Americans, about 20 percent of our total population, and 99 percent of those over 65.

And approximately \$2.3 billion will be spent on training and employment programs providing skills for almost one million low-income disadvantaged people, 90 percent of whom will be below the age of 25 or recipients of Aid to Families with Dependent Children. -

The list goes on and on, but I won't drown you with statistics. I simply want to point out that we do care and the facts prove it.

Yet, the above examples have failed to catch hold, largely because we have not communicated our belief in the role of government as provider of last resort support for those otherwise unable to protect themselves. In the face of that perception, our support for given budget levels does not abate the view that any support we allege is grudging, forced upon us by caring liberals.

Communication of the President's belief in maintaining a valid safety net as a fundamental obligation of government can permit us

to make real use of the evidence cited by the President in his NCCJ speech. We could then ask: If it is not compassionate to finance one of every seven meals eaten in the United States, does a ratio of one of six, or one of four, or one of two represent a "compassionate" commitment? Or, do we lack compassion for the Indian community when our FY 83 budget proposes outlays of more than \$13,000 per year per Indian family of four for Indian-specific programs alone — a figure that does not include the enormous added value of generic social welfare programs such as AFDC and Food Stamps, nor the value of land and water claims recoveries litigated on behalf of the Indian community by the United States. We could drive home the point that many "public interest" proponents of domestic spending use the specter of our alleged cruelty to mask their real agenda: a federal government in business to assume power over resources and to redistribute income, not to provide safety net protection.

The President has made clear that he believes in the fundamental obligation of government to provide such protection and stands at the opposite end of the spectrum from those who somehow feel that there would be no need for federal programs if only poor people would agree to "work hard." True, the present welfare system has generated powerful disincentives to work. But the President has consistently fought to preserve the government's now-eroded ability

to support people in need of basic assistance and has sought to elevate the relative priority accorded to such assistance.

D. The Bankruptcy of the Great Society and the Protection of the New Deal.

In the main, it is the programs of the Great Society that we have taken on. Their costs have been astronomical and their impact often destructive. By stating publicly that we are prepared to be judged in terms of what we do for the poor, we are free to take on Great Society programs whose failures are deeply understood even by the most ardent champions of the poor.

In taking them on and in cutting back on the excesses tacked onto New Deal programs during the 70's, the Administration can genuinely be presented as the protector of major safety net programs of the New Deal. For example, the great program of the New Deal -- Social Security -- began to get into trouble when, between 1970 and 1972, benefits were increased by 52 percent while payments into the program were increased by only 19 percent. Similar excesses have occurred in programs modelled after or begun during the New Deal that we seek to reform such as unemployment insurance, disability insurance and federal workers' compensation.

There are large numbers of Great Society programs that have left the poor more dependent and the resources of the country misdirected; many New Deal programs were overextended to the point of near-collapse. These are powerful themes for a President to assert — particularly one who was a union president and voted for F.D.R. They can be boldly asserted if we challenge the moral monopoly asserted by defenders of the status quo.

D. F.D.R. as our Symbol

At the 1980 Democratic Convention Ted Kennedy asked how the President could "dare" cite F.D.R. We can retort, "How dare they cite F.D.R.?" This presidency can model itself after F.D.R.'s if it expresses the values of caring and compassion that it has every right to do. The President said the same thing in his NCCJ speech of March 1982:

...You know, back in the New Deal days, many critics of Franklin Roosevelt accused him of trying to destroy the free enterprise system. FDR's answer was simple: he wasn't out to destroy our political and economic freedom; he was out to save it at a time of severe stress that had already caused democracy to crumble...

...Today I'm accused by some of trying to destroy government's commitment to compassion and to the needy. Does this bother me? — Yes. Like F.D.R., may I say I'm not trying to destroy what is best in our system of humane, free government — I'm doing everything I can to save it: to slow down the destructive rate of growth in taxes and spending; to prune non-essential programs so that enough resources will be left to meet the requirements of the truly needy...

...Government does have a responsibility to [help the poor] because our citizens -- the most generous people on earth -- have so ordered.

This theme should be repeated, augmented by a clear statement of this fact: The New Deal was about helping the jobless, the destitute, the helpless. Neither programs intended to enforce an illusory "equality" by social service bureaucracies nor massive income transfers were a part of the New Deal nor are they in the spirit of the New Deal.

F. Racial Quotas are Wrong and Immoral.

In a 1981 speech to the Democratic Strategy Council, Ed Koch listed a number of the "elitist" policies of the Democratic Party that had led to its 1980 defeat. Chief among them were quota policies, described by Koch as follows:

We supported racial quotas to end discrimination, even after it became clear that quotas were pitting race against race, ethnic group against ethnic group, rather than helping to bring about racial harmony.

Theodore White's summation of more than two decades of close observation of national politics, America in Search of Itself, described the growth of racial quotas as perhaps the single policy that most alienated the American public and brought about the President's election.

Advocates of racial preference schemes are not without resources, but in the final analysis they lack public, intellectual and Congressional support. They can thrive only to the extent that they are given the right to define moral conduct, and thereby make it difficult and in many instances impossible for the Administration to live up to its own principles and commitments.

A recent article in Fortune Magazine described the use of racial quotas in Reagan Administration programs. Its title, "Affirmative Action" -- by which the author meant quotas -- "Is Here to Stay," need not be predictive.

A sense that quotas have not worked -- for blacks or whites -- is fairly widespread across all segments of the population, including representatives of the media not presently sympathetic to the Administration. Yet, we have been fearful of taking principled action because our inability to communicate the moral basis of where we stand has stood in the way of our doing what we believe.

Rather than seeking back-door nonenforcement of what parts of the bureaucracy now call law, an Administration comfortable with what it stands for can make a committed, unapologetic effort to make civil rights law consistent with national opposition to discriminatory policies.

G. Reducing Inflation & Enhancing Private Sector Productivity Are Moral Not "Economic" Issues.

The President has said many times that inflation and a slack economy hurt the poor more than anyone else, but the liberal interpretation remains the popular belief: "Think how much worse poverty would be if we hadn't installed the Great Society reforms." It is a gross misreading of the history of poverty in the postwar period:

- ° Poverty, as officially defined by LBJ's Administration, declined steadily from a postwar level of 33 percent of the population to 13 percent in 1968. Then improvement slowed. It halted altogether during the 1970s. By 1980 the trend had reversed. Poverty had passed its 1968 level and was heading upward.

Charles Murray has spoken of how politics is today

being conducted as if conditions actually were getting better before the budget crisis intervened. As if the South Bronx started to burn on January 20, 1981, instead of in the 1960's. As if unemployment and crime and social disintegration in our poorest communities started to soar when the budget cuts were proposed, instead of in the 1960's. As if misery in our inner cities was diminishing, not increasing, before Ronald Reagan came to office.

Those who purport to speak on behalf of the poor must be forced to explain why progress stopped dead during the past decade. There is no single issue on which the Democrats should be more on the defensive.

In taking steps to control inflation and increase productivity, the President is pursuing the only strategy that has proved its effectiveness in attacking poverty. In the area of inflation, results have been dramatic. As the President has noted, our reduced inflation rates, contrasted with those in effect when we took office, have added almost \$1,000 in purchasing power to families with incomes of \$15,000. For families making less, the gains in purchasing power dwarf the budget cuts effected in programs for which they are eligible. Insofar as productivity and the economy are concerned, progress is in part hostage to interest rates which are themselves significantly driven by perceptions of our ability to maintain the anti-inflationary policies we have begun. The circle is thus completed: Until we exercise the leadership that will give longer-term prospects for continued operation of our program, interest rates will remain high in response to the possibility of renewed political control by the leadership that inflated the economy and ran it down.

H. Women's Aspirations and the Economy.

The same theme applies to many of the women's issues that the Democrats are trying to exploit. At the Philadelphia Convention, Walter Mondale spoke of the "feminization of poverty" by way of seeking to condemn Administration policies: "In Reagan's America," he said, "there is apparently no room for women. The feminization of poverty may well be the cruelest and most inexcusable social disaster of our generation." True; but it is our issue.

- ° The feminization of poverty occurred as a function of the breakup of the family that started slowly in the early 1960's then accelerated at the advent of the Great Society. The number of low-income households headed by females nearly doubled, from 23 per hundred in 1966 to 42 per hundred in 1979, while in the rest of the population the increase in female-headed households was only a fourth as great.

The breakdown of the family was not a lamentable but unavoidable trend in American society. The trend in society as a whole was manageable. Among the poor, it was explosive, and it coincided directly with fundamental "reforms" in social welfare that were predicted at the time to have devastating effects on the integrity of poor families. Biases in 70's welfare programs, combined with changes in prevailing moral values,

inflation and the decline of private sector productivity -- our issues -- were behind the tragedy of what the 70's did to (and the extent to which it created) single, poor women.

Beyond the poverty issue, women appropriately need to hear the Administration speak out more forcefully on where it stands, neither concentrating on the women who opposed ERA nor trying to placate those who supported it, but saying simply: our economic goals speak directly to the interests of all women. For those who seek to overcome barriers in hiring and pay, a healthy economy will do more than any government regulation in providing an environment in which they can achieve and maintain parity with men in the market place. For those women who were forced out of their homes into the job market by the eroding value of single family incomes, a non-inflationary economy is the only feasible way of providing a choice between a job away from home or full time work at raising families.

V. FAILURE TO DEAL WITH THE THE FAIRNESS ISSUE UNDERCUTS OTHER PROGRAMS AND APPROACHES.

A. Private Sector Initiatives.

The private sector initiatives program is important, but it is meeting with undue hostility and suspicion. Much of the audience

construes what we do not say in speaking of successes in voluntarism as more important than what we do say. They hear the President saying that the private sector should achieve important results without federal assistance, but also -- clearly, if implicitly -- that they should leave the business of politics and policy advocacy to the President and the politicians.

A first step in establishing a dialogue is to make clear that we welcome and respect the role of the philanthropic and religious communities in the political quest for social justice. That is, examples of successful voluntary undertaking should not be seen as an effort on our part to divert spokesmen for philanthropic and religious groups from active participation in the political process. Of course, fruitful dialogue may be difficult to achieve with many philanthropic organizations, particularly those dominated by professional staffs. Such staffs, often comprised of "alumni" of federal agencies and graduates of social work schools, have converted many organizations into grant seeking entities reliant for their very survival on CETA prime sponsorships, UMTA and CSA grants, Section 8 housing contracts, etc.

Still, the private sector initiatives story is a critical one to tell and the leadership of many such organizations can and will respond to the President's encouragement of their efforts. They will do so, however, only after we acknowledge the legitimacy of

the power of the non-profit sector and welcome the bully pulpit roles played by religious groups in American political life. Only in this way can we generate serious dialogue and allay understandable suspicions of the President's emphasis on voluntary, non-political efforts.

B. Other Initiatives.

Our lack of interest in moral themes, the sad fact that many Americans might be astonished that we are as angry about the plight of America's poor as are many of their alleged spokesmen, limits our ability to defend our positions in such critical and different policy areas as tax and defense. Once again, the numbers and arguments in support of our positions are powerful, but will not be adequately communicated until we persuade the country of the caring quality of our priorities:

Defense

- \* Under John Kennedy, 46 percent of all federal spending (including Social Security), and 9 percent of the Gross National Product was allocated to defense. The budget we inherited provided for but a 24 percent budget share and a 5.5 percent GNP share for defense. Our budget merely seeks a defense share of less than 34 percent and less than 7

percent of the GNP, and then only by FY 85. Moreover, our defense proposals, modest in terms of America's post-war history until the 70's, are made in the face of:

-- an all-volunteer force requiring the expenditure of more than 50 percent of the defense budget on personnel costs;

-- an arms buildup by the Soviet Union during the 70's which in committed resources was the largest in world history; and

-- obligations of the United States, moral in character, to friendly countries and treaty allies, and towards the preservation of a fragile world order jeopardized by instability in Iran, the Mid-East, Afghanistan and places elsewhere.

#### Taxes

When the President assumed office, the federal tax burden was at one of its highest levels ever, and fast rising to the highest level in American history; this was in the face of three consecutive years of negative private sector productivity growth, a rate of investment in new plant and

equipment less than half that of Western Europe and Japan and the lowest savings rate in the West. Under the budget we inherited, federal taxes were projected at 22.4 percent of GNP by FY 83, increasing to 24 percent in FY 86 — this in contrast with the prior all-time high of 21.9 percent, which occurred at the height of World War II when state and local taxes were relatively miniscule. Yet the extraordinary tax increases that had been taking place were achieved without vote of Congress, as inflation-driven "bracket creep," escalated in the last two years of the Carter Administration by the first back-to-back double digit inflation since World War I, placed working Americans in marginal tax rates originally intended only to apply to the rich. In the face of that, the President proposed:

—Equal, across-the-board individual cuts of 30% in all tax brackets over three years; and

—An across-the-board accelerated depreciation schedule.

° In an effort to decrease the size and delay the effective dates of the individual tax cuts, it was the House leadership that started the bidding war that led to tax breaks and shelters for the oil industry, electric utilities, race horse owners, "tax leasing" proponents and

other special interest groups. Such conduct was consistent with the traditional Democratic Party approach of redistributing income and awarding preference to specifically targeted beneficiaries.

We have numbers on our side, often powerful ones. But our efforts to dispel impressions with numbers alone have been and will continue to be unavailing. Such documents as the recent OMB staff paper describing the extent of our commitment to social welfare programs have made little dent in the overall debate. Even the recent, excellent OPD "Fairness Issues" book is unlikely to have more than limited impact. There is a general sense that numbers are manipulable; however accurate our numbers, they are not likely to generate changed perceptions. While a fact-oriented approach is critical, it ignores the overriding antecedent requirement: the need to be sufficiently credible on moral themes so that people will be prepared to look at the evidence.

C. The Public Relations Approach.

Nothing is more emblematic of the state we are in than some of the savage reaction to the President's visit to the Prince Georges County family who had been victimized by a cross-burning. No one who knows the President's instincts doubts the visit's spontaneity or the authenticity of his concern. But some thought it to be a PR stunt.

The President will be able to make personal gestures -- as he should -- only after establishing a broad public consensus that, whether or not one agrees with our policies, the moral conviction behind them -- the conviction of the Administration as a whole, not just the President as an individual -- is genuine, coherent, and worthy of the respect if not agreement of its opponents.

Public relations approaches lead to reliance on "bridge" figures whose function is "outreach." We do not want or need apologists for our policies, but reasoned and articulate expositions of them by people who believe in them. Administration efforts to "mediate" that are not based on support of the justness of our policies only encourage hostility to the President, and justifiably trigger the contempt of the very people that PR approaches seek to placate.

#### VI. NEXT STEPS.

The changes urged are feasible. They call, however, for a coordinated sequence of steps. These are the most basic ones.

##### A. A Presidential Message.

First, a major Presidential address on the fairness issue is in order. In such an address the President would embrace the theme that we are prepared to be judged by the effect of our program on

the poorest of Americans. He could properly acknowledge the power of the preachers, academics and others, and could indeed indicate that that power is a sign of American strength. And, he could say, the power of moral themes and their spokesmen is a sign of the enduring qualities of our Judeo-Christian principles of caring and compassion. The President could also indicate we, as conservatives, have not been comfortable with or perhaps even adequately attendant to moral imperatives and could reiterate that the moral high ground is important territory in America and cannot be ceded. Having said that, the President could more directly address the theme of fairness and poverty; he could make clear our preparedness to be judged in those terms and then address, sharply and frontally, the impact on the poor of liberal policies of the past decade.

What is critical, however, is that such themes should be articulated before the NAM, the American Legion and the Farm Bureau, not only to the NAACP and NCCJ.

B. Appearances.

The President should direct senior Administration officials, most particularly including Cabinet Officers, to more appear frequently on campuses and at the convocations and conventions of political advocacy and religious groups. Members of the Administration

should be familiar faces at smaller ad hoc seminars and symposia. Such appearances will at once acknowledge the political significance of such institutions and will abort what could become a bunker tendency to meet with friends only. They will create the sense that we are confident of the moral quality of our policies. We should not be afraid to be tested in campuses, churches, ghettos and community groups and it is critical for us to we make it clear that we are not afraid.

C. Appointments.

The Administration record in appointing able officials has been good. Improvement is always possible, however, and is particularly called for under present circumstances. If our programs and values are to be properly formulated and take hold, many of our future appointees will need also to be comfortable in the world of ideas, and to have moral and intellectual credibility with university, media, student and associated communities. All of the managerial skills in the world, complete loyalty to the President and impeccable Republican credentials will not give the President what he needs unless his appointees can challenge the moral monopoly still asserted by those committed to "of the left" - "for the poor" equations. Clearly, this is not an either/or issue; we do not need an Administration exclusively composed of such people. But we do need more of them.

There is another respect in which managerial skills, unrooted in a lifetime of thinking about ideas and issues, bear heavy costs. Persons unable to challenge the fundamental assumptions of past policies often become mere nay-sayers in relation to artful bureaucracies. Their roles can become reactive: reactive against conventional wisdom, reactive against media blips, and reduced to the role of tilting the policy initiatives of bureaucracies towards what are thought to be directions preferred by the President. Such persons are often unable to defend the President's policies, for they see their roles in terms of stemming tides, not moving in new directions. As the political struggles in which the Administration is engaged are rooted in and played out in the world of ideas, it becomes all the more important for appointees to be men and women of and with ideas.

There are many present examples that can be cited of the value of an appointment process moving in the above direction. For example, it is striking that our policies in the regulation/antitrust area have been but slightly and ineffectively challenged notwithstanding what might otherwise have been their vulnerability to strident "pro-business, anti-consumer" charges. The basis for that success is that Bill Baxter and Jim Miller have affirmatively pursued policies that lifetimes of thinking and experience have led them to believe in. It is no accident that both Baxter and Miller came to government service from distinguished academic backgrounds. The

campuses are filled with dynamic young academics who believe in, support and understand the fundamentals of what the President is seeking to do. They should be actively sought for consultation and appointment.

VII. CONCLUDING THOUGHTS.

It is not overstatement to say that the future of the Republican Party and American conservatism may be at stake over the tone and direction of our leadership.

American history is filled with instances of failed political leadership that did not recognize the importance of the moral component of our policies. - Stephen Douglas and the Democratic Party purported to discount the moral significance of the slavery issue and thereby empowered radical abolitionists and opened the way for the Republican Party. Abraham Lincoln was no less a target of the abolitionists during his Presidency, but his perception of the central importance of moral concerns both converted some of his most severe critics and sustained his leadership despite desperate hard times and failure during all but the last year of the Civil War.

This Administration is at a like crossroads:

- ° Conservatives are at risk of being seen as the green eyeshade, uncaring proponents of "efficiency," whose occasional election is needed to clean up messes that "caring" officials such as Walter Mondale and Tip O'Neill create out of the goodness of their hearts.
  
- ° Conservatives are at risk of generating a historic split between the votes of men and women that will relegate us to long-term minority status.
  
- ° Conservatives are at risk of forever failing to reach large numbers of Americans deeply troubled by the failure of liberal policies.
  
- ° The country is at risk of being locked into past policies and may be deprived of the means to challenge their fundamental assumptions, thereby condemning the poor to the manipulative mercies of "their" well-fixed spokesmen.

The country is at a historic juncture as it confronts the 1982 and 1984 elections. An uptick in the economy, combined with approaches that lead our policies to be broadly seen as caring and decent, can confound the pundits who so confidently await the Speaker's political resurrection.

Vindication of the President can have extraordinary results:

- ° An endorsement of fiscal discipline by the voters, as evidenced by a better-than-predicted showing in the 1982 elections, will have far more to do with interest rate reductions than could any actions based on charted and cherished relationships between gold and money, M-1 and M-2, deficits and GNP, etc. etc.
  
- ° If our case becomes intellectually and morally respectable among the audiences we must address, more radical political realignments may occur than are now deemed possible. Leaders of the black community might just begin to look hard at the price they pay for firm alliances with radical environmental groups (an upper-middle class, anti-jobs movement in many respects) and the never-say-die proponents of middle class subsidies led by the Speaker.

The alternate scenerios for the political future of the country are chilling. If this Administration's overall objectives are not given the time to take hold, a return to power of the Mondales and Kennedys who still clearly dominate the Democratic Party may occur. Such a return will have its predictable, disastrous consequences for all Americans, the poorest most of all.

But perhaps an even more tragic outcome is predicted by Kevin Phillips. In Post-Conservative America, Phillips sees the middle class disaffection that elected the President as "populist" rather than conservative. He anticipates that blue collar Southerners, "ethnic" Middle Westerners, farmers and union members will seek to turn the full powers of government to their own advantage.

In Phillips' view, failure of the Reagan Administration will cause the Republican and Democratic Parties to move closely towards each other, in directions that oppose limited government and free market operations. The parties, according to Phillips, will differ only in terms of the people chosen to sit at the table in Washington at which the American pie is sliced up.

There are voices that urge us not only to accept Phillips' syndicalist thesis, but to base our political strategy on it. That strategy would have us appeal to the votes of all those who are presumed to be motivated solely by "what's in it for them" and who are indifferent to or hostile to the fortunes of poor people and minorities. It is a self-defeating strategy. To keep office by these means would require us to out-promise and out-subsidize the Democrats whose policies we took office to change. It would, independently, be unworthy of us and alien to the President's views. It won't work.

There is massive resentment, true, among Americans who believe that values they cherish — hard work, independence, good citizenship — are being undermined, as indeed they have been. That resentment is one of the reasons that the President was elected. But the values themselves are sound and admirable.

What the President can do, and is uniquely qualified to do, is remind us who we are. The midwestern farmer and assembly line worker may speak angrily of welfare freeloaders. They will be unresponsive to liberal pleas to be more understanding of the juvenile who is repeatedly arrested and released once again without punishment. But given the chance, given the President's voice, they can acknowledge kinship with others less fortunate than they, can do right by those who are doing their best. Black people feel this no less to be true. The job is to create bonds of kinship, based on the shared values that have been America's historic strength, and that the President was elected to revitalize.

cc: Second Floor



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March 11, 1983

OFFICE OF  
THE DIRECTOR

NOTE FOR: JIM CICCONI

FROM: JOE WRIGHT

Thanks so much for coming by the other day to discuss the A-122 issue with Wayne Valis, Jim Coyne, Mike Horowitz and myself. I found that the conversation went exactly in the direction that I desired in that we received some very helpful comments from you and the rest of the group. As I mentioned, we have withdrawn the original proposal and will be working with you during the next several months to come up with a revised position.

Again, thanks for taking the time to come and talk to us on this issue. It is not an easy one to resolve and I look forward to working with you in the future.