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THE WHITE HOUSE

WASHINGTON

October 18, 1982

MEMORANDUM FOR KENNETH CRIBB

FROM: STEPHEN H. GALEBACH

SUBJECT: Insanity Defense; Letter from ITT

Aside from the two curricula vitae, the important item of interest in this letter is the three page article by Bruce Ennis in The Nation.

Ennis argues against certain bills introduced in Congress, on grounds that they would eliminate the mens rea element of certain serious crimes. He says that to eliminate mens rea would violate constitutional prohibitions against cruel and unusual punishment and deprivation of liberty without due process of law. Ennis makes the point that required elements of crime, such as mens rea, reflect a consensus, developed over hundreds of years, concerning the circumstances under which society believes criminal punishment to be appropriate.

Of course, Ennis's objections do not apply against the Administration proposal, since we do not eliminate the mens rea element for any particular crime.

Next, Ennis argues against the same idea we have proposed, saying it is a "harsh" proposal. He also says that "without major changes in the mens rea requirement, sentencing procedures and options, and the civil commitment process, it would be an unwise one."

Why does Ennis believe that a change such as we propose would be harsh and unwise? He does not say, but one can surmise that he believes an affirmative defense should still be available for someone who does not know right from wrong or who cannot control himself from taking a certain criminal act.

A good response is:

- The law presumes everyone to know right and wrong, and it is a particularly good presumption in the case of someone who has the wit to commit an intentional crime.

- People do have free will and, while we certainly want to allow a defense for actions that were not done voluntarily (such as when one person forces another to pull a trigger), we do want to treat human beings as responsible moral agents.

Further, we should not allow psychiatrists to distort the criminal justice process by trying to claim that someone does not know right from wrong -- a judgment on which psychiatrists will virtually never be able to agree; the only cases in which they will be able to agree, are cases in which the defendant lacks mens rea. Also, we should not allow psychological testimony saying that someone could not control himself from taking a bad act -- all of us would like to rationalize our misbehavior from time to time, by saying "the devil made me do it," and we should not allow defendants or psychiatrists to come into court with this sort of transparent excuse.

Finally, Ennis concludes by saying that the best way to reform the insanity defense is to turn it into an affirmative defense, instead of an element on which burden of proof rests with the prosecution. Ennis also believes that expert witnesses should not be able to offer opinions on ultimate questions for the jury to decide, such as whether a defendant pleading insanity knew right from wrong.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

October 20, 1982

FOR: EDWIN L. HARPER

FROM: BILL BARR for BOB CARLESON WPB

SUBJECT: Need for Quick Action on Indian Policy Statement

It is imperative that the President deliver the Indian Policy Statement before the elections. It is all ready to go, but it has apparently become bogged down in Presidential Scheduling.

Rep. Clint Roberts (R-S.D.) recently made campaign comments to the effect that reservations should be terminated. This is anathema to the Indians and these remarks are being widely reported in the Indian press. Liberal and Democratic Indians are saying that Roberts' remarks represent the view of the Administration. Our Republican Indian friends say they need the Indian Policy Statement to counteract this propaganda.

It is no exaggeration to say that if we issue the statement soon we may garner 100,000 to 150,000 Indian votes we might not otherwise get. These votes could affect races in Arizona, New Mexico, North Dakota, Montana and Oklahoma.

It would be foolish for us to fritter away this opportunity.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

October 20, 1982

FOR: EDWIN L. HARPER

FROM: MICHAEL M. UHLMANN

SUBJECT: Sex Discrimination Proposals of Senator Gorton

I. Introduction

Senator Gorton's bill seems attractive at first glance, but upon closer analysis it could lead to political and policy problems every bit as troublesome as those it seeks to eliminate. As outlined below, there are serious questions we must answer before taking a position on this bill. Many of the questions go beyond issues raised by the substance of this specific proposal -- questions having to do with our posture toward judicial activism, our response to the escalating litigiousness of our society, and our view of limits on the Congress's role in interpreting the Constitution.

II. Summary of Provisions of Gorton Bill

Senator Gorton's bill would turn every gender-based distinction employed by the United States or by any State into a "suspect classification" making such distinctions, in effect, the legal equivalent of racial classifications.

The bill provides that neither the United States nor any state may make a classification based on sex unless such classification is necessary to achieve a compelling interest of the government. The prevailing judicial interpretation of "compelling interest" in the racial area is that only the most extraordinary circumstances can be considered to be compelling.

Therefore, the effect of the bill would be to eliminate all governmental classifications based on sex, except in very limited and unusual circumstances.

In addition, the bill subjects to personal liability any person who, acting under color of state law, subjects another person to a gender-based classification which is not necessary to achieve a compelling government interest. The bill allows anyone aggrieved by a state or federal gender-based classification to file suit in federal court. The Attorney General is also given standing to seek declaratory or injunctive relief in appropriate cases.

III. Analysis

The Supreme Court has never held gender-based discrimination to be a suspect classification. Rather, the Court has applied so-called "middle level scrutiny," in contrast to "strict scrutiny" applied to racial classifications. The Court will uphold gender- based classifications only if they are "substantially related" to the achievement of "important governmental objectives."

In practice, the Court has upheld very few gender-based classifications in recent years -- upholding the male-only draft registration and statutory rape laws are the two noteworthy exceptions to this trend. The Court's "middle-level scrutiny" standard allows it to strike down any gender-based classification it regards as bad policy.

The Court has deliberated whether to label gender-based distinctions as suspect classifications, but it has decided not to. The court apparently believes that some gender-based classifications are not invidious or demeaning in the way that racial classifications are. Refusing to draft women, or refraining from placing women in combat positions, has long been viewed -- and still is by most people -- as a laudable and enlightened policy.

It would be difficult, however, to show that such a policy serves a compelling governmental interest. Courts have therefore hesitated to apply strict scrutiny to such classifications, to avoid driving out such policies as the all-male draft.

Senator Gorton needs to tell us what governmental policies he wants to change. Since most gender distinctions have already been eliminated under middle-level scrutiny, there is a question of which remaining classifications we should get rid of.

The major gender-based classifications that still remain -- and that would be affected by Gorton's bill -- are:

- All-male draft and registration.
- Military rules restricting women from combat positions.
- State laws which forbid homosexual marriage.
- Laws and rules governing child custody, which often employ a rebuttable presumption that mothers are better suited to receive custody than fathers.
- Single-sex sororities and fraternities at state universities.
- Traditionally single-sex universities, such as Smith or Mt. Holyoke, which accept federal financial assistance.

- Single-sex organizations supported by government such as Boy Scouts and Girl Scouts.

- Father-son, mother-daughter activities in governmental institutions.

- Differing treatment of males and females in statutory rape laws.

In every one of these cases, the good sense of the courts (such as it is) has allowed gender distinctions to pass muster under "middle level scrutiny," but one could not easily find a "compelling interest," as that term is applied in racial discrimination cases, to justify these practices under strict scrutiny.

We must not only ask whether we want to do away with these practices; we must ask several important questions about the institutional role of courts as well:

- Do we want to give courts an open invitation to refashion the law as they wish in the above areas? If we really want to change any of these areas of law, it would be better to do so on an issue-by-issue basis. To turn the question over to the courts invites the very kind of judicial activism which the President has long said he opposes -- the same kind of activism which underlay his opposition to E.R.A.

- Do we want to give a private right of action to anyone and everyone who feels aggrieved by any of these areas of existing law and practice?

Senator Gorton has not yet pointed to any facts that help to show that gender-based distinctions are per se invidious. On the contrary, the gender distinctions that would be struck down by his bill are ones that most people have found acceptable for a very long time.

Moreover, Senator Gorton shows no evidence that the Fourteenth Amendment was intended to bring about equally strict scrutiny for gender as for racial discrimination. If Senator Gorton's bill attempts to be a Congressional interpretation of the Constitution, it is simply a wrong interpretation.

THE WHITE HOUSE

WASHINGTON

October 21, 1982

MEMORANDUM FOR JAMES BAKER
MICHAEL DEAVER

FROM: EDWIN L. HARPER
ELIZABETH DOLE

SUBJECT: Indian Policy Statement

Indians are increasingly exercising their right to vote. Indian tribal leaders have been working closely with the Administration in the evolution and development of the President's Indian Policy Statement since January 20, 1981. Therefore, we know the statement will be well received.

It is the joint assessment of Bob Carleson and Ed Rollins that, if we issue the statement prior to the election, we may well garner 100,000 to 150,000 Indian votes we may not otherwise get. These votes could affect races in Arizona, New Mexico, North and South Dakota, Montana, and Oklahoma.

There may be some opportunities during the President's western trip for him to issue this statement. One opportunity would be his visit to New Mexico on the 29th of October, where he could issue the statement in conjunction with either a public or private meeting with Indian tribal leaders.

Prior to 1980, Indians generally exercised their political rights on an individual basis; the tribes themselves were not politically active or organized. In 1980, for the first time in history, several of the Indian tribes formally endorsed a candidate for President -- Ronald Reagan. The Pueblo Indians, a large New Mexico tribe, were the first to do so. They were followed by the Navajo, the largest tribe in the United States, with over 160,000 members, located mainly in Arizona and New Mexico. The tribal chairman of the Navajo is a strong Republican. A number of smaller tribes followed suit.

Out of the experience of the 1980 election, the American Indian National Republican Federation was formed under the auspices of the Republican National Committee. During the past two years, this group has been vigorously organizing among Indian tribes and groups, registering voters, and conducting other political activities.

The RNC has assigned the AINRF 14 priority Congressional districts to target for this election. These are all districts in which the Indian vote constitutes a substantial block. They are located in such states as New Mexico, Arizona, Montana (where the tribal leader of the Blackfeet is a strong Republican), North and South Dakota.

Recently, the President approved an Indian Policy Statement that stresses self-determination and economic self-sufficiency for Indian reservations. This statement should be very well received in the Indian community, and it was hoped that the statement could be announced by the President prior to the elections.

Unfortunately, Rep. Clint Roberts (R-S.D.) recently made campaign comments to the effect that reservations should be terminated. This is anathema to the Indians and these remarks are being widely reported in the Indian press. Liberal and Democratic Indians are saying that Roberts' remarks represent the view of the Administration. Our Republican Indian friends say they need the Indian Policy Statement to counteract this propaganda.

Attachments

Indian Policy Statement
Schedule Proposal

THE WHITE HOUSE

WASHINGTON

SCHEDULE PROPOSAL

October 21, 1982

TO: WILLIAM K. SADLEIR, DIRECTOR
PRESIDENTIAL APPOINTMENTS AND SCHEDULING

FROM: ELIZABETH H. DOLE

REQUEST: To make an address on the occasion of the release of the President's major statement on Indian policy.

PURPOSE: To outline and encourage support for this Administration's Indian policy of tribal sovereignty and self-determination for federally-recognized tribes.

BACKGROUND: The Indian population numbers 1.4 million primarily in 500 federally-recognized tribes and organizations. Decisions on the content of the President's Indian Policy Statement were made in Cabinet Council meeting September 20. This statement is in keeping with the President's 1980 campaign government-to-government relationship; self-government; repudiation of "termination", and the need for developing Indian economic self-sufficiency. This policy is in total accord with this Administration's New Federalism policy; the Administration's Economic Recovery Plan; deregulation, and involvement of the private sector in addressing national needs.

PREVIOUS PARTICIPATION: To date the President has had no event with Indian tribal leaders, a fact which has been noted in Indian country.

DATE: October 29, 1982

LOCATION: New Mexico DURATION: 1/2 hour

PARTICIPANTS: 200 American Indian tribal leaders
Sec. Watt, Sec. Schweiker, Asst. Interior Sec. Ken Smith

OUTLINE OF EVENT:
- President introduces Sec. Watt, who leads the group
- President then gives his address
- President shakes hands with the front row Indian tribal leaders
- President departs

REMARKS REQUIRED: Major policy address

MEDIA COVERAGE: Full Press coverage

RECOMMENDED BY: Ed Harper, Elizabeth Dole, Ed Rollins, and Sec. Watt

OPPOSED BY:

PROJECT OFFICER: Morton C. Blackwell

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

October 21, 1982

FOR: EDWIN L. HARPER

FROM: MICHAEL M. UHLMANN

SUBJECT: Economic Equity Act/Women's Strategy

I. Status of EEA Proposals

A. IRA Accounts. The 1981 ERTA now permits a non-working spouse to establish an IRA in her or his own name.

B. Standard Deduction for Heads of Households. Roger is looking at revenue loss projections that would occur if the standard deduction were made equal to that for married couples filing jointly.

C. Job Tax Credit for "Displaced Homemakers". If there be anyone so bold in the Administration to champion this idea, lots of luck.

D. Insurance and Pension Reform. The EEA would in effect eliminate all gender-based distinctions in the insurance and pension industry. On the question of insurance in general, the insurance industry, so far as I can tell, would be unanimous from now until forever in resisting so broad a federal intrusion into the insurance business. If there is significant sentiment within the Administration to open up this issue on a broad scale, a working group of some sort could be established to study it. But absent some compelling reason to do so, I would not recommend such course.

Although pension equity for women is generically related to the larger question of insurance as a whole, it is already on the federal agenda because of ERISA and the Supreme Court's ruling in a Title VII case (Manhart) a few years ago. As you are aware, there is a CCLP working group which is now looking at the matter. Their next meeting is scheduled for early November.

E. Day Care Tax Credit. The 1981 ERTA essentially enacted the EEA's goals in this matter.

F. Armed Forces. The EEA seeks to eliminate a number of remaining gender-based distinctions, running the gamut from promotions to job assignments to differences between sons and daughters sharing in a deceased parent's estate. Some of these proposals get themselves entertwined with the separate question of military preparedness, but others do not. The Act also calls for an annaul report by the Secretary of Defense on the status of

women in the Armed Forces. This last could easily be done without the necessity of Congressional enactment. The Task Force on Legal Equity for Women is ideally constituted, I think, to examine the larger questions of remaining gender-distinctions within the DOD establishment.

G. Regulatory Reform. The EEA would require the head of each agency to assure sex neutrality in regulations. The purpose of the Act in this respect is essentially identical to that of the President's Executive Order.

H. Agricultural Estate Tax. The 1981 ERTA made it easier to retain family ownership of farms, and essentially enacts the provision of the EEA in this regrad.

I. Alimony and Child Support. The EEA would require the Justice Department to study enforcement problems in this area and to make recommendations for improvement. Again, this is the sort of thing that can be undertaken without Congressional mandate. As you are aware, Bob Carleson has a CCHR group looking at problems in the area of child support. Emily's memo to you of October 18 highlights major subtopics and contains some useful suggestions. Either directly or indirectly through the Justice Department we can provide whatever legal analysis may be necessary to overcome remaining problems in this area.

In summary, it can be said that substantial portions of the EEA have already been enacted or are being pursued administratively. The stickiest wickets arise from problems in DOD and those having to do with insurance and pension reform. In the former a certain tension arises from the competing claims of military preparedness, and in the latter from the fact that women as a class have different risks and actuarial probabilities. Unless one assumes that all gender-based distinctions are or should be per se discriminatory, we will in all likelihood continue to pursue certain policies that will displease certain women's groups.

II. Longer-term Women's Strategy

Any longer-term strategy for dealing with women must begin with a better understanding than we now possess of the so-called "gender gap" and what it portends. There is a tendancy in certain quarters to assume that women as a class are disaffected by Administration policies. This is true only superficially. A closer look at the data, as I have indicated in a number of earlier memos, suggests that what we are looking at may have less to do with gender differences as such and more to do with the socio-economic condition of large numbers of people many of whom happen to be women. The data also suggest the importance of distinguishing among different groups of women. While certain themes are a stronger constant factor among women as opposed to men (e.g., "compassion", war/peace), attitudes among women differ

depending on whether they are married or unmarried, employed or unemployed, old or young, etc. Because of these differences there is no one policy or set of policies -- beyond the general restoration of economic health and the maintenance of peace -- which can satisfy so broad and so diverse a constituency.

The demographic changes in the American body politic over the past twenty years, (and the last ten in particular), especially as they pertain to the status of women, are so large and, in comparison to traditional American patterns, so novel that people far wiser than I have been hard pressed to understand much less formulate a policy to deal with these forces. If, for example, the tendancy toward single parent child rearing continues or expands during the next ten to twenty years at the same pace that it has during the past ten to twenty years, then I would say to you that we are on the threshold of a kind of political and social order that America has never known before and that many of the assumptions which consciously or unconsciously underlie our laws and customs will of necessity have to undergo radical change. Before any long-term strategy for dealing with these phenomena can be formulated, we will have to ask some rather fundamental questions about what kind of society we as a people want to have.

In raising these larger issues, I do not mean to suggest that we cannot or should not embrace specific policies of the sort proposed for example by the Economic Equity Act. I do mean to suggest that the sociological and cultural forces underlying the "gender gap" are so broad and so deep that they will contiue to exist regardless of what we do on any of the particular items contained in legislation like the EEA. What I would suggest at this point is the formation of a small group within the Adminstration -- consisting, for example, of some census folks, some peole from CEA, Rich Beal's shop, and perhaps from BLS -- which would be charged with preparing a detailed analysis of the data and with drawing out some of the larger policy implications which that data portend. Such a task could be completed, I should think, within the space of two or three months, at which time we could sit down in an effort to formulate a broad policy for the future.

SEABED MINING AND THE LAW OF THE SEA TREATY

BY EDWIN MEESE III

President Reagan's appointment on _____ of _____ as _____ is an important step in the President's efforts to secure a workable legal framework for the mining of the world's mineral-rich seabed.

When he entered office, President Reagan inherited a process originally designated to establish such a legal regime -- the Law of the Sea (LOS) negotiations. But the discussions some years before had begun veering off course, and the President immediately recognized that many potential provisions of the treaty would be unfavorable to American interests.

Through his negotiators, President Reagan sought several revisions, supported by our key Western allies, which would have substantially improved the document. But the bloc of countries that formed the dominant force in the treaty discussions bluntly spurned most of the changes the American delegation proposed. As a result, the draft convention approved last April continued to cast the United States as the major bankroller of a seabed mining scheme that could virtually close off U.S. and private sector mining of the seabed.

The seriousness of this issue overshadows the other, less controversial portions of the treaty. For the U.S. now must import more than 50% of our requirements for more than half of the most critical strategic minerals we use. Access to the vast seabed deposits may therefore be essential to protecting the U.S. economy and our national security in future years.

To ensure this access, the President declined to approve the flawed treaty, and has joined instead in an effort to establish an alternative seabed regime. He intends to work closely with other countries having seabed mining potential in order to create a legal environment that would encourage prudent development of the seabed's mineral resources.

He will also continue pursuing bilateral, regional, and multilateral agreements, where useful, to deal with additional maritime matters, such as scientific research and ocean pollution. In other important areas, such as navigation and overflight, traditional freedoms of the U.S. and its allies are already fully secure under existing international law. Thus, participation in the proposed treaty is not necessary to protect ours or our allies' general maritime interests.

Indeed, joining the treaty would be severely damaging to the seabed interests of both the U.S. and other nations. The LOS treaty would actively <u>discourage</u> mineral production from the ocean's floor, a crucial point that many LOS advocates have attempted to obscure.

A review of the treaty's flaws is essential to understanding why an alternative regime is this country's only option for protecting access to vital seabed minerals.

One of the treaty's most basic problems stems from the discriminatory nature of the seabed apparatus itself. The International Seabed Authority, to be established by the treaty to regulate mining, would be governed by two bodies -- an assembly composed of all parties, each with an equal vote, and a 36-member council.

The assembly would be numerically dominated by many small countries which have little or no prospective seabed mining capability. Influential among these nations, in fact, are land-based mineral producers who do not wish to see development of minerals from the seabed because it could jeopardize their competitive position in world markets.

In the council, a bias would exist against the United States. Already established rules would reserve three seats specifically for the Eastern European bloc (and thus, in practice, the Soviets), while the U.S. would not be guaranteed even one seat.

Thus, U.S. access to the oceans' store of strategic minerals would be entrusted to the goodwill of nations which have, for the most part, opposed U.S. political and economic objectives in the past.

Nor would the Authority's operating methods encourage seabed mineral production. The Authority could turn down any application for seabed development, even if the applicant were highly qualified and met all the established standards. Such a process would almost certainly be politicized, and, again, could well become highly unfavorable to the United States. Even if an application were approved, the Authority would be empowered to limit or terminate mineral production from the site.

The Authority would also have its own mining company, to be known as the "Enterprise," to compete with private concerns. This "Enterprise" would enjoy preferential treatment and generous subsidies, including loans and loan guarantees. Under the treaty, the United States would be required to provide one-fourth

of these funds, thereby forcing us to subsidize the very "Enterprise" whose ultimate practical effect could be to put U.S. and other private or national companies out of the seabed business -- if they were ever able to begin mining in the first place.

In addition, private mining firms could be forced to sell their mining technology to the Enterprise and possibly to other countries if the Enterprise could show that it could not get it elsewhere. Governments party to the treaty would be obligated to compel this transfer -- a chilling precedent which would in effect nationalize private property with no guarantee of just compensation.

Finally, and perhaps most dangerous, the treaty would be reopened for amendments 15 years after mining commenced. Since amendments could be added with a three-fourths vote of the parties, U.S. approval would not be required, thus denying the U.S. Senate its constitutional prerogative to advise and consent on the nation's treaty commitments. As a result, the United States would lock itself in advance into quite possibly anti-American treaty changes over which we could have no direct control.

In sum, these provisions would virtually preclude private sector, or even national, seabed mining efforts. Few if any mining firms or countries could afford the tremendous capital investment required for seabed start-up only to risk the taking, a few years hence, of their technology, their choice of mining sites and perhaps even their right to mine. U.S. industry, in particular, has made it clear it would not invest under such an arrangement.

Thus, it would be irresponsible for this nation to subjugate its seabed mining potential to the proposed LOS convention. Rather, it is in the best interests of the United States -- indeed, of the rest of the consuming and producing world -- to explore more productive alternatives to this seriously flawed regime.

There are many ways to assure the viability of seabed mining through an alternative international arrangement, including bilateral, regional and multilateral accords. The U.S. has already demonstrated its ability to cooperate with its allies by signing an interim agreement on resolving potential mining claim disputes until a more comprehensive regime is in place.

While our allies have not made a decision on ratification of the LOS treaty itself, the U.S. regards this interim agreement as an important development. We will continue consulting with our allies, all of whom have seem defects in the LOS treaty, on the best way to proceed.

November 1, 1982

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

October 26, 1982

FOR: EDWIN L. HARPER

FROM: MICHAEL M. UHLMANN

SUBJECT: Outline for Radio Talk on Women

Here is Bill's draft, as revised by me. Without a specific target or occasion anything of this nature is bound to be fluffy, if not vacuous. We have attempted to bridge the gap between women who by choice or necessity find themselves in the workforce, and those who find fulfillment as wives and mothers. Both groups are cited for the contributions they are making or will make to the social order, and an effort is made to sympathize with some of the problems each faces.

It is, in short, the kind of statement that might be issued during a Presidential campaign: unavoidably fluffy if one's purpose is to avoid alienating anyone, but by the same token, it is unlikely to please anyone very much.

Outline of Radio Speech on Women in American Society

1. Today, we are more aware of the important and multiple roles which women play in the life of our society. We recognize and salute the singular contribution that women are making in their work --both inside and outside the home.

2. We have seen fundamental changes in the past 30 years.

   - o More and more women are working outside the home -- some by choice, some by necessity.
   - o Brought about in part by technical advances which have reduced time necessary for household work.
   - o Also brought about by economic pressures that have made it necessary for more women to become wage-earners to support family.
   - o Women will help transform the workplace -- enriching it with their talents and civilizing it as they have the home.
   - o Women may also play a part in returning wage-earning work back into the home. Technology is making this possible. This will strengthen family and should be encouraged.
   - o Women must have equal opportunity. Must receive equal pay for equal work. Progress is being made.
   - o We must continue to eliminate policies which are unfair to women who work outside the home. Progress is being made. (Cite accomplishments.)

3. Even as these changes are occuring, women continue as wives and mothers, keeping the family intact.

   - o The burdens of maintaining strong family ties often fall most heavily upon women. The hard work essential to and the social significance of maintaining strong families are too often undervalued.
   - o As mothers, women play central role in raising, nurturing children and in forming their character and values.
   - o It is today's women who will transmit civilization and humanity to future generations and by their response to the challenges of life determine whether America will continue to be strong and free.

DOCUMENT NO. 098037 PD

OFFICE OF POLICY DEVELOPMENT

STAFFING MEMORANDUM

DATE: 10/19/82 ACTION/CONCURRENCE/COMMENT DUE BY: 10/25/82

SUBJECT: Radio Speech on Women in American Society

	ACTION	FYI		ACTION	FYI
HARPER	☐	☐	DRUG POLICY	☐	☐
PORTER	☐	☒	TURNER	☐	☐
BARR	☐	☐	D. LEONARD	☐	☐
BOGGS	☐	☐	OFFICE OF POLICY INFORMATION		
BRADLEY	☐	☐	HOPKINS	☐	☒
CARLESON	☐	☐	COBB	☐	☐
DENEND	☐	☐	PROPERTY REVIEW BOARD	☐	☐
FAIRBANKS	☐	☐	OTHER		
FERRARA	☐	☐	_____	☐	☐
GALEBACH	☐	☐	_____	☐	☐
GARFINKEL	☐	☐	_____	☐	☐
GUNN	☐	☐	_____	☐	☐
B. LEONARD	☐	☐	_____	☐	☐
LI	☐	☐	_____	☐	☐
MONTOYA	☐	☐	_____	☐	☐
ROCK	☐	☐	_____	☐	☐
ROPER	☐	☐	_____	☐	☐
SMITH	☐	☐	_____	☐	☐
UHLMANN	☒	☐	_____	☐	☐
ADMINISTRATION	☐	☐	_____	☐	☐

REMARKS:

Please return this tracking sheet with your response

Edwin L. Harper
Assistant to the President
for Policy Development
(x6515)

Los Angeles Times

Friday, October 8, 1982

Republicans Can Win on Women's Issues

By RICHARD A. VIGUERIE

There is a lot of talk these days about the Reagan Administration's "gender gap"—the problem it is having with women. In a Harris poll at the end of June, 53% of the women questioned said they were inclined to vote Democratic this fall; only 35% were inclined to vote Republican. Other polls show that considerable numbers of women oppose the Administration's positions on the Equal Rights Amendment, abortion and the nuclear freeze. These, we are told, are the "women's issues" that will revolutionize American politics over the next few years.

I'm afraid that some of the President's advisers may swallow these figures uncritically, and argue that in order to win women over, the President should move to the left on these "women's issues." This would be a sad and costly—and unnecessary—mistake. If Republican leaders and White House strategists allow liberal politicians, the media and women's movement leaders to define the terms of the debate as only ERA, abortion, the nuclear freeze and a few other self-selected liberal issues, the Republican Party can't hope to win.

There are other issues about which women are concerned and to which Republicans should respond—the far larger numbers of conservative issues that move and motivate the majority of women as workers, wives and mothers in our society. For example, why isn't the low quality of education in most public schools a women's issue? And why isn't it considered a women's issue that many women are afraid for their children's safety when they leave home each morning for blackboard jungles where crime, drugs and violence have increased frighteningly over the last few years? And why isn't busing treated as a women's issue? Last March, 76% of women responding to a CBS/New York Times poll opposed busing school children for the purpose of integration.

What about the flood of pornography engulfing the country? Why isn't it considered a vital issue for women? Not just the sleazy, hard-core "adult" stores and theaters that blight many cities, but the equally insidious softer-core barrage of sex and violence on America's television screens.

And why isn't rape written about as a crucial issue for women? A recent study reached the extraordinary—and certainly unacceptable—conclusion that if the crime epidemic continues at the present rate, one in every 10 women in the United States will be a rape victim in her lifetime. Obviously, the party and the candidates that tackle this issue will be doing something for women, not just talking about doing something.

Drafting women into the Army is an obvious women's issue. In an August, 1981, Gallup poll, 64% of women expressed strong opposition. And another Gallup poll last May reported 81% of women favoring a voluntary school prayer amendment to the Constitution. Or what about drunk driving? There could be no better women's issue than making our streets and neighborhoods safe for people to drive and children to play.

It may be argued that these issues are essentially local in interest, therefore limited in their effect. But as was demonstrated in 1978 and 1980, state and national elections can be won by coalitions of people who are deeply committed and highly motivated by single issues.

So the President's political advisers should really *think* about women's issues instead of accepting the conventional wisdom that liberals have so far managed to impose on the subject.

So far the signs aren't very hopeful. It is sad but true that the number of sophisticated, experienced political practitioners in the Reagan White House are few. Why else would the Republicans be allowing the Democrats to frame the 1982 election as a referendum on Reaganomics?

If Republican candidates have the courage of their convictions, and start running on issues like quality education, safety in schools, opposition to busing and support for voluntary prayer, they will once again find enormous support all across America—and not least from American women, whose real concerns and real interests they best express.

Richard A. Viguerie is the publisher of Conservative Digest.

THE WHITE HOUSE

WASHINGTON

October 18, 1982

MEMORANDUM FOR MICHAEL UHLMANN

FROM: for EDWIN L. HARPER by P. Buchanan

SUBJECT: Radio Speech on Women in American Society

Would you please work with Kevin Hopkins outlining a Presidential radio speech on the role of women in American Society today.

cc: Kevin Hopkins

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

October 26, 1982

FOR: EDWIN L. HARPER

FROM: MICHAEL M. UHLMANN

SUBJECT: Draft Response to Mail on Nebraska Religious School Controversy

Attached is a draft response to the thousands of letters and telegrams on the Nebraska school case. If it meets with your approval, Anne Higgins's shop should be notified pronto so the letters can get out ASAP.

Dear _____:

I share your concern over the religious liberty issues involved in the Nebraska dispute over teacher certification and other forms of state regulation for church-operated schools.

You probably share my sense of gratitude in learning that Pastor Sileven was released from prison last Friday. Enclosed you will find the statement we issued upon learning of this commendable step toward accommodation of this dispute.

The federal government has not been directly involved in Pastor Sileven's case, because it is a state court proceeding. But my Department of Education has been helpful in mediating between the state authorities and the churches and individuals concerned with the schools.

It is my hope and expectation that the citizens and state authorities in Nebraska will arrive at an orderly resolution of this dispute in a manner that respects both freedom of religion and quality of education.

Sincerely,

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release October 22, 1982

STATEMENT BY THE PRINCIPAL DEPUTY PRESS SECRETARY

The President was pleased to learn that a step toward accomodation has been reached in Nebraska over the subject of teacher certification for church-operated schools. He is grateful his Department of Education could be helpful in mediating the matter and happy that the Reverend Everett Sileven of Louisville, Nebraska, can rejoin his family.

In accord with America's historic commitment to diversity in education, the President expressed hope this spirit of cooperation will lead to a solution consistent with both the state's responsibility to ensure high-quality education and the right of parents to organize and support church-related schools for their children. He applauds the renewed effort to work within the framework of the law.

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MEMORANDUM

THE WHITE HOUSE

WASHINGTON

October 26, 1982

FOR: EDWIN L. HARPER

FROM: MICHAEL M. UHLMANN

SUBJECT: ACLU v. Lofton on "Good Morning America"

The ACLU has cut loose a 60-page Jeremiad entitled, "Civil Rights in Reagan's America". The thesis of the report, as summarized by Good Morning America's host, is that the Bill of Rights is under attack and that the Administration poses a greater danger to civil liberties than Joe McCarthy.

Ira Glasser led off for the ACLU by noting our proposed cutbacks in FOIA ("they have talked about exempting the CIA") and last year's Executive Order on intelligence information, which, he said, used an expanded definition of national security to cut off information from the public.

John Lofton, in reply, opened by saying that he couldn't take the report seriously because it was an obvious political ploy - "a smear...scurrilous, preposterous...a 60-page editorial cartoon." The ACLU, he noted, is upset by the Administration's policy on abortion, but has no problem when Christian school children are denied the right to pray.

Glasser ignored Lofton's riposte and returned to the general theme that the Administration was undermining the traditional view of civil liberties in the U.S. It is, he said, "an enemy of civil rights" as witness its policies on "blacks and women, church and state, and the federal court system."

Lofton countered by repeating his charge that the report was a "smear", stating that the ACLU tars as an enemy of liberty anyone who doesn't agree with their position.

Glasser and Lofton then fenced for perhaps 20-30 seconds on busing without particular point or effect.

In the wrap, the host noted that the Administration refused to provide a rebuttal spokesman to Glasser - hence Lofton's appearance.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

October 27, 1982

FOR: ROGER B. PORTER

FROM: MICHAEL M. UHLMANN

SUBJECT: NLRB

This year we will have three appointments to make to the NLRB. There is one opening now; Fanning's seat will open in December; Jenkins' seat will open in August.

The following are some developing areas of the law that will continually arise and that can be expected to be addressed by the NLRB over the next few years:

1. Mallinckrodt issues: In the Mallinckrodt case, the Board has laid down various factors to be considered in determining whether to permit skilled craftsmen to form their own union and to separate from a larger general union. While purporting to consider these factors on a case-by-case basis, the Board only pays lip service to them and almost never permits a craft unit to be severed. We favor greater severance freedom for craftsmen and want to see the Board become more generous in permitting severance.

2. Conaire Corp. issues: The NLRB has adopted a practice of imposing a union on workers if it finds that an employer is guilty of extremely unfair labor practices. Under this doctrine, the Board will impose unions on workers even if the workers have voted to reject a union. There is a distinct danger that the threshhold of "extremely unfair" practices by the employer will be gradually lowered so that imposition becomes a more common practice.

3. Dalmo Victor issues: Under existing law, a union can fine its members if they do not strike when a strike is called by the union. Recently, the Board held that a union member who did not wish to strike could not resign from the union for a period of 30 days after a strike was called. This effectively deprives union members of the right to resign because, if there is a strike, the employer will usually decide whether to hire "scabs" early in the strike.

4. Secondary boycott issues: The NLRB has been generous in permitting secondary boycotts. Obviously, we would want to see a Board that would place more limits on picket rights against non-employers.

There are a number of other issues, and I have asked some outside groups to prepare an analysis of those areas of the law that could be influenced by our NLRB appointments. I expect this analysis to be forwarded to me within a week or so.

A number of outside groups have made recommendations to me on NLRB appointments. Two names that keep coming up are Mr. Don Dodson, currently Assistant Secretary of Labor for Labor - Management Services, and Ms. Edie Baum, Chief Minority Counsel for the House Labor and Education Committee. Both are said to be confirmable.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

October 27, 11982

FOR: EDWIN L. HARPER

FROM: MICHAEL M. UHLMANN

SUBJECT: ACLU Attack Against the Administration

John Lofton is right: the ACLU report is scurrilous. Because it is blatantly so, any effort to reply would give it a dignity it does not possess and invite discussion under terms and conditions we cannot control.

After accusing us of being worse than Nixon and Joe McCarthy (because destruction of The Bill of Rights is "a primary goal, not a side effect" of our policies), the report levies charges in the following major areas:

- Secrecy In Government (attempts to tighten FOIA; broadening the definition of "national security" in the Executive Order on Intelligence; passage of Intelligence Identities Protection Act; pardoning Felt and Miller)
- Legal Services Corp. (cutting budget, placing limits on participation in kinds of cases)
- Civil Rights (General) (we have "virtually dismantled the enforcement of federal civil rights laws" -- busing, opposition to the "effects" test in VRA)
- School Prayer
- Abortion
- Anti-Crime Legislation
- Attack on the Federal Courts (support of limitations on court jurisdiction; arguing that legislatures, rather than courts, decide certain constitutional questions)

In short, an altogether predictable litany of lamentations from an organization which cannot abide the idea that anyone, anywhere might have a view on civil liberties different from their own. It is quite obviously part of an orchestrated assault on the Administration, whereby now-this, now-that left-liberal group screams just prior to the election that Torquemada is alive and well in Washington. (Betcha didn't know that "It (the Administration) wants women to return to the kitchen and stay pregnant. It wants gays to stay in the closet, and blacks on the wrong side of the track. It wants to unleash the police and the intelligence agencies from legal limits on their discretion...")