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Lubbock Civil Liberties Union v. Lubbock Independent School District

Facts

- o In 1979, the Lubbock school system adopted a policy that allowed both religious and non-religious student groups to meet before or after school, on a voluntary basis, for any educational, moral, ethical, or religious purpose.
- o This was essentially a policy of government neutrality toward religious and non-religious clubs; it allowed freedom of speech without regard to the religious content of the speech.
- o Even the president of plaintiff Lubbock Civil Liberties Union testified in the district court that the school district's policy of equal access was constitutionally sound on its face.
- o The district court upheld the school's policy as constitutional.
- o The district court found that the school district had taken certain actions before 1979 that unconstitutionally favored religion, (e.g., allowing readings from Scripture over the school's P.A. system). The Court, however, issued no injunctive relief because the school had refrained from any unconstitutional activities since adopting its new policy statement in 1979.

Holding of Court of Appeals

- o The Fifth Circuit reversed, stating that the school's policy constituted, on its face, an impermissible establishment of religion.
- o The Court held that allowing religious meetings "at a time closely associated with the beginning or end of the school day" implies recognition of religious activities and implies approval by school officials.
- o Students might be unduly influenced to attend a voluntary prayer meeting before or after school -- e.g., if they saw entering the meeting "the captain of the school's football team, the student body president, or the leading actress in a dramatic production." So arguing, the Court found the policy to have the primary effect of advancing religion.
- o The Fifth Circuit denied a petition for re-hearing en banc, but four judges dissented, saying that the decision would give "the impression that our government and the courts and the schools are hostile to all religious belief and practice."

### Procedural Posture of Case

- o The Lubbock schools filed a petition for certiorari with the Supreme Court on November 12. Amicus briefs in support of the cert. petition are due December 12.
- o It appears that a large number of amicus briefs will be filed, both by groups that have been active in support of the President's prayer amendment (e.g., Christian Broadcasting Network) and by some groups that have not (e.g., National Association of Evangelicals).

### Arguments in Favor of Filing Amicus Brief for U.S.

- o This case presents an excellent opportunity for us to affirm freedom of speech equally for religious and non-religious expression, and to call attention to a glaring judicial distortion of the Establishment Clause.
- o By filing in support of the petition for certiorari, we would enhance the likelihood of the Court hearing a case whose facts are ideally suited for making the President's case for freedom of religious expression.
- o We have strong legal arguments based on the Supreme Court's Widmar decision of last year, which:
  - required state universities to give equal treatment to religious and non-religious groups;
  - said that an equal access policy does not constitute recognition or support of religion by public authorities;
  - said that state universities may not discriminate against forms of speech that are religious in content.
- o A reversal of the Fifth Circuit would be a major victory for the constituency groups that have pushed hardest for the President's school prayer amendment.

### Arguments Against Filing

- o There is no enforcement authority of the U.S. in issue in this case.
- o There is some danger that the appellees will focus attention on the school district's pre-1979 policies favoring religion, although those policies are not legally in issue.

- o The United States seldom files an amicus brief at the cert petition stage.

Additional Option

If we decide not to file at the certiorari stage, we should strongly consider filing a brief on the merits should the Supreme Court grant certiorari.

November 18, 1982

MEMORANDUM

SUBJECT: Protecting the Pro-Administration Orientation of the National Institute of Education

We need to shore up our position at the National Institution of Education. Acting Director Bob Sweet has been orienting NIE soundly toward Administration goals. But the new appointee for NIE Director is an unknown quantity, and some timely preventive action now could assure that NIE does not switch sides into the opposition camp.

Outline of Situation

Our political appointees at NIE have initiated a research agenda emphasizing basic skills and local control of education. Promoting the President's agenda has entailed persistent work against the opposition of an entrenched bureaucracy (for instance, 25 NIE bureaucrats recently filed an anonymous 30-page personnel complaint with the Merit Systems Protection Board, attacking the persons and program of our appointees in NIE).

Now, we have nominated an unknown quantity, Manuel Justiz, Professor of Education at the University of New Mexico, to be the new Director of NIE. This appointment was justified as an effort to help out Senator Schmidt in New Mexico, and to reach out to a minority group that could potentially give us increased support.

However, social issue conservatives are concerned over the lack of evidence that Justiz shares the President's agenda on education research issues. Our people at NIE report that he has paid more attention, in the course of being briefed about the Institute, to the senior-level bureaucrats than to the political appointees.

Analysis

The stakes at NIE are high. Anti-Administration bureaucrats have been vociferous and confrontational in trying to obstruct a pro-Administration agenda for the Institute. No one seems to have any idea what Justiz's thoughts are about education, education research, or the Administration's agenda at NIE. The problem is that we will not find out until Justiz is confirmed and begins to make decisions -- and by then it will be too late.

The best safeguard against a switch of policy at NIE is to have our appointees in place at the National Council on Education Research before Justiz takes power. This Council is not the ordinary Executive Branch advisory council. It has statutory authority to hire its own staff, to commission writings and research, to stake out positions on education issues, and to set policy at NIE.

We dismissed the entire previous Council in May and replaced it with our own nominees. The Senate Committee on Labor and Human Resources, however, has not yet acted on the nominations. The Democrats on the Committee are holding up the nominations. With the restricted agenda of the lame duck session and with the budget dominating the beginning of the next Congress, we would be fortunate to get hearings on these nominations before February or March.

#### Options

1. We could make an immediate recess appointment of all the members of the Council. This would be a sure-fire way to maintain a pro-Administration direction for NIE, but it could engender negative publicity and make ultimate confirmation of the Council members much more difficult.

2. We could inform Senator Hatch that it is our desire that no hearings be held on Justiz's nomination until hearings have been held on the Council nominees. We could thus make the Council appointees and Justiz a package deal; if the Senate continued to delay on the entire package, our people at NIE could simply continue their present good work.

## Administration Initiatives Encountering Judicial Hurdles

Judicial activism -- the proclivity of some judges to act as super-legislators -- is taking a toll on Administration initiatives. A number of significant Administration initiatives have been frustrated or impaired by court rulings.

Federal courts have, among other things:

- o Enjoined enforcement of Department of Labor regulations under the Davis-Bacon Act, which would have saved in excess of \$600 million annually in government construction costs.
- o Invalidated the rescission by the Department of Transportation of the airbag rule for automobiles.
- o Invalidated an oil and gas lease sale off the coast of California for failure to adequately respond to Governor Brown's comments.
- o Enjoined disbursement of federal funds for land acquisition costs on the Westway for failure to consider the impact on fish adequately.
- o Impaired our war on drugs by holding: (i) that the Customs Service is precluded from participating in drug investigations except for policing the border, and (ii) that dogs cannot be used to sniff suitcases unless police have a reasonable suspicion that the suitcase contains drugs.
- o Held that losing plaintiffs in environmental cases can recover attorneys' fees from the government under the Clean Air Act, setting back our efforts to reduce attorney fee awards in government litigation.
- o Impaired our efforts to control selection and employment of Executive Branch personnel by (i) holding that the Secretary of Labor is precluded from removing members of the Benefits Review Board, a DOL component, and (ii) enjoining furloughs of employees of the Government Printing Office.
- o Interfered with efforts to deregulate financial institutions by invalidating a rule of the Depository Institutions Deregulation Committee relating to interest rate ceilings on time deposit accounts.

- o Interfered with our efforts to deregulate trucking by holding that the Motor Carrier Act does not empower the I.C.C. to permit truckers to expand commodity authority without specific findings as to need for service and carrier fitness.
- o Ruled against the nuclear power industry by (i) holding that the environmental impact statement for the restart of Three Mile Island had to address the "psychological impact" on the community, and (ii) invalidating an NRC rule concerning the environmental impact of the nuclear fuel cycle.

Most of these cases are being appealed. However, they underscore the importance of selecting federal judges who will champion doctrines of judicial restraint.

Office of Policy Development  
November 19, 1982



MEMORANDUM

THE WHITE HOUSE

WASHINGTON

November 20, 1982

FOR: EDWIN L. HARPER  
FROM: MICHAEL M. UHLMANN  
SUBJECT: New Initiatives in Antitrust

As you are aware, Bill Baxter has initiated a major review of the antitrust laws. The purpose of the exercise is to incorporate into antitrust statutes much of the so-called "new learning" which has emanated from the Chicago School and of which Baxter himself (along with folks like Bob Bork, Dick Posner, Jim Liebler, and Jim Miller) has been a leading exponent. The core of the new learning is "consumer welfare" economics, which seeks to analyze whether the public is in fact helped or hurt by antitrust and trade regulation enforcement which is undertaken in its name.

To make a long story short, a considerable body of literature over the past 20 years has demonstrated that much antitrust enforcement has adverse rather than beneficial consequences for the public. What Baxter apparently has in mind is a series of statutory changes which will ensure that consumer benefit is in fact the dominant criterion of enforcement.

Although the Antitrust Division is still in the process of deciding what should or should not be in the package, Baxter himself has a particular interest in the following:

- o Limiting the number and scope of per se violations to those which are capable of restricting output. Of necessity, this will focus primarily on horizontal activities and steer away from vertical arrangements save where those arrangements will be likely to invite or induce cartel or price-fixing behavior. This will require amending the Sherman Act, but depending on how far Baxter wants to press the principle, the Clayton Act as well.
- o There are any number of ways in which this same theme might be carried out, e.g.,
  - codification of merger guidelines of the sort now in force;
  - a statutory declaration that no vertical arrangement shall be illegal unless it restricts output;

- a statutory change to overcome certain theories embraced by the courts on patent-licensing arrangements;
- a statutory change to enhance the feasibility of R&D consortia.
- o Amending Section 8 of the Clayton Act (which deals with interlocking directorates) for the twin purpose of (a) expanding the rule to cover certain officers as well as directors, and (b) narrowing the rule in terms of what kinds of interlocks may be mischievous.

It is too early to tell which of these particular proposals will survive review within DOJ, but I have informed Baxter of the deadline we face over here. I would expect some sort of draft package from them by late next week or early the week after.

Apart from the general thrust, with which I strongly concur, we should pay special attention to the legislative and political risks which will necessarily arise if we send a major antitrust reform package to the Hill. I am, I must confess, something of a pessimist on this point and, despite my enthusiasm and support for what Bill is trying to do, believe we should proceed with caution. I will provide you with greater detail on this point when we meet and suggest a possible alternative.

STATUS OF PROPOSALS IN ECONOMIC EQUITY ACT

<u>Section</u>	<u>Proposal</u>	<u>Status</u>
<u>TITLE I -- TAX AND RETIREMENT MATTERS</u>		
101	Permit non-working spouse to set up own IRA.	Accomplished in 1981 ERTA.
102	Prohibit waiver of survivor benefits in ERISA plans unless spouse agrees.	Can be folded into <u>Manhart Working Group study of pensions/insurance</u> . Alternatively, CCEA may wish to handle.
	Require ERISA plans to pay survivor benefits if participant dies after 10 years service.	Can be folded into <u>Manhart Working Group study of pensions/insurance</u> . Alternatively, CCEA may wish to handle.
103	Provide that pensions can be assigned by divorce courts.	Accomplished for military spouses by statute, 1982.
104	Lower required participation age for ERISA plans from age 25 to age 21.	
105	Require retirement plans to count maternity leave for purposes of vesting and benefits.	Can be folded into <u>Manhart group</u> .
106	Increase zero bracket amount for heads of household to equal married couples.	
107	Entitle former military spouses who were married for at least 10 years the right to pro rata share of pension benefits.	Can be folded into <u>Manhart group</u> . (DOD member will have to be added.)

- |     |  |   |
|-----|--|---|
| 108 | Entitle former civil service spouses who were married for at least 10 years the right to pro rata share of pension benefits. | Can be folded into <u>Manhart</u> group. (DOD member will have to be added.)                            |
| 109 | Extend targeted-jobs tax credit for five years and make "displaced homemakers" eligible hirees.                              | Because of revenue-loss implications, you were not keen on pursuing this the last time we discussed it. |

TITLE II -- DAY CARE PROGRAM

- |     |  |   |
|-----|--|---|
| 201 | Increase child care credits.   | Accomplished in 1981 ERTA.  |
| 202 | Allow employers to provide child care assistance as tax-free fringe benefit. | Incentives for private sector child-care accomplished in 1981 ERTA. |

TITLE III -- ARMED FORCES

- |     |   |  |
|-----|---|--|
| 301 | Eliminate numerous sections in the U.S. Code which make sex-based distinctions in recommending promotion of Naval and Marine officers, removing officers from active duty, distributing assets of deceased members of Army and Air Force. | Largely subsumed in DOD review pursuant to Task Force on Legal Equity for Women. |
| 302 | Require annual DOD report on status of women.   | Army has completed 15-month study.   |

TITLE IV -- ESTATE TAX ON AGRICULTURAL PROPERTY

- |     |   |                            |
|-----|---|----------------------------|
| 401 | Raise estate tax exemption from \$175,000 to \$600,000. | Accomplished in 1981 ERTA. |
|-----|---|----------------------------|

- 402            Make it easier for                    Relief for agri-  
                 agricultural properties                    cultural properties  
                 to qualify for lower                    provided in 1981  
                 estate taxes.                                    ERTA.
- 403            Reduce the interest  
                 rate charged by IRS on  
                 deferred farm estate  
                 tax payments.
- 404            Eliminate FmHA provision  
                 apparently favoring married  
                 individuals with dependents  
                 in its lending.

TITLE V -- NON-DISCRIMINATION IN INSURANCE

- 501 -            Declare a national                    Problem under  
511            policy to prohibit                    review by Manhart  
                 discrimination in                    Working Group.  
                 insurance. Ban the  
                 use of gender-based  
                 mortality tables or  
                 other sex-based  
                 distinctions in any  
                 form of insurance.

TITLE VI -- REGULATORY REFORM

- 601 -            Directs review of                    Regulatory  
602            federal regulations to                    aspects accom-  
                 ensure sex neutrality.                    plished by  
                 Strengthens presumption                    Executive Order.  
                 that Code reference to  
                 one gender applies to  
                 both.

TITLE VII -- ALIMONY AND CHILD SUPPORT

- 701            Require DOJ to study                    Child support  
                 appropriate federal role                    program in  
                 in alimony, child support                    development  
                 enforcement.                                    stage.

## Outline of Family Initiative

- o Child Support Enforcement
- o Promotion of Adoption
- o Child Abuse and Neglect
- o Interstate Child Custody and Parental Kidnapping
- o Missing Children Act Implementation
- o Sexual Exploitation of Children
- o Increase dependent exemptions
- o Family care of Aged and Handicapped
- o AFDC Reform

THE WHITE HOUSE  
WASHINGTON

November 22, 1982

FOR: EDWIN L. HARPER

FROM: MICHAEL M. UHLMANN  
WILLIAM P. BARR  
STEPHEN H. GALEBACH

SUBJECT: Pro-Family Tax Reform

Proposal

This proposal is designed to take a bold pro-family initiative; to alleviate the gender gap; to maintain our momentum in the area of tax reform; to promote basic equity in the tax system; to promote the President's announced objective of scheduling tax cuts before the scheduled effective date of rate cuts in July 1983; and to preempt an expected Democratic initiative.

The proposal is to increase the tax exemption for dependents. The dependent exemption is currently \$1,000.

- o We estimate that each increase of \$100 in the dependent exemption will cost approximately \$1.2 billion in revenues. (Treasury projections have not yet been forthcoming.)1/
- o To double the exemption would cost approximately \$12 billion annually.

This proposal could be implemented by phasing in the increases over a period of years, thus getting full political credit immediately, while giving us time to fund the revenue losses. (E.g., \$200/year for five years).

Alternatively, we could push for a large increase in the exemption, effective immediately, perhaps compensated by a reduction in the scheduled rate cuts for July.

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1/ Estimate based on raw figures from 1981 Statistical Abstract of the United States. In 1979 there were 61.6 million dependents claimed by taxpayers. The median marginal tax rate for a family with two dependents was 20%. Each increase of \$100 in the dependent exemption will lose \$20 per dependent. A variety of factors could make the actual current figure less than 1.2.

## Analysis

Originally, income tax was to be imposed only on resources in excess of those needed to meet the basic needs of the family. That is why the personal and dependent exemptions were adopted. In 1948 the exemption stood at the level of \$600.

However, over the past 35 years, the dependent exemption has increased by only \$400 -- nowhere near the amount needed to keep pace with inflation. In order to keep a family with dependents in the same position today that it enjoyed in 1948, the dependent exemption would have to be \$4,600.

The resulting financial pressure on families is severe. Since the early 50s, the standard deduction -- or the zero bracket amount -- has been regularly increased in value so that today it offsets a slightly higher proportion of personal income than it did thirty years ago. Economists estimate that persons with no dependents will face essentially the same average tax rates in 1984 as they did in 1960. However, a couple with two dependents will face a cumulative increase of 43% during this period, while a couple with four dependents will face an increase in their average tax rate of 223 percent.

This inequity deprives the family of the resources needed for basic needs, thereby generating greater demand for federal programs to meet these needs. The federal government ends up taking away from families with one hand, creating want, and then giving back inefficient aid to the families with the other. This is precisely the process that the President has attacked throughout the larger part of his political life. Thus, for example, over the past decade, family spending on education has gone down while federal spending has rapidly increased. The same dynamic is reflected in such Great Society programs as guaranteed student loans; Pell grants; school lunch programs; women's, infants' and children's program, etc.

Some of our own family proposals are like the Great Society programs, except instead of giving aid, they give tax benefits through a series of discrete, specialized and proliferating tax credits and deductions: e.g., increased child day care credits; tuition tax credits; individual education accounts.

In short, we have been seeking piecemeal solutions to a problem that has really been caused in part by the failure to increase the dependent exemption to keep up with inflation. Instead of devising new programs to treat the symptoms, we should go straight to the cause -- by leaving the money for basic needs in the family where it belongs.



### Policy Implications

The political advantages of this proposal are obvious:

- o The President has made the "Family" a basic theme in his campaign and his Administration. This has struck a responsive chord in the two major constituency groups we weaned away from the Democratic party in 1980: urban ethnics and fundamentalist Protestants. This proposal could be the centerpiece of the Administration's pro-family policy. There is no more significant or effective pro-family initiative that we could take.
- o This family-oriented tax cut would go far toward mooting the "fairness" issue.
- o Studies have shown that a large part of the "gender gap" results from the financial strain and vulnerability felt by women who must support dependents. This proposal goes to the heart of their concern.
- o Blacks and Hispanics are among the groups that will be most directly and conspicuously helped by this initiative.
- o Finally, it could be employed as part of our assault on the jobs bill because it gives us a weapon of "compassion" all our own.

As a matter of tax policy, this proposal redresses a serious imbalance in the tax structure and is justifiable solely on that ground. However, there may also be merit in it from a supply-side standpoint. While it is probably true that this measure would not stimulate savings as efficiently as a rate cut would, if the choice is between this proposal or no cut in January, then this proposal may be preferable. Of special interest is the parallel with the policy of Andrew Mellon in the 1920s, who consistently combined increases in personal exemptions with his decreases in marginal tax rates.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

November 23, 1982

FOR: EDWIN L. HARPER  
FROM: WILLIAM P. BARR  
SUBJECT: Indian Policy

Attached FYI is a "hatchet" job on our lack of an Indian policy. We should try to get our Indian Policy Statement out soon. Both Morton Blackwell and Secretary Watt have made proposals for a Presidential event, but so far no action has been taken.

## THE WHITE HOUSE

WASHINGTON

November 30, 1982

FOR: ROBERT B. CARLESON

FROM: STEPHEN H. GALEBACH  
PETER J. FERRARA

SUBJECT: Protecting the Pro-Administration Orientation of  
the National Institute of Education

We need to take immediate action to safeguard the positive accomplishments of the National Institute of Education. Acting Director Bob Sweet has been shifting NIE research toward studies of educational quality, local control of schools, parental role in education, teacher quality, and the need for math and science education (see attached Highlights of New Research Agenda at NIE and Standards for Federal Research in Education).

Many of the ideas under consideration by OPD, such as returning education to local and parental control, improving basic skills, and emphasizing math and science, are already being pursued in some very promising ways by NIE.

Yet the new appointee for Director of NIE, Manuel Justiz, has made no public commitment to this agenda. There is no indication that his ideas are any different from those of the education establishment, which opposes the new agenda at NIE. The Senate Labor and Human Resources Committee has scheduled hearings on Justiz for December 9, and he is likely to be confirmed during the lame duck session.

#### Outline of Situation

Our political appointees at NIE have initiated a research agenda emphasizing basic skills and local control of education. Promoting the President's agenda has entailed persistent work against the opposition of an entrenched bureaucracy (for instance, 25 NIE bureaucrats recently filed an anonymous 30-page personnel complaint with the Merit Systems Protection Board, attacking the persons and programs of our appointees in NIE).

Now, we have nominated an unknown quantity, Manuel Justiz, Professor of Education at the University of New Mexico, to be the new Director of NIE. This appointment was justified as an effort to help out Senator Schmitt in New Mexico, and to reach out to a minority group that could potentially give us increased support.

However, there is no evidence that Justiz shares the President's agenda on education research issues. He has apparently spent virtually no time with our political appointees at NIE, asking instead to meet primarily with career people.

### Analysis

The stakes at NIE are high. Anti-Administration bureaucrats have been vociferous and confrontational in trying to obstruct a pro-Administration agenda for the Institute. No one seems to have any idea what Justiz's thoughts are about education, education research, or the Administration's agenda at NIE. The problem is that we will not find out until Justiz is confirmed and begins to make decisions -- and by then it will be too late.

The best safeguard against a switch of policy at NIE is to have our appointees in place at the National Council on Education Research before Justiz takes power. This Council is not the ordinary Executive Branch advisory council. It has statutory authority to hire its own staff, to commission writings and research, to stake out positions on education issues, and to set policy at NIE.

We dismissed the entire previous Council in May and replaced it with our own nominees. The Senate Committee on Labor and Human Resources, however, has not yet acted on the nominations. The Democrats on the Committee are holding up the nominations. With the restricted agenda of the lame duck session and with the budget dominating the beginning of the next Congress, we would be fortunate to get hearings on these nominations before February or March.

### Options

1. We should at least ask Justiz privately what his goals are for NIE, whom he has consulted in preparing for his testimony, and whether he intends to retain the political appointees who have done such good work.

2. We should inform Senator Hatch that it is our desire that no hearings be held on Justiz's nomination until hearings have been held on the Council nominees. We could thus make the Council appointees and Justiz a package deal; if the Senate continued to delay on the entire package, our people at NIE could simply continue their present good work.

3. If we take no action, we risk the gutting of some of the most promising initiatives the Administration has yet mounted in the field of education.

Minnesota Tuition Tax Deduction. A study of the only existing example of government assistance to private-school parents.

Private Schools. Studies of the nature, location, type, and size of private schools; studies comparing effective schools in the public and private sector; studies of the condition of teaching in public and private schools.

Parental Choice. A study of the variety of approaches that exist for increasing parental choice in public-school systems.

Law and Education. Studies of legal issues and local options in the area of school discipline, collective bargaining, and local decision-making; studies of legal issues surrounding private and home-based education; studies of legal issues concerning curriculum control, federal deregulation, and block grants.

The Scientific Basis for the Practice of Teaching. Studies debating whether teaching is an art or science.

Conceptions of Teaching as the Basis for Teacher Education. An exploration of the implications of various conceptions of teaching for the content, methods, and organization of teacher education.

Desegregation and Black Student Achievement. The most comprehensive and rigorous re-examination, since the Brown decision, of the effects of desegregation on black student achievement.

Teacher Selection. A study to examine the teacher-hiring practices of school districts and to identify the impediments to the selections of quality teachers.

School Improvement. A study to examine the effects of state efforts to improve the quality of education in local schools and districts.

Decertifying School Leadership. A study to examine the benefits to the public of state certification requirements for school administrators.

Role of the Schools. A study of the competing conceptions of the role of the school in contemporary American society. Are schools social laboratories or institutions for the refining of the basic intellectual skills?

Directors's Report on Reading. The most comprehensive and scientific re-evaluation and synthesis of research on the methods of teaching early reading. The nation-wide illiteracy problem has received massive publicity. This study will examine the hypothesis that the cause of this problem might be current methods for teaching reading in the early elementary grades.

Ability Grouping/Tracking. A study of the best and most effective assignment of students within a classroom to proper instruction groups.

Effective Schools and Local Control. A study to examine the question whether local control and/or building autonomy increases the effectiveness of a school.

Teacher Quality: Policy and Practice. Studies to examine every aspect of teaching and teachers -- from inducements to enter and remain in the teaching profession to certification and collective bargaining.

Finance and Governance. Studies to re-examine and re-evaluate the financial and governance structure of the contemporary American educational system.

Math and Science Teacher Shortage. A conference to allow state and local education agencies to exchange information about how they are going about solving the math and science teacher shortage.

Thinking and the Teaching of Thinking. Studies to inquire into the nature of thinking and how thinking skills can be taught.

State and Local Education Policymaking. A study of the roles of state legislators and local school boards in the making of education policy, including curriculum control.

Role of Parents. A study of the role and information needs of parents in the contemporary educational system.

Federalist Principles. A review of the role of federalism in high school social-studies courses.

Reading and Writing. Subsidy of five different projects to improve the teaching of reading and/or writing in elementary and secondary school curricula.

Blacks in Private Schools. A study to inquire into the reasons why some black parents are switching their children from public to private schools.

1. Federally-subsidized research should be objective, independent, and apolitical.

The recent history of American education is a political history. This has been true in the past and is, perhaps, inevitable when governments operate schools. Nevertheless, the enlargement over the past twenty years of the federal role in education, including the federal judicial role, has accelerated the process of politicization. The Reagan Administration inherited a Department of Education that was a monument to the political victories of education interest groups.

There are about 900 interest groups in the world of American education. All of them defend their individual turfs and, when necessary, band together with other interest groups for mutual gain. Their very existence points to a very significant fact about American education today: it is fragmented. The world of American education is a collection of often competing interest groups with views that are narrow rather than broad, and divided rather than cohesive. Against this clamor, an independent voice with a unified view is needed. The National Institute of Education can supply this voice--if it can maintain an objective viewpoint and its independence from these interest groups.

The other--and more direct--effect of interest group politics on NIE has been the maneuvering by these groups to have NIE "prove" the righteousness of their interests. Matters thus "proven" become clothed in academic robes, attain intellectual respectability, and take on an independent existence of their own. Again, NIE has to resist these political pressures by making independent decisions about the topics worthy of research.

It has been said that any government agency, including NIE, needs a constituency to survive. This is true, but the constituency of NIE is not rightly education researchers. NIE's constituency, like the rest of the Department's, is American school-age children and their parents. Education researchers are just a utilitarian means to serve this public good. NIE is not a welfare agency for the members of the American Education Research Association, the American Sociological Association, or the American Psychological Association.

The last reason for putting some distance between a research agency and the education interest groups is that the interest groups have not been noticeably willing to criticize and reform themselves; that is, they have not been noticeably objective. And objectivity is the lifeblood of a research agency.

In summary, research is, by definition, objective. It should be objectively conceived by objective and broad, rather than narrow, minds and objectively carried out. The truth, not self-interest, should prevail. The Director of NIE should not be in the debt of any of the education interest groups. He should be an independent voice.

2. The constituency of NIE is American parents. Their interests should be uppermost in the minds of the management of NIE.

This standard is important for five reasons: (1) Parents are the decision-makers for their children and, as such, can be regarded as the real consumers of education. (2) Parents are the only unorganized interest group in education. They desperately need someone to advocate their interests. (3) Research in education has shown that parents and family life is absolutely crucial to the academic achievement of children. (4) In their role as taxpayers, parents--along with other citizens--subsidize NIE. (5) Parents, not educators, have led the back-to-basics movement over the last decade and are responsible for any success that it has had.

3. NIE should emphasize basic education and the foundations of education.

This standard is important for six reasons: (1) It is noncontroversial. There is much disagreement in the public debate about education, but nearly everyone agrees that schools should impart and refine the basic intellectual skills of reading, writing, and mathematics. (2) Development and promotion of standards and techniques for teaching the basic skills is desperately needed. The national illiteracy problem itself is important and large enough to absorb the entire budget of NIE. (3) With tighter education budgets at all levels of government, the multitude of frill courses of the 1960's and 1970's are likely to be cut back for the sake of preserving the basic courses. Education research should be relevant. The future seems to be basic education. (4) The basic skills of reading, writing, and mathematics are the most amenable to education research. All of them are measurable. (5) There is quite obviously a public mandate for all education institutions, including NIE, to emphasize basic education. (6) American education needs a thorough reexamination and reevaluation of its roots, its purposes, and its role in contemporary American society.

There are few people in American education who are willing to ask questions of first principles. (This is another effect of the interest group conception of education.) NIE can supply the necessary prod for an open and honest discussion about the foundations of American education.

4. Considerations of education, not social science or law, should predominate in education and in education research.

The education enterprise is the art of teaching and learning the basic intellectual disciplines. The enormous socio-legal agenda that now burdens our educational system demands the majority of the attention and energy of our teachers and administrators. This agenda has nearly destroyed the basic enterprise of education.

The federal courts are the most influential institution in American education today. Education research is currently dominated by social scientists, not educators. It is the task of NIE to: (1) try to make

judges and politicians understand the nature of education and the capacity of education to serve as a universal constitutional remedy, (2) make federal education research dollars available for other methods of inquiry besides the social science method, and (3) ensure that social scientists understand the nature of education.



THE WHITE HOUSE  
WASHINGTON

December 1, 1982

FOR: EDWIN L. HARPER  
FROM: WILLIAM P. BARR  
STEPHEN H. GALEBACH  
SUBJECT: Issue Paper on Family Policy

Since the reason for dropping the dependent exemption idea was based on short-term political considerations, especially the imprudence of opening up any tax issues at this point, we think it would be a good idea for the President to become aware of the general idea as a long-term possibility for tax reform in the future, should the opportunity ever arise to push it after the July tax cuts go into effect.

## Family Policy: The Federal Government is the Problem

One of the hidden effects of inflation has been to make the federal tax system increasingly hostile to families. Since 1948, the tax exemption allowed for dependents has increased only from \$600 to \$1000, nowhere near keeping pace with inflation. If the exemption had kept pace with inflation, it would be worth \$2,400 today.

The result has been a severe shift of the tax burden from dependentless persons onto families:

- o Single persons and married couples with no dependents will pay approximately the same average tax rate in 1984 as they paid in 1960.
- o A couple with two dependents will pay an average tax rate 43% higher in 1984 than in 1960.
- o A couple with four dependents will pay an average tax rate approximately 223% higher in 1984 than in 1960.

A severe financial squeeze on families has thus resulted from government-generated inflation combined with government tax policy. We have departed drastically from the original tax policy of leaving adequate resources in the family, untaxed, to meet basic needs of family members.

This anti-family bias in federal tax policy has spawned a "need" for more government programs to help dependents: school lunch programs, student loan programs, day care credits, etc.

Many of our own initiatives, too, provide resources for families that would not be needed if government had not increased its take of family resources in the first place: tuition tax credits, individual education accounts, etc.

Instead of devising ever-increasing new programs to treat the symptoms, we should look for opportunities to address the cause -- by leaving the money for basic needs in the family, where it belongs.

After our July rate cuts are in effect, we may want to consider addressing this problem in future tax reform initiatives. No other aspect of federal policy is so clearly anti-family as this one.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

December 1, 1982

FOR: EDWIN L. HARPER  
FROM: MICHAEL M. UHLMANN *AG for*  
SUBJECT: Status of Bills Concerning Bankruptcy Courts

Although a number of bills have been introduced on the subject, two are of primary importance:

- o Rodino's bill in the House, which has been reported out of committee, will establish new Article III judges to handle bankruptcy cases.
  - It is not yet clear what type of rule Rodino will get from the Rules Committee, whether amendments will be offered on the floor, or whether the bill will likely pass the House in its present form.
- o Senate bill S.2000, pushed by Senators Dole and Thurmond, creates new Article III judges as in the House bill, contains a provision allowing the new judges to hear certain non-bankruptcy cases (the so-called "fungibility provision"), and contains substantive amendments to existing bankruptcy law.

Position of Key Players

- o The Administration supports the Dole/Thurmond proposal, which was developed jointly with the Justice Department.
- o The Judicial Conference continues to push for alternatives to making Title III judges to handle bankruptcy cases.
- o Consumer finance companies continue to oppose any bill that does not substantively amend bankruptcy law concerning future earnings of persons adjudged bankrupt.
- o Senator Metzenbaum says he will filibuster any bill that changes substantive bankruptcy law in ways favored by the consumer finance industry.

Recent Developments in Senate

- o Senators Thurmond and Dole have written to Senator Baker proposing to bring up their bill next week (more specifically, a series of amendments in the nature of a substitute for their bill).

- o They do not expect to be able to get a time agreement because of opposition by Metzenbaum and others.
- o Dole is trying to work matters out with Metzenbaum.
- o Tentative plan is to bring the bill up for one hour next week and perhaps file a cloture petition.
- o Senator Dole will meet with the Chief Justice tomorrow.
- o The Attorney General will meet with Senators Baker, Thurmond, and Dole on Friday.

Additional Matters of Concern

- o Democratic attempt to roll over judicial appointments into 1984 and 1985, authorizing the President to make only a portion of them in 1983.
- o It is not possible to predict whether or for how long the Supreme Court will grant another extension if the lame duck session fails to act.
- o We will need an additional extension in any event, since it will take 8-9 months to get the new bankruptcy court system in place.

## ABOLISHING THE DEPARTMENT OF EDUCATION

### Situation

Our proposal for a Foundation does not appear to have any realistic prospect of political success:

- o It has virtually no identifiable support in Congress.
- o The liberal/pro-education establishment elements oppose it because they want to retain a Department of Education.
- o The conservative/anti-education establishment elements oppose it because it would leave essentially unchanged the federal role in education and would increase the power of the education bureaucracy by cutting the number of Presidential appointees by 75%.

The other options for abolishing the Department are:

- o Take no action and accept the status quo.
- o Return Education to HEW.
- o Disperse education programs among other federal agencies.

### Analysis

The second option has the advantage of returning to a known situation and of downplaying the importance of education as a matter for federal control more effectively than the Foundation proposal. Congressman Erlenborn has already introduced a bill to return Education to HEW, which we could endorse at any time.

The third option presents us with opportunities to accomplish our objective gradually and by achieving the easier objectives first.

In general, there does not appear to be a significant chance of Congressional approval for abolishing the Department in any fashion. There are prospects, however, for enacting changes that will diminish federal control over education and return it more to parental, local, and state control. Examples include:

- o Introducing a voucher concept into the Title I program for disadvantaged students.
- o Pushing the Administration bill to allow states to use bilingual education funds for intensive English courses and other techniques, rather than exclusively for education in the native language, which has had the effect of creating a cultural ghetto and keeping children in prolonged dependency.

- o Pushing for additional block grants of education programs.
- o Encouraging and promoting the excellent research agenda that NIE has recently adopted, to emphasize excellence in education, a return to effective teaching of basic skills, parental and local control over education, and other Administration objectives.

Any or all of these goals could be pursued simultaneously with a proposal to abolish the Department of Education. It does not seem advisable at this time to expend much political capital in futile efforts at abolition, and it does not appear worthwhile to expend any capital at all in proposing the Foundation idea, which has already proven a losing proposition.

### C. Education Initiatives

OPD has prepared an options paper on achieving the President's objectives of abolishing the Department of Education.

Department of Education has developed initiatives (i) to encourage family savings for higher education and (ii) to strengthen math and science teaching in the public schools.

- o Abolishing the Department of Education
- o Improving Math and Science Education
- o Individual Education Accounts

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

December 2, 1982

FOR: JAMES E. JENKINS  
MITCHELL STANLEY

FROM: WILLIAM P. BARR

Attached is a comprehensive background book for Mr. Meese's speech at the posse comitatus conference on Monday. (An index is in the front of the book.)

If Mr. Meese does not have time to review anything else, it would be worthwhile for him to at least read Item #1 -- a speech by a DOD expert which cogently summarizes the historical and legal background of posse comitatus; practice both before and after P.L. 97-86; and current DOD Directives.

Some information about his audience which may be useful: Apparently DOD ordered 197 officers and civilians to attend. About 150 are expected to make it. All are in positions that are key to successful military/civilian cooperation. For example, attendees will include the C.O.s of NORAD regional operations; C.O.s of Naval Air Stations; officers at Army and Marine installations in the Southwest; and headquarters people with authority over training programs. (Attached are sheets showing various breakdowns of conferees).



INDEX

1. Overview (Speech by John Heaphy 5/8/82)
2. Posse Comitatus Act (18 U.S.C. Section 1385) and Interpretive Notes
3. History, Background, and Legal Discussion of Posse Comitatus Act
  - Law Review Article (1982)
  - DOD General Counsel Legal Memo (1978)
4. P.L. 97-86 -- Exception to Posse Comitatus (10 U.S.C. Section 374) and Legislative History
5. 1982 Report by Secretary of Defense on military cooperation with civilian law enforcement officials

Attachments:

  - DOD Directives implementing P.L. 97-86
  - Summary of major support provided by DOD after passage of P.L. 97-86
6. 1982 House Government Operations Hearings on Military Assistance to Civilian Law Enforcement

Prepared Statements of:

  - John Walker (Assistant Secretary of Treasury)
  - Patrick Hillier (Assistant Secretary of Army)
  - J. Ronald Denney (Assistant Secretary of Navy)
  - Tidal McCoy (Assistant Secretary of Air Force)
  - Jim Juliana (Deputy Assistant Secretary of DOD)
7. 1982 Report by House Government Operations on "Military Assistance to Civilian Narcotics Law Enforcement"
8. 1980 Industrial College of the Armed Forces Report: "The Use of DOD Assets in the Interdiction of Drug Traffic"
9. President's Speech on South Florida Task Force, November 17, 1982
10. Press clippings on National Guard Role
11. Letter from Senators Nunn/Percy to Secretary of Defense (3/28/1977) re list of potential support requirements from Customs and DEA

Response from DOD to Nunn/Percy letter (6/20/1977) -- including extensive list of assistance requests from 1971 to 1977