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D

THE WHITE HOUSE

WASHINGTON

PHOTO OPPORTUNITY WITH THE VICE PRESIDENT

Date: Tuesday, January 12, 1982
Location: Oval Office
Time: 3:00 p.m. (5 minutes)
From: Dave Fischer *DF*

I. PURPOSE

To provide NBC crew an opportunity to film the President and Vice President in an informal setting.

II. BACKGROUND

On Friday evening, January 15th, NBC Magazine will feature a "Day in the Life of the Vice President". To complete the piece, footage is needed showing the two of you in a working environment.

III. PARTICIPANTS

The President
The Vice President

IV. PRESS PLAN

NBC Camera Crew only.

V. SEQUENCE OF EVENTS

At the conclusion of the Cabinet meeting, you and the Vice President will walk into the Oval Office and be seated at your desk. One camera crew will film the walk to the Oval office with another crew pre-positioned inside.

THE WHITE HOUSE

WASHINGTON

DROP-BY MEETING WITH HEADS OF DEPARTMENTAL
LEGISLATIVE AFFAIRS OFFICES

DATE: Tuesday, January 12, 1982

LOCATION: Roosevelt Room

TIME: Between 4:00 and 5:00 p.m.
(for five minutes)

FROM: Kenneth M. Duberstein *Ken D.*

I. PURPOSE

To greet the chief congressional relations/legislative affairs officers of the departments and agencies, in their first joint meeting to prepare for the Second Session of the 97th Congress; and to impress upon them the importance of continued teamwork on the budget and other Administration priorities.

II. BACKGROUND

Legislative coordination between the White House and the departments is a daily enterprise. On occasion, however, the heads of departmental congressional relations offices -- in most cases they are Assistant Secretaries -- are called to the White House for major planning meetings. Today's meeting will coordinate plans for the Second Session, focusing especially on the FY '83 budget and the close working relationship we must maintain for its success.

III. PARTICIPANTS

See Attachment A.

IV. PRESS PLAN

No press.

V. SEQUENCE OF EVENTS

The meeting will already be in progress, from 4:00 p.m., when the President drops by the Roosevelt Room. Departmental participants will not be informed in advance of the President's visit. He will make very brief remarks to welcome them, and then continue with his schedule for the day. The business of the meeting will then resume.

PARTICIPANTS

STAFF

Ken Duberstein
Bill Gribbin
Nancy Kennedy
Powell Moore
Pam Turner
Dave Swanson
Sherrie Cooksey
B. Oglesby
Nancy Risque
John Dressendorfer
Dave Wright
Bob Thompson
Susan Alvarado
Jonna Lynn Cullen
Mike Hudson
Ed Rollins

DEPARTMENTAL REPRESENTATIVES

Butch Cochran, Associate Deputy Administrator for Congressional
and Public Affairs - Veterans Administration
Michael Dolan, Deputy Assistant Attorney General, Office of
Legislative Affairs - Justice
Tom Donnelly, Assistant Secretary for Legislation - HHS
Al Drischler, Deputy Assistant Secretary of State
Ann Graham, Assistant Secretary for Legislation/Public Affairs -
Education
Bruce Harris, Deputy Assistant Secretary of Defense
Stanley Hulett, Assistant to the Secretary, Director of Congressional
and Legislation Affairs - Interior
Michele Laxalt, Acting Director, Legislative Affairs - AID
William Maroni, Director of Congressional Relations, USTR
Mike Masterson, Director of Congressional Affairs - Agriculture
Jack Murphy, Director, Office of Legislative Affairs, NASA
Stephen May, Assistant Secretary for Legislative and Congressional
Relations - HUD
Robert Odle, Assistant Secretary for Congressional, Intergovern-
mental and Public Affairs - Energy
Bill Prendergast, Deputy Director, Office of Congressional
Liaison - EPA
Jonathan Sloat, General Counsel and Congressional Liaison -
International Communication Agency
Donald Shasteen, Deputy Under-Secretary for Legislation and
Intergovernmental Relations - Labor
Dennis Thomas, Assistant Secretary for Legislative Affairs -
Treasury
Paul Vander Myde, Assistant Secretary for Congressional Affairs -
Commerce
Lee Verstandig, Assistant Secretary for Governmental Affairs -
Transportation

TALKING POINTS

- I want to take just a minute, between other meetings, to welcome you to the White House.
- I'm doing the same thing you are: getting ready for the Second Session of Congress.
- Last year, all working together, we won many legislative victories, not for the White House, but for the country. That success was made possible, in large measure, because of the terrific teamwork you and your departments showed.
- This year, our legislative affairs team has a new captain, with Ken Duberstein wearing Max's old jersey and the same winning spirit.
- We have some difficult challenges ahead of us this year, especially on the FY '83 budget. But remember, one year ago, most people thought we were attempting the impossible. You carried the day in '81, and we can do it again.

THE WHITE HOUSE

WASHINGTON

MEETING TO DISCUSS TAX EXEMPT STATUS OF PRIVATE INSTITUTIONS

DATE: Tuesday, January 12, 1982

LOCATION: Oval Office

TIME: 1:45 p.m. (20 minutes)

FROM: KENNETH M. DUBERSTEIN *Ker D.*

I. PURPOSE

To discuss with interested Senators and Congressman your decision to submit legislation to prohibit tax exemptions for organizations that discriminate on the basis of race.

II. BACKGROUND

Last Friday, the Treasury Department announced that without further guidance from Congress, the IRS will no longer revoke or deny tax-exempt status for religious, charitable, educational or scientific organizations on the grounds that they don't conform with certain fundamental public policies. As a consequence of this decision, the IRS will restore the tax exemption of certain organizations which had previously been revoked. In particular, the appeal of Bob Jones University, and the Goldsboro Schools, which are currently before the Supreme Court will be rendered moot.

Senator Thurmond (R-S.C.) is chairman of the Judiciary Committee and represents South Carolina, in which Bob Jones University is located. Congressman Carroll Campbell's (R-N.C.) district includes Bob Jones University. Senator Bob Dole (R-Kan.) is chairman of the Finance Committee which will likely consider the legislation you will propose. Senator Mathias (R-Md.) is the ranking Republican on the Judiciary Committee and will be quite vocal and active in support of legislation on this matter.

You will be issuing a statement within a few minutes after this meeting spelling out your position (see Talking Points)

III. PARTICIPANTS

See Attachment A

IV. PRESS PLAN

White House Photographer only

V. SEQUENCE OF EVENTS

Members will enter through Southwest Gate to parking available on West Executive. They will be greeted by staff at the West Basement Level and escorted to the Oval Office to meet with the President.

ATTACHMENT A

PARTICIPANTS

The President
The Secretary of the Treasury

Senate

Strom Thurmond
Robert Dole
Charles McC. Mathias

House

Carroll Campbell

Staff

Ed Meese, Ken Duberstein, Dave Gergen

Congressmen Trent Lott and Barber Conable were invited but are unable to attend.

SUGGESTED TALKING POINTS FOR MEETING ON THE
TAX EXEMPT STATUS OF PRIVATE INSTITUTIONS

- I want to discuss with you the position I will be announcing shortly on the tax exempt status of non-profit, private educational organizations.
- Recognize that the issue raises important and sensitive policy questions of great interest to them.
- I am unalterably opposed to racial discrimination in any form and in dealing with private, non-profit institutions, I am determined to be sensitive to the protection of all individual rights involved.
- I am also opposed to the arbitrary exercise of authority by administrative agencies in the pursuit of what they unilaterally take to be social objectives. Where objectionable practices exist, the appropriate way to proceed is through legislation by the Congress. That was the sole basis of the decision announced by the Treasury Department last Friday.
- Accordingly, I will submit legislation and will work with the Congress to enact a law prohibiting tax exemptions for organizations that discriminate on the basis of race.
- I would welcome your thoughts and support.

THE WHITE HOUSE

WASHINGTON

THE PRESIDENT'S SCHEDULE
Tuesday, January 12, 1982

9:00 am (30 min)	<u>Staff Time</u> (Baker, Meese, Deaver)	Oval Office
9:30 am (15 min)	<u>National Security Briefing</u> (William P. Clark)	Oval Office
9:45 am (15 min)	<u>Senior Staff Time</u>	Oval Office
10:00 am (25 min)	<u>Personal Staff Time</u>	Oval Office
10:25 am	<u>Depart South Grounds for Visit to Department of Transportation</u> (TAB A) (Stephen Studdert)	South Grounds
11:45 am	<u>Return from DOT Visit</u>	South Grounds
12:00 m (90 min)	<u>Lunch and Personal Staff Time</u>	Oval Office
1:30 pm (15 min)	<i>See, Dean - 1:30</i> <u>Presidential Statement re Statehood for Puerto Rico</u> (Richard Williamson) (TAB B) (draft remarks attached) <i>Congress Campbell, Sen. Matthews</i>	Oval Office
2:00 pm (60 min)	<u>Cabinet Meeting</u> <i>in Miller & Cong. Campbell</i> (TAB C) (Craig Fuller)	Cabinet Room
3:00 pm (5 min)	<u>NBC Photo Opportunity with the Vice President</u> (David Fischer) (TAB D)	Oval Office
3:05 pm <i>30 min</i> (55 min)	<u>Personal Staff Time</u> <i>NSC. Dean. Garp</i>	Oval Office
4:30 5:30 pm (30 min)	<i>Recessed Rm. Drop by</i> <u>Staff Time</u> (Baker, Meese, Deaver)	Oval Office

A

PRESIDENTIAL REMARKS: VISIT TO DEPARTMENT OF TRANSPORTATION
JANUARY 12, 1982

You and I share a deep commitment to the American people. You are committed to a better government or you wouldn't be a member of the Senior Executive Service. As this Nation's top managers, you have dedicated your careers to forging a better Federal Government. That is what I am trying to do.

Any government is only as good as the people who make it work one day at a time. Ours is a great government because of motivated, dedicated public servants like you.

No one appreciates more than I the importance of the career executive managers who actually execute the policies of this government on a day-to-day basis, enforce the laws of our land and keep the multitude of programs running within whatever budget they are allocated.

And I also appreciate that career Federal Executives should be compensated for the work they do. That is why we actively supported the increase in Executive salaries and the removal of the pay cap. That is also why we have maintained the integrity of the Executive bonus system, so that there is a meaningful way of rewarding those who make exemplary contributions in the management of our programs.

The Department of Transportation SES program has stimulated thought and creativity that led to major program advances this year.

Through the DOT Executive Forum, which meets monthly, problems are thrashed out and new management concepts are born. I understand that Drew Lewis has exchanged ideas with you at one Forum session, and that you are scheduling talks by other top policy makers this year. The Executive Mobility Program which interchanges managers among all the various elements of this Department, gives you the diversity of experience and knowledge you need to manage an enterprise as broad in scope as this one.

These two vehicles are unique among SES programs. They are outgrowths of your own recommendations and a tribute to your initiative. With the transfer of the Maritime Administration to the Department of Transportation, you now have responsibility for managing all phases of the transportation sector. This requires broad-based skills and knowledge, but also gives you even more opportunity to exert the creativity you are developing in the SES program.

I also commend you for the way you have picked up on the national objectives of the Reagan Administration and found creative ways to execute them. I'm proud to count you on my team.

Not only did SES members help seek out ways to reduce the Department of Transportation budget; you also came to us with fresh approaches. You looked for waste that could be cut. You searched for less expensive and more efficient ways to execute the programs -- and you found them.

This kind of management ingenuity is critical to the success of this Administration and I commend you.

Some of you in the FAA along with the flight service specialists and technicians are in the forefront in designing a new system for the Nation's air traffic control. In so doing, you are helping this Administration keep its commitment to upgrade the system and employ the latest technology in keeping the airways safe.

Others among you have exerted your leadership in the auto industry studies which have paved the way for our ongoing regulatory reform program -- reform which will help a vital national industry to function and compete again in the free market system.

Your leadership is also evident in developing the transportation user fee concept that will more equitably distribute the cost of transportation among those who actually use the service.

But the qualities you have demonstrated in your work at Transportation are not unique to any one agency or department. They are the universal attributes -- the universal requirements -- for outstanding service in any public endeavor. You can't have good programs without good people to deliver them, and I am second to none in my appreciation of the importance of a dedicated, innovative Federal work force.

The theme of my Administration is a new beginning, a national renewal that will make America great again. I want to see this same spirit of renewal and excellence take hold

in the government itself. Thanks to you, and thousands of other dedicated public servants, we have, indeed, made an important beginning. We have cut waste, eliminated red tape and provided better services to the American taxpayers we are all here to serve.

This is an exciting time in our Nation's history, a time of both change and reaffirmation. And each of you and your colleagues throughout the Federal Government are on the front line, day in and day out, translating policy goals into accomplished realities. The times call out for excellence. Groups like yours are providing it.

I didn't have to come to Washington to find this out. I learned this vital lesson first-hand during my 8 years as Governor of California. During those 8 years we were able to create a more efficient, responsive and economic state government and still deliver -- and in many cases improve -- the full range of necessary services to the people of California.

Well, as usually happens, it was the politicians who took most of the credit for the reforms, the savings and the improvements.

But, let me tell you, we couldn't have made any of that progress in California if we hadn't been able to recruit, retain and motivate a dedicated cadre of state government employees -- skilled professionals at every rung of the ladder.

Many of them were a little nervous at first when I took office in Sacramento. I guess I understand why. They weren't quite sure what to expect, and the opposition had done its best to paint me as some sort of cross between a bogeyman and the Grinch that Stole Christmas. But as our reforms took shape, more and more dedicated state employees told me how much they appreciated what we were doing -- the greater efficiency and better management we were able to bring to a state government with a budget and population larger than most of the world's sovereign nations.

We're beginning to see the same thing happen in Washington. I believe that the vast majority of the Federal workers are every bit as committed to rooting out waste and fraud and inefficiency as the taxpayers they serve. I believe they want to do the best possible job they can. My Administration is dedicated to helping them -- helping you -- achieve this goal. Old abuses and errors must be redressed. The mistakes of the past have already cost us far too much in economic stagnation and crippling taxes and inflation. But, together, we can turn things around and make today's Federal Government a model for the generations that will come after us.

Together, we can make it happen. I'm counting on you, and so are the American people.

B

THE WHITE HOUSE

WASHINGTON

January 11, 1982

MEETING WITH GOVERNOR CARLOS ROMERO
FORMER GOVERNOR LUIS FERRE
MAYOR HERNAN PADILLA
COMMISSIONER BALTAZAR CORRADA

DATE: JANUARY 12, 1982

LOCATION: OVAL OFFICE

TIME: 1:30 P.M.

FROM: RICHARD S. WILLIAMSON

I. PURPOSE

To reaffirm preference for Statehood for Puerto Rico, should that be the choice of the people of Puerto Rico.

II. BACKGROUND

When you announced your intentions to seek the 1980 Republican Presidential nomination, your televised speech to the nation included a commitment to support statehood for Puerto Rico, should that be the choice of the people of Puerto Rico. This position was also expressed in a February 11, 1980, article in the Wall Street Journal by you. (Copy attached).

On Monday, September 28, 1981, Vice President Bush confirmed the Reagan Administration's support for Puerto Rican statehood at a GOP rally in San Juan.

On October 8, 1981, Former Governor Luis Ferre and Mayor Hernan Padilla expressed their appreciation for Vice President Bush's visit to Puerto Rico and noted their wish for a "personal and official statement" by President Reagan on Puerto Rican statehood.

A statement will strengthen the U.S. position with regard to the United Nations.

A Statehood Statement is supported by Vice President Bush, Ambassador Kirkpatrick, and Puerto Rican officials.

For your general information:

- In April of 1981, the Puerto Rican Task Force was organized as a vehicle for communication and coordination between Puerto Rico and your Administration. I am Chairman of the Task Force.

- The Task Force has held numerous meetings with Puerto Rican government, civic, academic, and business leaders. In September, 1981, the Task Force held public hearings in Puerto Rico.
- The Task Force played an important role in negotiating the placement of Haitian aliens at Ft. Allen, Puerto Rico.
- Working with Bill Brock, the State Department, and the Commerce Department, the Task Force has served as a forum for Puerto Rico's participation in the development of the Caribbean Basin Initiative.
- The reaffirmation of your position on Puerto Rican Statehood will:
 - Reinforce and strengthen the United States' position in the Caribbean.
 - Strengthen the U.S.'s position regarding the Caribbean in the United Nations.
 - Reinforce your supporters in Puerto Rico who have held fast in defense of your economic programs.

III. PARTICIPANTS

Vice President George Bush
Governor Carlos Romero (Democrat)
Former Governor Luis Ferre (Republican State Chairman)
Mayor Hernan Padilla (Republican National Committeeman)
Commissioner Baltazar Corrada (Democrat)
Richard S. Williamson
Thad Garrett - Office of the Vice President
Rick Neal - White House Intergovernmental Affairs

IV. PRESS PLAN

White House Photographer
Statement released to press following meeting.

V. SEQUENCE OF EVENTS

- 1:00 p.m. - Reception with Vice President Bush in the Roosevelt Room.
- 1:30 p.m. - Vice President Bush and participants meet President Reagan in Oval Office.

1:35 p.m. - President Reagan makes remarks regarding
Puerto Rican Statehood (remarks attached).

1:40 p.m. - Photo Opportunity.

1:45 p.m. - Conclusion.

Attachment: Statement

Puerto Rico and Statehood

By RONALD REAGAN

When I formally announced my intention to seek the Republican presidential nomination in 1980, my televised speech to the nation included a commitment to not only support statehood for Puerto Rico if the people of the island Commonwealth desire statehood. It also included a commitment that, as President, I would initiate statehood legislation, which really means that I would take the lead in persuading the people of Puerto Rico—the mainland United States—all American citizens—that statehood will be good for all of us.

A number of people, including close friends, wondered about my remarks. Not that they oppose the statehood idea. They just thought that it seemed odd that I would put such emphasis on an issue that strikes them as routine, when U.S. foreign policy positions everywhere seem to be collapsing. But then I remind my friends that in 1976, when many U.S. foreign policy positions were collapsing, I was putting great emphasis on the Panama Canal.

By this observation I mean to suggest that we cannot expect our foreign policies to be enjoying prestige around the world—attracting support instead of collapsing—when we are having serious problems with our closest neighbors. The American people lost the debate over the Canal when despite their opposition to the treaties, President Carter pushed them through. We were going to win the applause of the Third World, remember?

Now, it is no longer our neighbors who are being pulled away from us in the world-wide tug-of-war. Now—at least in this hemisphere—the pivot of the struggle is among our fellow citizens in the Puerto Rico Commonwealth.

"Yankee Imperialism"

Fidel Castro hardly lets a speech go by without denouncing "Yankee imperialism" in Puerto Rico and calling for its total independence from the United States. The idea is not confined to blustering speeches at Havana's Third World conferences or in the United Nations. Early in December, it came out of the point of a gun. A few miles from San Juan, two Navy employees were assassinated by the Soviet-made machine guns of terrorists who represent the tiny independence movement on Puerto Rico.

While the world watches the Iranian drama unfold, comrades of Cuba and its allies have now established a beachhead of violence on American shores.

Our keen "peacefully coexisting" competitor, the Soviet Union, is not unaware of the importance of Puerto Rico in the great global contest of ideas. As a "Commonwealth" Puerto Rico is now neither a state nor independent, and thereby has an historically unnatural status. There is this raw nerve to rub, and our Marxist-Leninist competitors rub it. They've long thought of the island economies of the Caribbean as easy marks. I do not suggest that the Kremlin strategists expect to snap Puerto Rico into the Communist orbit any time soon, only that they find it convenient to use its unnatural status, creating tensions around the idea of American "colonialism," "Yankee imperialism." We can't

merely defend ourselves against this attack. We must ourselves attack, not with terror, but with statehood.

It is not only that the fact of Puerto Rican statehood would deny Mr. Castro a raw nerve. But, in cementing itself to us as the 51st state, with unbreakable bonds, Puerto Rico would represent a positive bridgehead into the Caribbean, Latin America and the developing world.

This geopolitical concept of Puerto Rico's exposed position on the front lines of geopolitics isn't new on my account, by any means. It is at the heart of the old Republican Statehood Party on the island, now the New Progressive Party. It is understood by Gov. Carlos Romero Barcelo

If we cannot design a model for a political economy that is sufficiently attractive, if we can't win over our fellow citizens in Puerto Rico, how can our model succeed as an instrument of foreign policy anywhere in the world?

and San Juan Mayor Herman Padilla, the two young, dynamic advocates of statehood. I know it is profoundly understood by Luis Ferre, the 77-year-old President of the Senate, who was governor of Puerto Rico when I was governor of California. To these men, statehood is an historical imperative.

It is as simple as this: If we in the United States cannot design a model for a political economy that is sufficiently attractive, if we can't win over our fellow citizens in Puerto Rico to the nuptials that statehood involves, how can our model succeed as an instrument of foreign policy anywhere in the world? And, if we can succeed in discovering what it is that drags on the statehood idea, what it is that fosters a volatile independent movement that can harbor assassins, perhaps we can shed light on the failures of American foreign policy around the world this past quarter century.

How do we begin to understand Iran, and what has gone wrong in the Middle East, if we cannot fathom Puerto Rico—what it is that repels it as it is drawn to us?

The one thing I can say for sure, because it is a part of human nature, is that you cannot arrange a marriage unless both spouses believe the union will be greater than the sum of its parts. Because of this, I don't believe statehood will be achieved until a great majority of Puerto Ricans—not just a simple majority—feel the pull of statehood with passion.

Some Puerto Rican leaders here argue that the people of Puerto Rico must sacrifice in order to enjoy statehood, especially by means of greater tax burdens. Yet

Puerto Ricans already face higher tax rates and they have shed a disproportionate share of blood, relative to mainland citizens, in our wars. Thus, an American President will have to work with Governor Romero to integrate the two separate fiscal systems in a way that increases opportunity for the average island citizen, and thereby makes statehood an attractive proposition rather than an increased burden. Governor Romero has already been moving in this direction, systematically lowering tax rates in preparation for merger.

In the 1980s, the American President must understand that for U.S. foreign policy to succeed it must be magnetic, as opposed to expansive. This means we must once again make economic policy an essential ingredient of foreign policy. This is behind my idea of statehood for Puerto Rico.

Foreign Policy Failures

At the heart of our foreign policy failures of the last 25 years, I believe, has been the attempt to export "economic expansion" through dollars, rather than ideas. While the rest of the world waited for us to assist in the development along the lines of our own "land of opportunity," we responded with ideas that were never part of our own development: high tax rates, plenty of public debt, devalued currencies and less rather than more democracy in the guidance of state-capitalist systems.

Looking back on it, it should be no wonder that GI Joe was turned into the Ugly American.

And now, in our backyard, the Cubans are handing out AK-47 rifles even as they advertise their system—all over the region—as the path of progress. And we sit on our thumbs. The "Cuban Model" has been a disaster. Cuba is incapable of providing its people with the essentials of life. It is totally dependent on the U.S.S.R., which, in turn, depends on us for its food. Yet, with noisy propaganda and active support of violent revolution borne of economic failures, the Soviet-Cuban offensive in Latin America continues to slice off one piece of salami at a time.

An American counteroffensive must rely on the greatest weapon we have: the hope of a better life, achieved by adopting America's recipe for prosperity. It must advertise the proven secrets of economic growth, upward mobility for the poor, and, ultimately, political stability—even as we return to this recipe ourselves: reasonable tax rates, modest regulation, balanced budgets and stable currency.

Instead of letting our competitors pick the battleground of violent revolution, we should pick a peaceful battleground of competition between economic systems. Instead of reacting with force to revolutionary situations, we should preempt those situations with a positive foreign policy. We can build from a bridgehead in Puerto Rico. To show the world that the American idea can work in Puerto Rico is to show that our idea can work everywhere.

— Mr. Reagan is a candidate for the Republican presidential nomination.

PRESIDENTIAL STATEMENT: PUERTO RICO STATEHOOD

When I announced my candidacy for this office more than 2 years ago, I pledged to support statehood for the Commonwealth of Puerto Rico, should the people of that island choose it in a free and democratic election. Today I reaffirm that support, still confident in my belief that statehood would benefit both the people of Puerto Rico and their fellow American citizens in the 50 states.

While I believe the Congress and the people of this country would welcome Puerto Rican statehood, this Administration will accept whatever choice is made by a majority of the island's population.

No nation, no organization nor individual should mistake our intent in this. The status of Puerto Rico is an issue to be settled by the peoples of Puerto Rico and the United States. There must be no interference in the democratic process.

Puerto Ricans have borne the responsibilities of U.S. citizenship with honor and courage for more than 64 years. They have fought beside us for decades and have worked beside us for generations. Puerto Rico is playing an important role in the development of the Caribbean Basin Initiative and its strong tradition of democracy provides leadership and stability in that region. In statehood, the language and culture of the island -- rich in history and tradition -- would be respected, for in the United States the cultures of the world live together with pride.

We recognize the right of the Puerto Rican people to self-determination. If they choose statehood, we will work together to devise a union of promise and opportunity in our Federal union of sovereign states.

C

CABINET BRIEFING PAPER ON FEDERAL SECTOR LABOR RELATIONS

I. Responsibilities

1. Agency heads are responsible by law for all labor relations matters within their organizations.
2. The Director of the Office of Personnel Management is responsible for providing policy, advice, and training for agency representatives in meeting their labor relations responsibilities.

II. Union Rights

1. Unions have the right to exclusive recognition and to negotiate agreements in appropriate units if they win a majority of votes cast in open shop election units. Sixty-one percent of executive branch employees are represented in such units, much higher than in the private sector.
2. There is no right to strike. Instead all negotiated agreements must have grievance procedures with binding arbitration only as the final step, and even then only if the Federal Service Impasses Panel decides that remedy is appropriate. Grievances cover discipline, discrimination, dismissal, and so forth.
3. An independent agency, the Federal Labor Relations Authority, resolves disputes over appropriate bargaining units, scope of negotiations, unfair labor practices and arbitration awards. It has a statutory General Counsel, who investigates and prosecutes unfair labor practice charges. Decisions are appealable to Circuit Court of Appeals.
4. Employees have the right to a union representative when called for possible disciplinary action by management.
5. Free dues checkoff and unlimited official paid time for union negotiators is due to unions with recognition.

III. Management Rights

1. Strong management rights are set in law, with matters either mandatorily non-negotiable, or permissibly negotiable

at the option of the agency. However, management is required to negotiate on the impact and implementation of its decision.

2. No bargaining is permitted on wages and fringe benefits. Government-wide regulations, including merit system requirements, also serve as a bar to what can be negotiated by management.

3. In his statement of November 16, 1981, President Reagan said that unions are among our most valued institutions, that management should adopt an open-door policy and where appropriate give full consideration to organized labor's interests and concerns.

4. Management officials must understand and accept the legitimate collective bargaining rights of employees and unions, as well as seek their support and deal effectively with their opposition, in the challenging circumstances which exist as the Administration moves towards the goal of a leaner, more effective government.

IV. Labor Relations Leadership

1. The President has stated: "In government, there is a tendency on the part of some people . . . in the permanent structure, that they've been here before you got here and they'll be here after you're gone, and they're not going to change the way they're doing things." As the President said, this problem is limited to only some careerists. Most civil servants are cooperative--if they receive positive, clear and dynamic leadership from agency heads. Most problems of unresponsive civil servants are the result of weak leadership. For both employees who willingly cooperate and those who are reluctant, personal leadership by the agency head is the key.

2. Not only must the agency head, himself, lead, he must also enhance the ability of operating officials to manage effectively, especially his political appointees, by providing necessary training and policy guidance concerning the challenge of implementing the President's program in a collective bargaining atmosphere.

3. Very importantly, government managers must recognize the positive functions unions can serve in the workplace: for example, alerting top management to developing employee problems which affect productivity; cooperating with

management by attempting to eliminate problems which generate grievances; encouraging cost-saving ideas; promoting on-the-job safety; and facilitating employee knowledge of management policies.

4. The basic function of federal managers in labor relations is to create positive conditions of work and continuity of government services: by operating sound personnel-management systems; by applying appropriate and flexible rewards, sanctions and penalties to maintain operations; by engaging in effective contingency planning to control illegal job actions; and by returning operations to normal as soon as possible after unavoidable disruptions.

5. The major tools of effective leadership in the Federal Government are as follows: personal meetings with and encouragement of staff, employees, and union representatives; performance appraisals; SES bonuses and supervisor merit pay; disciplinary procedures; incentive awards and letters of recognition; positive statements about civil servants, assisting in out-placement efforts for displaced employees, and so forth. A regular schedule to effectuate such tools should attract top management attention.

6. The President set the tone when he personally awarded the rank awards to distinguished senior executives in the Rose Garden on October 14th of this year. At that time, he said, "The ability of this or any Administration to succeed depends in no small degree upon the energy, dedication and spirit of the great majority of Federal employees."

PACE CONSENT DECREE
(LUEVANO v. DEVINE)

I. BACKGROUND OF THE LITIGATION

The Luevano v. Devine lawsuit was filed in the U. S. District Court for the District of Columbia in January 1979.

The question presented by the case was whether OPM had sufficiently validated PACE to overcome its alleged "adverse impact." It has consistently been OPM's position that PACE is a well-validated examination and that sufficient tools are available to our attorneys and psychologists to make a strong defense in its behalf. Nonetheless, a high level policy decision was made in the early stages of the litigation during the Carter Administration to settle the case without a trial. Thus commenced lengthy negotiations to reach a settlement which eventually resulted in the consent decree.

II. MAJOR PROVISIONS OF THE PROPOSED DECREE

1. OPM must phase out PACE in no more than three years and at least according to the following schedule:

First year = 50 percent of PACE hires
Second year = 80 percent of PACE hires
Third year = 100 percent of PACE hires

2. The Decree requires us, when we use exams, to replace PACE with job-specific alternative examining procedures which would be phased in over the same three-year period described above.
3. This requires agencies to recruit and use special hiring programs to eliminate "adverse impact" from the interim use of PACE, and any new alternative procedures. These "all practicable efforts" can be used for up to 5 years after an alternative is put into effect.
4. The Decree requires OPM and agencies to compile and provide extensive reports to plaintiffs annually on PACE applicants and appointments.

III. TITLE 5 AND REGULATORY CONSTRAINTS

1. Title 5, Section 1103. Functions of the Director

This section spells out the specific functions of OPM's Director, including "enforcing the civil service rules and regulations of the President and the Office and the law governing the civil service..."

2. Title 5, Section 1104(a)(2), Delegation of Authority for Personnel Management

"The Director may not delegate authority for competitive examinations with respect to positions that have requirements which are common to agencies in the Federal Government, other than in exceptional cases in which the interests of economy and efficiency require such delegation and in which such delegation will not weaken the application of the merit system principles."

3. Title 5, Section 2301. Merit System Principles

".... selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity."

4. Title 5 Sections 3309 - 3318. Veteran Preference

This includes the prohibition of passing over a veteran to select a non-veteran, unless approval is given by OPM.

5. Part 300. Code of Federal Regulations

Subpart A, 300.102, states that competitive employment practices: "... test the relative capacity and fitness of candidates for jobs to be filled; result in selection from among the best qualified candidates...."

IV. OPTIONS:

OPTION 1: RETAINING PACE WITH PLAINTIFF OR CONGRESSIONAL ASSISTANCE

- FEATURES:
- Accepts substantial proof which exists validating PACE
 - Negotiate with plaintiffs to continue to use PACE
 - Present Congress with the problems

OPTION 2: PACE-LIKE ALTERNATIVE MERIT EXAM AND LITIGATION

- FEATURES:
- Present the Court with PACE-like exam and OPM problems
 - If objections, resolve in appellate court

OPTION 3: DEVOLUTION OF EXAMINING TO AGENCIES

- FEATURES:
- Shift examination and staff functions to agencies
 - Spread costs and responsibility to all the defendants

OPTION 4: MODIFIED COMPLIANCE USING MIX OF MERIT EXAMINATIONS

- FEATURES:
- 30 + separate exams to replace PACE
 - Each exam will include a written test, based upon merit
 - Develop specific exams in many, but not all occupations
 - Very costly; exceeds funds available in OPM's current budget
 - New exams subject to merit-adverse impact paradox
 - Not meet Decree requirement for 100+ exams

OPTION 5: COMPLIANCE THROUGH EXCEPTED APPOINTMENT

- FEATURES:
- Severely curtail outside hiring for PACE jobs and rely on internal sources to fill vacancies
 - Where necessary, use "special hiring programs" to supplement internal appointments as well as eliminate adverse impact

OPTION 6: FULL COMPLIANCE THROUGH ELIMINATION OF ADVERSE IMPACT

- FEATURES:
- ° Meet the principal Decree requirement, elimination of adverse impact, by race and national origin conscious hiring
 - ° Use either PACE or alternative exam registers
 - ° If necessary, seek modification of the Court Decree to allow explicit quota hiring

OPTION 7: IMPOSSIBILITY OF BEING IN FULL COMPLIANCE

- FEATURES:
- ° Cannot comply with Decree and law at reasonable cost
 - ° Director of OPM cited for contempt of court

DETAILED POLICY OPTIONS

Option 1: Retaining PACE with Plaintiff or Congressional Assistance

OPM could reopen negotiations with plaintiffs and propose to continue use of PACE indefinitely while ensuring through "all practicable efforts" (and perhaps other measures) that there will be no adverse impact. The problems and cost resulting from loss of examining flexibility under the decree could be reported to Congress by OPM. We could also inform Congress of how the public good would be better served if OPM were able to continue the use of broad band examining for PACE jobs.

OPM should begin immediately to negotiate with the plaintiffs for retention of PACE based on inability to meet the PACE phase out schedule because of the cost of constructing alternatives, the loss to the public if PACE is abandoned, and the conclusions of GAO (in its Mid-Atlantic study) that alternatives to PACE, where used, do not improve affirmative employment efforts. During these negotiations (and especially if these negotiations fail) OPM should inform OMB, GAO and the appropriate Congressional committees of the impact the new examining process will have on OPM's ability to carry out its statutory mandates within its current budget.

Modifications to the decree to retain PACE or to develop a new broad-band examination as a PACE alternative are likely to be acceptable to the plaintiffs only if they include procedures for ensuring there will be no adverse impact. To accomplish this, OPM would have to encourage agencies to use the special hiring programs allowed in the decree and perhaps seek changes in Title 5 to allow for selective certification (i.e., 3 + 3 certification from dual registers or race-norming the PACE) for PACE jobs to ensure that adequate numbers of protected class members are available to selecting officials.

Section 6(d) of the proposed decree provides that modifications may be sought "...to carry out its purposes, as may be appropriate in light of changes in circumstances or changes in law." Further, Section 13(b) allows the defendants, if unable substantially to fulfill the schedule to which the parties have agreed, to notify the Court and the plaintiffs, provide reasonable explanation and negotiate in good faith to resolve or by-pass the problem. The recognition in Section 7 of the Decree--that exam issues may not be fully resolved within five years but that absent agreement or cause, the jurisdiction of the Court will not automatically extend--makes one wonder whether the Court would push this issue if OPM delivers on the "no adverse impact" part but resists on the elimination of broad band exams.

Option 2: PACE-like Alternative Merit Exam and Litigation

OPM could present to the court an examination proposal which meets the intent of the decree but at the same time also meets OPM's legitimate need for professionally defensible and programmatically practical selection methods. This proposal would include a single PACE-like exam or a very few exams to replace PACE. Despite the strong arguments we can present to show how this approach is the only way OPM can meet the legitimate aims of the decree, the plaintiffs will undoubtedly reject this solution. Resolving these differences may force the court to focus on the negative effects on the public at large of implementing the multiple examination requirement of the decree, especially where use of broad band examinations in conjunction with other measures can accomplish the legitimate goals of the plaintiffs.

The decree requirement that PACE be replaced with occupationally specific examinations imposes a heavy administrative and financial burden, and does not advance the affirmative employment aims of the plaintiffs. The costs attendant to complying with this requirement for alternative tests for each of the 118 PACE occupations would be staggering for OPM, especially at a time when our budget is experiencing successive reductions. Conservative cost estimates for developing and administering the alternatives which we believe would fully meet this requirement of the decree run in excess of \$33 million per year. Thus, filling PACE jobs which account for only 6 percent of government-wide competitive hires, would require one-third of OPM's total S&E budget.

Even if we were to implement the alternatives required by the decree, it is very likely we will have to conduct an expensive defense of their validity later. If their legality is not accepted at that point, we will have wasted a great deal of time and money. In addition, it is likely that occupationally specific examinations will result in as great adverse impact as broad band tests. Therefore, for an unknown number of new examinations, optimum use of the registers may not be possible because of the "all practicable efforts" provision of the decree for averting adverse impact.

Another very serious problem associated with the multiple exam requirement of the decree is the effect it will have on recruiting, especially at college campuses. Currently, students who are interested in pursuing an interest in Federal employment can take one test and be considered for a large number of occupations. Except for those students with rather definite and narrow occupational interests, the multiple exam provision of the decree will all but end any effective recruiting on campuses.

Following this option would allow us to raise these issues through the process of litigation. We could use this opportunity to present the merits of broad band examining, an issue not considered in reaching the settlement contained in the decree.

Option 3: Devolution of Examining to Agencies

Devolution of the development and staffing function to agencies to spread compliance costs, both fiscal and operational, among the several defendants.

OPM has responsibility for development and implementation of alternatives only insofar as it retains examining authority for PACE jobs. Nothing in the decree precludes OPM from delegating this examining authority (and therefore responsibility for compliance with the alternatives provisions of the decree) to the other defendant agencies. However, section 1104(a)(2) of Title 5 provides "...the Director may not delegate authority for competitive examinations with respect to positions that have requirements which are common to agencies in the Federal Government, other than in exceptional cases in which the interests of economy and efficiency require such delegation and in which such delegation will not weaken the application of the merit system principles".

Although it would spread both the cost of and the staff workload for examination development and administration, delegation to agencies would assuredly result in inconsistent quality of examining, different examinations for similar occupations, and public complaints about difficulty in getting considered for Federal jobs.

Option 4: Modified Compliance using Mix of Merit Examinations

OPM has developed a proposal for the development of occupation-specific alternative examinations that addresses the terms of the decree regarding implementation of PACE alternatives and is in line with the Director's instructions to include written tests in alternatives. Under this proposal, about 30 separate written examinations would be developed to replace PACE. These exams will be based on merit, but not all of the 118 occupations will have a separate exam. Because of this, it is unlikely that the court will accept this proposal as compliance.

Furthermore, the proposed alternatives are likely to result in adverse impact and there is a good possibility that OPM will need to defend their use on the basis of validity evidence once they have been in use for 2 years. The decree requires validation in accordance with the provisions of the Uniform Guidelines. Special hiring programs will be necessary to alleviate adverse impact, thus limiting the benefits of the alternatives during the life of the decree.

The cost to develop and implement PACE replacements under this option exceeds the cost of OPM's current PACE examining program by more than \$5 million. This cost estimate does not include the costs of collecting and compiling adverse impact data and of presenting validity evidence. This high cost is difficult to justify given the limited benefits and probability that use of the new tests will be overturned by the court in future enforcement proceedings under the decree.

Option 5: Compliance through Excepted Appointments

OPM could eliminate or severely curtail outside examining for PACE jobs for the duration of the decree. Where necessary, the special hiring programs allowable under the decree could be used to supplement internal hires during the term of the Court's jurisdiction.

This course of action may leave OPM and other agencies in compliance with the decree, provided the special hiring programs eliminate adverse impact or agencies are able to document under the provisions in Paragraph 18(b) that they met the requirements for use of "all practicable efforts" in Paragraph 8(f). This could leave us under the Court's jurisdiction for the maximum period (5 years after cessation of PACE) and trades off short term disadvantages (possible decrease in quality of hires) for short and long term advantages (little or no wasted resources, gradual development of sound alternative selection procedures, favorable changes in the mood of the country and the courts).

Budget cutbacks in most non-Defense Federal agencies will most likely result in fewer PACE job hires at least in the first few years of the decree. Adopting a policy of filling any such vacancies internally, by interagency transfer, or through graduate level intern or other non-competitive hiring programs would eliminate or at least curtail the need to implement alternative examinations and to collect data on outside applicants.

OPM would phase out PACE immediately, as allowed under Paragraph 13(b) of the decree. All competitive appointments from outside hires would be suspended for five years. When an agency requests a certificate of appointment for a position once in a PACE-covered occupation, it should be placed in Schedule B, under the authority of civil service Rule 6.1. All appointments to these excepted positions will be made in accordance with Veteran Preference. These will be retained until the end of the five-year period, when all individuals will be subject to examination under a PACE-replacement examination (developed over the five-year period), and all other civil service regulations in order to be promoted out of a Schedule B position into a higher graded position in the competitive service. The Uniform Guidelines would be revised during this period or possibly the decree modified.

Option 6: Full Compliance Through Elimination of Adverse Impact

OPM could fully comply with the provisions of the decree calling for elimination of adverse impact by relying on race-conscious selection. This could be done either by issuing implicit guidance to agencies encouraging them to be race-conscious in filling PACE jobs or by petitioning the court to modify the decree to allow an explicit quota hiring system until a valid alternative to PACE is developed.

The decree requires both elimination of adverse impact and the implementation of occupation-specific alternative examinations to replace PACE. Research indicates, however, that the use of valid alternatives (most often written tests) will do little to reduce adverse impact. This option presents a way to achieve the affirmative employment objective of the decree (to make up for past shortfalls) without wasting resources on the development of alternatives which will be challenged because of their adverse impact and do not meet OPM's long-term examining needs.

Option 7: Impossibility of Being in Full Compliance

OPM could have the Department of Justice present to the court at the outset the difficulties it sees in complying with the decree under any of the options detailed above (assuming retaining PACE or developing a new broad band test are not in compliance). These difficulties include the statutory limitations on OPM's authority to delegate examining for PACE jobs to agencies, the loss in productivity to the government if merit examining is compromised, the technical impossibility of developing job-related exams which do not result in adverse impact, and the high cost of developing alternatives for each of the 118 PACE occupations.

If modifications in the decree are sought, we may be unsuccessful in convincing the court that the intent of the decree can be met in ways less damaging to Federal staffing and more within our budgetary constraints. The modification strategy may result in the court forcing us to implement a plan for which we do not have the resources and which is illegal under other laws.

Under Option 7, we could immediately present to the court the legal and fiscal obstacles to compliance rather than taking the time to negotiate changes in the decree which we may not be able to implement and which may not be in compliance with all laws. Plaintiffs would undoubtedly object and the court would probably be sympathetic. This might lead to a contempt of court citation against the Director of OPM.

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