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THE WHITE HOUSE

WASHINGTON

May 31, 1983

MEMORANDUM TO: Faith Ryan Whittlesey
FROM: Morton C. Blackwell *MB*
SUBJECT: Draft Presidential Remarks:
Reception for Council of the Americas

In the 3rd paragraph, 3rd sentence, the words, "Marxist socialism" should be replaced with "Marxism."

There is no need for the President to distinguish between "Marxist socialism" and any other kind of socialism. The word "Marxism" suffices. The President is not advocating any non-Marxist socialism and therefore the term "Marxism" could stand rhetorically by itself and be parallel with the word "socialism" which is found in the next paragraph.

MCB:jet

WHITE HOUSE STAFFING MEMORANDUM

DATE: May 27, 1983 ACTION/CONCURRENCE/COMMENT DUE BY: NOON TUESDAY May 31, 1983

SUBJECT: Draft Presidential Remarks: Reception for Council of the American

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	☐	GERGEN	☒	☐
MEESE	☐	☒	HARPER	☒	☐
BAKER	☐	☒	HERRINGTON	☐	☐
DEAVER	☐	☒	JENKINS	☐	☐
STOCKMAN	☐	☒	MURPHY	☐	☐
CLARK	☒	☐	ROLLINS	☐	☐
DARMAN	☐ P	☒ SS	WHITTLESEY	☒	☐
DUBERSTEIN	☒	☐	WILLIAMSON	☒	☐
FELDSTEIN	☐	☐	BRADY/SPEAKES	☒	☐
FIELDING	☒	☐	ROGERS	☐	☐
FULLER	☒	☐	<u>Bakshian</u>	☐	☒
			<u>Fischer</u>		☒

REMARKS:

Please forward comments/edits directly to Aram Bakshian, with a copy to my office, by Noon Tuesday, May 31.

Thank you.

RESPONSE:

See memo attached

(Rohrabacher/AB)
May 27, 1983
6:30 p.m.

PRESIDENTIAL REMARKS: RECEPTION FOR COUNCIL OF THE AMERICAS
WEDNESDAY, JUNE 1, 1983

Welcome to the White House. Since getting to Washington I've been stressing that there is an important role those of you in business have to play in solving the vexing problems that confront us. Well, perhaps the most vexing of all is coming to grips with the challenges we face in Latin America, especially in nearby Central American and Caribbean countries.

I'd like to take this opportunity to thank each of you, and the business enterprises you represent, for what you're doing to bolster the economic progress of the hemisphere. Freedom and the profit motive are still two of the most powerful forces known to man. Together we've got to make sure that they are put to work throughout the hemisphere.

It is almost a cliché to say that every problem is a potential opportunity, but that doesn't make it any less true. Today, people are looking for new alternatives. Marxist ~~socialism~~ ⁿ has totally failed to meet the needs of third world countries. Those sincerely searching for solutions are now looking to the business community, especially American business, to show them how to get their jobs done.

They've found that socialism can provide rhetoric, but it doesn't put food on the table.

I'll be meeting with the President of the Ivory Coast next week. And although there have been problems the Ivory Coast has suffered as a result of the world recession, that country, with

an emphasis on free enterprise, has accomplished so much in comparison to African countries that took a different route. And the same is true in this hemisphere.

Recently, when I was visiting Miami, I was struck by the vitality of the Cuban community there. Only 90 miles away in Cuba the basic necessities of life are still being rationed. There is one figure that tells it all. The 1 million Cubans in the United States produce almost twice as much wealth as the 10 million they left behind. We've got something and it works. And just as important, we're willing to share it. We want nothing less than the blessings of plenty for every nation of the New World.

I can think of nothing more important to the security of our country than building strong and healthy economies throughout the Western Hemisphere. One of the goals I've set is a new solidarity in the hemisphere. The people here have so many fundamental values that tie us together. Most of us are descended from pioneers who gave up everything to come to the New World in order to better themselves and their families.

Today, the efficiency, resources, and know-how of American business are as legendary as the spirit of those pioneers. Your role is no less historic. In Central America, in the Caribbean, and throughout Latin America, your enterprise will have tremendous impact on the political and economic future of the hemisphere. So, we are grateful to you for your resourcefulness and want to encourage you to be bold and to spread American

enterprise throughout the hemisphere. That is a job you can do better than anyone else.

Thank you for being here today, and God bless you.

WHITE HOUSE STAFFING MEMORANDUM

OFFICE OF PUBLIC LIAISON

DATE: 5/25/83 ACTION/CONCURRENCE/COMMENT DUE BY: _____SUBJECT: Assoc. of Chambers of Commerce in Latin America

	ACTION	FYI		ACTION	FYI
WHITTLESEY	☐	☐	TILLER	☐	☐
VIPOND	☐	☐	VILA	☐	☐
ROUSSELOT	☒	☐	GRAF	☐	☐
BLACKWELL	☒	☐	SUNDSETH	☐	☐
BUCKALEW	☐	☐	MORECI	☐	☐
GALE	☐	☐	_____	☐	☐
JACOBI	☐	☐	_____	☐	☐
JEPSEN	☐	☐	_____	☐	☐

REMARKS:

for follow thru

RESPONSE:

OK JHR to Blackwell +
Most would you please look at
this & return it if need to be involved
Handled. they are now involved.
MB

Faith Ryan Whittlesey
 Assistant to the President
 Ext. 2270



DEPARTMENT OF STATE

Washington, D.C. 20520

May 25, 1983

staff
to hire
JHR

Note to Amb. Whittlesey and Mr. Blackwell

Subject: Involving Association of American Chambers of
Commerce in Latin America in Central American Outreach
Effort JHR

TO MONT B.

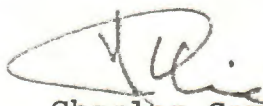
I recommend that you involve the AACCLA in your Central American outreach effort. The Association has about 18,000 corporate members throughout Latin America, about 50% representing U.S. companies.

Alexander Perry, Jr., the First Vice President and former President of the organization (an old friend from my St. Joe Minerals days) and Keith Miceli (the AACCLA's paid permanent Washington representative) both tell me that the Association is fully supportive of the President's Central American policies and would welcome more information.

I suggest two things:

1. That Miceli be included in meetings or briefings of Washington business representatives on this issue.
2. That a briefing of the AACCLA's President (stationed in Mexico) and regional vice presidents from Central America and the Caribbean be arranged. Miceli tells me that this could be done with a few days' advance notice.

Miceli's telephone number is (202)463-5485.


Charles Carlisle

WHITE HOUSE STAFFING MEMORANDUM

OFFICE OF PUBLIC LIAISON

DATE: 5/25/83 ACTION/CONCURRENCE/COMMENT DUE BY: _____SUBJECT: Assoc. of Chambers of Commerce in
Latin America

	ACTION	FYI		ACTION	FYI
WHITTLESEY	☐	☐	TILLER	☐	☐
VIPOND	☐	☐	VILA	☐	☐
ROUSSELOT	☒	☐	GRAF	☐	☐
BLACKWELL	☒	☐	SUNDSETH	☐	☐
BUCKALEW	☐	☐	MORECI	☐	☐
GALE	☐	☐	_____	☐	☐
JACOBI	☐	☐	_____	☐	☐
JEPSEN	☐	☐	_____	☐	☐

REMARKS:

for follow thru

RESPONSE:

JH 5:12Z TO BLACKWELL +
 Most would you please look at
 this & return it if need to be involved
 Handled. they are now involved.
MB

Faith Ryan Whittlesey
 Assistant to the President
 Ext. 2270



DEPARTMENT OF STATE

Washington, D.C. 20520

May 25, 1983

staff
to DIR
JH12

Note to Amb. Whittlesey and Mr. Blackwell

Subject: Involving Association of American Chambers of
Commerce in Latin America in Central American Outreach
Effort

JAR

TO MONT B.

I recommend that you involve the AACCLA in your Central American outreach effort. The Association has about 18,000 corporate members throughout Latin America, about 50% representing U.S. companies.

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Miceli's telephone number is (202)463-5485.

Charles Carlisle

JV, MB Comments to Marybeth by
3:00 FRIDAY, 5/27

Document No. _____

WHITE HOUSE STAFFING MEMORANDUM

DATE: May 26

ACTION/CONCURRENCE/COMMENT DUE BY: c.o.b. TOMORROW

SUBJECT: RESPONSES TO QUESTIONS SUBMITTED BY GUNOWNER MAGAZINE

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	☐	GERGEN	☒	☐
MEESE	☐	☒	HARPER	☒	☐
BAKER	☐	☒	JENKINS	☐	☐
DEAVER	☐	☒	MURPHY	☒	☐
STOCKMAN	☐	☐	ROLLINS	☒	☐
CLARK	☐	☒	WHITTLESEY	☒	☐
DARMAN	☐	☒	WILLIAMSON	☒	☐
DUBERSTEIN	☒	☐	VON DAMM	☐	☐
FELDSTEIN	☐	☐	BRADY/SPEAKES	☒	☐
FIELDING	☒	☐	ROGERS	☐	☐
FULLER	☒	☐		☐	☐

Remarks:

Please provide any edits directly to Mike Baroody, Ext. 7170, Room 160, by c.o.b. tomorrow, Friday, May 27th, with an information copy to my office.

Thank you.

Richard G. Darman
Assistant to the President
(x2702)

Response:

This is OK -
M. Blackwell

GUN OWNER MAGAZINE

1. Mr. President, during your acting career, you played many roles using a firearm. Are you also a shooter in private life? And, if so, what are your favorite guns?

I do a little target shooting at the ranch with hand guns -- but I really can't say that I have a particular favorite.

2. I understand that you have a collection of Old West firearms. What got you started collecting them and which are your favorites?

I made several Western films during my time in Hollywood and when I was associated with "Death Valley Days." Along the way, my interest in things associated with the Old West grew and, on one occasion, a fan sent me an old gun. Frankly, I would not call my collection strictly a "gun" collection as it includes many other things associated with the West -- saddles, other items of tack, and artworks. The six-gun was an invaluable part of the opening up of the West and it played a vital role in our nation's history. My collection of Americana has special meaning in that it is an expression of my feelings about our country.

3. We all know of your love of the outdoors and particularly horse-back riding. Do you hunt and, if so, what are your favorite types of hunting?

Actually, I'm not a hunter at all. Never have been.

4. Gun owners throughout the country took an active role in your campaign in 1980. Many are now anxious to know whether you will seek a second term in the White House. Are you close to making a decision about re-election in 1984?

Well, we only have to look at our friends over in the Democratic party to realize that campaign fever is starting up again. Now as to my own intentions, all I can say right now is what I've said many times before -- no decision -- one way or the other -- has been made. When it has been, I'll waste no time in letting everyone know.

5. What would motivate you to seek reelection?

I've said I don't like to walk away from an unfinished job. It's just not my style.

6. Mr. President, the Bureau of Alcohol, Tobacco and Firearms (BATF) continues to harass individual gun owners, and seems to spend more time on "Mom and Pop" gun stores with minor infractions than on organized crime and major felony violations of our gun laws. Do you favor putting the regulating division of the BATF back into the Treasury where it was 10 years ago and place the functions of firearm enforcement in a smaller agency?

I am pleased to report that there has been great improvement in relations between the firearm enforcement component of BATF and gun owners and licencees since I took office more than two years ago. I intend to see it remain that way. That is why, among other technical, administrative, and policy reasons, my Administration last year proposed the transfer of the BATF Firearms enforcement functions and related personnel to the U.S. Secret Service. The firearms component of BATF is now doing a fine job concentrating on organized crime and drug-related major felony violations of gun laws.

7. Do you support changes and modifications of the 1968 Gun Control Act as proposed in legislation authored by Senator James McClure and Representative Harold Volkmer?

I support changes and modifications of the 1968 Gun Control Act, a number of which are already embodied in the legislation sponsored by Senators James McClure and Orin Hatch and Representative Harold Volkmer. My Administration is working closely with sponsors of firearms reform legislation to produce a bill that truly protects the rights of law-abiding citizens without diminishing the effectiveness of criminal law enforcement against the misuse of firearms. I look forward to signing such a bill.

8. We all greatly admired your courage in dealing with the assassination attempt in 1981. We especially admired the fact that this incident did not weaken your long standing opposition to more stringent gun control laws. Would you explain why?

The attempt was made in Washington, D.C. -- which has some of the strictest gun control laws in the country, they didn't prevent my assailant from getting a gun.

9. As you know, Gun Owners has grown in the last 6 years to become one of the country's largest political action committees (PACs). Now, the ultra-liberals in Congress are trying to outlaw PACs or drastically restrict our ability to participate politically. Would you veto any legislation which would restrict Gun Owners' ability to participate through their collective efforts?

Some people think PACs should be limited. I don't favor passing laws to restrict free speech and active participation in politics by any individuals or groups. Instead of limiting what PACs can do, I'd rather ease the limits on what political parties can do. That's why I'm supporting legislation currently introduced by my friend Paul Laxalt in the Senate and my friend Bill Frenzel in the House. Both bills will go a long way in restoring our political parties to their rightful place in the American political process.

10. Justice Sandra Day O'Connor, your first appointment to the Supreme Court had a very strong pro-gun record in Arizona. Can we look forward to future judicial appointees sharing that philosophy?

My appointment of Justice O'Connor to the Supreme Court was based on a wide variety of factors. To limit the deciding factor to her position on gun control would be misleading and unfair to her. My feelings on the role of the Court within the framework of American life are well-known and a matter of public record. Justice O'Connor, in my opinion, shares those views. It is this type of compatibility that a President is looking for in making such an appointment. If in the future, I have the opportunity to appoint another member to the Court, the same factors that entered into the O'Connor appointment, will come into play.

11. There is a lot of confusion in the minds of many people about the meaning of the Second Amendment. What does it mean to you?

As I recently stated at the NRA convention on May 6, 1983, the Constitution does not say that Government shall decree the right to keep and bear arms. The Second Amendment of the Constitution does say "...the right of the people to keep and bear arms shall not be infringed." That seems pretty clear to me.

12. Finally, Mr. President, I'm interested in knowing what is your most memorable moment so far of your Presidency?

It would be impossible to pin down one moment because there have been so many. I am sure that every President remembers his Inauguration and, with the release of the American hostages, mine was especially memorable. Then, of course, there was the day of the attempt on my life when three other fine men were also seriously wounded. It is a very negative memory, but one which will always stand out. Another sad occasion, which was also an historical one, was the night three former Presidents landed on the South Lawn of the White House on their way to the funeral of Anwar Sadat. It was a very dramatic moment and the terrible event which had initiated it ~~had~~ shook the whole world. On the positive side I cannot leave out my meeting with Mother Teresa of India. Although she is a very diminutive woman with a quiet demeanor, she possesses an awesome power to make God's love a living reality. Lastly, I must mention the many handicapped and seriously ill children who have visited me in the White House. When I look in their eyes, sometimes I see their pain, but most often I see their bravery, their determination, their joy and I know that I have seen the hope of our future.

Questions Omitted

- * The leading Democratic contenders for president, Walter Mondale, Alan Cranston and Gary Hart are all strongly anti-gun. Yet, initiatives to enforce gun control in Massachusetts and California have recently been defeated. How do you explain this contradiction? What does this portend for the 1984 election?
- * Morton Grove, Illinois, has a law outlawing handguns while Kennesaw, Georgia requires every resident to own a firearm unless there is a conscientious objection. The rate of violence in Morton Grove has remained virtually the same while it has gone way down in Kennesaw after the enactment of each ordinance. How do you explain the difference?
- * There seems to be an international movement for disarmament. Do you feel that Americans will be more vulnerable if they are personally disarmed?
- * A number of people appreciated Nancy's comment about keeping a small gun by her nightstand for protection. What kind of public reaction did you receive on her statement?

JV -- RESPOND DIRECTLY TO ABAKSHIAN WITH EDITS BY NOON

WHITE HOUSE STAFFING MEMORANDUMDATE: May 25 ACTION/CONCURRENCE/COMMENT DUE BY: NOON TOMORROWSUBJECT: RADIO ADDRESS: RE WILLIAMSBURG SUMMIT

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	☐	GERGEN	☒	☐
MEESE	☐	☒	HARPER	☒	☐
BAKER	☐	☒	JENKINS	☐	☐
DEAVER	☐	☒	MURPHY	☐	☐
STOCKMAN	☐	☐	ROLLINS	☐	☐
CLARK	☒	☐	WHITTLESEY →	☒	☐
DARMAN	☐ P	☒ SS	WILLIAMSON	☒	☐
DUBERSTEIN	☒	☐	VON DAMM	☐	☐
FELDSTEIN	☒	☐	BRADY/SPEAKES	☒	☐
FIELDING	☒	☐	ROGERS	☐	☐
FULLER	☒	☐	BAKSHIAN	☐	☒
			FISCHER		☒

Remarks:

Please provide any edits directly to Aram Bakshian by noon tomorrow, Thursday, May 26th.

Note: This has been forwarded to the President.

Richard G. Darman
Assistant to the President
(x2702)

Response:

This is O.K.
M. Blackwell
5/26/83

Document No. _____

WHITE HOUSE STAFFING MEMORANDUM

DATE: May 21, 1983

10:00 A.M. MONDAY

ACTION/CONCURRENCE/COMMENT DUE BY: May 23, 1983

SUBJECT: DRAFT PRESIDENTIAL REMARKS RE MX FOR THE CONGRESSIONAL DINNER

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	☐	GERGEN	☒	☐
MEESE	☐	☒	HARPER	☒	☐
BAKER	☐	☒	JENKINS	☐	☐
DEAVER	☐	☒	MURPHY	☐	☐
STOCKMAN	☐	☒	ROLLINS	☐	☐
CLARK	☒	☐	WHITTLESEY →	☒	☐
DARMAN	☐	☒	WILLIAMSON	☒	☐
DUBERSTEIN	☒	☐	VON DAMM	☐	☐
FELDSTEIN	☐	☐	BRADY/SPEAKES	☒	☐
FIELDING	☒	☐	ROGERS	☐	☐
FULLER	☒	☐	Bakshian	☐	☒
			Fischer		☒

Remarks:

These draft remarks have gone forward to the President. Please provide minor edits directly to Aram Bakshian, with a copy to my office, by 10:00 a.m. Monday, May 23.

Thank you.

Richard G. Darman
Assistant to the President
(x2702)

Response:

This is too weak a statement.
Building MX as a means to reduction is
not the only argument.
Allowing the Soviets to enjoy superiority is not
acceptable to the public. That too should be stressed.

(Bakshian)
May 21, 1983
Noon

PRESIDENTIAL MX REMARKS: CONGRESSIONAL DINNER
MONDAY, MAY 23, 1983

Thank you all for being here. I know the heavy legislative workload each of you has to deal with and the many other demands on your time. I wouldn't have asked you here tonight if I weren't convinced that the subject of this gathering is one of overriding importance.

Now I know that the debate on the MX Peacekeeper missile, and the whole issue of strategic modernization, has been going on for a long, long time. And when a debate runs on and on as this one has, the tendency is to think that we've already heard everything on the subject that's worth hearing. Certainly, we've all been subjected to the paper equivalent of saturation bombing on this issue. The long-winded arguments have been thrown at us from every side. But I can't help wondering if the very intensity and length of the debate may have made it harder to see the forest for the trees.

Here we are tonight, just hours away from the House and Senate votes -- votes which I deeply believe may be among the most important that the Members of both chambers will be called upon to make in their entire careers. So, in these final hours before the decision is made, I very much wanted a chance to meet with those of you, of both parties, who still have an open mind on the question -- who are still struggling to reach the right decision, the decision that will be best for the people you represent, and for our country, now and tomorrow.

We all know what the vote will be about. The specific legislative proposal is to approve flight testing of the MX Peacekeeper missile and the work necessary for basing it in existing Minuteman silos. Implicit in this vote is approval of the production of the missiles. And this is the first essential step toward deployment of 100 Peacekeeper missiles beginning in 1986, and for the development of a new, small, single-warhead ICBM which would be mobile.

The terms of the question are clear enough. What is perhaps less understood is why it is such an important question. My answer to that is two, simple words: arms reductions -- balanced, verifiable arms reductions that can make the world of tomorrow a safer place for all the Earth's people. And that, I am convinced, is a goal we all share -- an issue that cuts across liberal-conservative and Democratic-Republican lines and should unite us as Americans and as members of the human family.

When I endorsed the Scowcroft Commission's recommendations, I did so because I felt they balanced three elements indispensable to our country's present and future well-being: modernization, deterrence, and arms control. All are important, but the key is that they are also interdependent. Modernization programs -- like the MX Peacekeeper -- go hand-in-hand with deterring nuclear war and achieving arms control.

Make no mistake. The MX and other modernization measures will be invaluable in helping us to strengthen the peace by seeking arms reduction agreements -- agreements that make for more security and stability by reducing overall force levels

while permitting the modernization of our forces needed to maintain a credible deterrent.

The Scowcroft Commission proved that this is not a partisan issue. Its members, drawn from both parties, several previous administrations, and a wide range of technical experts, showed that it's possible to grasp a complex, emotional issue of immense importance, to rise above politics, and to achieve a bipartisan consensus.

The members of the Commission agreed on the need to build and deploy the MX, and to build the smaller, single-warhead missile, not so we can fight a war or add more useless tonnage to the nuclear arsenal. They agreed because they are convinced, as I am, that their recommendations, if followed, will persuade the Soviets that it is in their interests, too, to agree to deep arms reductions. And that's something we all want.

The question now before us is whether the Congress can also reach a consensus, a consensus that will unite us in our common search for ways to strengthen our national security, reduce the risk of war and, ultimately, reduce the level of nuclear weapons. Such a consensus is not just desirable. It is crucial to America's future -- indeed, to the future of all the civilized values we hold dear and seek to protect from mass destruction.

If we can build that legislative consensus now, it can be sustained from one administration to the next, from one party to another, and lay the groundwork for steady progress toward arms reduction and a more peaceful and secure world.

When I say this is a bipartisan issue, I mean it. In fact, I want to close by quoting a liberal Democratic Member of the

House, Dan Glickman of Kansas, who explained why he had changed his mind and decided to back the MX a few days ago in the pages of the Washington Post. Here is what he said:

"To kill the MX now, I have come to believe, may indeed reduce the Soviets' inclination to 'give' on their giant land-based missiles, which is the heart of what we want in an arms control agreement. I have come to the conclusion that the basic question is this: Will the funding for MX help or hurt our ability to reach an ultimate reduction in nuclear weapons arsenals? It is a very close question but, on balance, I believe that we are closer to an agreement and to a reduction . . . if we proceed -- at least initially -- on funding for the missile."

Thank you, Dan Glickman.

I was not being over-dramatic when I said that this may be one of the most important votes any of you will ever be called on to cast. For that very reason, I respect you for taking a long, hard look at the issue before making up your minds. But I'm convinced that, as we reach the eleventh hour, the choice is clear: A vote for the MX is a vote for what all of us want for our country and for posterity -- a better chance for peace, for security, and for a real beginning toward arms reductions.

I can't think of any higher goal for us to work for together and I urge you think hard on this one from the perspective of our Nation's future and the kind of world our children will inherit.

Thank you all for coming this evening, and God bless you.

WHITE HOUSE STAFFING MEMORANDUM

DATE: May 21, 1983

ACTION/CONCURRENCE/COMMENT DUE BY:

11:00 A.M. MONDAY
MAY 23, 1983

SUBJECT: DRAFT PRESIDENTIAL OP-ED PIECE FOR WASHINGTON POST

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	☐	GERGEN	☒	☐
MEESE	☐	☒	HARPER	☒	☐
BAKER	☐	☒	JENKINS	☐	☐
DEAVER	☐	☒	MURPHY	☐	☐
STOCKMAN	☒	☐	ROLLINS	☐	☐
CLARK	☒	☐	WHITTLESEY →	☒	☐
DARMAN	☐ P	☒ SS	WILLIAMSON	☒	☐
DUBERSTEIN	☒	☐	VON DAMM	☐	☐
FELDSTEIN	☐	☐	BRADY/SPEAKES	☒	☐
FIELDING	☒	☐	ROGERS	☐	☐
FULLER	☒	☐	BAKSHIAN	☐	☒

Remarks:

This draft op-ed has gone forward to the President. Please provide minor edits directly to Aram Bakshian, with a copy to my office, by 11:00 a.m. Monday, May 23.

Thank you.

Richard G. Darman
Assistant to the President
(x2702)

Response:

No comment.
M. Blackwell

(Bakshian)
May 21, 1983
Noon

PRESIDENTIAL OP-ED PIECE FOR WASHINGTON POST

In a matter of hours, the Congress will vote on a question of vital concern to all Americans. The debate on the MX Peacekeeper missile, and the whole issue of strategic modernization, has been on the front pages for months now and may seem to have reached its saturation point. But, as is too often the case, the nature of much of the debate has generated far more heat than light, and made it harder for many sincere citizens to reach a calm, reasoned decision.

In these final hours before the Congress acts, I want to state, clearly and directly, what is at stake, and why it is so important to our country and to the world our children will inherit from us. Most of us are already familiar with what the vote will be about. The specific legislative proposal is to approve flight testing of the MX Peacekeeper missile and the work needed to base it in existing Minuteman silos. This is the first essential step toward deployment of 100 Peacekeeper missiles beginning in 1986, and for the development of a new, small, and mobile single-warhead ICBM -- all part of a long-overdue modernization of our aging defense system.

But if the details of the debate are clear enough, its importance may not be. At stake is the future of arms reductions -- balanced, verifiable arms reductions that can make the world of tomorrow a safer place for all the Earth's people. That is a goal all sensible people share, an issue that cuts

across party and philosophical lines and unites us as Americans and as members of the human family.

When I endorsed the Scowcroft Commission's recommendations on the MX Peacekeeper and modernization, I did so because I was firmly convinced that they balanced the three keys to our country's present and future safety: modernization, to maintain state-of-the-art readiness against a much newer Soviet array of systems; deterrence, to continue to make clear to the Soviets that aggression on their part would never pay; and progress in arms reductions to move from a balance of terror toward stable, peaceful discourse in the competition of ideas.

All three of these elements are crucial to our country's present and future well-being; they are also interdependent. Modernization goes hand-in-hand with a credible deterrent; both are necessary incentives to persuade the Soviets that it is in their best interest as well as ours to achieve meaningful arms reductions.

So the vote on the MX concerns far more than one piece of military hardware. It bears directly on our ability to strengthen the peace through arms reduction agreements that make for more security and stability by reducing overall force levels.

The Scowcroft Commission proved that this is not a partisan issue. Its members, drawn from both parties, from several previous administrations, and from some of our best technical and scientific institutions, demonstrated that Americans with widely differing attitudes can cope with a complex, emotional issue,

rise above politics, and achieve a workable, bipartisan consensus.

The members of the Commission agreed on the need to build and deploy the MX, not as an engine of destruction, but as a safeguard for peace; not as a means to fight a war, but as a deterrent to conflict and an incentive to peaceful negotiation. These are things we all want.

The question now before us is whether or not the Congress will join this consensus, a consensus that can unite us in our common search for ways to protect our country, reduce the risk of war and, ultimately, reduce the level of nuclear weapons. Such a consensus is more than desirable; it is crucial to America's future and to the future of all the civilized values we hold dear and would protect from mass destruction.

If we can consolidate this consensus now, it can be sustained from one Administration to the next, from one party to another, and lay the groundwork for steady progress toward arms reduction and a more peaceful and secure world. It is this realization which has caused many Democratic Members of the Congress who disagree with this Administration on a number of other issues, to make common cause with us on this one. Only last week, in these pages, a liberal Democratic Congressman, Representative Dan Glickman of Kansas, explained why he had changed his mind and decided to vote in favor of the MX. "To kill the MX now," he wrote, ". . . may indeed reduce the Soviets' inclination to 'give' on their giant land-based missiles, which is the heart of what we want in an arms control agreement. I

have come to the conclusion that the basic question is this: Will the funding for the MX help or hurt our ability to reach an ultimate reduction in nuclear weapons arsenals? It is a very close question but, on balance, I believe that we are closer to an agreement and to a reduction . . . if we proceed -- at least initially -- on funding for the missile."

As the Congress reaches the eleventh hour, the choice is clear: A vote for the MX is a vote for what all of us -- here and among our friends overseas -- want for our country and for posterity -- a better chance for peace, for security, for an end to nuclear horror and a beginning toward arms reductions. In pursuit of this noble goal, I will continue to work closely with the Congress. But, to succeed, I will need its bipartisan support. I cannot think of any single issue where it is more justified, and more vital to the future of mankind.

WHITE HOUSE STAFFING MEMORANDUM

DATE: May 20, 1983

ACTION/CONCURRENCE/COMMENT DUE BY: NOON MONDAY
MAY 23, 1983

SUBJECT: Report on Infanticide Regulation

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	☐	GERGEN	☒	☐
MEESE	☐	☒	HARPER	☒	☐
BAKER	☐	☒	JENKINS	☐	☐
DEAVER	☐	☒	MURPHY	☐	☐
STOCKMAN	☐	☐	ROLLINS	☒	☐
CLARK	☐	☐	WHITTLESEY	☒	☐
DARMAN	☐	☒	WILLIAMSON	☒	☐
DUBERSTEIN	☒	☐	VON DAMM	☐	☐
FELDSTEIN	☐	☐	BRADY/SPEAKES	☐	☐
FIELDING	☒	☐	ROGERS	☐	☐
FULLER	☐	☐		☐	☐

Remarks:

Please provide comments on the attached package and recommendation provided by the Infanticide Working Group concerning reissuance of the Infanticide Regulation to my office by Noon Monday, May 23.

Thank you.

Richard G. Darman
Assistant to the President
(x2702)

Response:

*This is a good revision.
It maintains the essential points:
1. National hotline
2. Federal enforcement based on sec 504 of Rehabilitation Act as the President stated in his message of April, 1982 to HHS + Justice. M. Blum*



May 18, 1983

MEMORANDUM FOR CRAIG FULLER

Pursuant to your instructions, attached is the report of the working group formed to review the HHS interim final rule published March 7, 1983.

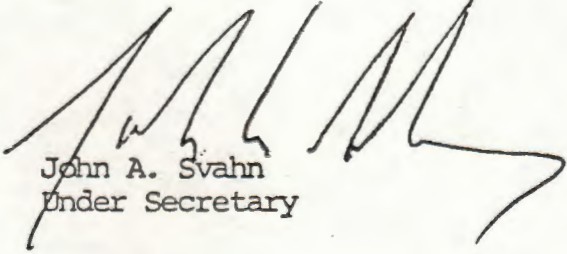
We are recommending publishing a notice of proposed rulemaking which modifies the interim final regulation somewhat; including an extensive preamble discussing the issues raised by Judge Gesell; and concluding with an appendix to the regulation which provides examples of the type of case to which the regulation is directed.

As you can see in the report, the working group held several formal sessions and met with representatives of the physicians, hospitals, handicapped, and pro-life groups in an effort to assure that all concerns were recognized in our proposed action.

Much discussion surrounded the role of the state agencies in enforcement of Section 504. While recognizing that states should play a significant role, it was generally concluded that the ultimate responsibility for enforcement of civil rights legislation rests with the Federal Government. Nevertheless, we are recommending that a notice be sent to state agencies and that their role be clarified and enhanced.

Finally, the working group and more particularly, the group representing the handicapped and pro-life contingents felt that the Federal Government should utilize all available tools for enforcement, specifically criminal prosecution where warranted. Accordingly, we are recommending that a notice be sent to the United States Attorneys alerting them as to the applicability of Section 504 and the fact that a violation may be a violation of the criminal provisions of 18 USC 241.

I recommend that the attached notice of proposed rulemaking with preamble and appendix be published in the Federal Register.



John A. Svahn
Under Secretary

Attachments:

- Tab A - Report of the work group
- Tab B - Recommended notice of proposed rulemaking
- Tab C - Working group members
- Tab D - Attendees at meetings with non-governmental organizations

REPORT OF THE INFANTICIDE WORKING GROUP

Background

The working group created by memorandum from Craig Fuller to the Secretary of HHS met on two occasions (see Tab C for list of members). In addition, a sub-group of the working group led by the Chairman met with representatives of the health care industry and with groups representing pro-life positions and the handicapped (see Tab D for a list).

The results of those discussions and recommendations follow.

The President's April 30, 1982, memorandum instructed the Secretary of Health and Human Services to inform health care providers of the applicability of Section 504 to the care and treatment of handicapped infants. It indicated his decision that existing federal civil rights statutes afforded protection to handicapped infants and his determination that they will be "vigorously enforced".

On May 18, 1982, the Department of Health and Human Services notified approximately 6,800 hospitals which receive federal financial assistance that it is unlawful under Section 504 to withhold from handicapped infants nutritional sustenance or medical care required to correct a life threatening condition. (As the President stated in his March 8 Orlando address: "I have directed the Health and Human Services Department to make clear to every health care facility in the United States that the Rehabilitation Act of 1973 protects all handicapped persons against discrimination based on handicaps, including infants.")

The Department published on March 7, 1983, an interim final rule, which used Title VI of the Civil Rights Act procedures to make known to beneficiaries their right to federal protection against discrimination. In addition, it waived the ten day waiting period before referral to the Department of Justice for enforcement.

The March 7 rule provided a system for beneficiaries of federally assisted programs to be informed of their rights and in turn provided the beneficiaries and the public with a hotline informing the Department of suspected violations.

The interim rule required each hospital to post a notice in a "conspicuous place" in the delivery, maternity, and pediatric wards and in each nursery. The notice gave the hotline number and encouraged persons who had knowledge of an infant being discriminated against to call the hotline number.

This position seemed to be accepted by all parties once understood. The industry groups were concerned that we were mandating expensive and useless procedures. Once explained, they concurred with our position. This position is spelled out in the recommended rule and appendix.

Who should be the Prime Enforcer of Section 504?

Much of the discussion surrounded the question of which entity should provide enforcement of the prohibition contained in Section 504.

Under the interim final rule and procedures adopted by HHS, HHS through its regional structure of the Office of Civil Rights was given responsibilities for initial investigation and enforcement. The states were also acknowledged to have a role in infant protection under the various child protection statutes.

The hospital groups would prefer enforcement and investigation to be done at the local level by a multi-disciplined board (including representation of handicapped groups) on a facility-by-facility or regional basis. They believe that individual cases are subject to considerable subjectivity and therefore require onsite analysis. The Federal role to them should be one of oversight, on a retroactive basis, rather than enforcement. Hospital spokesmen cited concern about federal employees tramping around in hospitals at all hours as a problem. The pro-life and handicapped groups and the working group feel that such a review board procedure would do little to prohibit past practices. Even attorneys for the handicapped felt that a properly constituted board would be a significant intrusion into hospital operations.

Several members of the working group and of the other groups felt the states should be the primary enforcers. DOJ put forth such a proposal and a similar proposal was made by attorneys for the handicapped. Valid questions do exist about this new role for the Federal Government, however it was the opinion of the group that on balance, the enforcement of civil rights statutes is a federal responsibility. States should be encouraged to exercise their authority, trained in the problem, and made aware of remedies available to them in order to more fully supplement the federal capability.

What system should be available to notify OCR of potential violations?

The interim final rule required the posting of the notice in "conspicuous" places in all the areas of a hospital frequented by infants. The notice contained the hotline number and urged people to call and report discrimination. Perhaps more than any other aspect of the regulatory scheme, this requirement infuriated the hospitals and particularly the physicians. Comments were made that it created "havoc" in the hospitals and "destroyed the trust" between the doctor and the patient's family.

Without acknowledging any merit in the providers claims, the handicapped groups recognized that the postings required under the interim final rule have had some unintended results. HHS too, reports that members of the public have misinterpreted the notices and called the hotline with irrelevant complaints.

All parties appear to recognize that legitimate complaints of the type of discrimination the notice is intended to prevent come from nurses working in the various wards.

It is probably advisable to modify the notice requirement and redirect it towards those most knowledgeable. Such a modification would not diminish the federal role or reduce protection of newborn infants.

What is the legal basis for HHS enforcement?

HHS has long maintained that payment of Medicare or Medicaid to a hospital constitutes federal financial assistance (FFA) to the facility and therefore the facility must meet such requirements as the department chooses to legally impose. Failure to do so would result in the loss of such federal financial assistance. The American Hospital Association maintains that the programs do not constitute FFA to the hospitals and therefore only hospitals which actually receive some type of grant (approximately 5% of the facilities) are covered under our March 7 rule. They further believe that the only penalty for failure to comply would be loss of the specific grant money.

The Department of Justice has not issued an opinion on this issue and there continues to be some disagreement within DOJ. The working group was promised a position from DOJ, but it was not forthcoming. Given the President's statements, both written and oral, the working group has concluded that the traditional HHS position is preferable.

Because of the potentially limited nature of a threat to withhold federal financial assistance to prevent or stop an ongoing, life threatening violation of Section 504, an effective response to life threatening discrimination against handicapped infants requires not only a cooperative effort between federal, state, and private agencies, but also the full utilization of federal civil rights protection. In the President's memorandum of April 30, 1982, he instructed that he be informed of the application of existing federal constitutional and statutory remedies, other than Section 504, to prevent the withholding of life-saving treatment to handicapped infants.

Several groups representing the handicapped and pro-life views made strong arguments for the Justice Department to vigorously enforce the criminal conspiracy provisions of the law.

Section 241, Title 18 of the United States Code provides that: "If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States...They shall be fined not more than \$10,000 or imprisoned not more than ten years, or both, and if death results, they shall be subject to imprisonment for any term of years or for life."

For example, agreement by parents and hospital personnel not to treat a congenital anomaly incompatible with life and amenable to surgical correction in a child with Downs syndrome may constitute conspiracy and therefore be a violation of Section 241.

Recommendations

A. It is recommended that the Department of Health and Human Services:

1. Issue a Notice of Proposed Rulemaking (see Tab B) which restates the March 7, 1983, interim final rule with the following modifications:
 - (a) the requirement that the notice be posted "in each delivery ward, each maternity ward, each pediatric ward, and each nursery, including each intensive care nursery" be changed to require that the notice be posted in the nurses' station having responsibility for such sections in the hospital;
 - (b) the notice to be posted be no smaller than 8½ by 11 inches (the notices distributed by the Department will in fact be 8½ by 11 inches);
 - (c) require hospital personnel to identify on the space provided on the notice the state child protection agency where child neglect or abuse violations can be reported, rather than simply providing this as an option;
 - (d) the proposed regulation be published with an appendix which further clarifies issues raised in discussions with outside groups and in Judge Gesell's opinion since such an appendix would provide more authoritative guidance and would be accorded greater weight by a reviewing court;
 - (e) that the preamble published with the proposed regulation further clarify issues raised in the litigation and specifically request comments on a number of questions raised by Judge Gesell and others.

2. In order to clarify the role of State child welfare agencies and to encourage their involvement in protecting the rights of handicapped infants:
 - (a) send a notice, similar to the May 1982 Notice to Health Care Providers, to State child protection agencies to clarify their responsibilities as recipients of federal financial assistance under Section 504:
 - (b) develop technical and other appropriate assistance to State and private child protection agencies consistent with their Section 504 responsibilities and communicate the assistance to those agencies.
- B. It is recommended that the Department of Justice notify United States Attorneys that a life threatening violation of Section 504 may constitute a violation of federal criminal law prohibiting conspiracy against rights of citizens (18 U.S.C. 241) and that they be prepared to institute timely proceedings as necessary regarding an ongoing or past life threatening violation of Section 504.

Supplementary Information: The President's directive of April 30, 1982, and the HHS Office for Civil Rights "Notice to Health Care Providers" of May 18, 1982, reminded recipients of federal financial assistance of the applicability of Section 504 of the Rehabilitation Act of 1973. Section 504 provides: "No otherwise qualified handicapped individual.... shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."

The Notice to Health Care Providers explained what is already clear from the language of Section 504 and the implementing regulations (45 CFR Part 84): The discriminatory failure of a federally assisted health care provider to feed a handicapped infant, or to provide medical treatment essential to correct a life-threatening condition, constitutes a violation of Section 504.

Section 504 requires that health services be provided to the handicapped "on a basis of equality with those not handicapped," Doe v. Colautti, 592 F. 2d 704, 709 (3d Cir. 1979), in order to assure "the evenhanded treatment of qualified handicapped persons." Southeastern Community College v. Davis, 442 U.S. 397, 410 (1979).

Section 504 is in essence an equal protection, non-discrimination standard. Congress expressly intended Section 504 to prohibit discrimination based on handicap in the same way that Title VI of the Civil Rights Act prohibits discrimination based on race. Programs or activities receiving federal financial assistance may not deny a benefit or service on grounds of a person's handicap, just as they may not deny a benefit or service on grounds of a person's race.

The Rehabilitation Act of 1973 defines a "handicapped individual" as "any person who (i) has a physical or mental impairment which substantially limits one or more of such person's major life activities, ... or (iii) is regarded as having such an impairment." 29 U.S.C. 706(7)(B). Thus it is clear that a handicapped infant is an "individual" within the protection of the statute and is a "person" within the protection of the regulation. Nothing in the plain language of Section 504 or its legislative history provides a basis for excluding infants from the statutory coverage of "individuals". It is equally clear, however, that the great majority of seriously ill children who require acute medical attention are not included in the term handicapped persons as used in Section 504. For example, a premature or otherwise low birth weight infant would not on that basis alone be considered a handicapped person for purposes of Section 504 even though he may require acute medical care.

The definition of a qualified handicapped person was clarified by the Supreme Court in Southeastern Community College v. Davis, 442 U.S. 397 (1979). In that case the Court addressed the question of whether a nursing school was prohibited by Section 504 from imposing certain physical qualifications for admission to its clinical training program. Noting that Section 504 prohibits discrimination on the basis of handicap against otherwise qualified handicapped individuals, the Court focused on the question of whether the plaintiff was otherwise qualified. It concluded that she could benefit from the program without fundamental alteration of the program. Id. at 409-410. As applied in the context of health care to handicapped infants, Section 504 would hold that where an infant would not benefit medically from a particular treatment, the infant would not be "qualified" to receive the treatment; thus, its denial would not violate Section 504.

Section 504 does not compel medical personnel to attempt to perform impossible or futile acts or therapies. Thus, Section 504 does not require the imposition of futile therapies which merely temporarily prolong the process of dying of an infant born terminally ill, such as a child born with anencephaly or intra-cranial bleeding. Such medical decisions, by medical

personnel and parents, concerning whether to treat, and if so, what form the treatment should take, are outside the scope of Section 504. The Department recognizes that reasonable medical judgements can differ when evaluating these difficult, individual cases.

The Department's existing regulations prohibit a recipient in providing any aid, benefit, or service from denying a qualified handicapped person "the opportunity to participate in or benefit from the aid, benefit, or service." 45 C.F.R. 84.4(b)(1)(i). The regulations also prohibit a recipient from affording a qualified handicapped person "an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others." 45 C.F.R. 84.4(b)(1)(ii) (emphasis supplied).

Recognizing that Section 504 protects only those infants who are able to benefit from treatment, the Department's May 18, 1982 Notice to Health Care Providers explained that a violation of Section 504 occurs when the treatment is withheld because of the existence of a handicap and the handicap does not render the treatment medically contraindicated.

Thus, Section 504 simply preserves the decision-making process customarily undertaken by physicians in any treatment decision: will the treatment be medically beneficial to the patient and are those benefits outweighed by any medical risk associated with the treatment? It is only when non-medical considerations, such as subjective judgements that an unrelated handicap makes a person's life not worth living, are interjected in the decision-making process that the Section 504 concerns arise.

The judgement Section 504 requires of a physician is a medical judgement concerning what medical treatment shall be provided an individual. Not all judgements made by a health care provider, however, are medical judgements. For example, a judgement not to treat a black infant because of the infant's race is not a medical judgement. A judgement not to remove a stomach block or repair a heart of a Down's Syndrome infant because the infant suffers the handicap of Down's Syndrome is likewise not a medical judgement.

The decision to forego medical treatment of a correctable life-threatening defect because an infant also suffers from a permanent, irremediable handicap that is not life-threatening, such as mental retardation, is a violation of Section 504. In this context, Section 504 provides that usual and customary

medical care afforded to non-handicapped infants not be denied to handicapped infants when they would benefit from such treatment. Similarly, where a course of medical care is usual and customary to correct or ameliorate a life impairing condition among a particular class of patients, for example, such as infants suffering from meningomyelocele (spina bifida), such beneficial care may not be withheld from an individual infant because of a subjective judgement that such infants as a class possess an insufficient quality of life.

While these are often difficult decisions to make, as well as to review, the standard of customary medical care is not one unfamiliar in the medical community and the Department appreciates the standard set forth in the recent Report of the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research, entitled, "Deciding to Forego Life-Sustaining Treatment."

The Commission concluded that "a very restrictive standard is appropriate" in decisions regarding the treatment of handicapped infants and the Department requests comments on the following statement of the Commission:

Though inevitably somewhat subjective and imprecise in actual application, the concept of "benefit" excludes honoring idiosyncratic views that might be allowed if a person were deciding about his or her own treatment.... As in all surrogate decision-making, the surrogate is obligated to try to evaluate benefits and burdens from the infant's own perspective. The Commission believes that the handicaps of Down Syndrome, for example, are not in themselves of this magnitude and do not justify failing to provide medically proven treatment, such as surgical correction of a blocked intestinal tract.

This is a very strict standard in that it excludes consideration of the negative effects of an impaired child's life on other persons, including parents, siblings, and society. Although abiding by this standard may be difficult in specific cases, it is all too easy to undervalue the lives of handicapped infants, the Commission finds it imperative to counteract this by treating them no less vigorously than their healthy peers or than older children with similar handicaps would be treated.

Events of the past several years suggest that handicapped infants have died from denial of food in federally assisted programs. The full extent of discriminatory and life-threatening practices toward handicapped infants is not yet known, but the Secretary believes that for even a single infant to die due to lack of an adequate notice and complaint procedure is unacceptable.

There is a great deal of evidence documenting that the "very strict standard" advocated by the President's Commission and the requirements of Section 504 are not being uniformly followed and that medically indicated treatment is sometimes

withheld from infants with congenital anomalies on the basis of their handicaps. For example, a 1973 article by Doctors Duff and Campbell of the Yale-New Haven Hospital documenting that of 299 consecutive deaths occurring in that special care nursery, 43 (14 percent) were related to withholding treatment. 289 N. Engl. J. Med. 890. The following was among the cases documented:

An infant with Down's Syndrome and intestinal atresia, like the much publicized one at Johns Hopkins Hospital, was not treated because his parents thought the surgery was wrong for their baby and themselves. He died several days after birth. Id. at 891.

The Johns Hopkins case became the subject of a documentary produced by the Joseph P. Kennedy Foundation, excerpts from which were shown as part of the "Death in the Nursery" documentary series presented by a Boston television station in February 1983. The facts of this particular case cited by Duff and Campbell were also much like the 1982 Bloomington, Indiana case cited by President Reagan in his statement of April 30, 1982, in which an infant with Down's Syndrome and a correctible esophageal atresia was allowed to die.

Another specific case investigated by the HHS Office for Civil Rights similar to the Yale-New Haven, Johns Hopkins, and Bloomington cases related to a 1979 death of an infant with Down's Syndrome and an intestinal obstruction at the Kapiolani-Children's Medical Center in Honolulu, Hawaii. As a resolution to the complaint, HHS and the hospital, in May of 1980, agreed to an amendment to the hospital's written consent procedures to assure that cases involving a lack of parental consent to medically indicated treatment for handicapped infants be reported to the State child protective services agency in the same manner as similar cases involving non-handicapped children.

In addition to the four documented cases, Yale-New Haven, Johns Hopkins, Kapiolani, and Bloomington, and the other cases cited by Duff and Campbell, there is persuasive evidence that cases involving discriminatory denial of care are not unique. A 1977 article, "Ethical Issues in Pediatric Surgery," 60 Pediatrics 588, reported the results of a survey of 400 members of the Surgical Section of the American Academy of Pediatrics and an additional 308 chairpersons of teaching departments of pediatrics and chiefs of divisions of neonatology and genetics in departments of pediatrics. Responses were received from 267

of the former group (66.8%) and 190 of the latter (61.7%).

Id. at 588-9. Responses were anonymous. Among the results of the survey were:

- 76.8% of the pediatric surgeons and 59.5% of the pediatricians said they would "acquiesce in parents' decision to refuse consent for surgery in a newborn with intestinal atresia if the infant also had Down's Syndrome." Id. at 590.
- 23.6% of pediatric surgeons and 13.2% of pediatricians would encourage parents to refuse consent for treatment of a newborn with intestinal atresia and Down's Syndrome. Only 3.4% of pediatric surgeons and 15.5% of pediatricians would get a court order directing surgery if the parents refused. Id. at 591-2.
- 63.3% of the pediatric surgeons and 42.6% of the pediatricians said in cases of infants with duodenal atresia and Down's Syndrome, where they "accept parental withholding of lifesaving surgery," they would also "stop all supportive treatment including intravenous fluids and nasal gastric suction." Id. at 592-3.
- 62% of all respondents who believe that children with Down's Syndrome "are capable of being useful and bringing love and happiness into the home" would nevertheless acquiesce in parents' decisions not to allow surgery for the atresia. Only 7% who so believe indicate that they would go to court to require surgery. Id. at 595.

These data strongly suggest that instances, such as occurred in Bloomington, Indiana in 1982, in which infants are denied life-sustaining, medically indicated treatment solely on the basis of their handicap cannot be dismissed as isolated events.

For purposes of applying Section 504, it is important to note that only 7.9% of Surgical Section members, and only 2.6% of other pediatricians, would acquiesce in parental refusal to treat intestinal atresia in an infant with no other anomaly. Their acquiescence in non-treatment of Down's children is apparently because of the handicap represented by Down's Syndrome. A significant number of Surgical Section members indicated that they would do considerably more than "acquiesce" in parental decisions not to treat: 23.6% said that, given parents who are indecisive about treatment of a Down's Syndrome infant with intestinal atresia, they would encourage the parents not to consent. Only 3.4% of Surgical Section members said they would get a court order if parents refused consent in such situations. Moreover, the underlying rationale of the surgeons' responses appears not to be so much a deference to parental judgement as a personal view that Down's Syndrome children are not worth having. A large majority (78.3% of surgeons, 88.4% of others) said they would get a court order directing surgery on a young child with a treatable malignant tumor whose parents refused consent out of belief in faith healing. But when asked, "If you were the parent of a newborn infant with Down's Syndrome and intestinal obstruction, would you consent to intestinal surgery?", only 27% of surgeons answered Yes. Other pediatricians responded 53.7% Yes.