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DRAFT

I am sending a letter today to all Senators urging them to bring debate to a close and pass the anti-abortion amendment to the federal debt ceiling bill. This amendment is a responsible statutory measure that affirms the humanity of the unborn child, bans federal funding and support for abortions, except to save the life of the mother, and provides a speedy opportunity for the Supreme Court to reconsider its often-criticized abortion decision of Roe v. Wade.

Although this amendment is a moderate step, it is a very important one. I have long been convinced that every abortion involves at least two people -- the mother and the child she carries within her. The starting point for a rational abortion policy must be a recognition of the humanity of the child.

The amendment now before the Senate writes into law the basic principle that unborn children are human beings and that all human life has intrinsic value. The amendment applies this principle logically to all operations of the federal government by banning federal funding and support for abortions, except those necessary to save the life of the mother. It also prohibits discrimination against medical students and personnel who conscientiously object to abortions.

These provisions will ratify and extend decisions Congress

has made repeatedly in the past. Recipients of federal funds are already barred from discriminating against medical personnel based on their views on abortion, and the Hyde Amendment already bans federally funded medicaid abortions unless they are necessary to save the life of the mother. The new amendment will apply these principles consistently to all aspects of federal spending.

It is especially important today to confirm the nation's commitment to protecting innocent life. At a time when respect for the value of human life is eroding in some parts of the medical and legal profession -- as we saw in the tragic case of Baby Doe earlier this year -- we need a firm statement of basic principle.

We also need to encourage the courts to reexamine past decisions in light of the express judgment of the elected representatives of the people. Despite its creation of abortion-on-demand, the Supreme Court has never expressly acknowledged whether or not unborn children are human beings. The amendment now before the Senate gives the Supreme Court a new opportunity to face up to this basic issue, without telling the Justices how they must decide the case.

Our respect for human life goes to the heart of who we are as a people. When our founding fathers declared the independence of our nation, they enshrined the principles that all men are

created equal and that they are endowed by their Creator with the right to life. Protecting innocent life is the foremost duty of government. Protecting the most defenseless is the height of that duty. No issue could raise a higher demand for the attention of our legislators.

I realize that this legislation touches on the most sensitive kind of decision in the lives of many persons. We must therefore approach the issue of abortion with great compassion and understanding. But true compassion and understanding means helping a mother and her baby, not doing away with the baby.

The amendment before the Senate is a moderate piece of legislation that does not purport to solve the problem of abortion-on-demand. But it does take the crucial first step of affirming the humanity of unborn children and applying this principle to the operations of the federal government.

I hope the Senate will finish a full and fair debate and come to a vote as quickly as possible.

DRAFT

Dear Senator:

I am writing to ask your support to close off debate and pass the anti-abortion amendment to the debt ceiling bill now pending in the Senate. This amendment is a responsible statutory approach to the problem of abortion on demand. It deserves a vote on the merits at the earliest opportunity.

As you are aware, this amendment will make permanent the Hyde Amendment ban on federal funding for medicaid abortions other than those to save the life of the mother. A permanent ban is far preferable to the annual appropriations battles over the Hyde Amendment in past years.

The amendment now before you will also apply the ban on abortion funding consistently to all operations of the federal government. This is a logical application of the principle I have repeated many times, that any abortion involves at least two people -- the mother and her child.

I believe it is vitally important for Congress to affirm, as this amendment does, the fundamental principle that all human life has intrinsic value. We are all shocked when the erosion of this principle leads to the death of a Baby Doe as in Bloomington. It falls to us now to stop this erosion and reverse it.

The amendment I urge upon you will not go against a Supreme Court decision -- as some earlier bills have been accused of doing -- but it will provide a speedy opportunity for the Supreme Court to reconsider its abortion decision of Roe v. Wade. A decision so sharply criticized as Roe should be reconsidered; the statements by Congress in this amendment provide a principled context for that reconsideration.

The Solicitor General recently filed a brief with the Supreme Court, arguing that policymaking concerning abortion is better left to legislatures than to courts. I agree. Control over federal funds is the special province of Congress, and we need a Congressional decision on the humanity of the unborn before we spend any federal funds on abortion.

I realize that this amendment reflects a moderate approach, which will not end abortion on demand, and I do not wish to impede any other anti-abortion measures that may come before you. But this is the first clear-cut vote in this Congress on the humanity of the unborn, and it is crucial that a filibuster not prevent the representatives of our citizens from expressing their judgment on so vital a matter.

Please lend your support to gaining cloture on this measure, and please give the closest possible attention to the cause of our unborn fellow humans when you vote your conscience on this amendment.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

September 2, 1982

FOR: EDWIN L. HARPER
FROM: MICHAEL M. JUELMANN
SUBJECT: President's Letter on the Helms's Amendment

1. Two changes in punctuation should be made: in the second line it should read Helms's; in the third full paragraph the phrase "including Senator Hatch's Amendment" should be offset by commas.

2. In the first paragraph where reference is made to Senator Hatch's amendment it is important that the text be changed from "I have supported" to "which I continue to support". Small as that change may seem to many, some folks might infer that the President no longer supports it.

3. While I understand the political logic of making specific allusion to Cardinal Krol, the K of C, and the Catholic Daughters, I question the wisdom of being so explicit. It could open the President to charges of blatant mongering to Catholics. It may also give offense to Protestant opponents of abortion whose advocacy on this issue is just as vocal and as strong as that of Catholics. Further, in mentioning any names there is always the risk of offending those not mentioned. In this light, we should be sure to mention those groups that have done the most to push for cloture, and those that are generally most supportive of the President. I have asked Steve Galebach to survey this list and get to you first thing in the morning his views on the wisdom of mentioning or not mentioning particular groups.

4. In any event, whatever is decided with respect to mentioning individuals and organizations, I think it would be prudent to have Jack Burgess check with them to see if they would have any extraneous objection to being mentioned in such a fashion.

5. You indicate that the penultimate paragraph of the letter is to be stricken from the copies to be sent to Senators from whom we are only asking for support on cloture. What the purpose of making such a distinction is I do not know, but it is unlikely to mollify any of the anticipated criticisms of the President's action and could lead to speculation that the President is less than firm on wanting to see that the amendment pass on the merits.

THE WHITE HOUSE

WASHINGTON

September 1, 1982

DRAFT

Dear Senator:

A broad spectrum of concerned Americans are joining with me in calling upon the Senate to bring its debate on Senator Helms's anti-abortion amendment to the debt ceiling bill to an end. Cardinal Krol, The Knights of Columbus and the Catholic Daughters of America support my position. Senator Hatch, whose own Constitutional Amendment against abortion I have supported, has generously joined in the call for a vote on the amendment now before the Senate. The American Life Lobby, the Moral Majority, the National Right to Life Committee and many others with whom I have shared a concern about the unborn have rallied behind calling for a vote on the Helms amendment.

This amendment is a responsible statutory approach to one of the most sensitive problems our society faces -- the taking of the life of an unborn child. Specifically, the Senate is debating an amendment which:

1. Affirms the humanity of the unborn child in our society.
2. Bans permanently federal funding and support for the taking of the life of an unborn child except to save the life of the mother, and
3. Provides opportunity for the Supreme Court to reconsider its usurpation of the role of legislatures and state courts in this area.

I realize that this amendment reflects a moderate approach. My purpose is not to impede any other anti-abortion measures, including Senator Hatch's amendment, that may come before you. But this is the first clear-cut vote in this Congress on the humanity of the unborn, and it is crucial that a filibuster not prevent the representatives of our citizens from expressing their judgment on so vital a matter.

Please lend your support to gaining cloture on this measure and please give the closest possible attention to the cause of our unborn fellow humans when you vote your conscience on this amendment. It is time to stand and be counted on this issue.

Page Two
September 1, 1982

Beyond the matter of cloture, it is vitally important for the Congress to affirm, as this amendment does, the fundamental principle that all human life has intrinsic value. We must never become a society in which an individual has the right to do away with inconvenient life.

I hope that you will be able to join me on this issue. If not, please give me a call.

Sincerely,

RR

THE WHITE HOUSE

WASHINGTON

September 2, 1982

MEMORANDUM FOR: ELIZABETH DOLE
KEN DUBERSTEIN
DAVE GERGEN
MIKE UHLMANN ✓

FROM:

Qu EDWIN HARPER *by E. Rich.*

SUBJECT:

Attached letter to Senators

Attached is a draft letter to Senators on the abortion issue. The next to last paragraph will be deleted for those Senators for whom we are only asking for support on cloture.

May I have your comments and recommendations not later than COB tomorrow, Friday, September 3.

Attachment



MEMORANDUM

THE WHITE HOUSE

WASHINGTON

September 2, 1982

FOR: EDWIN L. HARPER
FROM: MICHAEL M. UHLMANN
SUBJECT: Talking Points on University of Richmond Case

Background

- o Complaint originally filed during Carter Administration by women at the University of Richmond, a private institution, alleging sexual discrimination in the athletic program.
- o The issue is solely a Title IX matter. No racial aspects involved.
- o Department of Education indicated its intention to investigate, whereupon the University sued to enjoin the Department's investigation, arguing (1) that Title IX is program-specific, (2) that the athletic program received no federal funds, and therefore (3) that Education had no authority to snoop.

Trial Court Ruling

- o Judge Warriner (Federal District Court, Virginia) sustained the University's motion and enjoined the Department from going forward with the investigation. In upholding the University's position, the Judge relied upon the North Haven case, handed down by the Supreme Court last term, which underscored the program-specificity argument.

Discussion

- o Brad's view is that an appeal should not be taken because he believes that North Haven and Judge Warriner's opinion are a correct reading of Title IX. What's afoot, in his view, is an effort by women's groups to win back in the courts what they were unable to obtain during legislative passage of Title IX.
- o On a related front, Brad points out that the Third Circuit recently ruled in Grove City that federal financial assistance to students was sufficient to bring all aspects of a university under Title IX's coverage. If the Third Circuit view were to be sustained by the Supreme Court, it would in

effect render North Haven moot. (What would be the purpose of trying to keep Title IX program-specific if scholarships or loans to students bring all parts of a school under coverage?)

- o More broadly, Brad thinks that the Richmond ruling squares with our general view that the government's right to investigate ought to be related to discriminatory charges levied against particular activities.

Bottom-line

On the substantive merits, i.e., the reading of Title IX, the better view is that taken by North Haven and Judge Warriner. We should not attack the principle of program-specificity. It will be argued, however, that Warriner's order is overly broad -- he enjoined Education not only from investigating the University of Richmond, but from investigating any university in his bailiwick absent proof of discrimination in programs receiving direct financial assistance. A narrowly based appeal, limited to the scope of his order, might be taken and might satisfy some of Ted Bell's institutional concerns. It is unlikely, however, that anything short of an assault on the merits will satisfy the more vocal women's groups.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

September 3, 1983

FOR: EDWIN L. HARPER *Bill Power for MNO*
FROM: MICHAEL M. UHLMANN
SUBJECT: Situation Report on Tuition Tax Credits

1. Our plan of action was (1) to let political pressure build on Bradley and on Moynihan over the recess to soften them up; (2) to develop an "alternative" to Bradley's amendments which would be some minimal adjustments to our original proposal; and (3) to get Dole, Packwood,, and Moynihan to offer the alternative, which Bradley would hopefully be receptive to after two weeks of grassroots pressure.
2. During the recess, it was agreed by Dole's staff, Packwood's staff, coalition representatives, and us that, in developing the alternative, we would stick firmly with our basic approach of DOJ enforcement and that we would not bring IRS into it as desired by Bradley. It was the assessment of Dole's staff and Packwood's staff that if we made DOJ enforcement "tough enough" we stood a good chance of getting Bradley to back off his insistence on IRS enforcement. Dole's staff and Packwood's staff have been pressing us very hard to go beyond "window dressing" and to make fundamental changes to our original enforcement scheme. Their position is that if we do not make fundamental changes, we stand no chance of heading off Bradley.
3. Senator Dole wants to have us meet with Moynihan and Bradley no later than this next Wednesday, September 8, to unveil our alternative.
4. The Alternative Approach Under Consideration: Developing a compromise has been difficult, made more so by the fact that many of the principals have been on vacation. Based on our negotiations so far with the coalition, Packwood's staff, and Dole's staff, it looks as if an approach along the following lines could be acceptable. (Discussions have centered on principles rather than actual language; over the weekend we will be drafting language along the lines suggested here.) We are thinking of offering the following alternative:
 - a. The Attorney General would be "authorized and directed" to bring declaratory judgment actions against schools that discriminated. Unlike the present bill, no petition would be required to trigger the Attorney General's suit. (For bargaining

purposes, we may start with the position that a petition is still required but can be filed by anybody as long as it is related to a specific victim. But we believe we could trade-off this petition requirement altogether if we get what we want in "b" below.)

- b. The existing bill authorizes suits to establish that a specific act of discrimination has occurred pursuant to a discriminatory policy. Dole's and Packwood's staffers would like us to abandon the requirement of a specific act of discrimination altogether and permit suits if a school is "following a discriminatory policy". The approach we are thinking of is to permit the Attorney General to bring suit if he determines either (i) that a person has been discriminated against pursuant to a policy or (ii) that a school has declared or otherwise expressed a discriminatory policy. The Attorney General would be required to show one or the other of these to cut off credits.
- c. The current bill cuts-off credits for 3 years if final judgment is against the school. We would like to propose that the penalty period now run indefinitely but that the school could (after a minimum period like 1 or 2 years) file a motion with the court to reestablish eligibility. The school would have to show that it met certain objective criteria (e.g., that it formally rescinded any declared policy; that it undertook remedial advertising of its new non-discriminatory policy; that it has filed an affidavit detailing the steps it has taken to stop the policy). Once the school has made this threshold showing, the court would be required to reestablish eligibility unless the Attorney General came in and showed an actual instance of discrimination within the preceding 1 or 2 years.
- d. The present bill would not permit disallowance of credits until after the final appeal. Under the alternative, disallowances would occur as soon as the district court judgment was entered unless the school obtained a stay.
- e. We think there is one pro-school change that should be made if we make the above concessions. Under the present bill, after final judgment credits are disallowed retroactively to the year in which the complaint was filed by the Attorney General. This meant that the really decisive event would be the filing of a complaint, because that immediately put credits at risk. In many cases, the mere filing of a

complaint against the school could drive the school out of existence. We felt we could take this severe position because the original bill provided safeguards against DOJ abuse -- namely, the petition requirement, the three-year maximum penalty term, the exhaustion of appeal requirement. Because we would be relinquishing these safeguards, we think the penalty should be prospective from the date of the district court judgment. There are elements in the coalition that would not accept the alternative unless we provided this protection. It is unclear whether Bradley would view this change as a "step backward".

5. Recommended Action:

- a. Tuesday (September 7): Complete coordination of alternatives within Administration and with coalition.
- b. Wednesday: Meet first with Packwood and Moynihan and, then, with Bradley to see if agreement can be reached on the alternative.
- c. Thursday: If Bradley does not agree to our compromise, spend Thursday trying to muster enough votes to beat back Bradley in committee.
- d. Friday: If Bradley compromises or we can beat him, go ahead with mark-up.

THE WHITE HOUSE

WASHINGTON

September 3, 1982

MEMORANDUM FOR EDWIN L. HARPER

FROM: STEPHEN H. GALEBACH

SUBJECT: Suggested Order of Priority for Making Telephone Calls, Based on Information from Pro-life Groups

First Priority

Senator Baker - to get him to press hard for cloture

Senators leaning toward cloture, who should be most receptive to a call

Roth
Melcher
Johnston
Sasser
Warner

Pressler
Huddleston
Long
H. Byrd

Senators who voted against abortion funding in 1981 but need to be persuaded to vote for cloture

Cochran
Gorton
Chiles
Heflin
Mitchell

Heinz
Boren
Dixon
Biden

Republican Senators who should support cloture if pressured but are unlikely to vote with us on the merits.

Stevens
Hayakawa
Tower
Wallop
Stafford

Brady
Goldwater
Simpson
Chaffee

Additional Democrat Senators who may vote for cloture if they are called

Pryor
Bentsen
Jackson
Cannon

Nunn
Burdick
R. Byrd

In additon, there are:

- o 38 Senators who appear so firmly committed for cloture there is no need to call.
- o 27 Senators who appear so strongly pro-abortion that it would probably not help at this point to call them.

THE WHITE HOUSE

WASHINGTON

September 7, 1982

MEMORANDUM FOR EDWIN L. HARPER

FROM: PETER FERRARA
WILLIAM BARR
STEPHEN GALEBACH

SUBJECT: Special October Session of Congress.

It now appears that at least five of our major proposals will have been passed by the Senate but left unconsidered by the House at the time of Congressional adjournment at the beginning of October:

- (1) The Balanced Budget Amendment
- (2) Crime Package
- (3) Tuition Tax Credits
- (4) Enterprise Zones
- (5) School Prayer Amendment

In each case, the failure of House action is due either to passionate Democratic opposition or simple Democratic disinterest. Yet, on each one of these issues our position is overwhelmingly supported by the general public.

We would strongly recommend that the President invoke his Constitutional authority to call a special session of Congress right after official adjournment in October specifically for the purpose of allowing House consideration of these issues. Any other items passed by the Senate where our position is widely popular could also be added to the list.

This would put our own immensely popular issues at the forefront of the fall campaign. It would allow Republicans to campaign positively and on the offensive, while highlighting unpopular Democratic positions on these important issues. We think that the developing political pressures would lead to passage of these vital initiatives. At the same time, Democrats which had continued to hold out would face retribution at the polls, while those who gave in would alienate some of their own most important supporters. This would in our opinion lead as well to an improved Republican showing on Election Day.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

September 8, 1982

FOR: EDWIN L. HARPER
FROM: MICHAEL M. ULLMANN
SUBJECT: Deep-Sea Mining Agreement

As Bill reported to you this morning, the attached article suggests progress, but our three allies reserved their options to sign the LOS Treaty. The pressure should be kept on, and toward that end, the Meese op-ed piece would be useful. The last time I saw a draft of it, however, was in July, and it thereafter disappeared somewhere in the West Wing. I'd like to see the latest draft before it's put to bed.

RUSH

DOCUMENT NO. _____

090918

PD

OFFICE OF POLICY DEVELOPMENT

STAFFING MEMORANDUM

DATE: 9/7/82 ACTION/CONCURRENCE/COMMENT DUE BY: 9/8/82
SUBJECT: U.S., 3 Allies Sign Deep-Sea Mining Pact

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

REMARKS:

- 1) Does this mean we are making progress on our alternative approach?
- 2) Should this be mentioned in the draft Op Ed piece we have prepared for Edwin Meese III for the New York Times?

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

lease return this tracking
sheet with your response

U.S., 3 Allies Sign Deep-Sea Mining Pact

By Thomas W. Lippman
Washington Post Staff Writer

The United States and three Western European nations have signed an agreement on deep-sea mining claims that removes another potential irritant to the troubled Atlantic alliance and gives new hope to American companies that this country can circumvent the mining provisions of the Law of the Sea Treaty.

France, West Germany, Britain and the United States agreed to resolve through consultations any conflicting claims filed by sea-bed mining consortia under their existing laws and to consult each other before issuing any authorization for sea-bed mining operations.

The agreement does not in any way indicate that any of the three European signatories will join the United States in refusing to sign the Law of the Sea Treaty, but it appears to enhance the prospects that this country can negotiate separate

mining agreements outside the treaty with at least some of the industrialized nations.

The U.S. mining industry fears it will not be allowed access to the mineral riches on the ocean floor because the United States—alone among major industrial nations—has announced its refusal to sign the treaty. Yesterday, it welcomed the agreement with the West European nations as a possible breakthrough toward pacts that would circumvent the treaty.

"I think it's good news," said Charles Cook, vice president of the American Mining Congress. "It's significant that France, Britain and West Germany are in on this. They're the only ones besides us who have the wherewithal to do any actual mining, the ones who have the technology."

"With the treaty, the door was shut on us," said Conrad Welling, executive vice president of Ocean Minerals Co., an ocean-mining con-

sortium consisting of Lockheed Corp., Standard Oil Co. of Indiana, Royal Dutch Shell and Royal Bosalis Westminster, a Dutch marine construction company.

"The only other recourse we have is through agreements with individual countries," he said. "This is a step toward that."

But Lee Kimball, director of an independent group, Citizens for Ocean Law, who has closely monitored treaty developments, said, "You'll hear some people claim this is a breakthrough, but in no way does this indicate that Britain, France or Germany is going to back off from the treaty and join our scheme."

The treaty, which was approved overwhelmingly in a U.N. vote, would give exclusive control of the vast deposits of manganese, nickel and cobalt on the ocean floor to an international authority that would approve mining ventures, issue licenses, validate claims, set produc-

tion limits and distribute profits among signatory nations.

The United States has said it will not sign because the treaty's sea-bed mining provisions are irreconcilable with this country's economic philosophy. If the other industrialized nations accept the international regulatory program, however, the United States faces the possibility of being frozen out of potentially lucrative and strategically vital mining operations.

In the four-nation interim agreement signed Thursday, the European nations reserved the right to ratify the Law of the Sea Treaty. The framework agreed to permits exploratory work in progress to continue until the treaty takes effect and, as a senior administration official put it, allows the Europeans to "keep their options open."

"It is framed so as not to prejudice the position of any of the parties in respect to the Law of the Sea convention," the State Department said.

Proposed Changes to the Anti-Discrimination Provisions of the
Tuition Tax Credit Bill

1. New Eligibility Requirement

The new bill would contain a provision requiring schools to publish a statement of nondiscriminatory policy in their bylaws, brochures, admissions materials, and other publications.

2. Annual Statement Under Oath is Retained

The new bill would retain the original requirement that each school file with the Secretary of the Treasury and send to parents an annual statement under oath that the school has not discriminated on the basis of race during the calendar year.

3. Changes in the Triggering of the Declaratory Judgment Procedure and Investigation by the Attorney General

The original bill provided that to trigger an investigation by the Attorney General, a person who had been discriminated against by a school had to file a complaint.

The new provision would allow a petition to be filed by any person, provided that person alleges with particularity:

- (a) an act of discrimination, or
- (b) a communication expressing a discriminatory policy.

Under the original bill, the Attorney General was authorized to file a declaratory judgment action whenever he finds good cause, upon investigation, to believe that a school follows a racially discriminatory policy.

Under the new bill, the Attorney General would be authorized and directed to file suit under such circumstances.

Once the Attorney General files suit, he must show that the school is following a racially discriminatory policy, but under the new bill he is not bound or limited by the allegations contained in the petition that triggered the suit. The Attorney General must show actual evidence of racial discrimination, not failure to meet a quota or numerical standard.

The old bill contained a provision allowing the Attorney General to enter into a settlement agreement with schools against which complaints have been received. This provision would be retained.

If Senators so desire, the Administration would have no objection to a provision requiring regular reports by the Attorney General to Congress concerning the disposition of petitions and actions filed pursuant thereto.

4. Reinstatement of Credits

Under the original bill, a school adjudged to be discriminatory became automatically re-eligible for credits after a three-year penalty period.

The new bill would impose an indefinite penalty period, which continues until the school shows in court that it no longer discriminates.

The new bill would provide that the school may not move to reinstate its eligibility for credits until it has maintained a clean record for at least one year following the judgment against it.

The school must make a showing that it has ceased its discriminatory policy, communicated its change in policy to the community, and complied with various publication requirements.

5. Stay of Penalties Pending Exhaustion of Appeals

The original bill stayed all penalties until all appeals have been exhausted. Under the new bill, penalties could go into effect immediately upon entry of judgment by the district court against a school.

6. Commencement of Penalty Period

The original bill provided that penalties would not be imposed until final appeal, but that when imposed they would be retroactive to the year in which the complaint was filed.

Under the new provisions, the penalties would go into effect at the time the district court judgment is entered, but the penalties are retroactive only to the beginning of the calendar year in which the judgment was entered. Tax returns filed for previous years will generally not, therefore, have to be reopened.

7. Enforcement Responsibility

The new bill would direct the Secretary of the Treasury to provide the Attorney General all information relevant to the Attorney General's investigations and actions under the bill.

8. Attorneys Fees

The new bill would add a provision for the award of attorneys fees for schools that are found not guilty of racial discrimination following an action under this section.

Dole

Packwood

Roth

Danforth

Chafee

Heinz

Wallop

Durenberger

Armstrong

Symms

Grassley

Long

Byrd

Bentsen

Matsunaga

Moynihan

Baucus

Boren

Bradley

Mitchell

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

September 9, 1982

FOR: EDWIN L. HARPER
FROM: MICHAEL M. UHLMANN
STEPHEN H. GALEBACH
SUBJECT: Press coverage of the President's action on abortion

As you know, we have received prominent coverage on the President's letters and calls to Senators, with a banner headline in the N.Y. Daily News.

The article in the Washington Post, however, falsely portrays the President's action as a crass political ploy to curry favor on the right. This impression should be set straight, and the President's longstanding principled stance should make it easy to do so.

Since we can count on others to pick up on the Post's theme, Speakes should be prepared to counter with the following points.

- o Innuendos that the President's supporting cloture and passage of the anti-abortion measure out of political motive are totally false.
- o The President has long made it perfectly clear that abortion does involve at least two human beings -- the mother and her child -- and that the life of the child should be protected by the law.
- o The President has not before taken an active role in Senate anti-abortion measures, because he did not want to pick and choose between various alternative proposals.
- o Now that the Senate is voting on one of the measures, the President wants to support it while still supporting other measures such as the Hatch Amendment.
- o The anti-abortion measure now before the Senate follows exactly the President's reasoning on this issue and he supports the measure on principle.
- o Senator Baucus's speculation that the President is not serious on this measure is untrue. The President wants very much to see the measure brought to a vote and enacted into law.

THE WHITE HOUSE

WASHINGTON

September 9, 1982

MEMORANDUM FOR EDWIN L. HARPER

FROM: MICHAEL M. UHLMANN

SUBJECT: Letter from Congresswoman Schroeder

The facts concerning Dr. Leslie Wolfe are as stated in Congresswoman Schroeder's letter.

Dr. Leslie Wolfe is a GS 15 who was and now again is director of the Women's Educational Equity Act program. She was transferred to a different position within the Department, as stated by Congresswoman Schroeder.

This move was apparently made in order to replace her with someone sympathetic to the President's views on education. Dr. Wolfe was transferred back to her original position, however, and is now once again director of the Women's Equity program.

OFFICE OF POLICY DEVELOPMENT

STAFFING MEMORANDUM

DATE: 8/18/82 ACTION/CONCURRENCE/COMMENT DUE BY: 8/26/82
SUBJECT: Letter to the President from Congresswomen Schroeder

	ACTION	FYI		ACTION	FYI
HARPER	☐	☐	DRUG POLICY	☐	☐
✓ PORTER	☐	☐	TURNER	☐	☐
✗ BARR	☐	☐	D. LEONARD	☐	☐
BAUER	☐	☐	OFFICE OF POLICY INFORMATION		
BOGGS	☐	☐	GRAY	☐	☐
BRADLEY	☐	☐	HOPKINS	☐	☐
CARLESON	☐	☐	PROPERTY REVIEW BOARD	☐	☐
DENEND	☐	☐	OTHER	☐	☐
FAIRBANKS	☐	☐		☐	☐
FERRARA	☐	☐		☐	☐
GUNN	☐	☐		☐	☐
B. LEONARD	☐	☐		☐	☐
MALOLEY	☐	☐		☐	☐
MONTOYA	☐	☐		☐	☐
SMITH	☐	☐		☐	☐
✓ UHLMANN	☐	☐		☐	☐
ADMINISTRATION	☐	☐		☐	☐

Remarks:

Copy of Schroeder's letter attached. Is the comment about Wolfe true?

Please return this tracking sheet with your response.

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

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August 11, 1982

Dear Pat:

On behalf of the President, I would like to acknowledge your August 5 letter conveying your serious concerns in regard to Administration policy in addressing women's issues.

You may be assured that the points raised in your letter are receiving thorough study and consideration. I have taken the liberty of sharing your letter with the appropriate members of the President's staff, and I trust you will be hearing further following the necessary review of your concerns.

With best wishes,

Sincerely,

Kenneth M. Duberstein
Assistant to the President

The Honorable Patricia Schroeder
House of Representatives
Washington, D.C. 20515

KMD:CMF:nap

cc: w/copy of inc, Elizabeth Dole -- for DIRECT response (with copy to Ken Duberstein)

cc: w/copy of inc, Helene von Damm -- for appropriate action

cc: w/copy of inc, Becky Norton Dunlop -- FYI

WH RECORDS MANAGEMENT WILL RETAIN ORIGINAL INCOMING

DISTRICT OFFICE:
1767 HIGH STREET
DENVER, COLORADO 80218
(303) 837-2354

WASHINGTON OFFICE:
10 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515
(202) 225-4431

Congress of the United States
House of Representatives
Washington, D.C. 20515

093100

093100

August 5, 1982

President Ronald Reagan
The White House
Washington, D.C. 20500

Dear President Reagan:

As co-chair of the Congressional Caucus for Women's Issues, I have paid careful attention to your administration's record on women's issues. I am well aware of your repeated assertion that while you do not favor the Equal Rights Amendment, you are in favor of equality with a small "e".

Your administration is well into its second year. Your record on women's issues has not improved. It has deteriorated. The firing of Wendy Borchert, your special assistant on women's issues, is only the latest of a long chain of actions dating from the earliest days of your administration.

**On April 23, Secretary of Education Terrel Bell removed Dr. Leslie Wolfe from her position as director of the Women's Educational Equity Act program. Her removal, which occurred on the same day that new grant applications were due, was precipitated by an inaccurate and inflammatory article in CONSERVATIVE DIGEST ("Feminist Network Fed by Federal Grants"). I understand, due to heavy public support on her behalf, that she has now been reinstated.

**On July 19, Joy Simonson was yanked from the position as executive director of the National Advisory Council on Women's Educational Programs and replaced with Rosemary Thompson through illegal procedures resembling an orchestrated coup. The National Advisory Council on Women's Educational Programs was established to set policy for programs developed under the Women's Educational Equity Act. Joy Simonson had competently and effectively served the Ford and Carter administrations. Yet, in a sudden and callous move, she has been replaced by a woman with no expertise in this area.

** In August, Deputy Assistant Secretary of Defense for Equal Opportunity Sharon Lord was removed from that position after advocating support for the status of former military spouses within the Department of Defense and after expressing her disapproval of a recent Army decision to segregate basic training units by gender. Over the past year, she had worked well with the Secretary of Defense on issues to improve personnel policies and the readiness of the military services.

** On December 21, 1981, you set up the President's Task Force on Legal Equity in order to identify federal regulations and practices that discriminate on the basis of sex. The work of the Task Force was to be supplemented by the Attorney General and was to make quarterly reports. Not only have there been no reports, but the Task Force has been largely inactive. The Task Force is awaiting the report on sex discrimination in the federal statutes that Sarah McClendon brought to your attention at your July 28 press conference. As a member of the House Judiciary Subcommittee on Civil and Constitutional Rights, which has jurisdiction over such

statutes, I have also been trying to get copies of the report on sex discrimination. To date, however, the only people to have access to the report are members of the media, to whom it has been leaked, not policy makers.

In addition to the above incidents, you have made remarks in the past months that cause me to question your commitment to equality for women. You blamed the "ladies" in the labor market as the cause of the high rate of unemployment. You made a laughing matter of Sarah McClendon's serious question about a report outlining discriminatory federal statutes.

Mr. Reagan, you have said that you are for equal rights and opportunities for women. Your administration's interpretation of laws Congress passed to insure those equal opportunities leads me to believe your words ring hollow. Your drastic cuts in domestic programs disproportionately affect women. Your administration is undermining the well-being of women in America. You have said you are opposed to equality with a capital "E". It is now becoming clear you are opposed to equity with a small "e."

I urge you to start listening to American women and to put forth a clear and fair policy on women's issues that recognizes their problems and acknowledges their needs.

Sincerely,



Patricia Schroeder
Congresswoman

OMNIBUS CRIME BILL

1. Bail Reform

- o Permits danger to community to be considered in determining pre-trial release.
- o Permits a judge to set reasonable conditions for pre-trial release.
- o Lightens criteria for post-conviction release pending sentencing and appeal.
- o Increases penalties for bail-jumping.

2. Witness/Victim Protection

- o Requires pre-sentence report to include victim impact statement.
- o Makes it a serious crime to hinder or harm a witness or victim.

3. Strengthens Drug Penalties

- o Increases fine levels for drug trafficking.
- o Increases penalties for trafficking in large amounts of most dangerous drugs.
- o Increases penalties for offenses involving serious non-narcotic drugs.

4. Protection of Federal Officials

- o Makes it serious federal offense to kill, kidnap or assault certain senior White House officials, members of Cabinet, and Justices of Supreme Court.

5. Sentencing Reform

- o Changes sentencing system to a determinate system with no parole and limited good-time credits.
- o Sets fixed sentencing guidelines, which a judge must either follow or explain why he has not.

6. Criminal Forfeiture

- o Ensures that proceeds of racketeering activities are forfeitable.
- o Defines other types of property that are forfeitable.
- o Provides judicial power to protect property for later forfeiture.
- o Provides for orderly disposition of third-party claims.

7. Insanity Defense

- o By unanimous consent, this will not be considered as part of this bill.

8. Surplus Property Amendments

- o Authorizes GSA to donate to state and local governments surplus federal property for correctional purposes.

9. Miscellaneous

- o Criminalizes murder-for-hire.
- o Criminalizes activities in support of racketeering.
- o Expands explosives offenses to cover arson by fire.
- o Permits emergency electronic surveillance in life-endangering situations.

FACT SHEET

THE PRESIDENT'S PROPOSED CRIMINAL JUSTICE REFORM ACT

SUMMARY

The President is proposing legislation that will strengthen criminal justice in three critical areas. The bill will:

- o define and limit the insanity defense;
- o reform the exclusionary rule to prevent the suppression of evidence seized by police acting in a reasonable, good faith belief that their actions were in accordance with law;
- o set rules for federal review of state criminal proceedings to reduce delay and duplication, and to seek greater finality in the criminal justice process.

INSANITY DEFENSE

- o Congress has never acted in the formulation of the insanity defense. Its development has been left to the Courts. As a result, the federal courts do not apply a wholly uniform standard.
- o Under the now prevailing formulation, a "person is not responsible for criminal conduct if, at the time of such conduct, as a result of mental disease or defect, he lacks substantial capacity to appreciate the wrongfulness of his conduct or to conform to the requirements of the law."
- o This prevailing test contains serious flaws. First, it introduces subjective concepts of a defendant's motivation into the determination of guilt or innocence. Second, it permits the introduction at trial of massive amounts of conflicting and irrelevant testimony by psychiatric experts, thereby complicating the trial process and deflecting the attention of the jury from the critical issues. Third, as presently applied, the defense is viewed as one that is not available to less affluent dependants and that favors those able to hire an impressive array of psychiatrists.
- o The Administration's bill substantially limits the insanity defense. Under the bill, a person could be found not guilty by reason of insanity only if, as a result of mental disease or defect, he lacked the state

of mind (mens rea) required by statute as an element of the offense. Mental disease or defect would not otherwise constitute a defense. In a case where the defendant's sanity at the time of the offense was put in issue, the jury would be required to return a verdict of "guilty," "not guilty," or "not guilty only by reason of insanity." This last verdict could only be rendered when the defendant was found not to have the requisite mens rea.

- o Example: Under this approach, a mental disease or defect would, for example, be no defense in a murder trial if the defendant knew he was shooting at a human being and was trying to kill him, even if the defendant acted out of an irrational or insane belief. Mental disease or defect would constitute a defense only if the defendant, in the example, did not even know he had a gun in his hand or did not know he was shooting at a human being.
- o This approach would, in the vast majority of cases, make mental illness a factor to be considered only in sentencing, the one stage of a criminal proceeding where it is proper to consider mitigating circumstances. Limiting the insanity defense to those rare cases where the defendant lacked the mens rea required as an element of the offense would assure to the maximum extent possible that defendants do not escape justice.
- o This is the one approach that would assure that defendants do not inappropriately escape justice, and that a criminal trial is not diverted into a confusing contest between opposing psychiatrists. This approach has been endorsed in the past by numerous legal scholars, bar associations and psychiatrists.

EXCLUSIONARY RULE

- o The exclusionary rule is a judicially created rule under which evidence is barred from introduction at a proceeding such as a criminal trial if the evidence is determined to have been obtained as a result of a search or seizure that violated the first clause of the Fourth Amendment, which protects "persons, houses, papers and effects, against unreasonable searches and seizures, ..." The rule is of comparatively recent vintage, having been first imposed by the Supreme Court in 1914. The rule has been justified as a means of deterring unlawful police misconduct. Recent cases have clearly established that today the rule will be invoked to protect Fourth Amendment rights only when to do so is efficacious as a deterrent to unlawful conduct by law enforcement authorities.

- o Although the Supreme Court has recognized deterrence as the rule's paramount purpose, it has not limited the rule to situations in which a law enforcement officer's conduct is susceptible to deterrence. In fact, the heart of the present problem in application of the rule is that it has been expanded gradually by the courts and is still applied in some situations in which the rule cannot possibly serve its primary purpose of deterring police misconduct. This distortion of the rule's purpose has resulted in a substantial cost to our society as law enforcement officers and private citizens alike have lost faith in our criminal justice system.
- o A frequent problem with application of the rule arises when police in the field are confronted with a question as to whether they can make a warrantless search or arrest. Although arrests and seizures may sometimes be made without a warrant, the specific rules governing police conduct are to be found in hundreds of appellate court decisions that are often confusing or even flatly contradictory. The police must make an immediate legal analysis, often while confronting a known criminal. These situations often present such difficult factual situations coupled with a high degree of danger to the officer that the rule can in no way act as a deterrent.
- o The proposed bill would restrict the application of the rule to those cases in which it would in fact act as a deterrent to unlawful police conduct, thus restoring the rule to its proper role. Under the proposal, the rule would not be invoked where evidence was obtained pursuant to a search or seizure undertaken by law enforcement officers in the reasonable and good faith belief that their acts were lawful.
- o The proposal would enhance the operation of the federal criminal justice system by allowing courts greater access to all reliable evidence relevant in determining the guilt or innocence of the defendant, and would promote renewed respect for that system as a search for the truth in the minds of our citizens.
- o The proposal is grounded primarily on the cases decided over the past ten years in which the Supreme Court has emphasized the deterrence of unlawful conduct as the sole or primary purpose of the rule. The Department of Justice has concluded that such a modification would be held to be constitutionally permissible. It basically follows the recommendation of the Attorney General's Task Force on Violent Crime which conducted hearings on the issue around the country and received the opinions of distinguished citizens and jurists representing all points of view.

FEDERAL INTERVENTION IN STATE CRIMINAL PROCEEDINGS

- o The writ of habeus corpus is the most common means whereby the propriety of state criminal proceedings can be reviewed in federal court. Traditionally, the writ was understood to be an extraordinary remedy, designed to ensure that constitutional rights were secured. In recent years, however, this once extraordinary remedy has been converted into a routine means for seeking continual review of state convictions, often on frivolous grounds. So used, it distorts the proper relationship between federal and state government, undermines the need for finality of judgment in criminal proceedings, and introduces needless duplication of effort.
- o The Administration remains firmly committed to protecting rights secured by the Constitution, including those of criminal defendants in state criminal proceedings. It believes, however, that the interests of justice are not served by allowing, as the present system does, endless opportunities to second-guess state court judges and juries.
- o The Administration bill is designed to limit unjustified review of state convictions by federal courts:
 - by barring review of a claim not properly raised in state proceedings, unless the state failed to provide an opportunity to raise the claim consistent with federal law;
 - by establishing a one-year limit following exhaustion of state remedies, for application for federal habeus corpus;
 - by requiring deference to state court determinations of factual and legal issues which have been fully and fairly adjudicated in state proceedings.
- o The Administration believes that these, along with certain other technical changes, will remedy the major abuses that have crept into the system, while at the same time continuing to protect legitimate constitutional rights.

PREVIOUS ADMINISTRATION ANTI-CRIME PROPOSALS

In legislation already pending on the Hill, the Violent Crime and Drug Enforcement Improvement Act of 1982, the Administration has proposed measures which would:

- o make it more difficult for dangerous defendants to be released prior to trial or during appeals;
- o increase penalties for drug trafficking and prevent criminals from retaining assets and proceeds used in or derived from criminal activity;
- o reform the federal sentencing system by abolishing parole and requiring judges to operate within sentencing guidelines to assure greater likelihood of punishment;
- o facilitate transfer of federal surplus property to states for use as correctional facilities;
- o provide for increased protection of victims and witnesses in the criminal justice process. (The President earlier this year also created a Task Force on Victims of Crime, which will make further specific recommendations in late 1982 or early 1983.)