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MEMORANDUM

THE WHITE HOUSE

WASHINGTON

December 14, 1982

FOR: EDWIN L. HARPER

FROM: MICHAEL M. ULLMANN

SUBJECT: Options Concerning Davis-Bacon Act

I. Past Administration Actions

- o During his campaign, the President promised not to change the Davis-Bacon Act, and we have not sent any proposals for statutory change to Congress.
- o Department of Labor promulgated regulations for a more reasonable calculation of "prevailing wage" under the Davis-Bacon Act, looking to average wages in an area rather than to the union scale, and making other changes. The regulations were preliminarily enjoined by a federal district court, and we are still in litigation at the district court level.

II. Options for Future Administration Action

- o Propose a bill to change the method of calculating "prevailing wages" in the same manner that Department of Labor did by regulation.
 - However, such a bill would have a low chance of passing, especially in the House, and failure to gain passage would severely hurt our legal case in defending the Labor regulations.
 - Also, this course of action may be inconsistent with prior Presidential promises.
- o Continue our course of challenging Judge Greene's preliminary injunction ruling, and appeal to the D.C. circuit as soon as he issues a permanent injunction.
- o Propose legislation to prevent courts from second-guessing executive agencies on issuance of rules and regulations.
 - However, we have taken a position to the contrary thus far in Congress, by supporting regulatory reform proposals that would give increased authority to courts to scrutinize regulatory decisions by agencies. (See discussion of Regulatory Procedure Bill of 1982, below.)

III. Analysis

Federal court injunction against Department of Labor regulations:

Judge Greene justified his preliminary injunction on grounds that the old Department of Labor regulations for determining "prevailing wage" had been in effect since the Davis-Bacon Act was enacted in the mid-1930s, that Congress had not expressed displeasure with the old regulations, and that the Department would therefore bear a heavy burden of proof in seeking to make fundamental changes in the regulation. -- This is a far heavier burden of proof than the usual standard, which allows agency rulemaking to stand unless arbitrary and capricious.

Current status of case in Judge Greene's court:

Because we did not appeal the preliminary injunction, we must wait until Judge Greene issues a permanent injunction before we can take an appeal to the D.C. circuit. We are still awaiting the permanent injunction. In the meantime, the Supreme Court is considering the airbags case, and a favorable decision in that case will help us in the Davis-Bacon regulations case.

Possible legislation to restrict judicial scrutiny of executive agency rulemaking:

Diminishing the ability of federal courts to secondguess agency rulemaking would be a good development in general, in addition to aiding our posture in the case concerning the Davis-Bacon Act regulations. Activist judges have been far too inclined to step in and overturn regulations with which they disagree. Although administrative agencies often reach unwise results, they are at least susceptible to correction by the President and ultimately by the public, unlike the federal courts.

The regulatory reform proposals recently approved by the Senate with Administration backing, however, actually expand the authority of courts to intervene in agency rulemaking. The Regulatory Procedure Bill of 1982 provides that on issues of law, reviewing courts should exercise independent judgment, without according any presumption in favor of or against agency action. For questions of fact, the courts are to review to ensure that agency action has substantial support in the evidence on record in the rulemaking -- a more stringent standard than the "arbitrary and capricious" standard now applicable.

We face a dilemma. The "arbitrary and capricious" standard of review gives broad discretion to the agencies to make unwise decisions. But giving the courts a stricter standard to review agency rulemaking will simply transfer policymaking power from bureaucrats to judges. Given the number of Carter appointees to the federal bench, this is not likely to produce better policy.

We have supported the Regulatory Procedure Bill thus far because it gives courts greater opportunity to overturn excessive, burdensome, and unwise actions of agencies. Our experience with the Davis-Bacon regulations, however, points to the danger in the Regulatory Procedure Bill: that a greater policymaking role for courts is hardly a solution to the problem. If we wish to discourage judicial excesses such as Judge Greene's, we must reconsider our position on the Regulatory Procedure Bill.

In the meantime, we have an opportunity to improve the Davis-Bacon Act in its application of Davis-Bacon to projects funded by the new gasoline tax:

The proposed gasoline tax provides an excellent opportunity to inject a note of rationality into the controversy over the Davis-Bacon Act. Since a major purpose of the bill is to create jobs, there is a strong argument to be made for creating many jobs at average-wage levels, rather than a few jobs at inflated union-scale-wage levels. We could accomplish this objective by adding an amendment along the following lines:

"Notwithstanding any other provision of law, the Secretary of Labor and grantees under this Act are empowered to set wages in such fashion as will increase opportunities for employment, including opportunities for employment of women, members of racial and ethnic minority groups, young workers, and new entrants to the job market."

The Democrats are touting the gasoline tax as a jobs-creation bill. This amendment will force them to make a hard decision: if they vote against it, they will be voting against jobs-creation; if they vote for it, they will be voting against their labor union political base. For most Republicans, there would be little or no risk in voting for such an amendment.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

December 14, 1982

FOR: EDWIN L. HARPER

FROM: MICHAEL M. UELMANN
STEPHEN H. GALEBECH

SUBJECT: Ashbrook Amendment Concerning Insurance Coverage
for Abortions for Federal Employees

The House of Representatives is debating and voting on the Continuing Resolution today, which contains the Ashbrook Amendment prohibiting insurance coverage for abortions for federal employees, except to save the life of the mother.

The Senate Appropriations Committee will probably hold a mark-up session on the Continuing Resolution tomorrow at 10:00 a.m. Senator Hatfield has given strong indications that he will make a motion in committee to strip the Ashbrook Amendment from the Continuing Resolution because of his general opposition to riders to appropriations bills.

We have consistently supported the Ashbrook Amendment. Ken Duberstein recently sent a letter to the National Right-to-Life Committee saying that the Ashbrook Amendment is in accordance with the Administration's position on abortion, and we strongly support its retention in the continuing resolution.

While no high-visibility action is needed, it would be very helpful for Duberstein to send a similar letter to the members of the Senate Appropriations Committee before the vote tomorrow morning. Our supporters in the right-to-life movement place high priority on this measure. A timely letter to Senators would ensure that we do not waffle on this issue, and would not risk any serious adverse consequences.

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

*file in
book*

December 17, 1982

FOR: LARRY SPEAKES
FROM: MICHAEL M. UHLMANN

Attached for your guidance are briefing points on the Boston layoffs case. They have been approved by Fred Fielding.

Briefing Points on Boston Layoffs Case

- o The Justice Department's action in this case is consistent with this Administration's often stated opposition to reverse discrimination and racial quotas. The President's opposition to racial quotas has been longstanding and it reflects a concern that, in an effort to redress past grievances, you should not commit new injustices on innocent people solely on account of their race.
- o This case is the first one to reach the Supreme Court in which people have actually been laid off from their jobs solely on account of their race.

IF ASKED ABOUT THE WHITE HOUSE ROLE IN THE DECISION TO FILE IN THIS CASE, THE RESPONSE SHOULD BE:

- o The broad policy aspects of this case were discussed by Senior Staff through the usual channel of the Counsel's office. The particulars of the government's argument were determined within the Department of Justice, as is traditionally the case.

ALL FURTHER QUESTIONS SHOULD BE REFERRED TO THE DEPARTMENT OF JUSTICE.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

December 22, 1982

FOR: EDWIN L. HARPER
FROM: WILLIAM P. BARR
SUBJECT: Bill on Indian Claims/Arkansas Riverbed

There is an enrolled bill heading toward the President that would extend the statute of limitations for certain Indian claims for resources taken from the Arkansas riverbed. OMB and Justice have recommended veto. Interior recommended signing. Yesterday Mike Uhlmann and I sided with OMB and Justice, believing they have a better view of the merits.

You should be aware, however, why Interior is supporting the bill. While there are three tribes making claims, the main tribe involved is the Oklahoma Cherokees. The Chairman of the tribe, Ross Swimmer, is a long-time Republican and a strong supporter of the President. The tribe is also largely pro-Administration.

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

December 22, 1982

FOR: EDWIN L. HARPER
ROGER B. PORTER

FROM: MICHAEL M. UHLMANN

SUBJECT: Comments on Rough Draft of 1983 SOTU

I. The statement in Item IV.D. that "'equal pay for equal work' is too often a slogan and not a reality" is quite misleading. It plays into the hands of the most militant feminist groups and invites pressure on the Administration to take steps that are unwarranted and that we are not about to do (e.g., comparable worth).

As we are all aware, pay disparities for "equal work" are primarily a function of different male and female work experience. There is a small residuum of wage disparities even after accounting for experience differences. However, I think most economists would attribute this difference to choice factors rather than to discrimination. This is borne out by the fact that single women with equal job experience make as much, and indeed more, than their male counterparts. The small residual wage gap appears to exist principally for married women. It is precisely in this group where choice factors would be expected to play a major role (e.g., unwillingness to relocate, unwillingness to enter training programs, unwillingness to take on burdensome responsibilities that would detract from family duties, unwillingness to work overtime, higher rate of absenteeism, etc.).

The reason "equal pay for equal work" is "not a reality" today is because of economic factors that are operating in our economy. The gap can be expected to narrow over time as more women enter the labor force and remain there for longer periods of time. The gap is not something that can be eliminated by government activism. By portraying the gap as something that the government can solve, we would merely be raising false expectations and inviting people to measure us by a standard we cannot possibly meet.

Rather than playing upon and reinforcing a false impression, the President should do some low key education on this point. We believe the President should take the following tack:

- o Women are making great progress in the market place.

- o In many areas, there is a pay disparity between what men and women make doing the same job. This disparity is largely a function of job experience -- the average man has been on the job about twice as long as the average woman.

The pay gap between men and women is narrowing as women gain more experience. To the extent discrimination is responsible for any part of this pay gap, there are two federal laws on the books which prohibit such discrimination, and this Administration is committed to vigorously enforcing these laws.

II. I think the proposal for a tax credit at Item IV.A.3. on page 9 is ill advised. If the credit is directed at women, it should not favor divorced women over married women who have been out of the work force for five years. Creating a tax credit that singles out divorced women for specially favored treatment seems odd and without precedent in federal policy. If the credit is directed at "heads of households", then there is no reason to limit it to female heads of households; it should also be extended to male heads of households who have been out of the workforce for whatever reason.

We were told that any proposal to open the tax code before July was anathema. If thought is being given to opening the code before July, then the proposal to increase dependent exemption deserves consideration by the President. The proposal is more in line with the President's program and the pro-family posture that won him so many votes in 1980. If the SOTU message emphasizes initiatives directed solely at women and children from broken homes without doing anything pro-family, it could be viewed as a slap in the face by the President's most committed supporters.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

January 4, 1983

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

On January 3, the Interior Department issued a glossy public report on its activities during 1982 entitled "A Year of Progress". A copy of page 25 of the report is attached. As you can see, it reports that the Administration has already issued an Indian Policy Statement, and it outlines some of the main aspects of the statement. The statement has not in fact been issued by the President. We must get the statement out pronto or we will lose its impact; much of its thunder would be stolen by this premature leakage. If we don't get the statement out soon, we will look very silly in Indian country.

A Year of Progress: Preparing Indian Tribes and Island Territories for Economic Self-Sufficiency in the 21st Century

The Interior Department is responsible for 735,000 Indians living on 50 million acres of reservation land, and for improving the economic and political status of the U.S. flag territories of Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands and the Trust Territory of the Pacific Islands (Micronesia).

During 1981 and 1982, we have made progress in helping these peoples achieve economic self-reliance and governmental self-determination.

To date, we have:

Indian Tribes

- Announced the Administration's Indian Policy which is the first pronouncement of Indian policy since 1970. The policy:
 - reaffirms the government-to-government relationship;
 - reinforces the concept of Indian self-government;
 - establishes a Presidential Commission to help improve the economies on Indian Reservations;
 - designates the White House Office of Intergovernmental Affairs as liaison for Tribes; and,
 - recommends expanding the membership of the Advisory Commission on Intergovernmental Relations to include Indian tribal governments.
- Transferred 17 Bureau of Indian Affairs day schools to the State of Alaska, achieving a savings to the Federal Government of \$5.9 million.
- Established a formal process to negotiate settlements of over 50 Indian water rights claims in litigation. The Papago Indian Tribe's claim was the first to be negotiated and was settled in September 1982. The Papago settlement reduced the cost to the Federal Government from \$112 million (proposed in a bill vetoed by the President) to \$18 million and provided for a contribution of over \$8 million by local beneficiaries.
- Proposed to Congress a new \$10 million Indian Economic Development Initiative. The initiative will assist tribes in developing their natural and physical resources as a means of generating income and employment opportunities.

- Dedicated the first Indian-owned hydroelectric dam on a reservation. Financed with \$10 million in tribal funds, \$15 million raised by a State bond issue and a \$5 million federal loan, the Pelton Dam on the Warm Springs Indian Reservation in Oregon will generate approximately \$4 million annually to the Confederated Tribes through the sale of power to northwest utilities.
- Instituted forest inventory and planning programs to assist tribes in the cutting of timber on a sustained-yield basis. Eleven full programs and 20 to 30 abbreviated plans for smaller reservations were operational by the end of 1982.
- Started construction on nine new, small irrigation projects—four in Arizona, four in the Dakotas and one in Iowa—which will be completed in one to two years and will provide quick economic returns to the tribes.
- Provided \$2.5 million in funding to the Lower Brule Sioux Tribe for the second phase of the Grass Rope Irrigation Unit. This will permit the tribe to irrigate 3,500 acres, in addition to the 1,500 acres now under irrigation, generating a potential income of \$1.2 million.
- Proposed the Small Tribes Core Management Initiative for fiscal year 1983 to assist tribes of 1,500 population or less in meeting special needs associated with economic development.
- Settled the controversy about Indian gill-net fishing in the Great Lakes area. The plan, which will limit Indian gill-netters to an area generally north of Little Traverse Bay in Northern Michigan, was accepted in concept by Indian representatives, sport fishermen and the Michigan Department of Natural Resources. The comprehensive settlement will protect the fishery resources, protect Michigan's sport-fishing, and protect Indian treaty rights.
- Instituted a model hydrocarbon monitoring system in the Anadarko, Oklahoma, area that enables tribes to determine royalties at the exact moment they are due, thereby obviating the customary 30-day delay in royalty payment.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

January 7, 1983

FOR: EDWIN L. HARPER
FROM: MICHAEL M. UHLMANN
SUBJECT: Issue Paper/Civil Rights Statistics

You have asked: "Are there no statistics which get at the objective -- eliminating discrimination?" The answer is that, beyond what we have already provided, I know of no conclusive statistics; nor do those in the Administration who have responsibility for enforcing civil rights know of any.

There are essentially two types of data that can be used:

1. One could cite enforcement data -- that is, case filings, claims processing, enforcement resource levels, etc.

- o We have already presented this data and suggested that, while mixed, it generally shows a respectable level of activity.
- o We have also pointed out that resort to such statistics is based on a false premise that we should not accept -- namely, that progress in civil rights should be measured by an ever-escalating litigation load.
- o Finally, we have indicated that the enforcement statistics are inconclusive. Where our numbers are weak (school cases), we invite attack. Where our numbers are strong (voting rights), our critics have arguments why these numbers are meaningless.

2. The second kind of data that could be used is economic-sociological -- such as wage ratios, job entry totals, etc. The numbers here are likewise inconclusive.

- o Experts cannot agree on the meaning of the data for the last 20 years. Most experts who share our philosophy argue that whatever progress there has been over these decades is more a function of economic factors rather than civil rights enforcement.
- o We have been in office for 2 years (during one of the worst recessions in our history). To find numbers to show (i) over this brief period significant black progress and (ii) that the progress is due to "eliminating discrimination" would require much tergiversation. The numbers are not there.

- o Most areas defy quantification. How do you show that we are reducing discrimination in schools, for example? If anything, the racial imbalances in public schools are getting worse, and that is precisely why we want to stop forced busing. Even so, does racial imbalance in a school system mean that discrimination is occurring?

How do you measure progress in "eliminating discrimination in housing over the past two years? Do imbalanced neighborhoods mean discrimination? Does the trend toward greater racial imbalances in the cities mean that more discrimination is occurring?

In short, to the extent you want persuasive statistics, we are at a loss. Obviously, if you have any thoughts on how we can measure the extent to which we have "eliminated discrimination" over the past two years, I would be delighted to pursue it.

In the meanwhile, it is my view and advice -- and as far as I know the unanimous view and advice of all those responsible for civil rights enforcement in this Administration that:

1. We should move away from statistical arguments.
2. To rely primarily on statistical arguments deprives the President of the most effective way of defending his record and of affirmatively stating his case. It frankly exposes the President to attack and forces him to fight on the turf selected by his critics.
3. We should measure ourselves and ask others to measure us by the principles we are trying to achieve.

If you remain unconvinced, perhaps the best thing to do is to hold a CCLP meeting with the President precisely on this subject -- How do we best defend our record? Are there meaningful statistics? Is using statistics the best way of defending our record?

Tuition Tax Credits Reprise

Last week representatives of the tuition tax credit coalition met with staff members of the offices of Policy Development, Legislative Affairs, and Public Liaison. Among the groups represented were the Citizens for Educational Freedom, the U.S. Catholic Conference, the Council for American Private Education, and the Evangelical Christian school movement. Subsequent discussions were held with the Knights of Columbus and the National Catholic Education Association.

The coalition members reported that morale among grassroots supporters of tuition tax credits was low and that supporters had been "up the hill" so many times without success that it will take a great effort to persuade them that the Administration means business. All the coalition members stressed that it was imperative that the Administration show by strong and decisive steps that it is serious about pushing the legislation through Congress as early as possible.

The meeting was also attended by Chuck O'Malley, Secretary Bell's executive assistant. O'Malley, who had recently been out on the hustings, strongly confirmed the coalition's assessment.

The coalition representatives jointly called for the following action:

- o Introduction of a tuition tax credit bill within the first few weeks of the new session and inclusion of tuition tax credits in the budget message.
- o Mention of tuition tax credits in the State of the Union Address and other highly visible action by you pressing for early enactment.

Tuition tax credits will be a critical issue for the Administration over the next two years. In the 1980 campaign, the support of blue collar Catholic voters was decisive. The National Journal's analysis of the 1982 election results shows that we suffered the greatest defection from any of our constituency groups among these Catholic voters. (See attached) This conclusion is supported by Richard Wirthlin's surveys as well as by county and precinct studies which attribute the loss of at least 8 House seats to this Catholic defection.

Your support for tuition tax credits and your firm pro-life stance were important elements in wooing Catholic voters from their traditional Democrat moorings. In 1984 the Democrats will try to use the bishops' pastoral letters on the nuclear freeze (expected this Spring) and on economic justice (expected November 1983) to undermine our support among Catholic voters. Many of these voters can be expected to return to the Democrat column in 1984 unless we give them a reason not to. If we cannot at least get tuition tax credits through the Senate, we may have a hard time persuading them to stay with us.

Office of Policy Development
January 7, 1983

THE WHITE HOUSE

WASHINGTON
January 12, 1983

MEMORANDUM FOR THE SECRETARY OF HEALTH AND HUMAN SERVICES

(ATTENTION: DAVID NEWHALL)

FROM: MICHAEL M. UHLMANN, SPECIAL ASSISTANT TO THE
PRESIDENT, OFFICE OF POLICY DEVELOPMENT

SUBJECT: Discrimination Against the Handicapped;
Withholding of Care from Handicapped Newborns

As you know, there has been keen public attention over the past year directed at the "Baby Doe" case in Bloomington, the President's subsequent April 30 memorandum concerning discrimination in the treatment of handicapped persons, and the Administration's follow through on this issue.

In conjunction with OPD staff in the areas of human resources and health policy, I have been monitoring our response to this problem along the lines laid out by the President in his April 30 memorandum. The Department of Justice has drafted a revision to the regulations under Section 504 of the Rehabilitation Act of 1973, and I have been working with them concerning those aspects that have an impact on discriminatory medical treatment of handicapped persons.

I would like to coordinate closely with your Department, especially concerning legal issues of enforcement of Section 504 in this context. I understand that HHS is drafting guidelines to cover situations of withholding care from handicapped newborns.

Would you please send me your most recent draft of guidelines, so we may take a look at them before they are published and before Justice proceeds with its Section 504 revisions. Also, I think it would be useful to have a meeting within the next few weeks of the persons working on this issue at Justice, HHS, and OPD -- I envision this as an informal exchange of ideas rather than a regular meeting of the Cabinet Council on Legal Policy.

Thank you very much.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

January 12, 1983

FOR: EDWIN L. HARPER
FROM: MICHAEL M. UHLMANN
SUBJECT: Presenting and Integrating the President's Program
(Ref. 102985)

I. CRIME INITIATIVE

- o The crime issue should be a major Administration initiative, with direct and visible Presidential involvement.
- o Two types of legislation will be required.
 - The Omnibus Bill addressing sentencing and bail reform, criminal forfeiture, etc.
 - Separate bills on the exclusionary rule; habeas corpus; insanity defense; death penalty.
- o The legislation should be sent up as early as possible in this session and should be accompanied by a Presidential message.
- o The President should consider making a major T.V. address solely on the topic of crime. The address should focus on the things we have already done and the things we are trying to do.
- o The President should make the address immediately after Senate passage of the Omnibus Bill.

II. CIVIL RIGHTS

- o A number of our civil rights initiatives should be integrated into a package and presented with an affirmative communication plan.
- o These include:
 - Fair Housing Legislation which should be ready to transmit early in March 1983.
 - Enterprise Zones which should be transmitted as soon as possible.

- Revised OFFCP Regulations consistent with our stand against quotas and reverse discrimination.
- E.E.O.C. guidelines.
- o The President should consider making a major T.V. address on civil rights along the following lines:
 - Express outrage at every act of discrimination and commitment to enforce civil rights laws.
 - Call for color-blind society, quoting from civil rights leaders of 1960s.
 - State our firm commitment to equal opportunity.
 - Recognize that there are areas where equal opportunity does not exist and highlight Enterprise Zones, Fair Housing, and some of our Education initiatives as initiatives that deal with this problem in a way that brings genuine results.
 - Assert that in recent years our national goals of a color-blind society and equal opportunity have been subverted by reverse discrimination and quotas.
 - Say that we differ from our critics not over "ends" but over "means".
 - Contrast our vision of America, in which justice is due each person as an individual, with the liberal Democrat vision of a racial spoils system in which government chooses which group to favor and which to disfavor.
 - Conclude that we cannot stop racism by borrowing the tools of the racists.
 - This address should be given right after Senate passes either Enterprise Zones or Fair Housing.

III. IMMIGRATION

- o Cabinet Council to review legislation in light of experience last Congress.
- o Legislation should be ready to introduce in March or early April.

- o Presidential transmittal letter, but no addresses.
- o AG should take lead in ushering bill through Congress.

IV. ANTITRUST

- o Cabinet Council will discuss the issue in February.
- o Likely to be legislative initiatives for introduction in March - April.
- o Probably bills should be transmitted from DOJ.

V. TUITION TAX CREDITS

- o Legislation should be introduced by end of January.
- o A Presidential message should accompany legislation (based on last year's message).
- o President should consider making a major address on Education early in the session, bringing together:
 - tuition tax credits
 - voucherizing Title I
 - Individual Education Accounts
 - Back-to-Basics initiatives (e.g. Math & Science)
- o Optimally this speech should be given when tuition tax credit bill is transmitted to Hill.

VI. SCHOOL PRAYER

- o Transmit School Prayer Amendment as early as possible.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

January 17, 1983

FOR: MICHAEL E. BAROODY
FROM: WILLIAM P. BARR
SUBJECT: The Alabama School Prayer Case

Last Friday, a federal district court judge in Alabama held that voluntary prayer in public schools did not violate the Constitution.

I have still not been able to get a copy of the decision. It is about 70 pages long and has several controversial aspects to it. For now, I think we should keep comments on the opinion over in the Justice Department.

Late Friday night, I got in touch with some of the Mobile lawyers in the case, who themselves have not had a chance to read the opinion carefully. Based on my discussions, it appears that the decision had two parts. First, the judge held that the full-blown protections of the First Amendment apply only to the federal government and not to the state governments. The judge found that the Fourteenth Amendment's requirement that states guarantee "due process" does not incorporate all the protections of the First Amendment. The judge concluded, essentially as a matter of states' rights, that voluntary prayer does not violate the Constitution. This position directly attacks scores of Supreme Court decisions and is obviously profoundly controversial. The White House should not comment on this aspect of the opinion.

In a second part of the opinion, the judge apparently holds that, even if the First Amendment fully applied to the states, voluntary prayer does not violate the Establishment Clause. We would probably agree with this part of the opinion.

However, until I have read the opinion, I cannot vouch for the accuracy of the above description.

For now, if we are asked to comment, we should say something to this effect: "The President continues to believe that voluntary school prayer is proper and was never intended to be prohibited by the Constitution. He continues to support the Constitutional Amendment that would make it clear that voluntary prayer is permissible. As to the implications of this particular opinion, we refer your questions to the Department of Justice."

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

January 18, 1983

FOR: EDWIN MEESE III
EDWIN L. HARPER

FROM: WILLIAM P. BARR

SUBJECT: Tuition Tax Credit Legislation

Attached is a copy of the tuition tax credit legislation as it emerged from the Senate Finance Committee.

The tuition tax legislation we introduce this session can be essentially the same as the bill reported out by Senate Finance.

There are, however, at least three changes that we should make. None of them should be particularly controversial.

- o Our original proposal last Congress started phasing out the credit at \$50,000, eliminating it entirely for taxpayers making more than \$75,000. At the prompting of Senator Grassley, the Committee lowered the ceiling, phasing out the credit at \$40,000, eliminating it entirely at \$50,000. The coalition would like us to introduce a bill this session that would be a little more generous to families in the \$50,000 range. Specifically, they would like us to go with a \$40,000-\$60,000 phase-out. The Catholics, particularly, are concerned that many two-income families in large Eastern cities would not benefit from the legislation if the ceiling was set at \$40,000-\$50,000. I would recommend a \$40,000-\$60,000 phase-out, as the Catholics and other coalition groups request. I think we can persuade Senator Grassley to go with this. If not, I am confident we have the votes to sustain our position.
- o Opponents of tuition tax credits in the Committee tacked on a provision that requires tuition payments be made to a school, attendance at which complies with state compulsory attendance laws (page 15). This provision is anathema to the Christian schools, who feel that it would encourage public school groups to use state laws (such as in Nebraska) to harass private religious schools. This is a critical issue for the fundamentalists and they will not support the legislation with this provision in it. I recommend that the bill that we introduce this session omit the compulsory attendance provision.

- o The opponents of tuition tax credits also succeeded in putting a provision in the bill which prohibits private schools from discriminating against handicapped children (pages 15-16). While we were able to water this provision down somewhat, the Catholics are especially concerned about this provision because their schools do not have the facilities or the curriculum for handicapped children, and they are worried that they may be forced to incur the costs of providing for these special needs. The coalition would like us to water down these provisions a little bit more in the bill we introduce this session. I recommend that the bill that we introduce this session contain a more lenient handicapped rights provision, as requested by the coalition.

Nobody is particularly happy with the Dole/Bradley Amendment that postpones tuition tax credits until the Bob Jones case is resolved (page 29). However, if we deleted this provision, it would rekindle the whole civil rights debate with Senator Bradley. Interestingly, the Catholic bishops group has indicated that it is going to try to get Senators Bradley and Moynihan to agree to delete this provision. I don't think they will succeed.

I would recommend that we include the Dole/Bradley Amendment in the bill this session, unless the bishops are successful in backing the liberal Democrats off of it over the next week or two.

OFFICE OF POLICY DEVELOPMENT

STAFFING MEMORANDUM

DATE: 1/17/83 ACTION/CONCURRENCE/COMMENT DUE BY: ASAP

SUBJECT: 8:00 am Meetings 1/17/83

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

Barr Tuition Tax Credits

ACTION

- Important Item for SOTU.
- Build on last year's SOTU. Senate Finance Comm.
- Any problems with this?
- Elizabeth Dole's office to start next steps communications

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

January 19, 1983

FOR: EDWIN L. HARPER
FROM: WILLIAM P. BARR
SUBJECT: Whose Tuition Tax Credit Bill Is It Going To Be?

I have been informed that Senator Dole would like to have the President forego sending a tuition tax credit proposal and transmittal message up to the Hill. He would like to introduce a tuition tax credit bill as his own on this coming Tuesday. The bill would be based upon the one reported out of Senate Finance Committee (which is essentially the same one that we would transmit).

Dole has communicated this to Duberstein and has asked for a green light from us.

I think it would be a mistake for us to permit Dole to introduce this as his own bill. The President should have the opportunity of transmitting "his bill" to Congress. The transmittal event itself is a good political opportunity for the President. The bill should be known as "the President's bill", not as "Senator Dole's bill". Getting this bill through Congress will take some careful navigation in which choices and compromises may have to be made. If this is Senator Dole's initiative, we will lose some of our control over these events. I have already seen signs that, if we permit Senator Dole to take charge on this matter, the coalition will start dealing directly with him and leave us out of the loop altogether. This would cause serious problems down the road, because Dole's impulses would be to make unnecessary compromises that would infuriate some portions of the coalition and present us with a political problem.

There is another point that is very important. The Catholic bishops group (U.S.C.C.) is hostile to this Administration. They do not want President Reagan to get the credit from Catholic voters for this initiative. If we let Dole take charge of this, the U.S.C.C. will do everything it can to give Dole credit rather than the President.

THE WHITE HOUSE

WASHINGTON

January 20, 1983

FOR: EDWIN L. HARPER

FROM: MICHAEL M. UHLMANN
WILLIAM P. BARRSUBJECT: Proposed Presidential Letter to Cong. Hyde

We strongly recommend that the following revision be made to the proposed letter to Cong. Hyde.

The following two paragraphs should be substituted for the third paragraph on page 1:

In the 98th Congress, I will continue to support the broad range of proposals that would restrict abortion. We have waited ten years for Congress to rectify the tragedy of Roe v. Wade. The time for action is now. You and your pro-life colleagues will have my support in your efforts to bring this matter to a resolution this Congress.

Clearly, it is essential that we preserve and extend past protections that Congress has already adopted. So, I am pleased that you have already introduced, on January 6th of this year, the Respect Human Life Act of 1983, which will codify as permanent law various congressional provisions designed to protect innocent human life, which will extend and strengthen these restrictions, and which will provide the states with a compelling interest to take similar action. It is particularly encouraging to note that your legislation directly addresses the problem of infanticide as well, by making clear the right of all children, including handicapped children, to appropriate medical treatment.

This language is consistent with the President's position toward the end of last Congress and should be acceptable to all elements in the right-to-life movement.

For your information, the Hyde bill would curtail federal participation in abortions by:

- o prohibiting U.S. agencies from performing abortions except when the life of the mother is endangered;
- o prohibiting U.S. funds to be used for abortions, except when the life of the mother is endangered;

- o prohibiting U.S. agencies from promoting or encouraging abortions, except when the life of the mother would be endangered;
- o prohibiting health insurance for federal employees to pay for abortions, except to protect the life of the mother;
- o prohibiting recipients of federal aid from discriminating against people who oppose abortion.

The bill adopts and codifies the Administration's regulatory restrictions on infanticide.

Finally, the bill provides for expedited Supreme Court consideration of any State legislation that restricts abortion on the basis of the Federal statute.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

January 20, 1983

FOR: EDWIN L. HARPER
FROM: MICHAEL M. UHLMANN
WILLIAM P. BARR
SUBJECT: Family and "Social" Issues in the SOTU

I. The Family Theme

The President ran on a "family theme" in the 1980 election. We can expect that in the 1984 elections someone will ask, "How is the American family better off today than in 1980?"

In the SOTU, the President should use the family theme as a means of expounding the good things we have done to date and of laying the groundwork for pro-family initiatives in 1983 and 1984.

Herewith is an outline of what the President could say:

A. Introduction

- o Affirm key role of family -- The family is at the center of our lives. It is the focal point for the nurture of children and the inculcation of moral values.
- o The family is the most successful economic unit known to man. -- No government has ever approached the compassionate and efficient ways in which families care for people.
- o Families do not need the government to create them or sustain them. A stable government needs families. The government should not create hindrances to families.
- o It is crucial today that, as the Republican Platform insisted in 1980, "all domestic policies, from child care and schooling to Social Security and the tax code, must be formulated with the family in mind."

B. Our Achievements

- o We have already addressed some of the worst hindrances to families:
 - marriage tax penalty
 - IRA accounts
 - child care credits.

- o Most important of all, we have taken the wind out of the sails of inflation. Give examples of how decreases in inflation have benefitted average families.

C. Present and Future Initiatives

- o We have laid the foundation for a sound economy that will restore the ability of average-income working people to make basic choices about their families without being boxed in by government-created inflation and tax increases.
- o Families need the economic ability to make real choices about where they will raise their children, how they will save for their future, what schools are best suited for their children's education, and how much time parents wish to spend with their children to nurture, guide, and educate them.
- o In education -- Our tuition tax credit bill will give more families an effective choice over their children's education -- and improve both public and private education by injecting a dose of competition.
- o For the handicapped -- We have taken important steps to allow home care for handicapped children, elderly persons, and others who before were forced to stay in institutions in order to be eligible for federal medical benefits. Example: Katie Becket case in Iowa.
- o For the elderly -- The First Lady's foster grandparent program builds up more familial ties, bridging gaps between generations.
- o We must make sure that fundamental decisions about the life of each family continue to be made by the parents, not by federal judges or government bureaucrats.

D. Conclusion

- o In the months ahead, we will be looking at other areas in which federal policies adversely impact on families.
- o The "community of shared values" that gives America strength and that I spoke about in 1980 takes root in the home.

II. "Social" Issues

Obviously, the President should touch upon the so-called "social" issues. He should probably do so under the general theme that he is concerned not only with the economic, but also

the moral strength of America. He should express concern over the apparent decline in values, but at the same time optimism over the growing moral and spiritual awakening. He should make specific reference to:

A. Abortion

- o It has been ten years since the tragic opinion in Roe v. Wade. It is time for the people's representatives to address this problem. Congress must act now.
- o He continues to favor a broad range of measures that will restrict abortion.
- o He will actively assist efforts by pro-life Congressmen to achieve concrete gains this Congress.

B. School Prayer

- o He continues to support a Constitutional Amendment that will permit voluntary prayer.
- o He is also aware that there are legislative proposals that would ensure that student religious clubs must enjoy the same rights as other voluntary student clubs. He would support such legislation. It does not preclude action on his Constitutional Amendment.

C. Tuition Tax Credits

- o Points on tuition tax credits should be covered either under the family rubric (as above) or under the rubric of education.

III. Other

We assume that crime and education will be given salient treatment. Consideration should be given to mentioning the blight of pornography, particularly that involving the exploitation of children. This is an issue we may want to develop more fully over the next two years. (This issue is also related to an emerging one -- the kidnapping and interstate trafficking of small children for sexual exploitation. Several articles have appeared on this in the past few months -- one a cover story in Readers' Digest. Some responsible analysts believe that as many as 50,000 children are abducted annually in connection with the sex trade. Some local law enforcement officials see a national (and, indeed, international) network arising. Al Regnery is making this a high priority to look into and sees the possibility of this becoming a very hot issue in the months ahead.)

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

January 20, 1983

FOR: EDWIN L. HARPER

FROM: MICHAEL M. UHLMANN
WILLIAM P. BARR

SUBJECT: Guidance on the President's Meeting with
Pro-Life Groups Tomorrow (Friday, January 21)

Tomorrow, January 21, is the tenth anniversary of the Supreme Court's decision in Roe v. Wade. As you know, the President is meeting with a broad coalition of pro-life groups under the auspices of OPL. Morton Blackwell has prepared a background paper and talking points for the meeting; we have reviewed them, and they are fine.

The President's position should be essentially what it was toward the end of last Congress:

- o The President supports a broad range of measures that would restrict abortion.
- o The President believes the time for action is now.
- o The President will actively assist efforts by pro-life Congressmen to achieve concrete gains this Congress.

The President must be very careful not to appear as if he is using disunity in the movement as an excuse for inaction. In the first place, the disunity is highly exaggerated at this stage; everyone in the movement is desperate for some victory. Moreover, a number of groups are poised to blast the President if he adopts this posture. To underscore this, the Catholic bishops group within the past week or so have circulated a memorandum throughout the grassroots, reviewing the 97th Congress and stating that the President was all too willing to use movement disunity as an excuse for inaction. Not only will the President be castigated, but by adopting this posture, he would lose any influence over events and be forced to act in unfavorable legislative contexts over which he has no effective control.

During the 98th Congress, we should use quiet behind-the-scenes leadership to help orchestrate the development of pro-life initiatives. Both the pro-life movement and this Administration are in desperate need of a victory in this area. Therefore, at least initially, we should encourage small-scale initiatives that will likely garner majority support, such as federal fund cut-offs and fetal experimentation bans.

If, after getting a victory or two under our belt, we have sufficiently laid the groundwork for a more direct attack on abortion, we can be involved in selecting the time, place, and most promising vehicle.