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MEMORANDUM

THE WHITE HOUSE

WASHINGTON

July 6, 1983

FOR: T. KENNETH CRIBB

FROM: STEPHEN H. GALEBACH *Steve*

SUBJECT: Response Concerning Forced Busing and Educational Excellence

Although it is late to respond to the specific Washington Post article, the general line of argument represented in the article is likely to be used against us repeatedly in the public debate over education. The following is an outline of the best points to make in response to this argument.

1. The Washington Post article of May 20 is designed to create the impression that the President stumbled into praising improvements at an inner-city school that had actually resulted from court ordered-busing and federal funds.

2. In fact, the Time magazine article to which the President referred cited three inner-city schools for dramatic improvements, which resulted from a variety of contributing factors, including:

- instilling pride among students and faculty;
- providing strong leadership;
- requiring hard work and imposing discipline, while offering understanding and support to students;
- setting clear-cut academic standards and making sure that both students and parents understood them;
- requiring half an hour of homework in every subject each night;
- offering advanced courses;
- motivating faculty to improve the school;
- having a principal provide enthusiastic, personal leadership;
- putting in a school computer center;
- imposing a dress code;
- banning radios;
- giving recognition to honor students;
- having parents volunteer to help with students and in the school;
- having students volunteer to tutor and to do community service work;
- "no-nonsense commitment to high academic standards."

3. Every one of these factors was provided by local initiative; most of them have nothing to do with increased spending; none of them have to do with federal spending. These factors all have to do with decisions at the local level, not at the federal level.

4. What the federal government can do, however, is to show that a problem exists in our public schools, to show what approaches have worked at the local level, and to exhort parents to insist that their local schools set higher standards and take steps that are proven to work. That is what the President's Commission on Educational Excellence has done, and it is what the President was doing when he referred to the schools in the Time article as exemplifying good leadership "from the principal's office down."

5. The Washington Post article is a perfect example of a lack of interest by the media in the real, proven solutions to the education crisis -- the reporter never mentions any of the factors to which the Time article attributes improvement in these schools. Instead, the article simply tries to rehabilitate two proven non-solutions for the public schools: forced busing and more federal money.

6. Court ordered busing may have been the "catalyst" that motivated the Austin school to begin an improved academic approach, but busing has not been a cure for the problems of public schools in Austin or elsewhere. A recent symposium sponsored by the National Institute of Education, in which six experts examined the best 19 statistical studies that have been done on the relationship of desegregation with academic performance, concluded that desegregation had produced slight positive but statistically nonsignificant gains in academic achievement for minority students. Busing, in other words, is not very convincing as a panacea for our educational problems.

7. Similarly, anyone who has looked at the steadily declining quality of public education that has accompanied the massive increase in federal funds for public education, could not in good faith say that a further huge increase in new federal subsidies is the answer.

8. We can learn from experience. The educational solutions that have been proven to work require leadership at the local level. Schools can be dramatically improved if parents, students, and local citizens insist on the necessary changes. Calls for more busing or more federal funds are simply a way of distracting attention from the real answers to the problem.

29 June 1983

MEMORANDUM FOR STEVE GALEBACH

FROM: KEN CRIBB

Ken

Ed Meese has asked that articles^{*} be assembled concerning RR remarks that praised a high school in Austin, Texas. The school principal claims that the school's improved situation is due to forced busing. Could you come up with a response?

Many thanks.

** attached*

20 JUN 1983

ID #

118728

CA

OFFICE OF CABINET AFFAIRS ACTION TRACKING WORKSHEET

Action resulting from:

- ☐ document (attached)
☐ telephone call
☐ meeting (attach conference report if available)

Document Date: 1 / 1From: EMeeseDate Received: 83/05/26Subject: Forced Busing Statement

ACTION CODES:

- A — Appropriate Action D — Draft Response R — Direct Reply w/Copy
 B — Briefing Paper F — Furnish Fact Sheet S — For Signature
 C — Comment/Recommendation I — Info Copy Only/No Action Necessary X — Interim Reply

ROUTE TO:

Date Sent	Name	Action Codes	Date Due	Action Taken
83/05/27	① B. Dunlop TR	A	1 / 1	
83/05/31	② Faoro TR	A	83/06/03	COB
83/06/1	③ BMD		1 / 1	
83/06/10	Fuller TR	I	1 / 1	Wht
→ 83/06/20	④ Cribbs	I	1 / 1	
1 / 1			1 / 1	

COMMENTS:

- ① would you have someone check on the Presidential remark concerning a forced busing situation in Texas. ② There was an article about this in Friday or Saturday's Post
 ③ See attached Wash. Post article + Press Conference - May 17

Originator: ☐ Dunlop ☐ Faoro ☒ Fuller ☐ Gonzalez ☐ Hart ☐ Hodapp

KEEP THIS WORKSHEET ATTACHED TO THE ORIGINAL INCOMING MATERIAL AND WHEN THE ASSIGNED ACTION IS COMPLETE,

RETURN TO: ④ For your information - then file.

Office of Cabinet Affairs
 Attention: Karen Hart (x-2823)
 West Wing/Ground Floor

Busing School Inadvertently Draws Praise

WASHINGTON POST
May 20, 1983

By Dan Balz
Washington Post Staff Writer

AUSTIN, May 19—President Reagan gave an unintentional pat on the back to court-ordered school busing when he singled out an Austin high school for praise during his Tuesday night news conference.

Responding to a question about the role of the federal government in American education, the president reiterated his position that U.S. schools began to decline in quality as the federal role in education increased.

Then, citing three inner-city high schools recently cited for excellence, Reagan added, "Just by changes from the principal's office down . . . , these schools have become what schools are supposed to be, to the extent that students are leaving private schools to transfer to these public schools."

One of the schools to which Reagan was referring is Albert Sidney Johnston High School in Austin. There is no dispute that Principal Adan Salgado played a leading role in turning around his school's record.

But Salgado had plenty of help and money, and says that the catalyst for improvement was court-ordered busing. Reagan vigorously opposes court-ordered busing to achieve racial desegregation.

"It would have been most difficult, if not impossible, to get to where we got to now without court-mandated desegregation," Salgado told Washington Post special correspondent Anna Bennett. "It may have been my doing, but it was his money," he added, referring to federal funds.

"We're pleased with the president's citing Austin as progress, but it is an insufficient approach to the massive education problems that exist in this country," said John Ellis, Austin superintendent of schools.

Before busing, Johnston had the worst image of any high school in the city, and its enrollment, 99 percent minority, was declining. School busing, which began in 1980-81, brought about 700 white students to the school. The school district poured more than \$1 million in extra money into the school to make it more attractive to white parents, adding facilities, an honors program and new courses.

The school's enrollment today is 50 percent white. Test scores for minority students have improved, and those for white children have held steady. The Ford Foundation recently cited the school for excellence.

the Soviet Union was being allowed to purchase at below market value. And so this and—just as this is different than the gas deal. In that instance, our allies were making themselves dependent on the Soviet Union and were providing cash badly needed by the Soviet Union. So, there's a little difference between buying and selling.

Yes, Joe [Joe Ewalt, RKO Radio].

Pardon of Watergate Figure

Q. Mr. President, over the weekend we learned that you had pardoned one of the Cuban-Americans who was convicted of participating in the Watergate burglary, and then we learned you had turned down two other Watergate pardons. I'd like to know why you took those actions.

The President. Well, I didn't turn anyone down. I have received no recommendation from the Justice Department for other pardons. I did receive the recommendation for the one gentleman. He had never committed a crime of any kind before. He was not, in any way, a ringleader or a great activist in the deed performed. He served his sentence and since then has lived up to the letter of the law and been a very fine, productive citizen. And those are the terms for pardoning someone, so we pardoned him.

Bill [Bill Plante, CBS News].

Withholding Tax on Interest and Dividends

Q. Mr. President, not long ago you expressed in no uncertain terms your anger at the Nation's bankers, or some of them, for what you termed "misinformation" on the business of withholding. Now, it appears that the withholding will go through the Senate as it went through the House today by a margin that's large enough to override a veto. You threatened to veto it before. Will you still?

The President. Well, I'm not going to comment on that, Bill, because I understand that there is some talk of a—something or other of a compromise in it, and I'm going to wait and see what they come up with there on the Hill.

Now, wait a minute. Deborah [Deborah Potter, CBS News].

Possible Soviet Violations of Arms Control Agreements

Q. Mr. President, 6 weeks ago you said that there were serious grounds for questioning Soviet compliance with arms control agreements and that you might have more to say about that. And since then, the United States has confirmed that the Soviets have again tested the missile that has been raising U.S. concerns. With the talks resuming today with the Soviets on a new arms control agreement, don't the American people have a right to know if you believe the Soviets have violated past ones?

The President. It isn't so much as to whether we believe, it's a case of whether you have the evidence to actually pin down an infraction. And you said they tested the weapon again. We, even, aren't sure that this is the same weapon or that they're not testing two weapons. But with the information that we have, from our own trying to verify what is going on, yes, we have reason to believe that very possibly they were in violation of the SALT agreement. And we have appealed to them for more facts, more information on the weapon they tested. So far, they have not provided that information to us. So, all we can tell you is that we have a very great suspicion, but again you can't go to court without a case and without the solid evidence. And it's just too difficult, and we don't have that.

Yes, Candy [Candy Crowley, AP Radio].

Education

Q. Mr. President, you recently received a report on education which stated that if an unfriendly foreign power had imposed on America the mediocre educational performance which exists today, we might have viewed it as an act of war. In your '84 budget request, you asked for about \$13½ billion in Federal funds for the Department of Education and over \$235 billion for the Department of Defense. Isn't it time, in light of the report, to reassess your priorities?

The President. Not really, because, you see, education is not the prime responsibility of the Federal Government, and the total budget for education in the United States is far greater than the defense budget. As a matter of fact, the Federal Government ac-

tually provides less than 10 percent of the cost of education through the Department of Education.

And for that 10 percent, one of the things that's wrong with the school system—and if you want to talk to some local school board members, many of them will confirm this—is that for the 10 percent or less of funding, the Federal Government has wanted about 50 percent of a voice in dictating to the schools and running the schools.

Now, we've gone through a period of a number of years, about 10 years, in which we went from \$760 million Federal aid to education to about \$14.9 billion, and that's a 2,000-percent increase. And it was during that period that the testing scores—the college testing, entrance tests, and so forth—began to decline so severely.

Now, I appointed a Commission to study and bring back a report on what we felt was a decline in education in our schools. They brought back a masterful report. And in that report there's very little suggestion for more money. What they're talking about can be corrected without money. It takes some leadership. It takes some return to basics. It takes having students that now have to learn what they're supposed to learn in a class before they're moved on to the next class, just because they've come to the end of the year. And there's an awful lot of that goes on.

It also takes required courses in English, in the basics, in mathematics, in science, particularly in high school. And yet we've seen a time in which you can get credits toward graduation for cheerleading in some of our schools. Or how would you like to graduate by getting straight A's in bachelor life? [Laughter]

We think there's some common sense that is needed. And so we've proven that money, throwing money at it isn't the answer. And the Federal Government can never match the funding of schools at the local and State level, where we've created the greatest public school system the world has ever seen, and then have let it deteriorate. And I think you can make a case that it began to deteriorate when the Federal Government started interfering in education.

Q. If I could follow up, I realize that many of the things in the report could be

done without further increases in funds, but that also recommended more school days, longer school hours, better qualified teachers. I think many public school systems would tell you they don't have the money to do that. Where are they going to get it?

The President. Well, I don't know that so many of those things—there would be some increase in money there, I'm quite sure. But again, how much is being wasted on some things that aren't contributing to their education that could be transferred to that? And I think that—well, right now there are three—Time magazine, just a few days ago, had an article in there about three inner-city high schools: one in the Bronx, New York, one in Los Angeles, one in Austin, Texas. And just by changes from the principal's office down, in leadership, these schools have become what schools are supposed to be, to the extent that students are leaving private schools to transfer to these public schools.

And I want to implement as completely as possible that plan that was submitted to us by this Commission that was investigating education. And it won't cost \$11 billion, which a nameless gentleman has suggested he would advocate that we spend. [Laughter]

Lou [Lou Cannon, Washington Post].

Nicaragua

Q. Mr. President, you've described the Sandinista regime as being oppressive and inimical to our interest in the Western Hemisphere. Why don't we openly support those 7,000 guerrillas that are in rebellion against it, rather than giving aid through covert activity?

The President. Why, because we want to keep on obeying the laws of our country, which we are obeying. [Laughter]

Q. Do you think that if the Sandinista government remains in power in Nicaragua that democracy and freedom can survive in Central America?

The President. Well, Lou, let me answer it this way: We have tried to negotiate. We have tried to talk and to relate on a bilateral basis with the Nicaraguan Government, the Sandinista government.

The only objection that we have to them is, they're not minding their own business.

Hope Stirs in the Ghetto

Improving big-city high schools get Ford Foundation awards

Of all the problems that beset the nation's educational system, one of the most intractable has been the plight of the inner-city high school. Crippled by crime, underfunding and racial strife, the schools have been unable to motivate students who play hooky and mark time. Academic performance has been abysmal. But now there are signs that some ghetto high schools, despite their appalling problems, are making substantial progress. Last week the Ford Foundation singled out 92 schools in 20 large cities for praise and gifts of \$1,000 each, which were far more important for their symbolic value than for their monetary worth. In June about half of the schools will receive \$20,000 grants to help their climb.

"We found kids wanting to learn and teachers wanting to teach to a greater degree than we had expected," says Edward J. Meade Jr., who directs the foundation's precollege educational programs. What made the schools fight to improve? The basic reason was pride, which was evoked by strong leadership. The resurgence was often crystallized around an outspoken and energetic principal who galvanized students, parents and community. Reports Meade: "In some cases the motivation was as simple as, 'We were known as the louisiest school in town, and we don't want to be the louisiest school.'"

Three award winners:

► **Morris High, the South Bronx, New York.** When Frances Vazquez, 35, became the principal of Morris in 1979, the school was racked by violence. Located in one of the most depressed neighborhoods in the nation, Morris had an enrollment of 1,700 pupils that was 35% black and 65% Hispanic, many of them recent immigrants from the Caribbean and Latin America. "When I first arrived, I would not have used the staircase," recalls Vazquez. "Groups of kids were hanging around the halls and simply not attending classes."

Vazquez is in her office by 6:15 a.m. to run a program that now balances hard work and discipline with understanding and support. Students and their parents must sign contracts with the teacher to certify that they understand course requirements. Half an hour's homework is demanded in every subject every night.

The results are impressive by any standard. Last year the number of suspensions was down to 32, from 200 in 1978. Reading and achievement scores have ris-

en, and there is a new sense of optimism and confidence in the halls. Of this year's 300-plus seniors, 85% will go on to attend college (acceptance letters are plastered on one wall). The students have received offers of some \$1.3 million in financial aid, compared with less than \$1 million in 1978. Luis Nuñez, 17, who has seven brothers and sisters and whose mother is on welfare, has already been accepted by eight colleges, including Carleton and Oberlin, and has received a commitment



Principal McKenna with students at Washington Prep High

"I tell kids what to eat, what to wear, how to study."

from New York's Union College for \$11,650 in financial aid, enough to cover the whole year. "I want to be a doctor," says Luis.

► **Albert Sidney Johnston High, Austin.** Three years ago, the school had a largely vocational curriculum with a student body almost entirely composed of minority students. It lagged behind all other Austin schools academically. Recalls Principal Adan Salgado: "We were the doormat of the district."

Then Johnston had to deal with a new problem that turned out to be its inspiration: a 1980 court-ordered desegregation plan resulted in busing half of its students from white sections of town. When white parents began protesting against the new plan, Johnston's faculty became determined to improve the school. Led by Salgado, who can call most of his 1,700 students by their first names, the administration began beefing up the academic

program, installing the school system's first computer center and adding advanced courses in French, Latin, math, biology and chemistry. White enrollment has grown from 44% during the first year of busing to 50% this year. A total of 29 white students have left private schools to ride a bus 45 minutes each morning to Johnston. In 1980, 90% of the students were below grade level in math; by 1982, the figure had improved to 54%. Although no racial incidents have occurred, full integration in campus activities does not yet exist. But Salgado is confident that this problem will also eventually be solved. "You aren't going to see it right away," says he. "But it is going to happen—because these kids want to make it happen."

JEFF CORWIN

► **George Washington Preparatory High, Los Angeles.** Only four years ago, Washington High would have matched most people's Hollywood image of the blackboard jungle. "Morale here was terrible," recalls Margaret Wright, a leader of the parents' group. "The rooms were dirty, and 90% of the teachers were rotten."

Then, in 1979, George McKenna, a tough-minded former civil rights activist, became principal at the age of 37, which made him the youngest administrator ever appointed to the office in a Los Angeles high school. He moved quickly to upgrade expectations; this year he added the word preparatory to the school's name, underlining its new, no-nonsense commitment to high academic standards. He also replaced 85% of the teachers, banned radios and Walkmans, and imposed a dress code (no hats or earrings for the men, no curlers for the women). Says he: "I tell kids what to eat, what to wear, how to study."

McKenna's hard-line approach to learning is paying off. Violence and absenteeism have dropped dramatically, and seniors' test scores for basic skills, while still below the city level, increased by an average of four points this year in every subject. Honor students get their pictures on the wall and receive discounts for student activities. Some 700 students help tutor and do community service work. Parents volunteer to help out wherever needed. Next year 90% of the graduating class will go on to a college or vocational school.

For the first time, Washington will host the citywide Annual High School Shakespeare Festival this month. "Other kids are scared to death to come down here to the inner city," chuckles Shakespeare Coach Aura Kruger. "They should all be scared to death of the competition."

—By Guy D. Garcia. Reported by John E. Yang/Austin and Adam Zagorin/New York

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

July 6, 1983

FOR: EDWIN L. HARPER

FROM: MICHAEL M. UHLMANN

SUBJECT: Supreme Court's Decision Concerning Legislative Chaplains

Yesterday the Supreme Court upheld the Nebraska legislature's practice of opening each session with a prayer by a chaplain paid by the state.

A lower court had struck down the practice as a violation of the Establishment Clause. The Supreme Court reversed, reasoning that:

- o For a public body to invoke divine assistance does not advance a particular church, but merely recognizes that "we are a religious people whose institutions presuppose a Supreme Being."
- o The Establishment Clause was not intended to prevent legislatures from opening with prayer in this manner: At the same time in 1789 that the first Congress was reaching agreement on the language of the First Amendment, it voted to hire a chaplain.
- o The First Amendment should not be applied more strictly against state legislatures than its framers intended it to be applied against Congress.

There are a number of points for the President to make with respect to this decision:

- o The decision reaffirms the principle that the Constitution should be interpreted in light of the intent of the framers.
- o The President and the Justice Department have repeatedly made the point that the framers of the Establishment Clause never intended it to prevent public religious observances.
- The Supreme Court has now confirmed our view with respect to prayers in the legislature.
- We believe that respect for the intent of the framers will also uphold public religious observances by the people in general, such as a national day of prayer, or a national year of the Bible.

- o The basic message of this decision is that we do not have to exclude God from our public life -- that our legislatures, courts, and government executives can recognize that we need divine assistance and that we are accountable to a higher law -- in other words, that we are a "nation under God."

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

July 8, 1983

FOR: EDWIN L. HARPER
FROM: STEPHEN H. GALEBAUGH *SHG*
SUBJECT: Parental Consent for Abortion

You have asked why the general rule requiring parental consent for medical procedures performed on minors does not apply in the case of abortion.

The Supreme Court created this exception to the general rule in 1976, in the case of Planned Parenthood v. Danforth:

- o The decision struck down a Missouri statute that required consent of a parent before a minor could obtain an abortion, unless the abortion was necessary to save the life of the mother.
- o The holding was that "the State may not impose a blanket provision . . . requiring the consent of a parent or person in loco parentis as a condition for abortion of an unmarried minor."
- o The Supreme Court's Akron decision last month basically reaffirmed this rule, while giving the states some latitude to require a pregnant minor either (1) to get parental consent or (2) to make a showing in juvenile court that (a) she was sufficiently mature to make the decision on her own or (b) the decision to abort was in any case in her best interest.

The Court's reasoning in both Danforth and Akron can be summarized as follows:

- o Roe v. Wade held that the government may not prevent a woman from obtaining an abortion.
- o Constitutional rights apply to minors as well as to adults.
- o If a state may not prevent a minor from exercising a constitutional right to abortion, then the state may also not delegate to someone else (the parent) the power to prevent that minor from having an abortion.

The problem with this reasoning is that parental authority had always before been recognized as existing independent of the state, not delegated by the state. If the Court followed the "delegated power" theory consistently, it would undermine many aspects of the authority that parents exercise over children, because the parents would suddenly become subject to the restrictions that limit government action.

The position we should affirm in public debate on this issue is that American law has traditionally recognized the authority of the family to make decisions as a unit. The parents speak for the unit, and minors remain part of that unit until they reach the age of majority.

Under this view, parental authority can be overridden only when a court decides that the parent's decision clearly jeopardizes the life or health of the child. For example, when parents refuse consent for surgery that is needed to save the life of a child, courts have traditionally granted orders to allow the surgery to proceed.

Given the gravity of the moral decisions and psychological consequences involved in abortion, one could not say under the traditional legal analysis that a parent's decision to refuse consent for a minor to have an abortion is clearly against the interests of the child.

In conclusion, the Supreme Court's decisions on this matter are subject to severe criticism as a departure from traditional standards governing parental consent and as a threat to the proper authority of the family.

OFFICE OF POLICY DEVELOPMENT

STAFFING MEMORANDUM

DATE: ~~XXXX~~ 7/7/83 ACTION/CONCURRENCE/COMMENT DUE BY: 7/8/83 noon
SUBJECT: PARENTIAL CONSENT NOTIFICATION

	ACTION	FYI		ACTION	FYI
HARPER	☐	☐	DRUG POLICY	☐	☐
PORTER	☐	☐	TURNER	☐	☐
BARR	☐	☐	D. LEONARD	☐	☐
BLEDSE	☐	☐	OFFICE OF POLICY INFORMATION		
BOGGS	☐	☐	HOPKINS	☐	☐
BRADLEY	☐	☐	PROPERTY REVIEW BOARD	☐	☐
CARLESON	☐	☐	OTHER		
DENEND	☐	☐		☐	☐
GALEBACH	☐	☐		☐	☐
GARFINKEL	☐	☐		☐	☐
GUNN	☐	☐		☐	☐
B. LEONARD	☐	☐		☐	☐
LI	☐	☐		☐	☐
McALLISTER	☐	☐		☐	☐
MONTROYA	☐	☐		☐	☐
ROPER	☐	☐		☐	☐
SMITH	☐	☐		☐	☐
SWEET	☐	☐		☐	☐
UHLMANN	☐	☐		☐	☐
ADMINISTRATION	☐	☐		☐	☐

REMARKS:

THE WHITE HOUSE

WASHINGTON

July 7, 1983

MEMORANDUM FOR STEVE GALEBACH

FROM:

EDWIN L. HARPER 

SUBJECT:

Parental Consent Notification

Could you clarify the issue of why is it that parental consent is needed is for a doctor to remove a child's tonsils but not for an abortion? Could you give me a memorandum by Friday noon, July 8, clarifying this point.

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

July 8, 1983

FOR: EDWIN L. HARPER
JAMES E. JENKINS

FROM: MICHAEL M. UELMANN

SUBJECT: Answers to Fair Housing Questions

With regard to Ed Meese's questions on Fair Housing legislation:

1) Legislative status: OMB transmitted the package to Darman today for final Senior Staff circulation. The package should be ready for transmittal to the Hill early next week. Sensenbrenner will be the lead man in the House, and we expect all the Republicans on the House Judiciary Committee to sign on with the exception of Fish. Howard Baker will be taking the lead in the Senate.

2) Federal law overriding State law on handicapped provisions: If local laws are more limited than federal law in the extent to which they require expenditures for modifications, then the more expansive federal law will override the local law. If, on the other hand, local law goes beyond the federal requirements and imposes greater obligations on landlords, then these local requirements will continue to be effective as long as they do not conflict with the federal law.

Price

THE WHITE HOUSE

WASHINGTON

July 7, 1983

MEMORANDUM FOR MIKE UHLMANN

FROM: EDWIN L. HARPER

SUBJECT: Fair Housing



What is the status on the Hill?

Handicapped portion: Can Federal laws over ride local ordinances that require expenditures for elevators, etc. if a handicapped person lives in a building?

Ed Meese would like answers to these questions. Please send copies of the response to me and to Jim Jenkins.

THE WHITE HOUSE
WASHINGTON

July 8, 1983

NOTE TO ED HARPER

FROM: BILL BARR

As you requested, attached is a draft of an issue paper on the DOL affirmative action studies.

John Cogan and Mel Bradley have this draft and know that their critique is due by mid-day.

Mike Horowitz called me this morning to say that his office is engaged in a detailed review of the DOL studies and that he has serious reservations about their methodology and their validity. He said that he would like a chance to conclude his analysis before anything goes to the President.

THE WHITE HOUSE
WASHINGTON

July 8, 1983

NOTE TO MEL BRADLEY

FROM: BILL BARR

Ed Harper asked us to prepare an issue paper on DOL's affirmative action studies and to have you "carefully critique" our draft.

Attached is our draft of the issue paper. Harper has asked for your critique by mid-day. Good hunting.

THE WHITE HOUSE
WASHINGTON

July 8, 1983

NOTE TO JOHN COGAN

FROM: BILL BARR

Ed Harper has asked us to prepare an issue paper on DOL affirmative action studies referred to in the attached article and to have you "carefully critique" our draft.

Attached is a draft of the issue paper. Harper has asked for your critique by mid-day.

However, this morning Mike Horowitz called me to say that he is reviewing the DOL studies and has serious reservations about their validity. He does not think anything should go to the President on these studies until OMB has had a chance to review them.

Continued Controversy Over OFCCP Regulations

In 1964, President Johnson issued Executive Order 11246 establishing the policy of requiring federal contractors to engage in "affirmative action". Since then, the Office of Federal Contract Compliance Programs (OFCCP) at the Department of Labor has issued regulations spelling out affirmative action requirements in detail -- including the obligation to meet "goals and timetables" in the hiring and promotion of minorities and women.

The OFCCP regulations have been sharply attacked by critics who say that there is no real difference between "goals and timetables" and "quotas". These critics say that these numerical objectives, no matter what they are called, are applied and enforced in a way that compels employers to use racial preferences. They charge that, in the real world, "goals and timetables" mean that more-qualified white males are denied jobs and promotions solely because of their race or gender.

Early in the Administration, the OFCCP regulations were targeted for review by the Vice President's Task Force on Regulatory Relief. Proposed revisions were advanced in the summer of 1981 and, again, in April 1982, but were roundly attacked by feminists and civil rights groups, who tend to view any change in the status quo as retrogressive.

DOL, Justice, EEOC, and OMB are once more considering a number of modifications to the OFCCP regulations -- including one that would make it clear that "affirmative action" does not require race- or gender-based preferences. Once again, as word of these deliberations has leaked out, civil rights and feminist groups have rallied to defend the current regulations.

Against this backdrop, press stories have recently appeared disclosing that OFCCP would soon issue studies purporting to show that its affirmative action regulations have effectively promoted the employment of minorities and women. Supporters of OFCCP regulations are touting these studies as proof of the regulations' effectiveness.

The studies in question -- one prepared internally by OFCCP, the other by an outside consultant -- are in draft stage and are based on OFCCP data -- selected EEO and affirmative action compliance reports filed by private companies. Both use essentially the same methodology -- comparing the rate of minority employment in companies covered by federal affirmative action requirements with the corresponding rate in companies not subject to these requirements. Both studies reach essentially the same conclusion -- that, between 1974 and 1980, federal contractors achieved a higher rate of minority employment than other companies.

Continued Controversy Over OFCCP Regulations (Page 2)

Most other empirical studies of affirmative action have come to the opposite conclusion. Indeed, four previous studies using the same methodology as the two OFCCP studies found that there was no material difference between the records of contractors and non-contractors. The methodology of the OFCCP studies is still being reviewed.

Critics say that empirical studies like OFCCP's are meaningless, tautological exercises that prove nothing except this: If you impose a quota as a precondition to getting a government contract, then companies that want contracts will meet their quotas.

From our perspective, these studies beg the fundamental questions -- Do the regulations result in race- or gender-based preferences? Are such preferences just? Should we seek a colorblind labor market based on individual merit or a racial spoils system?

Office of Policy Development
July 8, 1983

50:10:10 4/10/85
Pls have an issue paper done on this in studies. then it carefully critiqued by the Bredley + John Logan Ed

Study Says Affirmative Rule Expands Hiring of Minorities

By ROBERT PEAR
Special to The New York Times

WASHINGTON, June 18 — A new study by the Labor Department has concluded that affirmative action of the type criticized by President Reagan has been highly effective in promoting the employment of blacks, women and Hispanic people.

The study said companies doing business with the Federal Government, which are subject to special affirmative action requirements, "have posted significantly greater gains in the employment and advancement of minorities and women" than other companies. The study said the gains were "attributable to the good-faith efforts of Federal contractors to comply with their contractual obligations of affirmative action."

Federal law forbids employment discrimination on the basis of race, sex or national origin. The law applies to all companies. But only businesses with Government contracts are required to take affirmative steps to hire qualified women and members of minority groups in proportion to their numbers in the work force.

Early Investigation Effort

The unpublished Labor Department study, one of the first systematic efforts to investigate the effects of the Federal contract compliance program, analyzed employment practices at 77,000 factories, offices and work sites with a total of more than 20 million employees.

It found that from 1974 to 1980 the rate of minority employment grew 20 percent among those doing business with the Federal Government but only 12 percent among the companies not covered by affirmative action requirements.

"The difference in performance between Federal contractors and noncontractors in employment of women during the period studied is even greater than that for minorities," the study said. "Women's participation in the contractors' work forces grew by 15.2 percent, as opposed to 2.2 percent in noncontractors' work forces."

In 1980 the Government contractors had a total of 14.1 million employees, of whom five million were women and 2.6 million were members of racial or ethnic minority groups, the study said.

The study also said women and members of minority groups experienced significantly greater upward mobility at the companies where the Government enforced affirmative action. At these companies, it said, large numbers of blacks, women and Hispanic people who had been service workers or low-skilled blue-collar workers moved up to skilled production, craft and white-collar jobs.

Labor Department officials said 20,000 to 30,000 companies, including

nearly all the biggest corporations in the country, were subject to the affirmative action requirements because they did business with the Government. The department, in keeping with Reagan Administration policy, plans to issue new rules soon that relax those requirements, the officials said.

New Rules Criticized

Civil rights advocates and officials of another Federal agency, the Equal Employment Opportunity Commission, have criticized some of the changes, but business organizations have generally welcomed them.

President Reagan and William Bradford Reynolds, the Assistant Attorney General for civil rights, have opposed the use of numerical hiring goals such as those set by Labor Department rules for more than a decade. Both men contend that the Supreme Court was wrong to uphold a voluntary affirmative ac-

tion program that reserved a certain number of places for blacks.

Mr. Reynolds said "preferential treatment based on race" was intolerable regardless of whether it was meant to help or to harm a particular minority group. He said "race-conscious affirmative action" could itself be a form of discrimination.

Barry L. Goldstein, a lawyer with the NAACP Legal Defense and Educational Fund Inc., said, "It certainly seems that the Labor Department has wanted to keep this study from being made public because of possible embarrassment to the President and the Justice Department, which have strongly opposed affirmative action."

Labor Department officials said they had not released the study because they wanted to verify its conclusions and check its statistical methods. Robert S. Follett of Welch Associates in Santa Monica, Calif., an economic consulting concern hired by the Labor Department to review the study, said "the methodology was appropriate" and the conclusions were valid.

The first affirmative action requirements for Federal contractors were established in 1961 under an executive order issued by President Kennedy. But over the next 20 years, according to the Labor Department study, there was little "factual documentation" of whether such rules actually increased job opportunities for women and members of minority groups.

Study Ordered in 1981

In September 1981, Ellen Shong Bergman, director of the Office of Federal Contract Compliance Programs, assigned her special assistant, J. Griffin Crump, to study the question. The office is part of the Labor Department.

Mr. Crump's study said the "superior performance" of Federal contractors in hiring and promoting blacks, women and Hispanic workers was remarkable because total employment at those companies grew only 3 percent from 1974 to 1980. In the same period there was an increase of 8.2 percent in total employment at the companies not doing business with the Government.

Another unpublished study, done for the Labor Department by Jonathan S. Leonard of the University of California at Berkeley, reached a similar conclusion. "The Federal contract compliance program has substantially improved employment opportunities for black males," he wrote. He added that affirmative action had increased the demand for black male labor and that this helped explain "a significant part of the increase in the relative earnings of black males."

Mr. Crump reported that Government contractors, under the stimulus of affirmative action, had a smaller proportion of their black and Hispanic employees in low-paying jobs. Twenty-two percent of the contractors' minority employees were service workers or unskilled laborers. For companies without Government contracts, the corresponding figure was 39 percent.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

July 8, 1983

FOR: ROGER B. PORTER
FROM: WILLIAM P. BARR
SUBJECT: Attached Issue Paper

The attached issue paper, Supreme Court Upholds Legislative Chaplains, was prepared by Bill Barr and Steve Galebach and reviewed by Mike Uhlmann. It is recommended for submission to the President on July 11.

FYI, the markup of the President's constitutional amendment on school prayer in the Senate Judiciary Committee is scheduled for Thursday, July 14.

Supreme Court Upholds Legislative Chaplains

In a 6-3 decision last week, the Supreme Court upheld the Nebraska legislature's practice of opening each session with a prayer by a chaplain paid by the state. The majority opinion was written by Chief Justice Burger, joined by Justices White, Blackmun, Powell, Rehnquist, and O'Connor. Dissents were filed by Brennan, Marshall, and Stevens.

A lower court had struck down the practice as a violation of the Establishment Clause. In reversing the lower court, the Supreme Court reasoned that:

- o For a public body to invoke divine assistance does not advance a particular church, but merely recognizes that "we are a religious people whose institutions presuppose a Supreme Being."
- o The Establishment Clause was not intended to prevent legislatures from opening with prayer in this manner: At the same time in 1789 that the first Congress was reaching agreement on the language of the First Amendment, it voted to hire a chaplain.
- o The First Amendment should not be applied more strictly against state legislatures than its framers intended it to be applied against Congress.

There are a number of points which you can make with respect to this decision:

- o The decision reaffirms the principle that the Constitution should be interpreted in light of the intent of the framers.
- o You and the Justice Department have repeatedly made the point that the framers of the Establishment Clause never intended it to prevent public religious observances.
 - The Supreme Court has now confirmed our view with respect to prayers in the legislature.
 - We believe that respect for the intent of the framers will also uphold public religious observances by the people in general, such as a national day of prayer, or a national year of the Bible.

While we cannot say based on this decision that the Supreme Court is ready to overrule its earlier school prayer cases, this case, coupled with the Court's recent decision upholding tuition tax deductions for private school parents may indicate that an emerging majority on the Court is ready to take a fresh look at the Establishment Clause based on the intent of the framers.

The Justice Department has recently filed a brief in the Supreme Court to support the legality of a nativity scene erected by a Rhode Island township. This will give the Court another opportunity to pull back from the more extreme positions it has taken in the past.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

July 12, 1983

FOR: T. KENNETH CRIBB, JR.

FROM: STEPHEN H. GALEBACH *SHG*

SUBJECT: School Prayer

Thus far, Morton and I have reached 10 of the school prayer leaders who will attend today's meeting.

Nine of them support the modification:

Paul Weyrich
Connie Marshner
Pat Robertson
Billy Melvin (National Association of Evangelicals)
Seymour Siegel (Prof., Jewish Theological Seminary)
Bishop Welsh (Allentown, Pa., Catholic Diocese)
Ted Pantaleo (Freedom Council)
James Draper (Southern Baptist Convention)
Rocky Rees

The tenth, Rabbi Menachem Lubinsky of Agudeth Israel, says he personally favors the amendment as modified, but his organization needs to study it further before deciding whether to endorse it.

A number of persons could not be reached because they are in transit to the meeting. We seem to have a broad and representative sample, however, and I believe we can expect general agreement with our new language among those attending the meeting.

It appears that the modified amendment will pick up important support we lacked with the original version. For example, Dr. Draper, head of the Southern Baptist Conference, had held back from supporting our amendment out of concern over state-drafted prayers, but supports the new version enthusiastically.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

July 19, 1983

FOR: EDWIN L. HARPER

FROM: MICHAEL M. UHLMANN
STEPHEN H. GALEBACH

SUBJECT: Permanent Restriction on DOD-Funded Abortions

Senator Jepsen is planning to offer an amendment to the Defense Reauthorization Act to prevent DOD funds from going to pay for abortions, except to save the life of the mother.

This amendment would place into permanent statutory law the same limitation that has been placed in DOD appropriations bills each year for the past five years. It would not change the substance of that limitation.

Republican leaders in the Senate have argued in the past that abortion funding restrictions should be placed on authorization rather than appropriations bills. Senator Jepsen's proposed amendment would satisfy these procedural concerns and promote the oft-repeated Administration policy against federal funding for abortions.

Senator Baker is apparently not opposing Senator Jepsen's effort, but Senator Tower is opposing strongly on grounds that it will delay the bill. Senator Jepsen says that because his amendment is germane to the authorization bill, the Senate will be able to gain cloture simultaneously on the bill and the amendment. An up-or-down vote on the amendment could then come without substantially delaying the bill.

Pro-life groups see this amendment as a good opportunity for an important victory.

Recommendation

Advise Senator Tower that this amendment implements a policy supported by the President, that we prefer to implement this policy by permanent statute rather than by annual battles over appropriations bills, and that we would like to have an up-down vote on the amendment. Inform Senator Baker of the same.

Note: It is not clear when Senator Jepsen will offer his amendment, but it could be at any time over the next few days.

Summary of Administration Initiatives/Accomplishments to Date

I. TAX REFORM AND OTHER ECONOMIC INITIATIVES

o Reducing the "marriage tax penalty."

Prior to 1981, married couples filing jointly were taxed at substantially higher marginal rates than were two single individuals earning the same income. The Economic Recovery Tax Act greatly reduces this penalty by allowing a partial deduction from married couples' combined salaries, thereby permitting a two-earner couple to keep more of what they earn.

o Expanding IRA participation.

The 1981 tax act raises the maximum contribution for earners from \$1,500 to \$2,000 and permits taxpayers filing joint returns to invest up to \$2250 in IRA, even if only one taxpayer has earnings.

o Reducing the estate tax.

The virtual elimination of the estate tax, enacted last year, is also of particular benefit to women, since they outlive men by an average of eight years. The new law provides for unlimited property transfers between spouses and raises the tax exemption on inherited property from \$175,625 in 1981 to \$600,000 by 1987, thus preserving intact some 99.7% of all estates.

o Increasing the tax credit for child care expenses.

For parents who earn less than \$10,000 per year, the credit will rise from \$400 to \$720 per child. The credit is then scaled back by one percentage point for each additional \$2,000 of income above \$10,000. For parents with incomes of \$28,000 or more, the allowable credit remains fixed at \$480 per child.

o Facilitating day care.

The 1981 Economic Recovery Tax Act provides incentives for employers to include prepaid day care in their employee benefit packages.

o Protecting incomes from inflation.

The drop in inflation has increased the purchasing power of many women. The indexing of the income tax to inflation, approved in 1981 and taking effect in 1985, will be of significant help to women whose income increases over time. One effect will be to stop erosion of the dependent exemption.

- o Protecting the financial security of military wives.

The President, in 1982, signed into law the Uniformed Services Spouses' Protection Act. Because military wives must move frequently to satisfy the career requirements of their husbands, they find it difficult or impossible to establish an independent career that would qualify them for a pension. The new law will correct the previous practice by allowing state courts to divide military retirement benefits in divorce settlements.

- o Making work schedules more flexible.

The President, on July 23, 1982, signed the Flexible and Compressed Work Schedules Act of 1982, which will permanently allow federal agencies to adopt "flexitime" schedules for their employees.

- o Job Training Partnership Act.

The JTPA, the Administration's replacement for the ineffective CETA program, specifically targets AFDC women for job training benefits. This is the first time that the federal government's major job training program has specifically targeted such women.

II. LEGAL EQUITY

- o Federal Equity Project.

Executive Order 12336 directed the Attorney General to complete review of federal laws and regulations containing language that unjustifiably differentiates on the basis of sex and created the Task Force on Legal Equity for Women responsible for implementing changes in laws. Much progress has been made. Corrective legislation has been introduced. The review is continuing.

- o 50 States Project.

In 1981 the President established the 50 States Project to assist governors in identifying and correcting state laws that discriminate against women.

III. CHILD SUPPORT ENFORCEMENT

- o Tax offset program.

Administration obtained legislation permitting states to make collections for past due child support to AFDC families by having IRS make offsets to federal tax refunds. \$168 million was collected through this initiative in 1982.

The Administration has also introduced legislation to provide for more effective state efforts to collect delinquent child support payments from both AFDC and non-AFDC women.

o Strengthening of federal activities.

Interagency working group has upgraded federal enforcement assistance activities. Parent locator system has been upgraded by automation of pertinent agency records and substantial expansion of agency records that may be accessed.

o Urban assistance program.

HHS has launched intensive efforts to increase collections in key urban problem areas through infusion of technical assistance.

o New legislative initiative.

Administration has proposed legislation to strengthen CSEP. The bill creates incentives to encourage state collection activities; establishes new enforcement mechanisms that will facilitate collections; and contains provisions to enhance collections in non-AFDC cases.

IV. APPOINTMENTS

The Administration's record on appointment of women is outstanding at all levels. The President has appointed three women to Cabinet level positions and the first woman Supreme Court Justice.

Third Quarterly Report of the Attorney General
on Legal Equity for Women

On July 14, the Justice Department transmitted to the Cabinet Council on Legal Policy the Attorney General's third quarterly report under Executive Order 12336.

Background

- o On December 21, 1981, the President issued Executive Order 12336 which:
 - directed the Attorney General to complete the review of federal laws and regulations containing language that unjustifiably differentiates on the basis of sex; and
 - created a Task Force on Legal Equity for Women which is responsible for implementing changes ordered by the President following review of the Attorney General's report.
- o The first DOJ progress report was transmitted to the Cabinet Council on Legal Policy in June 1982. It listed over 100 federal statutes containing gender-biased language.
- o On September 27, 1982, President Reagan sent a letter to Senator Dole in support of legislation to correct statutes identified in the first report. On October 1, 1982, Senator Dole introduced legislation which would cleanse the federal code of approximately 100 gender-discriminatory provisions identified in the report. No action has been taken on this legislation to date.
- o In the fall of 1982, the Justice Department authorized an updated computer-assisted search of federal statutes and regulations to identify remaining gender discrimination. In addition, Justice Department requested the heads of 42 departments and agencies to review their regulations, policies, and practices.
- o On December 3, 1982, the Justice Department transmitted a second status report to the Cabinet Council on Legal Policy. The second report described an updated computer-assisted search of the U.S. Code and of federal regulations.

The Third Quarterly Report

- o The third quarterly report has two main parts:
 - The results of the new comprehensive computer-assisted search of the U.S. Code and the Code of Federal Regulations.

- The initial reports of the first 17 agencies reporting progress in their review of regulations, policy, and practices.
- o The computer search is the most comprehensive and thorough Federal effort to identify substantive distinctions based on sex in the U.S. Code. The search was conducted by the Civil Rights Division of the Justice Department. The search has resulted in a list of approximately 130 statutory provisions which contain gender distinctions. (This is more inclusive than the list in the first quarterly report which identified approximately 100 such provisions.)
- o Of the 17 agencies that reported on the progress of their reviews, some are close to completing the process while others have more to do. Twenty-five agencies have not yet submitted reports. Their reports will be included in the fourth quarterly report.

Future Steps

In the weeks ahead, the Cabinet Council on Legal Policy will be reviewing the quarterly report and will make recommendations to the President on changes that should be made to eliminate unjustified sex-based distinctions that have been identified.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

July 28, 1983

FOR: EDWIN L. HARPER
FROM: MICHAEL M. UHLMANN
SUBJECT: Federal Preparedness Circulars

Since this area is of primary concern to NSC and DOD, as explained in my memorandum of July 18 (copy attached), I suggest we defer to their comments. I have called FEMA's attention to one matter of rhetoric that needs revision, however: the proposal to issue a circular on "Nuclear War Planning Guidance."

FEMA will make this revision. On other points, no further action by us is needed.

THE WHITE HOUSE

WASHINGTON

July 18, 1983

FOR: EDWIN L. HARPER
FROM: MICHAEL M. UFFMANN
SUBJECT: Federal Preparedness Circular

The Federal Emergency Management Agency (FEMA) has sent us two documents -- Federal Preparedness Circulars Nos. 1 and 2 -- for our review and comment.

These documents establish a new framework for categorizing and numbering all future directives issued by FEMA concerning preparedness for domestic and national security emergencies. In the past, FEMA directives have been issued in less systematic fashion, and adopting a higher degree of organization seems a good idea.

There are two aspects of FEMA's proposed system, however, that need further analysis:

- 1) The categorization and numbering system -- set forth in the six pages of "Proposed Comprehensive System of Federal Preparedness Circulars" -- deals heavily with contingency planning for military mobilization. This aspect should be reviewed by NSC, and I have asked for their views.
- 2) The categories mentioning contingency planning for nuclear war could lend themselves to distortions and accusations by the media -- here again the views of NSC will be helpful.

I will coordinate with NSC and prepare a draft response for us to send to FEMA. The Director of FEMA has requested our comments by August 1.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

July 29, 1983

FOR: ROGER B. PORTER
FROM: MICHAEL M. UHLMANN
SUBJECT: Issue Paper on Crime Bill

This paper was prepared by Steve Galebach and reviewed by me. It should be included in the next issues luncheon, because the bill has just passed committee in the Senate and will be discussed in greater detail at Tuesday afternoon's CCLP meeting.

The final Senate Judiciary Committee vote on our crime bill is a vote today on the portion dealing with the Federal Tort Claims Act. Other portions of our bill have been approved in votes over the past two weeks.

This bill gives the President an excellent opportunity to talk about fighting crime as a major campaign issue. It is worth noting that in his 1972 campaign against McGovern, Nixon used the crime issue to great effect -- giving eighteen speeches on this topic.

Although our issue paper does not detail what needs to be done in the Senate, it is crucial to persuade Senator Baker to schedule a vote this session on the main bill and on at least one of the separate bills, such as exclusionary rule or capital punishment. A vote on the main bill alone will not put the Democrats on the defensive. Democrats will almost surely threaten a filibuster on the separate bills, but they will be opposing popular bills and we should be able to beat them.

Crime Bill Gets Boost in Senate

The Senate Judiciary Committee has approved our Comprehensive Crime Control Act of 1983. Even though the Committee modified our bill in several respects, it is still an excellent vehicle to strengthen federal law enforcement and to rally the public behind our anti-crime efforts.

The most important change in the bill made by the Committee was to separate out the most controversial provisions: exclusionary rule, capital punishment, habeas corpus, and federal tort claims.

- o Senators Kennedy and Biden insisted on this change, because they do not want a tough floor vote on these issues.
- o Nevertheless, each of these provisions was approved by the Committee and reported to the Senate floor as separate bills.

All the other provisions of the crime bill were approved as one piece by an overwhelming 15-1 committee vote. Strategic implications of this vote are:

- o Even though key provisions have been stripped off as separate bills, the crime bill still has many important provisions for us to talk up: e.g., bail reform, sentencing reform, strengthened penalties for drug offenses.
- o Many of these improvements will help our major anti-drug and anti-crime efforts, thus giving an opportunity to talk up both our statutory improvements and our ongoing enforcement efforts.
- o If Democrat leaders in the House continue to refuse hearings on our bill, they will be vulnerable to sharp criticism.

If we can get major portions of our bill through the Senate this year, we can then focus public attention on whether the House will allow a vote on crime control. The key to success is getting a Senate vote this fall on our main bill and on at least one of the separate bills, such as exclusionary rule or capital punishment.

Our success in Judiciary Committee bodes well for future efforts on the Senate floor and in public debate on the issue of crime control.

Office of Policy Development
July 29, 1983