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**Record Group/Collection:** George H.W. Bush Presidential Records  
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**Series:** Baker, James A., III, Files  
**Subseries:** Public Correspondence Files

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**OA/ID Number:** 93006  
**Folder ID Number:** 93006-001

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**Folder Title:**  
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NRN

**Royce A. Scott**  
Certified Public Accountant

Telephone  
(915) 695-4380

P.O. Box 6639  
Abilene, Texas 79608

September 17, 1992

Mr. James Baker  
The White House  
1600 Pennsylvania Avenue  
Washington, D. C.

VIA FEDERAL EXPRESS

RE: NATIONSGATE

Dear Mr. Baker:

In all presidential elections 1960, I have voted for the republican nominee. The re-election of George Bush is in serious trouble in Texas because he has allowed the administrative branch of government to destroy our state.

**Recently, Mr. Bush made a completely untrue statement.** He said that our government is a government of laws. UNTRUE!. Our government is a government of influence. The FDIC gave most of the banking system in Texas to *Ross Perot et al dba NCNB*. The FDIC closed 39 solvent First Republic Banks. Then, the FDIC gave the assets to *Ross Perot et al dba NCNB* for NOTHING. FDIC and alter ego, *Ross Perot et al dba NCNB* proceeded to destroy businesses throughout our state.

Attached is proof that laws are for some people but not for *Ross Perot et al*. Being a certified public accountant, I am familiar with the process of revenue rulings. As a lawyer, you know that the process of using a revenue ruling is four steps. The first step is the application to the IRS. The second step is receiving the revenue ruling. The third step is structuring the matter to comply with the revenue ruling. The fourth step is to conduct the matter within the terms and conditions of the private letter ruling.

A review of the use of the private letter ruling by *Ross Perot et al dba NCNB* is as follows:

Step 1: Information related to the application for the revenue ruling is including in the ruling. There is massive misrepresentation! The depositors as owners, the dates, the owners of the JRB Bank, plans to sell stock, and other items completely misrepresented the matter.

Step 2: The private letter has ELEVEN times the conditions that the successor will assume all the liabilities of the subsidiary First Republic banks.

Mr. James Baker  
The White House  
September 17, 1992  
Page Two:

Step 3: There was no re-organization. But rather, the FDIC closed the banks and transferred the assets to JRB (Ross Perot et al dba NCNB) for a nominal value not fair market value. The purchase and assumption agreement does not in any fashion have any relationship to terms and conditions of the revenue ruling.

Step 4: In subsequent legal actions throughout Texas, Ross Perot et al dba NCNB has claimed that D'ench Dhome and Federal Holding Laws eliminated any claims including any defensive claims. By the sworn testimony and documents, Ross Perot et al dba NCNB has violated the terms and conditions of the revenue ruling.

Attached are copies of pages from business publications showing that Ross Perot et al dba NCNB will benefit to the amount of over a billion dollars.

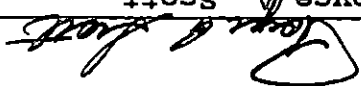
Also, attached is information which furnished the violation of the private letter ruling to the Internal Revenue Service. If George Bush was correct that this is a nation of laws, THEN, why is the FDIC and its alter ego, Ross Perot et al dba NCNB not subject to the laws of our state and nation?

Three reasons for George Bush to recover the billion from Ross Perot et al dba NCNB are:

1. Because it is morally, ethically, and legally right,
2. Because it would put a billion into the depleted treasury,
3. Because Ross Perot et al should not have the billion.

If George Bush wants loyal republicans in Texas to vote for him, then, something has to change. A beginning would be to start hearing the wails of people like me.

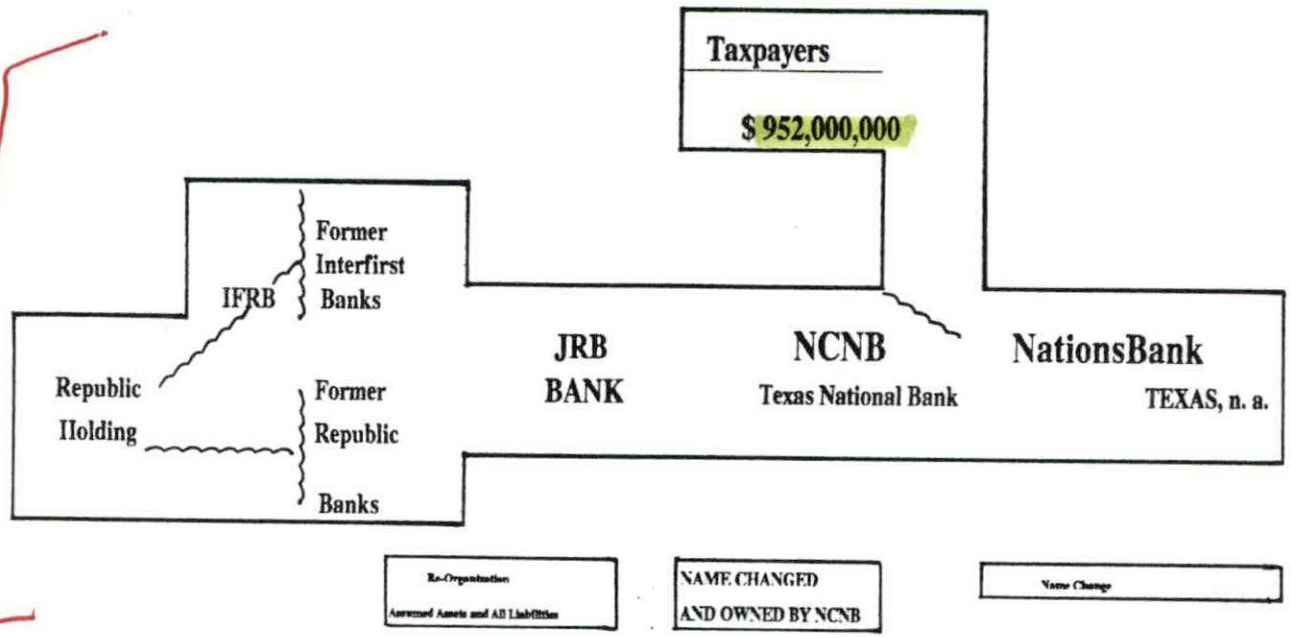
Sincerely yours,

  
Royce A. Scott

P. S. I should receive the award for furnishing the information.

My Home Phone is 915-692-9324.  
Let's talk about (843)(E)

AS SUBMITTED TO IRS



AS PER P & A AND PLEADINGS OF NCNB

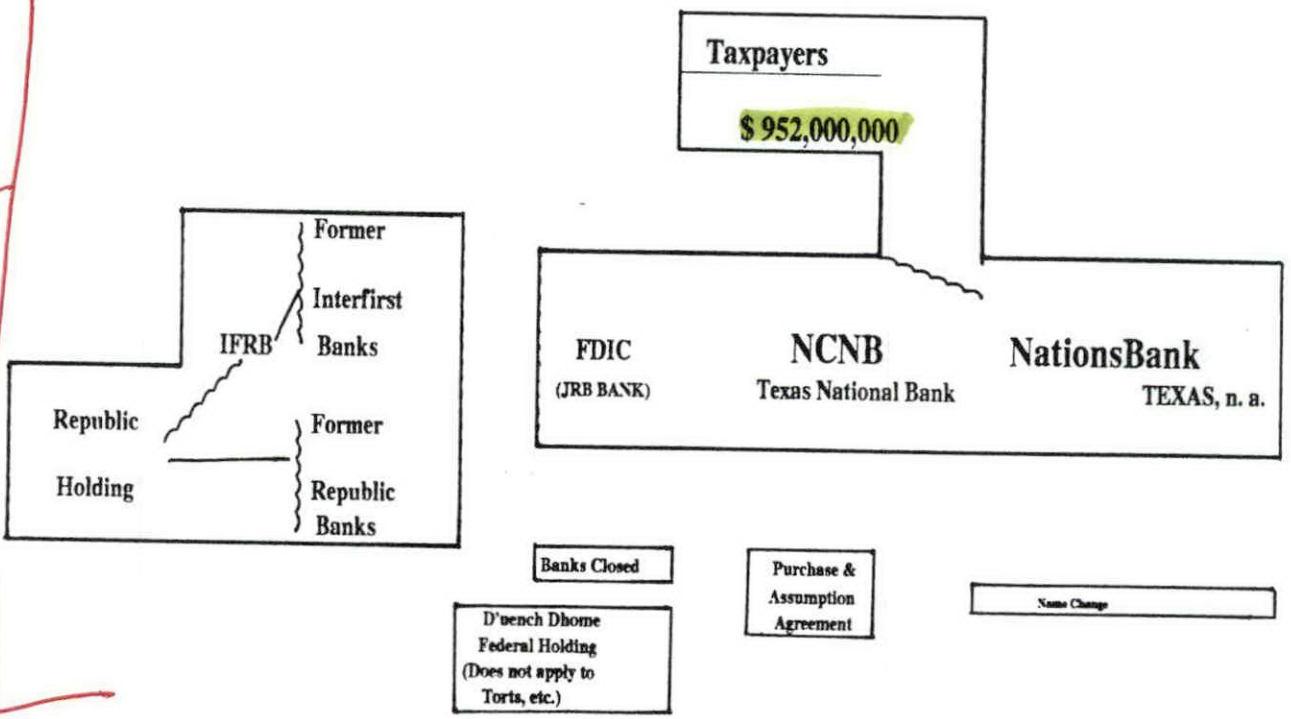


EXHIBIT "A"

Index Number: 8368.00-88

Washington, DC 20224

8835057

Person to Contact:

Telephone Number:

Refer Reply to:

CC:C:Br.13-TR-31-2386-88

Date:

JUN 10 1988

In re:

Parent -

Agency -

\*Acquiring -

Bridge -

National -

Exchange -

State X -

State Y -

State Z -

Date 1 -

Date 2 -

Date 3 -

Date 4 -

Date 5 -

b -

c -

d -

*See GREEN MARKINGS*

This is used or dent. 3 of the 11.

EXHIBIT "A"

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88350571

TR-31-2386-88

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Dear

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This is in reply to your authorized representative's letter dated May 28, 1988, requesting rulings as to the federal income tax consequences of a contemplated transaction in which several banks will be combined into one bank. Your representative submitted additional information in letters dated June 3, 7, and 8, 1988. The information submitted for consideration is summarized below.

Parent is a State X corporation operating as a bank holding company. Most of its banks are located in State Y. As of Date 1, Parent had approximately b common shareholders for its c classes of common stock that were traded on Exchange. Parent also had d classes of preferred stock issued and outstanding.

In addition, on Date 1 Parent had e subsidiary banks (hereinafter Subs) which Parent wholly owned either directly or through an intermediate wholly owned corporation. The deposit accounts of Subs are insured by Agency.

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Agency is a federal corporation responsible for maintaining safety and public confidence in the banking industry. Agency fulfills this obligation in part by insuring deposits in its member banks for up to \$f. When it becomes necessary, Agency meets its insurance obligation by liquidating the bank and paying the depositors cash or by arranging for another insured bank to assume the failed bank's deposit liabilities.

In the year ended on Date 1, Parent and its subsidiaries had book losses of \$g. In the three months that ended on Date 2, Parent reported book losses of \$h. These losses threaten the stability of the Subs. To relieve Agency of the necessity of liquidating the Subs and paying their creditors, Agency has devised a plan to combine the Subs into a new bank which will assume the Subs' liabilities. Agency has agreed to transfer funds as part of the plan. Also as part of the plan, Agency has negotiated to have Acquiring purchase stock of the new entity.

Acquiring is a State Z corporation doing business as a bank holding company. As of Date 1, Acquiring had i shares of common stock issued and outstanding. Another j shares of common stock were reserved for issuance pursuant to certain warrants and plans. The proposed transaction described in this letter will allow Acquiring to expand its business into State Y.

Agency and Acquiring have negotiated the following proposed transaction, the first two steps of which have already occurred.

- (i) On Date 3, Agency transferred a total of \$k to the Subs in return for a note due on Date 4. The note is secured by the stock of some of the Subs.
- (ii) On Date 5, Agency and Acquiring signed letters giving Agency, upon the happening of certain contingencies, the right to go forward with the transaction with Acquiring; while Agency had not selected Acquiring, Acquiring agreed to go forward with the transaction if selected by Agency, provided certain conditions were satisfied.
- (iii) All of the Subs will be declared insolvent by the appropriate regulatory authority. Agency will be appointed their receiver and a court of competent jurisdiction will confirm that appointment.
- (iv) Agency will form a new corporation, Bridge. All of the Subs will transfer all of their assets and liabilities to Bridge.
- (v) Acquiring will have the right to examine Bridge for L days. At the end of its examination, Acquiring will

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RULING BASED ON PREVIOUSLY INSOLVENT

(2)

have the right to purchase 100% of Bridge's voting common stock for \$m.

- (vi) Agency will transfer \$n to Bridge and receive 100% of Bridge's nonvoting common stock. At the same time, Acquiring may exercise the right described in (v) above. Agency's \$n, along with Acquiring's \$m, represents amounts required to bring Bridge up to regulatory minimum capital requirements.
- (vii) Agency will grant Acquiring an exclusive five year option to purchase its nonvoting common stock at a price described in (x) below.
- (viii) During Bridge's existence, Agency will provide approximately \$o in additional assistance. \$k of the assistance will be in the form of forgiveness of the note described in (i) above or cash that will be used to repay that note. The \$o represents the amount necessary to eliminate Bridge's negative shareholders' equity.
- (ix) At the end of Bridge's authorized existence, p years with a possible q year extension, Bridge will convert to a nationally chartered bank (hereinafter National). National will have the same stock ownership as Bridge.
- (x) Within the five year option period, Acquiring may exercise its right to purchase Bridge or National's nonvoting common stock for \$n plus r% of the net retained earnings in Bridge and National during the period in which Agency held the nonvoting common stock.

No Stock

The following representations have been made concerning the proposed conversion of Bridge into National:

- (a) The fair market value of the National stock and other consideration received by each Bridge shareholder will be approximately equal to the fair market value of the Bridge stock surrendered therefore.
- (b) There will not be a plan or intention by the shareholders of Bridge who own 1 percent or more of the Bridge stock, and to the best of the knowledge of management of Bridge, there will not be a plan or intention on the part of the remaining shareholders of

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Bridge to sell, exchange or otherwise dispose of any of the shares of National stock received in the transaction.

(c) Immediately following consummation of the transaction, the shareholders of Bridge will own all of the outstanding National stock and will own such stock solely by reason of their ownership of Bridge stock immediately prior to the transaction.

(d) National has no plan or intention to issue additional shares of its stock following the transaction.

(e) Immediately following consummation of the transaction, National will possess the same assets and liabilities, except for assets distributed to shareholders who receive cash or other property, assets used to pay dissenters to the transaction, and assets used to pay expenses incurred in connection with the transaction, as those possessed by Bridge immediately prior to the transaction. These assets and all redemptions and distributions (except for regular, normal dividends) made by Bridge immediately preceding the transaction will, in the aggregate, constitute less than one percent of the net assets of Bridge. Dissenting shareholders will own less than one percent of the Bridge stock.

14K

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(f) At the time of the transaction, Bridge will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Bridge with the exception of Acquiring's option to purchase all of the nonvoting common stock from Agency.

(g) The liabilities of Bridge assumed by National plus the liabilities, if any, to which the transferred assets are subject were incurred by Bridge in the ordinary course of its business and are associated with the assets transferred.

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(h) Following the transaction, National will continue the historic business of Bridge.

(i) At the time of the transfer from Bridge to National, Bridge will not be under the jurisdiction of a court in a Title 11 or similar case within the meaning of section 368(a)(3)(A) of the Internal Revenue Code.

Based solely on the information submitted and the representations set forth above and assuming that Acquiring exercises its right to purchase Bridge voting common stock at the end of its L day examination of Bridge, the following rulings are provided.

14L Concerning the transfer by Subs of all their assets to Bridge in exchange for Bridge's assumption of their liabilities, it is held as follows:

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(1) The transfer by Subs of all of their assets to Bridge in exchange for Bridge's assuming the liabilities of Subs will be a reorganization within the meaning of section 368(a)(1)(G) of the Code. Under these unique circumstances and as a result of the Subs' insolvency, the depositors own, in substance, the entire equity interest in Subs, and the deposits they have in Subs will continue in Bridge. Subs and Bridge will all be "parties to a reorganization" within the meaning of section 368(b).

6

(2) No gain or loss will be recognized by Subs upon their transfer of assets to Bridge in exchange for the assumption by Bridge of all the liabilities of Subs (sections 361(a) and 357(c)(2)(C)).

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(3) No gain or loss will be recognized by Bridge on the receipt the Subs' assets in exchange for Bridge's assumption of all of Subs' liabilities.

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(4) The basis of the Subs' assets received by Bridge will be the same as the basis of those assets in the hands of Subs immediately prior to the transfer (section 362(b)).

(5) The holding period of Subs' assets acquired by Bridge will include the period during which the assets were held by Subs (section 1223(2)).

(6) As provided by section 381(a) of the Code and section 1.381(a)-1 of the Income Tax Regulations, Bridge will succeed to and take into account the items of Subs described in Section 381(c). These items will be taken into account by Bridge subject to the provisions and limitations specified in sections 381 and 383.

(7) As provided by section 381(c)(2) and section 1.381(c)(2)-1 of the Income Tax Regulations, Bridge will succeed to and take into account the earnings and

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- ( profits, or deficit in earnings and profits, of Subs as of the date of the consummation of the proposed transaction.
- (8) An ownership change as defined in section 382(g)(1) occurs on Date 5. Section 382(l)(5) will not prevent the section 382(a) limitation from applying.
  - (9) No gain or loss will be recognized by Subs' depositors upon Bridge's assumption of the Subs' deposit liabilities.

Concerning the funds transferred to Bridge by Agency, it is held as follows:

- (10) The funds Agency transferred to certain Subs on Date 3 will be recognized as gross income to the Subs on Date 3. For federal income tax purposes, the note executed by Subs in exchange for the funds will be disregarded because at the time Agency took the note, Agency had no realistic expectation of repayment.
- (11) Bridge will recognize income in the amount of funds Agency provides to Bridge to replace Bridge's negative shareholders' equity, whether given in cash or notes, at the time the cash or notes are received. This amount is currently estimated to be \$0, including the \$k Agency provided on Date 3.
- (12) If Agency forgives the note described in ruling (10), Bridge will not recognize income on the discharge of indebtedness. Likewise, any circular flow of cash that Agency provides to Bridge so Bridge can repay the note described in ruling (10) will be disregarded for federal income tax purposes.
- (13) Bridge will not recognize income to the extent of the \$n Agency contributed in return for nonvoting common stock. Likewise, Bridge will not recognize income to the extent of the \$m Acquiring contributed in return for voting common stock (section 1032(a)).
- (14) Agency will have a \$n basis in its Bridge nonvoting common stock. Acquiring will have a \$m basis in its Bridge voting common stock.

Concerning the transfer of assets and liabilities from Bridge to National and the exchange of Bridge stock for National stock, it is held as follows: (9)

- (15) For federal income tax purposes, the transfer of assets by Bridge to National in exchange for shares of National common stock and the assumption by National of the liabilities of Bridge will constitute a mere change in the identity, form or place of organization of Bridge and therefore will qualify as a reorganization within the meaning of section 368(a)(1)(F) of the Internal Revenue Code. Bridge and National will each be a party to a reorganization within the meaning of section 368(b). (10)
- (16) No gain or loss will be recognized to Bridge upon the transfer of its assets to National solely in exchange for shares of National stock and the assumption by National of the liabilities of Bridge (sections 361(a) and 357(a)). (11)
- (17) The basis of the assets of Bridge in the hands of National will be the same as the basis of such assets in the hands of Bridge immediately prior to the proposed transaction (section 362(b)).
- (18) No gain or loss will be recognized to National upon the receipt of the assets of Bridge in exchange for shares of National stock (section 1832(a)).
- (19) The holding period of the Bridge assets received by National will include the period during which such assets were held by Bridge (section 1223(2)).
- (20) No gain or loss will be recognized to the shareholders of Bridge upon the receipt of National stock solely in exchange for their shares of Bridge stock (section 354(a)(1)).
- (21) The basis of the National stock to be received by the Bridge shareholders will be the same as the basis of the Bridge stock surrendered in exchange therefor (section 358(a)(1)).
- (22) The holding period of the National stock to be received by the Bridge shareholders will include the period during which Bridge stock surrendered therefor was held, provided that the shares of Bridge stock were held as capital assets on the date of the exchange (section 1223(1)).
- (23) As provided by section 381(c)(2) of the Code and section 1.381(c)(2)-1 of the Income Tax Regulations,

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National will succeed to and take into account the earnings and profits of Bridge as of the date of the transfer. Any deficit in the earnings and profits of Bridge will be used only to offset the earnings and profits accumulated after the date of transfer.

- (24) National shall be treated, for purposes of section 381, just as Bridge would have been treated if there had been no reorganization. Thus, a net operation loss of National for any taxable year ending after the date of transfer shall be carried back in accordance with section 172(b) in computing the taxable income of Bridge for a taxable year ending before the date of transfer (section 381(b) and section 1.381(b)-1(a)(2) of the Income Tax Regulations).


No opinion is expressed about the tax treatment of the transaction under other provisions of the Code and regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the transaction that are not specifically covered by the above rulings.

Temporary or final regulations, pertaining to one or more of the issues addressed in this ruling letter have not yet been adopted. Therefore, this ruling letter may be modified or revoked if temporary or final regulations as adopted are inconsistent with any conclusions herein. See section 16.84 of Rev. Proc. 88-1 I.R.B. 7, 19. However, when the criteria in section 16.85 of Rev. Proc. 88-1 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

This ruling is directed only to the taxpayer who requested it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

It is important that a copy of this letter be attached to the federal income tax returns of the taxpayers involved for the taxable year in which the transaction covered by this letter is consummated.

Sincerely yours,

  
James L. Dahlberg  
Chief, Branch 13  
Corporation Tax Division

000284

# U.S. Ruling Lets NCNB Earn \$2.8 Billion Before Taxes Begin

## Tax Shelter On Texas Deal Could Save Bank \$1 Billion

By JAY McINTOSH

Staff Writer

10/15/89

NCNB Corp. owes its thanks to some tax analysts at IRS headquarters in Washington.

Its thanks, and perhaps as much as a billion dollars. That's how much the Charlotte banking company could save in federal income tax in the next few years because of a June 1988 IRS ruling, a five-page letter that formed the bedrock of NCNB's winning bid in July 1988 for the failed First Republic Bank network in Texas.

The tax break, which stems from First Republic losses before NCNB took over, enabled NCNB executives to outfox the much larger banks that also bid for First Republic. It also cut the cost to federal regulators, who use bank fees, not tax money, to engineer bailouts.

First Republic's 40 banks nearly doubled NCNB's assets to \$60 billion, making it the nation's ninth-largest bank after it assumed full ownership of the Texas bank in July. Last week's purchases of savings and loans in Texas and Florida are pushing that ranking up to 7th.

And so far, the Texas trail has led to big bucks for NCNB.

Earlier this year, NCNB estimated the shelter would let it earn \$2.8 billion before the company paid any taxes. Normally, the tax on that much profit would come to about \$952 million.

The shelter works like a mammoth tax deduction. For the next few years, it will cover most or all of NCNB Texas' income and quite possibly its non-Texas earnings as well.

In the first half of this year, NCNB Texas earned \$124.6 million before taxes. With its relatively minuscule tax bill, it was able to keep \$121 million. In contrast, NCNB Corp.'s other operations, taxed at

The shelter works like a mammoth tax deduction. For the next few years, it will cover most or all of NCNB Texas' income and quite possibly its non-Texas earnings as well.

normal rates, had to earn \$210 million to keep \$127.7 million.

The profit gains have driven up the price of NCNB's stock, which closed Friday at \$47.50. For example, the stock's price was \$24.25 at the end of June 1988.

NCNB's second-quarter earnings were up 43% over the same quarter last year. Wall Street analysts estimate its third-quarter profit, expected to be reported today, will be up a whopping 64%.

Analysts expect NCNB's profits to climb another 30% next year.

Whether the company will save all of the \$952 million in taxes that would normally be due on \$2.8 billion in earnings is uncertain. Congress is still tinkering with a tax-law provision that could affect the total tax bill, though analysts don't expect it to seriously erode NCNB's tax break.

Industry analysts, bankers and tax lawyers are sure about one thing: The IRS ruling is one of a kind.

"I think as a matter of technical tax law, (the IRS) probably did make a mistake," says Washington tax

193%

See NCNB Page 5A

and 1989 were \$235 million. In both years, the majority of these lines was supported by fees paid directly by NCNB Corporation to unaffiliated banks.

Federal funds purchased in the amounts of \$28.4 million on Dec. 31, 1990 and \$54.9 million on December 31, 1989 were fully secured by investment securities.

On January 2, 1990, the corporation repaid the \$20 million note payable to the FDIC which was originally issued in conjunction with the acquisition of NCNB Texas. The note bore interest at the rate of 8.40 percent and was scheduled to mature July 31, 1990.

On July 31, 1990, the corporation issued \$200 million of 10.20 percent subordinated notes at par. The notes are due on July 15, 2015 and interest is payable semiannually beginning January 15, 1991. The notes are not redeemable prior to maturity.

In connection with the completion of the acquisition of Panmure Gordon & Co. Ltd. in 1987, convertible debt was issued. The number of shares issued upon conversion into NCNB Corporation common stock will be determined based on the U.S. dollar amount of convertible debt and the average closing price, as defined, of NCNB Corporation common stock at the time of conversion.

The indentures covering the parent company's 11% and 12.65 percent subordinated notes include provisions for the creation of segregated funds (the "note funds") for certain regulatory purposes and, although they are expected to provide a source of funds for the payment of the notes, the note funds do not constitute security for the notes. The amounts designated for the note funds on December 31, 1990 and 1989, were \$79.2 million and \$66.7 million, respectively. In establishing the note funds, the corporation has agreed that it will have issued equity in amounts and by certain dates as specified in the indentures. The corporation had issued sufficient equity through its dividend reinvestment plan to comply with the terms of the indentures through December 31, 1990. Issuance of equity to satisfy the terms of the indentures could have a dilutive effect on earnings per common share. The commitments to issue equity are revocable should the note issues no longer be considered capital for regulatory purposes.

The indentures covering the parent company's senior long-term debt, excluding convertible debt, include provisions that limit funded debt, long-term lease commitments, issuance of subsidiary preferred stock, creation of liens upon the property of the corporation and the payment of dividends. Under the most restrictive of the provisions, approximately \$1.4 billion of consolidated undivided profits were available for payment of dividends on December 31, 1990.

The corporation has acquired bonds sufficient to meet the sinking fund requirements on its 8 1/2 percent debentures.

The principal maturities for the next five years of long-term debt outstanding on December 31, 1990 were (dollars in thousands):

Year	1991	1992	1993	1994	1995
	\$17,654	4,319	11,076	2,788	\$2,421

#### Note 10 — Shareholders' Equity

In July 1989, the corporation issued 8,846,770 shares of common stock resulting in proceeds of \$409.4 million, net of related costs of issuance. The proceeds were used to partially fund the corporation's purchase of the remaining 51 percent equity interest of NCNB Texas.

On September 22, 1989, the corporation issued 5,000,000 shares of common stock for trading on the Tokyo Stock Exchange. This issuance resulted in proceeds of \$245.6 million, net of related costs.

On September 29, 1988, the corporation issued 5,000,000 shares of Series B Cumulative Perpetual Convertible Preferred Stock in a private placement with a number of institutional investors. The proceeds from this offering were used primarily to fund the corporation's investment in 20 percent of the equity of NCNB Texas discussed in Note 3.

Each share of preferred stock pays an annual dividend of 8 percent, and is convertible into NCNB Corporation common stock at a price of \$3.625 per share at the option of the shareholder. The shares may not be converted prior to October 1, 1992. The shares have no voting rights.

Dividends declared for common and preferred stock were as follows (dollars in thousands except per-share amounts):

	Year Ended Dec. 31		
	1990	1989	1988
Common	144,529	102,308	80,138
Per share	1.42	1.10	0.94
Preferred	20,000	20,000	5,100
Per share	4.00	4.00	1.02
Other shareholders' equity on December 31 is comprised of the following items (dollars in thousands):			

	1990	1989
Restricted stock award plan deferred compensation	(13,971)	(23,173)
Excess of cost over mkt. value of mkt. equity securities	(20,368)	(15,433)
Foreign currency translation adj.	(4,122)	(3,346)
	\$38,661	\$41,952

Effective July 1, 1990, the state of North Carolina revised the North Carolina Corporation Act (the Act). Among the revisions was the deletion of the concept of treasury stock. Accordingly, for comparability, the amount previously carried as treasury stock has been reclassified to common stock and surplus for all periods presented. Further, the Act eliminated the requirement for distinction between stated value and surplus. While outstanding preferred and common shares still carry par or stated values, such amounts have been combined for balance sheet presentation.

#### Note 11 — Deposits

The components of interest expense on deposits for the years ended December 31 were (dollars in thousands):

	1990	1989	1988
Savings and interest-bearing transaction accounts	\$1,011,486	\$745,584	\$321,304
Negotiable CD's and public funds	738,859	907,827	779,679
Consumer certificates and other time deposits	1,801,693	966,223	349,687
Foreign	209,640	211,004	87,088
Total	\$2,961,678	\$2,830,638	\$1,537,758

On December 31, 1990 and 1989, domestic time certificates of deposit in denominations of \$100,000 or more amounted to \$8,192.8 million and \$7,740.2 million, respectively. Other domestic time deposits in denominations of \$100,000 or more amounted to \$405.5 million and \$1,439.3 million on December 31, 1990 and 1989, respectively. Certificates of deposit and other deposits of \$100,000 or more of foreign offices amounted to \$2,133.2 million and \$2,148.2 million on December 31, 1990 and 1989, respectively.

#### Note 12 — Noninterest Income and Expense

The significant components of noninterest income and expense for the years ended December 31 are presented below (dollars in thousands):

	1990	1989	1988
<b>Noninterest Income</b>			
Trust fees	\$190,367	\$169,405	\$60,652
Service charges on deposit accounts	269,924	217,108	100,278
Nondeposit-related service fees	100,058	82,442	42,850
Bank card income	99,661	77,656	53,008
Investment securities gains	42,392	121,333	16,128
Other income	204,649	168,573	95,028
Spec. Asset Div. mgmt. fees	47,730	24,000	.....
	\$954,781	\$860,517	\$369,055
<b>Noninterest Expense</b>			
Personnel	\$846,321	\$834,566	\$866,723
Occupancy, net	196,491	188,368	83,891
Equipment	186,220	167,796	81,963
Marketing	70,624	78,994	34,389
Amortization of intangibles	55,902	39,358	37,575
Professional fees	88,111	82,016	31,314
General operating	382,748	295,699	143,596
General administrative and miscellaneous	85,111	65,338	35,353
Special Asset Division overhead allocation	(21,420)	(60,093)	.....
	\$1,888,108	\$1,692,042	\$814,806

#### Note 13 — Income Taxes

Effective Jan. 1, 1989 the corporation provides for income taxes in accordance with Statement of Financial Accounting Standards No. 96, Accounting for Income Taxes (SFAS 96).

The components of income tax expense for the years ended December 31 were (dollars in thousands):

	1990	1989	1988
<b>Current portion — expense:</b>			
Federal	91,501	43,457	70,409
State	10,438	13,099	8,557
Foreign	896	4,198	2,540
	102,835	60,754	81,506
<b>Deferred portion — expense (benefit):</b>			
Federal	(90,469)	2,458	845
State	(184)	5,787	(2,421)
Foreign	.....	.....	(2,006)
	(90,653)	8,245	(3,582)
	12,182	68,999	77,924

The corporation's current income tax of \$102.8 million, \$60.8 million and \$81.5 million for 1990, 1989 and 1988, respectively, includes amounts computed under the regular and alternative minimum tax (AMT) systems and approximates the amount paid for those years. These amounts reflect the utilization of certain current tax benefits associated with NCNB Texas.

Deferred expense (benefit) represents the change in the deferred tax asset or liability and is further discussed below.

A reconciliation of the difference between the effective tax rates and the federal statutory rate for the years ended Dec. 31 is as follows (dollars in thousands):

	1990	1989	1988
Federal statutory rate	34.0%	34.0%	34.0%
Increase (decrease) in taxes resulting from:			
Tax-exempt income	(5.7)	(9.5)	(12.3)

	1990	1989	1988
Utilization of operating loss carryforwards for financial reporting purposes	(31.4)	(17.2)	.....
Other, net	6.3	6.1	1.9

Effective tax rate ... 11.4% 11.4% 23.6%

The effective tax rates in 1990 and 1989 were significantly less than the Federal statutory rate due primarily to the utilization of approximately \$118.7 million and \$88.9 million, respectively, of tax benefits associated with operating loss carryforwards for financial reporting purposes arising primarily from the excess tax bases of net assets of NCNB Texas.

Under the liability method required by SFAS 96, the balance sheets amounts of deferred taxes are recognized on the temporary differences between the bases of assets and liabilities as measured by tax laws and their bases as reported in the financial statements. The principal sources of temporary differences, tax effected as statutory rates, are reduced by the unrecognized tax benefits in arriving at the deferred tax asset at Dec. 31. Deferred tax expense or benefit is recognized for the change in deferred tax liabilities or assets between periods, after consideration of the impact of acquisitions. An analysis of deferred taxes is as follows (dollars in thousands):

	1990	1989
<b>Tax effects of cumulative temporary differences at December 31 related to:</b>		
Excess tax bases of assets in Special Asset Division	\$445,247	\$431,901
Tax net operating loss carryforwards	(192,107)	(251,784)
Reserve for credit losses	(242,420)	(175,197)
Equipment lease financing	124,886	138,701
Depreciation	42,446	32,200
Employee retirement benefits	44,899	24,353
Other, net	(25,152)	(39,544)
	(692,695)	(703,172)
<b>Less:</b>		
Unrecognized tax benefit	526,211	666,694
Differences in tax rates realized	14,421	(24,932)
<b>Net deferred tax (asset) at end of year</b>	(152,063)	(61,410)
<b>Less:</b>		
Net deferred tax (asset) liability at beginning of year	(61,410)	40,345
Impact of acquisition of NCNB Texas	.....	(110,000)
<b>Deferred tax expense (benefit) recognized</b>	\$90,653	\$8,245

Prior to adoption of SFAS 96 in 1989, the corporation computed deferred taxes under the deferred method of APB 11. During 1988, the primary components of the \$3.6 million deferred benefit were deferred gains on the sale of real estate \$(16.1) million and deferred loan fees and costs \$(4.1) million offset by excess tax basis of loans \$(8.1) million and equipment lease financing \$(14.9) million.

Operating loss carryforwards for financial reporting purposes, totaling \$1.5 billion, comprised of tax carryforwards and temporary differences for which tax benefits have not been recognized, expire as follows (dollars in thousands):

Yrs. of Exp.	Tax Oper. Loss Carryforw.	Temp. Differences	Total
1991	\$65,901	.....	\$65,901
1996-1998	12,054	68,897	80,951
2002	487,065	.....	487,065
2006-2010	.....	874,100	874,100
After 2010	.....	39,661	39,661
	\$545,020	\$982,658	\$1,547,678

Statutory rate ... 34%

The tax operating loss carryforwards above were generated by NCNB Texas prior to August 1989, and may only be utilized against future NCNB Texas taxable income. Temporary differences above are also primarily attributable to the acquisition of NCNB Texas and may offset consolidated income for financial reporting purposes.

In connection with the establishment in 1988 of NCNB Texas, the corporation obtained private letter rulings from the Internal Revenue Service to the effect that the tax bases of the assets received by NCNB Texas from the FDIC as receiver for the subsidiary banks of First Republic Bank Corporation (the "FRB Banks") will be the same as the FRB Banks' bases in those assets. As a result, to the extent that the tax bases of assets acquired by NCNB Texas exceeded their book value, the consolidated group is able to recognize tax losses through charge-offs or disposition of such assets in excess of amounts recorded for financial reporting purposes.

The corporation's tax position under the alternative minimum tax system, after considering AMT credits, is substantially equivalent to the regular tax system and discussed above.

#### Note 14 — Employee Benefits

Retirement benefits — Net pension income for 1990, 1989, and 1988 was \$32.1 million, \$6.4 million, and \$1.5 million, respectively. For 1990 and 1989, \$8.7 million and \$3.3 million, respectively, of the pension income is attributable to NCNB Texas.

During 1990, the company purchased annuity contracts providing for the payment of benefits to

### THREE LEVELS OF FRAUD

FRAUD # 1        The FDIC gave away a banking system worth from one to two billion. Note, the former Texas American Banks sold for \$ 700 Million.

FRAUD # 2        The stockholders and buyers of stock of NCNB were not told of the terms and conditions of the revenue ruling. Note: The C&S Sovran was based upon value with revenue ruling.

FRAUD # 3        The taxpayers are losing about a billion due to the use of the revenue ruling by NCNB.



# SPECIAL REPORT

## NCNB TEXAS RULING BREAKS NEW GROUND

by William J. Wilkins and Terrill A. Hyde

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William J. Wilkins and Terrill A. Hyde are partners in the Washington, D.C. law firm of Wilmer, Cutler & Pickering. This article arises from their interest in corporate taxation, an area of their professional practice.

In this article, the FDIC's arrangements with NCNB Corporation to take over the banking operations of First RepublicBank Corporation is described. In all, the FDIC is expected to transfer about \$4 billion, but just under \$1 billion as equity, with the balance as forgiven loans and other credits to the failing Dallas bank. This takeover was preceded by negotiations with several banks for conditions under which one of them would be named to manage the bank and to make capital contributions to the bank. The IRS ruled that the takeover amounts to a G reorganization. The authors question whether the reorganization ruling is technically correct because it relies on treating depositors as owners. They also note that the ruling treats the FDIC assistance as taxable income despite an earlier private ruling to the contrary and disallows the carryover of operating losses. Even so, the successor bank will have high basis assets with little value, and these built-in losses may shelter subsequent earnings. The authors conclude that the IRS has finally moved to resolve some of the tax issues arising in several bank rescues, but they think that there is sufficient doubt about some aspects of the ruling as to require legislation to achieve certainty.

THE AUTHORS QUESTION THE AET ORGANIZATION RULING IS TECHNICALLY CORRECT BECAUSE IT RELIES ON TREATING DEPOSITORS AS OWNERS.

NOTE DEPOSITORS ARE CREDITORS

### I. Introduction

On September 8, 1988, the tax services first published summaries of LTR 8835057, the much-publicized private ruling issued to NCNB Corporation ("NCNB Corp.") in connection with its proposal to take control of the failed Texas banking operations of First RepublicBank Corporation.

The ruling... describes a remarkable and novel transaction.

REMARKABLE AND NOVEL TRANSACTION

The ruling, when put together with press reports and congressional testimony, describes a remarkable and novel transaction. Over the weekend beginning Friday, July 29, 1988, 40 banking subsidiaries (the "Texas Banks") of First RepublicBank Corporation (the "Holding Company") were thrown into receivership, and the Federal Deposit Insurance Corporation (the "FDIC") was named receiver for each of them. The FDIC transferred the Texas Banks' assets and liabilities to a single new national bank, initially named JRB Bank, N.A., but later renamed NCNB Texas National Bank ("NCNB Texas"). NCNB Texas is a "bridge bank" that currently has no shareholders, but is effectively controlled by the FDIC. NCNB Corp. then began managing NCNB Texas under a management contract between the FDIC and NCNB Corp. NCNB Corp. and the FDIC also have entered into an agreement which provides that, following a three-month interim period, NCNB Corp. and the FDIC will contribute \$210 to \$240 million and \$840 to \$960 million, respectively, to NCNB Texas in exchange for 20 percent and 60 percent in value, respectively, of newly issued common stock of NCNB Texas; the FDIC's stock will be nonvoting. At any time during the following five-year period, NCNB Corp. has the option to buy the FDIC's stock for a formula price. In addition, the FDIC has agreed to forgive a \$1 billion loan it made to the Texas Bank in March and to provide additional loans and outright gifts of cash to NCNB Texas. Sometime before July 1991, NCNB Texas will be required to change its form of organization from a bridge bank to a regular national bank.

And the tax consequences? To summarize the ruling, the tax consequences are as follows: the July actions leading to the formation of NCNB Texas constituted a G reorganization; the future conversion of NCNB Texas from a bridge bank into a regular national bank will be an F reorganization; the principal amount of the FDIC loan was immediately taxable to the Texas Banks in March

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when the loan was extended and future FDIC assistance will be taxable when granted; and NCNB Corp.'s obtaining conditional rights to acquire NCNB Texas stock created a section 382<sup>1</sup> change of ownership of the Texas Banks before the FDIC had even decided to accept NCNB Corp.'s proposals.

Press reports claimed that the tax ruling would result in millions of dollars in tax savings for the FDIC and for NCNB Corp. These tax savings were reportedly a major factor in the FDIC's conclusion that NCNB Corp.'s proposal was the least costly alternative for the FDIC among the proposals it had considered.

This article will discuss the difficult issues presented and resolved by the ruling, while attempting to flesh out the background of the ruling with facts on the public record. The ruling, which was requested May 20, 1988 and granted June 10, 1988, appears to break new ground in several significant areas, including the continuity of interest requirement for G reorganizations, the section 354 distribution requirement for G reorganizations, the option rules of section 382, and the taxation and timing of income generated by emergency loan assistance from the FDIC.

*Tax savings were reportedly a major factor in the FDIC's conclusion that NCNB Corp.'s proposal was the least costly alternative . . .*

While press reports left the impression that NCNB Corp. has obtained a tax bonanza, it should be noted that the ruling takes tough positions in some areas. As noted above, the ruling declares the FDIC assistance to be fully taxable, and not excludable as a contribution to capital, thus taking a position contrary to an earlier private letter ruling.<sup>2</sup> In addition, the ruling finds a section 382 ownership change quite early in the process, under circumstances that seem to eliminate completely any carry-forward of net operating losses.

Nevertheless, there is real gold in the ruling for NCNB Corp. and the FDIC, as the prospective owners of NCNB Texas. The finding of early taxability of the March FDIC assistance allows this substantial item to come into income before losses are wiped out by the ownership change. In addition, the finding that the corporate transactions are tax-free reorganizations preserves the historic asset basis, presumably including a high basis in uncollectible loans and other troubled assets. What is unknown is whether the tax benefit of this high basis was wiped out by the built-in loss rules of section 382(h), or whether it survived under the 25 percent threshold rule of section 382(h)(3)(B). Press reports indicate that this may

be a close call, but if it goes the taxpayer's way, the potential is there for enough built-in losses to shelter billions in income.<sup>4</sup>

## II. Background

### A. Trouble at First Republic Bank

The Holding Company was created in the 1987 combination of the two largest banking companies in Dallas. With \$33.2 billion in assets as of the end of 1987, the Holding Company was the largest bank holding company in Texas, and the largest in the country outside of New York, Chicago, and California. The Holding Company had 41 operating bank subsidiaries, including the 40 Texas Banks.<sup>5</sup>

Following a 1987 Holding Company loss of \$656.3 million, the Texas Banks began suffering drastic losses in their deposit bases. In January and February 1988, deposits dropped by \$1.9 billion, including \$600 million that was withdrawn from the Texas Bank in Dallas during a single five-day period.<sup>6</sup>

### B. FDIC to the Rescue

On Tuesday, March 15, the Holding Company confirmed that it had requested FDIC assistance to prevent the collapse of its banking operations.<sup>7</sup> On Thursday, March 17, the FDIC loaned \$1 billion to 11 of the Texas Banks and announced that depositors and creditors of the Texas Banks would be fully protected, even in excess of the usual \$100,000 maximum FDIC deposit guarantee.<sup>8</sup>

The FDIC loan was for a term of six months and carried an interest rate of one-half percentage point above the six-month Treasury bill rate. Although the FDIC loan was made subordinate to other debts of the borrowing banks, it was secured by guarantees and stock pledges. The Holding Company guaranteed the loan and secured its guarantee by pledging the shares of 30 of its banking subsidiaries. Each of the banking subsidiaries of the

<sup>1</sup>An August 1 *Wall Street Journal* article includes figures supplied by First Republic Bank Corp. indicating that nonperforming loans as of July 29, 1988 totaled \$5.135 billion, a figure representing 23.26 percent of total assets. *Apcar, Takeover by NCNB, Aided by \$4 Billion From U.S., Doesn't Protect Holders*, *Wall St. J.*, Aug. 1, 1988, at 3, col. 1. The 25 percent threshold test of section 382(h)(3) provides that built-in losses are not restricted after an ownership change if the amount of the net unrealized built-in loss does not exceed 25 percent of the value of the corporation's assets (other than cash, cash items, and marketable securities), measured immediately before the ownership change. The tax ruling indicates that the ownership change in this case occurred at the time NCNB Corp. and the FDIC exchanged certain letters, an event that probably took place in May or early June.

<sup>2</sup>*Nash, Large Texas Bank to Get \$1 Billion in Federal Rescue*, *N.Y. Times*, March 18, 1988, at A1, col. 8; *Hearings on the Condition of the Banking Industry and the FDIC Fund and the Supervisory and Assistance Activities of the FDIC Before the House Committee on Banking, Finance and Urban Affairs*, 100th Cong., 2d Sess. (1988) (Testimony of L. William Seidman) (hereinafter "Seidman Testimony"), p. 30.

<sup>3</sup>*Apcar, First Republic Bank Says It Approached Regulators on Federally Assisted Bailout*, *Wall St. J.*, March 16, 1988, at 3, col. 2.

<sup>4</sup>*Taylor, FDIC Lends First Republic Bank Units \$1 Billion Amid Search for Investors*, *Wall St. J.*, Mar. 18, 1988, at 3, col. 2.

<sup>1</sup>Except where otherwise indicated, section references are to the Internal Revenue Code of 1986, as amended.

<sup>2</sup>Hayes, *Talking Deals: FDIC's Savvy on Bank's Taxes*, *N.Y. Times*, Aug. 4, 1988, at D2, col. 1.

<sup>3</sup>LTR 8243025 (July 22, 1982).

WRONG

REAL  
GOLD  
FOR  
NCNB

Holding Company also guaranteed a portion of the loan, with the size of each subsidiary's guarantee depending on the size of the subsidiary's equity.<sup>1</sup>

While the FDIC's action stabilized the deposit situation, large losses continued, primarily as a result of heavy loan exposure in the troubled Texas real estate industry. At the end of March, some analysts were speculating that the FDIC might be unable to find a candidate to take over a problem as large as the Texas Banks.<sup>2</sup>

By July, however, reports were emerging that several banks were considering submitting proposals to reorganize the Texas Banks. The banks reported to be interested included NCNB Corp., Citicorp, and Wells Fargo & Co.<sup>3</sup> In fact, NCNB Corp.'s tax ruling reveals that by June 10, NCNB Corp. and the FDIC had already agreed to implement a specific structure in the event the FDIC ultimately selected the NCNB plan. The NCNB plan, as well as competing plans of other bidders and of Holding Company management, was worked out in extensive negotiations with the FDIC.<sup>4</sup>

#### C. FDIC Selects NCNB Plan and Seizes Bank

Late in the afternoon of Friday, July 29, the FDIC set in motion a chain of events that would result in the consolidation of all of the Texas Banks into a unique corporate entity, controlled by the FDIC, known as a "bridge bank." First, the FDIC Board of Directors selected the NCNB plan as representing "the most effective, most viable, and least costly approach for preserving existing banking services in the affected communities and promoting stability in the Texas banking system."<sup>5</sup> Next, the FDIC notified the Office of the Comptroller of the Currency and the Texas Commissioner of Banking that it would not renew the \$1 billion loan when it matured in September, and would not provide additional assistance to the Texas Banks. When the Comptroller declared that the Texas Bank in Dallas was no longer a "viable bank," the Federal Reserve demanded immediate repayment of all of its loans to the Dallas bank. The Dallas bank, being unable to repay the Federal Reserve, then was closed.<sup>6</sup>

The closing of the Dallas bank caused a default on the \$1 billion loan, which the FDIC then accelerated. With the acceleration of the loan and the calling of the guarantees, all banking subsidiaries of the Holding Company became insolvent, because of either their loan obligations, their guarantee obligations, or both, combined with their in-

<sup>1</sup>Id.; Seidman Testimony, p. 30.

<sup>2</sup>Apcar, *String of Losses Seen by First Republic Bank*, Wall St. J., Mar. 31, 1988, at 3, col. 1; Hayes, *First Republic Bank Sees a String of Big Losses*, N.Y. Times, Apr. 1, 1988, at D2, Col. 5.

<sup>3</sup>Apcar, *Citicorp May Edge Out NCNB in Bids to Join Bailout of First Republic Bank*, Wall St. J., July 7, 1988, at 2, col. 3; Helyar, *Banking World Gives Mixed Reviews to NCNB's Bid for First Republic Bank*, Wall St. J., July 6, 1988, at 21, col. 2; Apcar, *Wells Fargo Team Begins Sizing Up First Republic Bank*, Wall St. J., July 13, 1988, at 6, col. 1; Hayes, *FDIC Near Decision on Texas Bank Bailout*, N.Y. Times, July 8, 1988, at D2, col. 5.

<sup>4</sup>Hearings on the FDIC-Assisted Acquisition of the Subsidiary Banks of First Republic Bank Corporation, Dallas, Texas, by NCNB Corporation, Charlotte, North Carolina, Before the House Committee on Banking, Finance and Urban Affairs, 100th Cong., 2d Sess. (Aug. 3, 1988) (addendum to testimony of L. William Seidman, Chairman, Federal Deposit Insurance Corporation) (hereinafter "Seidman Supplement"), p. 6.

<sup>5</sup>Seidman Supplement, p. 6.

<sup>6</sup>Seidman Supplement, pp. 5-6.

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ability to meet those obligations instantly. As a result, they were all closed, and the FDIC was appointed as their receiver pursuant to applicable state and Federal law.<sup>11</sup>

Using recently granted congressional authority, and following the NCNB plan, the FDIC immediately caused the Texas Banks to transfer all of their assets and liabilities to NCNB Texas.<sup>12</sup> A bridge bank such as NCNB Texas is chartered as a national bank, but is not subject to certain limitations generally applicable to national banks. A bridge bank can operate without issuing any stock, and is effectively controlled by the FDIC until alternative equity arrangements can be made.<sup>13</sup>

#### D. The NCNB Plan<sup>14</sup>

NCNB Corp. will operate NCNB Texas under a management contract until about the end of October 1988. At that time, the FDIC will contribute between \$840 million and \$960 million to NCNB Texas in exchange for non-voting common stock representing 80 percent of its equity. NCNB Corp. will contribute between \$210 million and \$240 million to NCNB Texas in exchange for 100 percent of its voting common stock representing 20 percent of its equity. While the FDIC has certain consultation and veto rights, NCNB Corp. will manage NCNB Texas substantially as if it were a subsidiary.

Some analysts were speculating that the FDIC might be unable to find a candidate to take over the problem....

NCNB Corp. has an exclusive, nontransferable option, exercisable at any time within five years of the first stock issuance, to purchase some or all of the FDIC's NCNB Texas stock at a formula price.<sup>15</sup> FDIC has the right, once it becomes a 20 percent or less shareholder, to put its remaining minority interest to NCNB Corp. for the same formula price.

The FDIC will forgive the original \$1 billion loan and will provide additional assistance (expected to be approximately \$2 billion) in the form of cash or notes. The amount of additional assistance will be the amount necessary to give NCNB Texas at least six percent primary capital, after taking into account the equity capital described above and writedowns of troubled assets. Troubled assets will not be split off into a separate corporation; instead, they will be transferred to a special

<sup>11</sup>Seidman Supplement, pp. 5-6.

<sup>12</sup>12 U.S.C.A. section 1821(i) was enacted August 10, 1987, pursuant to section 503 of Public Law 100-86, the Competitive Equality in Banking Act of 1987.

<sup>13</sup>12 U.S.C.A. section 1821(i). The statute limits the duration of the bridge bank to two years, subject to a one-year extension if the FDIC determines that the extension is in the best interests of depositors and the public.

<sup>14</sup>The description in this section is derived from LTR 8835057 and the Seidman Supplement.

<sup>15</sup>The formula price is the FDIC's original investment plus a specified percentage of the net increase in NCNB Texas' book value. The percentage is 115 percent in the first three years, 120 percent in the fourth year, and 125 percent in the fifth year. After the lapse of the five-year option, the FDIC may sell its remaining stock to a third party or in a public offering.

ALL ASSETS  
AND LIABILITIES  
TO NCNB TEXAS

NOTHING TILL  
LATER

NOW TO  
FDIC

FDIC LOST  
MORE ON  
THE GIVEAWAY  
PLUS MORE  
ON  
TAX FRAYS

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Internal asset pool. This pool will be accounted for separately from other bank activities, and will be managed by a special management team under the supervision and direction of the FDIC. Because the performance of these assets directly affects the FDIC's exposure for direct assistance, it has a special interest in this part of the new bank's operations.

*A bridge bank can operate without issuing any stock, and is effectively controlled by the FDIC....*

### E. The Economics of the Deal

Only \$960 million of the approximately \$4 billion in capital that the FDIC has agreed to provide to NCNB Texas will be contributed in exchange for an equity interest. The remainder will be in the form of cash grants and debt forgiveness. The principal reason the FDIC agreed to contributions so disproportionate to those of NCNB Corp., which is assuming control of NCNB Texas, was to avert a crisis that would have left the FDIC exposed to liabilities greater than the cost of the assistance.<sup>20</sup> Accordingly, it could be said that the extra \$3 billion is being provided in fulfillment of the FDIC's obligation to assure that depositors and creditors of the Texas Banks get 100 cents on the dollar for their claims against those banks, and more broadly, to avert a spread of problems to other insured institutions. Second, arranging for an experienced private sector manager to take over a troubled bank as an owner creates an incentive structure that can provide a return to the FDIC that is superior to the return that could be achieved if the FDIC kept all of the equity and arranged for contract management.

### III. Tax Analysis

**4. A 'G' in 'Unique Circumstances'**  
The most crucial aspect of the NCNB Corp. ruling was the Service's determination that the transfer to NCNB Texas constituted a G reorganization. A G reorganization is defined as a transfer of assets from one corporation to another in "a Title 11 or similar case"<sup>21</sup> but only if "stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 354, 355, or 356."<sup>22</sup> In finding a G reorganization,<sup>23</sup> the Service focused on the transfer of assets from the Texas Banks to NCNB Texas; it apparently ignored

the second step of the transaction—the issuance of stock by NCNB Texas in exchange for capital contributed by the FDIC and NCNB Corp.

Before delving into the technical analysis, it should be noted that, despite the difficult task NCNB Corp. faced in convincing the Service that the transfer constituted a G reorganization, there seems to be no significant tax policy problem with treating NCNB Texas as the corporate successor to the Texas Banks, even if there is no continuity at the shareholder or securityholder level. If the practicalities of the situation and the receivership process had permitted, all 40 of the Texas Banks could have survived as operating corporations, holding company's stock interest in the Texas Banks could have been extinguished through operation of the receivership process, and the transaction could have gone forward with NCNB Corp. and the FDIC capitalizing each separate historical entity, possibly through a newly formed holding company. In that instance, there would have been no question that corporate characteristics would have survived, because the historic business assets would never have moved. Absorption of those assets into NCNB Texas, a bridge bank, was simply a practical step that was needed in order to maintain the banking operations of the Texas Banks and to provide stability pending a permanent solution. Indeed, that is the explicit purpose of the bridge bank statute.<sup>24</sup>

*The most crucial aspect... was the Service's determination that the transfer to NCNB Texas constituted a G reorganization.*

In a tax system in which corporate-level characteristics survive a taxable stock sale or a change of stock ownership through capital contributions, there is no strong policy reason to wipe out such characteristics simply because the shareholder-level transaction is preceded by a change in the form or identity of the corporate owner of all of the operating assets and liabilities, particularly where that change is implemented for the explicit purpose of continuing an historic business that the old corpora-

ALL OF THE  
OPERATING  
ASSETS AND  
LIABILITIES

<sup>20</sup>Seidman Testimony, p. 32.  
<sup>21</sup>An FDIC receivership is a "Title 11 or similar case." See I.R.C. sections 368(a)(3)(A), (D).  
<sup>22</sup>It should be noted that, if a transaction qualifies as a G reorganization, but also as another type of reorganization, or as a tax-free incorporation or subsidiary liquidation, G reorganization prevails to the exclusion of other characterizations. I.R.C. section 368(a)(3)(C). If the transaction fails to qualify as a G reorganization, however, it apparently could still qualify under one of the alternative characterizations. See S. Rep. No. 98-1035, 96th Cong., 2d Sess. 31 (1980).

<sup>24</sup>Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 790, the Competitive Equality Banking Act of 1987, S. Rep. No. 100-19, 100th Cong., 1st Sess. 22 (1987). For example, the Service might have considered treating the bridge bank as a statutorily created receivership estate similar to an estate in bankruptcy, which does not create a new taxable entity. I.R.C. section 1399; Treas. Reg. section 1.641(b). The Service indicated in Notice 88-7, 1988-4 I.R.B. 20, that it might consider such an approach with respect to a similar form of entity for insolvent thrifts (known as an interim association or "passthrough receivership"). The Notice stated that a transfer to such an entity would not constitute an ownership change for purposes of section 382. This approach is not wholly satisfactory, however, inasmuch as the FDIC is not obligated, under its bridge bank authority, to transfer all of a failed bank's assets to the bridge bank.

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tion was disabled from carrying on.<sup>24</sup> In such circumstances, it seems more appropriate to leave the policing of potentially abusive carryovers to section 382, which would have been the policeman if the new owners had acquired stock of the historic entities.

Given that policy background, and the pressure the Service must feel in emergency bank bailouts,<sup>25</sup> one can understand why the Service might feel justified in straining a bit to find that the creation of NCNB Texas qualified as a G reorganization—and some straining did in fact take place. Instead of discussing the fine points of the distribution rules or the continuity of interest doctrine, the ruling finds a G reorganization based essentially on the following sentence: "Under these unique circumstances and as a result of the [Texas Banks] insolvency, the depositors own in substance the entire equity interest in the Texas Banks, and the deposits they have will continue in [NCNB Texas]."

There seems to be no significant tax policy problem with treating NCNB Texas as the corporate successor....

The "unique circumstances" language properly acknowledges that the depositor-as-owner theory is less than a perfect fit when it comes to the technicalities of a G reorganization.<sup>26</sup> For example, section 368(a)(1)(G) requires a distribution which qualifies under section 354, 355, or 356. In order to satisfy this requirement, stock or securities of NCNB Texas would have to have been distributed to persons who held stock or securities in the Texas Banks. Even assuming a corporation without shareholders could be imputed to have made a distribution, to whom is the imputed distribution made, and were the distributees holders of stock or securities in the Texas

<sup>24</sup>If the transaction had involved only a single entity, or if 40 bridge banks had been created out of 40 Texas Bank subsidiaries, there would have been an excellent case for an F reorganization, had the distribution and continuity problems precluded a G characterization. See I.R.C. section 368(a)(1)(F) (defining the term "reorganization" to include "a mere change in identity, form, or place of organization of one corporation, however effected"). In particular, there is no statutory distribution requirement for F reorganizations, and there is authority indicating that a change of ownership following an F reorganization may not disqualify the reorganization on continuity grounds, if the change in corporate identity, form, or place of organization has independent economic significance, a valid business purpose, and is not a sham. Rev. Rul. 79-250, 1979-2 C.B. 156; see also LTR 8807044 (Nov. 23, 1987).

<sup>25</sup>Investors generally have not been able to work out the tax issues with the Internal Revenue Service until well after the assistance transaction with the FDIC has been negotiated. The uncertainty surrounding the tax consequences of assistance transactions is a real detriment to attracting new capital for troubled banks." Seidman Testimony, p. 22.

<sup>26</sup>The Service has been willing to depart from traditional technical analysis in other cases involving unique circumstances. See Rev. Rul. 80-105, 1980-1 C.B. 78, in which a mutual savings and loan was described as having a structure "unique among business organizations," thus permitting a mutual-to-stock conversion to qualify as an F reorganization even though the mutual company had no stockholders.

Banks? And are there problems of post-acquisition continuity of interest for those imputed recipients?"

It may be possible to get by the technical requirement of a distribution, based on the theory that a distribution or issuance will not be formally required where its practical effect would be no different from standing still.<sup>27</sup> Nevertheless, the purpose of requiring a distribution under sections 354, 355, and 356 would seem to be to ensure that the stockholders and securityholders of the transferor corporation continue the same stock/security relationship with the transferee.<sup>28</sup> The obvious technical problem here is that the former common stockholder of the Texas Banks—Holding Company—will receive nothing in the transaction.

Assume, however, that the Texas Banks' insolvency permits Texas Bank depositors to be considered as holders of equity in the Texas Banks the day before the transaction, and "distributees" of equity in NCNB Texas the day after the transaction. It still will only be a matter of weeks before the FDIC and NCNB Corp. assume control and put in enough capital to make the Texas Bank depositors plain old depositors again. Even if the depositors' few weeks of post-reorganization status as equity owners would be enough for sections 354, 355, and 356, it is questionable whether it is enough to satisfy the judicial continuity of interest doctrine<sup>29</sup> where, as

"There appear to be serious obstacles to a reorganization characterization under the other provisions of section 368(a)(1), simply because of the form of the transaction (i.e., no merger occurs, no voting stock is issued to old shareholders, and the involvement of multiple corporations precludes an F reorganization). In addition, if the absence of a qualifying distribution would preclude G status, it also may preclude D status, for which the statutory distribution requirements are identical. Note, however, that some decisions in the liquidation-reincorporation area have read the technical D requirements broadly. If one could view the creation of NCNB Texas as a transfer of assets between corporations with common ownership, section 368(a)(1)(D) with a liquidation-reincorporation gloss might be an alternative theory for a reorganization. See Bittker and Eustice, *Federal Income Taxation of Corporations and Shareholders*, Para. 14.54 (Fifth Ed., 1987). An alternative analysis would be that the transaction was a section 351 incorporation of NCNB Texas with Texas Bank assets, a transaction that would also preserve high basis and built-in losses. Under this theory, one would have to determine that the transferors of the assets (nominally, the Texas Banks, acting through their receiver, the FDIC) received, in exchange for the assets, stock or securities embodying control of NCNB Texas immediately after the exchange. Because the Texas Bank subsidiaries received nothing from the transaction, this analysis has many of the same difficulties as a reorganization analysis. Note also the potential obstacles presented by section 351(e)(2), which denies section 351 treatment where stock or securities of a debtor corporation in a Title 11 or similar case are used to satisfy indebtedness of the debtor corporation.

<sup>27</sup>See *James Armour, Inc. v. Commissioner*, 43 T.C. 295 (1965); *Lessinger v. Commissioner*, 85 T.C. 824 (1985).

<sup>28</sup>Commentators have heretofore generally suggested that an actual distribution to stock or security holders is a prerequisite for treatment as a G reorganization. See, e.g., Tatlock, 468 T.M. *Bankruptcy and Insolvency: Tax Aspects and Procedure*, at A-38; Asofsky, *Reorganizing Insolvent Corporations*, 41 N.Y.U. Inst. Fed. Tax. Para. 5.02[1][c]. But see note 27 *supra*; Asofsky, *supra* at 8-8.

<sup>29</sup>The continuity of interest requirement applies to G reorganizations. H.R. Rep. No. 833, 96th Cong., 2d Sess. 31 (1980); S. Rep. No. 1036, 96th Cong., 2d Sess. 36 (1980).

PROBLEMS

OBVIOUS TECHNICAL PROBLEMS

QUESTIONABLE

PRESSURE STRAINING

LESS THAN PERFECT FIT

## SPECIAL REPORTS

here, the subsequent infusion of capital and acquisition of control, albeit subject to contingencies, were planned at the time of the transfer from the Texas Banks to NCNB Texas.<sup>1</sup>

Another problem with this analysis is that the Service may have picked the wrong creditor to anoint with equity-owner status. It will be recalled that the FDIC is the guarantor of deposits up to \$100,000 per depositor; that the FDIC assumed responsibility for full payment of all deposits and debts of the Texas Banks, over and above the \$100,000 guarantee; and that the FDIC made a \$1 billion loan to the Texas Banks that was subordinated to all other deposit and debt obligations of the Texas Banks. When the FDIC took the latter two actions, the run on Texas Bank deposits stopped, precisely because depositors stopped worrying that they might be treated as equity owners. Accordingly, even if the depositors were under water on July 29, they were slinging on the shoulders of a more completely submerged FDIC.

In addition, it seems that the FDIC is the party that more aptly compares with the *Alabama Asphaltic* creditors, assuming "effective command of the property" after throwing the Texas Banks into receivership.<sup>2</sup> In this case, the FDIC decisively exercised its considerable power as creditor, regulator, and receiver to call all the shots, without checking with the depositors or with the Holding Company.<sup>3</sup> The Service may not, however, have regarded the \$1 billion March loan as sufficiently long term to qualify as a "security."<sup>4</sup>

**The depositor-as-owner theory is less than a perfect fit when it comes to the technicalities of a G reorganization.**

If the FDIC is treated as the equity owner under an *Alabama Asphaltic* approach, the reorganization analysis is at least somewhat more satisfying. Although a technical distribution of NCNB Texas stock or securities is still lacking, the planned end-of-October stock issuance would not divest the FDIC of its equity position. Furthermore, the fact that the plan contemplates continued FDIC equity ownership for up to five years seems to be clearly

<sup>1</sup>See *McDonald's of Zion, Inc. v. Commissioner*, 888 F.2d 520 (7th Cir. 1982); Rev. Rul. 66-23, 1956-1 C.B. 67. Although value, not control, is the measure of continuity (see *Nelson v. Helvering*, 296 U.S. 374, 377 (1935); Rev. Proc. 77-37, 1977-1 C.B. 558), the depositors would no longer have an "equity" interest, but rather a creditor's interest, once NCNB Texas was returned to solvency. For the proposition that deposits do not represent a sufficient equity interest for continuity of interest purposes outside of a bankruptcy or receivership context, see *Paulsen v. Commissioner*, 469 U.S. 131 (1985).

<sup>2</sup>*Helvering v. Alabama Asphaltic Limestone Co.*, 315 U.S. 179 (1942).

<sup>3</sup>The FDIC has two interests in the receivership estate—as receiver and as creditor. Although its interest as receiver (which is similar to that of a trustee in bankruptcy) would not count as ownership for this purpose, its interest as a major creditor of the receivership estate might count.

<sup>4</sup>There is considerable literature discussing whether short-term creditors qualify as security holders for purposes of the G reorganization provisions. See, e.g., Asofsky, *supra* note 29, at 5-8.

in the ballpark as far as post-reorganization continuity of interest is concerned.<sup>5</sup>

Finally, there is a nagging statutory problem with any creditor-as-owner theory, whether the owner is seen as the depositor or as the FDIC. Section 368(a)(3)(D)(ii) provides a specific remedy to the problem of the lack of continuity of interest and of a qualifying section 354, 355, or 356 distribution,<sup>6</sup> but only for thrift institution reorganizations meeting fairly specific requirements. As banks rather than thrifts, the Texas Banks were not covered by this provision.<sup>7</sup> Moreover, Congress based its 1986 repeal of those provisions in part on the view that they constituted an exception to normal tax rules, adopted to provide financial assistance to troubled thrifts.<sup>8</sup> The approach taken by the NCNB Texas ruling implies that, in the Service's view, the initial 1981 enactment of section 368(a)(3)(D)(ii) may have been unnecessary, and that its 1986 repeal may have been meaningless.

### B. F Reorganization Analysis

The ruling that future actions to convert NCNB Texas from a bridge bank to a regular national bank will be an F reorganization is relatively straightforward, although the possibility of the FDIC's selling off its 80 percent interest shortly before or after the transaction might raise a continuity of interest issue. On this point, it is interesting to note that the ruling includes the recital of a representation that there was no plan or intention to sell shares of the newly chartered successor corporation following the transaction, despite the FDIC's clear plans to sell off its interest, if not to NCNB Corp., then to another buyer.<sup>9</sup> The fact that the reorganization qualifies under section

<sup>5</sup>The Service has stated that "ordinarily, the Service will treat five years of unrestricted... ownership as a sufficient period" to satisfy the continuity of interest requirement. Rev. Rul. 66-23, 1956-1 C.B. 67.

<sup>6</sup>I.R.C. section 368(a)(3)(D)(ii) provides that a transaction will not fail to qualify as a G reorganization "if no stock or securities of the corporation to which the assets are transferred... are received or distributed" provided the following requirements are satisfied: substantially all the liabilities of the transferor become liabilities of the transferee immediately after the transfer, the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation certifies that the grounds set forth in 12 U.S.C. sections 1464(d)(5)(A)(i), (ii), or (iii), exist or will exist in the near future in the absence of Board action and the requirements of I.R.C. sections 354(b)(1)(A) and (B) are met. The legislative history of the provision states that if its requirements are satisfied, a transfer will be treated as a G reorganization without regard to the continuity of interest doctrine. See H. Rep. No. 217, 97th Cong., 1st Sess. 283 (1981) (Conference Report).

<sup>7</sup>Section 368(a)(3)(D)(ii) applies only to financial institutions described in I.R.C. section 593, a category which does not include banks. Banks are defined in section 581. The Senate Finance Committee amendment to the Technical Corrections Act of 1988 would extend this provision to failed banks. Baucus and Packwood, Amendment No. 3044, section 794, proposed to be made to S. 2238, 104 Cong. Rec. S12731, 12751 (Sept. 16, 1988).

<sup>8</sup>See Staff of the Joint Committee on Taxation, *General Explanation of the Tax Reform Act of 1986*, 571 (1987).

<sup>9</sup>Seidman Supplement, p. 3. As noted *supra* at note 24, post-transaction continuity of interest may not be a strict requirement for F reorganizations in all cases.

WRONG CREDITOR

NAGGING STATUTORY PROBLEM

DESPITE

IS STILL LACKING

SPECIAL REPORTS

368(a)(1)(F) means that the transaction will not terminate the taxable year of NCNB Texas.<sup>40</sup> This could be valuable in the event of losses from bad debt deductions, which may be carried forward only five years.<sup>41</sup>

C. Section 382 Analysis

Although the Service extended to bank depositors the theory of the statutory provisions treating thrift depositors as equityholders for purposes of satisfying the continuity of interest requirements for a G reorganization, it did not elect to similarly extend the parallel rules treating thrift depositors as equityholders for purposes of avoiding an ownership change under section 382.<sup>42</sup> For this purpose, the Service looked to the planned issuance of stock to the FDIC and NCNB Corp. and consequently found the occurrence of an ownership change (and limitation of the loss carryforwards as of the date of the ownership change) relatively easy to determine. The timing of the ownership change is a more complex question, however, and turns on the application of the option rules under section 382.

In the ruling, the Service apparently applied the option rules to find that an ownership change<sup>43</sup> occurred on or before June 10,<sup>44</sup> when "[the FDIC] and [NCNB Corp.] signed letters giving [the FDIC], upon the happening of certain contingencies, the right to go forward with the transaction with [NCNB Corp.]; while [the FDIC] had not selected [NCNB Corp.], [NCNB Corp.] agreed to go forward with the transaction if selected by [the FDIC], provided certain conditions were satisfied." Thus, under the letters, if the FDIC chose NCNB Corp. as the winning bidder, certain unnamed conditions and contingencies still might permit either party to back out; on the other hand, if those conditions and contingencies were met, each party had the right to force the other to perform its obligations under the plan. The Service apparently disregarded these contingencies and determined that the FDIC and NCNB Corp. had obtained options to increase their ownership of the Texas Banks by more than 50 percentage points.

Under the regulations, there is a separate testing with respect to each class of options and with respect to each optionholder; in addition, there is separate testing for each combination of optionholders. In this case, there appear to be three separate options: the right (or obligation) of the FDIC to acquire newly issued NCNB Texas nonvoting common stock representing 80 percent of the equity; the right (or obligation) of NCNB Corp. to acquire newly issued NCNB Texas voting common stock representing 20 percent of the equity; and the right of NCNB Corp. to purchase the FDIC's stock.<sup>45</sup>

All of these options would be deemed exercised on the date the letters creating the options were signed, because each of them, either alone or in combination with the other party's option, created an ownership change.<sup>46</sup> Accordingly, it should be the case that, if and when any of the options is actually exercised, such exercise would be disregarded for purposes of creating yet another ownership change (and yet another loss limitation).<sup>47</sup> This means that NCNB Texas will not be deemed to

APPARENTLY DISREGARDED

TO SIMILARLY EXTEND

MORE COMPLEX

Approach... implies that... the initial 1981 enactment of section 368(a)(3)(D)(ii) may have been unnecessary, and that its 1986 repeal may have been meaningless.

Under section 382(i)(3)(A)(iv), an option to acquire stock is generally treated as exercised if the exercise of the option would result in an ownership change.<sup>48</sup> The term "option" is broadly defined in the temporary regulations. For example, under the regulations, a contract to acquire or sell stock is treated as an option.<sup>49</sup> In addition, the extent to which an option is contingent is generally disregarded.<sup>50</sup>

<sup>40</sup>I.R.C. section 381(b).

<sup>41</sup>I.R.C. section 172(b)(1)(L).

<sup>42</sup>I.R.C. sections 382(i)(5)(A) and (F) provide that, in the case of a reorganization of a troubled thrift, net operating loss carryforwards will not be limited if, immediately after the reorganization, deposits in the troubled thrift represent at least 20 percent of the deposits and shareholders' equity of the acquiring entity. The Senate Finance Committee amendment to the Technical Corrections Act of 1988 would extend this provision to failed banks. Baucus and Packwood, Amendment No. 3044, section 794, proposed to be made to S. 2238, 134 Cong. Rec. S12731, 12751 (Sept. 16, 1988).

<sup>43</sup>See also section 108(d)(6) of H.R. 4333 (100th Cong., 2d Sess.), which provides a technical correction to this section to remove any reference to section 318. Under regulations, the determination of whether an option is deemed exercised is made as of each "testing date," a term that is defined to include any date on which options are transferred by, or to, a five percent shareholder of the loss corporation (or a person who would be a five percent shareholder if the option were treated as exercised). Treas. Reg. sections 1.382-2T(h)(4), (a)(2)(i).

<sup>44</sup>Treas. Reg. section 1.382-2T(h)(4)(v).

<sup>45</sup>Treas. Reg. section 1.382-2T(h)(4)(iv).

<sup>46</sup>Treas. Reg. section 1.382-2T(h)(4)(iii).

<sup>47</sup>The ownership change is apparently with respect to the Texas Banks rather than NCNB Texas, although this is unspecified in the ruling.

<sup>48</sup>June 10 is the date on which the ruling was issued to NCNB Corp. The ruling states that the unspecified "Date 5" had already occurred.

<sup>49</sup>Treas. Reg. section 1.382-2T(h)(4)(i), (ii).

<sup>50</sup>The Service's determination that an option existed on the date NCNB Corp. agreed to go forward with the transaction (subject to FDIC approval) raises interesting issues in the bankruptcy context. Query whether a similar case could be made that a plan of reorganization filed in a Title 11 case is an option (disregarding all contingencies), with the result that net operating losses are limited as of that date. We understand that the Service may have this issue under consideration in connection with a ruling request. In a related context, the Service recently issued a ruling (as yet unpublished) treating the filing of a plan of reorganization as a "letter of intent" for purposes of the transition rules under section 384.

<sup>51</sup>Treas. Reg. section 1.382-2T(h)(4)(vi). If an option is allowed to lapse, the option is treated as though it had never been issued, and the loss corporation may file an amended return claiming use of any losses it was precluded from using by the section 382 limitation. Treas. Reg. section 1.382-2T(h)(4)(viii).

SPECIAL REPORTS

undergo a subsequent ownership change if NCNB Corp. exercises its options to acquire the stock owned by the FDIC.

The NCNB Corp. ruling also states that the special exception in section 382(l)(5) will not apply to preclude a limitation on loss carryforwards. Under this provision, no section 382 limitation applies to an ownership change occurring in a Title 11 or similar case if the shareholders and creditors of the old loss corporation (immediately before the ownership change) own (immediately after the ownership change) 50 percent or more of the stock of the new loss corporation. Here, as explained above, the option rules were applied to treat NCNB Corp. as a 100 percent stockholder of the Texas Banks as of the date the option was created. However, because NCNB Corp. was not a shareholder or creditor of the Texas Banks before that date, section 382(l)(5) should not apply.

After an ownership change, a loss corporation's ability to offset income with loss carryforwards is limited to an amount determined by multiplying the value of the loss corporation immediately before the ownership change by a prescribed rate of return. Under the facts of this case, the value of the Texas Banks appears to be zero at the time of the ownership change. It would be difficult to justify a positive value in light of the massive FDIC assistance being given to eliminate negative equity, and in light of the fact that the Holding Company is receiving nothing for its prior ownership of the Texas Banks. Accordingly, the section 382 limitation also appears to be zero.<sup>11</sup>

*There may be a question as to the potential application of section 7507 to FDIC assistance payments to failed banks.*

D. Taxability of FDIC Assistance

The final challenge that the ruling presents is whether the FDIC assistance (other than the up to \$960 million contributed in exchange for the FDIC's equity interest) is taxable or is tax free as a contribution to capital, and when any such taxability would arise in the case of amounts ostensibly loaned. The Service gave two rulings on this issue. The first provided that the \$1 billion March loan was taxable to the Texas Banks at the time it was made on the grounds that "the note executed by [the Texas Banks] in exchange for the funds will be disregarded because at the time [the FDIC] took the note, [the FDIC] had no realistic expectation of repayment." The second provided, without analysis or explanation, that NCNB Texas "will recognize income in the amount of funds [the FDIC] provides to [NCNB Texas] to replace [NCNB Texas'] negative shareholders' equity, whether given in cash or notes, at the time the cash or notes are received."

These rulings are of interest for two reasons. The first is the Service's apparent rejection of the theory that FDIC assistance payments are excludable from income under section 118 as nonshareholder contributions to capital.

The Service had previously issued a private ruling treating FDIC assistance payments to a state chartered mutual savings bank as excludable under section 118.<sup>12</sup> Also rejected, apparently, was any notion that assistance payments should be excluded under section 1032 as shareholder capital contributions either after the transfer of the Texas Banks' assets to NCNB Texas (when the FDIC effectively assumed ownership and control) or after the issuance of stock by NCNB Texas (when the FDIC will become an actual shareholder).<sup>13</sup> The Service's conclusion may be based on the rationale that the FDIC's assistance payments are made in its capacity as insurer and not because it stands to benefit (either as a shareholder or third party) as a consequence of making the payments.<sup>14</sup>

*The Service is beginning to take positions on some of the difficult issues presented by reorganizations of troubled banks.*

The second point of interest relating to FDIC financial assistance is that the Service treated the \$1 billion March loan as income at the time it was made even though it was characterized as a loan and was secured by stock and guarantees.<sup>15</sup> This may not be entirely off the mark. While the expectations of the FDIC in March may not be completely clear from the documentation, one might easily conclude from the events of July 29 that the purpose of the elaborate system of guarantees and pledges was not so much to secure the loan as to set up an arrangement under which the Texas Banks would fall into the total control of the FDIC whenever the FDIC chose to press the button.<sup>16</sup>

<sup>11</sup>LTR 8243025 (July 22, 1982). Although Congress in 1981 enacted I.R.C. section 597, which specifically excludes Federal Savings and Loan Insurance Corporation assistance from income, legislative history indicates the section was intended as a clarification of existing law and may have been directed as much at avoiding basis reduction under section 362(c) as at clarifying the exclusion from income. See generally Spragens, "Saving the Savings and Loan Industry: Tax Consequences of Financial Assistance Payments to Troubled Thrifts," 15 J. Corp. Tax. 217 (1988). Section 597 is scheduled to expire December 31, 1988. The Senate Finance Committee amendment to the Technical Corrections Act of 1988 would extend the provision until June 30, 1989 and broaden its scope to include FDIC assistance payments. Baucus and Packwood, Amendment No. 3044, section 794, proposed to be made to S. 2238, 134 Cong. Rec. S12731, 12751 (Sept. 18, 1988).

<sup>12</sup>The Service did rule, however, that the amount contributed by the FDIC in exchange for its stock interest would be excludable under section 1032.

<sup>13</sup>See LTR 8612002 (December 4, 1985).

<sup>14</sup>The consequence of treating the loan as income at the time it was made is to enable it to be used to offset losses before they are limited by the ownership change under section 382. On the other hand, FDIC assistance following the ownership change would be treated as taxable income unless post-ownership change losses or built-in losses (if they survive) are available to shelter the income.

<sup>15</sup>See *Cozzi v. Commissioner*, 88 T.C. 435, 445 (1987) ("The moment it becomes clear that a debt will never have to be paid, such debt must be viewed as having been discharged").

ALSO, REJECTED

PURPOSE

PRESS THE BUTTON

SHOULD NOT APPLY

WOULD BE DIFFICULT TO JUSTIFY

WITHOUT ANALYSIS OR EXPLANATION

<sup>11</sup>Sections 382(a), (b)(1).

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## Politics and Banking: One View of Clinton

According to an *Associated Press/Wide World* story by Robert M. Garsson printed in *Banking Week*, Arkansas Governor Bill Clinton has promised to create, if elected president, a nationwide network of community development banks, which might both compete with and complement established commercial banks.

Clinton has said little about the banking industry's bread-and-butter issues: deposit insurance premiums, capital standards, and the increasing burdens of regulation, but his fascination with community development banks offers clues about his views on banking. No issue is more important to the Arkansas Governor than creating jobs, and he wants the banking industry to play a key role in such efforts, according to the story.

Unlike the Bush administration, which adopted a deregulatory stance that appealed to large banks, big securities firms, and diversified financial services companies, Gov. Clinton wants to foster local action through a network of community-based institutions. "He believes in small community banks," said Arkansas Banking Commissioner William J. Ford. "Small business is essential in job creation, and he knows that small businesses are created by small banks."

Ford and others who know the governor say he is likely to prove a determined advocate of community banking and of rules to force banks to plow money back into the communities from which they take deposits.

William H. Brandon, Jr. who was chairman of the Arkansas Economic Development Commission under Gov. Clinton and who is in line to become president of the American Bankers Association next year said, "The politician went out of his way to establish ties to the industry. Through the years he always recognized that banks have a central role in the economy."

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**FEDERAL FINANCIAL INSTITUTION EXAMINATION COUNCIL**

**San Francisco, California**

**June 19, 1992**

**Presentation by Royce A. Scott**

My name is Royce Scott. I am from Abilene, Texas. In order to be at this hearing, I have paid for my own airline ticket, hotel, and meals. Probably, all of the other participants have had their expenses paid by a bank, trade association, consumer association, or a government agency. Additionally, I am probably the only person who is participating that will not draw a salary for today. Therefore, I must feel that this meeting is important. For the first time in my life, I am fearful that we are in danger of losing our society and our nation. In order for a government to survive, it is necessary that the governed have confidence in their government. Today, the confidence in our government is at the very lowest ebb.

None of the three branches of our national government have the confidence of the citizens. In various polls, senators and representatives are rated at the bottom of the list. **The public is constantly bombarded with scandals of banking, sex, and other misconduct of some of the members of congress.** Also at the bottom of the ratings is the legal profession. **Citizens do not view the judicial system as a remedy of wrongs.** Recently, after a jury in Abilene awarded a judgment against a corporation allied with a government agency, the judge reversed the decision. I have no response to the question of people who ask "why have a jury?". **The confidence in the administrative branch of government is so low that a an unofficial candidate, who the public knows nothing about or about his views, is leading the polls over the nominees of both political parties.** Even, our citizens who are employees of government agencies are discouraged. People, especially independent business persons, are trapped between conflicting laws, rules, and government agencies. Both congress and the White House have been powerless to control the ever growing deficit. In our state, the big excitement for a community is the prospect of being selected for a new prison. Convicts receive early release because of over crowded prisons. In addition to violent crimes, white collar crime has spread through out our society. There is an easy way to be elected to office. One could simply go to the courthouse and have his, or her, name changed to **NONE OF THE ABOVE.** With the new name on the ballot, the party could win an election by a landslide without campaigning.

The general public does not understand the difference in the function and the purpose of the different government agencies. For example, I doubt if very many of our citizens would have any idea of the difference between the Federal Reserve System and the Federal Deposit Insurance Corporation. To the average citizen, government is government, and banking is banking. Last week, there was a cartoon in the paper which showed a couple standing in front of a large building which had a sign of "THE ONLY BANK". The caption read: "I knew that sooner or later that would happen!".

In Newsweek, there was a picture of about fifteen looters emerging from a store in the Los Angeles riots. Not a single person had a look of anger. In fact, all of the looters were smiles and happiness. Since only about three of the looters were black, it is doubtful that the looting had anything to do with the court verdict. Ironically, one of the looters appeared to be an anglo in a white shirt and tie. What has happened in Los Angeles is a picture of the nation. From the looters of the streets of Los Angeles to Wall Street and the streets of Washington, citizens seem to be unconcerned about what is right or wrong. If we do not begin to solve the problems of our nation, the future of our nation lies in the chaos of the Los Angeles riots. If we do not solve the lack of confidence in congress, judicial system, and the administrative branch of government, our future is anarchy. If we cannot stop the stress being exerted on our citizens by the various departments of government and its agencies, our future is anarchy.

First, I feel that we need to define what is a bank. A bank is four groups of people. One group is the stockholders, who have received an authority to do business, a bank charter. A second group is people which we call employees. The third group is called deposit customers. The fourth group is called loan customers. A bank is people who should be working together. As a certified public accountant, I would like to point out that the interest on the deposits is expense to the bank. And, the interest on the loans is revenue to the banks. The interest paid by the loan customers is what covers the building costs, payroll costs, and other costs. The term Certificate of Deposit conjures up a completely inaccurate image. A Certificate of Deposit is not a piece of gold, but rather a CD is simply a loan to a bank. I cannot understand the logic of why our government has assumed all the risks to any party or parties who has ten CD's of \$ 100,000 each in ten banks and/or savings and loans. I wish that someone could explain the logic of why depositors of large amount of funds should be at no risk.

Next, we need to define what is the FDIC. By its own name, we can ascertain its purpose. The second word of its name is

#### D E P O S I T.

The FDIC is financially supported by the banks as it is the protection which provides funds. The big question is who controls or who does not control the FDIC. In the last five years, we, citizens in Texas, have learned more about the FDIC. I can assure you that when the FDIC goes into a community that there is no consideration for the affect on the people who live and work in the community. I can assure that when the FDIC goes into a bank, there is no consideration for the affect on the employees. It does not matter to the FDIC as to whether or not any or all employees will become unemployed. When it comes to the loan customers, the matter is worse. With the loan customers, the FDIC's policy has been slash and burn. Throughout the state, FDIC has become a four letter cuss word.

I am a member of an endangered species because I am an independent businessman. About everyone knows that independent businesses employ people, develop products, develop innovations, pay a major share of our taxes, support charities, and are a major part of the communities. Because of the cost, time requirements, and emotional affect, independent businesses cannot successfully raise funds by securities. The prime source of funds for independent businesses has been the community banks. The consolidation of banks into a few large banks will further restrict and destroy the segment of our society which operates independent businesses. The government policy has been to close smaller banks, but large banks are "Too Big to Fail". Loans to independent businesses are being severely restricted by loan policies of examiners. For example, examiners classifying a loan on a pickup because of the fact that the customer, who had an excellent credit history and had not been late on a payment, worked in the oilfield.

Attached is a list of the banks in Abilene as of January 1, 1985. The list shows the amount of deposits and what has happened to the bank. You can easily see that about one-third of our banking system in Abilene has been given to NCNB by the FDIC. NCNB has been in Abilene for almost four years. However, I do not know of a single independent business which received a single penny of a loan from NCNB. A personal example: I had a preferential right under a contract which resulted in being able to acquire an additional interest in an oil property at a price below fair market value. The interest in the oil property had a cash flow which paid the full acquisition cost and interest in two years. There was no hope of a loan in Abilene, At a Midland bank, my loan was rejected because I was not settled with NCNB on my First Republic debt. I will address the misconduct of NCNB on the matter in a few minutes. Currently, because of NCNB, I am not receiving a cash flow of about a \$ 15,000 per month. There is an asset which I do not own valued at over a half a million. Recently, I decided to secure credit cards through a local banks. In a few days, my applications for new bank credit cards were approved for a considerable limits on each card. Recently, NCNB has begun to purchase residential loans in the Abilene area. It was not long ago that the interest rate on my home was less than the interest rate which the savings and loan was paying on deposits. The savings and loan had a negative interest factor before overhead. Are problems being set up for the future by allowing banks to invest in long term low interest rate loans on real estate?

Are you familiar with the D'uench Dhome and the Federal Holding Laws? Five years ago, most lawyers, bankers, and persons doing business with banks were not familiar with the case. Section 1823 (e) is an impossible law. Under section 1823 (e), unless four requirements of an agreement are met, the FDIC is not bound by the agreement of the failed bank. The first requirement is in writing. The second requirement contemporaneously is a vague and unknown matter. The third requirement of the agreement having been recorded in the minutes of the loan committee or board is impossible. This sub-section makes customers and creditors of a bank responsible for maintaining and keeping the minutes of which they have no access or control. The fourth requirement is that the agreement is maintained continuously in the files of the bank. Again, it is impossible for the other parties. Customers, creditors, and other third parties do not having access or control over the files of the bank.

I propose a solution to the chaos. I suggest a registry which would be similar to the filings of UCC. A form would contain the bank name, the bank number, the name of the party, the party's number at the bank, the federal identification number of the party, the date of the agreement, and the type of the agreement. The register would give the filing a number and date the receipt of the form. Thereby, bank examiners would be able to secure a printout of all agreements since the last examination. The bank examiners would have the ability to secure information of agreements of customers with other banks. The customers and other parties would be able to be assured that the FDIC and other parties would be obligated to such agreements.

After a number of years of abuse, we, the former customers of failed banks, have hope. A recent court decision by the fifth circuit should reduce the abuse by FDIC and its alter-ego, NCNB. After, reading the Westlaw printout on the case, it is my understanding that a Republic Bank in the Houston area accelerated a loan. Then, the bank dumped the inventory which was collateral for below the fair market value. The customer had sued the bank. Then, the FDIC and its alter-ego, NCNB, came thundering in to town riding on their elephants. There is nothing morally right about FDIC and its alter-ego, NCNB, demanding payment of the notes without giving credit for the value of the inventory. There is nothing ethically right about FDIC and its alter-ego, NCNB, demanding payment without consideration for damages which had been done by the failed bank. There is nothing morally or ethically right about FDIC and its alter-ego, NCNB, refusing to accept rights which customers have under state and federal law. Recently, I was chatting with a judge as we walked out of a courthouse. He commented that the problem with FDIC/NCNB was that they try to make their rules as they go.

Various papers which have been filed in the matter of the closing of the First Republic banks present a picture of chaos and deceit. In an article in Fortune magazine, the chief officer of NCNB stated that NCNB had paid ZERO for the First Republic Banks. Apparently, only two of the First Republic Banks were insolvent except for the call of the guarantee of the Dallas bank loans from the agency. The guarantees which were forced on the subsidiary banks violated both federal and state laws. One of the solvent banks which was closed was the First Republic Bank Abilene, n. a. (pka Interfirst Bank Abilene, n.a.) The assets of the bank in Abilene were transferred to JRB Bank. The name of JRB Bank was changed to NCNB Texas National Bank. Apparently, FDIC never received any payment for the hard assets such as desks, computers, file cabinets, etc. The goodwill and trust departments were given to NCNB without receiving compensation for the value. Then, the FDIC gave a sweetheart contract to NCNB regarding the outstanding loans. If the bank in Abilene had not been closed, a major part of the loan portfolio would have been collected through standard banking operations. Good customers with good loans became problems because of the actions of FDIC and its alter-ego, NCNB. The contract provided that NCNB could charge its so called expenses to FDIC. Then, NCNB was allowed to keep a part of the collections. What was probably the largest oil and gas loan portfolio was given to a bank who had NO guidelines or experience in determining the value of oil and gas collateral. The experience level of loan officers assigned to accounts was far below an acceptable level. As a result throughout our state, businesses have been destroyed, employees have lost their jobs, and values of real estate have been sharply reduced. Now, the decline in real estate values has spread to other states. As a result, the decline of real estate values has endangered banks, insurance companies and other entities throughout our nation.

The looting in the Los Angeles riots was dramatic and televised on a national basis. However, the looting of the taxpayers in the closing of banks and savings and loan and giveaways has not be dramatic nor televised on a national basis. The loss of lives in the Los Angeles riots was dramatic because of deaths and injuries from gunshots, fires, and other highly visible means. To the contrary the loss of lives and the injuries in the looting and riots of the banking system in Texas has not been dramatic as heart attacks, nervous breakdowns, and other causes are not so visible.

The giveaway of the largest banking system in the state included an additional giveaway of an estimated billion dollars of tax refund to NCNB. According to the revenue ruling which is attached, the FDIC and NCNB completely misrepresented the transaction to the Internal Revenue Service. As someone who has worked with IRS, I know that this does not represent the work of the IRS. The information presented to the IRS was that the matter was a reorganization of the First Republic Bank. On that basis, the IRS issued its ruling. In the ruling, the IRS makes nine statements relating to the successors assuming the liabilities of

the subsidiary banks of First Republic. In numerous ways including numerous court actions, NCNB has refused to accept any of the liabilities other than deposits. NCNB has claimed that D'uench Dhome and Federal Holding laws insulate them from even defensive claims. For a revenue ruling to have a value, the transaction must agree with the ruling. Attached is a copy of the Purchase and Assumption Agreement of the Abilene bank. It is obvious that the same agreement was used on the various First Republic banks. It does not take any legal or tax training or experience to easily determine that the revenue ruling and the Purchase and Assumption Agreements do not agree. NCNB has fought to try to keep this information out of the hands and eyes of the citizens who are paying the taxes for this giveaway. The answer as to why the FDIC gave the banks to NCNB rather than sell to banks such as Wells Fargo may be in the July 30, 1988 issue of the Dallas Morning News. The headlines were "PEROT AIDS NCNB BID TO ACQUIRE FIRST REPUBLIC".

What has FDIC gained by closing the solvent bank in Abilene? Probably, the closing has resulted in losses due to loans which would have been collectible. Losses due to additional expenses paid to NCNB. The building which First Republic occupied was owned by a partnership of which the bank was a partner. The partnership had secured a loan on the building from a savings and loan in Dallas. After NCNB moved out to the location of the second bank which they acquired, the building was re-possessed. As a result of the closing of the savings and loan, FDIC owns the mostly vacant building. There are other interesting factors. The stock of NCNB doubled upon being given the First Republic banks. The banks in Texas were about twice the size of the bank in the Carolinas. Since the First Republic acquisitions, NCNB has been given numerous banks and savings and loans plus numerous contracts for the outstanding loans.

After NCNB assumed the control of my loans, I have had four different officers assigned to the account. The first officer and I had a settlement. When my wife and I drove for two and half hours to an appointment with the second officer, he refused to discuss the matter. The third officer found a number of run checks which had been lost by NCNB. The third officer began to furnish information which I need for my records and tax returns. The fourth officer was impossible. Now, the supervisor has left the bank; therefore, we must again "re-invent the wheel". NCNB/FDIC filed a lawsuit probably because the notes were within three days of the statute of limitations. NCNB has tried to repossess property of which NCNB had issued a release of the deed of trust and received the proceeds. NCNB has taken me through two court hearings regarding production of documents which I believe were shredded by NCNB. I have a letter from the legal department of the FDIC that a "volume" of my files have been lost. It is interesting that employees who have left NCNB have gone into the business of buying notes from NCNB.

In summary, I would like to see five changes. First, I would like to see 1823 (e) replaced with a registry system. Second, I would like to see funds made available for independent businesses. Third, I would like to see the IRS recover the billion dollars of taxes from NCNB. Fourth, I would like to see a congressional investigation of the FDIC/NCNB relationship and actions. Fifth, I would like to see terms of the FDIC Act implemented. The act requires a maximizing of present value of assets and a minimizing of losses. The minimizing of losses should include any losses of communities, businesses, employees of banks, and loan customers.



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Company **DUNDEE PETROLEUM INC** Department/Floor No. **2** Company **MR. JAMES BAKER** Department/Floor No. ( )

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## TERMS AND CONDITIONS

### DEFINITIONS

On this Airbill, we, our and us refer to Federal Express Corporation, its employees and agents. You and your refer to the sender, its employees and agents.

### AGREEMENT TO TERMS

By giving us your package to deliver, you agree to all the terms on this Airbill and in our current Service Guide, which is available on request. If there is a conflict between the current Service Guide and this Airbill, the Service Guide will control. No one is authorized to alter or modify the terms of our Agreement.

### RESPONSIBILITY FOR PACKAGING AND COMPLETING AIRBILL

You are responsible for adequately packaging your goods and for properly filling out the Airbill. Omission of the number of packages and weight per package from this Airbill will result in a billing based on our best estimate of the number of packages received from you and an estimated "default" weight per package, as determined and periodically adjusted by us.

### AIR TRANSPORTATION TAX INCLUDED

Our basic rate includes a Federal Tax required by Internal Revenue Code Section 224 on the air transportation portion of this service.

### LIMITATIONS ON OUR LIABILITY AND LIABILITIES NOT ASSUMED

Our liability for loss or damage to your package is limited to your actual damages or \$100, whichever is less, unless you pay for and declare a higher authorized value. We do not provide cargo liability insurance, but you may pay an additional charge for each additional \$100 of declared value. If you declare a higher value and pay the additional charge, our liability will be the lesser of your declared value or the actual value of your package.

In any event we will not be liable for any damages, whether direct, incidental, special or consequential in excess of the declared value of a shipment, whether or not Federal Express had knowledge that such damages might be incurred including, but not limited to, loss of income or profits.

We won't be liable for your acts or omissions, including but not limited to improper or insufficient packing, securing, marking or addressing, or for the acts or omissions of the recipient or anyone else with an interest in the package. Also, we won't be liable, if you or the recipient violates any of the terms of our agreement. We won't be liable for loss of or damage to shipments of prohibited items.

We won't be liable for loss, damage or delay caused by events we cannot control, including but not limited to acts of God, perils of the air, weather conditions, acts of public enemies, war, strikes, civil commotions, or acts or omissions of public authorities (including customs and quarantine officials) with actual or apparent authority.

### DECLARED VALUE LIMITS

The highest declared value we allow for FedEx Letter and FedEx Pak shipments is \$500. For other shipments, the highest declared value we allow is \$25,000 unless your package contains items of "extraordinary value," in which case the highest declared value we allow is \$500. Items of "extraordinary value" include artwork,

jewelry, furs, precious metals, negotiable instruments, and other items listed in our current Service Guide.

If you send more than one package on this Airbill, you may fill in the total declared value for all packages, not to exceed the \$100, \$500 or \$25,000 per package limit described above. (Example: 5 packages can have a total declared value of up to \$125,000.)

If more than one package is shipped on this airbill, our liability for loss or damage will be limited to the actual value of the package(s) lost or damaged (not to exceed the lesser of the total declared value or the per package limits described above). You have the responsibility of proving the actual loss or damage.

### FILING A CLAIM

ALL CLAIMS MUST BE MADE BY YOU IN WRITING. You must notify us of your claim within strict time limits. See current Service Guide.

We'll consider your claim filed if you call and notify our Customer Service Department at 800-238-5355 and notify us in writing as soon as possible.

Within 90 days after you notify us of your claim, you must send us all relevant information about it. We are not obligated to act on any claim until you have paid all transportation charges, and you may not deduct the amount of your claim from those charges.

If the recipient accepts your package without noting any damage on the delivery record, we will assume that the package was delivered in good condition. In order for us to process your claim, you must, to the extent possible, make the original shipping cartons and packing available for inspection.

### RIGHT TO INSPECT

We may, at our option, open and inspect your packages prior to or after you give them to us to deliver.

### NO C.O.D. SERVICES

NO C.O.D. SERVICES ON THIS AIRBILL. If C.O.D. Service is required, please use a Federal Express C.O.D. airbill for this purpose.

### RESPONSIBILITY FOR PAYMENT

Even if you give us different payment instructions, you will always be primarily responsible for all delivery costs, as well as any cost we may incur in either returning your package to you or warehousing it pending disposition.

### RIGHT OF REJECTION

We reserve the right to reject a shipment at any time, when such shipment would be likely to cause damage or delay to other shipments, equipment or personnel, or if the transportation of which is prohibited by law or is in violation of any rules contained in this Airbill or our current Service Guide.

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In the event of untimely delivery, Federal Express will at your request and with some limitations, refund or credit all transportation charges. See current Service Guide for further information.



NRN

NATIONAL CONFERENCE OF STATE LEGISLATURES

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**PAUL BUD BURKE**  
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LEGISLATIVE RESEARCH COUNCIL  
SOUTH DAKOTA  
STAFF CHAIR, NCSL

**WILLIAM POUND**  
EXECUTIVE DIRECTOR

September 14, 1992

The Honorable Jim Baker  
Chief of Staff  
The White House  
Washington, D.C. 20500

Dear Mr. Baker:

Thank you for your recent interest in mandates. Enclosed please find a complimentary copy of the National Conference of State Legislatures' (NCSL) most recent *Mandate Monitor*.

We have taken the liberty of putting you on our mailing list to receive complimentary copies of the Mandate Monitor which is published 10 to 12 times a year.

If you have any questions, please feel free to contact me at (202) 624-8695.

Sincerely,

*Christine Wnuk*

Christine Wnuk  
Fiscal Policy Associate

CW/mbb  
Enclosure



NATIONAL CONFERENCE OF STATE LEGISLATURES

**CHRISTINE WNUK**  
FISCAL POLICY ASSOCIATE

444 NORTH CAPITOL STREET, NW SUITE 515 WASHINGTON, DC 20001  
202-624-5400 FAX: 202-737-1069

# Mandate Watch List

## *Revenue Act of 1992*

*HR 11, sponsored by Representative Rostenkowski (D-Illinois)  
Passed in House July 2.*

On July 2, the House of Representatives adopted the Revenue Act of 1992 (HR 11). This measure provides \$5 billion in urban aid and contains \$12 billion in tax and programmatic modifications. One provision would potentially create costly litigation against states. This amendment to Title XI of the Social Security Act would grant a Social Security Act beneficiary a right to sue a state in federal court under Section 1983 to enforce state plan requirements. States could be sued regardless of the lack of federal regulatory guidance and funding. This amendment would reverse the Suter V. Artist M. Supreme Court decision of March 25, 1992, which ruled in favor of the states.

This amendment pertains to all programs authorized by the Social Security Act for which state plans are required. Examples of such programs include the foster care, child welfare, AFDC, Medicaid, child care and development block grant, social services block grant and child support enforcement.

## *Fiscal Accountability and Impact Reform Act (FAIR)*

*HR 5545, sponsored by Representative James Moran (D-Virginia)  
Introduced July 2, 1992.*

## *Mandate and Community Assistance Reform Act*

*HR 5591, sponsored by Representative Frank Horton (R-New York)  
Introduced July 9, 1992.*

These bills add to the legion of mandate relief legislation that has been introduced in the 102nd Congress. Currently, there are 20 such bills on the Mandate Monitor. Fourteen of these bills contain general relief provisions, such as tightening the requirements for cost estimates as required by the Congressional Budget Act of 1974, calling for a point of order when an unfunded mandate is debated on the floor, and providing for funding of all mandates to states or not holding states responsible for the implementation of the unfunded mandate. Two bills pertain to pre-emption clarification. Four bills address specific issues, such as the repeal of penalties with respect to grants to states for safety belt and motorcycle helmet traffic safety programs as directed in recent public law.

Title I of Representative Moran's bill responds to the Congressional need for information on the effect of legislative initiatives on public and private resources. Title I focuses on the compliance and implementation burdens imposed on state and local governments by federal programs, and the impact of federal programs on productivity, economic growth, creation of jobs and international competitiveness. Title II of the bill

*The Hall of the States Mandate Monitor is a database that records the changing status of legislation containing federal mandates on state and local government. The Mandate Watch List alerts readers to particularly threatening legislation under active consideration.*

*The Monitor and the Watch List are maintained by NCSI and are issued 10 to 12 times a year depending upon federal action. Inquiries should be directed to:*

*Christine Wnuk  
National Conference of State Legislatures  
444 North Capitol St., NW  
Suite 500  
Washington, D.C. 20001  
(202) 624-8695*

*Subscriptions to the Monitor and Watch List can be purchased for \$35 a year by calling the Marketing Department at 303/830-2200.  
ISSN #1057-7025*

*Watch List continues on reverse side...*

*Watch List Continues...*

requires federal agencies to consider the economic impact of their actions on utilization of public and private resources and to select options that have the least adverse economic consequence. Representative Horton's bill establishes a commission to review, consolidate, and eliminate certain mandates. This bill closes a loophole in the Congressional Budget Act of 1974 that enables unfunded mandates to be included in legislation in the absence of Congressional Budget Office estimates of their impact on states and localities. Other amendments require that a cost estimate accompany the conference report of legislation to ensure that any major changes made on the floor or in conference will be reported and require committees to include in their directions to the conference committees the total cost of their provision to all levels of government. Requirements for cost estimates for agency regulations are strengthened as well.

***Family Preservation and Mickey Leland Hunger Act***  
***HR 3603, sponsored by Representative Downey (D-New York)***  
***Reported by Ways & Means amended July 2.***

The Family Preservation and Mickey Leland Hunger Act, HR 3603, was reported by Ways & Means on July 2. In the course of the markup, the provision requiring all states to operate the AFDC emergency assistance program, with half the resources earmarked for homelessness prevention, was removed. According to the U.S. Department of Health and Human Services, 26 states, Puerto Rico and the Virgin Islands currently have this program.

***Appropriations Update***

The House Appropriations Subcommittee on Labor/HHS/Education recently eliminated federal reimbursement to states for cash and medical assistance for refugee resettlement. Instead, the subcommittee, legislating on an appropriations measure, provided direct assistance for a private program run by voluntary agencies. States will still have to fund refugee services through AFDC, general assistance, Medicaid, and indigent health services.

***Mandate Removed***

After careful consideration, HR 159, a transportation bill, has been removed from the Monitor. This bill changes the minimum apportionment for highway funds from 90 percent to at least 100 percent of the estimated tax payments paid into the highway trust fund by a state.

***Mandate Monitor Takes a Recess***

Note to readers: Due to the Congressional recess, the Mandate Monitor will not be published in August. Look for the next issue in September.

# 1992 Hall of the States Mandate Monitor

Shaded areas indicate recent changes or additions to the Monitor.

Program Area	Bill/Reg. Number	Sponsor	Brief Title	Explanation & Programs Affected	Bill Status
AGRICULTURE					
BANKING	S1461	Levin	Deposit Insurance Protection Act of 1991	Requires states whose state chartered financial institutions cause disproportionate federal insur. losses, due to inadequate state regs., to pay an insur. premium as a condition of future deposit insurance.	7/11/91 Banking, Housing & Urban Affairs
	HR6	Gonzalez	Financial Institution Safety and Consumer Choice Act	Restricts activities of state banks and their subsidiaries to the activities of nat'l banks, unless the FDIC has determined that the activities pose no significant risk to the insurance fund.	Parts of HR 6 were incorporated into P.L. 102-242, "Federal Deposit Insurance Corp. Improvement Act of 1991"
	HR4158	Lowey		Would prohibit grants under the community development block grant prog. to communities that fail to enforce laws preventing the use or threat of force against individuals for exercise of abortion rights.	2/4/92 Banking, Finance & Urban Affairs
	HR4170	Vento/Wytle	Interstate Banking Efficiency Act of 1992	After 18 months, full interstate banking is allowed. After 3 years, full interstate branching is allowed. During the 3 year window, states may opt-in or opt-out of interstate branching.	6/25/92 Hearings held by Banking, Finance & Urban Affairs, Subcmte. on Financial Institutions Supervision, Regulation & Insurance 6/30/92 Hearings completed
	HR4202	Hoagland/McCollum	Nationwide Banking and Branching Act of 1992	Interstate banking immediately. After 2 yrs., states may branch interstate. Within the 2 year window, states may opt-out of interstate branching.	2/7/92 Banking, Finance & Urban Affairs
	HR4477	Lowey	Reproductive Freedom Protection Act	Would prohibit grants under the community development block grant program to communities that fail to adopt a policy of enforcing laws that prevent the use or threat of force against individuals for the exercise of abortion rights.	3/17/92 Banking, Finance & Urban Affairs
	HR4792	Mink	Earthquake and Volcanic Eruption Hazard Reduction Act	States declared earthquake or volcanic eruption prone shall submit certification to the Director of the Federal Emergency Management Agency stating whether the state has adopted and is enforcing mitigation measures under the loss-reduction criteria. Funds would be available to promote compliance. After 2 years, no federally related mortgage loan could be made or extended unless the property is covered by earthquake and volcanic eruption insurance. If a state is found to be non-compliant, each Federal agency responsible for insuring any banks or savings and loans shall prohibit such institution from making or renewing a Federally related mortgage loan secured by improved real estate or a mobile home located or to be located in an earthquake or volcanic eruption prone area.	4/7/92 1. Science, Space & Technology 2. Banking, Finance & Urban Affairs

# 1992 Hall of the States Mandate Monitor

Shaded areas indicate recent changes or additions to the Monitor.

Program Area	Bill/Reg. Number	Sponsor	Brief Title	Explanation & Programs Affected	Bill Status
	S2207	Dodd	Interstate Banking and Branching Act of 1992	After 1 yr., full interstate banking by acquisition is allowed (de novo after 2 years). Consolidation of existing multistate bank operations can occur after 18 months. After 3 yrs., banks may branch interstate. States have 2 years to opt-out of interstate branching. If a state opts-in during those 3 years, it may prohibit de novo entry for 5 years.	2/6/92 Banking, Housing & Urban Affairs
	S2217	Dole	Title IV of the Economic Growth Act	Authorizes full nationwide banking and branching for state and nat'l banks as well as foreign banks. No state may prohibit the entry of out-of-state banks or branches.	2/7/92 Finance
	S2334	Wirth		Extends the statute of limitations applicable to civil actions brought by the Federal conservator or receiver of a failed depository institution from 3 to 5 years.	3/10/92 Banking, Housing & Urban Affairs
	S2533	Inouye	Earthquake and Volcanic Eruption Hazard Reduction Act	States declared earthquake or volcanic eruption prone shall submit certification to the Director of the Federal Emergency Management Agency stating whether the state has adopted and is enforcing mitigation measures under the loss-reduction criteria. Funds would be available to promote compliance. After 2 years, no federally related mortgage loan could be made or extended unless the property is covered by earthquake and volcanic eruption insurance. If a state is found to be non-compliant, each Federal agency responsible for insuring any banks or savings and loans shall prohibit such institution from making or renewing a Federally related mortgage loan secured by improved real estate or a mobile home located or to be located in an earthquake or volcanic eruption prone area.	4/7/92 Commerce, Science & Transportation
	S2776	Bryan	Consumer Reporting Reform Act of 1992	Provides some federal protection of consumers whose reputations have been damaged by false or inaccurate reports. States would be barred from enacting privacy or consumer protection legislation with stricter requirements than those provided in 6 separate areas of Federal law.	5/21/92 Banking, Housing & Urban Affairs
	HR1171	Wolpe		Would req. states in which the failure of state savings associations has involved a disproportionately large share of the thrift resolution costs, including costs incurred by the Resolution Trust Corporation, to pay a state thrift deposit insurance premium as a condition of future federal deposit insurance.	2/28/91 Banking, Finance & Urban Affairs
COMMERCE	HR3596	Torres	Consumer Credit Reporting	States would be excluded from regulating the credit reporting industry	6/18/92 Favorably reported by House

# 1992 Hall of the States Mandate Monitor

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Program Area	Bill/Reg. Number	Sponsor	Brief Title	Explanation & Programs Affected	Bill Status
	(amends.)		Act of 1991	except to enforce federal credit reporting laws.	Banking Cmte.
	HR5136	Carper	Atlantic State Coastal Fishery Management Improvement Act of 1992	Atlantic Commission would prepare interstate fishery mngt. plan. States that are selected shall prepare a state implementation plan and submit to Atlantic Commission for approval. States without approved plans or that fail to enforce mngt. programs could lose aid connected with this act and the Anadromous Fish Conservation Act and will lose certain fishing rights. This bill also establishes data reporting procedures. Funding under this Act will be terminated if states do not adhere to standards.	5/12/92 Merchant Marines & Fisheries
	S640	Kasten	Product Liability Fairness Act	Legislation to govern any civil action brought against a manufacturer or product seller for harm caused by a product. Pre-empts state law to the extent that it establishes a rule of law applicable to recovery in such actions. When a rule of law is not established by legislature, the issue is left applicable to state law.	5/14/92 Language of S640 was incorporated into amendment during Senate consideration of S250; amendment rejected on May 14, 1992
	S955	Cohen	State Thrift Deposit Insurance Premium Act of 1991	Would require states in which the failure of states savings & loans has involved a disproportionately large share of the thrift resolution costs, including costs incurred by the RTC, to pay a state thrift deposit insurance premium as a condition of future federal deposit insurance.	11/26/91 Committee hearings held
	S2538	Hollings	Consumer Seafood Safety Act of 1992	Each shellfish producing state must submit a state shellfish safety program plan. This plan must provide for certification of shellfish shippers. Grants may be available for up to 60% of operating costs.	4/7/92 Commerce, Science & Transportation 6/30/92 Hearings held by Commerce, Science & Transportation
	S2863	Dodd	Toy Injury Reduction Act	Pre-empts state authority to pass legislation pertaining to the labelling of certain toys and games.	6/17/92 Commerce, Science & Transportation
	HR2003	Leach	Depositor Protection Act of 1991	Would require the deposits of all state chartered banks, savings associations, and credit unions to be federally insured by the end of a two year phase-in period.	4/23/91 Banking & Finance
	HR4900	Dingell	Federal Insurance Solvency Act of 1992	Explicitly prohibit states from "discriminating" against Federally certified insurers in taxation, ratemaking, or other regulatory activity. States would be prohibited from imposing barriers to the withdrawal of an insurer from either a line of business or from all business in a state. Establishes a self-regulatory organization that would allow agents and brokers to opt-out of state regulatory requirements.	4/9/92 Energy & Commerce
COMMUNICATIONS	S12	Danforth	Cable Television Consumer	Would require coverage of local news on cable television	1/31/92 Measure, as amended, passed Senate

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EDUCATION			Protection Act of 1991	& restore the right of local regulatory authorities to regulate cable television.	4/8/92 Approved by House Energy & Commerce, Subcmte. on Telecommunications, 17-7.
	S2	Kennedy	Strengthening Education for American Families Act	Certain requirements to be met by including state plans to qualify.	1/28/92 Measure, as amended, passed Senate
	S1150	Pell		Would require states to have stringent requirements for Student Loan Programs.	6/11/92 Conference held 6/16/92 Conferees agreed to file report 6/30/92 Passed in Senate 7/8/92 Conference report agreed to in House by yea-nay vote: 419-7 7/8/92 Measure now cleared for President
	S1503	Nunn		Would provide more stringent reqs. for the Student Loan Program incl. uniform minimum standards for granting licenses to proprietary schools and places the authority to grant approval in one agency in each state.	2/20/92, Provisions incorporated in S1150
	HR751	Sawyer	National Literacy Act	Would require states to develop indicators of program quality, and would require states to evaluate at least 80% of the projects during the life of the reauthorization. Requires literacy programs in correctional institutions.	3/19/91 Passed in House 3/20/91 Placed on Senate calendar 7/24/91 P.L. 102-73
	HR3239	Gordon		Provides for more stringent reqs. for the Robert T. Stafford Student Loan Program.	3/25/92 Provisions of HR3239 were included in HR3553; House began consideration of HR3553 7/8/92 Provisions of HR3239 were incorporated in S1150, which is now cleared for the President
	HR3648	Kostmayer	School Dropout Prevention Act of 1991	Would impose a school enrollment requirement on the issuance of motor vehicle licenses and instructional permits.	10/29/91 Public Works & Transportation
	HR4323	Kildee	Neighborhood Schools Improvement Act	Successor to HR3320; States must establish a reform plan after receiving grant. In second through tenth year of grant, states match funds and distribute a percentage of funds to local educational agencies.	2/26/92 Education & Labor
	S2166	Johnston	The National Energy Security Act of 1992	Requires large state and municipal fleets operating in urban areas to use alternative fuels. Requires state utility commissions to consider providing financial incentives to utilities to invest in energy conservation programs.	2/19/92 Passed in Senate
	HR776	Sharp	National Energy Policy Act	Major pre-emption of state regulatory authority over electric and gas utilities. Pre-empts state participation in high-level radioactive waste	5/27/92 Passed in House: 381-37 6/4/92 Referred to Senate Finance
ENERGY					

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				<i>repository decision-making. Pre-empts state taxing authority for uranium enrichment corporations. Mandates review and update of state energy building codes to a minimum standard.</i>	<i>6/16/92 Markup in Senate Finance 7/2/92 Unanimous consent agreement was reached providing for consideration of the bill on July 22, 1992</i>
ENVIRONMENT	S130	Pressler		<i>Prescribes that no state may allow a low-level radioactive waste facility to be constructed within 50 miles of another state's border without the approval of that state's legislative branch.</i>	<i>1/15/91 Energy &amp; Natural Resources</i>
	S175	Bingaman		<i>A bill to amend the Resource Conservation &amp; Recovery Act to improve procedures for implementation of state compacts providing for the establishment &amp; operation of regional disposal facilities for municipal &amp; industrial solid waste &amp; other purposes.</i>	<i>1/15/91 Environment &amp; Public Works</i>
	S596	Mitchell	<i>Fed. Facility Compl. Act of '91</i>	<i>Establishes federal requirements for state facilities.</i>	<i>10/24/91 Incorporated Into HR2194</i>
	S942	Hollings		<i>Would require that priority be given to planting trees on state lands devastated by disaster or where tree loss is causing environmental damage.</i>	<i>4/25/91 Small Business</i>
	S976	Baucus	<i>Resources Recovery Act Amendments of 1991</i>	<i>Call for federal approval/ disapproval of mandated state solid waste management plans.</i>	<i>5/20/92 Markup completed by Environment &amp; Public Works</i>
	S1081	Baucus	<i>Federal Water Pollution Control Act of 1991</i>	<i>Requires state plans; there are federal standards &amp; federal sanctions.</i>	<i>7/18/91 Subcmte. hearings held and completed by Environment &amp; Public Works Committee</i>
	S2335	Hatfield	<i>National Beverage Container Reuse and Recycling Act of 1992</i>	<i>No state which imposes any tax on the sale of any beverage container may impose a tax on any amount attributable to the refund value of such container.</i>	<i>3/11/92 Commerce, Science &amp; Transportation</i>
	S2360	Durenberger	<i>Toxic Release and Pollution Prevention Act</i>	<i>Amends the Emergency Planning and Community Right to Know Act of 1986 to establish grant programs to assist states in meeting requirements of this Act. States shall provide at least 20% of the funds.</i>	<i>3/17/92 Environment &amp; Public Works</i>
	S2386	Warner		<i>States are required to submit waste management plans to Administrator for approval. After a certain time, landfill operators may not accept waste from generators without approved plans. After a certain time, landfill owners in states without approved plans may receive municipal solid waste generated outside the state without obtaining authorization from the affected local government.</i>	<i>3/20/92 Environment &amp; Public Works</i>
	S2363	Kerry	<i>National Recycling Marketing Act</i>	<i>No state may establish or continue in effect a minimum content standard for a covered item unless such standard is identical to, or less stringent than any standard in effect for such item.</i>	<i>3/17/92 Environment &amp; Public Works</i>
S2384	Coats		<i>States are required to submit Solid Waste Management Plans</i>	<i>3/20/92 Environment &amp; Public Works</i>	

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				<i>to the Administrator for approval. After a certain date, landfill owners may not receive municipal solid waste generated in another state if the exporting state does not have an approved management plan.</i>	
	S2579	Lautenberg	Dry Cell Battery Management Act of 1992	State solid waste plans must include provisions for a program to collect from consumers and institutions used mercuric-oxide and rechargeable batteries and rechargeable consumer products with non-removable batteries. Pre-empts state authority to enforce requirements for coding dry cell batteries unless requirements are identical to provisions in this Act.	4/9/92 Environment & Public Works
	HR12	Hughes	Beaches Environmental Assessment, Closure and Health Act of 1991	Would require states to conform to federal beach water quality standards. Would require the EPA to develop criteria for beach water cleanliness. States would have to test the water along their beaches and post signs if the contamination levels exceeded the uniform standards.	1/3/92 Report to House by Marine & Fisheries (HRpt 102-424)
	HR116	Kanjorski	Solid Waste Compact Act of 1989	A bill to amend the Resource Conservation & Recovery Act to improve procedures for the implementation of state compacts providing for the establishment & operation of regional disposal facilities for municipal & industrial solid waste.	1/16/91 Energy & Commerce
	HR173	Olin	Sold Waste Transportation Act	Would place certain restrictions on the interstate disposal of solid waste.	1/16/91 Energy & Commerce
	HR870	Torres		Would require management standards and recycling requirements.	2/6/91 Energy & Commerce
	HR921	Richardson		Would prohibit the disposal of solid waste in any state other than the state in which the waste was generated.	2/6/91 Energy & Commerce
	HR945	Tauzin		Would require states to provide an opportunity for their citizens to participate in comprehensive recycling programs.	2/6/91 Energy & Commerce
	HR997	Henry		Would require a refund value for certain beverage containers & resources for state pollution prevention programs.	2/21/91 Energy & Commerce
	HR2084	Tallon		Would establish minimum requirement for the water quality criteria for dioxin published pursuant to section 304a of the Federal Water Pollution Control Act, to require each state to adopt a water quality standard for dioxin which is at least as stringent as the US Fish & Wildlife Services, in consultation with the National Oceanic and Atmospheric Administration to conduct a study on the effects of dioxin on wildlife.	4/25/91 1. Public Works 2. Merchant Marine & Fisheries
	HR2194	Eckart	Fed. Facil. Compl. Act of '91	Establishes state requirements for federal facilities.	2/4/92 In Conference in House and Senate
	HR2387	Studds	Reauth. of the 1984 Atlantic Striped Bass Conservation Act	Allows the federal govt. to temporarily bar bass fishing in the coastal waters of states that do not comply with federal guidelines to protect the striped bass.	10/17/91 P.L. 102-130

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HEALTH	HR3865	Swift	National Waste Reduction, Recycling, and Mngt. Act (RCRA Reauthorization)	Sets minimum requirements for state plans. This includes requirement that scrap tire collection sites must be identified and that a goal of 100% recycling 18 months after enactment be adopted. States must submit solid waste management plan to EPA within 30 months of enactment and hold public hearings. States must undergo an implementation review 3 years after the plan is approved. If EPA finds that a state is not fully implementing the plan then the disposal facilities within the state may accept waste imports without the authorization of the affected local government. Industries must report to states on the amount of industrial solid waste they are producing. States must compile the data and forward it to EPA.	6/18/92 Markup in Energy & Commerce 7/2/92 Approved by Energy & Commerce: 28-15
	HR4167	English		Amends the Comprehensive Environmental Response, Compensation and Liability Act of 1980 to require certain states to contribute to other states' shares of cleanup costs if a contaminated disposal facility in one state contains another states' hazardous waste.	2/5/92 Energy & Commerce
	HR4258	Huckaby	State Regulation and Management of Solid Waste Act of 1991	Requires states to submit a Solid Waste Management Plan to the Administrator for approval; allows states to collect fees for solid waste but requires that 1/2 of collections are earmarked for local governments.	2/19/92 Energy & Commerce
	S5	Dodd	Family & Medical Leave Act of 1991	Requires employers with 50 or more employees to grant up to 12 weeks of unpaid leave per year to full-time employees for childbirth, adoption, serious illness of the employee or an immediate family member. Employees would be entitled to health insurance during the leave period & reinstatement to the same or an equivalent position upon return.	10/2/91 Passed Senate 11/13/91 Passed House
	S25	Mitchell	Freedom of Choice Act of 1991	Prohibits states from restricting an individual woman's right to choose to terminate a pregnancy prior to fetal viability. After fetal viability, a state may restrict or prohibit abortion unless termination of the pregnancy is necessary to preserve the life or health of the woman. The bill does not require states to fund the performance of abortions or prevent states from requiring the involvement of a parent, guardian, or other responsible adult prior to a minor's termination of a pregnancy.	5/13/92 Hearings held by Labor & Human Resources 7/1/92 Ordered to be reported by Labor & Human Resources Cmte. amended by yea-nay vote: 12-5
	S1229	McCain	Small Employer Health Insurance Incentive Act	Would exempt certain small employer purchasing groups from certain requirements of state laws relating to health benefit plans & to amend IRS Code of 1986 to equalize tax benefits for self-employed persons participating in such groups.	6/6/91 Finance
	S1446	Kerrey	Health USA Act of 1991	Would provide for an equitable and universal national health care	7/11/91 Finance

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				<i>program administered by the states.</i>	
	S1872	Bentsen	Better Access to Affordable Health Care Act of 1991	Pre-empts state mandated benefits not covered in Federally required basic benefits packages. Pre-empts existing state legislation regulating managed care and utilization review.	3/3/92 Provisions of S1872 were included in the provisions of a cmte. amendment in the nature of a substitute to HR4210 on 3/3/92, by Finance
	S2306	Bond	Insurance Simplification and Portability Act of 1992	Provides Secretary with the authority to review state health insurance regulatory programs to determine if they meet standards. States that do not meet stds. have an opportunity to apply a corrective action plan. If state programs are still considered to be below stds., the Secretary shall decertify the program and assume responsibility for it.	3/3/92 Finance
	S2320	Wellstone	Universal Health Care Act	No individual who is a resident of a state is eligible for benefits under this title for a month in the calendar year, unless the state provides for payment to the National Health Trust Fund.	3/5/92 Finance 6/17/92 Hearings held by Finance
	S2346	Kassebaum	BasiCare Health Access and Cost Control Act	Pre-empts state laws which regulate policies under BasiCare. Also pre-empts state laws which mandate benefits under managed care that are greater than those offered through BasiCare. Also with respect to managed care, pre-empts state laws which restrict reimbursement rates, differential financial incentives, and utilization review methods. Pre-empts some state laws regarding medical malpractice. Requires states to contribute to BasiCare an amount proportional to current Medicaid match, indexed upward with inflation.	3/12/92 Finance
	S2347	McCain	Children's Health Improvement Act of 1992	Requires state Depts. of Education to determine the types of health ins. policies to be offered by local education agencies. If local agencies are not in compliance with requirements, the Secretary can withhold up to 10% of the total amount of Fed. assistance made available to that agency.	3/12/92 Finance
	S2513	Daschle	American Health Security Plan	Requires states to establish a federally approved plan to administer a national health care plan. Federal gov't est. conditions under which state programs must insure individuals. Prohibits states from cost-sharing, except where specified. States not in compliance with requirements could lose grant money for this project or have feds. assume authority for it. States are required to pay their share of cost.	4/2/92 Finance 6/17/92 Hearings held by Finance
	S2571	Mitchell	Long-Term Care Family Security Act of 1992	States are required to maintain current levels of financial commitment under Medicaid for population groups and long-term care in services covered by the long-term care plan (indexed for increases in the medical CPI). States are required to establish mechanisms to secure compliance with specified standards for long-term care insurance. These regulatory programs shall include toll-free phone numbers	4/9/92 Finance 6/23/92 Hearings held by Finance, Subcmte. on Medicare & Long-Term Care

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				to log complaints and provide information. Consumers should have access to complaints on file. State regulatory programs must be certified with the federal government. Secretary is required to establish mechanisms to ensure presence and operation of effective state regulatory programs ("look behind" authority).	
	S2732	Dole	Health Benefits for Self-Employed Individuals Act of 1992	Administration proposal. States shall regulate health insurance in keeping with Federal standards. State regulatory programs are subject to review by Federal government. Pre-empts state laws with respect to managed care.	5/14/92 Finance
	S2814	Riegle	Medicare Enrollment Improvement and Protection Act	Authorizes Secretary of HHS to enroll QMB (Qualified Medicare Beneficiary) eligibles automatically in Medicare Part A and bill state Medicaid plans for premiums. Currently, individuals must apply for Medicaid coverage of Medicare Part A premiums.	6/4/92 Finance
	S2817	Inouye	National Health Care Act of 1992	States will ensure the implementation of all state health services, determine the distribution of health care funding, develop and administer a mechanism to pay & reimburse health care providers, work with localities in undertaking health care planning and coordination with appropriate social and human services, implement a quality assurance program, administer a consumer advocacy and information program, and license and regulate all health care providers and facilities. No individual who is a resident of a state is eligible for covered services under this Act for a month in a calendar year, unless the state contributes to the National Health Care Trust Fund.	6/9/92 Finance
	S2878	Bond	Medical and Health Insurance Information Reform Act	States must develop a comparative value information program. The program must provide information on the average prices of common health care services and information related to the value of each health insurance plan available in the state, including premium costs and the value of benefits, and, where available, information on the variability of those prices within the state or other market areas. The data must be available within the state not later than one year after enactment, and must be updated no less frequently than annually. Within four years of enactment, the state must also provide comparative quality and outcomes data on health insurance plans and hospitals and make the information broadly available in the market areas served by those plans and hospitals. Grant money would be available.	6/23/92 Finance
	S2908	Simon	Human Tissue Transplant Act	Authorizes state laws with respect to tissue banks to continue in effect UNLESS they are inconsistent with the provisions of federal	6/29/92 Labor & Human Resources

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				<i>legislation. Further, any requirements of a state with respect to human tissue intended for transplantation which is different from, or, in addition to federal requirements, may not be continued in effect.</i>	
	HR8	Oakar		Would provide for an equitable and universal national health plan administered by the states and for other purposes.	1/16/91 1. Ways & Means 2. Energy & Commerce
	HR25	Edwards	Freedom of Choice Act of 1991	Would prohibit states from restricting the right of a woman to choose to terminate a pregnancy before fetal viability or to protect the life or health of a woman. A state may impose requirements medically to protect the life or health of the woman. Nothing in this act shall be construed to prevent a state from requiring a minor to involve a parent, guardian, or other responsible adult before terminating a pregnancy.	6/30/92 Ordered to be reported by Judiciary amended by yea-nay vote: 20-13
	HR1300	Russo	Universal Health Care Act of 1991	States would be required to pay 85% of state Medicaid effort and annual per capita fee of \$85 to National Health Care Fund. States would be responsible for allocating Trust Fund share within the state.	3/6/91 1. Armed Services 2. Energy & Commerce 3. Post Office & Civil Service 4. Veterans' Affairs 5. Ways & Means
	HR1916	Wyden	Long Term Care Insurance Consumer Protection Act	Would establish federal standards for long-term care insurance policies.	5/20/92 Hearings held by Energy & Commerce, Subcmte. on Health & Environment
	HR2089	Walsh	Hearing Loss Testing Act of 1991	Would require hearing loss testing of all newborns.	4/24/91 Energy & Commerce
	HR2235	Thomas	Amendments to Public Health Service Act	Would require that states expend a specific percentage of certain purposes relating to the treatment of IV drug abuse under alcohol and drug abuse block grant.	5/7/91 Energy & Commerce
	HR2691	Jefferson		If a dental health care professional has been licensed by a state to provide dental health care, another state may not, in considering an application by the professional for a license to provide the dental services involved, discriminate against the professional on the basis that the professional is not a resident of the state, or that the professional was first granted the license by another state.	6/19/91 Energy & Commerce
	Proposed Amend.	Dole		Would require that states receiving assistance under any federal health grant program certify to the administrator of such program that the state has in effect a law requiring certain health professionals infected with AIDS to disclose this information to their patients.	
	Proposed Amend.	Hatch		Would require states receiving assistance under any federal health grant program to certify to the administrator of such program that	

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				<i>the state has in effect a law requiring individuals infected with AIDS to disclose such infection to any health care professional.</i>	
	HR2810	Michel	<i>Drug Treatment and Prevention Act of 1991</i>	<i>Would expand the nation's drug treatment capacity, promote drug-free/safe schools, require statewide drug abuse prevention and treatment plans, and ensure that new federal grant dollars provided for treatment sources do not displace state dollars.</i>	6/27/91 1. Education & Labor 2. Energy & Commerce
	HR3626	Rostenkowski	<i>Health Insurance Reform and Cost Control Act of 1991</i>	<i>Pre-empts state mandated benefits not covered in Federally required basic benefits packages.</i>	3/12/92 Hearings by Ways & Means, Subcmte. on Health
	HR3656	Campbell		<i>Would give priority in the awarding of certain grants to entities located in states that have enacted laws to limit the malpractice liability of physicians providing charity care services, and to amend the McKinney Homelessness Act to give priority in the allocation of homeless housing assistance to recipients in states that have enacted such laws.</i>	10/29/91 Banking, Finance & Urban Affairs
	HR4235	Olin	<i>National Children's Health Care Act of 1992</i>	<i>Requires each state to establish an outreach system to assure that eligible pregnant women and children have access to covered health services. State health dept. expenditures for the services of care coordinators shall be reimbursed by the Administration if established guidelines are followed.</i>	2/18/92 Energy & Commerce
	HR4576	Houghton	<i>Health Equity Access Improvement Act of 1992</i>	<i>Pre-empts state law with respect to managed care by prohibiting 1. restrictions on reimbursement rates, 2. restrictions on differential financial incentives, 3. mandating benefits greater than those established in the Act, 4. mandating benefits for qualified small employer purchasing groups greater than those recommended under model plan.  Requires states to establish 1. alternative dispute resolution procedures pertaining to medical malpractice, 2. statewide risk management program to reduce incidence of medical malpractice. States that the Federal National Long-Term Re-Insurance Corporation is exempt from state tax.</i>	3/25/92 1. Ways & Means 2. Energy & Commerce 3. Judiciary
	HR4582	Roberts	<i>BasicCare Health Access and Cost Control Act</i>	<i>Provisions identical to S2346</i>	3/25/92 1. Energy & Commerce 2. Ways & Means 3. Judiciary 4. Rules
	HR4594	Glickman	<i>BasicCare Health Access</i>	<i>Comprehensive health care bill which pre-empts state laws</i>	4/26/92 1. Energy & Commerce

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			<i>and Cost Control Act</i>	<i>pertaining to benefits required for accidents and health insurance, malpractice suits, mandates health benefits, regulation of managed care. Requires states to remit their share of Medicaid funding to the Federal Government. This amount would be indexed for inflation.</i>	<ol style="list-style-type: none"> <li>2. Ways &amp; Means</li> <li>3. Judiciary</li> <li>4. Rules</li> </ol>
	HR4889	Cardin	<i>Flexible Medical Access and Cost Containment Act of 1992</i>	<i>A Federal Health Care Cost Containment Commission would allocate allowable health spending among the states. States would establish commissions to set payment rates for health care services on an annual basis which would result in aggregate expenditures equal to the amount allowable under the state expenditure limit. The commission would set payment systems for states that fail to establish rate setting commissions. The federal commission would also hear appeals by classes of providers on the adequacy of state rates. States would be required to pay the amount they otherwise would have spent for Medicaid benefits into the Public Health Trust Fund.</i>	4/9/92 <ol style="list-style-type: none"> <li>1. Ways &amp; Means</li> <li>2. Energy &amp; Commerce</li> <li>3. Education &amp; Labor</li> </ol>
	HR5049	Slattery	<i>Improved Access to Affordable Health Care Act of 1992</i>	<i>States must establish requirements that insurers guarantee availability in a state. The small group standards required by the bill would be established as model legislation by the National Association of Insurance Commissioners and applied and enforced primarily by the states. Secretary of HHS could assume authority for state governments failing to meet federal standards to certify and supervise small group insurance plans. Grant funds available for FY 1993, FY 1994, and FY 1995 for states to establish small employer health insurance purchasing programs. The Secretary of HHS is required to establish within two years voluntary federal standards for certifying "qualified" managed care plans and utilization review programs. States may impose requirements under Medicaid. States are prohibited from imposing specified limitations or prohibitions on "qualified" plans or programs.</i>	4/30/92 Energy & Commerce
	HR5050	Ford	<i>UniMed Act of 1992</i>	<i>Permits Federal government to review state regulatory programs for the certification of open group health policies. In states that meet regulatory requirements, the Federal government may still determine whether the policies in the state meet requirements ("look behind" authority). Prevents states from establishing requirements for open basic certified group health policies that are different from requirements set forth in the Act. Prohibits states from enforcing laws that require the offering, as</i>	4/30/92 <ol style="list-style-type: none"> <li>1. Ways &amp; Means</li> <li>2. Energy &amp; Commerce</li> <li>3. Education &amp; Labor</li> </ol>

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				part of a group health plan or group health policy, of any services, category of care, or services of any class or type of providers that differ from benefits required under Title IV of ERISA of 1974. Pre-empts state laws restricting utilization review programs that meet Federal standards. States shall make contributions to UniMed trust fund	
	HR5174	Glickman	BaslCare Health Access and Cost Control Act	Each year, the BaslCare Commission will set a maximum allowable percentage for insurance premiums. States would have the authority to lower the annual increase but not raise it. Requirements for BaslCare health benefits will pre-empt state and local government regulations relating to insurance benefits, except state information requirements. Certain provisions of state law pertaining to managed care are pre-empted. States will be required to contribute to BaslCare an amount proportionate to their current Medicaid match. This will be indexed for inflation.	5/14/92 1. Energy & Commerce 2. Ways & Means 3. Judiciary 4. Rules
	HR5325	Michel	Action Now Health Care Reform Act of 1992	States must submit reports addressing how they will enforce established standards with respect to small employer carriers. Pre-empts state benefit mandates for small employer health benefit plans that meet consumer protection standards. Exempts qualified purchasing groups from state health plan benefit mandates. Pre-empts certain state laws pertaining to medical malpractice and establishes requirements for state alternative dispute resolution systems. Overrides state laws which prevent sole use of electronically transmitted claims and other medical records for payment purposes. (Quill Pen laws). Requires states to make available to consumers information on the comparative value of medical services.	6/4/92 1. Energy & Commerce 2. Ways & Means 3. Judiciary 4. Education & Labor
	HR5376	Collins	Long-Term Care Insurance Standards and Consumer Protection Act of 1992	No long-term care insurance policy may be sold in a state unless the state has a regulatory program to monitor long-term care insurance. These regulatory programs must incorporate enforcement programs, a means to file complaints, a toll-free number to provide information on complaints, information on insurance policies, consumer access to compliance information, and review process for premium increases. The Secretary may review state programs to determine adherence to federal standards. States found out of compliance may lose the program if corrections are not made. Secretary may review long-term care policies in states with approved regulatory programs ("look behind" authority).	6/11/92 Energy & Commerce

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Program Area	Bill/Reg. Number	Sponsor	Brief Title	Explanation & Programs Affected	Bill Status
	HR5500	Conyers	Health Care for Every American Act	Establishes a National Health Insurance Standards Board which will develop national health insurance policies and procedures. States will administer the program, making payments to providers who care for beneficiaries. State programs are required to establish a State Health Advisory Council to provide consumers, providers and policy experts with a means to oversee and give input on implementation of the Act. State programs are required to establish District Health Advisory Councils, composed of consumers, providers and public health officials, will advise on how to increase capacity in medically underserved areas and reduce excess capacity in overserved areas. States will provide 13% of the cost of services under the Act. The federal payment to states depend on characteristics of residents.	6/25/92 1. Energy & Commerce 2. Ways & Means 3. Post Office & Civil Service 4. Armed Services 5. Veterans' Affairs
	HR5514	Dingell/ Waxman	Health Choice Act of 1992	Health care reform measure financed through VAT tax (Value Added Tax, essentially a national sales tax), employer contributions and payments from states based on their Medicaid contributions. States could elect to operate their own programs, as long as their benefit package was at least as good as that in Health Choice. State mandated benefit laws would be pre-empted to the extent that they conflict with Health Choice.	6/30/92 1. Energy & Commerce 2. Ways & Means 3. Education & Labor
Medicaid	S4	Bentsen	Child Welfare & Preventive Services Act	Mandates continuous coverage of children under age 6 for 6 months at a time, prohibits terminating Medicaid coverage for children under age 19 before the state determines that the child does not qualify for Medicaid under other criteria. Mandates Medicaid coverage of all children who are SSI recipients. Mandates adjustments in payments in disproportionate share hospitals when services are provided during exceptionally long and costly hospital stays for children to age 19. Changes matching rate in Medicaid. Also deals with foster care, adoption, and substance abuse.	1/15/91 Finance 6/10/92 Hearings held by Finance
	S29	Moynihan		Coverage of residential drug treatment for pregnant women and certain family members.	1/15/91 Finance
	S62	Moynihan	Homeless Mentally Ill Outreach Act	Would require states to provide coverage for mobile outreach units to identify and assist mentally ill homeless people.	1/14/91 Finance 4/26/91 Subcmte. hearings held
	S902	Bradley	Infant Mortality & Children's Health Act of 1991	Would phase in coverage of pregnant women and infants with incomes below 185% of the poverty level.	4/23/91 Finance
	S905	Bradley	Childhood Immunization Improvement Act of 1991	Would require additional vaccination coverage under the Medicaid program.	4/23/91 Finance

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Program Area	Bill/Reg. Number	Sponsor	Brief Title	Explanation & Programs Affected	Bill Status
	S1677	Daschle		Provide for coverage of alcoholism & drug treatment services under Medicaid.	8/2/91 Finance
	HR96	Hertel	Medicaid Eligibility and Benefits Expansion Act of 1991	Requires states to provide Medicaid coverage to pregnant women and infants whose family income does not exceed 150% of poverty level. Requires states to cover all individuals with family incomes up to 120% of poverty line. Provides temporary coverage for dependents of unemployed individuals.	2/11/91 Energy & Commerce, Subcmte. on Health & the Environment
	HR276	Collins	Hospital Closings Community Relief Act of 1991	Would require state plans for appropriately responding to closing of hospitals.	1/16/91 Energy & Commerce
	HR290	Collins		Would require coverage of services to pregnant women and children up to 185% of the federal poverty line.	1/16/91 Energy & Commerce
	HR395	Quillin		Would provide that clinical social worker services are a mandatory benefit.	1/16/91 Energy & Commerce
	HR382	Oakar	Breast Cancer Treatment Informed Consent	Would require states to enact laws requiring physicians & surgeons to inform breast cancer patients of alternative effective methods of treatment for breast cancer in order to qualify for federal funds.	1/16/91 Energy & Commerce
	HR459	Cooper	Fairness in Medicaid Funding Act of 1991	Would change the medical assistance percentage used under the Medicaid program.	1/14/91 Energy & Commerce
	HR860	Panetta		Would require the coverage of hospice care under Medicaid.	2/6/91 Energy & Commerce
	HR930	Snowe	Amend. to Title XIX of the Soc. Sec. Act	Would require states to adopt & enforce certain guardianship laws providing protection & rights to awards as a condition of receiving Medicaid funds.	2/6/91 Energy & Commerce
	HR1129	Collins		Would require state Medicaid programs to provide coverage of screening mammography/pap smears.	2/21/91 Energy & Commerce
	HR1161	Schroeder	Women's Health Equity Act of 1991	Withhold federal Medicaid funds from states that do not enact laws requiring physicians and surgeons to inform breast cancer patients of alternative effective methods of treatment for breast cancer before treatment begins. Requires Medicaid coverage for gynecological services provided by nurse practitioners. Requires states to provide Medicaid coverage for all pregnant women and children under age 6 with incomes up to 185% of poverty. Requires states to provide Medicaid coverage for routine mammography and pap smear screening.	2/27/91 1. Energy & Commerce 2. Ways & Means 3. Post Office & Civil Service
	HR1162	Schroeder	Women's Health Care Coverage Expansion Act of 1991	Would require coverage of obstetrical and gynecological services furnished by nurse practitioners. This bill is also incorporated in HR 1161, Women's Health Equity Act	3/7/91 Energy & Commerce
	HR1288	Boxer	Immunization Now Act	Would require an entitlement program regarding the immunization	3/7/91 Energy & Commerce

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Program Area	Bill/Reg. Number	Sponsor	Brief Title	Explanation & Programs Affected	Bill Status
			of 1991	of infants against vaccine-preventable diseases.	
	HR1311	Vucanovich		Would require state Medicaid plans to provide screening mammography.	3/7/91 Energy & Commerce
	HR1391	Waxman	Medicaid Infant Mortality Amendments of 1991	Prohibits states from using asset tests to determine Medicaid eligibility for pregnant women and infants. Requires states to issue separate Medicaid identification numbers to infants born to Medicaid eligible women within 60 days of birth.	3/12/91 Energy & Commerce
	HR2213	Penny	Amend. to Soc. Sec. Act, Title XIX	Would require states to establish a basic outpatient service to needy children.	5/2/91 Energy & Commerce, Ways & Means
	HR2656	Stark	Amend Title XIX of Soc. Sec. Act	Precludes states from imposing arbitrary limits on the length of time a Medicaid patient may stay in the hospital.	6/17/91 Energy & Commerce
	HR2657	Stark	Amend Title XIX of Soc. Sec. Act	Mandates that states pay hospitals and physicians no less than what Medicare would have paid for the services.	6/17/91 Energy & Commerce
	HR2949	Stark	Medicaid Prescription Drug Act of 1991	Would require coverage of prescribed drugs under the Medicaid program for qualified Medicare beneficiaries and qualified disabled and working individuals.	7/18/91 Energy & Commerce
	HR3595	Waxman	Medicaid Moratorium	Would place a moratorium on federal regs. prohibiting the use of provider taxes and voluntary contributions to pay for Medicaid. Limits percent share of the Medicaid Match that states can collect using these methods to 25%.	12/12/91 P.L. 102-234
	HR4311	Richardson	Amend Title XIX of Social Security Act	Would require mandatory coverage of services furnished by nurse practitioners under state Medicaid plans.	2/25/92 Energy & Commerce
	HR4793	Paxon	Amend Part A of Title IV & Title XIX of Social Security Act	Requires that the amount of aid to be provided under the state plan to a family which has received aid under another state's plan during the preceding 1 year period must not exceed the amount of aid such other state would have provided the family under such other plan if the family were residing in such other state.	4/7/92 1. Ways & Means 2. Energy & Commerce
	d.1/29/92 pp.3298-		Fraud and Abuse Program Exclusion Authority	Establishes requirements to be met by State Medicaid Fraud Control units. These units will investigate and prosecute cases pertaining to Medicaid fraud. These units will also investigate complaints of abuse of patients at institutions that receive Medicaid payments. States will assume 10% of costs for this program.	1/29/92, effective date
	3358				
HUMAN SERVICES	S4	Bentsen	Child Welfare & Preventive Services Act of 1991	1. Would require child in foster care to be placed in setting most appropriate for that child. 2. Would require states to submit all claims for federal reimbursement in one calendar year. 3. Would require the health & education records of foster care to	1/15/91 Finance 6/10/92 Hearings held by Finance

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Program Area	Bill/Reg. Number	Sponsor	Brief Title	Explanation & Programs Affected	Bill Status
				<p>include: 1) telephone numbers of health providers, and 2) record of service under Medicaid.</p> <p>Mandates continuous coverage of children under age 6 for 6 months at a time, prohibits terminating Medicaid coverage for children under age 19 before the state determines that the child does not qualify for Medicaid under other criteria. Mandates Medicaid coverage of all children who are SSI recipients.</p> <p>Mandates adjustments in payments in disproportionate share hospitals when services are provided during exceptionally long and costly hospital stays for children to age 19.</p> <p>Changes matching rate in Medicaid.</p> <p>Also deals with foster care, adoption, and substance abuse .</p>	
	S60	Moynihan		A bill to amend Title IV of the Social Security Act to require states to develop plans for cases where the placement of certain children in foster care or transitional independent living may not be carried out immediately.	1/15/91 Finance
	S61	Moynihan		A bill to amend Title IV of the Social Security Administration Act to make improvements in the foster care maintenance payments program and for other purposes.	1/15/91 Finance
	S1212	Graham	Amend. to Soc. Sec. Act, Title XVIII	To provide coverage for certain preventive care items and services under part B, and to provide a discount in premiums under such part for certain individuals certified as maintaining a healthy lifestyle.	6/4/91 Finance
	S1306	Kennedy	ADAMHA Reauthorization	<p>Splits ADMS into 2 grants, one for substance abuse and one for mental health. States are required to serve IV drug users and pregnant women seeking treatment within a set time period.</p> <p>Requires states to pass laws prohibiting the sale of tobacco products to minors or risk losing a portion of their grant money.</p>	<p>5/12/92 Conference report issued (HRpt 102-522)</p> <p>6/9/92 Conference report approved: 86-8</p> <p>7/1/92 Conference report agreed to in House by yea-nay vote: 359-60</p> <p>7/2/92 Submitted to President Bush</p>
	S1941	Kennedy	Refugee Resettlement Reform Act of 1991	Requires states to provide case management or contracts for case mgmt. from existing funds for cash, medical assistance and social services. Proposes block grant funding instead of line item for cash, medical assistance and social services.	7/2/92 Reported to Senate amended by Judiciary (SRpt 102-316)
	S2141	Kennedy	Long-Term Care Insurance Improvement and Accountability Act	No long-term care insurance policy may be sold in a state unless the state establishes a regulatory program. In states with regulatory programs, the Secretary is authorized to determine whether or not long-term care insurance policies offered in the state have failed to comply with the requirements of the title. If a state is not compliant, no	<p>1/21/92 Labor &amp; Human Resources</p> <p>4/29/92 Hearings held and completed by Labor &amp; Human Resources</p> <p>7/1/92 Ordered to be reported by Labor &amp; Human Resources amended</p>

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Program Area	Bill/Reg. Number	Sponsor	Brief Title	Explanation & Programs Affected	Bill Status
				<i>new policies could be offered under the plan.</i>	
	S2303	Moynihan	Work for Welfare Act of 1992	Within 60 days after opening a new AFDC case, states would have to provide assessment, an employability plan and referrals. (see also MANDATE RELIEF)	3/30 92 Hearings held by Finance, Subcmte. on Social Security & Family Policy
	HR11	Rostenkowski	Revenue Act of 1992	Amends Title XI of Social Security Act to grant a Social Security Act beneficiary a civil right to sue a state for damages in federal court regarding enforcement of administrative provisions. This amendment pertains to all programs authorized by the Social Security Act for which state plans are required.	7/2/92 Approved by House: 356-55
	HR375	Mollohan		Would extend eligibility for the Child Care Food Program to children receiving day care services pursuant to a state's job opportunities and basic skills training program.	1/16/91 Education & Labor
	HR1507	Gekas	Relief for Elderly Eviction and Foreclosure Act of 1989	Would require states that not later than 60 days after commencing any proceeding to compel the sale of residence occupied by an older individual from such residence, notice of such proceeding be given to such individual and to the appropriate area agency on aging if such proceeding is based on the failure of such an individual to pay debt.	3/20/91 Education & Labor
	HR2021	Snowe	Older Americans Transportation Amendments of 1991	Would require states to appoint an advisory board to make recommendations regarding transportation services that affect older individuals; to provide for coordination of such services and to require the Commissioner of Aging to submit a report regarding transportation services provided under such act.	4/25/91 Education & Labor
	HR2025	Snowe	Older Americans Eldercare Amendments of 1991	Would require states to expand state and community involvement in order to promote community-based long-term care services to older individuals, including related services for their caregivers.	4/25/91 Education & Labor
	HR2362	Fawell	At-Birth Abandoned Baby Act of 1991	Requires states to adopt laws to allow for adoptions of abandoned babies within 90 days of abandonment. If states fail to pass legislation, funds under Title IV of the Soc. Sec. Act will be withheld.	5/15/91 Ways & Means
	HR3603	Downey	Family Preservation Act of 1991	<ol style="list-style-type: none"> <li>1. Would require 15% of IVB funds be spent on state courts with funds going directly to the court administrator.</li> <li>2. Includes a 50% set-aside with money to be spent on family preservation services including substance abuse.</li> <li>3. Eliminates the means test for Title IV-E, therefore, every child in foster care can be paid for by the federal gov't. However, the match rate is reduced to 40% for services and 25% for administration.</li> <li>4. Requires a state directory of services.</li> </ol>	10/22/91 Ways & Means 7/2/92 Ordered to be reported by Ways & Means amended

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Program Area	Bill/Reg. Number	Sponsor	Brief Title	Explanation & Programs Affected	Bill Status
				5. Requires extensive data collection. All child welfare spending in each state needs to be broken down by federal, state and local.	
	HR3698	Waxman	Community Mental Health & Substance Abuse Services Improvement Act of 1991	Would change allocation formulas and would create a separate new mental health block grant program, earmarking nearly 80% of the ADAMHA funds for drug and alcohol abuse programs. Also mandates states to enact laws prohibiting cigarette sales to those under 18, submit drug and alcohol abuse treatment program plans and establish strategies to accomplish reduced tobacco use by minors.	3/24/92 Laid on table by House
Family Leave	S5	Dodd	Family and Medical Leave Act of 1991	Requires employers with 50 or more employees to grant up to 12 weeks unpaid leave per year to full-time employees for childbirth, adoption, or other serious illness of the employee or an immediate family member. Employees would be entitled to health insurance during the leave period & reinstatement to the same or an equivalent position on return.	10/2/91 Passed Senate 11/13/91 Passed House
	HR2	Clay	Family and Medical Leave Act of 1991	A bill to entitle employees to family leave in certain cases involving a birth, an adoption, or a serious health condition & to temp. medical leave in certain cases involving a serious health condition, with adequate protection of the employees employment and benefits rights, and to establish a commission to study ways of providing salary replacement for employees who take any such leave.	11/6/91 Cmte. hearings held by House Rules Cmte 11/13/91 Laid on Table in House
	d.6/6/91 pp 26194 -26240		Child Care Regulations	<ol style="list-style-type: none"> <li>1. Requires states to spend 90% of their block grant flexible funds on direct services.</li> <li>2. Withholds federal dollars for any state that restricts parental choice, including state restrictions that limit the availability of private and sectarian providers.</li> <li>3. Forbids states, even if federal money is exhausted, to restrict the number of child care certificates.</li> <li>4. Requires that federal funding supplement existing state dollars and not supplant it using the previous year as the base (i.e. Sept. '90 for FY '91).</li> <li>5. Requires states to allow parents who receive certificates to use them for sectarian purposes.</li> </ol>	8/6/91 Comments period ends
	d.6/25/91 pp 29054 -29069		At-Risk Child Care Regulations	In violation of the legislation, the regulations define "in order to work", and would restrict at-risk child care to families who need child care to accept employment or remain employed, not those who are unemployed, in training or in educational programs. Circumvents state authority on standards as those generally applicable to care of a particular type regardless of the source of payment for the care. This provision would	8/25/91 Comment period ends

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JUSTICE				require states to pay for child care even if the provider was exempt from state standards.	
	Proposed Amend.	D'Amato		States which do not incorporate a workfare program as part of their general assistance program would lose 10% of AFDC money.	
	Proposed Amend.	D'Amato		Provides that for a period of 1 year from the date an individual becomes a new resident in a state, such individual is eligible to receive AFDC in an amount that does not exceed the lesser of the amount the individual received or could have received in the former state of residence, or the amount the individual could have received in the new state of residence.	
	S3	Boren	Congressional Campaign Spending Limit and Election Reform Act of 1992	Conference agreement prohibits state party committees from evading the contribution limits of federal law by using non-federal money for get-out-the-vote activities for non-federal candidates, recognizing that such activities may be undertaken with the real intention of aiding federal candidates.	5/13/92 Override of President's veto rejected in Senate by yeay-nay: 57-42 (2/3 vote required)
	S15	Biden	Violence Against Women Act of 1991	Requires certain grant recipients to establish state commission on Domestic Violence.	10/29/91 Reported to the Senate
	S250	Ford	National Voter Registration Act of 1991	Would require states to allow residents to register to vote in federal elections when they apply for a driver's license or state or federal benefits such as unemployment insurance.	5/20/92 Passed in Senate by yeay-nay vote: 61-38. 6/16/92 Passed in House: 268-153 7/2/92 Vetoed
	S288	Dixon	Regional Presidential Primaries & Caucuses Act of 1991	Requires each state to conduct primaries in accordance with this law. No state will be allowed to hold a Presidential primary on a date other than the date assigned by the commission to the region in which the state is located. (SEE ALSO HR46)	1/30/91 Rules & Administration
	S321	McConnell	Law Enforcement Officers' Bill of Rights	Unless states adopt the Law Enforcement Officers' Bill of Rights, federal funding under the Omnibus Crime Control & Safe Streets Act of 1968 would be cut by 20%. In addition, it allows states to be sued for not passing the Bill of Rights.	1/31/91 Judiciary; Incorporated in S1241, but removed in Conference Report HR3371
	S352	Glenn	National Guardianship Rights Act of 1991	Would establish national standards for the protection of the rights of alleged incapacitated individuals.	2/5/91 Judiciary
	S474	DeConcini	Professional and Amateur Sports Protection Act	To prohibit sports gambling under state law.	6/2/92 Passed Senate: 88-5 6/3/92 Referred to House Judiciary
S544	Heflin	Animal Research Facilities Protection Act of 1991	Makes it a federal crime to sabotage animal research facilities. (SEE ALSO HR2407)	10/16/91 Passed Senate	
S635	Thurmond	Comprehensive Violent Crime	Conditions receipts of funding on state implementation of drug	6/16/91 Placed on Senate calendar	

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			<i>Control Act of 1991</i>	<i>testing for targeted classes of offenders. Additional provisions.</i>	
	<i>Amend.</i>	<i>Rudman</i>	<i>Amendment to the Crime Bill</i>	<i>Would direct states to increase the size of local police forces.</i>	
	<i>S1002</i>	<i>Shelby</i>		<i>Makes it a federal criminal offense for parents to flee the state for purposes of avoiding payment of child support. (SEE ALSO HR1241)</i>	<i>5/8/91 Judiciary</i>
	<i>S1008</i>	<i>McConnell</i>	<i>National Child Abuser Registration Act</i>	<i>Would req. state agencies to register all offenders convicted of any acts involving child abuse with the Nat'l Crime Info. Center at the Dept. of Justice.</i>	<i>5/8/91 Judiciary ; Incorporated in Omnibus Crime Control Act, HR3371</i>
	<i>S1170</i>	<i>Durenberger</i>	<i>Crimes Against Children Registration Act</i>	<i>The Attorney General shall establish a state program and guidelines requiring any person who is convicted of a criminal offense against a victim who is a minor to register a current address with local law enforcement officials of the state for 10 years after release from prison, parole, or supervision.</i>	<i>5/23/91 Judiciary; Incorporated in Omnibus Crime Control Act, HR3371</i>
	<i>S1241</i>	<i>Biden</i>	<i>Violent Crime Control Act</i>	<i>Makes murder by firearm a federal offense with death penalty. Other mandatory sentences. Also contains Police "Bill of Rights", Heabeas Corpus, gun control and exclusionary rule.</i>	<i>7/11/91 Passed Senate; Provisions modified in conference. See HR3371</i>
	<i>S1454</i>	<i>Seymour</i>	<i>Penalties Against Violence</i>	<i>Would establish penalties for participation in illegal gang activity.</i>	<i>7/11/91 Judiciary</i>
	<i>S2304</i>	<i>Lautenberg</i>	<i>Stop Arming Felons Act</i>	<i>Amends Title 18 of US Code to permanently prohibit the possession of firearms by persons who have been convicted of a violent felony, irrespective of state law.</i>	<i>3/3/92 Judiciary 5/5/92 Hearings completed by Judiciary, Subcmte. on the Constitution</i>
	<i>S2613</i>	<i>Pressler</i>	<i>Anti-Car Theft Act of 1992</i>	<i>Makes auto theft a federal crime. States may elect to participate in national motor vehicle information system. States not participating may be denied access to FBI's National Crime Information Center.</i>	<i>4/10/92 Judiciary</i>
	<i>HR1</i>	<i>Brooks</i>	<i>Civil Rights Act of 1991</i>	<i>Would amend the Civil Rights Act of 1964 to restore and strengthen civil rights laws that ban discrimination in employment.</i>	<i>11/22/91 P.L. 102-166</i>
	<i>HR46</i>	<i>Bennett</i>	<i>Regional Pres. Primaries Act of 1991</i>	<i>Requires each state to conduct primaries in accordance with this law. No state will be allowed to hold a Presidential primary on a date other than the date assigned by the commission to the region in which such state is located. Requires that each voter shall be eligible to vote only for a candidate for nomination by the party of that voter's registered affiliation. If the state law makes no provision for registration by party affiliation, voters in that state shall register in accordance with procedures prescribed by the Attorney General. (SEE ALSO S288)</i>	<i>1/3/91 House Administration</i>
	<i>HR326</i>	<i>Gingrich</i>		<i>Would provide for mandatory education for incarcerated adults.</i>	<i>1/16/91 Education &amp; Labor 3/19/91 Certain provisions put into HR751 (see Education section) Provisions also in HR3371</i>

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	HR629	Solomon		Would impose mandatory sentences for violent felonies committed against the elderly.	1/24/91 Judiciary
	HR642	Jacobs		Would require a 20 percent reduction in certain assistance, unless a law enforcement agency has a binding law enforcement officer's bill of rights.	1/24/91 Judiciary; Modified to require a study by Dept. of Justice in HR3371
	HR1502	Boxer	Violence Against Women Act of 1991	Same provisions as S15.	3/20/91 1. Education & Labor 2. Energy & Commerce 3. Interior & Insular Affairs 4. Judiciary 5. Public Works & Transportation
	HR1241	Hyde		Makes it a federal criminal offense for parents to flee the state to avoid paying child support. (SEE ALSO S1002)	4/9/92 Approved for full comte. action amended by Judiciary, Sub. on Crime & Criminal Justice 7/1/92 Ordered to be reported by Judiciary, amended
	HR2217	Traficant		Would withhold a portion of law enforcement federal assistance to states that do not have a law that permits the death penalty or life imprisonments w/out parole, for any conviction of premeditated murder and for any conviction of murdering a law enforcement officer.	5/2/91 Judiciary
	HR2407	Stenholm	Farm Animal and Research Facilities Protection Act of 1991	Makes it a federal crime to sabotage animal facilities. (SEE ALSO S544)	4/2/92 Approved by Agriculture; Referred to Judiciary 7/8/92 Approved for full comte. action amended by Judiciary, Subcmte. on Crime & Criminal Justice
	HR2553	Hobson	National Child Abuse Registration Act of 1991	Would require state agencies to register persons convicted of any acts involving child abuse with the Nat'l Crime Info. Center, Dept. of Justice	6/5/91 Judiciary; Incorporated in HR3371
	HR2858	Manton	Amend. to U.S. Code, Title 18	Would impose mandatory prison terms for possession or use of a firearm or a destructive device during conduct constituting a crime of violence or a drug trafficking crime under state law.	7/10/91 Judiciary
	HR2862	Ramstad	Jacob Wetterling Crimes Against Children Registration Act of 1991	Would require any person who is convicted of a state criminal offense against a victim who is a minor, to register a current address with law enforcement officials of the state for 10 yrs. after release from prison, parole, or supervision.	7/10/91 Judiciary; Similar provisions incorporated in HR3371
	HR2903	Gallegly	Juveniles in Drug Crime Prevention Act of 1991	Would impose minimum mandatory prison sentences for drug crimes involving minors.	7/16/91 1. Energy & Commerce 2. Judiciary; Similar provisions incorporated in HR3371
	HR2904	Gallegly	Three-Time Loser Drug Act of 1991	Mandates life imprisonment without release for drug traffickers or violent criminals convicted of a third offense.	7/16/91 1. Energy & Commerce 2. Judiciary

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	HR2931	Hobson	National Child Abuse Registration Act of 1991	Would require state agencies to register all offenders convicted of any acts involving child abuse with the National Crime Information Center of the Dept. of Justice.	7/17/91 Judiciary; Similar provisions incorporated in HR3371
	HR3371 Conf. Rpt.	Brooks	Omnibus Crime Control Act of 1991	Conf. rpt. combines HR3371 and S1241. Requires states to collect info. regarding persons who violate state criminal child abuse laws. If states do not comply w/in 3 years, they stand to lose a portion of federal funding for drug control. States w/ death penalties shall est. minimum requirements for attys. representing defendants. Prohibits states from est. lotteries based on professional sports. Requires criminal history background checks for firearm purchases. Requires updating and indexing state criminal history records. Creates federal offense for stealing art. Sense of Congress that drunk driving offenses should be considered in child custody and visitation. Creates federal crimes for computer and insurance fraud. Prescribes drug testing.	3/19/92 Mitchell (D-ME), motion to close debate on consideration of the conference report on HR3371 rejected by yea-nay vote: 54-43. (3/5's vote required) 5/14/92 Conference report considered in Senate
	HR4312	Serrano	Voting Rights Improvement Act of 1992	Requires jurisdictions with large language minority populations to provide bilingual assistance to voters.	2/25/92 Judiciary 7/8/92 Reported to House amended by Judiciary (HRpt 102-655)
	HR4366	Conyers	Universal Voter Registration Act of 1992	Requires that each state's motor vehicle driver's license application shall serve as an application for voter registration. Requires states to accept mail-in voter registration under certain conditions and to designate locations for registration such as public assistance offices and public schools and universities.	3/3/92 1. Administration 2. Post Office & Civil Service
	HR4542	Schumer	Anti-Car Theft Act of 1992	Makes forceful car theft a federal crime. Gives states the option of participating in a national motor vehicle information system. Authorizes the FBI to deny access to the National Crime Information Center to any state failing to participate in the system.	3/31/92 Hearings held by Judiciary, Subcmte. on Crime & Criminal Justice 5/21/92 Markup by Subcmte. on Crime & Criminal Justice
	HR4585	Schroeder	National Child Protection Act of 1992	State shall report child abuse crime information to, or index child abuse crime information in, the national criminal background check system. Grant money would be available. If states are not in compliance within 1 year, they could lose up to 10% of funds available through Title I of Omnibus Crime Control and Safe Streets Act of 1968.	3/25/92 Judiciary; Similar provisions in HR3371
	HR4599	Moran	Driver's License Information Act of 1992	It shall be unlawful for a state, or for any person, to disclose, other than for a governmental purpose, driver's license information to any person other than the licensee, without the licensee's freely granted express consent. Any person aggrieved by a violation of this section may, in a civil action, obtain appropriate relief from	3/26/92 Judiciary

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				<i>the state, if the state does not prohibit such disclosure.</i>	
	HR4897	Cunningham	National Police and Peace Officer Protection Act	Would amend Title I of the Omnibus Crime Control and Safe Streets Act of 1968 to deny grant funds to states unless law enforcement officers are permitted to carry concealed firearms.	4/9/92 Judiciary
	HR5266	Andrews		Amends Omnibus Crime Control and Safe Streets Act of 1968 to reduce funds available to a state by 25% unless states implement prison workfare program.	5/27/92 1. Judiciary 2. Ways & Means
	HR5304	Frank		To provide that a state court may not modify an order of another state court requiring the payment of child support unless the recipient of child support payments resides in a state in which the modification is being sought, or consents to seeking the modification in such other state court.	6/2/92 Judiciary
LABOR	S600	Metzenbaum	Child Labor Amendments of 1991	Would require states to certify that all minors who wish to work have a) permission from guardians and b) are enrolled in school	3/11/92 Ordered to be reported by Labor & Human Resources amended by ye-a-nay vote:10-7
	HR514	Kolter	Coal Miner's Unemployment Assistance Act of 1991	Would establish a temporary program of supplemental unemployment benefits for unemployed coal miners who have exhausted their rights to regular unemployment benefits.	1/14/91 Ways & Means
	HR773	Stark		Amends the Social Security Act to make ineligible any state that supplements Federal SSI benefits, but does not pass such benefits along.	1/31/91 1. Energy & Commerce 2. Ways & Means
	EE20-91		Social Security Regulations	Regs. to assist state and local govts. comply with P.L.101-508 mandating Soc. Sec. coverage for all state & local govt. employees not covered by a state or local retirement system. In the regulation, the IRS set minimum retirement benefit requirements which state that benefits received from a state or local govt. must be equivalent to the benefit the employee would have received under Soc. Sec.	
REVENUE & TAX	S267	Reid		Would prohibit a state from imposing an income tax on the pension or retirement income of non-residents.	2/19/92 Committee hearings completed by Senate Finance
	S473	DeConcini	Sports Service Mark Protection Act	No state shall sponsor, operate, advertise, or promote any lottery, sweepstakes, or other betting or gambling that uses or exploits, directly or indirectly, a service mark owned by a professional or amateur sports organization.	6/26/91 Hearings completed by Judiciary, Subcmte. on Patents, Copyrights & Trademarks
	S474	DeConcini	Professional & Amateur Sports Protection Act	No state shall sponsor, operate, advertise, authorize, license, or promote any lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly, on any game conducted by any professional or amateur sports organization.	11/26/91 Reported to the Senate, SRpt. 102-248

# 1992 Hall of the States Mandate Monitor

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Program Area	Bill/Reg. Number	Sponsor	Brief Title	Explanation & Programs Affected	Bill Status
	S1681	Seymour		A bill to amend Title II of the Social Security Act to make it clear that states and local governments may not tax Social Security benefits.	1/31/91 Judiciary
	HR213	Roe		A bill to amend Title XVIII of the Social Security Act to authorize payment under the Medicare Program for certain services performed by chiropractors.	1/3/91 1. Ways & Means 2. Energy & Commerce
	HR431	Vucanovich		Prevents states from imposing taxes on nonresidents' withholding pensions.	1/14/91 Ways & Means
	HR490	Lent	Amend. to IRS Code of 1954	Amends the IRS code of 1954 to exclude from the gross income of any participant in any state or local government plan so much of any distribution from such plan as represents his allocable share of tax exempt interest of such plan.	1/11/91 Ways & Means
	HR1531	Unsoeld	Pension Equity Act of 1991	Would prohibit a state from imposing an income tax on the pension income of individuals who are not residents of that state.	3/20/91 Judiciary
	HR2913	Archer	Domestic Corporation Tax Equality Act of 1991	Would prohibit states from imposing taxes on a worldwide unitary base. Also would prohibit states from requiring the inclusion if the income tax of a corporation is calculated more than an equitable portion of any dividend received from certain unrelated foreign corporations.	7/16/91 1. Judiciary 2. Ways & Means
	HR2971	Doolittle		A bill to amend the Title II of the Social Security Act to provide that no state or local government may tax Social Security benefits.	7/23/91 Judiciary
TRANSPORTATION	HR2542	Toricelli	Amend. to U.S. Code, Title 23	Requires states to adopt the system for handicapped parking established by the Sec. of Transportation and to recognize the parking stickers of individuals with disabilities from other states.	6/4/91 Public Works & Transportation
	HR4703	Mineta	Interstate Commerce Commission Sunset Act of 1992	Pre-empts state authority to enforce any law or regulation relating to interstate or intrastate market entry, rates of services of any motorcarrier, motor private carrier, water carrier, freight forwarder, or broker that provides transportation of property, including express packages, in interstate commerce. No state may require any interstate private or for-hire motor carrier or interstate broker of property to prove the lawfulness of any interstate transportation activity including, but not limited to requiring the carrier to maintain any certificate or permit issued by the Interstate Commerce Commission, register vehicles operated under permit issued by ICC, display decals or stamps as a means of identification, or pay fee or tax pertaining to any of these activities.	3/30/92 1. Public Works & Transportation 2. Judiciary 3. Energy & Commerce
	S965		Intermodal Surface	1. Effective 09/30/96, states must join the Internat'l Registration and	12/18/91 P.L. 102-240

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Program Area	Bill/Reg. Number	Sponsor	Brief Title	Explanation & Programs Affected	Bill Status
			<i>Transportation Efficiency Act of 1991</i>	<p><i>the International Fuel Tax Agreement.</i></p> <p><i>2. Effective 9/30/94, states will no longer be allowed to collect fees from motor carriers subject to the jurisdiction of the ICC. A 1-year grant program would be established to offset the revenue loss to the states.</i></p> <p><i>3. Effective 9/30/96, states must join the Internat'l Fuel Tax Agreement which uses a base state registration for the collection of fuel use taxes and is overseen by the IFTA Board.</i></p> <p><i>4. Would offer grant money to states to establish motorcycle helmet and seat belt laws. States not participating in the grant program by FY 1994 would be required to spend 1.5% of their highway money on highway safety programs.</i></p>	
	HR3221	Clement		<i>Would pre-empt state laws relating to the regulation of rates for surface transportation of property services provided by certain motor and air carriers.</i>	<i>3/24/92 Subcmte. hearings in Public Works &amp; Transportation, Subcmte. on Surface Transport. 4/2/92 Subcmte. hearings completed by Surface Transportation</i>
	HR4335	Hastert	<i>Safe and Competitive Trucking Act of 1992</i>	<i>No state shall have in effect or enforce any law, regulation, std., or other provision relating to any of the following: intrastate rates, routes, or services of any interstate motor carrier, or interstate broker which provides intrastate transportation of property, including express packages; the leading, rental, or other sourcing of commercial drivers and motor vehicles by interstate motor carriers of property operating intrastate commerce.</i>	<i>2/27/92 1. Public Works &amp; Transportation 2. Judiciary 4/2/92 Hearings completed by Public Works, Subcmte. on Surface Transportation</i>
OTHER	HR74	Bryant	<i>Professional &amp; Amateur Sports Protection Act</i>	<i>Would prohibit sports gambling under any state law.</i>	<i>9/17/91 Approved for full committee action by Justice Subcmte. on Econ. &amp; Commercial Law</i>
	HR611	Gallegly		<i>Would make ineligible for federal financial assistance any state or locality the President determines to have a policy providing sanctuary to members of the Armed Forces who are avoiding military obligations.</i>	<i>1/23/91 Government Operations</i>
	HR843	Atkins	<i>National Plumbing Products Efficiency Act of 1991</i>	<i>Would establish federal standards for the manufacturing and labeling of certain plumbing products.</i>	<i>2/6/91 Energy &amp; Commerce</i>
	HR1424	Meyers	<i>Enclave Fire Protection Act of 1991</i>	<i>Would require states to permit certain emergency response personnel to conduct preincident planning activities and for other purposes.</i>	<i>3/13/91 Government Operations</i>
	HR5283	Dymally		<i>To pre-empt State and local sanction measures against Namibia.</i>	<i>5/28/92 Foreign Affairs</i>
MANDATE RELIEF	HConRes 141	Rose		<i>Expressing the sense of Congress that adoption of new Federal mandates should be contingent on the financial ability of state and local</i>	<i>4/25/91 Government Operations</i>

# 1992 Hall of the States Mandate Monitor

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Program Area	Bill/Reg. Number	Sponsor	Brief Title	Explanation & Programs Affected	Bill Status
				<i>governments to implement the mandates.</i>	
	HR1546	Barnard		Amends Congressional Budget Act of 1974 to call for a point of order on any bill or resolution which, in the judgement of CBO, is likely to result in an annual cost to state and local gov'ts of \$50,000,000 or more with respect to any program, project, or activity.	3/21/91 Rules
	HR1547	Barnard	Intergovernmental Mandate Relief Act of 1991	Establishes procedures to assure that the Federal government pays the total amount of additional costs incurred by state and local gov'ts in complying with any intergov'tal regulation which takes effect on or after the date of enforcement of this Act.	3/21/91 Rules
	HR2260	Herger	Unfunded Federal Mandates Relief Act of 1991	Assures that the Federal government pays the total amount of additional direct costs incurred by state and local governments in complying with any Intergovernmental regulation which takes effect on or after the date of enactment.	5/8/91 1. Government Operations 2. Judiciary 3. Rules
	HR2338	Snowe		To provide that no state or local gov't shall be obligated to take any action required by Fed. law enacted after the date of this Act unless all expenses are fully funded by the United States.	5/14/91 Government Operations
	HR3344	Hochbrueckner	Nat'l Comm. on Intergov'tal Mandate Reform Act	To review and inventory the increasing number of federally mandated programs and to recommend changes necessary to reform the system by which federally mandates programs are established.	9/16/91 Government Operations
	HR4207	Snowe		To amend Title 23, US Code , to repeal a penalty for noncompliance by states with a program requiring the use of safety belts and motorcycle helmets.	2/7/92 Public Works & Transportation
	HR4613	Thomas	States' Rights and Local Legislative Prerogatives Preservation Act of 1992	No statute, or rule promulgated under such statute, shall pre-empt, in whole or in part, any state or local government law, ordinance, or regulations, unless the statute explicitly states that such pre-emption is intended or unless there is a direct conflict between such statute and a state or local gov't law, ordinance, or regulation so that the two cannot be reconciled or consistently stand together.	3/26/92 Government Operations
	HR5125	Shays		A bill to amend the Congressional Budget Act of 1974 to expand the requirement that legislation be accompanied by cost estimates of its impact on state and local governments.	5/7/92 1. Government Operations 2. Rules
	HR5545	Moran	Fiscal Accountability and Impact Reform Act (FAIR Act)	To improve federal decisionmaking by requiring a thorough evaluation of the economic impact of federal legislative and regulatory requirements on state and local governments and the economic resources located therein.	7/2/92 1. Rules 2. Judiciary
	HR5591	Horton	Mandate and Community Assistance Reform Act	Establishes a Commission to review, consolidate and eliminate certain mandates. Amends Congressional Budget Act of 1974 to delete	7/9/92 1. Government Operations 2. Rules

# 1992 Hall of the States Mandate Monitor

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Program Area	Bill/Reg. Number	Sponsor	Brief Title	Explanation & Programs Affected	Bill Status
				<i>language stating that cost estimates are required only if submitted in a timely manner. Further requires that cost estimates accompany the conference report of any legislation.</i>	3. Judiciary
	S2080	Levin	Pre-emption Clarification and Information Act of 1991	Requires a statute to state explicitly Congress' Intent to pre-empt state & local gov't powers before the courts and federal agencies could invalidate or prohibit any state or local gov't law, ordinance or regulation.	11/26/91 Governmental Affairs
	S2170	Dodd	Distressed Urban Areas Assistance Act of 1992	Expresses the sense of the Senate that mandates from the Federal level must be either paid for at the Federal level or that states and cities and towns be given more time to comply.	1/30/92 Labor & Human Resources
	S2204	Durenberger	Repeal of Certain Provisions of Law Relating to Seat Belts and Motorcycle Helmets	Amend Intermodal Surface Transportation Efficiency Act of 1991 to repeal the provision relating to penalties with respect to grants to states for safety belt & motorcycle helmet traffic safety programs.	2/6/92 Environment & Public Works
	S2289	Roth	Competitiveness Enforcement Act	Requires agencies of the Federal government to prepare an estimate of the total costs to state and local governments for each year in which the rule would be in effect.	2/27/92 Rules & Administration
	S2301	Sasser	Infrastructure Stimulus Act of 1992	Provides a temporary waiver of states' matching fund requirements for federal-aid-highway programs and for mass transit discretionary and formula capital construction projects, where the Governor of the state has certified that sufficient funds are not available to pay the cost of the non-Federal share of the project.	2/27/92 Environment & Public Works
	S2303	Moynihan	Work for Welfare Act of 1992	Provides uncapped appropriation for JOBS and for child care under JOBS, state match requirements would be repealed, but would have "maintenance of effort" requirements. (see also HUMAN SERVICES)	3/30/92 Hearings by Finance, Subcmte. on Social Security & Family Policy
	S2319	Nickles	Economic and Employment Impact Act of 1992	Requires Fed. legislation and regulations to be accompanied by economic and employment impact statements assessing their impact on the private sector and state and local governments.	3/5/92 Governmental Affairs
	S2348	Mack	Federal Mandates Relief Act of 1992	A reimbursement bill which would place a disincentive on Congressional mandates by requiring the Federal Gov't to pay for the cost of mandates.	3/12/92 Governmental Affairs
	S2349	Mack		A point-of-order bill which would slow the process of passing unfunded Federal mandates. Senators could raise a procedural point-of-order and stop any legislation on unfunded mandates from coming to a vote.	3/12/92 Rules & Administration

## Mandate Relief Bills

Type of Relief	Author	Bill	Date		Chamber	Committee	Staff Phone
			Introduced	Cosponsors			
Study	Hochbrueckner	HR3344	9/16/91	27	House	Government Operations	(202) 225-3826
	Horton	HR5591	7/9/92	2	House	Government Operations/ Judiciary/ Rules	(202) 225-4916
	//////						
Fiscal Note	Shays	HR5125	5/7/92	17	House	Government Operations/ Rules	(202) 225-5541
	//////						
	Roth	S2289	2/27/92	0	Senate	Rules & Administration	(202) 224-2441
	Nickles	S2319	3/5/92	15	Senate	Governmental Affairs	(202) 224-5754
	Moran	HR5545	7/2/92	80	House	Judiciary/ Rules	(202) 225-4376
Point of Order	Barnard	HR1546	3/21/91	26	House	Rules	(202) 225-4101
	Mack	S2349	3/12/92	2	Senate	Rules & Administration	(202) 224-5274
Funding	Rose	HConR141	4/25/91	1	House	Government Operations	(202) 225-2731
	Dodd	S2170	1/30/92	1	Senate	Labor & Human Resources	(202) 224-2823
	Snowe	HR2338	5/14/91	12	House	Government Operations	(202) 225-6306
	Mack	S2348	3/12/92	2	Senate	Governmental Affairs	(202) 224-5274
	Barnard	HR1547	3/21/91	26	House	Rules	(202) 225-4101
	Herger	HR2260	5/8/91	1	House	Government Operations/ Judiciary/ Rules	(202) 225-3076
//////							
Transportation	Durenberger	S2204	2/6/92	16	Senate	Environment & Public Works	(202) 224-3244
	Snowe	HR4207	2/7/92	56	House	Public Works & Transportation	(202) 225-6306
	Sasser	S2301	2/27/92	2	Senate	Environment & Public Works	(202) 224-0642
Medicaid	Dannemeyer					(202) 225-4111	
Human Services	Moynihan	S2303	3/30/92	0	Senate	Hearings held by Finance, Subcmte. on Social Security & Family Policy	(202) 224-4451
	//////						
Pre-emption	Levin	S2080	11/26/91	3	Senate	Governmental Affairs	(202) 225-6221
	Thomas	HR4613	3/26/92	19	House	Government Operations	(202) 225-2311



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*Hall of the States Mandate Monitor*

The Honorable James Baker  
Chief of Staff of White House  
Washington D.C.

Caron

NRW

Dear Mr. Baker,

The purpose of this letter is to seek approval or disapproval of the use of your name in the book I am working on. An attached copy is enclosed so that you can see how and why I would desire to use a name with the prophecy of Jeremiah. 49:13 thru 14.

A letter from your secretary stating approval or disapproval is desired but if no answer arrives I will accept that as a disapproval and remove your name before a Copyright is applied for.

Your friend,

Milton Lee Curry

Box 1329

Buna, Texas 77612

## THE TWO RUMORS

One must search and seek to become a faithful witness for the Lord. How can one witness to another and not even know what the word of our God is saying?

The prophets approach of writing and his speech should also become familiar. At times they spoke of the beginning and ending of the subject although there may be a great time space separating two occurrences.

Twelve months was the set time between these two rumors but Jesus said, For there shall be great tribulation, such as was not since the beginning to this time. Except those days should be shortened there should no flesh be saved but for the elect's sake those days shall be shortened.

I cannot give the days the Lord has not given to me, therefore I cannot say how many days will be taken away from the 2,300 day set time. This I can say, We are now living within the days the Lord has shortened the great tribulation.

Many have already tempted the Lord by not hearing are believing the servant the Lord sent to warn them. The very gospel they preach will be the gospel that will condemn them.

The Lord said, if they will not believe the servant I send they will neither believe me.

Bozrah was the territory settled and named after the dukes of Esau. Eusau's brother was Jacob.

From the ages of antiquity changes have occurred unto this present time. These changes must be realized and

accepted concerning territories and name spelling. God's word never changes.

Also bring to remembrance the first and great commandment. Thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy mind.

Three things mentioned, heart, soul, and mind. Therefore meditating and searching, and seeking is one third an obligation in worship as believing, and obeying to do all the things the Lord said we should do. The devil and all his angels will never take that privilege from me.

Bozrah a territory, named after the dukes of Esau over time became the territory of Iraq. Sometime between the days of antiquity until now, it became Basra.

In Isaiah's time it was Bozrah. In Jeremiah's time it remained Bozrah, therefore their prophecies speak of Bozrah. The Edomite territory to be destroyed with its people ending tribulation.

The importance of Basra is that Saddam Hussein placed his choice troops around and near Basra during the war.

As we proceed in meditation of the prophecy you will realize why I have gone to great lengths explaining Basra.

Jeremiah 51:46 And lest your heart faint, and ye fear for the rumor that shall be heard in the land; a rumor shall both come one year, and after that in another year shall come a rumor, and violence in the land, ruler against ruler.

Two rumors, one in one year, the second rumor in the year following. Then ruler is against ruler.

Jeremiah gives us an amazing clue of how to recognize the first rumor. Then Daniel the prophet gives great detail of both rumors. But the Lord God is truly the giver of all good gifts to mankind for the prophets wrote as they were moved by the Spirit.

If you are familiar with the Gulf war you will immediately recognize the ambassador sent unto the heathen(Gentile nations) to come against her.

### **FIRST RUMOR**

Jeremiah 49:13 thru 14 For I have sworn by myself, saith the Lord, that Bozrah shall become a desolation, a reproach, a waist, and a curse: and all the cities thereof shall be perpetual wastes.

**I have heard a rumor from the Lord, and an ambassador is sent unto the heathen, saying, Gather ye together, and come against her, rise up to battle.**

The Majesty, the wisdom and the knowledge of our Lord daily continues to astonish me. Whom else but the Lord could have been so accurate at the set time?

Jeremiah was only the Lord's servant, recording God's truth, which will be fulfilled as recorded.

Hear Jesus, Luke 24:44 And he said unto them, These are words which I spake unto you, while I was with you, **that all things must be fulfilled, which were written in the law of Moses, and in the prophets, and in the Psalms, concerning me.**

Looking back on the event of the Gulf War we can see this prophecy has already been fulfilled.

You should have already recognized the messenger sent, saying gather together, and come against her, was the Secretary of State, James Baker. Mr. Baker represents the United States of America.

August 2, 1990 Iraq invaded Kuwait. The Secretary of State shuttled from nation to nation gathering them together to rise up and come against Iraq.

A deadline was set for Iraq to withdraw from Kuwait.

Prior to the deadline Saddam, in a radio speech said his country was ready to fight to keep conquered Kuwait.

The rumor Jeremiah heard from the Lord was in fulfillment at that time. The nations rose up to battle.

Retain this study in memory as we hear what the Lord wanted us to know concerning the great tribulation.

Let us come to the knowledge of truth so we may warn others to repent and be prepared to stand before the Lord in the resurrection of the just.

The best method in interpreting scripture is to hear another prophet's interpretation upon that particular subject. Let us hear Daniel.

Beginning in Daniel 11:21, speaking of the king that rises up to take away the daily sacrifice.

Daniel 11:21 A vile and contemptible person will rise whose line is not of royal succession.

Saddam Hussein arose and assumed presidency of Iraq July 16, 1979. He did not come from a royal succession.

His word is worthless for he practices deceit, and without warning he enters the richest areas and overpowers them with great forces while inflicting fear and torture upon those whom oppose him. He controls his own nation in this same manner.

August 2, 1990 Iraq invaded Kuwait and devised his plans against strong nations.

Jeremiah's rumor he heard from the Lord, a messenger has been sent among the nations. Gather yourselves together and come against her.

Saudi Arabia was the base the nations gathered to oppose Iraq. Saudi Arabia is south of Iraq.

Daniel 11:25 thru 26 And he shall stir up his power and his courage against the south with a great army: and the king of the south shall be stirred up to battle with a very great and mighty army, but he shall not stand: for they shall forecast devices against him.

Yea, they that feed of the portion of his meat shall destroy him, and his army shall overflow: and many shall fall down slain.

We now look in hindsight and see this is the first rumor. Looking forward into the future another rumor is yet to come, fulfilling the scripture.

Daniel 8:10 thru 12.

And it waxed very great, even to the host of heaven; and it cast down some of the host and of the stars to the ground, and stamped upon them.

Yea, he magnified himself even to the Prince of the host, and by him the daily sacrifice was cast down.

And an host was given him against the daily sacrifice by reason of transgression, and it cast down the truth to the ground: and it practiced and prospered.

The future is dim for Israel, Egypt, and their allies. For it is written in the scriptures, When Egypt fails her helpers will fall.

Israel and Syria will fall even before Egypt and the allies fail.

Daniel 11:27 thru 28 covers the space of time separating the two rumors.

And both these king's hearts shall be to do mischief, and they shall speak lies at one table; but it shall not prosper: for yet the end shall be at the time appointed.

Then shall he return into his own land with great riches; and his heart shall be against the holy covenant: and he shall do exploits, and return to his own land.

We the people bear witness to his exploits. Blowing oil well heads polluting air, land and sea. Carting Kuwait's riches to his own land.

There is a time appointed by our Lord for this return south.

### **Second Rumor**

Daniel 11:29 thru 30 **At the time appointed he shall return**, and come toward the south: but it shall not be as the former, or as the latter.

For ships of Chittim(Gentiles) shall come against him:

therefore he shall be grieved, **and return**, and have indignation against the holy covenant: so shall he do. **he shall even return, and have intelligence with them that forsake the holy covenant.**

This will not all happen in one day but a number of days will pass before the time of the end. To prevent confusion Let us place verse 11:40 before 11:31 to have a better clarification separating the time appointed from the time of the end.

Daniel 11:40 And **at the time of the end shall the king of the south push at him:** and the king of the north shall come against him like a whirlwind, with chariots, and with horsemen, and with many ships; and he shall enter into the countries, and shall overflow.

Daniel 11:31 And arms shall stand on his part, and they shall pollute the sanctuary of strength, and shall take away the daily sacrifice, and they shall place the abomination that maketh desolate.

At the time appoint Iraq will return south. Many people whom will be in his path will be judged therefore the judgment of the world will begin at the time appointed. these are times the Lord set.

Acts 17:30 thru 31 And the times of ignorance God winked at; but now commandeth all men every where to repent.

Because he hath appointed a day, in that which he will judge the world in righteousness by that man whom he hath ordained: whereof he hath given assurance unto all men, in

that he hath raised him from the dead.

Many mock as Paul tried to warn them their day of judgment will come whether they are dead or living on earth.

God is not mocked for he will come quickly, to repay every one for what he has done.

The gospel has been preached over the world. Call upon the name of the Lord, believe upon the name of the Lord Jesus Christ. But they have not believed the gospel nor obeyed anything the Lord commanded his people to do.

It was written in the law of Moses.

Deuteronomy 18:18 thru 19 I will raise them up a prophet from among their brethren, like unto thee, and will put my words in his mouth; and he shall speak unto them all that I shall command him.

And it shall come to pass, that whosoever will not hearken unto my words which he shall speak in my name, I will require it of him.

Jesus came in the name of the Lord God. He spoke all the Father gave him to speak.

Now the day of judgment will begin at the time appointed.

NRN

September 6, 1992

President George Bush  
The White House  
Washington, DC

Dear Mr. President:

Hey.....Big Spender!. Where have you been the last four years..... talk about slick! You've let people starve and struggle and worry for four years because you were saving up all this money to use as a Big Stick to beat people into voting Republican when you got into trouble with your voodoo economics.....you knew this "trickle-down" theory was really a "gusher-up" theory all the time, you conniving character, and you put aside this money to rescue you and keep your power. I wish you had put one-fourth as much energy into helping people these past years as you are putting into your selfish ambitions now. Of course you've now jettisoned your credibility on your foreign policy expertise and concern as well as your domestic credibility, which is long gone.

Your criticism of Clinton's health care plan is laughable when, under you, nearly 40 million people lack any health care ins. and hundreds of thousands more are losing theirs along with their jobs and pensions. We also know you've done nothing to contain healthcare costs which have skyrocketed and if you get your capital gains tax cut for the rich (less than 1% of the almost 7% it would effect would get most of that) you'll cut Medicare even more...and probably Medicaid too. That's your outrageously inhumane "healthcare plan".

We've seen how your "economic philosophy" has transferred the biggest share of wealth in history from the poor and middle-class to the already wealthy and how you have the gall to ever say otherwise is frightening in what it tells us about your personal ambition being a priority over helping anyone who isn't rich and also over the good of our country. I predict the worst economic disaster that has ever befallen modern society to take place if you get a second term! Is that how you want to go down in the history books?? As far as the poor and homeless and elderly and sick go.....you "ain't seen nothin' yet". The mood of the populace is angry and if it keeps on this way and your ugly, divisive tactics continue, I wouldn't be surprised to see lots of blood in the streets. You can't ignore and lie to the largest share of the populace indefinitely and expect them not to fight back.

We know how many jobs are gone and still going and how the few jobs you've "created" are low-paying, parttime and without fringe benefits. We know corporations have been allowed to incur massive debt which means less money for investment and how the executives still "get theirs" and the little guy pays, or in cases of rampant bankruptcy, is left holding the bag. We know about the myriad <sup>corp.</sup> tax deductions (like operation loss) work and who they work for and how deregulation, mergers, hostile takeovers, and the like have cheated the average American and how jobs overseas makes companies richer (but not American workers). You've allowed the Federal debt to soar by never sending a decent budget to Congress. Foreign countries don't pay their fair share of taxes and deregulation has cut down competition and threatened public safety and your catering to special

interests

1 all the while you're yelling at Congress for doing it (as if you have a special dispensation to do it) is disgusting.

Your moral preaching while acting in an immoral way as far as taking care of this country's needs is shameful as is the constant stream of misinformation and lies coming from the Republican Party and from you.

You still don't seem to "get it" and, in the few cases you do, your actions are so cynical as to be unbelievable. Americans want more time to spend with their families yet, because of your neglect, have to work harder and longer for less and both parents have to do it. Some people have to beg or go on what little dole is left. For the first time in my life, and I've lived awhile, our church has had to feed people one or two nights a week in ~~an~~ ever rising numbers and we're coming to the end of our finances and volunteer time. People don't want lectures about "family values".....those that have them<sup>(values)</sup> don't need the lecture and those that don't won't listen anyway. We want an effective and fair government that actually IS effective and fair and doesn't just talk about it! We want jobs, roads, healthcare that we can afford, a decent education (and I don't want to pay for Catholics and Fundamentalists' kids<sup>Church-Schools</sup>) as our forefathers meant us to have, enough police and programs for kids to cut down on crime (which has risen under you), and fairness in the tax code and a sense that we're actually getting something for our dollar.....all of us .....not just the voters who live in states that are vital for reelection.....and we want politics we don't have to hate. We also want a president we can trust. Think we're going to vote for you?????NOT ON YOUR LIFE!!!!

A tax cut? I don't want it even though I could use it, because I know it would increase the deficit and my grandchildren will be strapped. The rich people in this country want it.....they'll selfishly take all they can get and, of course, they know, with you at the helm, they'll be the ones that get it. At the same time, I'm tired of paying their share so get some revenue from raising taxes on them for a change. (I know your mind is set in cement on this, however). Don't you ever think of the future of all those grandchildren you so picturesquely surrounded yourself with at the convention? Don't you want a debt-free nation with clean air and water? Evidently you think just making sure they have money and are isolated from all those people who aren't radical right-wingers is all they need. You are really short-sighted.

And if foreign policy is so important why did you snatch Jim Baker away from it? I used to have a little respect for him but since he came the campaign has gotten more vicious, irrelevant and untrue so you are all down in the mud together. When you try to stand up at the end of this campaign, that mud won't come off. Are you being cowardly about the debates because your record has been so bad?

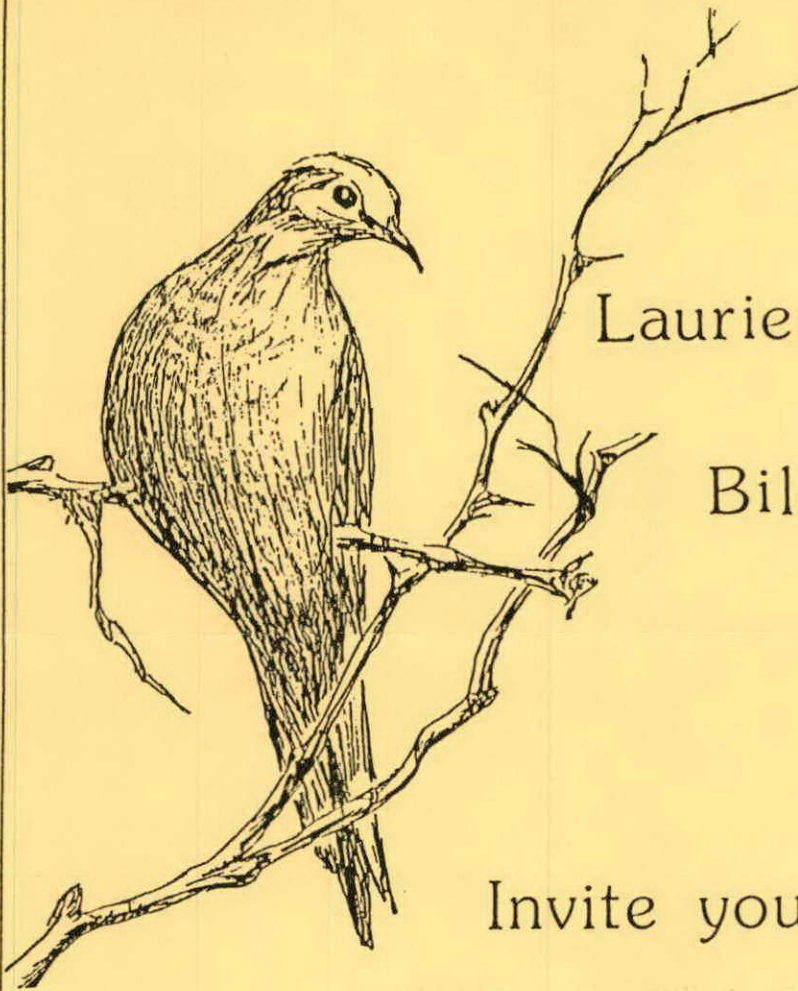
Yours truly,

Bob and Betty Donaldson

9/4 Phone requested

B. Montagne

OK to  
regret



Laurie & Tubby Hunter  
and  
Bill & Billie Carl

Invite you to

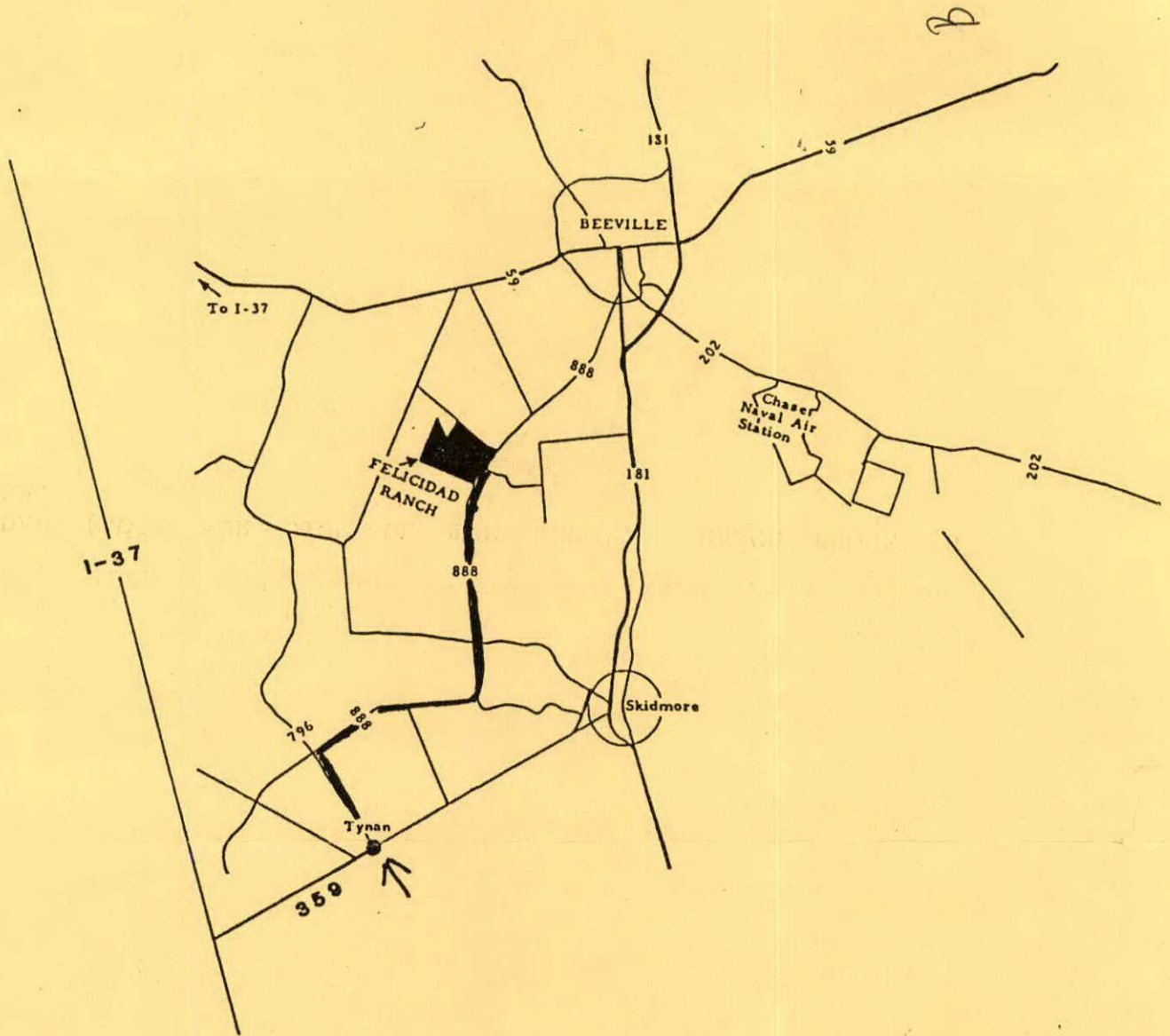
DOVE HUNT  
RANCHO FELICIDAD

3 pm Saturday — September 26, 1992

barbecue and drinks Saturday evening

R.S.V.P. 512/888-4471 Johnnie Wesson

LEAVE CORPUS CHRISTI ON I-37 - GO TO EXIT 36 (TYNAN/SKIDMORE),  
AT STOP SIGN (FM 359), TURN RIGHT, GO TO TYNAN - TURN LEFT IN  
TYNAN AT FM 796. TAKE 796 TO FM 888 (THERE WILL BE A  
CEMETERY), TURN RIGHT ON 888 APPROX. 15 MILES +/- TO RANCHO  
FELICIDAD (LOOK FOR SIGN ON THE LEFT). RANCH PHONE IS  
358-8552.



September 1, 1992

CENTRAL  
FILES - NRN -  
CST spoke  
w/ her by  
phone


Dear Mr. Baker:

Congratulations to you! You're back in our old neighborhood.

I'm writing to ask for your support and recommendation in filling an administrative position on the White House staff. I was unable to return to work following the '88 Campaign but due to personal circumstances - I must. You have probably completed staffing your immediate office but perhaps you would help me out by personally recommending me to White House personnel vouching for my professional record and personal character - not to forget - my dedication to The President.

Recently, I received a call and had a subsequent interview with Mr. Fehrer of the personnel office. He had received my resume and wanted to meet with me to discuss my areas of interest. I also spoke to Ms. Jackson of your office to ask her to personally let you know that I was available. Of course, I would consider any office but believe there may be something available in Congressional correspondence and I would consider that area.

Thank you Jim. I sincerely appreciate your recommendation.

  
Pat Bye

PS: If you could use some help in your office, I would accept a temporary spot until after the election. Pro-bono, if necessary.

PATRICIA A. BYE

511 N. Wakefield Street  
Arlington, Virginia 22203  
703-524-6619

WORK EXPERIENCE

BUSH-QUAYLE '88 CAMPAIGN

August 11, 1988 thru  
November 9, 1988

Assistant to Senator Dan Quayle's Campaign Director

Supported the Campaign Director, his Deputy and the Director of Scheduling and Advance in all areas of the division's administrative procedures. Responsible for review and follow-up of incoming communications dealing with scheduling and long-range planning and for maintaining all official records for the office of the Vice Presidential Candidate.

BLAIR HOUSE RESTORATION FUND

March 2, 1987 thru  
June 17, 1988

Executive Director

Managed all operations of the organization established to monitor and disburse funds in connection with the refurbishment of the official guest house of The President. Established operating, record keeping and financial procedures of the Fund, in consultation with its officers, attorneys and accountants. Managed the day-to-day operations of the Fund, which included arranging from its resources for payments related to the restoration of Blair House, reporting to the officers, and coordinating extensively with the Fund's directors, National Council members, contractors, and senior State Department Officials, including the Chief of Protocol, regarding all aspects of the organization.

DEPARTMENT OF STATE

September 6, 1983 thru  
July 11, 1986

Special Assistant to the Assistant Secretary of State for  
International Organization Affairs and  
Staff Coordinator for Plans and Policy

Assisted the Assistant Secretary in implementing the multilateral policy objectives established by the President and Secretary of State. Insured that the Assistant Secretary's decisions were communicated and implemented in a timely and effective manner. Coordinated Bureau activities with appropriate White House Staff. Supervised the preparation of Congressional testimony. As staff Coordinator for Plans and Policy, devised systems whereby the Assistant Secretary was able to chart his priorities and commitments within the UN system. In an administrative capacity, arranged for the Assistant Secretary's U.S. Intergovernmental discussions, as well as international conferences and bilateral consultations, including the US General Assembly and the annual meeting of US Ambassadors to UN System agencies. Travelled extensively with the Assistant Secretary, providing both administrative and policy support.

COMMISSION ON THE BICENTENNIAL OF THE US CONSTITUTION

Special Assistant to the Staff Director  
and Liaison between office of the

November 5, 1985 thru  
June 29, 1986  
(Detail)

Executive Director and Commission Staff

At the request of the Chief Justice, was detailed by the State Department to the Bicentennial Commission to oversee The Chief Justice's transition from the Supreme Court to the Headquarters of the Commission and to serve as a Special Assistant to the Staff Director of the Commission. In latter capacity, served as Director of Operations for the Commission with responsibility for the establishment of administrative procedures and advising and assisting office directors with the implementation of various organizational plans.

THE WHITE HOUSE

January 1982 thru  
July 1983

Administrative Assistant to the Deputy Chief of Staff

Responsible for establishing the overall management procedures of the Office of the Deputy Chief of Staff of the The White House. Assisted the Deputy Chief of Staff on Presidential trips, including survey trips for Presidential summit meetings and temporary operations from the Santa Barbara White House.

REAGAN-BUSH TRANSITION  
PLANNING GROUP

November 1980 thru  
January 1981

Executive Assistant and Staff Coordinator

Served as Executive Assistant and Staff Coordinator to the Director of Scheduling and Advance. During this time, served as one of two principal; staff coordinators at the Blair House acting as liaison on behalf of the Deputy Chief of Staff between the First Family, Inaugural Committee Chairman and the Transition scheduling office in planning inaugural and other activities specifically involving The President and First Lady.

REAGAN-BUSH CAMPAIGN

1980

Administrative Assistant

Served as Administrative Assistant to the Director of Presidential Scheduling and Advance who was responsible for the full day to day scheduling of the Presidential Candidate in the General Election.

PRIOR TO 1980

Served in a variety of administrative positions with the Army Intelligence and Security Command, the Army Security Agency and the Defense Intelligence Agency.

PRESCOTT SHELDON BUSH, JR.

110 EAST 42ND STREET, SUITE 1300

NEW YORK, N.Y. 10017

*central  
files -  
NRW*

FAX: 212-599-2235

TEL: 212-599-1409

August 28, 1992

The Honorable James A. Baker  
Chief of Staff  
The White House  
Washington, DC 20500

Dear Jim:

It was good to see you at the Convention and to sit next to Mike and Rita.

The enclosed letter, written to Senator Ed Pease in October 1990 by my niece, Dr. Kelsey Kauffman, who has a PhD in Criminal Justice, presents an idea that might be a good part of the President's Crime Package.

I'm awfully glad you're back in charge in the White House and wish you God Speed in your labors.

With warmest personal regard.

Sincerely,



encl.  
82892jim.bak

PHOTOCOPY  
MISC. HANDWRITING

10 October 1990

Senator Ed Pease  
P.O. Box 452  
Brazil, IN 47834

Dear Ed,

I am writing to propose that Indiana establish a separate correctional facility for female inmates and their young children.

To my knowledge, only one prison in the United States permits children to remain with an incarcerated parent, a prison for women in New York State which allows mothers to keep infants until the child is one year old. The practice is more common in the rest of the world. For example, in Australia (where I lived during the 1980s) pre-school aged children can remain with their mother unless the mother's conviction is for child abuse. In Argentina (where I had the opportunity to visit women's prisons earlier this year) children are accommodated until they are two years old.

As you are well aware, the incarceration rate for women in the USA is rising even faster than it is for men. Much of the increase is due to drug addiction. Many of the young drug-addicted women who go to prison are also mothers. They often conceived unintentionally, received little or no pre-natal care, gave birth prematurely, and bore children with substantial physical, intellectual, and emotional problems. Whether because of drug addiction, lack of parenting skills, poverty, absence of other caring adults in the home, and/or the special problems their children present--but not necessarily because of lack of love or good intention--many incarcerated mothers have failed in their role as parents.

When a woman is convicted and incarcerated in Indiana today, she can take basic education or occupational training courses, participate in drug therapy, and receive regular visits from her children, logistics permitting. While the mother is in prison, her children may be cared for by relatives (who may or may not be suitable substitutes), be placed in one or more foster homes (which may, themselves, be less than satisfactory), or, in the case of children born with drug addictions, remain in a hospital.

When the mother is released she is frequently reunited with a child who has even greater problems than before her incarceration, a child, moreover, to whom she is in part a stranger. As the parent-child relationship almost inevitably falters, so, too, may the mother's resolve to remain drug-free. The cycle perpetuates itself in two senses: first with the mother's return to addiction, crime, and incarceration; second, and more devastating from a societal perspective, with the child's eventual involvement in the same destructive patterns. The Indiana Boys' and Girls' Schools are filled to capacity with children, some of whom are already parents themselves, as the cycle begins for a third generation.

The facility I envision would offer the possibility of breaking this cycle. Unlike the prisons in New York, Australia, and Argentina that I have mentioned, where a few young children are housed along with their mothers amidst a general prison population, the proposed institution would be exclusively for incarcerated mothers and their young children. The primary mission of the institution would be enhancement of the parent-child relationship and the development of child and mother. Also unlike the other facilities I mentioned, where mothers often remain incarcerated long after their infants or toddlers have been required to leave, mothers would enter the proposed program only if their anticipated date of release was before their child was old enough to attend school. The idea would be to work with mother and child as a unit and prepare them for life outside as a unit.

I see several important advantages of such an institution. By preserving and enhancing the bond between mother and child, improving parenting skills, and developing strategies by which the mother can cope with her children's developmental problems, the mother may gain and retain the most powerful incentive she may ever have to radically alter her lifestyle on the streets. Her children, meanwhile, would have the opportunity to develop in a safe and attentive environment without being separated from the one person in their lives who really loves them.

In addition to reducing recidivism by mothers in the program, and helping to prevent future involvement in criminal behavior by their children, the program may provide more tangible and immediate benefits for Indiana taxpayers. The proposed institution would, I estimate, cost considerably less overall than the combined cost of incarceration for the mother and care for her children in foster homes or hospitals. (A recent article in The New York Times noted that the cost in California for keeping babies born to addicted mothers in institutional care is \$6,000 per month per child. Foster parents willing to take "fragile infants" receive \$1,729 per month per child.) Costs for internal and external security should also be substantially less at the proposed institution than in a typical women's prison; morale among inmates and staff would be higher, and incentives to escape minimized (not many mothers would seek to escape leaving their children behind them). I also think the chances of obtaining outside grants for the program would be excellent.

The Indiana Department of Correction is currently requesting twenty million dollars for the first phase of a new women's prison. Now is the time to consider a new direction in treating female offenders.

Although we have talked about prisons before, and I think I sent you a copy of my book, Prison Officers and Their World (Harvard University Press, 1988) last year, let me provide a bit more information about my background. I worked as a prison officer in the Connecticut Prison for Women in the early 1970s. Since then I have studied prisons and written a number of popular and scholarly articles about them, in addition to my book. I teach one course a

year at DePauw University on prisons. I hold a doctorate in education from Harvard University, with a specialty in human development. Also important given the nature of this proposal, I have spent most of the past eight years being a nearly full-time parent of three young children, and consider that responsibility to be the most important, challenging, and rewarding I have had in my forty-three years.

I look forward to hearing what you think of my proposal.

Sincerely,

Kelsey Kauffman  
609 Ridge Ave.  
Greencastle, IN 46135  
317-653-6225

To Central  
Files

received 9/2  
no action  
same letter  
to Sec. Baker

GERALD F. FITZGERALD  
DRAWER A  
PALATINE, ILLINOIS 60078-8001

August 31, 1992

The Honorable James A. Baker  
The White House  
1600 Pennsylvania Avenue  
Washington, DC 20500

The Honorable Samuel K. Skinner  
The White House  
1600 Pennsylvania Avenue  
Washington, DC 20500

Gentlemen:

As a long-time observer of the political scene, I feel motivated to make several observations:

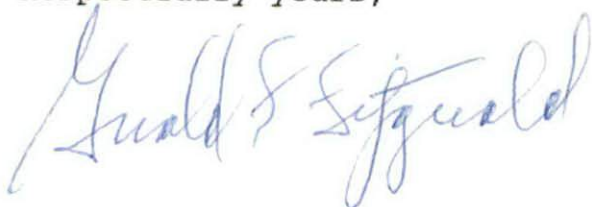
1. President Bush should not be involved in the assault on his Democratic opponent. It does not appear presidential. To a lesser extent, the same holds true with Vice President Quayle. Hardball should be left to others.

2. President Bush is not perceived in general as being a strong leader on domestic affairs and is having a difficult time putting the blame on Congress where it belongs. I suggest the following:

(a) the President should show his muscle with a **line item veto** of a minor bill. This will reaffirm presidential authority in the eyes of everyone, even if it should fail a court test.

(b) Lastly, the President should index the capital gains tax, again an assertion of presidential authority and power. In my judgment, these would focus the fight between the President and the Congress where it belongs.

Respectfully yours,



**SUBURBAN  
BANCORP**

Gerald F. Fitzgerald  
Chairman of the Board

Suburban Bancorp, Inc.  
50 North Brockway Street  
Palatine, Illinois 60067-5064  
708-359-1077  
FAX 708-359-1687

178E05

The Honorable Samuel K. Skinner  
The White House  
1600 Pennsylvania Avenue  
Washington, DC 20500

GERALD F. FITZGERALD  
DRAWER A  
PALATINE, ILLINOIS 60078-8001

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HELPFUL FRIENDLY COURTEOUS  
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REVERENT



You are cordially invited  
to attend a

*phone  
requested*

**NATIONAL EAGLE SCOUT  
COURT OF HONOR**

*Honoring*

**DANIEL GABRIEL HURLBURT**

*and*

**DAVID ANTHONY SWAN**

*of*

*South San Francisco Troop 281*

*at*

*Hillside Elementary School*

*1400 Hillside Blvd.*

*South San Francisco, California*

*Saturday, September 12, 1992*

*at 6:30 p.m.*

*Light Buffet*

*R.S.V.P. Jane Hurlburt*

*Following Ceremony*

*(415) 355-8102*

*Elizabeth Swan*

*(415) 756-8136*

*David Anthony Swan*  
412 HIGATE DRIVE  
DALY CITY CA 94015-3903

*Mrs. Elizabeth Swan*  
412 Higate Drive  
Daly City, CA 94015



THE HONORABLE JAMES A BAKER 111  
SECRETARY OF STATE  
WASHINGTON D C 20510



RICHARD L. PIEN

CENTRAL  
FILES -  
NRN  
9/18/92

Wednesday, September 2, 1992

Dear Mr. Baker:

Congratulations on your new Chairmanship  
of BUSH\*92\*QUAYLE.

I look forward to completing my transition  
to the White House following our introduction  
by Jonathan Moore at Harvard's Institute of  
Politics.

Sincerely,



James A. Baker  
The White House  
Washington, DC 20500

# RICHARD L. PIEN

ADDRESS: 394 MARLBOROUGH STREET, BOSTON, MA 02115. TEL: (617) 437-0394

## PROFESSIONAL SKILLS & EXPERIENCE

### NEW ENGLAND COMMITTEE

BUSH\*92\*QUAYLE  
Sep 1991-Aug 1992

- \* Republican Convention Delegate lists for New England, Embroidered Polo shirt fundraiser item.
- \* New Hampshire rally, OH National Medical address, Thyroid Fnd Benefit, Harvard & Yale coordination.
- \* Harvard JFK Sch of Gov IOP Study Grp: US-Pacific Rim Policy with Amb James R. Lilley, Fall '91.
- \* Harvard JFK Sch of Gov IOP Study Grp: Road to the White House with John Ellis, Spr '92.

### MASSACHUSETTS FINANCE COMMITTEE

WELD FOR GOVERNOR  
May 1989- Jan 1991.

- \* Transition Committee, Inc.: candidate since 11/6/90; MRP Finance Cmte appointment: 8/1/91.
- \* Harvard JFK Sch of Government IOP Study Grp: The new Weld administration Spr '91.
- \* Interfaced Weld endorsements by US Pres Bush, US Vice-Pres Quayle, Sec E. Dole.
- \* Speech proposals, fund-raising, endorsements, State Cmte caucus, convention, SJC, debates.
- \* 21st US Decennial Census: May 1990 Hatch Act restriction for Back Bay Nonresponse Follow-up.

### GREATER BOSTON PRECINCT CAPTAIN

GEORGE BUSH FOR PRESIDENT  
Feb 1987- Jan 1989.

- \* Proposed speaking engagements for Vice-Pres Bush: Yale & Harvard Clubs of Boston, Wang Labs.
- \* Office guests included Secretary of State Henry Kissinger & Secretary of Education William Bennett.
- \* Grass roots organization & formation of Massachusetts steering committee.
- \* Harvard JFK Sch of Government IOP Study Grps: The White House Fall '89, Inside Baseball Spr '91.
- \* Yale Political Union introduction to Chubb Fellow George Bush, Timothy Dwight, 1977.

### NEW ENGLAND REGIONAL REPRESENTATIVE

U.S. TREASURY-INTERNAL REVENUE SERVICE  
Jan 1985-Jan 1987.

- \* Acquired skills in individual and employment tax law and regulation.
- \* Represented IRS Taxpayer Service for New England and part of New York.

### DISTRICT MANAGER MARKETING/SALES

FIRST FEDERAL AIR TRAVEL PASS ON AIR FLORIDA  
Dec 1982-Jun 1984.

- \* Developed and executed training program & telemarketing program. Wrote training manuals.
- \* Directed Boston office of 3 assistant managers, 3 secretaries, 35 sales consultants.
- \* Supervised highest productivity office in New England, New York City, Washington, DC.

## RESEARCH

### RESEARCH ASSISTANT

IMMUNOGEN CORPORATION, Boston, MA  
Aug 1981-Apr 1982.

- \* Verified the cytotoxicity of Adriamycin and Daunorubicin in treatment of cancer.
- \* General adviser Nobel Laureate '81, White House National Medal of Science '90.

### SENIOR THESIS

YALE SCHOOL OF MEDICINE, New Haven, CT  
Jan 1978-Aug 1978.

- \* Senior Thesis: research endorsed by Nobel Laureate '74 on specific inactivation of marker enzymes.

## INTERNATIONAL

### GRAND TOUR

ORIENT: CHINA, JAPAN, HONG KONG  
May 1979-Aug 1979.

- \* Hosted by US Ambassador to the Republic of China & Citicorp \* Citibank ROC Head Officer.

## RELATED SKILLS

### LANGUAGES

French & Chinese Mandarin

### MICROCOMPUTERS

Macintosh, IBM, & Forth generation languages

## EDUCATION

### HARVARD UNIVERSITY

- \* Advisory Committee, Harvard Extension Alumni Association, Appointed Sep 1991.
- \* Harvard University Extension, Cambridge, MA, C.S.S. One year Harvard M.B.A., Finance, Honors, Harvard Law School Quadrangle. May 1988-Jun 1989.
- \* Graduate School of Arts & Sciences, Cambridge, MA, Gp. One year graduate program, Division of Medical Sciences, Harvard Medical School Quadrangle. Sep 1980-May 1981.

### YALE UNIVERSITY

- \* Yale College, New Haven, CT, B.A. Molecular Biophysics & Biochemistry. Sep 1975-May 1979.
- \* Senior Thesis endorsed by '74 Nobel Laureate\*Advanced Placement: Freshman English & Calculus.

### HAWKEN SCHOOL

- \* Preparatory Secondary School, Gates Mills, OH, Honors. Sep 1971-May 1975.
- \* Harvard College Secondary School Program, Summer 1974, Weld Hall.
- \* SAT: Verbal 600/Math 720, ACH: Math II 770.

### Extracurricular Activities

- \* Varsity Roster Squash Racquets, Tennis, Classical Music, Photography.

THE WHITE HOUSE

WASHINGTON

August 21, 1992

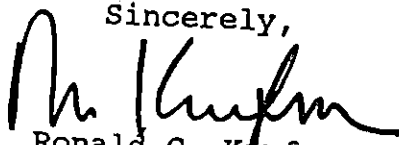
Dear Mr. Pien:

On behalf of President Bush, thank you for your kind words of support and the Bush/Quayle '92 polo shirt. I know the President appreciates your kind gesture.

In the months ahead we will definitely need active campaigners such as yourself letting people know what a great President they have in George Bush. Glad to see that New England is in good hands.

Thank you again for the thoughtful gift.

Sincerely,



Ronald C. Kaufman  
Deputy Assistant to the President  
for Political Affairs

Mr. Richard L. Pien  
394 Marlborough Street  
Boston, MA 02115



# The Thyroid Foundation of America, Inc.

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National Director**  
Pat Bradley, L.P.G.A.

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Mr. John W. MacNeil  
Ms. Jeanne K. Macmillan  
Ms. Stephanie A. Martini  
Mr. Richard J. McDermott  
Mr. H. Calvin Place  
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Newsletter Editor-in-Chief  
Mrs. Ruth Hapgood

August 14, 1992

Mr. Richard L. Pien  
394 Marlborough Street  
Boston, MA 02115  
United States of America

Dear Mr. Pien:

Thank you for sending me a copy of that special note which you sent to First Lady Barbara Bush.

I am pleased that you were able to attend that special Educational Forum and luncheon in honor of Mrs. Bush.

I know she is pleased to have you inspired to campaign on the New England Committee for the President.

Sincerely,

  
Lawrence C. Wood, MD, FACP  
President/Medical Director

LCW:syn

cc: First Lady Barbara Bush

PERSONAL

TO CENTRAL  
FILES -  
NRN

9/4- CJ called Gilbert Scott to  
say that TAB could not possibly  
intervene on this sort of thing -  
totally inappropriate. Empathized  
August 25, 1992 with his  
2213 Eastwood Drive feelings of  
Richardson, TX 75080 a father;  
Tel: (214) 234-0481 sorry we  
couldn't help.

Mr. James A. Baker, III  
The White House  
Washington DC 20500

Dear Jim:

It has been 45 years since we were at The Hill School during the 1946-47 school year. I lived in Hillrise and had occasion to come to know you. I have watched your accomplishments through the recent years with great interest and congratulate you on the wonderful success you have had in your political and diplomatic activities. I am pulling for you and The President to do your magic and win this one too. Heaven only knows the country cannot stand another Carter style presidency.

I am writing you for help to save a young man, my son Cadet Andrew B. Scott, from a very unjust separation from the United States Military Academy.

My intention is to make this letter brief, for I feel it is far more important for you to take your time to read the case file and the enclosed sampling from over 100 letters sent to DA and added to the case file. The letters are by Andrew's peers, professors, and life-long associates. This is my purpose.... I ask you personally to read all of this. Only then can you perhaps understand that this is a case of principle, not one of emotion. Only then can you begin to understand who Andrew is, who he dreams of becoming, what he has the capabilities of being and thus why he seeks a reversal in this decision.

The Department of the Army seems to abhor reversing a decision of the Superintendent of the USMA no matter how unjust and it may be. I am asking for your help to insure that a truly unbiased evaluation and just decision is made and returned to West Point by the

Department of the Army.

As his father, I am not asking the impossible; I am only asking for that which is right and just in the decision process.

Gratefully,



GILBERT T. SCOTT  
The Hill Class '47  
USMA Class '52

P.S. A complete file was sent to President Bush in late June and a second letter was promised to be delivered to him by his Physician when he visited the Super Conducting Super Collider in Texas.

G.T.S.

**URGENT!!! PLEASE READ IMMEDIATELY!!! ACTION PENDING!!!**

Jerry L. Livezey  
3360 Southlake Park Road  
Southlake, Texas 76092  
817+329-9058

July 27, 1992

President George Bush  
Executive Office of the President  
1600 Pennsylvania Ave. N.W.  
Washington, D.C. 20500

RE: For inclusion in the file of  
Cadet Andrew Scott, United  
States Military Academy

Dear Sir,

I am writing this letter to urge you to intercede in the decision to separate Cadet Andrew Scott from the United States Military Academy.

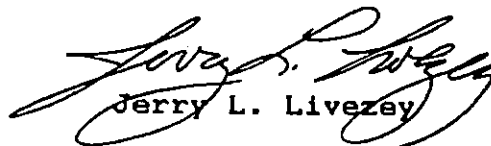
This decision was a tragic mistake for several reasons. I am enclosing a copy of the letter I forwarded to General Graves, Superintendent of United States Military Academy, outlining my objections.

I would also urge you to recommend education and counseling for General Graves and his staff regarding the purpose, tradition, and operation of the Cadet Honor Code at West Point. The Honor Code and Honor System belong to the Corp of Cadets, but control of the Code has been taken over by the regular Army officers involved. They appear to totally ignore the input of the Corp Honor Representatives, contrary to the published guidelines of the Honor Code.

Sir, the Honor Code is one of the foundations of the United States Military Academy at West Point. Please do not allow misguided Army officers to undermine its values and effectiveness.

I trust you will assist in correcting this dreadful mistake for the good of the Corp of Cadets, the United States Army, the American taxpayer, and Cadet Andrew Scott.

Sincerely,

  
Jerry L. Livezey

Central  
Files  
(NRN)

3 Sept 92

To: James A. Baker 111 Fax 202 456 2397  
From: Peter C. Maffitt Fax 713 522 6620 tel: 713 523 6869

Re: Nov, 1992 Election

Dear Jim,

It is absolutely essential that the President be re-elected. What can I do to be of help?

In the past few months I have been in Chicago, Wash DC, Miami, St. Louis, and Denver. I have never felt such political anger, economic fear, and indifference. George does best when faced with a challenge, but how did we get in such a situation. For example, we have a cousin who is as strong a Republican as possible, but his wife will not put a Bush sticker on her car in Houston for fear someone will damage her car. I have a college roommate who is a life-time Republican who is totally turned off by the President. We have an elderly aunt who is furious over the abortion issue. The anger goes on and on.

I had a Media pass at the Convention. From conversations and what I read, the Media is as hostile as I have every seen it towards the President.

The issue now is how to turn this negative voting feeling around.

You may not be aware of the extend of job fear related to LAFTA. I am getting several calls on how to move a US factory to Mexico, but Carla Hill is going around the nation trying to tell workers that LAFTA will create jobs in US. From a statesman issue LAFTA makes great sense, but has anyone looked closely at the short-term political results? People are very fearful of globalization and Clinton isolationism is very appealing to a broad sector of the US.

I hope that when the American public gets to the voting booth he or she will put aside the anger and emotions and vote with reason.

Sincerely,



Peter C. Maffitt

File.

9/9/92

No response necessary.

B. Montague

BARBARA CHRISTIE  
5305 CROMWELL DR  
BETHESDA MD 20816 06AM

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▶ THE HONORABLE JAMES BAKER  
STAFF DIRECTOR WHITE HOUSE  
WASHINGTON DC 20500

*friend?*

DEAR JIM  
MAY I MEET WITH YOU AS SOON AS CONVENIENT  
IF FORWARDED CORRESPONDENCE ON ISSUES INVOLVED WHERE I HAVE KNOWLEDGE  
AND EXPERIENCE. HAVE TRIED TO HELP THE PRESIDENT SINCE 1979. CAN  
RENDER A CONTRIBUTION IN THE EFFORT TO REELECT PRESIDENT UNDER YOUR  
ADROIT GUIDANCE.  
RESPECTFULLY  
ALEXANDER K CHRISTIE

14:16 EST

MGMCOMP

MGM 09 (10/89)

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THE WHITE HOUSE  
WASHINGTON

September 2, 1992

MEMORANDUM FOR PHILLIP D. BRADY  
ASSISTANT TO THE PRESIDENT AND  
STAFF SECRETARY

FROM: JAMES A. BAKER, III   
CHIEF OF STAFF AND SENIOR COUNSELOR  
TO THE PRESIDENT

SUBJECT: COMMISSION REQUEST

Please have a Commission prepared for the following person:

NAME: David Q. Bates, Jr.

TITLE: Assistant to the President and Special  
Assistant to the Chief of Staff


STATE: Texas

Thank you.

THE WHITE HOUSE  
WASHINGTON

September 8, 1992

MEMORANDUM FOR PHILLIP D. BRADY  
ASSISTANT TO THE PRESIDENT AND  
STAFF SECRETARY

FROM: JAMES A. BAKER, III   
CHIEF OF STAFF AND SENIOR COUNSELOR  
TO THE PRESIDENT

SUBJECT: COMMISSION REQUEST

Please have a Commission prepared for the following person:

NAME: Thomas A. Scully

TITLE: Deputy Assistant to the President and  
Counselor to the Director, Office of  
Management and Budget


STATE: Virginia

Thank you.

THE WHITE HOUSE  
WASHINGTON

September 8, 1992

MEMORANDUM FOR PHILLIP D. BRADY  
ASSISTANT TO THE PRESIDENT AND  
STAFF SECRETARY

FROM: JAMES A. BAKER, III   
CHIEF OF STAFF AND SENIOR COUNSELOR  
TO THE PRESIDENT

SUBJECT: COMMISSION REQUEST

Please have a Commission prepared for the following person:

NAME: Chester Paul Beach, Jr.  
TITLE: Associate Counsel to the President  
STATE: Virginia


Thank you.

THE WHITE HOUSE

WASHINGTON

September 8, 1992

MEMORANDUM FOR PHILLIP D. BRADY  
ASSISTANT TO THE PRESIDENT AND  
STAFF SECRETARY

FROM: JAMES A. BAKER, III   
CHIEF OF STAFF AND SENIOR COUNSELOR  
TO THE PRESIDENT

SUBJECT: COMMISSION REQUEST

Please have a Commission prepared for the following person:

NAME: Gary L. Foster

TITLE: Deputy Assistant to the President for  
Special Events

STATE: Texas

Thank you.

NRW



September 10, 1992

Dear Jim:

Here is my letter to the Editor of the Denver Post and a copy of how the Post used it.

On Monday, September 14th, I am doing a press conference in San Diego on the same subject.

Best regards,

The Honorable James A. Baker III  
Chief of Staff  
The White House  
1600 Pennsylvania Avenue  
Washington, D.C. 20500



## GERALD R. FORD

September 9, 1992

Dear Mr. Editor:

Your Editorial - "There was only one Truman," disturbs me as it ignores two fundamental Truman-Bush similarities in contrast to several serious Clinton differences with the two Presidents.

Recently, I saw and heard Governor Clinton discuss President Bush and President Truman.

Let me expand it to include Governor Clinton, as well.

In WWI, President Truman fought courageously in combat in Europe as an officer in the U.S. Army.

In WWII, President Bush was the youngest combat Navy pilot and was shot down by enemy forces in the Pacific War.

Governor Clinton and several of his relatives in contrast, manipulated and maneuvered so he did not serve in the Armed Forces while the U.S. was at war.

Both Truman and Bush, obviously believed that military service in wartime was an obligation of citizenship and an act of patriotism. Governor Clinton did not.

Let me add another contrast between the two Presidents on the one hand and Governor Clinton on the other.

In June 1950, President Truman, under the auspices of the U.N., committed U.S. Armed Forces to meet the invading communist forces in Korea that were challenging the national interest of America and its allies.

(Continued on Page Two)

In 1991, President Bush, also under the auspices of the U.N., committed U.S. Armed Forces to protect America's national interest against the middle east invasion by Saddam Hussain.

In 1991, Governor Clinton in the Gulf Crisis opposed the decision of President Bush, a majority of the members of the House and Senate and the members of the U.N. Security Council.

Again, Truman and Bush reacted similarly - firm activists against military aggression in opposition to U.S. national interest.

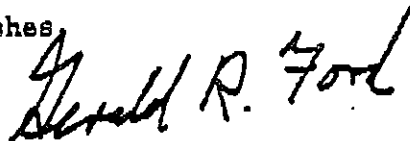
Here is Governor Clinton's response in this foreign policy crisis:

"I agree with the arguments of the people in the minority on the resolution - that we should give sanctions more time and maybe even explore a full-scale embargo...before we go to war."  
(1/15/91)

"I guess I would have voted with the majority if it was a close vote. But I agree with the arguments the minority made."  
(1/15/91)

How's that for a Profile in Courage.

Best wishes,



Mr. F. Gilman Spencer  
Editor  
The Denver Post  
1560 Broadway  
Denver, Colorado 80202

## Former President Ford lauds Bush, derides Clinton

Your editorial "There was only one Truman," (Post, Sept. 9) ignores two fundamental Truman-Bush similarities in contrast to several serious Clinton differences with the two presidents.

Recently, I saw and heard Governor Clinton discuss President Bush and President Truman. Let me expand it to include Governor Clinton, as well.

In World War I, President Truman fought courageously in combat in Europe as an officer in the U.S. Army.

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Again, Truman and Bush reacted similarly — firm activists against military aggression in opposition to U.S. national interest.

Here is Governor Clinton's response in this foreign policy crisis:

"I agree with the arguments of the people in the minority on the resolution — that we should give sanctions more time and maybe even explore a full-scale embargo . . . before we go to war." (Jan. 15)

"I guess I would have voted with the majority if it was a close vote. But I agree with the arguments the minority made."

How's that for a Profile in Courage?

GERALD R. FORD  
AVON

## Post didn't do its homework on Florida codes

I must take strong exception to your editorial of Aug. 27 on the violence of nature. I was born in South Florida and lived there for 39 years, having moved to Denver one week ago.

You obviously did not do much homework on the building codes of the area. By code, structures must be able to withstand winds of 120 mph. What is, in your words, "a more typical hurricane"? There has not been a storm of this magnitude in South Florida since 1935. How high do you go with the codes, 180-200-225 mph? The costs, contrary to your statement, would be staggering.

The people in South Florida have enough worries right now. Not only did

many lose their houses, but their places of employment are also gone. My sister's Sub Shop in Homestead no longer exists. She donated \$2,000 worth of frozen meat to a shelter. Many others are doing similar things without regard to their pockets.

Your writers should be expressing shock over the bureaucratic delays in distribution of food, water, fuel, etc. The United States can get aid to other countries quicker than within its own borders. Instead, your writers are advocating a slower process for handling the federal loans. Easy to do, I guess, from the proverbial "Ivory Tower."

PATRICK J. SULLIVAN  
Arvada

## When not collected, fossils just weather away

Some glaring inaccuracies and omissions in "Fossil fans have bone to pick" (Aug. 26) need to be taken up by your legal affairs writer.

A group of professional fossil collectors, having leased collective rights from a tribal member owning the land, had their find seized by the government with-

bureaucrats would restrict fossil collecting on public lands and elevate fossil collecting to almost the level of drug crimes, with seizure, fines, vehicle confiscation and even jail time possible. Hunters, rock collectors and all people who have ever picked up a pretty rock, beware — you may soon be a criminal.

## Truman had no liking for a GOP president

President Bush wants to compare his campaign to that of President Truman. In "Plain Speaking: an Oral Biography of Harry S Truman" by Merle Miller, President Truman had this to say about a Republican president: "He'll look out for the rich and squeeze out the farmer and the small business man. Somebody who'll do everything in his power to make the rich richer and the poor poorer."

GLENN BAKKER  
Tabernash

## Hornby's column stirred up a little guy's resentment

I'm writing about Bill Hornby's column, "Time to buy insurance on Colorado schools" (Post, Aug. 27).

Why is it that most of you in the media reside in liberal wonderland? For Hornby to say this isn't a political issue of Republicans vs. Democrats is to ignore the basic notion of how these "acts" come about. This indeed is a political issue, pitting those who are fiscally responsible (Republicans) against those who believe the only way to govern is with scare tactics, i.e. our children, and more taxes (Romer, Democrats).

With a daughter, 5, and a son, 15 months, I do believe in children first. I also believe in the Constitution and the right not to be taxed unfairly.

Governor Romer thinks every time there is a shortage the only answer is to raise taxes. This time he wants to create the third-highest sales tax among major U.S. metro areas — higher than Boston, New York or Los Angeles.

Quit with your scare tactics, Hornby. We have a great deal of options at our disposal before we again go to John Q. Public for more hard-earned money.

Why not impose a small tax on gambling and apply it to our schools? But leave us little guys out of it.

MARK J. FARROW  
Englewood

## Don't revile nursing homes

Regarding Laura Hershey's recent Post column on nursing homes: I agree that some are better than others, and that there are inherent problems with them. But please don't denounce and degrade them as you do.

They are places for individuals who require 24-hour supervision, not just "help"

## THE DENVER POST

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*Senior Editor*

## There was only one Truman

**H**ARRY TRUMAN might be madder than heck, or something to that effect, if he knew how his reputation was being borrowed by lesser men. Truman was a one-of-a-kind, no-nonsense, down-to-earth, decisive, this-is-where-I-stand kind of fellow. He stood up to the Chinese in Korea and dressed down Gen. Douglas MacArthur when the time came. The 33rd president pushed the Marshall Plan on the European front and the Fair Deal on the home front. Sure, he complained about a do-nothing Congress — but he made it clear that the buck stopped at his desk. His mantle should not be lent lightly to any politician.

Yet of the two presidential contenders who now are trying to be the new Truman, George Bush has the lesser claim. Bill Clinton, if his campaign rhetoric is to be believed, at least understands that America must be strong internally if it is to be a world leader. His people-first policies might fit right into the thinking of the plain-spoken man from Missouri who was the first president since Reconstruction to promote a civil rights agenda.

George Bush, in contrast, claims to be the new Harry Truman simply on the basis of coming from behind to win the political horse race. He seems to have looked at his own ratings, then opened the history books and picked out a president whose situation appears to fit his own sorry dilemma.

But Bush hasn't done his homework well enough. While it is true that Truman eventually triumphed despite dismal opinion polls, Truman was able to recapture voters' loyalty by reminding them of who he was and what he stood for — the very qualities that Bush has difficulty defining. Besides, when Truman railed against a do-nothing Congress, he could make the charge knowing that he had put forward a well-conceived domestic agenda that lawmakers had failed to enact. Bush, by comparison, has governed largely by veto, not by vision. And Truman might be appalled at Bush's past resistance to new civil rights laws.

Bush also has a problem with a little-reported nuance of history that undermines his claim to be able to overcome poor poll standings.

One problem pollsters had with predicting Truman's re-election was that public survey techniques in the late 1940s were very primitive and so failed to account for the sentiments of large numbers of middle- and lower-income voters. Truman therefore may never really have been behind in public affection, as the poll numbers indicated.

But for the last four decades, pollsters have labored intensely to avoid similar mistakes, so today, thanks to better survey methods, it is undeniable that Bush's popularity truly has sagged.

The difference may prove decisive come Election Day.

Mike Keefe  
1992



## READEI Bannir

I read with great interest the column by Richard Reeves of 25 to 28 pages. It is indeed terrible. Reeves's conclusion:

1. Where does R... handguns were used... sibly some type of... Reeves seems fixa

2. The crime... away just because... harder to possess... clubs, fists or even... also offer an opp... someone in.

3. Yes, let's ad... reaucracy with th

## Parach

Parachute has a... shale "boom and b... "boom and bust" w... astating and long... town and its reside

I think that it w... the people who live... that Mayor Beasle... gambling initiative... another initiative

Martel & Associates  
Executive Communication Counsel

NRN  
9/10 - called  
office to thank  
"Beth"

Myles Martel, Ph.D.  
President

August 26, 1992

The Honorable James Baker, III  
Chief of Staff  
The White House  
Washington, DC 20006

Dear Jim:

Congratulations on your new position. I am so pleased that you're now in charge.

For the past 12 years -- since we were last together -- I've worked on 200 plus debates. The enclosed manual should be helpful in shaping President Bush's debate strategy.

In warm friendship, and with every good wish.

Very sincerely yours,



Myles Martel

**POLITICAL CAMPAIGN DEBATES:  
IMAGES, STRATEGIES, AND  
TACTICS  
DEBATE PREPARATION GUIDE**

**Myles Martel, Ph.D.**

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**Myles Martel, Ph.D.**

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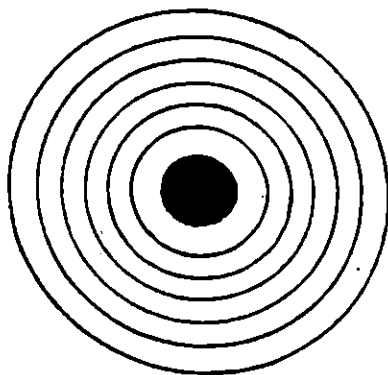
## WORKSHEET

### THE NET EFFECTS GOAL-SETTING PROCESS

#### SHAPING YOUR DEBATE STRATEGY

**Step 1.** Designate your target audience(s) for the intended communication, and identify where they fall in relation to the bull's eye (your most important target audience).

- |    |                       |    |  |
|----|-----------------------|----|--|
| a. | Males                 | i. | Size of family                         |
| b. | Females               | j. | Union affiliation                      |
| c. | Age parameters        | k. | Political affiliation                  |
| d. | Religious preference  | l. | Voting profile                         |
| e. | Racial origin         | m. | Interest in election                   |
| f. | Socio-economic status | n. | Attitude re: candidate                 |
| g. | Education             | o. | Attitudes re: specific issue positions |
| h. | Geographic area       | p. | Other                                  |



**Step 2.** Once you analyze each target audience in terms of relevant demographics, knowledge level and attitudes, ask throughout the entire Goal-Setting Process:

1. How relevant is each demographic factor or combination of demographic factors to your overall debate strategy?
2. How does the relevance of any of the above affect the ideas or language you select, the extent to which you rely on emotional vs. logical appeals, the types of examples you choose, and the degree of technicality of your presentation?
3. To what extent is the audience familiar with the issues you are presenting and with you and your campaign? To what extent does their degree of familiarity affect how you shape your approach to the debate?

**Worksheet - The Net Effects Goal-Setting Process - Page Two**

**Step 3.** Define in precise terms the attitudinal and/or behavioral support you are immediately or ultimately seeking from your target audience(s).

**Principal Goals:**

1. Quantifiable electoral support from one or more specific target audiences.
2. Quantifiable elevated name recognition.
3. Reinforcement of support base (quantifiable)
4. Added legitimacy to campaign (quantifiable)
5. Prevention of erosion resulting from a less than impressive performance (Risk averse pressured obligation vs. opportunity)
6. A combination
7. Other

Rank order on a 1-5 scale (1=low significance, 5=high significance) the significance of the following objectives in achieving your goal(s):

**I. Differentiating**

The ability to differentiate myself from my opponent(s) on the basis of:

1. Issue positions/votes Specify:
2. Experience Specify:
3. Accomplishments Specify:
4. Character Specify:
5. Image/Personality Specify:
6. Party Specify:
7. Campaign Specify:
8. Vision/Philosophy Specify:
9. Other Specify:

- How important is selling to the process of differentiating?  
Specify:
  
- How important is defending?  
Specify:
  
- How important is attacking?  
Specify:

- A. **Selling**
  - 1. The ability to "sell" my issue positions in general
  - 2. The ability to "sell" my issue positions on the following topics:
    - a. Education
    - b. Jobs
    - c. Healthcare
    - d. Crime in general
    - e. Urban crime
    - f. Drugs
    - g. Economic development
    - h. The economy
    - i. Tax policy
    - j. Foreign affairs
    - k. Trade
    - l. Defense
    - m. The environment
    - n. Transportation
    - o. Social security
    - p. Agricultural policy
    - q. Other
  - 3. The ability to "sell" the more relevant aspects of my experience, specifically:
  - 4. The ability to "sell" my accomplishments, specifically:
  - 5. The ability to "sell" my vision/philosophy:
  - 6. The ability to "sell" my image, personality/character:

\_\_\_ B. **Defending**

The ability to "defend" against existing or probable attack my:

1. Issue positions/votes Specify:
2. Experience Specify:
3. Accomplishments Specify:
4. Character Specify:
5. Image/Personality Specify:
6. Party Specify:
7. Campaign Specify:
8. Vision/Philosophy Specify:
9. Other Specify:

\_\_\_ C. **Attacking**

The ability to attack my opponent(s) on the basis of:

1. Issue positions/votes Specify:
2. Experience Specify:
3. Accomplishments Specify:
4. Character Specify:
5. Image/Personality Specify:
6. Party Specify:
7. Campaign Specify:
8. Vision/Philosophy Specify:
9. Other Specify:

II. **Agreeing/Aligning**

1. With advisability of actions taken by opponent
2. With opponent's assessment of a problem (its nature and scope)
3. With opponent's goals for resolving the problem.
4. With opponent's analysis of the cause of a problem
5. With element(s) of the opponent's proposed solution
6. With element(s) of the opponent's vision
7. Other

If agreeing/aligning seems strategically advisable and tactically feasible, specify the focus of the alignment, its rationales (e.g., to project a statesmanlike image, to highlight or sharpen distinctions despite points of commonality), and how the alignment will be executed.

- How helpful or risky is aligning? (implicitly or explicitly)  
Specify:

## Worksheet - The Net Effects Goal-Setting Process - Page Five

**Step 4.** Define in precise terms the behavior you must prevent from occurring within your target audience:

Are you seeking to prevent:

- Erosion of support (psychological, financial, etc.)
- Protest
- Deterioration of Morale (within campaign and support base)
- Anticipated misperceptions of fact
- Release of sensitive information
- Speculation/rumor
- The perception of negligence
- Public concern or fear
- The highlighting of a distracting/potentially embarrassing negative
- Undue optimism/pessimism
- Something else?

1. What principal values underpin the most salient issue positions selected for your debate strategy?
  - Puritan and pioneer morality, or the willingness to cast the world into categories of foul and fair, good and evil, and so forth.
  - Value of the individual, or the ranking of the rights and welfare of the individual above those of government and as important in other ways.
  - Achievement and success, or the accumulation of power, status, wealth, and property.
  - Change and progress, or the belief that society develops in positive ways measured by progress.
  - Ethical quality, or the view that all persons are equal in a spiritual sense and ought to be in a realm of opportunity.
  - Effort and optimism, or the belief that hard work and striving will ultimately lead to success.
  - Efficiency, practicality, and pragmatism, or the value placed on solution-oriented as opposed to ideologically-oriented thinking.\*
2. What is the specific nature of the media coverage needed to enhance the likelihood that your Net Effects Goal(s) will be achieved.

Summarize your Net Effects Goals based on the exercise performed above:

\*Edward D. Steele and W. Charles Redding, "The American Value System: Premises for Persuasion," *Western Speech*, Vol. 26 (Spring 1962), pp. 83-91.

**Planning Political Debate Strategy**  
**Pinpointing Candidate Strengths and Opponent Vulnerabilities**

**A. Issue Positions -- on basis of:**

Overall Philosophy/Ideology  
Logic  
Evidence/Methodology  
Values or Principles

**B. Record:**

Competence-related experience  
Attendance, votes and committees  
Votes (general voting pattern and specific votes)  
Legislative Initiatives  
Interest Group Ratings  
Actions (with emphasis on results achieved or failures)  
Inaction  
Other:

**C. Character/Credibility:**

Honesty/Dishonesty/Sincerity of actions or motives  
Goodwill  
Loyalty  
Adherence to family or religious values

**D. Other Potentially Relevant Characteristics:**

Academic Background	Influence/Clout
Accessibility	Intelligence
Ambition	Marital Status
Community Service	Old Age
Effectiveness	Religious/Ethnic Affiliation
Energy Level	Residency
Family Image	Veteran
General Temperament	Wealth
Health	Youth
Other:	

**E. Campaign -- on basis of:**

Winability/Electability  
Management Quality  
Campaign Tone  
Communication of issue positions  
Control (appropriate or inappropriate) of candidate's exposure  
Tactical Improprieties ("Dirty Tricks")  
Financial Improprieties  
Campaign Spending Practices  
Media Relations  
Supporters, persons and interest groups (endorsements)  
Strength of support from own party. Opposite party.  
Willingness or unwillingness to debate

## WORKSHEET

### THE SUBSTANCE GOAL-SETTING PROCESS

#### THE MARTEL METHOD

**STEP 1** Pinpoint the key arguments/points needed to modify the targeted attitudes toward your or your opponent's record, issue positions, character, personality, campaign, etc.

(Sell, attack, defend)

**Arguments:**

**STEP 2** Polish the phrasing of each argument for maximum persuasive impact with your target audience.

Note: Examine language particularly for conciseness, clarity, authority, vividness -- therefore, for "soundbite potential."

**Rephrased Arguments:**

**STEP 3** Marshal logical evidence (examples, actions taken or committed to, data, expert testimony, photographs, etc.) to support each argument requiring such proof.

Be sure that evidence passes the following basic tests:  
relevant, authoritative, recent, sufficient, potent

Marshal emotional proof to buttress arguments.

Revised February, 1992

## WORKSHEET

### CANDIDATE IMAGE GOALS

As a candidate, the image you project of yourself is integral to your credibility and therefore your persuasive potential. Use the following inventory to pinpoint the major image impressions you need to communicate to help you achieve your Net Effects Goals as well as those you consciously need to prevent.

#### Positive

- |                              |                           |
|------------------------------|---------------------------|
| 1. action orientation        | 30. imagination           |
| 2. analytical ability        | 31. integrity             |
| 3. approachability           | 32. kindness              |
| 4. assertiveness             | 33. liking for people     |
| 5. believability/credibility | 34. loyalty               |
| 6. candor                    | 35. maturity              |
| 7. charisma                  | 36. neatness              |
| 8. community-orientation     | 37. objectivity           |
| 9. compassion/caring         | 38. openness              |
| 10. competence               | 39. organized             |
| 11. competitiveness          | 40. other-directed        |
| 12. composure/calmness       | 41. patience              |
| 13. confidence               | 42. positive attitude     |
| 14. conviction               | 43. reassuring            |
| 15. cooperativeness          | 44. relaxation            |
| 16. courage                  | 45. respect for others    |
| 17. decisiveness             | 46. righteous indignation |
| 18. dependability            | 47. security              |
| 19. detail-orientation       | 48. self-reliance         |
| 20. directness               | 49. sensitivity           |
| 21. discipline               | 50. sincerity             |
| 22. energy                   | 51. standards/values      |
| 23. enthusiasm               | expectations              |
| 24. fairness                 | 52. strength              |
| 25. flexibility              | 53. tactfulness           |
| 26. friendliness             | 54. tenacity              |
| 27. graciousness             | 55. toughness             |
| 28. hard working nature      | 56. trusting nature       |
| 29. humorous nature          | 57. warmth                |

#### Preventive

- |                              |                            |
|------------------------------|----------------------------|
| 1. anger                     | 8. hostility               |
| 2. arrogance/alooofness      | 9. impatience              |
| 3. condescending/patronizing | 10. pedantic               |
| 4. defensiveness             | 11. preachiness            |
| 5. detachment                | 12. selfish/self-centered  |
| 6. disdainfulness            | 13. stress/tension/anxiety |
| 7. glib                      | 14. strident/shrill        |

Note:            Feel free to add trait(s) not identified above.

Revised February, 1992

## **Major Tactics for Political and Public Policy Debates**

Forewarning or Preempting  
The Shotgun Blast  
The Laundry List  
Direct Questions and Challenges  
Turning the Tables  
Flat Denial  
Quotable and Attack Lines  
Highlighting Evasiveness  
Closing with a Surprise  
Tossing Bouquets  
The Apology or Confessional  
"I Pass"  
Reference Tactics (how to refer to your opponent)  
Wit/Humor  
Appeals to Special Audiences  
Appeals to Commonly Held Values  
Rhetorical Questions  
"Man With the Facts"  
Visual Aids/Props  
Illustrations, Anecdotes, Metaphors, Analogies  
"Banana Peels"

Based on: Political Campaign Debates: Images, Strategies, and Tactics by M. Martel, Longman, 1983.

## MANAGING HOSTILITY

- Hostile questions are often hidden opportunities; they can stimulate the speaker's competitive juices and, as a result, bring out his or her best.
- Composure -- or loss of it -- can speak more loudly than content.
- Do your best to depersonalize the situation by defending your position on the issue -- not your ego.
- The questioner's hostility may be more related to his or her personality than to feelings about you or your organization.
- Don't confuse a tough question with a hostile question.
- The hostile questioner is not necessarily a member of your target audience.
- The hostile questioner can generate audience sympathy toward the speaker.
- Monitor your body language, assuming a friendly attitude toward the questioner until you have compelling evidence to act differently.
- Don't overengage the hostile audience member. Learn how to break both verbal contact and eye contact.

Source: *Mastering the Art of Q & A: A Survival Guide to Tough, Trick and Hostile Questions*, Myles Martel, Ph.D. (Dow Jones-Irwin), 1989

# MARTEL & ASSOCIATES

## "Banana Peels" and Political Debates

The basic premise of the "Banana Peels" approach is that your aptitude in answering questions will be strengthened by your ability to label the type of question being asked and to employ the appropriate tactical options associated with it. Regardless of the type of "Banana Peel," you should be monitoring the opportunity the question provides for you to reinforce one or more key messages.

Type	Example	Major Options
1. Hostile	"How do you expect to be credible with your <u>rotten</u> environmental record?"	<ol style="list-style-type: none"> <li>1. Maintain composure.</li> <li>2. Take exception to language <u>without repeating hostile/loading terms verbatim</u>.</li> <li>3. Refute assumptions.</li> <li>4. Ignore negative accusations, and go on the offense with your "sell" or attack points.</li> </ol>
2. Speculative	"Do you expect the economy to get worse before it gets better?"	<ol style="list-style-type: none"> <li>1. Answer if response is known and relatively risk free.</li> <li>2. If not risk free, label question as speculative without appearing defensive or patronizing.</li> <li>3. Seek an opening for your key message.</li> </ol>
3. Hypothetical	"If the Federal Government had invested more in research, could this problem have been prevented?"	<ol style="list-style-type: none"> <li>1. Answer directly.</li> <li>2. Point out hypothetical nature of question.</li> <li>3. Insert your key message</li> </ol>
4. Picayune/Overspecific	"How did you vote on Senate Bills X, Y, & Z?"	<ol style="list-style-type: none"> <li>1. If answer is known, answer directly.</li> <li>2. If you don't know, say so. (Sometimes you may need to explain in a non-defensive, non-apologetic manner why you don't know and offer to provide the answer later.)</li> <li>3. Seek an opening to switch to a key message.</li> </ol>
5. Leading (Also a "yes, no" question)	"Isn't it true that you voted in favor of this bill mainly to reinforce your weakening support amongst farmers?"	<ol style="list-style-type: none"> <li>1. Agree or disagree.</li> <li>2. Note, without being argumentative, that the question is leading.</li> <li>3. Challenge/Question the assumption(s).</li> <li>4. Ignore, and bridge to a "sell" theme.</li> </ol>

Type	Example	Major Options
6. Loaded	"Your opponent and the media have referred to you as a 'junket junkie' who jumps at the opportunity to join a special delegation: How do you react to this?"	<ol style="list-style-type: none"> <li data-bbox="795 237 1443 398">1. If you agree or disagree with any of these assumptions, let it be known--<u>but without repeating the damning premise</u>--and then respond. <b>Note:</b> Major loaded terms and assumptions are underlined.</li> <li data-bbox="795 463 1443 549">2. Ignore claim(s) and "sell" your positive message instead.</li> </ol>
7. Multi-faceted	"What is the most serious aspect of the healthcare problem today? What are its causes? Can the Federal Government have an impact in alleviating the problem? How? By when? What would you do to make a difference?"	<ol style="list-style-type: none"> <li data-bbox="795 582 1443 700">1. If each facet can be remembered, and answering all won't cause harm (assuming there is ample time), then answer fully.</li> <li data-bbox="795 700 1443 819">2. If harm can be caused by answering a remembered facet, it may be advisable to "forget" it and answer the others.</li> <li data-bbox="795 819 1443 959">3. Don't hesitate to ask for a facet to be repeated if you are reasonably certain you forgot a "safe" one and won't be offered an "unsafe" one.</li> <li data-bbox="795 959 1443 1078">4. If the questions cannot be realistically answered within the time allotted, politely say so.</li> <li data-bbox="795 1078 1443 1261">5. Sometimes it may be advisable not to respond in the order in which the facets were asked, e.g., if the last facet is the most crucial, it may require your initial attention.</li> <li data-bbox="795 1261 1443 1347">6. Try to summarize overall response with a key message theme.</li> </ol>
8. Vague, Unfocused	"What would you do to energize the economy?"	<ol style="list-style-type: none"> <li data-bbox="795 1379 1443 1455">1. Define the question the way you wish--consistent with your persuasive goals.</li> <li data-bbox="795 1455 1443 1498">2. Ask the questioner to clarify his/her focus.</li> </ol>
9. "Yes-No"	"Did limited Congressional oversight play a role in this problem developing?"	<ol style="list-style-type: none"> <li data-bbox="795 1530 1443 1606">1. If "yes" or "no" is safe by itself, answer accordingly.</li> <li data-bbox="795 1606 1443 1681">2. Challenge any refutable assumption (implicit or explicit).</li> <li data-bbox="795 1681 1443 1832">3. If a simple "yes" or "no" response is risky, point out how the forced alternatives can interfere with a presentation of the "full truth." Then answer the question.</li> <li data-bbox="795 1832 1443 1869">4. Present your position.</li> </ol>

\*Also leading

Type	Example	Major Options
10. "Either -Or"	"Is this problem due more to limited oversight or to limited funding?"	<ol style="list-style-type: none"> <li>1. If assumption within first part of the question is incorrect, refute it.</li> <li>2. How accurate is the assumption within the second part of the question? If not, refute it.</li> <li>3. How correct are the causal connections?</li> <li>4. Consider pointing out the either-or nature of the question.</li> <li>5. How complete an explanation is it? Are other factors--possibly more significant ones--involved? If so, explain, possibly labeling the question as "either-or."</li> </ol>

\* Some of these examples represent a combination of "banana peels." Frequently, the combinations appear as leading or yes-no questions with some other type of "banana peel" present.

**Sources:** Mastering the Art of Q&A: A Survival Guide for Tough, Trick & Hostile Questions (Dow Jones-Irwin) and The Persuasive Edge: The Executive's Guide to Speaking and Presenting (Fawcett Columbine).

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## DEBATE HEADLINES

### CULTIVATING CREDIBILITY AND "QUOTABILITY"

by

Myles Martel

In most debates, media interviews and Q & A situations you should begin your answer with a headline, a single sentence to provide the impression that you are responding to the question and to convey a sense of direction as you pursue the fuller response.

Eight principal options surround the use of the headline:

1. The Flat Answer (of Agreement or Disagreement)

"Yes," "No," "Perhaps," "Right now," "Absolutely," "Surely," "Definitely"

"I can't accept that," "I disagree," etc.

2. The Response (Via Agreement or Disagreement) to a Premise Contained within the Question

"You're right, I did vote in favor of the legislation you mentioned.

However..."

3. The Framing Statement

"There are three major steps I would take if the problem you describe were to become more serious."

4. The Use of Proof

"According to the FBI, drug-related crimes have increased \_\_\_% within the past decade."

5. The Backgrounding Preamble

"To answer your question, I must supply you with a little background information."

6. The Argument(s)

"Because the CIA apparatus failed to predict and therefore failed to alert us to the likelihood of the attempted coup."

7. The Editorial (Regarding the Quality or Difficulty of the Question) "You've

asked a very complex (interesting, provocative, intriguing) question."

8. The Show of Support, Empathy, or Compassion

"I have great empathy for the indescribable difficulty -- the untold pain -- experienced by the people who survived that earthquake."

**Advice:**

1. The better the headline, the more likely that your target audience will pay attention to your answer, plus sense your ability and willingness to provide it. This enhances your credibility and your "quotability."
2. Whenever possible, try to use the headline to reinforce a key message as well as a major image trait.
3. A caveat is in order: Stating your position too strongly in the headline can cause a disagreeing target audience member to become more defensive and thereby more prone to refute your position internally or aloud.

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## Martel & Associates Debate Preparation Plan

Planning for a debate is usually an enormously complex exercise where one overlooked detail can make a difference between success and failure. This Plan helps bring discipline to the preparation process.

### I. Basic Issues

Number of Debates

Dates

Location

Sponsor

Media Coverage

Political Implications of Each Debate Chosen, Including Target Audience

Negotiating Potential

### II. Format Features

\_\_\_\_\_ Opening Addresses Length \_\_\_\_\_ Basis for Sequence \_\_\_\_\_

\_\_\_\_\_ Rejoinder Length \_\_\_\_\_

\_\_\_\_\_ Questions \_\_\_\_\_ No. \_\_\_\_\_ Length \_\_\_\_\_

\_\_\_\_\_ Cand. A Response Length \_\_\_\_\_

\_\_\_\_\_ Cand. B Response Length \_\_\_\_\_

\_\_\_\_\_ Follow up Questions Definite \_\_\_\_\_ Optional \_\_\_\_\_  
Location in Format \_\_\_\_\_ Response Length \_\_\_\_\_

\_\_\_\_\_ Cand. A Rebuttal Length \_\_\_\_\_

Candidates Question Each Other Directly  
 Location in Debate   
 Length of Questions   
 Number of Questions   
 Length of Response   
 Rebuttal  Length   
 Counterrebuttal   
 Direct Question Groundrules (re:topics, tone, phrasing, etc).   
 Moderator: Who? How Selected? Role as Questioner?  
 Panelists  
 Number   
 Who  
 How Selected (Candidate Input Opportunity)  
 Closing Addresses Length  Basis for Sequence

Means by which extra time or less time than anticipated will be managed.

Add Questions  Add to Response Length  Subtract Questions   
 Shorter Response Length  Add to or Shorten Closing Remarks

**III. Negotiating Details**

Notes taken to lectern? \_\_\_\_\_

Notes taken at lectern? \_\_\_\_\_

Props and visual aids? \_\_\_\_\_

Coin Toss

Meaning

Date and Time

What degree of authority does the negotiator have?

Will agreements be placed in writing?

Should a "silence" agreement be placed on what transpires during the negotiating sessions?

Should the sessions be held in stages?

How many? \_\_\_\_\_ When? \_\_\_\_\_

**IV. Technical Issues**

**A. Stage Setting**

Will candidates sit or stand?

Where will each sit or stand?

Will the moderator and panelists separate the debaters?

A      

Panel
-------

      B

Will they be facing the candidates?

A      

Panel
-------

      B

Will a "V" formation be used?  
Moderator



What are the exact measurements of the set?

What are the exact measurements of the lectern?

Have lecterns been "sandbagged"?

Have pens and notepad been provided on lectern?

Have sheets been removed to prevent tearing?

Water glasses available? (no stemware)

How will debate be timed?

Will there be timecards? Colored lights? Location?

Visibility to candidate? What signals will be conveyed? How?

How will overtime be signalled? Visually? Orally? Both?  
Visually then orally?

Will each candidate have a timer?

Will the timers be in line with the candidate's camera?

Will there be a running clock on the lectern?

Will one be mounted on or near the camera?

**B. Cameras**

How many?

Where will they be placed?

Will the candidates each have dedicated cameras?

**C. Lighting**

What is the specific lighting configuration?

How adjustable is the lighting for factors of heat and glare?

**D. Audience**

Will there be a live audience?

How many?

Who?

Number of tickets per candidate?

Will the audience be allowed to react overtly to the debate?

Will audience members be invited to pose questions?

Will television cameras focus on audience reactions during the debate?

What type of security will be present? Legalities of ejecting disrupting parties?

**E. Sound**

Will the candidates use lectern or lavalier microphones? Backup?

Will candidates be able to hear panelists and audience questions?

Will candidate be able to hear the opponent(s)?

Will a sound and lighting check be arranged for each candidate?  
When?

**V. The Debate**

**A. Pre-Debate Media Strategy**

How to respond to questions re:

Preparation methods

Strategy

Candidate's mood

Expectations re: performance

Etc.

**B. Management**

Special Debate Office

Secretary

Typewriter

Xerox machine

Phone lines

Message center

Refreshments

**C. Candidate**

Schedule leading up to debate

Suite near debate

Food and liquid intake as debate approaches

Exercise

Warm up questions

Persons to be with candidate shortly before debate begins

Advance team escort to debate

Persons to take stage following debate

Advance team to escort from debate

Makeup Opportunity

Station's Artist

Own

Perspiration control techniques

**D. The Opening Moments**

How will the debate be introduced?

How will candidates be introduced?

Handshake

Smile and nod upon introduction

Eye contact with panelists, opponent, live audience, television cameras?

**E. Post-Debate Considerations**

Press availability

Timing

Location and Specific Details of Setting

Length

Planned Responses to Anticipated Questions

Rally

**Media's Approach to Debate:**

- Interview prominent figures
- "Person - on - the - Street"
- Call - in Polls re: Who won or lost

**"Control" tactics regarding media approaches**

- Should the campaign make an audio and videotape of the debate?
- Will the debate be replayed? When? What channel(s)? Legal considerations?
- Should a full transcript be made?

**F. Other Details**

No motorized camera rule

No roving reporters during debate

No applause rule

Unruly conduct will result in expulsion rule

No admittance once debate has begun rule

Pre-debate photo opportunity with opponent

Pre-debate actuality -- radio or TV -- to promote debate

Specific nature of pre-debate publicity