Document Originally
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Following Page

4/27/92

Please file for
Cam Findlay:

Welfare Reform

THE WHITE HOUSE

WASHINGTON

April 21, 1992

MEMORANDUM FOR GAIL WILENSKY

FROM: CHARLES E.M. KOLB

SUBJECT: Welfare Reform Documents

Many thanks for sharing with me the attached documents on welfare reform. In addition to the comments I made on these documents, I wanted to offer the following suggestions.

As currently drafted, it is unclear to whom the options paper will be addressed. If it is for the Policy Coordinating Group ("PCG"), then I believe some of the detail is appropriate. If it is for the President, I do not believe we need to drag him through the options on evaluation design and budget neutrality.

I would also suggest some revisions in the overall organization of the document. First, I believe there should be a brief introduction which states the importance of welfare reform as an issue and then lists the driving principles behind our efforts. Whether the audience is the President or the PCG, this information will be helpful in framing the contours of the policy debates that will inevitably follow.

Second, I recommend presenting the options as follows:

- the existing Federal waiver process
  - -- current status
  - -- pending waiver requests
  - -- expected waiver requests
  - -- open issues (e.g., evaluations and budget neutrality);

- waiver solicitations
  - -- aggressive outreach by the Federal government to encourage particular types of waivers
  - -- describe outreach process (e.g., NGA, ALEC, and others); and

- legislative proposals
  - -- to accommodate State flexibility
  - -- to promote Bush Administration welfare-reform principles.

As I mentioned last week at our meeting, I recommend that we move promptly to submit new legislation (or revise last year's "Community Opportunity Act") to include any new waiver authority that we need. As we have done recently in civil justice reform, perhaps we could consider the possibility of devising a model State welfare reform package that ALEC or some other group might have an interest in promoting as well.

Conceptually it makes sense for us to keep distinct proposals that can be achieved under existing statutory or rulemaking authority and those requiring new legislation. The message conveyed would be the following: wherever we have authority, we're using it to the fullest extent of the law. Where we don't -- and want to see change -- we're proposing new laws or changes to existing laws that would accommodate State experimentation and/or Federal principles of welfare reform. In short: a full court press.

Attachments

[Version of 4/16/92]

Waivers

Where we are on waivers

To assure that states obtain timely review of waiver proposals and that all agencies become involved early, a review process has been established that brings together senior officials from the agencies involved soon after a waiver request is submitted. That process will also follow proposals as they move through.

Wisconsin's waiver request, the first received since the President's State of the Union address, was reviewed and approved within four weeks of receipt. Wisconsin asked that the authority granted in the Social Security Act that allows provisions of law or regulations be waived in order to conduct an experimental, pilot, or demonstration project be used to allow Wisconsin to undertake its demonstration.

State innovation can happen through one of several mechanisms:

- State plan amendments. The largest State-federal welfare programs, AFDC and Medicaid, are operated according to state plans. The plans describe how states structure their AFDC or Medicaid programs. Some innovations can be accomplished by approving a state plan amendment and do not require waivers.

- Program waivers. These waivers waive some limitation in law or regulation. These waivers allow a state to pursue a different course in a defined area. For example, "home and community-based waivers" allow Medicaid to pay for services provided in the home when they are less costly than in a nursing home or hospital.

- Research waivers. The Social Security Act provides broad authority to waive rules governing a broad array of programs -- including AFDC, Medicare, and Medicaid. In distinction to waivers granted to provide flexibility, research waivers change rules in order to test hypotheses in the "laboratories of democracy." In the past, these waivers have (1) run for predetermined length of time and (2) involved some kind of evaluation to determine what happened in the experiment.

- Statutory waivers. Some states have sought and receive legislation that waives other provisions of law that would conflict with the state's approach.

Wisconsin asked for a research waiver. Wisconsin complied with the current standard for approval of a research waiver relating to welfare programs:

- Rigorous, effective evaluation, using experimental design and random assignment of individuals to experimental or control groups;

- Adherence to budget neutrality.

Not all states want to hold to these standards. New Jersey has submitted a draft of its waiver proposal that would apply the waiver statewide with no control group and exceed the cost of the existing program by $90 million over five years.

OPTION AREA 1: Facilitating Innovation by States

What rules should be applied in evaluating state waiver requests? Our current policy says waivers should be granted for research projects. How should research and state flexibility be balanced?

Issue #1. Flexibility for research v. flexibility to accommodate states

The best experiments show whether something worked. The closer the scientific method is followed, the more readily a conclusion can be drawn.

Good experiments are more difficult than simply changing program rules. The most conclusive experiments involve an experimental and a control group. The experimental group faces the rules of the experiment (no increased AFDC payment for additional children) while the control group has the traditional AFDC rules.

Some states have already shown that they do not want waivers to conduct research. They wish to change their programs. Evaluation is a burden rather than a product. This appears to be the case for New Jersey's waiver.

Option 1: Insist on effective, rigorous evaluation as a component of waivers

This is our current policy; the rigor demanded is proportional to the financial risk involved. As a result, the evaluation requirement:

- Favors experimental design, with some participants treated under the "new" rules and other under the "old;"
- Favors random assignment of individuals between experimental and control groups;
- Involves comparatively small numbers of participants because of the evaluation cost and ability to manage large groups operating under different rules; and
- Leads to evaluation of a single policy without the ability to understand the systemic change that might emerge if everyone was subject to the rules of the demonstration.

Pro:

- Debates about what works in welfare reform will only be [illuminated][~~settled~~] by carefully evaluating experiments in the "laboratories of democracy."

- Without effective evaluation, subjective evaluation, particularly personal opinion, will play a greater role.

- Abandoning an insistence on evaluation arms critics with the charge that the Executive Branch is abusing statutory discretion.

Con:

favoring state innovation through waivers.

- The Administration has taken a high profile ~~"pro-waiver"~~ posture; refusing to approve some waiver requests or insisting on significant changes that lead to protracted negotiations may suggest we were not serious about waivers.

>?!

- Cursory evaluation that makes no effort to show if something "works" may be better than poor evaluation that makes untenable claims that something "works."

Option 2: Allow research designs consistent with increased state flexibility.

Experimental design not requiring random assignment would be acceptable; evaluation approaches that allowed for all individuals participating in a program in an area would be acceptable.

Pro:

- Several states (California, New Jersey) have suggested they do not wish to use control groups; they want to have all recipients subject to the rules of the demonstration.

Unless the state makes significant changes in its approach, we would not be able to approve the California and New Jersey waivers without significant modifications to what the state proposes.

- Can determine success of experiments by comparison with other states.

Con:

- No effective evaluation will take place. There will be no statistically persuasive data to resolve the debate about whether the reform "worked."

Issue #2. Approaches to budget neutrality

result in must

In open ended entitlement programs, a waiver can ~~mean~~ a program that costs more than the regular program. Under current policy, waivers ~~are required to~~ be budget neutral. Budget neutrality requires that the program created by the waiver ~~should~~ cost no more than the standard program. A variety of means are available to assure this standard is met. States prefer flexibility in meeting budget neutrality. Containing federal costs calls for a tighter standard for budget neutrality.

to prevent

Fiscal controls are important ~~lest~~ waivers ~~becoming~~ a back door to higher federal costs.

from opening that

The Reagan Administration's Interagency Low Income Opportunity Advisory Board insisted that proposals be budget neutral year by year. If a waiver project cost more in any year than had been projected, the federal government moved to recoup the overrun in the following year.

All agencies in the Working Group believe that year-by-year budget neutrality is too strict a standard. Many projects try to provide more generous rules or services at first in order to achieve lower costs in subsequent years. Year-by-year neutrality penalizes efforts that do not have immediate payback.

Current policy involves:

- Half way assessment. Costs would be assessed at the half way point, at a maximum of thirty months into the project. If costs were above the baseline for the first half (up to thirty months), the state would be paid a new baseline, the old baseline minus a pro rata share of the overage during the balance of the project. If costs fell below the new baseline, the state would continue to receive the new baseline amount, recouping earlier losses.

- Stop loss. Costs would be paid as incurred, but if the costs exceeded the projected amount by more than $50 million, payback would be triggered and would continue for the balance of the project.

Option 1: Define a particular policy

Under this option, the Administration would articulate a policy that would define the standards that will apply to waivers. [The Working Group would devise a standard that takes into account the financial risk to the federal government, in waivers with lower projected costs, a more generous standard would apply.] **OR** [The Working Group recommends that:

- In waivers with projected federal costs below $1 million per year, overall neutrality be the standard;

- In waiver with projected federal costs above $1 million per year, the "half way" assessment technique be used; and

- In all waivers, an accumulated amount in excess of the baseline exceeding $50 million trigger immediate payback.]

Pro:

- Eliminates the argument that we are favoring any governor or state.

Con:

-

Option 2: Enunciate a general standard, develop tests on a case-by-case basis.

Under this option, a general standard would be applied would be decided on a case-by-case basis. The Working Group recommends a standard of rigor proportional to financial risk.

Pro:

- Leaves states considering waivers without a clear standard.
- Gives flexibility in deciding what standard should apply to a waiver request.

Con:

-

Issue #3. Lessening evaluation as a barrier

The cost of a rigorous evaluation are born by a single state while the benefits of the knowledge gained are available to all. Also, states, especially small states, are unlikely to have the in-house expertise to prepare a waiver proposal.

Options:

- Identify federal domestic discretionary funds that could be awarded in addition to 50/50 match of evaluation costs as administrative costs. Possibilities: PHS 1% evaluation set-aside. Head Start T&TA for developmental effects on children. ACF coordinated discretionary. Other agencies??
- Fund a center to provide technical assistance to states preparing proposals, emphasizing options we want to see tried (see below.)

OPTION AREA: Program waivers and expanded options

- Rent calculation waivers

  Allow waiver of rents in public housing for problem projects, those who zero rent obligation.

- Davis-Bacon/Fair Labor Standards Act waiver

- Effective welfare-to-work approaches

  The Job Opportunities and Basic Skills (JOBS) program provides funds and a framework for states to carry out welfare-to-work programs. States have tended towards education activities. Thus far, the only programs with demonstrated cost-effectiveness emphasize job search first, and training only for those who do not find jobs. San Diego's Saturation Work Incentive Model (SWIM) is the best example.

  A SWIM-type model would be encouraged, through the availability of a waiver that any state could have upon request and a legislative proposal that would allow models that have demonstrated effectiveness to be implemented by any state.

- Targeting discretionary dollars to Enterprise Zones

OPTION AREA: Policy Changes

- Change rules on expelling criminals from public housing.

OPTION AREA: Follow up activities

At the same time as decisions resulting from this paper are announced, the President send a letter to all governors informing me of steps taken to facilitate waivers.

Also, hold a workshop in Washington to discuss the waivers we seek to encourage.

OPTION AREA: Waivers that would be encouraged

Target those at high risk for long-term dependency

- **Comprehensive interventions for teen parents.**

- **Teen pregnancy prevention.** Reward those who complete high school who neither become pregnant nor father children.

Ending Welfare as a Way of Life

- **Full work requirements.** Extend current JOBS work requirements for the AFDC population.

- **AFDC Transition Program (ATP.)** After one year of regular AFDC, families move into AFDC Transition Program.

Personal responsibility

- **Paternal responsibility.** Require that AFDC applicants provide the names of both parents of each child who will be included in the grant and require absent parents of AFDC children who receive food stamps or state general assistance to be in work or in training.

- **Immunization and Child Health.**

OPTION AREA: Additional Waiver Authority

- Expand the authority in Section 1115 of the Social Security Act to include all Federal-State programs in the Social Security Act and to allow the scope of demonstrations to be broadened to include all purposes the improve the well-being of those served by these programs.

- Propose authority comparable to Section 1115 for [means-tested] programs where it is currently lacking:

  - Food Stamp Act
  - Housing Act of 1937
  - [WIC?]
  - [Domestic discretionary programs? - JTPA? Education programs?]

U. S. Department of Housing and Urban Development
Washington, D.C. 20410-7000

OFFICE OF THE ASSISTANT SECRETARY
FOR COMMUNITY PLANNING AND DEVELOPMENT

MEMORANDUM FOR: Charles Kolb, Deputy Assistant to the President

FROM: Anna Kondratas, Assistant Secretary
Community Planning and Development

SUBJECT: White House Meeting on Tampa Conference/
Self-Employment Welfare Reform Strategies

Per our conversation, this is to outline the proposed 3:00 p.m. meeting on Wednesday, April 29, to discuss self-employment (and related asset accumulation policies) as a viable strategy for achieving Administration empowerment and welfare reform goals.

Earlier this month, the National Association of Resident Management Corporations (NARMC, Kimi Gray, President) and HUD co-sponsored a Tampa conference entitled Comprehensive Assistance to Support Housing (CASH). Over 500 low-income entrepreneurs, public housing resident management leaders, housing agency directors, and non-profit trainers attended this very successful conference.

The Tampa Housing Authority, under the leadership of Executive Director Audley Evans, has been successful in creating 30 resident-owned businesses employing over 100 former welfare recipients. The Resident Enterprise Assistance Program (REAP) was founded in 1988 through a small $25,000 Technical Assistance Community Development Block Grant with matching funds from the city; its lending activities are now managed by the Bank of Tampa.

In addition, REAP has created a network of 25 Home-Based Child Care Centers. These family-oriented centers are also owned and operated by former public assistance recipients (predominantly single, female heads of household). In a number of remarkable cases, residents have moved off welfare and are now business owners, taxpayers, and employers.

In addition to creating new jobs and empowering individuals with greater choices, self-employment also provides role models for the family and the community. Over the past ten years, community non-profit organizations have been expanding self-employment as a viable alternative for individuals (women in particular) on welfare.

This past July, a group of 200 organizations came together to form the Association of Enterprise Opportunity (AEO), as a national membership organization providing training to non-profit organizations in how to implement self-employment initiatives.

As you know, the Administration has endorsed legislative reforms which would encourage AFDC recipients to accumulate savings for new business opportunities as well as "enterprise allowance" strategies for the unemployed. The momentum of the Tampa conference, as well as the input and political support of organizations such as AEO and NARMC, could be instrumental in forging a broad bipartisan and grassroots support base for enactment of these policies.

Attached is a profile on key Tampa conference participants and national leaders who have been invited to the meeting on April 29th. Thank you very much for assistance in arranging this meeting.

Enclosures

ATTENDEES:

1. Audley Evans, Executive Director, Tampa Housing Authority, and Chairman, Resident Initiatives Task Force of the National Association of Housing and Redevelopment Officials (NAHRO).

Evans founded the REAP business incubator program, which has been responsible for greatly increased resident business start-up and is a nationally recognized model for development of self-employment enterprises. Since taking the helm of the Tampa PHA in 1987, Evans has also been successful in restructuring the agency and in securing its removal from HUD's "troubled agency list."

A black Republican, Evans has received strong support from Sen. Connie Mack, who has recommended a Presidential visit to this national success story.

2. REAP Entrepreneur/program participant to accompany Mr. Evans.

3. Kimi Gray, Chairperson, Kenilworth Parkside Resident Management Corporation and President, National Association of Resident Management Corporations. Ms. Gray is a nationally recognized leader in the field of resident ownership, management, and self-employment activities. The NARMC organization she heads is the national membership organization for resident management; the organization is strong supporter of the President's HOPE initiative.

4. Beverly Smith, Executive Director of the Association of Enterprise Opportunity, representing self-employment enterprises nationwide. She has extensive background in research and policy development in the area of self-employment at the state and national levels of government. Smith formerly served as Deputy Director of the Woman's Self-Employment Project (WSEP) in Chicago. WSEP is participating in a five state demonstration to assist women on AFDC in becoming self-sufficient through self-employment.

5. John A. Litzenberg, Program Officer, Charles Stewart Mott Foundation, Flint, Michigan. The Charles Stewart Mott Foundation has been a key pioneer in the self-employment movement. The Foundation has funded a number of demonstrations across the country which created lending programs to seed these self-employed businesses. Mott also provided 50 scholarship to assist residents in participating in the Tampa conference.

HUD PARTICIPANTS

Anna Kondratas, Assistant Secretary, Community Planning and Development

David Caprara, Deputy Assistant Secretary for Resident Initiatives

Paul Fletcher, Special Assistant for Economic Development and Tampa Conference Organizer

THE TAMPA TRIBUNE

Tampa, Florida ■ Thursday, April 9, 1992

Advocates of public housing kick off national conference

By LISA LANDERS
Tribune Staff Writer

TAMPA — The start of a national public housing conference Wednesday at the downtown Tampa Hyatt Regency Hotel was similar to a presidential convention.

There were no delegates carrying signs or cheering candidates, but there were more than 450 public housing officials and residents touting programs for self-employment, and they cheered Kimi Gray, a leader in the resident self-employment movement.

"You see, it doesn't make us any difference who's going to the White House, because whoever gets there must understand that we've got a platform," said Gray, a public housing resident and president of the Kenilworth/Parkside Resident Management Corporation.

"You hear these presidential candidates talk about resident initiatives in their speeches today, and that's all right ... but we just don't want to be talked about, we want to get in the budgets. So we'll be at the convention," Gray said.

Her emotional speech drew participants to their feet and was the kickoff of three days of seminars and workshops at the Comprehensive Assistance to Support Housing (CASH) conference.

The conference is sponsored by the U.S. Department of Housing and Urban Development (HUD), the Tampa Housing Authority and the National Association of Resident Management Corporations. It is aimed at helping low-income people take advantage of business ownership and employment opportunities through government programs, such as HOPE — Homeownership and Opportunity for People.

"I don't know of anyone who's brought more to the table for residents like our Secretary of HUD [Jack Kemp]," said Raymond Harris, a HUD regional administrator. "One of the best signs of that happening is happening right here in Tampa."

Tampa was chosen as the host of the conference because of the housing authority's nationally recognized Project REAP (Resident Enterprise Assistance Program), HUD officials said.

Conference attendees talked with REAP business owner Gussie Livingston and others about the program and toured the program. Livingston, a College Hill Homes resident, runs a day-care facility, oversees a T-shirt business managed by public housing youths and initiated a resident management training program at College Hill.

"Free enterprise, economic opportunities and entrepreneurship is the name of the game," said Paul Fletcher, HUD's special assistant for economic development. "This is what most American's dream about and it should make no difference where you come from, but rather that all the opportunities are made available to everyone."

WELFARE REFORM DEMONSTRATIONS

I. Underlying Principles

The Administration shares the concerns of the States and the American people about welfare dependency, education, training, and employment of welfare recipients, and the viability of single-parent families. A consensus between liberals and conservatives about the basic principles which should govern welfare reform led to the enactment of the Family Support Act of 1988. In reviewing State waiver requests, the following principles will guide Administration efforts to promote further reform of the welfare system through State experimentation.

A. Parents have primary responsibility for the support, nurturing, care, health, and education of their children. Welfare reform should remove the barriers to self-sufficiency such as lack of education, training, poor health, and the absence of economic opportunity.

B. Reform efforts should build upon the major accomplishments of the Family Support Act. Thus, they could include strengthening work requirements and extending requirements for responsible behavior to areas beyond employment and child support enforcement.

C. Welfare reform should be concerned with multi-generational dependency and the needs of both parents and children. The goal of welfare reform should be to improve individual, family, and community life.

II. Model Waiver Packages

The Department has identified several approaches to welfare reform which are consistent with these principles. The Department considers these model approaches and will expedite proposals which are built around them.

-DRAFT-

Welfare Reform

WELFARE AND INCOME ASSISTANCE IS GENEROUSLY PROVIDED BY AMERICANS TO HELP THOSE IN NEED, BUT THE LONG TERM OBJECTIVE MUST BE TO HELP RECIPIENTS MOVE INTO THE ECONOMIC MAINSTREAM AND GAIN FINANCIAL INDEPENDENCE. THIS IS IMPORTANT BECAUSE ALL AMERICANS SHOULD HAVE THE OPPORTUNITY FOR PRODUCTIVE MEANINGFUL LIVES, AND BECAUSE OUR COUNTRY, TO MEET THE CHALLENGES OF THE NEXT CENTURY, MUST TAKE ADVANTAGE OF ALL THE TALENTS AND ABILITIES OF ITS CITIZENS.

There are several principles that will help government achieve this end:

1) Programs must help people become <u>independent</u>. Success is measured when someone leaves the program. Responsible behavior should be encouraged, as is further training and education.

2) Programs must be administered with <u>integrity</u>. We must make every effort to eliminate fraud and those who would abuse the taxpayer's generosity.

3) Programs must be administered with <u>compassion</u>. Our neighbors who need a helping hand must be treated respectfully. There is no share nor stigma associated with these programs. Services should be coordinated, accessible, and not duplicated.

4) This Administration, while it has undertaken many efforts to coordinate programs, demonstrate new program models and enhance job training and support for needy welfare recipients, recognizes that only in full partnership with the States can programs meet these goals. Consequently, the President encourages initiatives and proposals from the States to help all Americans fully participate in our nation's economy and neighborhoods.

Tues., April 28
1:00 PM
National Press Club

GOPAC

THE NATIONAL GRASS-ROOTS ORGANIZATION BUILDING REPUBLICAN LEADERS FOR AMERICA'S FUTURE

440 FIRST STREET NORTHWEST
SUITE 400
WASHINGTON, D.C. 20001

PHONE (202) 484-2282
FAX (202) 783-3306

NEWT GINGRICH
GENERAL CHAIRMAN

HOWARD H. CALLAWAY
CHAIRMAN

April 6, 1992

225-3026
FAX 225-8398

Honorable Clay Shaw
U.S. House of Representatives
Washington, DC 20515

Dear Clay:

As you know, GOPAC is coordinating a monthly series of national press conferences designed to give Republican House Challengers an opportunity to lay out a specific agenda they will support if elected in November.

Our plan is to hold a Washington press conference, once a month, at the National Press Club, to announce a bill or policy initiative which Republicans would pass in the first 100 days if we win a majority.

More important, we will make the press conference available, via a telephone link, to House challenger candidates. For several weeks now, we have been walking challenger candidates through a series of training modules designed to help them use this opportunity as a "news hook" to draw attention to their own campaigns. Copies of the materials we've already sent out are attached.

Our first press conference is scheduled for April 28, 1992, at 1:00 p.m. and the topic is workfare. Our plan is to announce the introduction (or coming introduction) of the legislation we have been working on for the past several weeks.

The purpose of this letter is to ask you to attend the Washington press conference and to speak briefly on why the legislation we have developed is so important. (I'm also asking Hank Brown, Gary Franks, Bill Paxon and Vin Weber, plus the other members of the leadership.)

I don't expect this to take more than about 30 minutes (plus travel time), and your participation would add tremendously to the overall impact of the event.

I've asked Jeff Eisenach, GOPAC's Executive Director, to follow up with your office. If you or your staff have questions or need further information, feel free to call him at 202/484-2282.

Your friend,

Newt Gingrich

Enclosures

ECS YES/NO/HOLD/CALENDAR
LJ YES/NO/NO REC

DRAFT PRESS RELEASE

FOR IMMEDIATE RELEASE
April 28, 1992

FOR FURTHER INFORMATION, CONTACT:
[Your Name or Press Secretary's Name]
[Your campaign telephone number.]

[YOUR CITY, YOUR STATE]: Republican [YOUR NAME] today announced that, when elected to Congress in November, [HE/SHE] will support legislation to require welfare recipients to work for their benefits.

"Our current welfare programs have proven to be nothing more than a 'poverty trap,'" [YOUR NAME] said. "By requiring welfare recipients to work, we will be re-establishing the value of honest hard work as the way to get ahead in America."

* * *

USE THIS PARAGRAPH ONLY IF APPROPRIATE
AND AFTER RESEARCHING ITS ACCURACY.
SEE ENCLOSED MATERIALS.

[YOUR NAME] said that [HIS/HER] opponent, incumbent Democratic Congressman [INCUMBENT'S NAME], has consistently refused to support real workfare legislation. He pointed to a 1987 vote in which [INCUMBENT'S NAME] voted against a Republican workfare proposal and a 1988 vote by [INCUMBENT'S NAME] in favor of a program that raised spending without imposing real work requirements.

* * *

[YOUR NAME] announced [HIS/HER] commitment to workfare as part of a nationwide press conference held simultaneously by more than 50 Republican challenger candidates in 25 states, each of whom pledged to support the workfare plan as part of a "100-day agenda" Republicans will push through Congress next Spring. The nationwide announcement was organized by Republican Congressmen Newt Gingrich, Vin Weber and Clay Shaw, and Senator Hank Brown, who led a kickoff press conference at the National Press Club in Washington to describe the plan.

Political observers expect large Republican pickups in the House this Fall, and [YOUR NAME] even predicts Republicans may capture control of the House for the first time in 38 years.

"I'm looking forward to being part of the largest freshman class in the history of the House," [YOUR NAME] said. "We can change Congress and enact the necessary revolution we need for America to be successful in the 21st century -- if we are willing to take the first step, right here in [YOUR STATE], by replacing [INCUMBENT'S NAME] with someone truly committed to replacing the welfare state."

WORK AND FAMILY RESPONSIBILITY PLAN PRESS CONFERENCE
APRIL 28, 1992
FINAL CHECKLIST

Logistics

1. Make sure you have informed key reporters that you are participating in the nationwide announcement and invited them to your own press conference/availability.

2. Make sure you have made arrangements to listen in to the National Press Club press conference in Washington.

> **THE PHONE NUMBER IS 202/833-0860. ALL YOU HAVE TO DO IS DIAL THIS NUMBER AT 12:55 P.M. EASTERN TIME ON APRIL 28 AND YOU WILL BE ABLE TO HEAR CONGRESSMAN NEWT GINGRICH, VIN WEBER AND CLAY SHAW, AND SENATOR HANK BROWN, CONDUCT A BRIEFING FOR REPORTERS ON THE SUBSTANCE OF THE WORK AND FAMILY RESPONSIBILITY PLAN.**

Be sure to arrange for (a) a Speaker Phone at the site of your press availability and (b) a tape recorder to record both the Washington press conference and your own.

3. Prepare a press release (one page at most) and a written opening statement (two-three pages double spaced). (Use the enclosed draft press release and opening statement as a guide.)

Issue Preparation

1. Read the enclosed materials and make sure you understand the essence of the proposal, including the Questions and Answers.

2. Research the incumbent's record. Some materials are enclosed. Make sure you know how your incumbent voted on key issues in the 1987-1988 welfare reform debates. **There is no worse mistake for a challenger than to misstate the incumbent's record. Do your research carefully.**

3. Research welfare as it pertains to your district.

> Call each county welfare office to get total numbers of families on welfare (Aid to Families with Dependent Children) in each county and total welfare spending by county.
>
> From the same source, ask for examples of workfare programs already underway in your district. While these programs are usually half-measures on a small scale, they may provide you with local evidence that "workfare works."

4. Review at least one recent book on poverty and welfare. [Look for titles by Charles Murray (Losing Ground), Stuart Butler (Out of the Poverty Trap) and Nicholas Lehman (The Promised Land).]

GOPAC

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NEWT GINGRICH
GENERAL CHAIRMAN

HOWARD H. CALLAWAY
CHAIRMAN

April 20, 1992

MEMORANDUM FOR HOUSE CHALLENGER CANDIDATES

FROM: **Jeff Eisenach**
Executive Director, GOPAC

SUBJECT: **April 28 Press Conference on Workfare**

As you should know by now, GOPAC is coordinating a nationwide press conference on Tuesday, April 28, by House challenger candidates across the country. The topic is workfare, and the purpose of the press conference is to help you get local press on an issue that is almost certain to be a winner for your campaign.

If you have been reading and listening to the materials you've been receiving from GOPAC over the past several weeks, you already know that the press conference will begin at 1:00 p.m. Eastern time with an announcement at the National Press Club in Washington. Congressmen Newt Gingrich, Clay Shaw and Vin Weber, and Senator Hank Brown, will participate in that press conference and announce the Work and Family Responsibility Plan -- the essence of which is that people on welfare for more than 12 months will be required to work for their welfare benefits.

The National Press Club press conference will be available to you through a telephone hookup. You can listen in simply by dialing 202/833-0860. Your local press can listen in too, either by dialing the same number themselves or by joining you at a speaker phone where you can listen in together.

The enclosed materials are designed to facilitate a local press conference or press availability you can hold in conjunction with this national announcement, where you can announce your support for this revolutionary program. For best results, you should begin your event at 1:00 Eastern time, begin by listening to the national press conference, then make your own remarks and take questions.

Let me emphasize that the enclosed materials are for you to use, or not use, as you choose. If the issue is wrong for your campaign, don't participate. If you don't feel comfortable with the rhetoric, write your own. And, whatever you do, make sure to tailor what we have sent you to your own district and circumstances.

At a very minimum, add some local statistics on welfare participation and costs and a discussion of how you differ with your incumbent.

As this is written, we already have more than 35 Republican House Challenger campaigns signed up to participate in 20 states. Your announcement, therefore, is likely to be seen in the context of a national event in which Republicans across the country make clear that, as a majority in 1993, we intend to enact a true revolution and to replace the welfare state with an opportunity society.

Two last things: First, a Business Reply Envelope is enclosed for your use in sending us news clippings that may result from your event on April 28. Please use it to send us your clippings so that we can distribute them to other candidates and to the national media as evidence of the fact that Republicans really will make a difference.

Second, remember that this is the first in a series of monthly press conferences to announce House Republican initiatives that will be enacted in 1993. The next press conference will be on the topic of **Congressional Reform**, and is tentatively scheduled for **Tuesday, May 26**, at 1:00 p.m.

Thank you for everything you are doing, and good luck on Tuesday.

P.S. If you are planning on holding a press availability or endorsing the Work and Family Responsibility Plan, please remember to let Laura Stotz, at GOPAC, know of your plans. This will allow us to direct national reporters to you and increase your exposure on this important issue.

Outline of Weber/Gingrich/Shaw Welfare Reform
March, 1992

1. Create the AFDC Transition Program

a. After 1 year of regular AFDC, families move into the AFDC Transition Program in which they are expected to work or prepare for work; at state option, participation in the AFDC Transition can begin as soon as families enroll in AFDC

b. At the end of 1 year, and every year thereafter, an assessment is made by states to determine whether the recipient has made "clear and substantial effort" toward preparing for work.

c. States, in consultation with the Secretary, must establish the guidelines by which "clear and substantial effort" is defined. States can set their own guidelines within the following framework:

1) the general rule, to which education is an exception (see below), is that families must participate at least 25% time on a year-round basis; their participation is calculated on a one-year measurement period (e.g., 100% time for 3 months, 50% time for 6 months, or 25% time for 12 months fulfills the requirement)

2) within 12 months of enactment, the Secretary must publish rules about how education hours are counted; the guiding principle should be that meeting whatever a given educational institution (including professional training schools, 2-year programs, and 4-year programs) considers full-time enrollment, and maintaining at least minimum passing evaluations, should count as participation

3) in two-parent families, at least one parent must meet participation requirements

4) states can require participation of parents regardless of the age of their children, but all parents of children age 3 and older must participate

5) children born while the family is enrolled in AFDC do not exempt parents from participation under the child age rules (i.e., parents who have a child over age 3 or whatever minimum age is set by the state and then have a baby are required to renew their participation within 2 months of the birth)

6) all the programs authorized in section 482(d) count as participation under the AFDC Transition program

c. Sanctions. Participants who fail to meet the state-defined criteria for participation are sanctioned as follows:

--for the first offense, the AFDC grant is reduced by 50% of the difference between a household of 1 person and a household

of 2 persons in that state
--for the second offense, AFDC grant is reduced by 100% of the difference between a household of 1 person and a household of 2 persons in that state
--for the third offense, the family is dropped from AFDC altogether

d. Exemptions.
--disabled
--2 months following birth
--under age 3 years (or less at state option)
--last trimester of pregnancy
--providing full-time care of disabled

e. 4-Year Limitation. Irrespective of all other provisions of law, families must leave AFDC after 4 years. The maximum of 4 years includes all repeat spells on welfare.

f. More money for states to educate and train welfare mothers. ____ is authorized, to be distributed to states on the basis of the same formula and with the same state matching provisions as under the JOBS bill.

2. Parental Responsibility Initiative

a. Immunizations and Well-Child Examinations

--This program is optional for states

--Parents on AFDC must demonstrate that their children have received the set of immunizations and completed the well-child visits proposed by states and approved by the Secretary (such as those recommended by the Committee on Practice and Ambulatory Medicine of the American Academy of Pediatrics)

--States, in consultation with the Secretary, should develop their own procedures to verify compliance with these requirements; however, the verification procedures cannot require visits by parents to the welfare departments; compliance procedures must be accomplished by phone, by mail, or by similar methods of communication

--Sanctions for noncompliance are the same as those in the JOBS program (suspension of the adult portion of the AFDC benefit until the family complies for the first infraction, until the family complies but at least 3 months for the second infraction, and until the family complies but at least 6 months for the third and subsequent infractions)

b. School Attendance

--This program is optional for states

--AFDC parents are required to insure that their children between the ages of 6 and 18 be enrolled in and attend on a regular basis public school or an accredited alternative school

--In consultation with the Secretary, states should define the attendance standards children must achieve

--Sanctions for noncompliance are the same as above

3. Marriage Penalty. If a mother on AFDC marries a man who is not the father of one or more of her children, and if their combined income is less than 150% of the poverty level, the AFDC grant would continue for up to two years. The grant would be for the family size equal to the number of children who are not the husband's.

4. Expansion of Work Supplementation Programs (same as Hank Brown's S.2288).

a. To help AFDC parents gain the experience and skills they will need to escape welfare, States are authorized to use the AFDC grant and the cash value of a family's Food Stamp benefit to subsidize employment in the private or public sector

b. Employers must contribute at least enough money to the parent's income so that the wage is equal to at least 125% of the combined AFDC and Food Stamp benefit

c. To provide states with a financial incentive to use this program, states are allowed to calculate the federal payment of AFDC and Food Stamp benefits at the maximum amount for which a participating family is eligible under state and federal law, regardless of how much the employer contributes to the parent's wage (thus, states that persuade employers to pay more than the amount required to bring the wage to 125% of the combined AFDC and Food Stamp benefit can save money on the program)

file: OSTP

OFFICE OF THE VICE PRESIDENT

WASHINGTON

April 27, 1992

MEMORANDUM FOR ATTACHED DISTRIBUTION LIST

FROM: DAVID M. MCINTOSH DMM

SUBJECT: BIOTECHNOLOGY GENOME PATENTING
REVIEW OF BACKGROUND PAPER
FOR THE OSTP PUBLIC MEETING

At our meeting last Thursday, we agreed to review a background paper under preparation for the OSTP public meeting scheduled for May 21 and 22. We wanted to be sure that the paper would direct the attention of meeting attendes to those issues of concern to the Administration and not open areas of technology and patenting that are well settled. A draft of the background paper is enclosed. On pages 15-17 OSTP proposes a set of possible issues. Please let me know your comments on this list of issues and other materials contained in the draft background paper.

OSTP has requested that we quickly respond so that the meeting organizers can mail the background paper well in advance of the public meeting. In order to expedite the clearance process, please a send a copy of your comments directly to OSTP c/o Ms. Rachel Levinson, telephone 202 395-4850, fax 202 395-1571, and a copy to this office. We will try to clear the background material without a meeting, but will schedule one if necessary.

5/4/92

File for Cam Findlay:

OSTP

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4/27/92

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF SCIENCE AND TECHNOLOGY POLICY
WASHINGTON, D.C. 20506

April 24, 1992

MEMORANDUM FOR ADDRESSEES

FROM: **D. ALLAN BROMLEY** D Allan Bromley
CHAIRMAN, FEDERAL COORDINATING COUNCIL FOR SCIENCE, ENGINEERING, AND TECHNOLOGY

SUBJECT: **BACKGROUND PAPER ON INTELLECTUAL PROPERTY PROTECTION AND GENOME RESEARCH**

Per discussion at the April 23 meeting of the Council on Competitiveness ad hoc group on genome patenting, the attached draft document, "Intellectual Property Protection and Genome Research: Background Information for a Public Meeting," is being circulated for your comments.

This paper contains a brief, factual description of the current state of genome research and relevant intellectual property protection mechanisms and technology transfer laws and procedures. It is a product of the Genome Patent Working Group and has been transmitted to me through the FCCSET Committee on Life Sciences and Health (rosters attached). As stated in the Federal Register Notice of Meeting (copy attached), the background paper will be distributed to meeting registrants as an aid in focusing discussion at the meeting.

Please communicate your comments directly to Ms. Rachel E. Levinson, OSTP, at 202-395-4850 (telephone) or 202-395-1571 (FAX) by c.o.b. April 29, 1992.

Attachments

cc: **Dr. Mason**
Dr. Clutter

INTELLECTUAL PROPERTY PROTECTION AND GENOME RESEARCH: BACKGROUND INFORMATION FOR A PUBLIC MEETING

I. INTRODUCTION

Various federal agencies have established coordinated genome research projects.[1] The National Institutes of Health (NIH) and the Department of Energy (DOE) have established human genome research programs, involving research on genomes of humans and selected model organisms.[2] The U.S. Department of Agriculture (USDA) supports the plant genome research project[3] as well as the animal genome research project.[4] The National Science Foundation (NSF) supports a genome research project on a model plant system, *Arabidopsis*.[5] Other countries in Europe and elsewhere have launched coordinated genome projects addressing genomes of humans, plants, animals, and bacteria.[6]

Infusion of new federal funding through these projects into the already strong biological research base in the United States has encouraged genome research in this country and contributed to a rapid rate of scientific progress beyond earlier expectations. For example, new technologies allow for the rapid, and relatively inexpensive, isolation, cloning, and DNA sequencing of genes or gene fragments. Consequently, it is possible to obtain sequences representing a large number of genes for which, in some instances, little other information is available. The Federal Government has a dual responsibility to encourage the free flow of scientific information and the rapid commercialization of research results. In order to address how best to achieve these goals with respect to

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[1] A *genome* is the total gene complement of a set of chromosomes found in higher life forms, or the functionally similar but simpler linear arrangements found in bacteria and viruses.

[2] Understanding Our Genetic Inheritance. The U.S. Human Genome Project: The First Five Years, FY1991-1995. A joint publication of the Department of Energy and the Department of Health and Human Services. Washington, DC, April 1990.

[3] USDA Plant Genome Research Program. Washington, DC: U.S. Department of Agriculture, June 1991.

[4] Federal Register, Vol. 56, No. 231, 2 December 1991.

[5] A Long-range Plan for the Multinational Coordinated Arabidopsis thaliana Genome Research Project. Washington, DC: National Science Foundation, July 1990.

[6] Human Genome Research: A Review of European and International Contributions. London: Medical Research Council of the United Kingdom, January 1991.

genome research, the Federal Coordinating Council for Science, Engineering and Technology (FCCSET) has formed a high level interagency committee, the Genome Patent Working Group (GPWG), under the auspices of the FCCSET Committee on Life Sciences and Health (CLSH).[7] The GPWG is charged with defining the pertinent science and related issues, examining different views and perspectives on these issues, and proposing a series of options to be considered at the policy making level. The scope of the GPWG is limited to the issues related to federally funded genome research.

It should be recognized that rapid progress in genome research is possible only because of the vast accumulated information in biology that has resulted from basic research supported by various agencies over a long period. All the agencies involved in genome research are aware of the importance of integrating genome research with all of biology, as evidenced by the fact that most of the coordinated genome research projects take a broad view of the kind of research and experimental systems that they support. Similarly, issues related to the protection of intellectual property rights and commercialization of federally funded research results are not new or unique to genome research. There are existing laws and policies that deal with these issues. However, genome research has highlighted some of the problems of interpretation and application of existing laws in the rapidly evolving area of molecular genetics.

The GPWG seeks input from many sources in completing its tasks. The purpose of this document is to provide the interested public with general information on what genome research is, how intellectual property is protected, and how the Federal Government encourages technology transfer from laboratories to commercialization. The document is written as background for a public meeting to be held on May 21-22, 1992, in Washington, D.C. It is not designed to be a comprehensive treatise, but is intended rather as an aid to focus the discussion about this extremely complex subject on a few key issues of common interest. Examples of these issues are identified in Section VII at the end of this document.

II. SCIENTIFIC BACKGROUND

Genome Projects. Since the discovery of the double helical structure of deoxyribonucleic acid (DNA) by Watson and Crick in 1953, it has been evident that the sequence of its "letters" (the nucleotide bases adenine, cytosine, guanine, and thymine--or A, C, G, and T, for short) was the key to its information content. The Human Genome Project, cosponsored by the DOE and the NIH, is a coordinated 15-year effort to locate and

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[7]The seven member agencies are the Departments of Agriculture (USDA), Commerce (DOC), Energy (DOE), Health and Human Services (DHHS), and State (DOS), along with the National Science Foundation (NSF) and the Office of Science and Technology Policy (OSTP). The NSF chairs the working group.

decode all the information in the complete human DNA, or human genome. Concurrently with the development and establishment of the Human Genome Project, the USDA planned and established the Plant Genome Project in 1991. The goal of the USDA project is to facilitate the genetic improvement of plants by locating important genes and markers on plant chromosomes, determining the structure of those genes, and transferring the genes to improve the performance of commercial plant varieties to meet market needs.

The genome exists in living cells in highly organized structures called chromosomes. The number of chromosomes varies greatly from species to species, but is always a characteristic number for each species. In the case of humans, each of the 24 distinct human chromosomes is a single, enormously long, double helical molecule (averaging an inch and a quarter per chromosome, with 23 pairs of chromosomes stuffed into a volume of less than one billionth of a cubic centimeter within each nucleated cell). Along the length of that molecule are regions of special sequences, called genes, that are functionally distinct because they encode instructions for the manufacture and control of products (proteins) that build, manage, and organize everything in the cell--which is itself the basic building block of all living tissues. It is estimated that an adult human being has about one hundred trillion (100,000,000,000,000) cells of many different kinds and functions. To oversee this complexity, the organization of the information contained in the genome must also be highly complex so that only the parts needed to do specific jobs are expressed where and when necessary. The genomes of some crop plants can be even more complex, with multiple copies of chromosomes beyond the normal number of two of each. The need to understand the basic structure and organization of the genome--whether human, animal, or plant--is a driving force behind the several organized genome projects.

The Human Genome Project departs from the norm for basic biological research in several ways: it is a focussed and technology-dependent, basic research effort, and it is a highly interdisciplinary project. Its principal objective is a delineation of all three kinds of maps of the human chromosomes - genetic, physical, and DNA sequence. Accomplishing this daunting task will require further technological advances, instrumentation, and chemistries that will permit us to analyze the fundamental molecules of life, DNA and proteins, as well as to develop the sophisticated new computational methods needed to interpret the information.

Research Objectives. In the past, research investigating the causes of genetic diseases in humans and animals, or genetic defects in plants and microorganisms, focused on identifying the missing or defective protein associated with the symptoms of such illnesses or defects. The vast improvements in technology over the last two decades have made it possible to examine the genome at the molecular level, to pinpoint the precise location of the defects within the protein sequence and to place the location of the gene coding for that protein on a genetic map. Such information is equally valuable for understanding normal cell function and physiology. Today, research is conducted from

both directions, from the gene to the protein and the protein back to the gene. In either case, each step in the process of DNA transcription and RNA translation into proteins provides vital insight into the sophisticated means for controlling gene expression, cell development and organismal function.

Scientists do not yet thoroughly understand the organization of the information in the genome of even a very simple organism--much less the human genome; nor do they understand all the multiple and subtle control mechanisms that operate within the genome. Current estimates are that there are perhaps 100,000 genes in the human genome, of which, to date, some 5,000 are named and 2,300 localized (mapped) onto one of the 24 distinct chromosomes. For fewer than 1,500 human genes is there even a partial understanding of their function. The first step in building this understanding is to construct a detailed "map" of where the genes are. There are several different kinds of map, of different levels of resolution, that are obtained using different technologies. One of the aims of the Human Genome Project (and other genome projects) is to place reference points, or landmarks, on the chromosomes so that genes can be oriented as they are found. This procedure is similar in concept to the mile markers on interstate highways. The marker may not, by itself, indicate anything more than the number of miles from a state line (by convention, either the south or west border), but it is very useful as a milestone to someone traveling on the highway. The most useful markers have two qualities: (1) they must be easily recognizable and (2) there must be lots of them, spread relatively evenly along the length of the chromosome so that one is never very far away from a unique point. The Human Genome Project has recently seen the mapping of almost 1,000 specific sequence markers (referred to as Sequence Tagged Sites, or STSs). An STS is a short stretch of consecutive DNA sequence that is usually not enough to code for a full protein, or to deduce anything about the function of the protein for which the STS serves as a marker. However, it is by definition unique, i.e., nowhere else in the entire genome will the same sequence be found. These STS markers represent only a small percentage (about 3.5%) of the number that will be needed to complete the map for the human genome.

Another approach to mapping uses a special construct called cDNA (for "complementary DNA"). Very briefly, in the cell, the DNA constituting a gene is first transcribed into a temporary intermediate molecule called hnRNA (for "heterogeneous nuclear ribonucleic acid"). This intermediate is then processed through the precise removal of intervening sequence fragments into an edited form of RNA called mRNA (for "messenger RNA") that codes for a specific protein. Using recombinant DNA techniques, it is possible to synthesize a complementary strand of DNA using the mRNA as a template. Once it is cloned, or purified and multiplied in culture, this cDNA can be used to isolate the corresponding gene from a large mixture of such sequences. With automated technologies, it is now possible to rapidly sequence portions of these cDNAs. This approach makes the identification of a large number of putative genes simple and relatively inexpensive to perform. Partial cDNA sequences have been referred to as "expressed sequence tags" (ESTs) because they identify expressed genes. Since this

working copy bears sequence information unique to the protein product, its sequence is useful for identifying on the original starting chromosome exactly where the gene for the given protein is situated, thus mapping it.

Intense efforts are currently under way across the United States and in many other countries around the world to continue and accelerate mapping efforts, both in humans and in selected model organisms. The ultimate map will be the complete nucleotide sequence of the genome.

Potential Benefits of Genome Research. Many genes code for the production of protein products; these proteins are used to build other proteins, to assemble the physical structure of a cell or tissue, and to serve as enzymes (which carry out the metabolic reactions) or as signal molecules (hormones, needed for internal regulation and control) that are necessary for the functions of a cell and ultimately of the organism. Human diseases can result when there is an error in the gene coding for a protein product that catalyzes necessary cellular chemical reactions. One example is cystic fibrosis, in which a very small change in the gene sequence results in a defective membrane transport molecule that cannot efficiently control the flow of chloride ions into certain cells. As a consequence, these cells improperly regulate the amount of water kept inside the membrane and they retain more than they should. This results in the formation of a sticky mucous secretion which is characteristic of the disease and is the source of the clinical symptoms, particularly in the lungs and pancreas. In plants, a single base pair change in the gene sequence that encodes a chloroplast membrane protein can result in herbicide resistance.

The identification of genes offers several kinds of promise. On one level, the product of the gene can be manufactured using recombinant DNA methods and this product supplied as a drug or other useful compound for humans, animals, and plants. On another level, the gene itself can be supplied using gene therapy approaches. In addition, specific genes can be used to modify or genetically engineer plants, animals or microbes. These prospects offer opportunities for commercial benefit to the inventors and developers of such products and therapies. As more human genetic defects are identified, many new and extremely specific therapies and medicines will emerge for diseases that have few effective therapies today. Similarly, as more economically important genes are identified in crop plants, many new varieties will emerge that could help increase efficiency and reduce losses in crop production. For humans, as well as for plants and other organisms, the elucidation of the organization and function of the genetic endowment will ultimately lead to enormous utility and benefit.

III. INTELLECTUAL PROPERTY PROTECTION

The Patent System. The U.S. Constitution, through Article I, Section 8, clause 8, has empowered Congress with a broad grant of authority to promote the "Progress of Science

and the Useful Arts." The basic concept of the patent system is that providing a limited grant of exclusive rights to inventors will give them an incentive to disclose their inventions to the public, rather than retain them in secrecy. Through this mechanism the public gains information not only on technical advances, but also on activities of their competitors in related fields of technology, so as to prevent duplicative research efforts. The incentive offered is a 17-year grant of a right to exclude others from making, using, or selling the invention. The patent grant does not, however, provide the patent holder with authority to make, use, or sell the patented invention; it only provides authority to preclude others from such activities. Thus, for example, if a person obtains patent protection for an improvement to a basic invention patented by another, that patentee may not be able to commercially exploit the improvement unless permission from the owner of the basic patent is obtained. The improvement patent will, however, enable the patent owner to preclude all others, including the basic patent owner, from making, using or selling the improvement.

Basic Requirements for Patentability. There are four fundamental, statutory requirements that every invention must meet in order to become entitled to patent protection, regardless of the technological field of the invention: utility, adequacy of disclosure, novelty, and non-obviousness.

First, the patent applicant must demonstrate that the invention is "useful" in a practical sense. This requirement, referred to as utility (35 U.S.C. 101), is met when the patent applicant identifies some useful purpose to which the invention can be applied. In addition, some inventions which are unapplied mathematical algorithms, laws of nature, abstract ideas, or natural products indistinguishable from the form in which they exist in nature are not protectable through the patent laws. Note that practical utility in its patent law sense may be entirely different from biological or therapeutic utility.

Second, to obtain a patent for a new invention, one must file an application that describes the invention in detail and describes the subject matter for which patent protection is sought. Each patent application thus has two sections, the specification and the claims. The specification describes in detail the field of technology to which the invention pertains, and then describes, both generally and in detail, the features of the invention. The claims, on the other hand, set forth in detail the subject matter for which the patent applicant desires protection.

Substantive application disclosure requirements are governed by 35 U.S.C. 112. This section of the patent code requires that applicants describe their invention in sufficient detail as to enable a person skilled in the field of technology to which the invention pertains to "practice" the invention. Hence, many patents on inventions involving biological material require deposit of a specimen. This requirement ensures that patent documents include a sufficient technical description of the invention to people working in the field of the invention, so as to provide them with the opportunity to study and to improve upon the patented invention.

Novelty refers to the requirement that the invention not be known or in use prior to the filing of the patent application. A lack of novelty, which will preclude the grant of a patent, can be based upon any prior publication, an issued U.S. or foreign patent, or evidence that the invention was in public use or was on sale more than one year prior to the filing of the application. An absolute bar to patentability due to lack of novelty can occur if there was prior disclosure, use, or sale more than one year before the filing of the U.S. patent application. Where the publication or use occurs less than one year prior to the application filing date, the patent applicant may still be able to overcome the novelty bar and obtain a patent.

The final requirement for patentability is that the invention be non-obvious as stated in 35 U.S.C. 103. This requirement serves to preclude patenting of minor improvements, where those improvements would have been considered to have been obvious to a person skilled in the field of the invention. Measuring whether an invention would have been obvious requires an assessment of several factors, including the state of the art at the time the patent application was filed, the level of skill of the ordinary worker in the field of the invention, and the difference between what the applicant has claimed as his or her invention, and that which is known in the prior art. (The term "prior art" refers to patents, technical publications, and other published documents available anywhere in the world prior to the filing date of a particular patent application and evidence of public use or sale in the United States.) Additional factors, such as commercial success of the invention, or proof that the invention solved a long-felt need, may be offered to establish that the invention was not obvious.

Patent Examination Process. The U.S. Patent and Trademark Office (PTO) receives a tremendous volume of patent applications from inventors both in the United States and abroad. For example, the Office received over 165,000 applications in 1991. To ensure rapid examination of patent applications, the PTO employs more than 1,800 examiners who examine applications involving virtually every imaginable field of technology. In the field of biotechnology, the PTO employs over 150 highly skilled scientists, most of whom have advanced degrees and/or postdoctoral experience. Despite the volume of applications, the PTO has maintained an average pendency for filed applications of less than 19 months between the date a patent application is filed, and the date of its final disposition by the PTO.

Each patent application undergoes a rigorous examination to ensure that it satisfies the statutory requirements of the patent laws, as well as the formal requirements of the PTO. During the examination process, patent applications are kept confidential - patent examiners and PTO staff are prohibited by law from disclosing the content of pending applications. If the examiner in charge of prosecution of a patent application determines that the application satisfies the formal and statutory requirements of patentability, the PTO will issue the application as a patent. This will result in the application being printed and made available to the public.

If an examiner determines that a patent application does not satisfy the criteria for patentability noted earlier, the patent application will be rejected. If the decision of the examiner is made final, the patent applicant can appeal to the Board of Patent Appeals and Interferences, an appellate panel within the structure of the PTO staffed by experienced examiners who are also lawyers. If the Board upholds the rejection, the applicant may seek judicial review of this decision, and may ultimately petition for *certiorari* to the Supreme Court.

Plant Patents. In addition to utility patents, plants are afforded two other forms of protection. Title 35 of the U.S. Code, section 161, provides protection for asexually reproduced varieties of plants, including cultivated sports, mutants, hybrids and newly found propagated plants, but excludes tuber-propagated plants or plants found in an uncultivated state. The Plant Variety Protection Act (PVPA) of 1970 provides patent-like protection for sexually reproduced varieties of plants excluding fungi, bacteria, or first generation hybrids.

Enforcement of Patent Rights. As noted above, a patent gives its owner the right to preclude others from making, selling, or using the invention described in the claims of the patent within the territorial limits of the United States. This right is classified as a property right, and can be assigned to others or licensed on an exclusive or non-exclusive basis. To enforce one's rights under a patent, one may file a civil suit in a Federal District court, alleging patent infringement. If successful, the patent owner may obtain an injunction, monetary damages, or both. Thus, the patent owner can effectively stop the patent infringer from making, using, or selling the patented invention, and may recoup whatever damages were incurred during the period of infringement.

Experimental Use Defense. A limited defense may be available to a party charged with patent infringement if the use of the patented invention was for academic, non-commercial research purposes. This defense, termed the experimental use defense, developed and continues to be largely governed by case law. It is important to note the defense is rarely invoked, and will not be effective if the use of the patented invention was to discover a means of exploiting the patented invention commercially. In addition to the common law experimental use doctrine, the patent law provides an explicit exemption from infringement for parties other than the patent owner who make, use, or sell patented drugs where the use is solely for the purpose of producing data to satisfy requirements for federal regulatory review (e.g., FDA marketing approval).

Foreign Patent Systems. Patent systems outside the United States share many substantive similarities with our system. For example, most industrialized nations with patent systems require the elements of utility, adequate disclosure, novelty, and non-obviousness, irrespective of the names which are used to describe these elements. The primary differences lie in the procedural elements of our system. Thus, in every country except the United States and the Philippines, if a conflict in priority arises over which of two inventors of the same invention is entitled to a patent, the patent is awarded to the

first party to file the patent application. In the United States, the patent is granted to the first inventor.

Another significant difference between the U.S. and foreign systems is the absence of a "grace period" in foreign systems. The grace period provides inventors with up to one year to file patent applications after publication of the invention. Thus, a patent applicant in the United States can overcome a rejection based on prior art if the publication relied upon to defeat novelty was authored by the inventor and published less than one year before the date of filing of the patent application. In most foreign systems, the novelty bar could not be overcome even if the publication was by the same inventor.

One mitigating factor against harsh results of the lack of a grace period is the right of foreign priority provided through the Paris convention. This convention is a treaty which has been signed by over 100 different countries. Through the treaty, an individual can file first in the United States, and then for up to one year file abroad in treaty countries. The priority right allows the applicant in his/her foreign application to rely upon the date of filing in the United States. This is also true for applications filed in foreign countries and then filed in the United States.

Biotechnology. In recent years, biotechnology has brought an avalanche of new patents. These range from the genetically engineered Harvard mouse to a tasty tomato with extended shelf life, to a recombinant bacterium (E. coli) that can convert a whole spectrum of sugar molecules into ethanol. The avalanche in patent application filings was unleashed by the 1980 holding of the Supreme Court in Diamond v. Chakrabarty that a bacterium altered through genetic engineering techniques that was different from the bacterium as it existed naturally was eligible for patent protection.

Copyrights, Trademarks, and Trade Secrets. Other forms of intellectual property protection include copyright, trademark, and trade secret protection. Of the three, only trade secret protection has no federal component. Though copyrights were originally envisioned to cover the discoveries of the genome projects, that idea was quickly abandoned because copyrights do not protect an idea but only the expression of the idea and do not extend to any procedure, process, system, method of operation, concept, principle, or discovery. Trademarks have no applicability in protecting genome discoveries.

A trade secret is the term used to describe proprietary information or materials that are kept in confidence and have value to their owner only to the extent that they remain secret. For example, the formula for Coca-Cola is one of the classic examples of a trade secret. Trade secrecy is used in private industry either to provide a competitive business advantage, or prior to the time the invention has matured to the point where it is ripe for the patent process. Trade secrets are governed by state law, most of which are patterned after the Uniform Trade Secrets Act. Trade secrets rights cannot be held and

enforced by the Federal Government. Thus, except for information whose disclosure is restricted through federal laws or regulations, any citizen can compel disclosure of information generated by a federal laboratory or agency through the Freedom of Information Act. An important exception to this policy of disclosure is created by the National Competitiveness Technology Transfer Act, which authorizes laboratories to withhold from disclosure certain categories of information relating to Cooperative Research and Development Agreements (CRADAs) under the Federal Technology Transfer Act of 1986 (FTTA) for up to five years.

Dedication to the Public. Another option under some circumstances is dedication to the public. This is the deliberate destruction of an invention's patentability by disclosing it through publication, public use, or a Statutory Invention Registration. (A Statutory Invention Registration, or SIR, is issued by the Patent and Trademark Office. An application for a SIR must disclose the same information about an invention that a patent application would, but need not meet the requirement of novelty, non-obviousness and utility. As a result, a SIR can be issued much faster than a patent.) To be effective, a disclosure must describe the invention as fully as a patent would and must occur before anyone else independently makes the invention. If someone has already filed a patent application -- or, under the U.S. "grace period", someone files within one year after the "dedication": and can show that he or she made the invention before it occurred -- a valid patent on the invention could still be obtained. Dedication to the public is appropriate when the exclusive rights to an invention that might be secured through patenting have no commercial value.[8]

IV. RESEARCH EXEMPTION

The Plant Variety Protection Act, mentioned in Section III, contains a provision that provides a research exemption. Section 114 of the PVPA defines this exemption as follows:

> The use and reproduction of a protected variety for plant breeding or other *bona fide* research shall not constitute an infringement of the protection provided under this Act. (7 U.S.C. 2544).

Since any distinct, uniform, and stable variety developed in such research would in turn be eligible for a Plant Variety Protection certificate, it follows that such a variety derived directly from a protected one would itself also be protectable. The possibility exists that this situation might be changed. The PVPA was initially enacted to bring the United States into compliance with the International Convention for the Protection of New

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[8] See, for example, section 650.10, "Unwanted Inventions" of the National Science Foundations" "Patents" regulation, 45 CFR 650.10.

Varieties of Plants (UPOV). Recently, this UPOV Convention has been revised to extend protection for the developer of a new variety to include related varieties "essentially derived" from it.

V. LICENSING

Background. The patenting and licensing of inventions made by federal employees as well as the recipients of federal funding is authorized by U.S. patent law and regulations. Congress legislated a preference for patenting when it enacted the Patent and Trademark Act Amendments of 1980.

> It is the policy and objective of the Congress to use the patent system to promote the utilization of inventions arising from federally supported research or development ... to ensure that the Government obtains sufficient rights in federally supported inventions to meet the needs of the Government and protect the public against nonuse or unreasonable use of inventions ...

For federal research laboratories, the Federal Technology Transfer Act of 1986 (FTTA) further authorizes the sharing of royalty revenues with inventors and the retention of royalties at the agency level for various purposes related to enhancing technology transfer activities. The FTTA strongly encourages agencies to transfer commercially applicable technology through patenting and licensing, although this is not mandatory.

Licensing Process of the Federal Government. The licensing rules applicable to all government inventions are set forth in the patent law at Title 35, United States Code Sections 200-212 and implementing regulations of the Department of Commerce at Volume 37, Code of Federal Regulations, Part 404. Pending patent applications also are routinely licensed by Government as well as industry and academia, although enforceable patent rights do not exist until a patent is actually issued by the U.S. Patent and Trademark Office. Because patents grant limited rights (see Section III), a patent license agreement cannot grant rights to use or sell a product where regulatory approval (e.g., from the FDA) is legally required; the license merely is a promise by a licensor not to sue a licensee for patent infringement.

Typically, the licensing of Government inventions is pursued by the involved federal agencies shortly after the filing of a patent application. Inventions that are available for licensing typically are identified through notices published in the Federal Register to invite the filing of license applications by prospective licensees. If an agency contemplates licensing an invention exclusively, a notice of that intention must also be published in the Federal Register. Applicants for license are required by law to submit plans for the development and/or marketing of inventions. The application period must be held open for at least 30 days before a subsequent Federal Register notice would be permitted to announce a contemplated exclusive licensee for such inventions. Following

the announcement of an agency's intention to license an invention exclusively, a 60-day objection and comment period is mandatory.

The agency handling the licensing of a given invention has the responsibility for promoting their inventions, making judgments as to the appropriate degree of exclusivity to grant in a license, and determining which applicants are qualified and acceptable. Actual license negotiations often focus on business matters, such as royalty rates and benchmarks for assessing the likely diligence of a licensee's performance. Many agencies utilize a model licensing agreement based on agreements developed in academic licensing offices. Licenses normally are granted to companies that agree to manufacture in the United States any inventions that are to be used or sold in the United States, although waivers from this requirement may be obtained in appropriate circumstances. Licensing practices at DOE's Government-owned-contractor-operated (GOCO) laboratories are more like those followed by universities.

Licensing Process in Academia. The negotiation process utilized in academia is very similar to that of Government agencies because the kinds of terms to be negotiated are generally very similar. However, the competitive aspect and public notice requirements that pertain to licensing as described above do not apply to universities. Some universities have their own procedures about selecting licensees, particularly when companies founded by their own faculty pursue license rights. Often, universities promise invention rights to their research sponsors for applicable studies.

Federal law does require that the Government retain a nonexclusive, paid-up license to practice (or have practiced) any invention made with Government funding. This applies whether the invention is made by Government employees or grantees. The domestic production requirement discussed above also applies to licensing by grantees.

Exclusive vs. Nonexclusive Licensing. For the licensing of any given invention, the exclusivity of available rights falls along a continuum ranging from nonexclusive to semi-exclusive to exclusive. Government agencies and academic licensing offices have the legal flexibility to provide through licensing the degree of exclusivity needed to facilitate the development of particular products. The paramount consideration in determining the degree of licensing exclusivity is the encouragement of product development. However, obligations to partners in Cooperative Research and Development Agreements (CRADAs) pursuant to the FTTA (at Government agencies) or to research sponsors (at universities) may preempt a more open approach to licensing.

Nonexclusive licensing typically is appropriate for very basic and enabling technology, such as certain types of materials having many different commercial uses or general laboratory techniques. Semi-exclusive licensing, in which a few licensees share patent rights, becomes appropriate when there are larger markets, lower developmental costs, and less overall risk. Exclusive licensing is appropriate when it is determined that nonexclusive licensing will not lead to expeditious product development.

Issues of Scope. The scope of rights that can be licensed also lies along a continuum for any particular invention. Rights to commercialize all uses may be granted, or more limited rights to a family of diagnostic or therapeutic products might be licensed, or perhaps only the rights to commercialize a specific product for a specific use. Rights may also be divided by geographic territories.

A family of uses itself can be of variable scope and might include, in the case of medical products, for example, all cancer therapeutics or all solid tumor anticancer therapeutics. Decisions about the appropriate scope of rights generally are made after consideration of factual data about various factors, including market size and affected patient population.

Royalty Rates. Royalties also fall along a continuum ranging from no charge in cases where patents effectively are dedicated to the public, to a cost recovery level that would recoup patenting and administrative costs, to market rates. Most Government agencies and universities have adopted a model system for which royalty rates generally fall within a range of about 0.5%-6% of product sales, depending on the extent to which the Government or university scientists have developed a product--i.e., from basic research through some development or prototyping stages--before it is licensed.

Procedural Issues. Various standard licensing provisions and practices may be modified to facilitate the transfer of specific types of inventions. For example, minimum notice provisions can be expanded where extra concern exists about increasing disclosures of licensing opportunities.

VI. THE FEDERAL TECHNOLOGY TRANSFER LAWS AND THEIR IMPLEMENTATION AT VARIOUS FEDERAL AGENCIES

Mechanisms for Technology Transfer. The Stevenson-Wydler Technology Transfer Act (15 U.S.C. Section 3701-14), as amended by the Federal Technology Transfer Act of 1986 and the National Competitiveness Technology Transfer Act of 1989, directs the Federal Government to transfer federally owned or originated technology to State and local governments and to the private sector, where appropriate. The Act, which affects only federally owned laboratories (Government-owned-contractor-operated and Government-owned-government-operated facilities), authorizes a variety of mechanisms designed to promote the transfer of technology to the marketplace, including Cooperative Research and Development Agreements (CRADAs) between federal labs and non-federal entities; award programs for federal employee-inventors; and royalty sharing with employee-inventors when agencies retain ownership of the inventions. It also directs agencies to allow their employees to patent inventions when the agencies do not themselves patent or "otherwise promote commercialization" of those inventions.

The Stevenson-Wydler Act prescribes certain technology transfer activities requiring Offices of Research and Technology Applications at each federal laboratory over a

certain size and establishing the Federal Laboratory Consortium for Technology Transfer. Nevertheless, technology transfer activities do vary from agency to agency because of differing structures and missions.

Agency Activities. The Department of Agriculture has a long history of developing farm-related technology and disseminating it to farmers, and its Agricultural Research and Forest Services have entered into about 250 CRADAs since the Federal Technology Transfer Act became law.

The Department of Commerce, through its National Institute of Standards and Technology, regional Centers for the Transfer of Manufacturing Technology, and Advanced Technology Program, carries out cooperative programs with industry in order to speed innovation and accelerate the adoption of new technologies by U.S. companies. It also sponsors conferences and seminars focusing on government-university-industry partnerships and enters into CRADAs with private industry.

The Department of Energy, whose laboratories are operated by contractors in most cases and by DOE in others, aggressively pursues and encourages technology transfer. Each DOE laboratory has a Technology Transfer Office, and under authority provided in the NCTTA, DOE uses CRADAs and other collaborative agreements to transfer technology to the marketplace. In addition, DOE and DOE supported laboratories sponsor conferences and seminars, and license technologies.

The Department of Health and Human Services, through the National Institutes of Health, operates the world's largest biomedical research facility. It transfers all types of biomedical and health-related research to industry, primarily through licensing agreements and CRADAs. The NIH Office of Technology Transfer's licensing efforts include: promotion of technologies at conferences and meetings; publication of an annual directory on technology transfer at NIH; an on-line abstract of Public Health Service (PHS) technologies; and a database of companies and their interest by technological field for direct marketing of PHS technologies to industry.

Since the National Science Foundation is barred by its Organic Act from itself operating any laboratories and the federally funded research and development centers it owns are chiefly astronomical observatories, most NSF-originated technology comes from non-Government-owned laboratories, largely at colleges and universities.

Like most federal agencies, the NSF allows its contractors and grantees to retain the principal rights to inventions and other forms of intellectual property produced through NSF-funded research. This treatment of inventions is required in awards to small businesses and non-profit organizations, including universities, by the Bayh-Dole Act. A Presidential Memorandum issued in 1983 directs agencies to apply the policies of that Act to all awardees unless prevented from doing so by statute. Policies directing agencies to leave with the grantees the rights to software, data, and other copyrightable

material are stated in the Office of Management and Budget circulars and the Federal Acquisition Regulations. Allowing commercial rights to remain with the institutions or individuals that performed the research assures that those with the greatest knowledge of the technology have the maximum incentives to bring it into the marketplace.

VII. ISSUES AND QUESTIONS

As is often the case with any rapidly advancing field of science, genome research has drawn (and will continue to draw) many new participants unfamiliar with pertinent laws and practices; and it has produced (and will continue to produce) scientific discoveries that do not fit neatly into existing molds. This document, in Sections II-VI, provides a baseline of information about the existing means of protection of intellectual property and current technology transfer practices. An understanding of these issues will form the background for the public meeting to be held on May 21-22, 1992, in Washington, D.C. The purpose of the public meeting is to involve all interested parties in identifying science and technology transfer issues central to maintaining scientific advances in genome research and promoting rapid application of new discoveries to commercial development. In order to facilitate discussion at the public meeting, the GPWG has identified some key issues and questions, as listed below.

A. Genome Research

- What impact, if any, would the Federal Government's use of the existing system for the protection of intellectual property have on Federally funded genome research, given applicable exemptions from infringement liability for non-commercial academic research (see Section III)?

- What, if any, consequences for scientific progress would result from the Federal Government holding patents on key products of genome research? Would any adverse consequences be ameliorated if Federal agencies adopted licensing policies (e.g., nonexclusivity, limited scope, low royalties) for use of such patents by researchers?

- How would the impact of Government ownership of intellectual property rights on Federally funded research differ depending on the level of research (e.g., basic research as compared to applied/development research); and depending on the recipient (e.g., Government laboratory, grantee or contractor)?

- How would the impact of Government-owned intellectual property rights on Federally funded research differ depending on the genome being studied (e.g., human, farm animal, crop plants, or industrial microorganisms); depending on the stage of research (e.g. extent of knowledge about the biological function of gene

sequences); and depending on the anticipated products of the research (e.g., molecules or whole organisms)?

B. Commercialization of the Products of Federally Funded Genome Research

- Should the policies which govern the ability of participants of Federally funded research to seek patent protection on genome research be changed? Are there any important circumstances that make Federally funded genome research different from other Federally funded biological research? If so, what are those special circumstances and what impact would they have on the application of Federal laws and policies relating to the transfer of Federally funded technologies to the private sector?

- To what extent might publication, patents (if granted), licensing, and other forms of dissemination of the results of genome research at an early stage of discovery, (e.g., gene sequences for which the biological functions are not yet determined), provide incentives or disincentives to product development?

- Following publication of sequence data would sufficient intellectual property protection be available to stimulate product development?

- What effect, if any, would result from the U.S. Federal Government owning patents on DNA sequences, in contrast to ownership by the private sector, foreign and domestic, on the public interest (e.g., the rapid introduction of new, safe and effective products at reasonable prices?)

- What impact, if any, on U.S. companies' willingness to develop products would result from the application of the intellectual property system to Federally funded genome research and how might the policies of other countries affect U.S. research and development?

- Should patenting, licensing and technology transfer policies be uniform for all recipients of Federal funding, whether they are Federal laboratories, contractors or grantees?

C. Collaboration

- What impact, if any, might the Federal Government's use of the intellectual property protection system have on data and resource sharing both nationally and internationally?

- What impact, if any, might the decision of the U.S. Government to seek patent protection for gene sequences have on genome research partners and practices in other countries?

- How can both dissemination of research results and the encouragement of product development be facilitated on an international scale?

THE WHITE HOUSE
WASHINGTON

Date: 4-30-92

TO: CAM FINDLAY

FROM: **NELSON LUND**
Associate Counsel
to the President

file: rail strike

☐ Action

☐ Comments

☒ FYI

FAX COVER SHEET

Presidential Emergency Board
Nos. 220, 221 and 222
Washington, DC 20572
(202) 523-5995

5/4/92

File for Cam Findlay:

Rail Strike

TO: Charles I. Hopkins, Jr.
H.G. Anderson
John P. Lange
R.E. Swert
R.J. Irvin
Ronald P. McLaughlin
Mac A. Fleming
G. Thomas DuBose
Edward P. McEntee
George J. Kourpias
R.A. Scardelletti
George Leitz
David Lee, Esq.
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Harry Rissetto, Esq.
Sheldon M. Kline, Esq.
Michael S. Wolly, Esq.
John A. Edmond, Esq.
Dennis A. Arouca, Esq.

FROM: Roland Watkins
Special Assistant to Emergency Board Nos. 220, 221 & 222

DATE: April 30, 1992

NUMBER OF PAGES: 5

Presidential Emergency Board
Nos. 220, 221 and 222
Washington, D.C.

April 30, 1992

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National Railway Labor Conference
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Washington, DC 20036

Mr. H.G. Anderson
Vice President-Labor Relations
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Mr. R.E. Swart
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Consolidated Rail Corporation
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Mr. R.J. Irvin, Int'l President
American Train Dispatchers Assoc.
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Mr. Ronald P. McLaughlin, President
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Mr. Mac A. Fleming, President
Brotherhood of Maintenance of Way Employes
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14600 Detroit Avenue
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Int'l Brotherhood of Electrical Workers
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Mr. George J. Kourpias, Int'l President
International Association of Machinists
and Aerospace Workers
1300 Connecticut Avenue, N.W.
Washington, DC 20036

Mr. R.A. Scardelletti, Int'l President
Transportation Communications Union
3 Research Place
Rockville, MD 20850

Mr. George Leitz, President
Transport Workers Union of America
80 West End Avenue
New York, NY 10023

Re: Emergency Board Nos. 220, 221 and 222

Gentlemen:

Enclosed is a copy of a stipulated extension for your consideration. Please sign and return it to me at the National Mediaton Board either by facsimile (202-523-1494 or 202-523-1031) or hand delivery no later than 9:30 a.m., EDT, on Friday, May 1, 1992. Any questions should be directed to me at 202-523-5995.

Sincerely,

Roland Watkins

Roland Watkins, Esq.
Special Assistant to
Emergency Board
Nos. 220, 221 and 222

-enclosure-

EMERGENCY BOARD NOS. 220, 221 AND 222

WASHINGTON, D.C.

In order to further the goals of the Railway Labor Act, as amended, 45 U.S.C. 151-188, and to facilitate resolution of the disputes referenced in Executive Order Nos. 12794, 12795 and 12796 (March 31, 1992), the undersigned parties agree that the reports to the President by Emergency Board Nos. 220, 221 and 222 may be submitted on or before May 28, 1992. The parties further agree that the period of restraint on the parties' resort to self-help shall continue in effect without interruption until 12:01 a.m., EDT, June 24, 1992.

FOR THE CARRIERS:	FOR THE EMPLOYEES:
National Railway Labor Conference	Transportation Communication Union
Consolidated Rail Corporation	United Transportation Union
National Railroad Passenger Corporation	Brotherhood of Locomotive Engineers
CSX Transportation, Inc.	Brotherhood of Maintenance of Way Employes

American Train Dispatchers Association

Int'l Brotherhood of Electrical Workers

Int'l Association of Machinists &
Aerospace Workers

Transport Workers Union of America

M E M O R A N D U M

May 14, 1992

file

Via FAX

TO: D. Cameron Findlay

FROM: John Giraudo

Re: Privatization/Infrastructure Executive Order

The President's Executive Order offers the Administration a timely answer to the rising voices clamoring for more federal grants for the inner cities. The Administration has already given them the money -- in spades. What is now needed is a weed, seed and grow program.

The Administration needs to do two things to implement the Executive Order's cure for the problems of the inner cities. The first is to publicize the Executive Order by raising both official and public awareness of the opportunity it presents. The second is to actively promote the Executive Order by tying federal "seed" money to city resourcefulness in utilizing their untapped idle capital to grow inner city investment.

I. Raise Official and Public Awareness

* Most mayors and governors do not know about the Executive Order. Even if they do, they are

5/19/92

Please file for Cam Findlay -

Privatization

avoiding it and parading to Congress for more federal money.

* Mayors already have the federal money they are asking for -- billions of dollars has been made available to them by the Executive Order. The federal government is going to let cities and states cash in on the past federal grants they received.

* With a $350 billion federal deficit, city governments must become more resourceful. Self-reliance must be practiced by big city mayors just as much as it must be practiced by everyone else in hard times. The onus is on city government to show it cares, not just the federal government.

* The City of Los Angeles owns a giant port, four airports, a water company, an electric utility and a number of wastewater plants. If these were sold, billions of dollars could be raised to provide small business loans to rebuild the South-Central community.

* We talk a lot about getting our priorities straight. Here is an opportunity for cities to get their priorities straight. They do not need to be in the port business, electric business, water business. They need to show they care about places like South-Central.

* It is a crime for City governments to sit on billions of dollars in assets while inner cities burn. The public needs to see how remiss city governments are. LA should sell its assets for the billions they are worth, not raise sales taxes, as they are contemplating, for the few nickles that will provide for inner city investment.

II. "Seed" Privatization Transactions

* Federal dollars are scare. We must maximize their leverage. Federal seed money must be used to pry open the idle capital cities and states sit on and get them to use it for investment in the inner cities.

* Tie federal seed money to asset sales which raise capital to grow inner city investment.

* "SWAT" teams from the Administration should provide necessary briefings and technical assistance to help cities mine their balance sheets for assets to sell.

* A Rebuild American Fund with federal seed money should be set-up to encourage a Rebuild LA fund containing privatization proceeds. Together, the commingled funds could make small business loans to match and encourage private investment being offered by Peter Ueberroth's private Rebuild LA Fund for South-Central. Private investment will be easier and faster if public investment goes in first.

CHRYSLER CORPORATION

R A Perkins
Vice President
Washington Affairs

March 19, 1992

file: MPVs

The Honorable Samuel K. Skinner
Chief of Staff to the President
The White House
Washington, DC 20500

Dear Sam:

My GM and Ford colleagues and I appreciated the opportunity to meet with you last week to discuss the MPV tariff issue. Unfortunately, we were unable to get too deeply into the substance of the issue, which I sincerely believe favors classification of all these vehicles as trucks.

It is important to realize that Customs' ruling to classify these vehicles as trucks emerged after an exhaustive investigation of the legal and technical facts by experts in tariff law and historical precedents. I have enclosed a number of key documents which were at the heart of Customs' decision in 1989, and have annotated the relevant segments for easy review. I believe these documents show that Treasury's overturn of that decision was illogical and not supportable on the merits.

There is a tendency to oversimplify this issue, to conclude that MPVs with plush seats and carpets must be passenger cars. But the critical tariff classification language for cars (HTSUS 8703), "principally designed for the transport of persons," is governing and was created expressly to eliminate subjective and speculative judgments by Customs' inspectors of how certain imported vehicles might be used. Customs concluded that all MPVs fail this "principally designed" test and must default to the next lower classification (HTSUS 8704), "motor vehicles for the transport of goods." It was the right decision.

I urge you to review the substance underlying the Customs Department decision, with the hope that the White House position on this issue can be altered. It is of utmost importance to Chrysler, as well as to Ford and General Motors.

Sincerely,

Bob Perkins

RAP/st
Enclosure
cc: The Honorable Clayton Yeutter
Mr. Cameron Findlay

Chrysler Corporation
1100 Connecticut Avenue NW
Washington DC 20036
202 862 5408

3/23/92

Please file for Cam Findlay:

MPVs

MPV POINTS OF EMPHASIS

1. The Customs decision in 1989 was the right decision. The "principally designed" language in HTS is unambiguous and is the fundamental governing criterion for classification. A vehicle that is at least equally designed to transport goods cannot be "principally designed to transport persons," and therefore defaults to 87.04. Simplistic arguments that all MPVs with passenger carrying capability should be classified as cars ignore the legal foundation for such decisions.

    - See Attachment 1, Customs decision dated 1/4/89.

2. The Treasury's overturn of Customs' decision was totally illogical and factually wrong. The 4-door sports utility vehicles are derived from the same truck-based chassis that are the basis for their 2-door counterparts.

    - See Attachment 2, Treasury ruling 5/4/89.

3. Regardless of the passenger amenities available in passenger carrying vans and sports utilities, the vehicle's basic design concept is founded on the goods and cargo carrying function (truck chassis, flat floor, wide doors, removable seats, etc.)

    - See Attachments 3 and 4, MVMA and Ford testimony at Customs hearing 12/15/88.

4. The Treasury ruling was based more on a concern for a political GATT challenge rather than a legally founded GATT challenge.

    - See Attachment 5, Legal Memo on GATT legality.

    - See Attachment 6, GATT issues.

ATTACHMENT 1:
EXCERPTS FROM
U.S. CUSTOMS DECISION
1/4/89

ISSUE:

Are the Suzuki vehicles "motor vehicles for the transport of goods" within heading 8704, HTSUS? If so, and if seats and other appointments have been installed behind the driver and front passenger seats prior to importation, then are these same vehicles more properly within heading 8703, HTSUS, as "motor vehicles principally designed for the transport of persons?"

LAW AND ANALYSIS:

Classification under the HTSUS is governed by the General Rules of Interpretation (GRI). GRI 1 is as follows:

> 1. * * * for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the following provisions * * *

The relevant headings in this case are as follows:

> 8703 Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 8702), including station wagons and racing cars: * * *
>
> 8704 Motor vehicles for the transport of goods: * * *

There are no relevant legal notes in section XVII or chapter 87 which address these headings for our purposes in this ruling.

By the express language of heading 8703, a vehicle which is equally designed for the transport of persons and goods cannot be classified in heading 8703 because it fails the requirement that it be "principally designed" for the transport of persons. Multipurpose vehicles which are capable of off-the-road uses, such as the Suzuki 4x4 utility vehicles, are usually constructed on a truck chassis to withstand the shock and torsion resulting from such uses. The bodies of these vehicles may vary in style and utility. However, the

body style of the Suzuki 4x4 vehicles is one that has been designed for the transport of goods.

The design of this body is utilitarian and allows the easy loading, transportation, and unloading of goods: swing out rear door; flat floor and rear loading deck; and relatively high roof for the size and weight rating of the vehicle. In this condition the vehicle, i.e., the body and chassis, is designed for the transport of goods because it has readily accessible and usable cargo space, together with a chassis and suspension that permits a cargo payload which is approximately 20 percent of the gross vehicle weight rating. The percentage of payload gross for small pickup trucks, for example, is normally from 15 percent to 25 percent of the gross vehicle weight. Therefore, we conclude that the Suzuki vehicles of this type are classified in heading 8704.

The basic design and features of a vehicle (this includes body and chassis), once established, create a presumption that the vehicle has been principally designed for an intended purpose. The addition of other secondary design features which adapt the vehicle to additional uses are evidence only of the fact that the vehicle, at this point, is a multipurpose vehicle. To the extent that a change does not significantly alter the basic design, a vehicle remains at least equally designed for the transport of goods and for the transport of persons. A material change in the body style, such as one which restricts the loading and unloading of cargo (except, perhaps, transport vehicles for special types of goods), could result in a different conclusion. However, the addition of interior trim packages, carpeting, and removable or folding rear seats do not, of themselves, effect an alteration of the fundamental design of a vehicle as a vehicle for the transport of goods.

Motor vehicles classified in heading 8703 are vehicles "principally designed for the transport of persons." A vehicle that is multipurpose or dual purpose is not, for purposes of heading 8703, "principally designed for the transport of persons" merely by virtue of front and rear seating. Station wagons, classified in heading 8703, are not dual purpose vehicles because they were initially designed for the transport of persons. Station wagons usually have lower roof heights, lower loading heights at the rear door, and a driver's "seating reference point" (location of driver's hip to the ground) of less than 25 inches. These differences are evidence that station wagons are vehicles "principally designed for the transport of persons" and secondarily for the transport of goods.

To the extent that a vehicle is equally designed for the transport of goods and of persons, it cannot be classified in heading 8703. The addition of the rear trim packages, carpeting, and rear seat or seats in the Suzuki vehicles do not impair the basic design of the vehicles as "for the transport of goods." Therefore, if imported in this condition, they are classified in heading 8704, HTSUS, rather than in heading 8703, HTSUS.

No single factor appears to dictate whether a vehicle is principally designed for the transport of persons. In this case, the chassis and suspension, the body style, the payload capacity (by weight) in relation to the gross vehicle weight, the seating reference point (approximately 26.5 inches), and the relatively minor effect of the rear seating on the cargo capability of the Suzuki vehicles indicate that these are multipurpose vehicles for the transport of goods and persons, and that, at a minimum, the basic design of the vehicles for the transport of goods is at least equal to the design of the vehicles for the transport of persons. The promotional literature confirms this conclusion.

HOLDING:

If imported with spark-ignition internal combustion piston engines, the Suzuki Samurai and YOE, Y2R, and YOR, described above, are classified as motor vehicles for the transport of goods, other, G.V.W. not exceeding 5 metric tons, in subheading 8704.31.00, HTSUS, dutiable at 25 percent ad valorem pursuant to subheading 9903.87.00.

Sincerely,

John Durant, Director
Commercial Rulings Division

ATTACHMENT 2:
TREASURY RULING

TELEX

MAY - 4 1989

U.S. CUSTOMS SERVICE
OFFICE OF REGULATIONS AND RULINGS
JOHN VALENTINE

TO: ALL REGIONAL COMMISSIONERS
ALL DISTRICT DIRECTORS
ALL AREA DIRECTORS
ALL PORT DIRECTORS

FROM: COMMISSIONER OF CUSTOMS

SUBJECT: INSTRUCTIONS ON THE CLASSIFICATION OF MULTIPURPOSE VEHICLES AND SMALL VANS; LIQUIDATION OF CERTAIN ENTRIES MADE ON OR AFTER JANUARY 1, 1989, ARE TO BE WITHHELD

BACKGROUND:

1. IN A TELEX OF JANUARY 4, 1989, AS MODIFIED BY TELEX OF JANUARY 13, 1989, HEADQUARTERS ISSUED INSTRUCTIONS ON THE ENTRY AND WITHHOLDING OF LIQUIDATION FOR ENTRIES OF SPORT-UTILITY VEHICLES AND SMALL VANS UNDER THE HTS PENDING REVIEW OF THE CLASSIFICATION ISSUE. THE REVIEW HAS BEEN COMPLETED AND THIS TELEX SUPERSEDES THE TWO REFERENCED TELEXES.

2. WE HAVE MODIFIED OUR RULING OF JANUARY 4, 1989, HQ 083081, CLASSIFYING THE SUZUKI SAMURAI, YOE, Y2R, AND YOR UNDER HEADING 8704. ALTHOUGH THE RATIONALE HAS BEEN MODIFIED, THE CONCLUSION IS THE SAME. THESE VEHICLES ARE TO BE ENTERED AND CLASSIFIED UNDER HEADING 8704.

3. SPORT-UTILITY VEHICLES AND VANS ARE TO BE CLASSIFIED ACCORDING TO THE FOLLOWING:

A. (1) SPORT-UTILITY VEHICLES ARE DESIGNED TO PERFORM MULTIPLE FUNCTIONS. THEY TYPICALLY HAVE A BODY AND CHASSIS DESIGN STRONGER THAN THAT OF ORDINARY PASSENGER CARS. THEY ALSO HAVE A BOXY BODY STRUCTURE WHICH ALLOWS FOR CONSIDERABLE INTERIOR VOLUME, AND FLAT CARGO FLOORS, WHICH FACILITATE THE LOADING AND UNLOADING OF CARGO. THESE FEATURES SUIT THE VEHICLES FOR THE TRANSPORTATION OF GOODS.

(ii) HOWEVER, SOME SPORT-UTILITY VEHICLES HAVE STRUCTURAL MODIFICATIONS THAT ARE EVIDENCE OF A DESIGN IN WHICH TRANSPORTATION OF PERSONS IS TO BE A PRIMARY PURPOSE. FOR THIS REASON A DISTINCTION IS MADE FOR CLASSIFICATION PURPOSES BETWEEN TWO-DOOR AND FOUR-DOOR MODELS. ON THE FOUR-DOOR MODELS THE REAR DOORS ARE TYPICALLY HINGED AND DO NOT FULLY OPEN. FREQUENTLY, THE DOOR OPENING IS RELATIVELY NARROW AND OF AN IRREGULAR SHAPE BECAUSE OF THE INTRUSION OF THE REAR WHEEL WELL. THIS TYPE OF BODY CONFIGURATION IS COMMONLY SEEN IN ALL FOUR-DOOR SEDANS AND VIRTUALLY ALL TRADITIONAL STATION WAGONS; IT IS A STRONG INDICATION THAT PASSENGER TRANSPORT, RATHER THAN CARGO TRANSPORT, WAS A PRINCIPAL DESIGN CRITERION FOR THE VEHICLE.

(iii) THEREFORE, FOUR-DOOR SPORT-UTILITY VEHICLES HAVING THE FEATURES DESCRIBED ABOVE GENERALLY WILL BE CLASSIFIED AS "MOTOR VEHICLES PRINCIPALLY DESIGNED FOR THE TRANSPORT OF PERSONS" IN HEADING 8703, WHEN IMPORTED WITH HINGED REAR SIDE DOORS AND EQUIPPED WITH WINDOWS.

NOT TRUE THEY ARE THE SAME AS 4-DOOR IN PASSENGER AMENITIES

(iv) IT IS ALSO TYPICAL FOR TWO-DOOR SPORT UTILITY VEHICLES TO HAVE THE FEATURES DESCRIBED IN PARAGRAPH A(i). HOWEVER, UNLIKE FOUR-DOOR VEHICLES, THE TWO-DOOR VEHICLES DO NOT HAVE OTHER STRUCTURAL FEATURES THAT EVIDENCE TRANSPORTION OF PERSONS AS A DESIGN PRIORITY. THEREFORE, WHEN THESE VEHICLES HAVE A RELATIVELY FLAT REAR SPACE, THEY GENERALLY WILL BE CLASSIFIED AS "MOTOR VEHICLES FOR THE TRANSPORT OF GOODS" IN HEADING 8704, EVEN WHEN IMPORTED WITH FOLDING OR REMOVABLE REAR SEATS.

B. VANS CONSIST OF A SINGLE, BOX-LIKE BODY STRUCTURE THAT ENVELOPS BOTH THE SPACE FOR THE DRIVER AND FRONT-SEAT PASSENGER AND THE REAR SPACE, WHICH IS USABLE FOR CARRYING PASSENGERS AND CARGO. VANS ARE TO BE CLASSIFIED ACCORDING TO THE FOLLOWING:

(i) VANS WILL BE CLASSIFIED IN HEADING 8703 WHEN IMPORTED WITH ALL OF THE FOLLOWING FEATURES:

(1) WINDOWS IN THE REAR SIDE PANELS
(2) REAR SEATING FOR TWO OR MORE PERSONS
(3) THREE OR MORE SIDE-DOORS, ONE OF WHICH OFFERS ACCESS TO THE REAR OF THE COMPARTMENT.

(11 ANS IMPORTED WITHOUT ALL THREE OF HESE FEATURES WILL BE CLASSIFIED IN HEADING 8704. APPLICATION OF THESE PRINCIPLES WILL NOT RESULT IN A CHANGE IN THE CURRENT CLASSIFICATION OF ANY VAN NOW IMPORTED.

ACTION:

1. YOU SHOULD REQUIRE ENTRY OF THE FOLLOWING TWO-DOOR MULTIPURPOSE (SPORT-UTILITY) VEHICLES UNDER HEADING 8704 WHETHER OR NOT THEY ARE IMPORTED WITH REAR SEATS: DODGE RAIDER AND RAMCHARGER, GEO TRACKER, ISUZU TROOPER AND TROOPER II, MITSUBISHI MONTERRO, NISSAN PATHFINDER, SUZUKI SAMURAI AND SIDEKICK, AND TOYOTA 4RUNNER. CONSULT WITH CUSTOMS HEADQUARTERS ON THE CLASSIFICATION OF ANY [illegible]ICLE NOT SPECIFICALLY MENTIONED.

[illegible]QUIRE ENTRY OF THE FOLLOWING FOUR-DOOR MULTIPURPOSE (SPORT-UTILITY) VEHICLES UNDER HEADING 8703 WHETHER OR NOT IMPORTED WITH REAR SEATS: ISUZU TROOPER AND TROOPER II, MITSUBISHI MONTERRO, NISSAN PATHFINDER, RANGE ROVER, AND TOYOTA LAND CRUISER AND 4RUNNER. CONSULT WITH CUSTOMS HEADQUARTERS ON THE CLASSIFICATION OF ANY SIMILAR VEHICLE NOT SPECIFICALLY MENTIONED.

3. YOU SHOULD REQUIRE ENTRY OF THE FOLLOWING VANS UNDER HEADING 8703 IF IMPORTED WITH THE THREE CONDITIONS LISTED IN 3(B)(11) ABOVE: MAZDA MVP, MITSUBISHI WAGON, NISSAN VAN, TOYOTA PASSENGER VAN, AND VOLKSWAGON VANAGON. IF ANY OF THESE FEATURES ARE ABSENT AT THE TIME OF IMPORTATION, THE VEHICLE SHOULD BE ENTERED UNDER HEADING 8704.

4. THE FOLLOWING VEHICLES ARE NOT CLEARLY EITHER SPORT-UTILITY VEHICLES OR VANS, BUT SHOULD BE ENTERED UNDER HEADING 8703: NISSAN STANZA WAGON AND THE PLYMOUTH/DODGE COLT VISTA WAGON.

5. IN ACCORDANCE WITH THE PRINCIPLES OUTLINED IN THIS TELEX, YOU MAY LIQUIDATE ENTRIES OF ALL OF THE ABOVE VEHICLES ENTERED, OR WITHDRAWN FROM WAREHOUSE FOR CONSUMPTION ON, OR AFTER JANUARY 1, 1989.

6. FOR FUTHER INFORMATION, CONTACT JOHN VALENTINE OR VICKI H. ALLUMS (FTS 566-8181).

ATTACHMENT 3:

STATEMENT OF

PAUL MOREL

FORD MOTOR COMPANY - DESIGN ENGINEER

AT

UNITED STATES CUSTOMS SERVICE MEETING

ON

DECEMBER 15, 1988

IN BEHALF OF THE MOTOR VEHICLE MANUFACTURERS ASSOCIATION

My objective is to identify certain technical specifications which establish that MPVs are not "principally designed" to transport passengers. The basic structure and construction of a vehicle which will transport both cargo and persons must be principally designed to carry cargo. The basic design consideration must be the load-carrying function because the transport of cargo requires more demanding characteristics.

Let me first give you some examples of the difference between vans and vehicles "principally designed" for passenger use. First, a vehicle to carry cargo must optimize height to accommodate large cubic volume and, in the case of virtually all vans, walk-through space for access to work cargo areas. Thus, the cargo height of passenger cars and station wagons typically ranges between 30 and 35 inches from floor to roof; in contrast, vans range in cargo height from 45 to 54 inches.

Second, a cargo-carrying vehicle requires door openings to accommodate large-size objects, ranging from motorcycles to washing machines.

A third example is the need for a flat-load floor for ease of loading and unloading.

There are a myriad of other examples, but the critical point I want to make is that the load-carrying function dictates the overall design of the vehicle. The load-carrying functions establishes the height of the vehicle, and the height of the vehicle determines the important and well-documented location of the driver's "seating reference point" (SRP). The SRP is a point which defines the location of the driver's hip. The distance

from this point to the ground is never greater than 25 inches for passenger cars and station wagons. For vans, the SRP is always 25 inches or above. In lay terms, you "sit down" into a passenger car or a station wagon you "step up" into a van. This distinction is easily quantifiable.

Steve Collins' statement illustrated the fact that the producers of imported utility vehicles emphasize that these vehicles are entirely based on truck designs. These truck-based vehicles are equally designed to transport both persons and goods, and to perform a wide variety of functions, such as snow-plowing and winching. As a practical matter, these vehicles are not "principally designed" for persons since such a vehicle would not have the design features possessed by utility vehicles. I want to briefly reinforce this point by describing these technical aspects.

First, Suzuki has gone on record with one major technical difference between utility vehicles and passenger vehicles. Specifically, Suzuki has stated that "high ground clearance" is a critical characteristic of MPVs, and that this distinction could be demonstrated by a vehicle possessing four out of five of the following characteristics:

1) Approach angle of not less than 28 degrees;
2) Departure angle of not less than 20 degrees;
3) Breakover angle of not less than 14 degrees;

4) Running clearance of not less than 8 inches;

5) Front and rear axle clearances of not less than 7 inches.

Second, unlike passenger cars, four-wheel drive utility vehicles have heavy-duty, two-speed transfer cases and low gear ratios which give these vehicles the ability to perform multiple tasks. It would be commercially nonsensical to include these features in a vehicle "principally designed" to transport persons.

Third, utility vehicles must have truck-based chassis significantly stronger than passenger cars because utility vehicles must withstand the stresses imposed by off-road operations and load-bearing functions, such as snow-plowing.

In summary, it is crystal clear that vans and utility vehicles are not "principally designed" to transport persons. They are designed to transport goods, persons, and perform a multiple of tasks.

ATTACHMENT 4: EXCERPTS FROM MVMA TESTIMONY 12/15/88

truck. Let me give you some examples of the truck-based origin of MPVs:

According to Nissan's current sales brochure for its Pathfinder, the Pathfinder's engine is

> "... a version of the modified engine that powers the Nissan Hardbody truck .... Nissan gave the Pathfinder the same rugged chassis as the Hardbody [truck]. ... And the same tough-as-it-gets welded ladder box section frame (with an extra cross-member added)."

A 1987 article in Motor Trend states:

> "It's obvious the Pathfinder and ... the Hardbody pickup were on the drawing board at the same time. From the B-pillar forward, the sheetmetal on both is the same, the sloping hood for less drag and the extra-wide doors for easy entry. Even the design of the opening side-quarter windows on the Pathfinder is taken from the optional light bar on the pickup truck."

The same is true for the Toyota 4Runner. Consumer Guide's Auto '89 explains:

> "Be advised that 4Runner rides and handles like a truck, [which is] not surprising since it's based on Toyota's 4X4 pickup, using the same chassis and powertrains."

NOTE: BOTH NISSAN PATHFINDER AND TOYOTA 4RUNNER COME IN 2 AND 4 DOOR VERSIONS, ALL DERIVED FROM TRUCK DESIGNS.

A survey of sport-utility vehicles for consumers in Popular Mechanics also noted that:

> "The 4Runner is basically a simple adaption of Toyota's top selling pickup truck ...."

The Isuzu Trooper II is designed as a truck, and Isuzu's submission to the Customs Service last August acknowledges this fact. Isuzu stated that its MPVs--particularly the Trooper II --

> "contain rugged chassis and suspension systems .... [The] Trooper vehicles [are] built on a truck chassis .... The [Trooper's] cargo area floor is constructed from corrugated steel plate, the same material employed in the floor panel of the cargo-bodies in pick-up trucks. ... [The Trooper] can favorably compare with pick-up trucks in their cargo carrying capacity."

Similarly, despite the name "Passenger Van," Toyota describes its 1989 model of this vehicle as combining

> "... the space and versatility of a van ... [and] the comfort and handling of a car ... With both middle and rear seats removed, you will find an astounding 149.8 cu. ft. in Deluxe Vans of rear cargo space. You've got a people carrier one minute and a cargo carrier the next. ..."

Under no stretch of the imagination is this vehicle "principally" designed to carry persons.

NOTE: ISUZU HAS ELIMINATED THE 2 DOOR VERSION OF TROOPER II BECAUSE OF HIGHER PROFITS FROM 4 DOOR, LOW TARIFF VERSION

ATTACHMENT 5: LEGAL MEMO ON GATT LEGALITY

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ROBERT C. CASSIDY, JR.
DIRECT LINE (202)
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February 14, 1992

By Facsimile

Mr. William E. Barreda
Deputy Assistant Secretary for
Trade and Investment Policy
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Room 3208
Washington, D.C. 20220

Dear Bill:

You asked for our thoughts on the implications under GATT of action by the U.S. Government that results in a rate of duty in excess of the current bound automobile rate being imposed on imports of MPVs and/or minivans. Our response is as follows:

SUMMARY

Classifying MPVs/minivans as vehicles for the transport of goods under HTS 8704 would not violate any GATT rule or any HCCN rule.[1] Questions about the action could, of course, still be raised by another Contracting Party under Articles XXII and

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[1] Such a classification might or might not be consistent with the views expressed by the HCCN Harmonized System Committee in 1989, depending on exactly what the USG does, but interpretations by the Committee are only advisory -- unless a signatory government agrees to accept the Committee's views as binding, which the USG did not do in that instance.

XXIII.[2] We believe the standard that most likely would be applied to determine if the USG action amounts to a non-violation, nullification or impairment of another signatory's benefits flowing from a U.S. GATT concession is whether that signatory had a reason to expect, at the time it negotiated the GATT concession with the USG, that a subsequent USG measure would impair those benefits.[3]

Oddly enough, we have not found any panel report directly on point. The Gramophones from Germany report, which was never approved by the Contracting Parties, says there can be a violation of Article II.1 if a new product is not classified "in accordance with the principles established by the national legislation."[4] This rule does not shed any light on the MPV/minivan issue since the proper classification of those vehicles under U.S. law has varied and been the subject of heated controversy for years. Thus, we believe, no GATT signatory with whom the USG negotiated a concession, such as the binding of the rate on automobiles, could have had a reasonable expectation about how MPVs/minivans would be classified by the USG in the future. The basis for this conclusion is summarized below.

CLASSIFICATION OF MPVs

Prior to January 1, 1989, all articles imported into the United States were subject to the Tariff Schedule of the United States ("TSUS"), 19 U.S.C. § 1202. A portion of that schedule, labelled "Motor Vehicles," contained several

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[2] Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance, Annex *Agreed Description of the Customary Practice of the GATT in the Field of Dispute Settlement (Article XXIII:2)* (28 Nov. 1979), Para. 5, last sentence. We note that imposition of a higher rate of duty under HTS 8703 could be the basis of an argument that the USG has violated a GATT concession since the automobile rate under 8703 is bound while rate under 8704 is not (or the binding is suspended).

[3] See, e.g., GATT, 2 BISD 188, 193 (1952).

[4] GATT Doc. L/580 (1956). The Contracting Parties did not accept the Gramophone Experts' report for reasons that are not entirely clear. GATT Doc. SR 11/16, at 168 (1956).

classifications for "motor vehicles (except motorcycles) for the transport of persons or articles." Two of those classifications are relevant here:

(a) Item Number 692.02: "Automobile trucks valued at $1,000 or more . . . ." These vehicles were subject to a most-favored-nation ("MFN") rate of duty of 25 percent ad valorem under a "temporary" rate increase imposed under item 945.69.

(b) Item Number 692.10: "Other." The vehicles in this category were subject to an MFN rate of 2.5 percent ad valorem.

These classifications had been part of the TSUS since at least 1965; and although the tariff rates applicable to motor vehicles were reduced pursuant to trade agreements since then,[5/] the nomenclature of the classifications remained unchanged through the end of 1988, when the entire TSUS was rescinded.

The TSUS did not define the term "automobile truck." Nor did it include any explicit category for MPV's that may be used equally well for the transportation of either goods or people. This presented no significant problem prior to the early 1970's. Up to that time, very few MPV's were imported into the United States; and most of those that were had values less than $1,000 and, accordingly, were classified as "other" and tariffed at the lower rate.

Beginning in the early 1970's, however, the situation changed, due to a steady influx of MPV's valued at more than $1,000.[6/] The Customs Service issued a series of letter rulings which determined, one article at a time, whether each specific import was or was not an "automobile truck," subject to the 25 percent duty. Not surprisingly, that process produced

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[5/] The temporary 25 percent duty under TSUS item 945.69 was not reduced.

[6/] See Toyota Motor Sales, U.S.A. Inc., v. United States, 585 F. Supp. 649 (Ct. Int'l Trade 1984), aff'd, 753 F.2d 1061 (Fed. Cir. 1985).

inconsistent, unpredictable and unsatisfactory results.[7] Nevertheless, for the next decade little was done to achieve a uniform resolution to the problem of classifying MPV's under the TSUS.[8]

On June 1, 1988, the Customs Service announced in a formal notice of proposed rulemaking that it was considering adoption of an interpretive rule to clarify the status of MPV's under the TSUS. Customs' notice explicitly acknowledged that it was increasingly difficult either to justify or to implement the two-part classification in the TSUS because: "Developments in motor vehicle design, reflecting market demands, have blurred the distinctions between automobile trucks and other automobiles."[9] Acknowledging that under existing criteria importers were often able to "manipulat[e] . . . the classification by the relatively simple addition or deletion of interior furnishings," Customs solicited public comment on whether it should consider "other,

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[7] For example, in one Ruling Letter, Customs determined that a Range Rover model was "primarily designed and used to transport persons." Letter of October 11, 1984, from John Montague, Area Director, New York Seaport, U.S. Customs Service. In another Ruling Letter, Customs determined that a certain Land Rover model was an automobile truck under the TSUS even if imported with padded rear seats installed. Letter of January 29, 1985, from Harvey Fox, Director, Classification And Value Division, U.S. Customs Service. Less than two and a half years later, Customs ruled that a similar Land Rover model, with comparable cargo-carrying and towing capacities, was a passenger car, even though rear seats were not assembled into the vehicle at the time of importation. Letter of June 10, 1987, from Harvey Fox, Director, Classification And Value Division, U.S. Customs Service.

[8] The situation became more acute in the 1980's as foreign producers began to import essentially the same vehicle as a car or a truck depending on whether they thought it more important to avoid the 25 percent duty on automobile trucks or the quantitative limits on car imports.

[9] Proposed Interpretive Rule Relating to Classification of Motor Vehicles or Automobile Trucks, 53 Fed. Reg. 19933 (June 1, 1988).

more structural features" of each imported vehicle in determining whether or not the vehicle should be classified as an "automobile truck" under the TSUS.[10/]

The MVMA, several importers, and other parties submitted extensive comments. However, on August 23, 1988, President Reagan signed the Omnibus Trade and Competitiveness Act of 1988, which replaced the TSUS with an entirely new tariff nomenclature, the HTS, effective January 1, 1989. Shortly thereafter, Customs expressly recognized that the classifications and criteria previously applicable under the TSUS would no longer be relevant:

> The tariff nomenclature under the HTS is different from the TSUS nomenclature and will be interpreted according to all relevant rules of interpretation, legal notes, and if necessary, any relevant legislative history.[11/]

Accordingly, because it was "no longer necessary" to resolve the ambiguities in the TSUS, Customs terminated the proposed rulemaking.[12/]

In the early 1970's multilateral negotiations under the auspices of the Customs Cooperation Council ("CCC") were initiated to modernize the Brussels Tariff Nomenclature ("BTN"), the international agreement on which the tariff nomenclature of the major developed trading nations, except for the United States and Canada, was based.[13/] The result of these negotiations was a

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10/ Id.

11/ Withdrawal of Proposed Interpretive Rule Relating to Classification of Motor Vehicles as Automobile Trucks, 53 Fed. Reg. 46474 (Nov. 17, 1988).

12/ Id.

13/ The primary purpose of these negotiations was to bring the U.S. nomenclature into conformity with the system used by the rest of the world.

new international agreement on tariff nomenclature, the International Convention on Harmonized Commodity Description and Coding System ("HCCN").

The BTN contained a single tariff provision, heading 87.02, embracing all "motor vehicles for the transport of persons, goods or materials," including "sports motor vehicles." From 1976 through 1981 the CCC considered and rejected several proposals for a new motor vehicle classification,[14] before ultimately adopting the final HCCN language. The final version includes two separate classifications, whose headings are as follows:

> "87.03: Motor cars and other motor vehicles principally designed for the transport of persons . . ., including station wagons and racing cars."[15]
>
> "87.04: Motor vehicles for the transport of goods."[16]

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[14] The various proposals are discussed in detail in Section II, below.

[15] As an Explanatory Note to this heading explains, "[T]he expression 'station wagons' means vehicles with a maximum seating capacity of nine persons (including the driver), the interior of which may be used, without structural alteration, for the transport of both persons and goods." 4 CCC Harmonized Commodity Description and Coding System: Explanatory Notes 1427 (1986) ("Explanatory Notes").

[16] One additional classification, heading 87.02, covers "public-transport type passenger motor vehicles." They are defined as "vehicles designed for the transport of ten persons or more (including the driver). . . . " Id. at 1426. There is no suggestion that any of the MPV's that were the subject of the Customs and Treasury Rulings belong under this heading.

Congress approved the HCCN and it was implemented in domestic law by enactment of the HTS.[17] As the Conference Report on the Omnibus Act makes clear, the HTS nomenclature includes changes from the TSUS that are "significant" in both their "number and nature."[18]

The effect of the HTS on the vast majority of vehicles was quite clear. Virtually all "cars," including station wagons, are classified under heading 8703 and dutiable at an MFN rate of 2.5 percent ad valorem. Likewise, virtually all "trucks" are classified under heading 8704. As under the TSUS, certain trucks are subject to a temporary increase in the MFN rate of duty to 25 percent ad valorem under HTS item 9903.87.00. The problematic area under the new law is the same one left ultimately unresolved under the TSUS -- how to classify mixed-use MPV's and, in particular, sport-utility vehicles and vans.

If you have any questions, please call me.

Sincerely,

Robert C. Cassidy, Jr.

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[17] The Omnibus Trade and Competitiveness Act of 1988, §§ 1203, 1204 (19 U.S.C. §§ 3003, 3004, 1202).

[18] H.R. Conf. Rep. No. 576, 100th Cong., 2nd Sess., 549 (1988).

ATTACHMENT 6 : GATT ISSUES

CLASSIFICATION OF MPVs AND MINIVANS AND GATT

- Classifying MPVs and minivans as "motor vehicles for the transport of goods" under HTS heading 8704 would not "violate" any rule in GATT or in the international customs nomenclature agreement (the International Convention on Harmonized Commodity Description and Coding System or "HCCN") --

  - **No GATT rule requires** any category of goods to be classified any particular way for customs duty purposes.

  - **No GATT rule prohibits** a change in classification of goods for customs duty purposes.

  - **No HCCN rule requires** goods to be classified in a particular way or **prohibits** a change in classification.

  - HCCN recognizes that parties to that agreement **will differ** over proper classification of specific goods. The views of the HCCN Harmonized System Committee regarding such a difference are only advisory and do not **require** any particular classification.

- **Classification of MPVs and Minivans under 8704 can raise a GATT "issue" only if --**

  (1) the government of a major exporting country of MPVs and minivans concludes that they have a sound basis for objecting and makes a political decision to confront the United States,

  (2) that government is not persuaded to drop its objection during consultations with the United States, and

  (3) that government decides to ask GATT to form a panel of neutral experts to hear its objection.

- **Because no GATT rule can be broken by classification of MPVs and Minivans under 8704, the issue before a GATT panel would be whether that classification "nullifies or impairs" GATT rights of the objecting government.**

- Specifically, the panel would consider a complex legal and factual record to decide whether the objecting government had a **"reasonable expectation" during past GATT negotiations it had with the United States that the United States would impose the 2.5% automobile duty of MPVs and minivans.** There are strong arguments that no government could have had a reasonable expectation that 1992 MPVs and minivans would be dutiable at 2.5%. In fact, as imports of MPVs grew from about 20,000 units in 1979 to more than 269,000 by 1990, importers themselves repeatedly classified these vehicles both as cars and trucks.

- **A challenge to the classification of MPVs and minivans would take years and could lead to adverse effects on U.S. trade under GATT rules only if --**

  (1) a GATT panel concluded that the GATT rights of the objecting government were nullified or impaired by classification of MPVs and minivans under 8704,

  (2) the objecting government decided to press the issue,

  (3) the objecting government and the United States did not negotiate some resolution of the issue (such as reductions in U.S. duties on imports of products of interest to the objecting government to **"compensate"** that government for the trade loss, if any, it experienced due to classification under 8704),

  (4) the objecting government asked the GATT Council to adopt the panel report,

(5) the GATT Council adopted the report by consensus (i.e., the United States agreed to the action),

(6) the objecting government and the United States did not agree on some resolution of the issue during a "reasonable period," the definition of which is up to the GATT Council ("reasonable periods" have lasted for years in various GATT disputes),

(7) the objecting government asked the GATT Council for authority to retaliate by raising its duties on imports from the United States and the GATT Council decided, by consensus, to grant such authority, **and**

(8) the objecting government retaliated against the United States.

February 18, 1992

Counsellor to the President for Domestic Policy

The Counsellor to the President for Domestic Policy (Counsellor) will serve as the principal White House adviser to the President for domestic policy and as a member of the President's Cabinet. He will be responsible for the coordination of domestic policy among relevant agencies and for the White House's development of innovative domestic initiatives. He will direct the efforts of a new Policy Coordinating Group (PCG), which will be chaired by the President. He will also oversee the work of the Office of Policy Development (OPD).

The PCG will function as the central clearinghouse for the President's domestic policy. The Counsellor will have the responsibility for referring issues to the PCG and ensuring that domestic policy proposals and initiatives receive adequate coordination and development. The PCG will have an executive committee, which will include a core group of Cabinet officials (the Secretary of the Treasury, the Director of OMB, the Chief of Staff, the Counsellor, and the Deputy Chief of Staff). The executive committee will clear all PCG options papers before presentation to the President. The Counsellor will have the responsibility of designating, after consultation with the Chief of Staff, other Cabinet officials to attend meetings of the PCG when such officials' agencies have an interest in the particular subject matter under discussion. He may also form subcabinet task forces or working groups to develop particular issues or initiatives.

The Secretary of the Treasury will continue to be the Administration's principal spokesperson on economic policy. He will continue to develop economic policy and will continue to chair economic policy Cabinet-level working groups established by the President through the PCG process.

Like the Assistant to the President for National Security, the Counsellor will report to the President and coordinate through the Chief of Staff.

5/21/92

Please file for Cam Findlay

Yeutter

Clayton,

There are several points regarding your memo and our conversation.

1. The previously agreed upon title was changed in your memo. This matter should not be reopened.

2. The decision to have a separate working group on economic policy was agreed to. It needs to be quickly established.

3. Further to my memo of last week, any issue which is substantially economic will go to the economic working group. General domestic policy issues which do not involve substantial economic consequences should go to the PCG.

4. Where there is a question about which group should handle an issue, you and I will jointly decide before assignment.

5. Operationally to make this work, as I stated before, the dual reporting relationship of French Hill, which exists today, should be maintained.

6. Any memorandum which establishes the PCG should include these points and be discussed before distribution.

With regard to economic policy, this system will work when the Counsellor, Chief of Staff and the Secretary work in ensuring close communication and coordination between our offices. That is what will ensure good policy development for the President.

JH

THE WHITE HOUSE

WASHINGTON

2-10-92

Dear Nick

I like your suggestion for Economic issues to be worked on an interagency basis. Now that the EPC has been abolished and the President has setup the P.C.G., we should update him as soon as Clayton arrives so the President can sign off. As to Personnel, we should discuss with Clayton as they now all work for him. Sam

5 Feb 1992

Sam,

This follows up on the recent discussions regarding domestic and economic policy.

As you know, the agreed upon memo stated: "The Secretary of the Treasury will continue to be the Administration's principal spokesperson on economic policy. He will continue to develop economic policy and will continue to chair economic policy Cabinet-level working groups established by the President through the PCG process."

To act on the above, the principal economic policy Cabinet-level working group would consist of the Secretary of the Treasury (Chairman), the Secretary of Commerce, the Director of the Office of Management and Budget, the Chairman of the Council of Economic Advisers, the U.S. Trade Representative, the Counsellor to the President for Domestic Policy, and the Chief of Staff. Obviously, other Cabinet members and senior staff will be invited to meetings as appropriate.

In order to ensure proper coordination with Clayton, French Hill and the two people who work for him should continue to have a dual reporting relationship with the White House and Treasury. French will be the executive secretary of the economic working groups and principal day to day coordinator between the White House, Treasury, and other agencies.

I will ask Hollis McLoughlin to be my main point of contact between your office, Cabinet Affairs, the Domestic Counsellor and French Hill. I would ask that Hollis be designated as my representative on the PCG to attend those meetings which I cannot. This would go a long way in ensuring that we are all working to pull together domestic and economic policy.

The Treasury is continuing to work on about 15 economic issues with established Cabinet and Sub-Cabinet working groups. As soon as Clayton gets on board, we should sit down and bring him up to date on these issues.

I am also pulling together three new groups on corporate governance, review of credit crunch, and steel VRAs. As soon as Clayton arrives, I will get him up to speed on these topics as well.

It is important for the White House to have a written statement covering this and the rest of the domestic policy operation.

Nick

I have told Clayton I would make this job as Domestic Counsellor work and I will. But the issue of economic policy is settled.

file: regulatory reform

Priority Regulations
Draft

Regulation	Status	Economic Benefit
Department of Agriculture		
1. Eliminate or reduce prior label approval requirements.	ANPRM out.	Would reduce 120,000 applications which now must be filed annually with USDA.
2. Adopt proposed changes in nutrition labeling requirements.	NPRM out.	$860 million (net present value).
3. Adopt proposal to eliminate Forest Service appeals process.	NPRM out.	$183 million (net present value).
4. Adopt new risk assessment system for AHPIS plant imports.		
5. Eliminate biotechnology rule (7 CFR 340) regarding introduction of organisms and products altered or produced through genetic engineering.	OMB holding.	
6. Adopt screening procedures for forest service special uses.	NPRM by June 15.	Could save the government and applicants $552 million, $80 million/yr.

6/4/92
Plse. file for Cam Findlay:
Regulatory Reform

Commerce

1. Adopt a market-based approach to regulations regarding fisheries.	One fishery has moved to this approach.	Would reduce overcapitalization in fisheries and increase efficiency while conserving resource.
2. Review use of contingent valuation methodology.	No action.	Will lead to more accurate damage assessments.
3. Continue to revise export controls as planned.	In report.	Will promote global competitiveness. Will especially aid affected industries.(p.1 & 2 of report).

Commodity Futures Trading Commission

1. Revise regulations for commodity pool operators in order to ease disclosure, reporting, and recordkeeping requirements.	No action.	$2-5 million/yr.
2. Lift the ban on trade options for agricultural products.	NPRM out.	Would allow agricultural producers, handlers etc. to engage in more customized risk management opportunities creating an entirely new market.

Defense

1. Revise rules regarding recoupment of non-recurring costs.	NPRM out.	$200 million/yr.
2. Streamline 404 permitting process.	Some guidance issued.	$25 million/yr.

3. Issue wetlands manual.	Proposed rule issued.	Could save billions of dollars.
Education		
1. Deregulate state vocational rehabilitation services program.	No action.	Would substantially reduce admin. requirements allowing resources to be allocated more efficiently through providing services to handicapped adults.
2. Reduce school recordkeeping requirements.	NPRM out 2/21/92.	Would shift resources toward educating students. This will eliminate 1000's of hrs in burden and save millions of dollars in litigation fees.
EEOC		
1. Revise policy guidance regarding use of testers.		Would reduce the costs of litigation and save businesses the time and money they waste interviewing testers.
2. Review Uniform Guidelines on Employee Selection Procedures.	Promised to take action in 1981.	Would ensure that these do not lead to quotas. This would increase competition and efficiency.
3. Complete RIA for employment provisions of ADA.	Complete RIAs promised to OIRA when regs published last July.	Would provide information on economic impact of ADA regs.
Energy		
1. Review manufacturer impact model for appliance efficiency standards.	No action.	The new model will be critical as it will drive future standards.
2. Review effect of accelerated phaseout of CFCs on	No action.	Could lower costs and increase certainty associated with energy efficiency

ability of manufacturers to meet appliance standards.		standards for products relying on CFCs.
3. Terminate action to modify energy efficiency standards for clothes washers.	ANPRM out.	Modifying standard would put domestic manufacturing at a competitive disadvantage.
Environmental Protection Agency		
1. Clean Air		
Define low NOx burner "technology" in a manner that reduces costs for utility.		DOE comments that using a less expensive definition allows achievement of both statutory and non-statutory goals at $230-900 million less annually.
Title I:		
Use statutory minimum for trip reductions rule.	No action.	Would reduce costs of these programs in 10 major metropolitan areas.
Use statutory minimum for on-board diagnostic rules and evaporative emissions controls.		Would reduce the costs to consumers of these rules by at least $500 million/yr.
Re-examine scientific basis for Benzene NESHAP, use statutory criteria.		Would primarily benefits the petroleum refinery industry--could reduce short-term capital costs.
2. Waste/RCRA.		
Scale back financial requirements for underground storage tanks to provide greater flexibility for small communities.		$75-150 million/yr.

Keep the "mixture" and "derived from" rule process on track in order to meet early 1993 date for final rule.		Replace these rules with a "characteristics" based approach to refocus RCRA on higher risk hazardous wastes. EPA estimates cost savings from this approach of up to $1.8 billion/yr.
Permit-by-rule and reduced permitting requirements for RCRA hazardous waste storage - Accelerate process to provide for more flexibility under EPA's permitting program by developing a final rule by early 1993.	In report.EPA plans to have a final rule in 1995.	Would reduce costs of current process which takes 2 yrs and substantial public involvement.
Do not list used oil as a hazardous waste.		EPA has indicated that its proposed management standards could impose additional costs of as much as $600 million/yr. Scaling back these requirements could substantially reduce costs (and create a more favorable climate for recycling).
Corrective Action: Complete EPA final rule analysis for suspend ad hoc requirements for cleanup of past releases pending completion of this final rule.		Estimates of corrective action costs range up to $400 billion. EPA has been implementing stringent and costly cleanup requirements (outlined in its 1990 proposal) through routine permitting, even though fundamental policy issues have not been resolved.

3. Water/Clean Water Act		
Stormwater - Implement statutory minimum approach for mandated "next steps" for stormwater rule.		After October 1992, EPA may extend the stormwater permit requirements to towns with populations under 100,000. EPA should not issue such additional regulations; instead it should evaluate the effects of current regs.
Re-examine regulatory options for radionucleides in drinking water to develop a more cost-effective final rule.		EPA estimates that the proposed rule would impose costs of $350 million per year (California Water Systems estimates 1 billion/yr.); much of this cost would have been imposed on smaller communities. EPA should adopt less stringent requirements in the final rule to bring the costs of the rule more into line with the likely benefits.
Examine options for stopping the promulgation of additional drinking water standards that are not cost effective where this poses health risks. EPA should examine ways of deferring further rulemaking.		EPA has established stringent drinking water standards over the last several years for lead and microbiologicals and proposed rules for a number of other contaminants (like sulfates and disinfection contaminants). These rules will impose substantial costs on households in smaller communities.
4. Pesticides		
FIFRA biotech small scale research.	NPRM at OMB.	Represents an important step in implementing the Administration's regulatory reforms approach for biotechnology.

Standards for Additional Containments.		
Federal Communications Commission		
1. Relax rules limiting the number of television stations which can be commonly owned.	NPRM out. In report.	$160 million/yr.
2. Eliminate network-cable cross-ownership rules.	NPRM out. In report.	$10 million/yr.
3. Complete video dial tone proceeding.	NPRM out. In report.	Would spur construction of advanced networks and provide competition to cable.
4. Steps to reduce cable-telephone ban: a) increase rural exemption. b) increase use of waivers. c) redefine cable operator. d) allow joint ventures.	No action.	Same as above.
5. Allow UHF-TV licensees to use spectrum to provide cellular telephone service.	No action.	$1 billion in net present value from spectrum in L.A. alone.
6. Allocation of spectrum for low earth orbiting satellites.	No action. In report.	Could generate billions in revenue.
7. Allocation of spectrum for personal communication services.	NPRM expected in July. In report.	Net benefits of $2.5 billion per year.
Federal Deposit Insurance		

Corporation [Incomplete]		
FERC		
1. Adopt guidelines for market-based pricing of electric power.	No action.	Would generate at least $9 billion in investment in independent generating projects.
2. Revamp gas pipeline construction rule.		Would encourage construction of new natural gas pipelines, allowing access for millions of potential consumers.
3. Propose general policy on electric transmission based on opportunity cost.		Would allow more efficient use of the nation's electric power grid.
4. Deregulate oil pipelines in competitive markets.	No action.	Would reduce prices for consumers, more efficient investment by pipelines.
5. Deregulate natural gas pipelines in competitive markets.		Same as #4 above.
Federal Maritime Commission		
1. Reduce filing requirements for non-vessel operators.	Published a notice of intent on May 7.	Up to $20 million annually.
2. Reduce or eliminate tariff filing requirements on LCL traffic for all NVOCC's.	Proposal under considerat ion.	Would save $20 million annually.
Federal Reserve Board [Incomplete]		

Federal Trade Commission		
1. Revise Hart-Scott-Rodino exemption limits.	No action.	Would streamline up to 2/3 of the 1000-2000 applications received by the FTC annually.
2. Announce joint venture guidelines.	No action.	
Department of Health and Human Services.		
1. Revise CLIA '88 regulations (Clinical Laboratory Improvement Act) to avoid putting unnecessary burdens on doctors and health care workers which raise the costs of health care.		
2. IRB approval of Phase one research.	No action.	
3. Revise Medical Device User Facility Reporting Requirements.	Published in March.	
4. Revise Nutritional Labeling Education Act regulations.	NPRM out.	
5. Streamline wage reporting requirements imposed on employees.		
HUD		
1. Ease regulations relating to manufactured housing.	No action.	$35 million per year savings achieved through reduced price of manufactured homes.

2. Eliminate HUD's RESPA proposal.	In small business proposal. Not in report.	HUD's proposal to prohibit referral fees from real estate agents to mortgage brokers is unnecessary and will reduce competition.
3. Streamline refinancing of single family homes.	NPRM out.	Savings could reach $1 billion.
4. Implement program automation.	In process of being issued.	Could free up $200 million annually.
5. Reduce mortgage insurance premiums.	In report.	$97 million/yr.
6. Revise/eliminate HUD's rule on rules.		Would considerably reduce the number of regulations at HUD.
7. Move to a market rate for Ginnis Mae FHA bankruptcy.		A market rate would save borrowers $100-$200 million/yr.
Interior		
1. Reduce royalty rates for stripper wells. Possibly other minerals as well.	NPRM out.	$70.8 million/yr.
2. Implement department-wide change in appeals process to improve efficiency and avoid unnecessary delays.	In report.	Would remove administrative costs and costs associated with lengthy delays.
3. Revise Type B natural resource damage assessment procedures. Possibly repropose.	Judicial remand. NPRM out.	Would lead to more accurate and lower damage assessments. If CV were only used in limited situations. NOAA also utilizes this methodology.
4. Reform the concession management program.	NPRM out.	Would increse competition in federal management of concessionaires.

Interstate Commerce Commission		
1. Adopt final rule for acceleration of "bingo" card elimination.	NPRM out. In report.	$250-500 million/yr.
2. Adopt final rule to expand commercial zones.	NPRM out. In report.	$100 million/yr.
3. Reform railroad rate practices.	In report.	
4. Streamline and simplify motor carrier regs.	In report.	
Justice		
1. Review comments on ADA to determine areas where more certainty is needed.	No action.	Would decrease litigation risk, allowing for more efficient implementation.
2. Make sure INS completes its review.	Due April 28.	N/A.
Labor		
1. Reduce threshold for coverage and simplify the recordkeeping and labeling requirements for the hazard communication standard.	No action in report.	Would reduce costs of compliance with training and paperwork requirements, especially for small businesses.
2. Repeal ban on homework in women's apparel industry.	NPRM under 12291 review.	Would create jobs and improve childcare.

3. Reduce the scope and the recordkeeping requirements of blood-borne pathogen standard.	No action.	Would eliminate costs of compliance for businesses dropped from scope of standard and reduce costs of compliance for those covered.
4. Revise "methods of compliance" policy (currently allows the use of respirators in extremely limited circumstances).	No action.	Would reduce costs of standard by allowing respirators instead of more expensive engineering controls for personal protective equipment.
5. Amend lockout/tagout standard. It should only apply to situations involving equipment that is, in fact, dangerous.	No action.	Would eliminate costs of compliance from businesses dropped from scope.
6. Issue Beck Rules.		Will save certain workers $300 - $500 per year.
NRC		
1. Ease proposed reporting requirements for tritium (used for exit signs etc.).	NPRM out	Industry claims $20 million industry loss.
SEC		
1. Ease financial disclosure requirements for foreign companies.	No action.	Would increase competitiveness of U.S. exchanges and provide U.S. investors with a greater selection.
2. Eliminate "uptick rule" for shorts.	No action.	Would increase market liquidity especially wrt. hedging.
3. Simplify securities registration forms	In report.	$180 million/yr.

4. Simplify "Standard Instructions for Filing Forms."	No action.	Would considerably reduce the cost of filing especially for small businesses.
5. Deregulate mutual fund sales charges.	In report.	Would remove unnecessary regulatory constraints expand the market for asset-backed securities and should increase access to capital for small businesses.
6. Remove constraints on asset-backed financing to create new options for investors and lower cost methods of raising capital.		
7. Create new types of investment companies. Permit development of companies whose shares are redeemable on a monthly, quarterly or semi-annual basis.	In report.	Would increase market liquidity and thus availability of capital for small companies.
8. Expand the availability of shelf registration for all types of investment grade, asset backed securities.	Under Commission considerat ion.	Would provide issuers with greater flexibility in the timing, manner and size of distributions.
9. Allow wider availability of Rule 144A to make it easier for institutional buyers to avail themselves of this safe harbor.	In report.	Would increase demand and trading liquidity, which should in turn reduce the costs borne by issuers, intermediaries and investors in private offerings.
10. Streamlined requirements for insider reporting, including action to address employee	In report.	Would allow issuers to recover profits made by those shareholders from certain stock transactions within 6 months.

benefit plans.		
11. Simplify broker/dealer registration and reporting requirements.		Would significantly reduce administrative cost.
12. HLT disclosure of bank holding companies.		
Treasury - IRS Regulations (Tentative)		
1. Simplify nondiscrimination regulations.	Effective date postponed to Jan. 1993.	Would streamline and simplify the 600 pages of regulations that are used to interpret 3 lines of statute.
2. Limit minimum participation regs to defined contribution plans.		
3. Modify 401 (K) regs to include safe harbors among other changes.	No action.	Would expand retirement plan coverage, increase savings, and increase revenues to the federal government.
4. Simplify required minimum distribution regs.		Would lower the costs of implementing a pension plan and have the same effect as number 3.
5. Simplify regulations of required coverage of employees.		Would reduce complexity in the retirement plan area.
6. Revise five percent owner restriction rule to remove its differential impact on small businesses.		Would eliminate disproportionate tax on small business owners.

7. Publish new actuarial assumptions for IRS' Small Plan Audit Program for notice and comment.		
8. Eliminate IRC sec. 416 which imposes additional burdens and data collection on small businesses.		
9. Clarify tax treatment of bona fide hedges by treating gains and losses as ordinary income. (Arkansas Best).	No action.	Clarity will increase U.S. investment by making it less costly for investors to hedge their risks.
10. Issue final rules which eliminate disproportionate dividends as evidence of a second class stock.		
12. Revise regulations on multiple payroll tax deposits.	NPRM out 5/11/92.	$2.7 billion.
Non-Tax Regulations		
13. Revise BATF requirements for alcoholic beverages, setting labeling requirements similar to the way FDA sets food labeling requirements.		

Department of Transportation

1. Issue privatization guidelines.	No action. Not in report.	Would implement Executive Order through which governments can sell or lease airports.
2. Eliminate the IATA antitrust exemption.	No action. Not in report.	Savings to consumers of $230 million per percentage reduction in international airfares resulting from competitive pricing. This could save $100's of millions.
3. Issue guidance document on airport peak/off peak pricing.	No action. Not in report.	Would reduce airport congestion, saving travelers millions of hours of delay annually.
4. Eliminate distinction between commuter airline and other commercial airline slots at slot constrained airports.	Petition for rulemaking pending. Not in report.	Increases passenger capacity at the nation's most crowded airports without increasing runway congestion.
5. Ease requirements for unescorted access privileges.	NPRM Feb.	Industry estimates that this rule will cost $0.5 to 2 billion.

file: welfare reform

May 21, 1992

WAIVER TRACKING SHEETS

Highlights:

* California's waiver application was received in HHS on May 20. Copies have been distributed to OMB and OPD. The State is expected to request a meeting with Federal officials next week.

* New Jersey officials are expected to request a meeting with the Director in response to a compromise evaluation and cost-neutrality arrangement discussed at an April 23 meeting of officials and staff from the State, HHS, OMB, an OPD.

* HIMD/HFB and HCFA staff are developing cost data related to Oregon's Medicaid waiver proposal.

* Terms for approval of the AFDC waivers for Oregon have been reviewed by Federal agencies and the State. Approval documents are with Sec Sullivan for signature.

6/9/92

Pls. file for

Cam Findlay

Welfare Reform

May 21, 1992

WELFARE WAIVER TRACKING SHEET

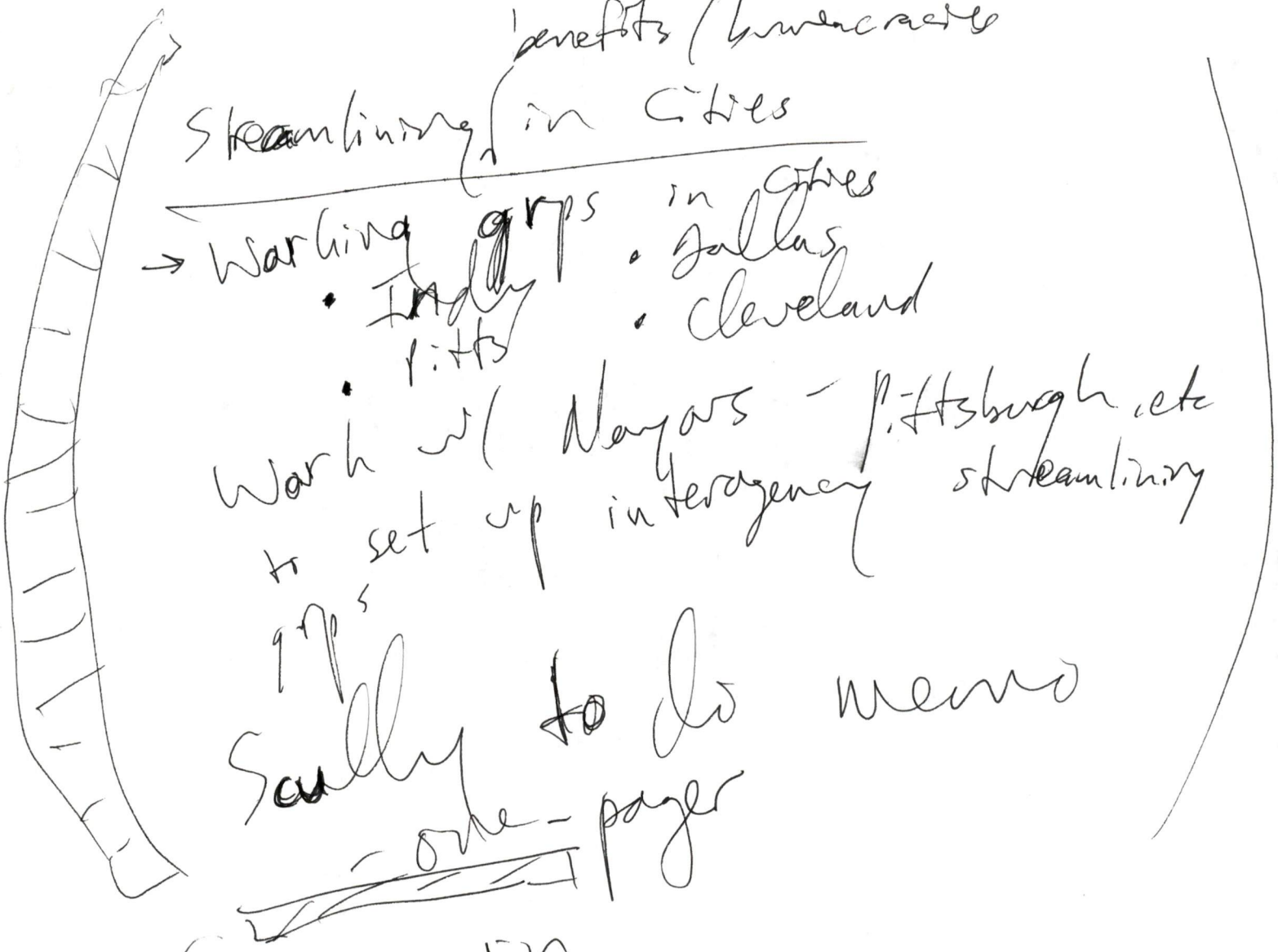
STATE (new States in **bold**)	PROPOSAL	AGENCY	RECEIVED BY AGENCY	STATUS (new items & changes in **bold**)
RECEIVED				
California	AFDC benefits reduced 10 percent across the board, another 15 percent after a family has been on the rolls 6 months; new arrivals receive benefits at the level of States they left for one year; no additional benefits for children born to mothers on the rolls; minor mothers must live with parents, are rewarded for staying in school, face penalty from dropping out; disregard one-third of earnings permanently; eliminate 100 hour rule for two-parent families. Some interest in Medicaid expansions for children.	HHS/ACF HHS/HCFA	5/20	**Copies of the State's application have been distributed by HHS to OMB and OPD. The State is expected to ask for a meeting with Federal officials in the next week or so.**
New Jersey	Benefits would not increase automatically for mothers on AFDC who have another child, however, they would be eligible for higher earnings disregards that would permit them to keep more of their AFDC as their earnings rise; step-parent income deeming liberalized; eliminate 100-hour rule for AFDC-UP fathers; extend transitional Medicaid to two years.	HHS/ACF HHS/HCFA	4/13	The State is expected to request a meeting with the Director to discuss the compromise evaluation and cost-neutrality position proposed by HHS, OMB, and OPD staff.
Oregon - Medicaid	Medicaid waivers part of broader health access and cost containment proposal. Medicaid would be extended to all below poverty, but only a standard package.	HHS/HCFA	8/91	HIMD/HFB and HCFA staff are developing cost data related to the State's waiver proposal.
Oregon - AFDC job search	Remove 20 hour/week limitation on participation by mothers with children under six; remove 8 weeks/year limitation on job search; require substance abuse treatment for those in need of it; other requirements for very young mothers.	HHS/ACF	4/10	**Terms for approval of the requested waivers have been reviewed by Federal agencies and the State. Approval documents are with Sec Sullivan for signature.**

STATE (new States in **bold**)	PROPOSAL	AGENCY	RECEIVED BY AGENCY	STATUS (new items & changes in **bold**)
EXPECTED				
Arizona	State Department of Economic Security is supporting legislation that would provide three tracks for JOBS - job search and workfare, self-initiated activities, or a teen parent track that focusses on education. Waivers might not be required.	HHS/ACF	Not received yet.	Six bills including learnfare, AFDC benefit reductions, lower benefits for recent arrivals, extensive workfare, and flat grant regardless of family size were defeated in the State legislature.
Colorado	Require school attendance by dependent children; require immunizations; liberalize requirements for AFDC-UP to make marriage more attractive.	HHS/ACF	Not received yet.	HHS received copy of a bill that may be introduced before the State legislature.
Connecticut	Require school attendance by dependent children; require that parents immunize children.	HHS/ACF	Not received yet.	No contact yet between State and HHS. Press reports more than 60 welfare bills pending before State legislature.
Florida	Medicaid: Expansion of eligibility to permit Medicaid buy-in as part of broader access effort including small business and other pooled purchasing arrangements; managed care for Medicaid and Medicare recipients; single payor demonstration; voluntary price controls and admin savings measures. In addition, a wide range of AFDC "new paternalism" proposals are before the State legislature.	HHS/ACF HHS/HCFA	Not received yet.	Gov Chiles met with HHS and OMB officials to discuss Medicaid waiver proposal.

STATE (new States in **bold**)	PROPOSAL	AGENCY	RECEIVED BY AGENCY	STATUS (new items & changes in **bold**)
Georgia - State agency bill	Reduce or eliminate benefits for second or subsequent children born to AFDC family; priority for incarcerated AFDC parents in training, education, work release programs; comprehensive services programs for teen parents; learnfare; $1,000 voucher for post-secondary education for AFDC teenagers who complete high-school; require immunizations of AFDC dependent children; bonus for parenting skills training and regular contact with children's schools; higher eligibility levels for families with earnings or child support.	HHS/ACF	Not received yet.	Legislative package supported by Department of Human Resources
Georgia - Carter	Unclear		Not received yet.	Former President Carter met with President Bush to discuss a Carter Center project in connection with the 94 Olympics in Atlanta. Welfare waivers were mentioned, but details are not available.
Illinois	Wisconsin-style learnfare - family grant reduced for failure to meet attendance standard; no automatic increase for children born to mothers on the rolls.	HHS/ACF	Not received yet.	Proposals before the State legislature.
Iowa	Expand AFDC self-employment demonstration, provide grants to counties for local welfare reform initiatives; disregard income of new step-parents for one year; $100 bonuses for AFDC recipients who complete high-school or GED; learnfare; cap on benefits for children born to parents on AFDC.	HHS/ACF	Not received yet.	Bills before the State legislature.
Maine	Benefits would not increase automatically for mothers on AFDC who have another child while on the rolls; new residents receive AFDC at lower levels; reduce amount of disregarded income.	HHS/ACF	Not received yet.	Conference call scheduled for 4/23 postponed at least a month due to appointment of new agency head in State.

STATE (new States in **bold**)	PROPOSAL	AGENCY	RECEIVED BY AGENCY	STATUS (new items & changes in **bold**)
Maryland	Reduce AFDC benefits across the board about 30 percent, but restore benefits for good behavior - immunizing children, school attendance.	HHS/ACF	Not received yet.	**The State's waiver application is expected today. In light of the considerable consultation that has already occurred between HHS and the State, Asst Sec ACF has promised the Gov a short turn-around.**
Missouri	Require school attendance by teen parents and dependent children 13-15 years old.	HHS/ACF	Not received yet.	HHS staff met with Missouri staff about the State's learnfare proposal. State officials expect to submit their waiver request in mid-May, after their legislature has adjourned. Target for implementation is beginning of next school year.
Oklahoma	Require or provide incentive for dependent children to stay in school.	HHS/ACF	Not received yet.	State officials confident learnfare legislation will pass this year.
Oregon - work program	State referendum called for conversion of AFDC, food stamps, and unemployment compensation into single jobs program.	HHS/ACF HHS/HCFA USDA/FNS	Not received yet.	Oregon proponents and their consultant met separately with HHS and OMB officials to discuss current status of referendum implementation. Gov does not want to go ahead, advocates have brought suit.
Pennsylvania	No additional benefits for children born to mothers while on AFDC but more liberal earnings disregards to allow parents to make up difference; benefits for new arrivals limited for one year to level of donor States; school attendance requirement.	HHS/ACF	Not received yet.	Bills introduced before the State legislature on 3/25.

STATE (new States in **bold**)	PROPOSAL	AGENCY	RECEIVED BY AGENCY	STATUS (new items & changes in **bold**)
Utah	Grants would be lowered and termed "child support assurance," differential would be restored for participation in JOBS education and training activities; AFDC-UP attachment to work force rule would be liberalized.	HHS/ACF	Not received yet.	HHS staff have discussed evaluation issues in connection with State's draft proposal. A waiver application is expected soon.
Vermont	AFDC: All child support payments go directly to AFDC family; target child support enforcement; waive rule that families are not eligible for AFDC-UP if father works more than 100 hours per month; workfare for all AFDC-UP fathers on the rolls more than one year; increase maximum earnings disregarded in calculating benefits; cash incentives to participate in parenting classes, carry out specific responsibilities; possibly workfare for all AFDC adults after a certain period on the rolls. Food Stamps: Disregard first $50 in child support (like AFDC); liberalize maximum auto value; cash-out benefits to working poor; implement EBT.	HHS/ACF USDA/FNS	Not received yet.	HHS regional office provided State with waiver application kit. Waivers would not be implemented before FY93-4.
Virginia	Wisconsin-style learnfare.	HHS/ACF	Not received yet.	State staff requested 1115 kit for proposal to pilot learnfare in three counties.
Washington	State has major liberal reform demonstration in fourth year. Legislature to consider a wide range of "new paternalism" changes.	HHS/ACF	Not received yet.	No contact between HHS and State yet. Information from press item on bills that may be submitted to the State legislature.



benefits / bureaucracy

Streamlining in Cities

→ Working grps in cities
- Indy
- Pitts
- Dallas
- Cleveland

Work w/ Mayors - Pittsburgh, etc
to set up interagency streamlining grps

Sally to do memo
- one-pager

Easy win

- HUD, Ag, HHS, Education
- White guy with wrinkles

SUMMARY OF PEB REPORTS

6/10/92

Please file for
Cam Findlay

1992 Rail Strike

file:
1992
Rail
Strike

June 3, 1992

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June 5, 1992
(D: 6/4/92)

CONFIDENTIAL **HAND DELIVERY**

Mr. D. Cameron Findlay
Special Assistant to the President
and Counselor to the Chief of Staff
White House
Chief of Staff's Office
Washington, D.C. 20500

RE: PEB Summaries

Dear Cam:

It occurred to me that it might be helpful to you, Scott and perhaps others (hopefully, Sam) to have a very brief written summary of the report and recommendations of the three Presidential Emergency Boards which were delivered the end of last week.

I hope these are helpful and useful to you.

With best regards,

Sincerely,

Bill

William J. Curtin

WJC/ld
Enclosure

BARGAINING PRECEDING PEBs 220, 221 AND 222

PEB 220 - Freight Industry and IAM

The IAM and the freight industry were originally in national negotiations with the other freight unions -- so-called "national handling." However, the IAM declined to participate in the national procedural agreement which led to the creation of PEB 219.

Following PEB 219's recommendations in January, 1991, three unions representing more than 40% of freight employees reached voluntary agreements with the carriers based on PEB 219's recommendations. Subsequently, the Special Board created by Congress and appointed by President Bush concluded that the remaining unions which were before PEB 219 should follow the pattern set by the three unions that settled voluntarily. As a result, 95% of the organized freight employees were covered by the PEB 219 settlement pattern prior to the creation of PEBs 220, 221 and 222.

In subsequent negotiations, the carriers moved closer to the IAM position by dropping all prior proposals which were not recommended by PEB 219, including pro-management wage and work rule proposals 219 rejected.

The IAM chose not to adopt the settlement pattern as a basis for further negotiation -- generally, it conducted negotiations as if other industry settlements had not occurred.

PEB 221 - Conrail and the BMWE

Five unions which bargained with Conrail did not participate in PEB 219. When bargaining resumed after the freight industry settlements, Conrail also decided to drop its proposals which were inconsistent with the settlement pattern.

Conrail was able to reach voluntary agreements with four out of the five labor organizations that did not participate in PEB 219 (three collective bargaining agreements and one agreement to resolve the dispute through binding arbitration). The collective bargaining agreements were based on the industry pattern.

The fact that Conrail had reached agreements with the other unions did not change the BMWE's position. The BMWE chose not to moderate its bargaining positions causing a stalemate and the subsequent creation of PEB 221. In the proceedings before PEB 221, the BMWE asserted the settlements by the other unions were irrelevant.

PEB 222 - Amtrak, the BMWE, and Five Other Labor Organizations

Amtrak and the labor organizations representing Amtrak employees did not participate in PEB 219. Amtrak made a series of proposals which can best be summarized as follows: Amtrak sought more work rule flexibility than was in the freight industry settlement pattern and, if that flexibility were agreed, Amtrak would offer wage adjustments higher than those in the freight settlement pattern. If the labor organizations would not agree to more flexible work rules than those in the freight pattern, Amtrak would offer the compensation proposal in the freight pattern.

Prior to the PEB 222 report, Amtrak was able to reach voluntary agreements with labor organizations covering more than 60% of its employees thereby creating an Amtrak-specific settlement pattern. The labor organizations representing the remaining employees are now the subject of the PEB 222 recommendations.

SUMMARY OF PEB 220'S RECOMMENDATIONS
REGARDING IAM/FREIGHT INDUSTRY DISPUTE

Wages - Recommends wage increases and time schedules consistent with the industry settlement pattern. Increases are retroactive to July 1, 1991, contrary to the carriers' proposal. The IAM's claim for a skill differential is to be submitted for study to a tripartite committee headed by a neutral whose decision in the event of a deadlock shall be final and binding.

Health and Welfare - Issue should be resolved on the basis of 219's recommendations which were largely based on the unions' proposals. Rejected union proposal to disaffiliate from the industry-wide plan and avoid employee cost-sharing.

Incidental Work Rule - Follows the settlement pattern which expanded the incidental work rule to apply to all shopcraft employees at all locations and to include simple tasks. Employees of any craft may be assigned simple tasks up to two hours per shift.

Subcontracting - Follows pattern barring carriers (except during emergencies or for minor transactions) from contracting out work until completion of expedited, party-paid arbitration on a carrier or regional basis.

Successorship - The Board declines to require a successorship clause in line sale agreements. Board disagrees with the carriers' position that this issue is not a bargainable subject.

Southern Pacific Lines - Recommends that the IAM and SP bargain locally and arbitrate if necessary.

Moratorium - Recommends moratorium period for all matters on which notices might properly have been served when the last moratorium ended on July 1, 1988, to be in effect through January 1, 1995. Section 6 notices may be served no earlier than November 1, 1994.

Board's Rationale for Recommendations

"Certainly, the IAM was aware, when it elected to stay out of the PEB 219 proceedings, that specific findings of fact and recommendations would be made that dealt with the identical issues now in dispute between the carriers and the IAM, and that those recommendations would apply to the overwhelming majority of the unionized work force.

> We consider it critical to the public interest that labor relations and collective bargaining on the nation's railroads be fair, stable, and reasonably consistent. Conversely, we believe that political competition between and among unions for supremacy of benefits, with its ineluctably destabilizing consequences, is damaging to the public interest.
>
> Therefore, because the recommendations of PEB 219 are now in effect for most of the unionized employees in the railroad industry, we conclude that significant variations for the IAM-represented employees that change previously linked or stabilized economic and work relationships with other rail employees would produce the destabilization that we think must be avoided. We recognize, however, that exceptions may be made in special, compelling circumstances."

PEB No. 220 at pages 9-10.

SUMMARY OF PEB 221'S RECOMMENDATIONS
REGARDING CONRAIL/BMWE DISPUTE

Wages - Parties should adopt general wage and cost of living increases and time schedules consistent with the industry settlement pattern. Rejects Conrail claim that BMWE should lose retroactivity because it declined to participate in 219.

Entry Rates - Consistent with the pattern, employees in highest-rated jobs should not be subject to progression. Contrary to Conrail's position, Board deviated from the pattern in recommending that, for lower-rated jobs, the present schedule of 75% starting pay progressing to full rate over 5 years should be changed to a 2-year schedule starting at 90%, increasing to 95% by year-end and 100% by end of second year.

Repairman Rates and Tool Subsidy - Rejected union proposals to increase Repairman's rate to that of Class One Operator and to require the carrier to pay for specialized tools.

Health and Welfare - Issue should be resolved on the basis of 219's recommendations which were largely based on the unions' proposals. Rejected union proposal to disaffiliate from industry-wide plan and avoid employee cost-sharing.

Subcontracting - Followed 219's recommendation that current procedures regarding subcontracting be continued. Rejected union proposal that it have veto power over contracting out.

Successorship - Rejected union requests for successorship clause in line sales agreements and requirement that Conrail provide lifetime compensation if acquirer fails to comply. PEB agreed with union that topic is bargainable.

Minimum Workforce - Followed pattern approach to reduce impact of seasonality -- 6-month guarantee or SUB benefits for selected gangs, work rule changes to expand work opportunities and Select Committee to modify as needed. Rejected union demands for minimum manning restrictions and year-round work guarantees that would have required Conrail to hire close to 4,000 more employees than 1991 levels.

Expenses for Production Units - Rejected Conrail's position and recommended that production crews receive a $35 per day allowance if the location of their headquarters changes from that in effect at the time of bidding.

Combining and Realigning Seniority Districts - Followed 219's recommendation to provide a mechanism to make changes to existing seniority districts.

Regional and System-Wide Gangs - Production gangs may be used regionally and system-wide. Regional and system-wide gangs are justified on highly technical and expensive equipment being operated by a large number of skilled employees.

Work Week - Normal work week for production gangs should be five consecutive days, only one weekend work day may be scheduled. Four ten-hour work days may be permitted.

Starting Time - Followed industry settlement pattern regarding widening of starting-time window for production gangs and certain supporting forces.

Work-Site Reporting - Rejected Conrail position and industry pattern that production gang pay start at work-site. Recommended that employees be compensated for travel over 15 minutes each way.

Vacation Rule - Recommended union proposal that employees on leave for union business accumulate vacation credits, but on a prospective basis only. Declined to recommend deviation from Vacation Agreement allowing employees to take vacation in one-day increments.

Working Foremen - No basis for altering traditional concept of foremen as working foremen.

Safety - Insufficient evidence to support union changes to safety program.

Safety Shoes - Recommended increase in safety shoe allowance from $30 to $60.

Meal Periods - Recommended union proposal to add a second meal period five hours after the lunch period for those on overtime. Declined to recommend union proposal to force lunch into a set one-hour window each shift.

Travel Allowance - Weekend travel allowance for Divisions raised from $6.00 to $10.00 per trip and for Inter-Regional Units from $7.50 to $12.00 per trip.

Camp Car Standards - FRA standards are adequate. Conrail must comply by January 1, 1993, if not already in compliance, even though some parts of guidelines do not become effective until January 1, 1994.

Moratorium - Recommended moratorium period for all matters on which notice might properly have been served when the last moratorium ended on July 1, 1988, to be in effect through January 1, 1995. Section 6 notices may be served no earlier than November 1, 1994.

Board's Rationale for Recommendations

"Certainly, the BMWE was aware, when it elected to stay out of the PEB 219 proceedings, that specific findings of fact and recommendations would be made that dealt with the identical issues now in dispute between Conrail and the BMWE, and that those recommendations would apply to the majority of the unionized work force.

We consider it critical to the public interest that labor relations and collective bargaining on the nation's railroads be fair, stable, and reasonably consistent. Conversely, we believe that political competition between and among unions for supremacy of benefits, with its ineluctably destabilizing consequences, is damaging to the public interest.

Therefore, because the recommendations of PEB 219 are now in effect for most of the unionized employees in the railroad industry, we conclude that significant variations for the BMWE-represented employees on Conrail that change previously linked or stabilized economic and work relationships with other rail employees would produce the destablization that we think must be avoided. We recognize, however, that exceptions may be made in special, compelling circumstances."

PEB No. 221 at pages 7-8.

SUMMARY OF PEB 222'S RECOMMENDATIONS
REGARDING AMTRAK/BMWE AND AMTRAK/IAM DISPUTES

1. Amtrak/BMWE Dispute

BMWE Wages - Amtrak's wage proposal adopted. This provides for a $2,000 lump sum payment on signing, and periodic increases totally 18% until December 31, 1994. Plus, cost of living adjustments for each 6-month period beginning July 1, 1995. Rejected union's request for retroactivity.

Health and Welfare - Issue should be resolved on the basis of 219's recommendations which were largely based on the unions' proposals. Rejected union proposal to disaffiliate from industry-wide plan and avoid employee cost-sharing.

Total Quality Commitment - Contrary to Amtrak's proposal, Board declined to recommend incorporation of contractual language on total quality commitment into collective bargaining agreements. Parties encouraged "to give joint attention to" this issue.

Entry Rates - Consistent with industry pattern, employees in highest-rated jobs should not be subject to progression. Contrary to Amtrak's position, the Board deviated from the pattern in recommending that, for lower-rated jobs, the present schedule of 75% starting pay progressing to full rate over 5 years should be changed to a 2-year schedule starting at 90%, increasing to 95% by year-end and 100% by second year.

Per Diem - Amtrak may determine whether to continue to use camp cars or to provide a reasonable per diem in lieu thereof. In response to the union's argument that $29.00 proposed by Amtrak was too low, PEB recommended a per diem of $35.

Travel Allowance - Insufficient information to support BMWE proposal to increase travel allowance for employees travelling to temporary lodging locations and returning home on rest days.

Restricted Exercise of Seniority - Amtrak sought limitations on current right to bid or bump positions. Board recommended that employees be permitted to make one lateral bid per calendar year. Also, employees may voluntarily displace once per calendar year in a lower-rated position.

Regional and System-Wide Gangs - Geographical restrictions on the use of travelling gangs working on high-technology equipment should be eliminated throughout the Northeast.

Vacation Rule - Recommended union proposal that employees on leave for union business accumulate vacation credits, but on a prospective basis only. Declined to recommend deviation from Vacation Agreement allowing employees to take vacation in one-day increments.

Clothing Allowance - Recommended increase in safety shoe allowance from $30.00 to $60.00 but declined to recommend that Amtrak be required to provide work clothing.

Work Classification Simplification - Board adopted Amtrak proposal to establish new classifications and recommended that vacant classifications be merged with active classifications.

Work-Site Reporting - Rejected Amtrak position and industry pattern that production gang pay start at work-site. Recommended that employees be compensated for travel over 15 minutes each way.

Training Program - Any employee may bid on training opportunities. However, if there are no "acceptable bidders" for vacancies, Amtrak may select one of the three most junior employees who have completed the training, and that employee must remain in the position for a minimum period of one year.

Claims and Grievances - Recommended that BMWE be required to progress claims denied by the carrier's highest officer within 90 days, instead of 9 months. The carrier should be required to supply documents to be used in any investigation to the union 5 days prior to hearing.

Safety - No changes are necessary to present safety program.

Northeast Corridor Agreement - Recommended Amtrak proposal for per diem allowance for production and other gangs in the Northeast Corridor. Recommended $35.00 instead of the $29.00 Amtrak proposed.

Elimination of Arbitraries - Rejected Amtrak proposals to: 1) eliminate payment of 8-hour minimum for "protect service;" 2) amend Rule 30 to provide that when changing from standard time to daylight savings time, employees working one hour less be compensated for actual hours worked and 3) compensate employees called in for work not continuous with their regular assignment for actual time worked.

Intra-Craft Work - PEB provided explicit recognition that when intra-craft work of an incidental nature is performed, employees will be paid only the rate of their position.

Inter-Craft Work - Rejected Amtrak proposal to have the ability to assign work traditionally assigned to the BMWE to other crafts and to assign work of the other crafts to the BMWE.

Work Week - Amtrak may be permitted to schedule four-day weeks of ten hours per day provided that one rest day a week is a Saturday or Sunday.

Starting Time - Amtrak may be given the right to commence crew work days at any time. For employees starting at times other than 6:00 a.m. to 8:00 a.m., crew members will receive a 55¢ per hour premium.

Overtime - Rejected Amtrak proposal that overtime not be paid until after 40 hours per week. For employees who work a four-day week of ten hours per day, overtime shall be paid after ten hours work per day or after 40 hours work per week.

Paid Holidays - Rejected Amtrak proposal to delete one holiday and BMWE proposal to add a holiday.

Combined Seniority Districts - Geographic boundaries between the various seniority districts should be removed. Amtrak required to provide current employees in each of the present seniority districts with preferential treatment when exercising seniority in their current districts.

Moratorium - Recommended moratorium period for all matters on which notices might properly have been served when the last moratorium ended on July 1, 1988, to be in effect through January 1, 1995. Section 6 notices may be served no earlier than November 1, 1994.

2. IAM/Amtrak Dispute

Wages - Board adopted Amtrak wage proposal. Board describes Amtrak position as higher wages for greater work rule relief. Where work rule relief is not granted, Amtrak proposed 219 wages. Since Board did not recommend substantial work rule reform regarding shopcrafts, it is unclear which wage package is recommended.

Health and Welfare - Issue should be resolved on the basis of 219's recommendations which were largely based on the unions' proposals. Rejected union proposal to disaffiliate from industry-wide plan and avoid employee cost-sharing.

Total Quality Commitment - Contrary to Amtrak's proposal, Board declined to recommend incorporation of contractual language on total quality commitment into collective bargaining

agreements. Parties encouraged "to give joint attention to" this issue.

Modernization of Job Classifications - Amtrak proposed to have two classifications of journeymen within the shops, an "A" class to perform more highly-skilled tasks and a "B" class to perform routine and semi-skilled tasks. Board rejected this proposal as "premature."

Employee Utilization - Amtrak proposed greater flexibility in the assignment of shopcraft employees than available under the incidental work rule of the National Agreement. Board rejected this proposal as "premature" but recommended adoption of the expanded incidental work rule proposed by 219 as clarified by the Special Board.

Exercise of Seniority Rights Under the Reducing and Increasing of Forces Rules - Recommended Amtrak's proposals to allow it to more quickly stabilize forces in the event of job abolishments or displacements.

Physical Examination - Recommended proposal allowing Amtrak option to require employees who do not perform service for 30 calendar days to submit to a complete medical exam.

Monthly-Rated Positions - Amtrak sought elimination of monthly rate for certain positions that resulted in pay for a 40 hour week plus an additional eight hours straight time for Saturday, whether worked or not. Board recommended that the monthly rate continue for incumbent roadway mechanics, but new hires may be paid on an hourly basis.

Subcontracting - IAM employees are statutorily protected from furlough in the event that Amtrak pursues subcontracting arrangements. Additional restrictions proposed by IAM are not needed.

Job Classification - Board declined to recommend IAM proposal that the classification of Mechanical Technician be eliminated.

Supervisors' Seniority Retention - Board recommended IAM proposal, to which Amtrak did not present a position, requiring supervisors to pay appropriate fee to retain or accumulate seniority.

Additional Paid Holiday - Board declined to recommend IAM proposal to add a paid holiday.

Auto Train Agreement for IAM - Board declined to adopt Amtrak proposal that there be a special agreement for IAM work on the Auto Train.

Revision of Rule 44 - Rejected IAM request for revision of Rule 44 to provide that local Chairman may investigate alleged violations of the Agreement during regularly-scheduled hours without loss of pay or service credit.

Distribution of Agreements - Recommended IAM's proposal that Amtrak print and distribute a consolidated collective bargaining agreement. Amtrak did not present a position on this proposal.

Moratorium - Recommended moratorium period for all matters on which notices might properly have been served when the last moratorium ended on July 1, 1988, to be in effect through January 1, 1995. Section 6 notices may be served no earlier than November 1, 1994.

Board's Rationale for Recommendations

> "[Amtrak] has settled with a number of organizations representing about half of its employees on a wage package different from that recommended by PEB 219. By doing so, it has introduced into the present case an 'internal model' different from that established by PEB 219. In short, through negotiations and its position before us, it has taken itself out of the PEB 219 mold, at least as to wages. Hence, the possibility of a 'destabilizing' effect between those bound by the PEB 219 recommendations and others gaining a better wage benefit is not present. This is not to say that the PEB 219 recommendations may not be relevant. Rather, they will be considered, where appropriate, on the same footing as other probative material."

PEB No. 222 at page 9.

6/15/92

Please file for Cam Findlay — Oregon Medicaid Waiver

THE WHITE HOUSE

WASHINGTON

June 12, 1992

MEMORANDUM FOR GAIL WILENSKY

FROM: JAY LEFKOWITZ

SUBJECT: Oregon Medicaid Waiver

As we discussed, here are my views about the Oregon Medicaid waiver proposal. Although I am generally very supportive of using states as "laboratories of democracy," I have several concerns about the Oregon proposal that I wanted to raise with you before we reach a final decision.

As you know, the President articulated his opposition to the government's arbitrary rationing of health services in his State of the Union Address. Yet this is precisely what the Oregon program would do. Based on highly subjective judgments by Oregonians questioned in a telephone survey, the Oregon rationing plan would deny medical coverage to persons for whom it was judged that treatment would not significantly improve their "quality of life."

As the attached letter from the National Right To Life Committee illustrates, the "quality of life" values assigned to specific disabilities reflect widespread misconceptions and prejudices among the non-disabled population. Nevertheless, based on these arbitrary designations, the Oregon proposal would make life and death determinations.

The President has always spoken eloquently in support of the sanctity of human life. Under the Oregon proposal, however, treatment would not be provided for very low birthweight babies or for individuals whose prognosis for survival, or improved quality of life, is considered low. This, despite the fact that abortion-on-demand would always be covered by under Oregon's rationing plan. Granting the Oregon waiver request could leave the impression that we care more about dollars than human lives. Moreover, given the strong opposition to the Oregon proposal by the disabilities community (a copy of a letter from the Consortium for Citizens with Disabilities is attached), approval of the waiver could also undermine much of the good will generated by the President's support for the Americans with Disabilities Act.

Any Administration decision to waive regulations in order to permit federal money to be spent on a project necessarily implies some explicit approval for the broad premises of that project. Although some theories of federalism suggest that we should grant

any waiver as long as it doesn't violate federal law, this may be a case that argues in favor of some outer bounds to our enthusiasm for state experimentation.

Attachments

cc: Cam Findlay
Lee Liberman
Leigh Ann Metzger
Tom Scully

National RIGHT TO LIFE committee, inc.

Suite 500, 419 7th Street, N.W.
Washington, D.C. 20004-2293 – (202) 626-8800 (FAX) 737-9189 or 347-3907

May 14, 1992

President George Bush
The White House
Washington, D.C. 20500

Dear President Bush:

On behalf of the National Right to Life Committee and its 3,000 local affiliates, I write to urge that you reject Oregon's pending request for federal approval to institute its health-care rationing system.

We believe that the Oregon waiver should be denied on ethical, legal, and policy grounds. Our strong objections to the plan are similar to those voiced by many other pro-life organizations and religious bodies, including the Southern Baptist Convention, the U.S. Catholic Conference, and the Christian Coalition headed by the Rev. Pat Robertson.

The Oregon rationing plan is based in large part upon how randomly chosen respondents in a telephone survey rated the "quality of life" with various sorts of disabilities, on a scale of 1 to 100. Many respondents clearly assigned low numerical ratings to life with significant disabilities, reflecting misconceptions and prejudices which regrettably are still widespread among the non-disabled population. Of course, the numerical values assigned to specific disabilities in such off-the-cuff responses-- say, ranking "using a wheelchair" as a 29 and "blindness" as a 41-- could hardly be anything other than arbitrary and capricious. Yet it was precisely these subjective "quality of life" scores-- adjusted in some particulars by a 17-member commission based on obscure criteria-- that produced the ranked list of services which will determine who lives and who dies.

In your State of the Union message, you opposed health-care "reforms" that would result in "ration[ing] services arbitrarily." The Oregon plan rations not merely on an "arbitrary" basis, but invidiously on the basis of disability. The National Legal Center for the Medically Dependent and Disabled, a national support center funded by the Legal Services Corporation, has concluded that the Oregon plan would violate the Americans With Disabilities Act, and we concur in that analysis.

We know that some officials within your Administration argue that approval of the Oregon waiver would not imply agreement with the policy judgments that Oregon has made. For example, OMB official Thomas Scully said, "I'm one of Oregon's biggest fans. Even if the Oregon plan blows up and doesn't work, if Oregon's willing to do bold and crazy things, we should let them." (*American Medical News*, March 9, 1992.)

However, certain fundamental principles must define the parameters of

permissible experimentation. Your Administration would certainly not approve an "experimental" plan that rationed medical care on the basis of race. Oregon's proposal to systematically discriminate on the basis of "quality of life"/disability criteria places it equally outside of the universe of permissible experimentation.

Moreover, approval of the Oregon plan by your Administration would clearly be read by other states, by the press, and by Members of Congress, as a statement that your Administration believes that state rationing based on such invidious criteria is at least tolerable, thereby encouraging other states to adopt similar plans.

It is our earnest hope that you will reject the Oregon rationing plan as inconsistent with your Administration's strong commitment to defending the sanctity of innocent human life and the civil rights of disabled Americans.

Thank you for your consideration of this matter.

Sincerely,

Wanda Franz, Ph.D.

Wanda Franz, Ph.D.
President

Robert Powell

Robert G.B. Powell, Jr.
Vice President

David N O'Steen

David N. O'Steen, Ph.D.
Executive Director

Consortium for Citizens with Disabilities

For further information please contact:
Bob Griss, United Cerebral Palsy Associations, Inc. (202) 842-1266
Co-Chair, Health Task Force
Consortium for Citizens with Disabilities

June 3, 1992

President George Bush
The White House
1600 Pennsylvania Avenue, N.W.,
Washington, D.C. 20500

Dear President Bush,

The Consortium of Citizens with Disabilities (CCD) is a working coalition comprised of numerous national consumer, advocacy, provider, and professional organizations which advocate on behalf of our nation's 43 million citizens of all ages with physical and mental disabilities and their families. We work closely with your Administration and Congress on Federal legislation, regulations, and their implementation on diverse areas of concern such as rights, health care, housing, job training, education, transportation, and income maintenance. We were very involved in supporting your outstanding leadership in the development and enactment of the Americans with Disabilities Act (ADA). The undersigned disability organizations in the Consortium for Citizens with Disabilities have grave concerns about the Oregon Medicaid rationing plan. We are keenly aware that your Administration will soon decide whether or not to approve this plan. We strongly urge you to disapprove this plan.

Oregon's Medicaid rationing plan would set a dangerous precedent of restricting coverage to persons on the basis of highly subjective judgments about presumed quality of life. Medicaid is rationed now on the basis of how much money states are willing to commit to their Medicaid programs, but all persons who become eligible for Medicaid are covered for whatever medically necessary services the Medicaid program provides. Oregon is proposing to utilize federal Medicaid dollars by limiting what Medicaid would cover on the basis of medical diagnosis. Persons for whom it is prejudged that medically necessary services would not significantly improve the quality of their lives, would be denied those services even if they are insured.

Oregon deserves credit for trying to reduce arbitrary barriers to health care access for low income persons by proposing to extend Medicaid eligibility and promote preventive health services. However, the process which Oregon utilized to prioritize Medicaid services would create tremendous uncertainty about whether people who are insured will ultimately be covered for the medical services which they need. Determination of which services to cover will be made not on the basis of medical judgement but on the basis of fluctuations in the state budget and subjective judgments about the quality of life that persons are expected to experience. On the basis of the ranking of 709 medical condition-treatment pairs, the State Legislature would draw a line across the prioritized list of services to determine which services would be covered by the Medicaid program each year.

If the federal Department of Health and Human Services approves the prioritization process which Oregon has proposed, other states will seek to adopt similar approaches to justify the cost containment which they have not been able to achieve in their escalating health care budgets. Moreover, Oregon has already passed legislation requiring small employers to provide the same fluctuating benefit package

in the Medicaid program to their own employees and dependents through their employer-sponsored health insurance, although the state legislators exempted themselves from the rationing criteria. This prioritization process violates the non-discrimination requirements of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act by permitting rationing of medically necessary services on the basis of medical diagnosis. It would also violate the federal Child Abuse ("Baby Doe") Amendments of 1984 by permitting the withholding of medical services from children with certain conditions.

As a society, we need to start rationing excess capacity in our health care system, especially the proliferation of duplicative high tech medical equipment, and eliminating administrative waste before we condone the rationing of medically necessary services to persons who can least afford it. Oregon should be encouraged to demonstrate the value of promoting preventive services and extending health insurance coverage to the uninsured, but this should not be paid for by withholding medically necessary services from vulnerable persons whom the general public or health professionals feel have a low quality of life.

Before the rationing of medically necessary services should be tolerated in the United States, we need public policies which: (1) eliminate administrative waste; (2) reduce excess capacity; (3) control health care costs; (4) promote preventive services; and (5) distribute health care costs equitably throughout the population. Clearly, this goes beyond the control of the Medicaid program. But rationing Medicaid services to low income women and children, many with severe disabilities, will not affect the underlying causes of the health care crisis. Instead it will create a dangerous precedent which will undermine the health security that all Americans deserve and place the lives of certain people with disabilities in great jeopardy.

Please assure us you will consistently protect the rights of citizens with disabilities by not approving a Medicaid rationing plan that legitimates discrimination on the basis of health condition. We eagerly await your reply.

Sincerely,

Partial Listing of Organizational sign-ons:

AIDS Action Council
American Association on Mental Retardation
American Foundation for the Blind
Mental Health Law Project
National Association of Private Residential Resources
National Association of Protection & Advocacy Systems
National Council of Community Mental Health Centers
National Organization for Rare Disorders
National Parent Network on Disabilities
National Recreation and Park Association
National Transplant Support Network
Spina Bifida Association of America
The Arc (formerly the Association for Retarded Citizens of the United States)
The Association of Persons with Severe Handicaps
United Cerebral Palsy Associations, Inc.

Document Originally
Attached to
Following Page

6/17/92

Please file for
Cam Findlay:
Maritime Reform

file: maritime reform

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Statement Of Andrew H. Card, Jr.
Secretary Of Transportation
Before The Subcommittee On Merchant Marine
Of The Committee On Commerce, Science, And Transportation
United States Senate

June 17, 1992

I. Introduction

Mr. Chairman and Members of the Committee, I am pleased to be here today. When I appeared before you just a few months ago for my confirmation hearing, you strongly emphasized the need to evaluate our Nation's maritime policy. Since that time, along with other members of the Administration, I have been giving maritime issues a great deal of time and attention.

As many of you in this room are well aware and as I quickly learned, developing a maritime policy is much easier said than done. There have been occasions during this process when I identified with the character from Greek mythology who was condemned to pushing a stone up a hill, only to have it escape near the top, and roll back down, requiring him to start all over again. With your help, I'm convinced that meaningful maritime reform need not be a sisyphean enterprise.

Operations DESERT SHIELD/DESERT STORM reinforced the importance of reliable sealift for our national security. In total, over 3.2 million short tons of dry cargo and over 6 million tons of petroleum product were delivered through March 10, 1991, the official date of the end of the reinforcement operation. Of the total cargo needed to support allied forces in the Persian Gulf, 95 percent went by sea. Over 80 percent of the

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dry cargo sealift required for Operations DESERT SHIELD/DESERT STORM was carried on U.S.-flag ships. The Department of Defense (DOD) used not only dedicated vessels, but also U.S.-flag vessels operating in "normal" commercial service.

But today, America's merchant marine is in a state of crisis. The privately owned U.S.-flag merchant fleet currently ranks 16th in the world in number of ships with 393 seagoing vessels. Forecasts indicate that by the year 2000 -- absent any change in maritime policy -- the fleet will shrink to 117 ships, with a carrying capacity of 5.9 million deadweight tons, down from nearly 20 million today.

In 1979, 18 major U.S.-flag liner companies operated in the foreign trades. Today, there are only 6, and these companies operate only 120 vessels. Recently, the two largest U.S.-flag liner operators, American President Lines (APL) and Sea-Land, said they will withdraw their vessels from the U.S. flag starting in 1995 unless reforms are implemented to help U.S.-flag operators compete in world markets.

As the number of ships in the U.S.-flag fleet declines, so does the number of civilian merchant seafarers in the active workforce. In 1960, the U.S. flag fleet supported slightly over 100,000 active seafarers. By 1990, these numbers had dropped to about 27,000 active seafarers. Additionally, no commercial ships for the foreign trades are being built in American shipyards.

Consequently, America must rely on foreign-flag ships and foreign crews to carry the vast majority of its import and export

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cargoes. In fact, since 1985, foreign-flag ships have carried more than 80 percent of the U.S. oceanborne liner trade, and more than 95 percent of our bulk commodities.

Without reform of our archaic maritime laws, America's foreign trade merchant fleet may be virtually extinct by the year 2000.

The U.S. maritime industry provides a significant benefit to the U.S. economy. Having a strong merchant marine provides jobs and an income stream to the economy. It also supports a maritime infrastructure that includes an educational and training base that is needed for national security. Increasingly, in today's world, our strong maritime companies have been in the forefront of intermodalism, contributing to a strong comparative advantage we hold vis-a-vis our major competitors.

Total revenues earned by the U.S. water transportation industry are nearly $21 billion. Nearly $10 billion in revenues are earned from the movement of freight by water. Over $8 billion in revenues are earned from services incidental to water transportation. More than $2 billion in revenues are earned from the water transportation of passengers.

The U.S. maritime industry also contributes toward the U.S. Gross Domestic Product. In 1990, it generated over $12.1 billion in balance of payments receipts. This includes over $4.2 billion in export freight and charter hire payments to U.S. carriers by foreign entities.

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Maritime Review. Shortly after my confirmation, the Department of Transportation undertook a vigorous examination of existing and potential commercial maritime policies and programs. In April, the White House Policy Coordinating Group (PCG) created a Working Group on Maritime Policy that included the heads of 17 departments and agencies. Its purpose was to advise the President on what is needed to ensure vital national security sealift capacity while sustaining a viable commercial presence.

As the result of this effort, the Administration will propose legislation and take administrative actions that will set a new course for America's merchant marine, one which will enhance its competitiveness and improve its viability into the 21st Century. Our efforts have been guided by the President's desire to deregulate the industry and to increase its productivity and international competitiveness.

No comprehensive policy would be complete without addressing two sets of laws that have long supported the American merchant marine. While the PCG focused its review primarily on the foreign trade fleet policy, it did review Section 27 of the Merchant Marine Act of 1920 (the Jones Act). The Jones Act requires that the domestic waterborne commerce of the United States be carried on vessels constructed in the United States, owned by U.S. citizens, and registered under the American flag. The Jones Act has fostered a domestic shipping industry and provided a commercial market for American shipyards. The recent

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Department of Defense Mobility Requirements study included a reliance on the Jones Act fleet to provide some of the sealift needed for sustainment shipping in national emergencies. The Administration reaffirms its support for the integrity of the Jones Act.

Several laws require federal agencies to ship a significant portion of Government-generated cargoes on U.S.-flag ships. These laws guarantee the availability of cargo to U.S.-flag ships and, for some operators, make possible their continued existence. Of the agricultural humanitarian aid cargoes alone, the amount carried by U.S. flag operators has declined from 6 million tons in 1987 to a projected 4.6 million tons in 1992, a decline of almost 25 percent. Existing preference cargo requirements should continue to be enforced.

II. The Course for Action

The Administration has reaffirmed that an operating U.S.-flag merchant fleet is critical to meet our national defense and economic security needs.

Regulations that unreasonably inhibit our carrier's operations must be removed. To be successful, our fleet must have flexibility to respond to rapidly changing opportunities and market conditions.

U.S.-flag carriers cannot meet these challenges without the ability to build or buy new, more efficient vessels needed to upgrade and modernize their fleets.

Eleven Key Proposals. The Administration proposes the

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following specific actions:

(1) The Capital Construction Fund (CCF) is a tax-deferral program designed to assist U.S.-flag operators in amassing the capital needed to acquire vessels. The Administration proposes allowing CCF deposits to be used to acquire vessels in the worldwide market for operation in international trades. We also propose broadening the list of eligible uses to include lease payments for new vessels, and acquiring U.S.-built vessels for the coastwise and inland waterways trades. To allow for these benefits, no new contributions would be permitted from June 1, 1992, to the date of enactment, after which the inside buildup of earnings would be taxable currently.

In providing this flexibility, the Administration in no way intends to limit vessel acquisition to foreign sources.

(2) The Credit Reform Act requires a specific appropriation to cover the risk and administrative costs of new loan guarantee commitments made under Title XI federal ship financing program. The Administration supports the Title XI program to help finance construction and reconstruction in domestic shipyards. The appropriations request for this loan guarantee program will be determined in and through the annual budget process.

(3) In order further to promote more competitive U.S. shipyards, the Administration will continue to work vigorously toward elimination of subsidies provided by foreign governments to their shipyards. It will pursue this issue through bilateral

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negotiations and through methods of disciplining countries that subsidize shipyards, which could include an expedited Section 301 action, a GATT (General Agreement on Tariffs and Trade) case under the Subsidies Code, or other feasible approaches. Importantly, no benefit from our maritime proposal will be allowed to accrue to those yards found by the U.S. Trade Representative to be excessively subsidized. The Administration stands ready to impose sanctions prospectively on ships built in foreign yards determined through the U.S. Trade Representative's investigative process to be excessively subsidized. In addition, the Administration will initiate a research and development program to promote shipyard productivity. We also will initiate an export promotion program for U.S. shipyards, subject to annual appropriations review.

(4) The Administration will enforce current cargo preference laws while seeking greater flexibility for U.S.-flag carriers to operate more efficiently under those programs. The requirement that new foreign-built or foreign-registered liner vessels must wait three years to carry preference cargoes after switching to U.S. registry should be eliminated. Foreign-built bulk vessels constructed after the date of enactment of new legislation registered under the American flag also should be immediately eligible for preference cargoes. In addition, foreign-flag feeder vessels should be eligible in conjunction with U.S.-flag line haul vessels to carry preference cargoes.

(5) The Administration will accelerate efforts to align

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U.S. ship design and construction and stability standards more closely with accepted international standards, which will reduce costs and significantly enhance carriers' ability to compete internationally.

(6) Current laws impose citizenship tests for ownership and control of U.S.-flag vessels that now benefit from some maritime promotional programs. The Administration proposes relaxing U.S. citizen ownership requirements for maritime promotional programs. This action will allow U.S. ship-owning companies meeting U.S. citizenship requirements to attract more foreign equity capital. It also will make it easier for them to enter into joint ventures with foreign companies.

(7) In addition, currently the U.S. Government must approve the sale or transfer of any U.S.-flag vessel from a citizen to a non- citizen. This restriction, along with the one outlined above, discourages investment in the U.S.-flag fleet. The Administration will, in effect, eliminate the need for Government approval of transfers of vessels that are not militarily useful, except during periods of national emergency. These changes should encourage the acquisition of additional newer tonnage into the U.S.-flag fleet. This enhanced asset mobility will assist in the infusion of capital into the U.S.-flag fleet by both American and foreign investors.

(8) U.S.-flag operators who elect to have non-emergency vessel repair work done by foreign shipyards are presently required to pay a tax of 50 percent on the cost of the work

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performed. This policy was enacted to encourage operators to use U.S. shipyards, but it has not worked. The Administration proposes, subject to budget offsets, decreasing, then repealing, the ad valorem duty to reduce substantially the cost of vessel maintenance and repair for the U.S.-flag fleet.

(9) Issues of tax treatment of foreign-source income, including Subpart F, and alternative minimum tax are relevant to a number of U.S. multinational businesses, including the maritime industry, and will be considered comprehensively by the Department of Treasury within the upcoming months.

(10) The Administration will continue to work with the Federal Maritime Commission to achieve as much operating flexibility and as many benefits of competition as the 1984 Shipping Act permits, such as: permitting parties to amend service contracts' "essential terms"; permitting global service contracts to be filled with the FMC; ensuring that ocean conferences do not impede individual carriers' ability to take independent rate actions; and, reducing tariff restrictions on non-vessel operating common carriers, including eliminating tariff filing for small business NVOCCs and permitting cargo consolidators greater pricing flexibility. However, in addition to this, shippers and carriers must sit down together on ocean shipping issues and seek ways to enhance our ability to move commerce efficiently and cost effectively. I will therefore encourage a serious dialogue immediately and will monitor its progress closely.

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(11) A number of recommendations encourage increased productivity within both the shipbuilding and ship operating industries. The Administration strongly believes that productivity enhancements, such as those that could be realized through the collective bargaining process, are essential to making our fleet more competitive. We urge maritime labor and management to sit down to assess critically existing work rules with a goal to improving shipboard productivity in line with technological advances in the fleet. The Administration will, for the time-being, defer submission of legislation on productivity enhancements in order to allow the collective bargaining process time to address these issues.

National Defense Determinations. Several policy decisions directly affect the relationship between the merchant marine and the Department of Defense (DOD). For example, DOD will not pursue any build and charter programs for the lease of ships that would be detrimental to U.S. liner operators or distort the market for commercial ships.

DOD will consult with the Maritime Administration to determine the effect on the commercial market of any such program.

In addition, a parallel National Security Council Defense Policy Coordinating Committee review reported to the PCG Working Group that "The Department [of Defense] needs well-trained and reliable crews for both government-owned and commercial ships and depends on the U.S. commercial fleet to provide these crews for

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government-owned ships." To meet this need, a reserve program may be required to assure that government-owned sealift vessels can be crewed rapidly and reliably in an emergency. The Departments of Transportation and Defense will continue to study such an approach.

For now, persons leaving jobs ashore to crew sealift ships during national emergencies should have reemployment rights similar to those of military reservists who are called to active duty, and we strongly endorse passage of the pending Administration bill to provide such reemployment rights.

As an additional step, the Administration will review Government procedures for the procurement of ocean transportation by all agencies, military and civilian. We seek to identify areas which can be modified to achieve greater efficiencies and benefits to U.S.-flag ocean carriers and the Government, while not increasing the cost of shipping services to the Government.

A Contingency Retainer Program. It became clear during the policy review process that even if the Government were to adopt all these recommendations, the costs of operating U.S.-flag merchant ships would remain higher than those of many foreign-flag competitors. Lower wage rates and direct and indirect subsidies by foreign governments contribute to the disparity.

Therefore, in order to assure the continued operation of American-flag merchant ships, the Administration will propose legislation to create a contingency retainer program for U.S.-flag operators. The program will guarantee that ships will

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remain available to meet national security requirements while also maintaining an American presence in international commercial shipping. To be eligible to participate in this program, an operator would be required to keep the vessel in active commerce under the U.S. flag, commit to improving its productivity and operating efficiency, and make it available in times of emergency. To dovetail with vessel financing timetables, we believe that the government program should extend over a seven-year period. We envision payments beginning at $2.5 million per ship per year for the first two years and phasing down to $1.6 million per ship per year in the final year.

While we have not yet worked out all the details of the new program, we know that it must return to the taxpayer good value for money spent. The program must contain incentives to encourage efficient, cost conscious operations.

This system of contingency payments would differ significantly from the present operating-differential subsidy (ODS) program. It would not be based on a wage differential. The Administration affirms its previous policy statement that existing ODS contracts will be honored through their remaining terms, but that no new ODS contracts will be signed and current contracts will be allowed to expire. However, we will encourage presently subsidized operators instead to participate in the new program.

The new program will not be encumbered by the operating restrictions that are applied to the ODS program. For example,

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operators would be able to acquire vessels worldwide, operate then anywhere in the foreign trade and in conjunction with foreign-flag feeder vessels. Operators will be free to compete efficiently and flexibly for international cargoes.

III. Conclusion

In summary, Mr. Chairman, the dual role of the privately owned American merchant marine remains valid.

I have outlined for you today the elements of a policy that has as its centerpiece an incentive program that is critical if we are to meet our national security sealift requirements, keep ships under the U.S. flag, and make them more competitive. This program is supplemented by a series of administrative, regulatory and legislative proposals to enhance the competitiveness of the American merchant marine and the efficiency of ocean shipping services.

We will proceed promptly with those actions that can be implemented administratively. We will also submit legislation for our remaining proposals.

Mr. Chairman, I appreciate the opportunity to present the Administration's maritime reform package, and I look forward to working with the Committee in securing the future for America's vital maritime industries.

Thank you very much. I will be pleased to respond to any questions you may have.

Document Originally
Attached to
Following Page

6/12/92

Please file for
Cam Findlay

Maritime Reform

1

Maritime Reform 6/11

DoD
Cutting troop strength by half
Cutting reserves etc
- DoD needs should be focus

Damman - fundamental Q's
Is there nat'l security reqmt?
What is it?
What interest is there to subsidize fleet beyond (#2?

DoD
70,000 TEU's is nat'l security reqmt

Howe said 70,000 is the number - conservative reqmt - assumes fairly unlikely scenario

Damman
→ No justif for subsidy w/o nat'l security
→ How do we get from 25 → 83

DoD
Could have used zero ships
- We need 25 ships - not prepared to pay for more
- And not prepared to pay anything above cargo preference indirect subsidy

- if more ships require more $, they'd prefer fewer ships - they can do it w/ US fleet

Clayton
So if DoD not willing to go above 25, any add'l money requires different justif from DoT

Bursey
$2.5 mm for 74 ships
Incentivizing w/ efficiencies for fewer crew
[Over & above cargo preference]

Darwan
Easy policy answer - more efficiencies but politics means those not possible

Bursey
Pay for it thru phase-out of ODS subsidies as they expire

DoD
We're not convinced there would be 25 ships w/o add'l fin. support

6/18/92

Please file for
Cam Findlay -

Regulatory Reform

file
reg return

THE WHITE HOUSE
WASHINGTON

DATE: 6/18

TO: SKS

FROM: **D. CAMERON FINDLAY**
Deputy Assistant to the President and
Counselor to the Chief of Staff
1st Floor, West Wing, x6594

- ☐ **FYI**
- ☐ **Appropriate Action**
- ☐ **Let's Discuss**
- ☐ **Per Our Conversation**
- ☐ **Per Your Request**
- ☐ **Please Return**

6/18/92
CAM
Tell HHS
they c.c. us
directly that I
want them to make
more sense

COMMENTS:

I've been keeping tabs on this with the Competitiveness Council. They are keeping pressure on HHS to allow a

one year extension.

PEPSICO INC.
700 ANDERSON HILL ROAD
PURCHASE, NY 10577-1444
TEL. (914) 253—2862

DCF HAS SEEN

GALEN J. RESER
DIRECTOR
GOVERNMENT AFFAIRS

June 12, 1992

CONFIDENTIAL

Leader:

Not to sound like a broken record . . . but, despite the welcome news in your April 22 letter that HHS would be granting the full 12-month extension being sought by the food industry in order to comply with the new federal labeling law, we now hear that only a nine-month extension is being considered.

Congress gave the agency discretion to delay application of the effective date for up to one year on a finding that compliance with the statutory six month period for making label changes would cause an undue economic hardship. We believe that an adequate showing to justify a decision of the Secretary to grant such an extension has been made.

Quite simply, six months from the date final rules are issued is an impossibly short time to make changes on more than a quarter of a million labels that will require modification as a result of the new rules. The economic costs associated with attempting to compress this enormous task into six, rather than eighteen, months would be staggering. Of course, costs go down in relation to the period of time beyond six months that would be permitted for making label changes. The more time there is, the greater the cost savings to manufacturers and, therefore, the public.

FDA's own regulatory impact analysis, published with its proposed rules, found that extending compliance beyond six months would result in substantial savings that arguably outweigh any foregone benefits. The agency's own cost study -- which the food industry believes underestimates actual costs -- indicates that if the compliance date is extended by one year, total costs would be reduced from $1.5 to $0.6 billion, which represents a sixty percent reduction in costs.

In our comments to FDA, we included expert opinion evidence from an executive of the label printing industry. In short, the label printers -- the experts who will have to do the job -- believe it is impossible to change all the involved labels in less than eighteen months, at an absolute minimum. They have stated that there simply is not enough capacity to make all changes within six months.

Sam, a nine-month decision makes nobody happy. The public interest groups blast the Administration and accuse you of endangering public health and the industry is left scratching its head about fuzzy-headed bureaucratic decision making. The sad truth is that the giant food companies will comply -- they have the economic muscle to command all the nation's printing capacity -- the people who get hurt are the small business, family-owned, limited product companies who get shoved to last in line and may find themselves facing stiff penalties for non-compliance. Yesterday the *Wall Street Journal* ran a piece entitled "Small Businesses Complain That Jungle Of Regulations Jeopardizes Their Futures" . . . I immediately thought of this food labeling law as but a good illustration of this problem.

Galen

AMERICAN PRESIDENT COMPANIES, LTD.

Facsimile Transmission Sheet

TOTAL NUMBER OF PAGES: 4
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DATE 6/19/92

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TO: Cam Findlay FAX #

FROM: M M Murphy

SUBJECT: Labor Position on Admin Maritime Reform

6/22/92

MESSAGE:

Please file for

Cam Findlay -

Maritime Reform

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For Immediate Release June 18, 1992

MARITIME LABOR WELCOMES ADMINISTRATION'S PROPOSALS TO REBUILD U.S. FLEET

Washington, D.C. -- The presidents of America's major maritime unions, in a joint statement released today, commended Transportation Secretary Andrew Card, who yesterday announced the details of a new maritime policy reform initiative.

The union presidents -- (listed in alphabetical order by last name) Dave Arian, International Longshoremen's and Warehousemen's Union (ILWU); John M. Bowers, International Longshoremen's Association (ILA); Timothy A. Brown, International Organization of Masters, Mates & Pilots (MM&P); Henry Disley, Marine Firemen's Union (MFU); Gunnar Lundeberg, Sailor's Union of the Pacific (SUP); Raymond T. McKay, American Maritime Officers, District 2 Marine Engineers Beneficial Association (AMO, District 2 MEBA); Michael Sacco, Seafarers International Union (SIU); and Gordon M. Ward, District No. 1 - Pacific Coast District, Marine Engineers Beneficial Association (District No. 1 - PCD, MEBA) -- represent the majority of American merchant mariners working aboard U.S.-flag commercial vessels as well as shoreside personnel in American ports.

The union officers representing seagoing members, in September of 1991, issued a call-to-action to all segments of the maritime industry and to the government to work together with labor to maintain the American flag on the high seas. The unions have consistently pledged to support those policies and programs which will carry the U.S.-flag merchant marine into the next century, and which will enhance the competitiveness of American-flag, American manned vessel operations.

To this end, the labor leaders expressed their support for

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various aspects of the program announced by Secretary Card as "critical first steps to put our industry on the road to recovery. We are especially pleased," they said, "that changes are proposed which will help American operators acquire new vessels for operation under the United States flag."

"Most importantly," according to the heads of the maritime unions, "many of the proposals will help put American vessels on a more equal footing with their foreign flag competitors and will, in time, help eliminate the need for American operators to expand foreign vessel operations." The ability to acquire vessels from worldwide sources for operation under the United States flag; the right for such vessels to carry government cargo; and the creation of a new "contingency retainer program" to guarantee the availability of a U.S.-flag commercial fleet in time of emergency were singled out as particularly helpful by the unions.

"Our country's requirements during Operation Desert Shield/Desert Storm proved once again that commercial shipping capability is an indispensable component of our nation's seapower strength, and that the only reliable commercial shipping capability is provided by a privately-owned U.S.-flag fleet manned by highly trained American merchant mariners. Many of the proposed maritime policy initiatives," according to the union presidents, "should at least help form the vitally important framework necessary to maintain and enhance the U .S.-flag shipping capability so critically important to the economic, political and military security of the United States."

The presidents of the eight maritime unions also credited the persistent efforts of Senator John Breaux. The statement issued by the presidents also recognized the actions of Senator Trent Lott and Congressman Walter Jones in helping formulate a new maritime policy in conjunction with Secretary Card. The unions reaffirmed their commitment to work with Senator Breaux, Senator Lott and Congressman Jones to move a meaningful, comprehensive maritime policy reform package through the Congress as quickly as possible.

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Note: Attached is a copy of the full text of the statement issued by the maritime union presidents.

STATEMENT BY MARITIME UNION PRESIDENTS
ON ADMINISTRATION'S POLICY ANNOUNCED JUNE 17, 1992

June 18, 1992

We welcome the administration's maritime policy presented to the Senate Commerce Committee yesterday by Secretary of Transportation Andrew Card. If much of what Secretary Card has proposed comes to fruition, the United States will have a U.S.-flag fleet on the high seas, as befits the nation's status as the major world power.

Overall, we believe the administration's proposed maritime policy, if put into place, will have beneficial effects on the American economy, the nation's defense capability and the employment situation. Secretary Card's proposals represent critical first steps to put our industry on the road to recovery.

We commend President Bush and Secretary Card for their vision -- and commitment to fulfill that vision -- of an America with a U.S.-flag fleet. We recognize and deeply appreciate the ongoing and persistent efforts of Senator John Breaux, chairman of the Senate Subcommittee on Merchant Marine of the Commerce Committee, which oversees shipping issues in that legislative body. Additionally, we thank Senator Trent Lott, ranking minority member of that panel, as well as Congressman Walter Jones, chairman of the House Merchant Marine and Fisheries Committee for their role in this process. We recognize that the efforts of these legislators kept the issue of a maritime policy front and center on the nation's agenda.

As history demonstrates, the commitment of the President of the United States to a strong American merchant marine is an essential ingredient to the enactment of any forward-looking maritime legislation. This was the case in the enactment of the Merchant Marine Act of 1936 and the Merchant Marine Act of 1970, two pieces of legislation that serve as the underpinning of the U.S.-flag fleet, both charted by the administration of the time and supported by Congress and the industry.

Those Acts have served us well, but no program or policy is flexible and elastic enough to function eternally in this constantly and rapidly changing world. We believe, just as those acts were crafted to meet the realities of world shipping in those times, the administration's proposals can form the core of a maritime initiative that continue to serve the nation's interest while also enacting new approaches that will make the U.S.-flag fleet competitive in today's global trades. This, we believe, can be the Merchant Marine Act of 1992.

While we have not had an opportunity to fully study the entire package put forward by the Secretary, on initial review we believe we can fully support the thrust of the initiative. In particular, we are especially pleased that changes are proposed which will help American operators acquire new vessels for operation under the U.S. flag.

Most importantly, many of the proposals will help put American vessels on a more equal footing with their foreign-flag competitors and will, in time, help eliminate the need for American operators to expand foreign vessel operations. For example, such proposals include the right of American operators to acquire vessels from worldwide sources for

operation under the U.S.-flag, the right for such vessels to carry government cargo, and the creation of a new "contingency retainer program" to guarantee the availability of a U.S.-flag commercial fleet in time of emergency. We also welcome the initiatives designed to encourage shipbuilding in the United States.

Our country's requirements during Operation Desert Shield/Desert Storm proved once again that commercial shipping capability is an indispensable component of our nation's seapower strength, and that the only reliable commercial shipping capability is provided by a privately-owned U.S.-flag fleet manned by highly trained American merchant mariners. Many of the proposed maritime policy initiatives should at least help form the vitally important framework necessary to maintain and enhance the U.S.-flag shipping capability so critically important to the economic, political and military security of the United States.

For our part, as elected representatives of licensed and unlicensed marine personnel, we pledge to work with the administration, the Congress and the industry to ensure that such a policy becomes a reality.

Additionally, as we have done in the past, we will work with our contracted operators -- within the framework of our collective bargaining agreements -- to take steps that will allow the United States fleet to be the most productive one in the world. As each union has demonstrated in the past, as new technology and new ships are brought into line, management and labor can work together to ensure that our American workers are properly trained and the best qualified in the world.

American maritime labor, the industry and Congress have demonstrated a willingness to work for a revival of a U.S.-flag shipping capability. With the addition of administration support to the equation, we are hopeful that what once looked to be a formidable task has now become a reachable goal.

Signed by (in alphabetical order):

Dave Arian, President, International Longshoremen's and Warehousemen's Union

John Bowers, President, International Longshoremen's Association

Timothy A. Brown, President, International Organization of Masters, Mates & Pilots

Henry "Whitey" Disley, President, Marine Firemen's Union

Gunnar Lundeberg, President, Sailors' Union of the Pacific

Raymond T. McKay, President, American Maritime Officers, District 2 MEBA

Michael Sacco, President, Seafarers International Union

Gordon M. Ward, President, District No. 1 - Pacific Coast District, MEBA