

9/7/77 [1]

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THE PRESIDENT'S SCHEDULE

Wednesday - September 7, 1977

- 7:45 Dr. Zbigniew Brzezinski - The Oval Office.
- 8:30 Meeting with Congressional Black Caucus.
(45 min.) (Mr. Frank Moore) - The Cabinet Room.
- 9:30 Panama Canal Briefing for Key Institutional Leaders.
(30 min.) (Mr. Hamilton Jordan) - The State Dining Room.
- 10:30 Mr. Jody Powell - The Oval Office.
- 11:00 Meeting with Senators John C. Stennis, Sam Nunn,
(30 min.) Henry M. Jackson and Robert B. Morgan... (Mr. Frank
Moore) - The Cabinet Room.
- 12:30 Lunch with Mrs. Rosalynn Carter - Oval Office.
- 1:30 Meeting with the Honorable Michael Norman Manley, M.P.
(30 min.) Prime Minister of Jamaica. (Dr. Zbigniew Brzezinski).
The Oval Office and the Cabinet Room.
- 2:45 Meeting with His Excellency General Kjell Eugenio
(30 min.) Laugerud Garcia, President of the Republic of
Guatemala. (Dr. Zbigniew Brzezinski) - The Oval
Office and the Cabinet Room.
- 4:00 Meeting with His Excellency Carlos Andres Perez,
(30 min.) President of the Republic of Venezuela. (Dr. Zbigniew
Brzezinski) - Oval Office and the Cabinet Room.
- 5:15 Former President Gerald R. Ford - The Oval Office.
(30 min.)
- 6:50 Depart via Motorcade en route Pan American Union Building.

Attend Reception Hosted by OAS Secretary General H.E.
Alejandro Orfila and Signing of the Panama Canal Treaty.
- 8:05 Depart Pan American Union Building en route White House.
- 8:30 State Dinner Following Signing of the Panama Canal Treaty.
The State Floor.

9/7/77

THE WHITE HOUSE
WASHINGTON

Guatemala - Langerud
FM MOLINA AM MALDONADO

G - Panama relations

Belize - G - G Bu
Moko vs Monkey

Human Rts +

Fact of San Jose

Election Campaign - 3/78

Wife was in hospital

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9/7/77

THE WHITE HOUSE
WASHINGTON

Zanzer

Venezuela - Perez
FM CONSALVI Amb @ Ir. bagren
Bolivia / Chile + Peru
Caribbean / World / Int BK
Int 71 Fuel Cycle 10/19-21
OPEC mtg 12/77

Videla Crisis *Platellide*

THE WHITE HOUSE
WASHINGTON

9-7-77

Black Caucus

Unemp 12 mil (2x) 40% Aug → Aug
10 yrs - Emp +20% = Work force 2x

Enforce anti-discrimination (EEOC)

1.4 mil B J I P ^{2nd College} (Low income)

EOETA ^(local) = 1.8 mil min youth (60%
(128 B, 1) vs 20% of total unemp youth
5.6 mil

= Urban policy - Pat Harris

Regular mtgs - me and/or VP
Dinner 9/24 = Chmn Mitchell

= Targeting on cities

PW - 10% set aside (228,000 jobs)

8(a)

Youth employment - 200,000 jobs

Unemp. most serious = -1%

THE WHITE HOUSE
WASHINGTON
September 7, 1977

Bob Lipshutz

The attached was returned
in the President's outbox
today and is forwarded to you
for appropriate handling.

Rick Hutcheson

RE: ROBERT J. BLACKWELL, DEPT.
OF COMMERCE

THE PRESIDENT'S SEAL

THE WHITE HOUSE
WASHINGTON

September 2, 1977

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/
C
/

MEMORANDUM FOR THE PRESIDENT

FROM: ROBERT LIPSHUTZ *RJL*
SUBJECT: Robert J. Blackwell,
Department of Commerce

Attached is a report which I obtained from the Office of the General Counsel of the Department of Commerce regarding Mr. Blackwell and some of the accusations made against him.

It is my understanding that the job which Blackwell handles is susceptible to a tremendous amount of criticism, regardless of how it is handled.

The Secretary of Commerce and her General Counsel are fully aware of the sensitivity of this particular job, the accusations made from time to time in this particular matter which was referred to you and others, and the results of their investigations into them. The conclusion reached is that Blackwell is a man of impeccable integrity and ability, and they have tremendous confidence in him.

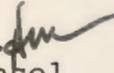
Regarding an earlier accusation against Mr. Blackwell, which arose during the previous Administration and carried over into your Administration, the Department of Justice itself actually reviewed that particular matter (the "Burmah Oil" situation), and cleared Mr. Blackwell of accusations made against him in that situation. I had communicated with both Secretary Kreps and the Justice Department myself when it was brought to our attention.

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September 2, 1977

MEMORANDUM TO ROBERT LIPSHUTZ
COUNSEL TO THE PRESIDENT

From: Homer E. Moyer, Jr. 
Deputy General Counsel

Subject: Maritime Issues

The memorandum we discussed by phone earlier today touches on two separate issues: (1) the Department's role in the State of Alaska's bid process for disposing of its royalty oil from the North Slope; and (2) conflict of interest issues arising from Assistant Secretary Blackwell's having received a job offer from several shipping firms.

This memorandum briefly discusses each of these two issues. Some related background materials are attached.

I. Disposition of the State of Alaska's
royalty oil from the North Slope

The State of Alaska, which receives as royalty 12-1/2% of the crude oil produced from the Alaska North Slope, has for several months been considering proposals for how best to dispose of its royalty oil. One proposal has been advanced by an Alaskan corporation, Alaska Consolidated Shipping, Inc. (ACS), 51% of which is owned by six Alaskan Native corporations, 49% of which is owned by Seatrain Lines, Inc.. Seatrain is a New York corporation which, among other things, operates a shipbuilding facility at the site of the former Brooklyn Navy Yard.

The ACS proposal to the State of Alaska is of interest to Commerce for several reasons. Since 1969 the Economic Development Administration (EDA) has furnished Seatrain with financial assistance and guarantees totaling some \$200 million. In addition, the Maritime Administration (MarAd) provided loan guarantees and construction



differential subsidies for the construction of four tankers. In early 1975 Seatrain's financial condition worsened and work was suspended on the last two of these four tankers. \$40 million of EDA's assistance was granted at that time as a working capital loan to permit completion of the vessels. Although this loan has served its purpose, the viability of the Seatrain shipyard continues to be a concern.

In March of this year the Assistant Secretaries of both EDA and MarAd recommended to Secretary Kreps that she communicate to Governor Hammond the Department's interest in the ACS proposal to the State of Alaska. This she did by a March 10, 1977 letter (a copy of which is attached) and, later, by visit of Departmental officials with the Governor. As you will note, the first paragraph of the Secretary's letter states her expectation that the Governor will select a proposal that "offers the greatest benefits to the people of Alaska." To the best of my knowledge, no letter was sent from Assistant Secretary Blackwell to Governor Hammond. The Secretary's letter has been made public. The selection of a proposal is yet to be decided by the State.

II. Assistant Secretary Blackwell's Job Offer

In June of this year Blackwell was approached by certain shipowners about employment as the head of a new industry association that is being formed. Blackwell immediately notified the Secretary of this inquiry and disqualified himself from any official actions concerning the companies involved.

In the context of the memo you described, two points should be made about this job offer. First, it was wholly unrelated to Alaskan royalty oil and the ASC proposal. Neither Seatrain nor ASC was or is expected to be involved in the proposed industry association. Indeed, unlike Seatrain, none of the companies involved in the proposed association is engaged in the operation of tank vessels or the carriage of oil.

Second, Blackwell has rejected the offer and is no longer negotiating with representatives of the proposed association. As you know, this offer prompted suggestions of impropriety by Congressman McCloskey (and attendant bad press) during hearings before the House Merchant Marine and Fisheries Committee. Several days later, however, McCloskey apologized

on the record to Blackwell, and the issue has since subsided. For your information, I attach a transcript excerpt of McCloskey's remarks.

Please let me know if you would like any additional information on these issues.

Attachments

1255 Mr. McCloskey. I do, Mr. Chairman, but I want to take the
1256 opportunity to put carefully on the record at this point my
1257 respect and absolute belief in Mr. Blackwell's integrity and
1258 honorable service to this country for 23 years. If there
1259 were any inference to the contrary as a result of our heated
1260 exchange the other day, I would like to remove them because
1261 I don't know of a person in government service who has had

1262 more opportunity to reap personal benefit by the stroke of a
1263 pen in any number of maritime programs and who has
1264 religiously avoided any kind of personal benefit from the
1265 job he has done. I want to make that clear because I have
1266 immense respect for Mr. Blackwell.

THE WHITE HOUSE
WASHINGTON

- FOR STAFFING
- FOR INFORMATION
- FROM PRESIDENT'S OUTBOX
- LOG IN/TO PRESIDENT TODAY
- IMMEDIATE TURNAROUND

ACTION
FYI

*Comments due 5:00 PM today.
No extensions.*

	/	MONDALE
		COSTANZA
/		EIZENSTAT
		JORDAN
		LIPSHUTZ
		MOORE
		POWELL
/		WATSON
/		LANCE
/		SCHULTZE

	ENROLLED BILL
	AGENCY REPORT
	CAB DECISION
	EXECUTIVE ORDER
	Comments due to Carp/Huron within 48 hours; due to Staff Secretary next day

	ARAGON
	BOURNE
	BRZEZINSKI
	BUTLER
	CARP
	H. CARTER
	CLOUGH
	FALLOWS
	FIRST LADY
	HARDEN
	HUTCHESON
	JAGODA
	KING

	KRAFT
	LINDER
	MITCHELL
	MOE
	PETERSON
	PETTIGREW
	POSTON
	PRESS
	SCHLESINGER
	SCHNEIDERS
	STRAUSS
	VOORDE
	WARREN

THE WHITE HOUSE
WASHINGTON

September 7, 1977

Stu Eizenstat
Jim Schlesinger

The attached was returned
in the President's outbox today
and is forwarded to you for
appropriate handling.

Rick Hutcheson

RE: FINAL DECISION ON AN ALASKAN
NATURAL GAS TRANSPORTATION
SYSTEM

THE WHITE HOUSE
WASHINGTON

10
1

Mr. President:

Schlesinger and Eizenstat
recommend that you announce
the results of the oil
pipeline negotiations with
the Canadians at tommorrow's
(Thursday) meeting with
Prime Minister Trudeau.

Rick

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THE WHITE HOUSE
WASHINGTON

Jim & Stu
Assess OMB
Comments
J.C.

MEMORANDUM FOR: THE PRESIDENT
FROM: JIM SCHLESINGER 
SUBJECT: Final Decision on an Alaskan Natural Gas Transportation System

I. Canadian Negotiations

Last Friday in Ottawa, tentative agreement on an overland pipeline proposal for your consideration was reached. Resolution of the remaining difficult issues included agreements on routing, cost-sharing and levels of taxation.

The basic components of the agreement include:

1. Routing - The pipeline would follow the original Alcan Highway route with no Dawson Diversion. This agreement would save us \$630 million dollars initially, as well as the 6 cents in cost of service that would have been added by the Dawson Diversion.

2. System Efficiency - A higher-capacity pipeline system would be installed south of Whitehorse, to carry both U.S. and Canadian gas flows. A joint testing commission would evaluate the technical feasibility, safety and reliability of a 1680 psi 48-inch diameter pipe design and a 1120 psi 54-inch design, as well as the proposed 1260 psi 48-inch design.

3. Cost-sharing - For that part of the pipeline system in Canada through which both U.S. and Canadian gas will flow, cost of service would be allocated in proportion to the volumes of gas transported for each country.

Having abandoned the Dawson Diversion, the Canadians insisted that if the Dempster lateral were built, the U.S. should pay 100 percent of the cost of service for the extension of the Dempster lateral from Dawson to Whitehorse (the Dawson Spur).

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In order to back the Canadians off the NEB approved route, the U.S. earlier offered to pay a two-thirds share of the Dawson spur cost of service. While payment for the entire Dawson spur was preferable to construction of the Dawson Diversion, it would nevertheless have put the U.S. cost of service over the \$1.04 per mcf target price.

The Canadians contended that our expected-case cost overrun of 40 percent in Canada (which was used in the \$1.04 calculation) was too high. We were finally able to reach agreement on cost allocation by a formula that ties the U.S. share of the Dawson spur to the percent of the actual cost overruns in Canada.

The formula agreed on provides:

<u>Percent Cost Overrun On the Canadian System</u>	<u>Percent of Dawson Spur Cost of Service Allocated to</u>	
	U.S.	Canada
0 to 35	100	0
40	83 1/3 or the ratio of U.S. to Canadian gas volumes at Whitehorse, whichever is higher	16 2/3 or the ratio of Canadian to U.S. gas volumes at Whitehorse, whichever is lower
45 and over	66 2/3 or the ratio of U.S. to Canadian gas volumes at Whitehorse, whichever is higher	33 1/3 or the ratio of Canadian to U.S. gas volumes at Whitehorse, whichever is lower

In the cost overrun range of 35 to 45 percent, the U.S. share of the Dawson spur costs would vary linearly from 100 percent to 66 2/3 percent, unless the actual volumes of U.S. gas in the line commit us to provide a greater share.

In the lower cost overrun case of 35 percent or below, under which the U.S. would be required to pay the entire cost of the Dempster spur, the cost of service reduction from such overrun savings on the mainline would more than offset any increase in cost of service resulting from increasing to 100 percent the U.S. share of the Dawson spur. For example, with an overrun of 25 percent in Canada, the U.S. pays 100 percent of the Dempster spur. In this example the average U.S. cost of service over a twenty year period would be approximately \$1.00 per mcf (1975 dollars) - or 4 cents per mcf below our target price of \$1.04 and over 20 cents below the El Paso cost estimate. With a 35 percent overrun, it is just about \$1.04. With the expected case of 40 percent, it is just slightly above \$1.04.

This agreement creates new incentives - on a portion of the project within Canada's jurisdiction and not otherwise subject to our control - which could significantly lower the cost of service and at the same time enhance the project's financibility. Together with the tax provision described below, this agreement provides the rare negotiating result whereby both countries can claim they have substantially improved their positions over the NEB decision. The U.S. gains a reduction of 8 cents or higher in the cost of service depending on the level of overruns, and Canada gains a reduction of approximately 12 cents.

The agreement also imposes a ceiling on U.S. liability for the Dawson spur of 35 percent above filed costs, although the Canadians can credit any savings they achieve on the mainline system against their cost overruns on the Dawson spur. In the unlikely case that there are severe cost overruns on the Dawson spur and no offsetting credits from mainline construction, the U.S. will be subject to a minimum share provision.

4. Taxation - Under the recently signed Transit Pipeline Treaty, the taxation of the pipeline by Canadian provinces would be limited to the levels charged against similar pipelines in the respective provinces. In the Yukon Territory, ad valorem (property) taxation is to be governed by a new agreement because there are presently no other pipelines in the Yukon.

Property taxes in the Yukon would begin in 1983 at \$30 million (current Canadian dollars) and escalate by the GNP deflator for five years. If in 1988 it is found that the general level of property taxes in the Yukon has increased faster than the Canadian GNP deflator, a one-time adjustment would be made to the pipeline's property tax to bring it into line with other Yukon property taxes. After that adjustment, and for the remainder of the life of the project, the tax payment would increase with the Canadian GNP deflator or with the rate of increase in the general level of Yukon property taxes, whichever is higher. As further protection, it was also agreed that the level of taxation applied to Alcan would never exceed the level of taxation applied to the Dempster lateral if and when it is built.

This Yukon tax agreement completely replaces the NEB and Lysyk recommendations for a \$200 million socioeconomic impact payment. Any required impact payments needed in advance of taxes will be treated as a loan by the companies to the government to be paid back with interest out of future tax revenues. The U.S. would have no role in such an arrangement. The actual level of taxes is only a modest increase over the level of taxes included in Alcan's original cost of service estimates. This agreement is a substantial gain for the U.S. over the NEB decision, and removes a potentially troublesome open-ended charge.

*Be strict
on this.*

5. Other Charges - We also reached agreement in principle on a limitation of other charges which might be levied on the pipeline, particularly in the Yukon. The Canadians do not wish to give up their ability to deal with unforeseen contingencies, but recognize our need to be protected against deliberate shifts in government policy that could add substantially new charges. Language is now being drafted to cover this area in the Agreement on Principles.

6. Miscellaneous Issues - Certain other issues must be addressed either by separate initiatives, public statements from the respective governments, or by appropriate language in the Agreement on Principles. These include:

a) Settlement of native claims

The Canadian government would make a clear public statement that settlement of native claims is a unilateral problem for Canada and would neither delay the project nor increase U.S. costs.

b) Agreements with the provinces

The Canadian federal government would seek separate agreements from each of the three western provinces to abide by the terms of the Transit Pipeline Treaty. The agreements will take several months to complete, but the Canadian federal government expects to obtain a public statement from each provincial government during the interim that supports the Agreement on Principles.

c) Financing and tariffs

Cost-of-service tariffs would commence when the gas begins to be shipped from Alaska to U.S. markets.

Both governments agreed that a variable rate of return on equity should be used to provide incentives to avoid cost overruns. *

The U.S. agreed to encourage the gas producers and the State of Alaska to assist in the financing of the project through advance guarantees for project debt.

II. Decision

The U.S. approach to the negotiations has been one of attempting to clarify the details of the Canadian option so that you could compare it to the American option and reach a final decision. In the process, we have made maximum use of the El Paso comparison to secure the best possible Alcan proposal.

As indicated in my memoranda to you of August 8, August 15, and August 22, the potential to secure increased Canadian as well as Alaska gas and the opportunity to save U.S.

*Schultze comment: The final formula should contain strong incentives to prevent cost overruns.

consumers billions of dollars from a project with a cost of service clearly superior to El Paso tilt the scales in favor of Alcan - notwithstanding the real complications that could result from building a pipeline through two countries.

At that time, I indicated that my final recommendation would depend on our assessment of the magnitude of consumer savings and the existence and reliability of Canadian assurances on a broad range of related issues.

I believe the agreement that has been developed provides both the requisite assurances and the clear-cut cost advantages to support a decision favoring the Alcan project.

Under the expected cost overrun case, the 20 year average cost of service for Alcan would be approximately \$1.04 per mcf (1975 dollars), compared to \$1.21 per mcf for El Paso. Additionally, the new incentives to minimize cost overruns in Canada could further reduce the \$1.04 target price. The resulting \$.17 difference between Alcan and El Paso compares favorably to the much more modest \$.09 difference (\$1.21 vs. \$1.12) that had resulted from the NEB decision and accompanying recommendations. It is important to note that the original Alcan proposal (\$.99 per mcf) was never a viable or approved option from the Canadian point of view.

This clear-cut cost of service advantage of Alcan - together with the Canadian assurances on delays, native claims, taxation levels, tariffs, routes and additional charges - more than offset, in my judgement, the limited advantages of the El Paso system.

The strongest argument in favor of the El Paso system is that it is a known quantity completely within the jurisdiction and control of the United States. The El Paso system would also:

- provide a major employment and economic stimulus to the U.S. economy because of the project's geographical focus in the U.S.;
- have a built-in financing advantage over the Alcan system through MARAD loans for LNG tankers and through State of Alaska debt guarantees.

The supposed certainties of an all-U.S. project, however, may be illusory. The assurances we have from the Canadian government are more comprehensive than anything that could be concluded with either the State of Alaska (regarding taxation, particularly the amount of tax imposed on the LNG terminal) or the State of California (regarding a site for the regasification facility). Significantly, California officials are now considering an offshore LNG terminal that could require 10 years for construction.

These uncertainties, together with the inherent inefficiencies of an LNG system (higher labor costs and a 5 percent higher fuel requirement), outweigh the limited employment and financing advantages of El Paso. Alcan will provide two-thirds the total employment of El Paso. As discussed in the August 22 memorandum, there is a substantial expectation that Alcan can be privately financed.

As the August 22 memorandum indicates, there are other factors favoring Alcan in addition to cost of service and Canadian supply advantages. These include:

- an increase in cooperation with the Canadians on other energy issues such as oil swaps, pipelines and strategic reserves;
- given the use of an overland route, the clear superiority of pipeline technologies over LNG technologies;
- the need to anticipate growing volumes of natural gas from the Gulf of Alaska that will require LNG deliveries to the West Coast, thus preserving LNG West Coast delivery potential.
- the substantial advantage of pipeline facilities over LNG facilities in having a useful life beyond 25 years;
- the findings of almost all Federal agencies and private parties that the Alcan route is environmentally superior to El Paso;

delivering gas where it's needed

- the opportunity to develop a new era of mutually beneficial interdependence with Canada on a broader range of concerns.

If you choose Alcan and send a decision to Congress within the next 7 to 10 days, I believe there is every reason to expect that it will be approved before Congress adjourns this session. Even Senator Gravel has indicated his potential support for Alcan, further isolating El Paso's strongest supporter, Senator Stevens. For construction projects of this magnitude, it is axiomatic that the sooner they are approved and undertaken, the less they will cost the ultimate consumer.

Prime Minister Trudeau has a separate meeting scheduled with you on Thursday morning. The Canadians have expressed the hope that if you have made your decision by that time, this meeting could be the occasion of a joint announcement generally outlining the project and perhaps initialing the Agreement on Principles. You could, as you did with the National Energy Plan, indicate at that time that the full text of the decision and report would be sent to the Congress in about a week.

Members of my staff, the Department of State and our Interagency Pipeline Steering Committee have been meeting during the last several days with the Canadians to draft the final language of the Agreement on Principles.

I should know by early Wednesday whether the agreement is sufficiently complete for a Thursday announcement.

All the agencies represented on the Interagency Steering Committee agree with the conclusion that a decision favoring the Alcan proposal be sent to the Congress. Memoranda to that effect have been recently forwarded to you by the Secretary of the Interior and the Director of the Office of Management and Budget.

THE WHITE HOUSE

WASHINGTON

Date: September 6, 1977

~~MEMORANDUM~~

FOR ACTION:

Stu Eizenstat *attended*
Jack Watson *nc by phone*
Bert Lance
Charles Schultze *attended*

FOR INFORMATION:

The Vice President

FROM: Rick Hutcheson, Staff Secretary

SUBJECT: Schlesinger memo re Final Decision on an Alaskan Natural Gas Transportation System

YOUR RESPONSE MUST BE DELIVERED
TO THE STAFF SECRETARY BY:

TIME: 5:00 PM

DAY: Tuesday

DATE: September 6, 1977

IMMEDIATE TURNAROUND
NO EXTENSIONS

ACTION REQUESTED:

Your comments

Other:

STAFF RESPONSE:

I concur.

No comment.

Please note other comments below:

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately. (Telephone, 7052)

THE WHITE HOUSE

WASHINGTON

September 6, 1977

MEMORANDUM FOR THE PRESIDENT

FROM STU EIZENSTAT
KITTY SCHIRMER

Stu

SUBJECT SCHLESINGER MEMO ON ALASKA NATURAL GAS TRANSPORTATION
SYSTEM

We concur with Jim's recommendation that you select the Alcan route, as modified in negotiations with the Canadian Government. He and the negotiating team have done a good job in reaching an agreement which benefits both countries in pipeline routing and cost of service.

Jim has been keeping key members of Congress advised of our progress in the negotiations with Canada, and they now know that pending a final decision by you, an agreement has been worked out with Canada. If you select the Alcan route, we recommend that calls be made Wednesday evening to key Congressmen informing them of your meeting with Trudeau on Thursday and of the possibility of an announcement that day. This is particularly important since Congress must approve the decision, but has only an up or down vote on your recommendation. Anything we can do to increase their sense of participation in this decision should ease the way for approval.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MEMORANDUM FOR THE PRESIDENT
FROM: BERT LANCE *Jim McIntyre, for*
SUBJECT: Alaskan Gas Pipeline Decision

You may find this somewhat cautious view of the risks associated with this project helpful in structuring your final decision.

There is very little doubt that sooner or later we will need the Alaskan gas. Under a best case scenario assuming your National Energy Plan is enacted as proposed, and is as effective as originally estimated, Alaskan gas will be needed by 1990. More probably, Alaskan gas could be used in the 1985 time frame. However, the most pressing need for gas is over the next 2-3 years. Thereafter, results of the NEP coupled with Mexican gas will ease our shortage problem. Therefore, it appears sensible to target for delivery of Alaskan gas in the mid-1980 time frame. To get through the next 2-3 years, we will need to:

- ° press Canada for increased exports of gas as part of an ALCAN agreement, and
- ° expedite the delivery of Mexican gas.

We run the risk of repeating the rather extreme shortage situation encountered from January through March this year. ALCAN may provide a way to minimize this problem.

With regard to route selection, ALCAN appears to be the most cost effective if:

- 1) the total cost of the project through completion can be financed privately without Federal assistance or an all-events cost of service tariff, and
- 2) the price of delivered gas to the U.S. consumer is not significantly higher than petroleum -- its competitive fuel.

Each of the above are interdependent and are basically driven by project cost.

Estimating the cost of large-scale, complex projects such as ALCAN is subject to much uncertainty. Sponsors of such projects have consistently underestimated final costs in their initial estimates by wide margins. Basic reasons given include unexpected inflation, design changes, flawed initial estimates, poor management, etc. Professor Mead, University of California, completed an analysis of 16 major projects (Attachment A) ranging from pipelines to nuclear power plants. On the average, project costs were 2.5 times higher than initial estimates. After making adjustments for unanticipated inflation and changes in project scope, project costs were still 1.5 times greater than initially estimated. None of the projects were completed at the initial estimated cost.

We have also reviewed the cost estimation experience of the Trans Alaskan Oil Pipeline (TAPS) which experienced rather severe cost escalation problems. Because of the numerous design changes and lack of thorough total project cost estimates until 1974/5, it is impossible to say precisely how much escalation actually occurred except that it was substantial.

The table below shows various projections of ALCAN total project capital costs (including interest) and resulting cost of service for the gas for the first year and an average over a 20-year expected life. These estimates are in nominal (current) dollars increased for inflation at 5% annually. It is important to consider nominal dollars since project financing will have to provide such levels.

	<u>Comparison - ALCAN Cost Estimates</u>		
	(\$ in billions)		
	<u>Total Project Cost</u>	<u>Cost of Service</u>	
		<u>First Year</u>	<u>20-year Average</u>
A. ALCAN Estimate	\$10.7	\$4.36	\$5.64
B. Energy Policy & Planning Staff Estimate	(Not available in nominal dollars)		
C. DOI/DOT Cost Overrun Report			
Expected Case 32% Overrun	13.4	4.94	5.75
Worst Case 95% Overrun	23.3	7.34	7.65

1/ NEP gas prices are escalated 5% annually. First year NEP price is \$1.45.

The following points are relevant:

- According to Treasury's report on financing, substantial project cost overruns could present serious problems about whether private capital markets could provide debt financing. The DOI/DOT Cost Overrun Task Force expected cost is \$13.4 billion. Further, an OMB staff analysis of the assumptions in the report for the expected case disclosed that project delays from litigation were not considered and it was also assumed that Canadian labor rates would be 40% lower than U.S. rates. OMB staff believes that 1) litigation delays will occur since unlike TAPS legislation, the Alaskan Gas Transportation Act permits temporary injunctions on judicial actions, and 2) Canadian labor rates will not remain at levels below U.S. rates for the life of the project but will close the gap. There is also a significant chance of inflation occurring at a rate greater than 5% for one or two years over the life of the six-year project. From this we conclude that ALCAN project costs are likely to fall somewhere between the Cost Overrun Task Force Expected (\$13.4 billion) and Worst Case (\$23.3 billion).
- The current ALCAN financial plan provides for \$11.3 billion in financing including \$1.6 billion for possible overruns. Beyond this level, ALCAN will seek producer and possibly State of Alaska guarantees of debt necessary to complete the project. Producers and the State of Alaska have much to gain from the sale of Alaskan gas and may be willing to guarantee some debt but at this time, this is a significant unknown. If, for example, project costs were in the \$16-\$18 billion range, the ALCAN plan would require an additional \$4.7-6.7 billion of debt guarantee from producers and Alaska. In ALCAN's original FPC proposal, they requested a consumer guarantee of payment for the project presumably to enable private financing. This was later changed when our opposition became public knowledge. Predicting outcomes at this time is difficult but there is a chance that ALCAN cannot be financed by the private sector. Whether or not private sector financing is possible will become clear after Congress approves a route and the applicant proceeds to line up financing and sales contracts (probably mid-1978).

Because of this possible threat, the following approach is suggested:

PROPOSE ALCAN but in a carefully qualified decision that includes but is not necessarily limited to the following terms and conditions to minimize risks.

- 1) Private sector financing must be provided for the life of the project. Overruns must be privately financed. It should be made very clear that no Federal assistance will be provided now or later.
- 2) Propose a traditional cost-based tariff -- avoid an all-events full cost of service tariff.

- 3) Point out concerns about possible litigation resulting in delays in completing the project (see Attachment B for discussion). Indicate that a waiver is proposed for section 4f of the Department of Transportation Act (49 USC, 1653 (f)) and additional waivers may be necessary.
- 4) Express concern about the need for a strong private and government management arrangement. Indicate final arrangements are under development and will be announced in the next month or two.

I hope these views are helpful. If you have any questions, please advise.

Attachments

Table 2 -- Analysis of cost overruns in major construction projects since 1956, adjusted for (1) unanticipated inflation and (2) changes in project scope. (million dollars)

Project	Initial cost estimate		Latest est., or observed costs		Unadjusted ratio of observed to "final" cost	Ratio adjusted		Compound annual rate of cost overruns — after adjustments
	Amt.	Est. date	Amt.	Date		Unanti- cipated Inflation	Change in scope of proj.	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1. BART-Bay Area Rapid Transit Authority	\$996.0	1962	1640.0	5-76	1.647	1.297	1.037	0.31
2. New Orleans Superdome	46.0	1967	178.0	7-75	3.870	3.217	3.219	15.73
3. Wash. D.C. Area Metropolitan Transit	2500.0	1968	5020.0	5-76	2.008	1.375	1.151	0.94
4. Clinch River liquid metal fast breeder reactor (TVA)	699.0	1970	1950.0	4-76	2.790	2.384	2.384	9.08
5. Allied Chemical's Barnwell S.C.nuclear waster recycle plant.	98	1971	250.0	9-76	2.551	2.051	1.762	11.99
6. Toledo Edison's Davis-Besse nuclear power plant, Ohio	305.7	1971	466.0	5-75	1.524	1.401	1.401	11.89
7. Metropolitan Atlanta Rapid Transit Authority	1320.0 ^{1/}	1971	2100.0 ^{1/}	5-76	1.591 ^{1/}	1.257	1.108	1.03
8. Trans Alaskan Oil Pipeline (Alyeska)	1500.0 ^{1/}	1970	7700.0 ^{1/}	7-76	5.133 ^{1/}	4.010	2.406	9.18
9. Cooper Nuclear station, Nebr. Pub. Power Dist.	184.0	1966	395.3	74	2.148	1.748	1.748	7.23
10. Rancho Seco Nuclear Unit No. 1, Sacramento	142.5 ^{1/}	1967	347.0	74	2.435 ^{1/}	2.026 ^{2/}	1.239	3.11
11. Dulles Airport, Wash.DC	66.0 ^{1/}	1959	108.3 ^{1/}	62	1.641 ^{1/}	1.641 ^{2/}	1.486	14.10
12. Second Chesapeake Bay Bridge	96.6 ^{1/}	1968	120.1 ^{1/}	6-73	1.243 ^{1/}	1.104	1.104	2.00
13. Arkansas Frying Pan Project, Ruedi Dam	12.8 ^{1/}	1962	22.9	72	1.789 ^{1/}	1.636	1.145	1.36
14. Ark.Fry.Pan.(Sugar Loaf)	6.1 ^{1/}	1962 ^{1/}	10.2	73	1.672 ^{1/}	1.500	1.500	3.75
15. Ark.Fry.Pan(Boustead Tunnel)	9.2 ^{1/}	1962	21.2 ^{1/}	73	2.304 ^{1/}	2.078	1.233	1.92
16. Rayburn Ofc. Bldg.Wash.DC	64.0 ^{1/}	1956	98.0 ^{1/}	6-66	1.531 ^{1/}	1.531 ^{2/}	1.342	2.99
Weighted Average					2.539	1.945	1.548	4.09

¹ Does not include interest.

² Observed inflation was less than anticipated.

Editorial Note: Professor Mead's initial cost estimate for the Alyeska Pipeline is an early estimate and is not discussed elsewhere in this report.

POSSIBLE LITIGATORY DELAYS - ALCAN CONSTRUCTION

The Alaskan Gas Transportation Act (ANGTA) does not prohibit preliminary injunctions as did The Alaskan Petroleum Pipeline System Act (TAPPS). Thus, delays to be occasioned by judicial orders should be taken into account in assessing the cost of any Alaska natural gas transportation system.

The Department of Transportation has noted that Section 4(f) of the DOT Act (49 U.S.C. 1653(f)) requires that the Secretary approve no programs and projects effecting public parkland, recreation areas or wildlife and water fowl refuges unless there is no feasible and prudent alternative to using the land and "all possible planning to minimize harm" to the land is done. Because of the broad language of the section and the consequent possibility for delays, DOT has recommended waiver of the section. ANGTA itself, while purporting to limit judicial review, not only contains a less than total limitation, but even the limitation provided is so worded as to provide fertile grounds for litigation.

Additionally, several agencies have noted that the National Environmental Policy Act (NEPA) will require environmental impact statements in addition to those already completed, and that such statements will not be shielded from judicial review. Further, the Army foresees litigatory possibilities regarding permitting procedures under Section 10 of the Rivers and Harbors Act and Section 404 of the Federal Water Pollution Control Act and the Department of the Interior has mentioned a large number of laws which could delay a system including portions of the Mineral Leasing Act of 1920, the Fish and Wildlife Coordination Act and the National Historic Preservation Act of 1966.

Although the agencies can no doubt expedite their activities and thus minimize delays arising from compliance with current law, the mere existence of those laws opens the possibility of litigation and attendant delays. The possibility is magnified by the chance for errors in administration of the existing regulations and this latter possibility is compounded by ANGTA's premium on speed which will enhance the likelihood of errors.

In view of the foregoing no analysis of the costs of an Alaska natural gas transportation system, which ignores litigation caused delays, can be accurate. Nevertheless, the agencies appear generally unwilling to forthrightly admit that any of their actions are likely to result in significant delays. Accordingly, a hard estimate of actual delays to be anticipated is not possible. The sum of the "insignificant" internal and litigatory delay expected by the several agencies' may well add up to a total delay of significant proportions. Thus, it appears that if the system is authorized premised on current information, it will go forward with essentially no guarantees that every available provision of law will not be employed to retard it. Unfortunately, with a single exception, the agencies' attitudes would appear to preclude seeking preemptive waivers.

11:00 AM

THE PRESIDENT HAS SEEN.

THE WHITE HOUSE

WASHINGTON

September 6, 1977

MEETING WITH SENATORS JOHN STENNIS,
SAM NUNN, HENRY JACKSON AND
ROBERT MORGAN

Wednesday, September 7, 1977
11:00 A.M. (30 minutes)
Cabinet Room

From: Frank Moore *FM.*

I. PURPOSE

To discuss the neutrality and defense features of the Panama Canal Treaties. If their concerns can be satisfied, then they may not demand concurrent or sequential jurisdiction over the Treaties.

II. BACKGROUND, PARTICIPANTS & PRESS PLAN

A. Background. As you remember, Senator Byrd suggested that you meet with these key figures of the Armed Services Committee in order to reassure them regarding the defense and neutrality aspects of the Panama Canal Treaties. We are hoping to avoid any assertion of Armed Services Committee jurisdiction over the Treaties.

B. Participants: The President
Ambassador Linowitz
General Brown
Senator Stennis
Senator Nunn
Senator Jackson
Senator Morgan
Frank Moore
Bob Thomson

C. Press Plan: White House Photo Only.

III. TALKING POINTS

- A. Obviously, the primary topic should be the neutrality and defense aspects of the treaty.
- B. During the Linowitz-Bunker briefings in June, Senator Jackson said any provision allowing us to enter Panama in perpetuity to defend the Canal's neutrality must be explicit. As you know, the Treaties implicitly guarantee us this right. Consequently, the Senator may need some convincing on this point.
- C. The Senate Foreign Relations Committee Chief Counsel has informed us the Committee will fiercely resist any attempt by the Armed Services Committee to gain jurisdiction over the Treaties. Consequently, we must head off an attempt by Armed Services to gain a piece of the action. If you can successfully reassure these key Senators about the defense and neutrality provisions in the Treaty, there is a better chance to avoid time-consuming jurisdictional fights and Armed Services Committee votes and mark-ups.
- D. A possible concession we could make would be to agree on appearances at Armed Services Committee hearings only. No formal jurisdiction over the Treaties would be taken by the Committee, but it would publish its hearing record for the edification of the Senate.

THE WHITE HOUSE
WASHINGTON
September 7, 1977

Stu Eizenstat
Bob Lipshutz

The attached was returned in
the President's outbox. It is
forwarded to you for appropriate
handling.

Rick Hutcheson

RE: BAKKE V. REGENTS OF U. OF
CALIFORNIA

THE PRESIDENT HAS SEEN.

cc Stu
Bob
J

The decision of the California Supreme Court in Bakke v. Regents of the University of California presents a grave threat to the advancement of black and other minority citizens in education, employment and other areas. If the Supreme Court of the United States adopts the California court's decision it will jeopardize virtually all government programs which are designed to ameliorate the conditions of black people. A decision affirming the California court's judgment would be a landmark setback for the civil rights of blacks. A reversal of the decision would permit, but not require, the continuation of affirmative action programs voluntarily adopted by local, state and federal agencies.

If this Administration believes that the national interest requires affirmative action by government at all levels to improve the conditions of minority people it should seek the reversal of the California decision. The United States should file an amicus brief in the Supreme Court of the United States which argues unequivocally that the California decision should be reversed. The brief should argue that the University of California's medical school admissions procedure is entirely lawful under the Fourteenth Amendment. The purpose of the special admissions program is

**Electrostatic Copy Made
for Preservation Purposes**

entirely legitimate. The program seeks to create more minority physicians to deal with desperate health problems in minority communities. The vast disparities in white and black life expectancies, infant mortality rates and similar measures of health show that racial discrimination is very much a matter of life and death. Black men, women and children die in disproportionate numbers for lack of medical attention. California's medical school admissions program is unassailably legitimate and consonant with the primary purpose of the Fourteenth Amendment.

The government's brief should also argue that the means used by the University are permitted by the Fourteenth Amendment. An admissions policy which establishes a preference for members of disadvantaged minority groups is not a violation of the Fourteenth Amendment guarantee of equal protection of the laws. The very same Congress which adopted the Fourteenth Amendment in 1866 enacted special educational programs for the newly freed slaves within a month after adopting the Amendment, i.e., the Freedmen's Bureau Act of 1866. President Andrew Johnson twice vetoed that law, arguing that it was class legislation which favored blacks over whites. But the very same legislators who had adopted the Fourteenth Amendment in June 1866, enacted the Freedmen's schools. The framers of the Fourteenth Amendment would have thought it inconceivable

the Amendment would be interpreted to prohibit the same kinds of special educational aid for blacks which they deemed essential. No decision of the Supreme Court since the adoption of the Fourteenth Amendment holds that the equal protection clause bars race-specific measures to ameliorate the condition of minority races.

The Administration should not yield to entreaties for a halfway position (unacceptable to both sides) which supports the general principle of affirmative action but urges that the Court adopt a rule against racial "quotas." In the final analysis a rule against "quotas" will doom all special admissions programs. Such a distinction would encourage lawsuits against every school with a special admissions program. No such distinction will be workable either in University graduate school admissions or in the employment context. A goals-quota dichotomy has no basis in the equal protection clause. The equal protection issue is whether or not there is forbidden race discrimination, and not whether a program is administered with flexibility or rigidity. The government's brief should argue that the Constitution permits state universities to adopt special admissions criteria and procedures to aid minorities and that it should be left to the universities and other state authorities to develop fair and sensible methods of administration. A goals-quota distinction should not be made a matter of constitutional law.

If the Administration disagrees with the above and concludes that the goals-quota distinction does have merit as a constitutional principle, it should nevertheless support the legality of the university program. If there is to be a distinction between goals and quotas, the California program is clearly defensible as a "goal" not a "quota." The correct distinction is between "goals" which are flexible preferences for qualified minority applicants and "quotas" which rigidly require the admission of a fixed number of minority applicants whether qualified or not. The California program admitted only qualified applicants and thus poses no issue or a quota preferring unqualified minority students to qualified whites. Furthermore, the California program has considerable flexibility because the students admitted each year include members of several large minority groups, Blacks, Chicanos, Asians and Native Americans, and there was no prescribed number of students from any one minority group. Nor was there any ceiling on the number of minority students, since the university also admitted minority students in its regular admissions program.

Because the Bakke case is not controlled by any Supreme Court precedent the views expressed by the Government may have great weight with the Supreme Court. The government position will be weighed by minority citizens

of today and ultimately by posterity. A government brief which failed to provide strong support for affirmative action programs would be an indelible blot on this administration's record. We believe that in the long run racial justice will prevail, and that future generations would come to regard a government brief supporting Bakke's position in the way the nation would now view a government brief which supported segregation in the Brown case. Fortunately, there was no such government brief in Brown, and there should be no counterpart in Bakke. We urge that the President direct the Department of Justice to prepare and file a brief which vigorously supports the position of the Regents of the University of California.

THE PRESIDENT HAS SEEN.

THE WHITE HOUSE

WASHINGTON

September 6, 1977

MEETING WITH CONGRESSIONAL BLACK CAUCUS

Wednesday, September 7, 1977

8:30 a.m. (45 minutes)

Cabinet Room

From: Frank Moore *FM*
Stu Eizenstat *Stu*

I. PURPOSE

This is the only meeting between the President and the Congressional Black Caucus since the Inauguration. Very strong political ramifications exist in terms of future programs in various legislative areas, and a cover memo, which is attached, explains in detail.

II. BACKGROUND, PARTICIPANTS, AND PRESS PLAN

Background: Complete information is attached.

Participants: The President, Congressional Black Caucus (Member Profile is attached), Frank Moore, Valerie Pinson, Stuart Eizenstat, Larry Bailey, Bunny Mitchell, Jim Dyke, Bill Smith and the Vice-President.

Press Plan: White House Photographer.

III. TALKING POINTS

See attached.

THE WHITE HOUSE
WASHINGTON

September 6, 1977

MEMORANDUM FOR: THE PRESIDENT
FROM: FRANK MOORE *F.M.*
STU EIZENSTAT *Stu*
SUBJECT: Your Meeting with the Black Caucus
September 7, 1977

Attached are proposed talking points for your meeting with the Congressional Black Caucus.

You indicated in your last meeting with Congressman Mitchell that you wanted to use the meeting to tell the Caucus members your views on many issues of concern to them. We have therefore prepared lengthier than usual talking points, from which you can read or refer to in the meeting. These points match in sequence the points the Caucus indicated to us they wanted you to discuss.

The Caucus regards this meeting as an extremely important one: it is their first meeting with you since the Inauguration, and the meeting comes at a time when a) Administration relations with minorities are strained, b) minority youth unemployment is at a record high, c) an urban initiative has just been launched and d) the Administration is about to make a decision on the Bakke case. In addition, the Caucus is concerned that you have not met with them until now, and believe that the failure to meet is symptomatic of a lack of communication between the Administration and the Black community.

Further, the Caucus members feel you have overemphasized the importance of a balanced budget; in their view, a balanced budget is equated with high unemployment.

One of their major proposals is the launching of a "war on joblessness" to be coordinated by the Vice President, with a view toward achieving full employment as quickly as possible.

We believe there are substantial disadvantages to this proposal:

- 1) The Caucus definition of full employment differs substantially from the Administration's. This difference can only produce added friction.
- 2) A necessary component of the Caucus' full employment strategy would be price (and wage) controls.
- 3) The term "war on joblessness" raises many of the problems of excessive expectation associated with the Johnson era in the "war on poverty."
- 4) Unless the Vice President were strongly inclined to assume lead responsibility for Administration employment, anti-inflation and urban initiatives, we believe there are substantial disadvantages to his proposed role as coordinator. We have checked with the Vice President's office and while the Vice President would like to be actively involved in issues of concern to the Caucus, he is disinclined to assume a formalized coordinating function.

Suggested responses to the Caucus:

- 1) Emphasize major Administration initiatives now underway to deal with the employment problem.
- 2) Indicate that the Vice President has been actively involved in these efforts and will continue to work closely with you and members of the Cabinet on matters of concern to the Caucus.

Finally, you should be aware that Congressman Rangel will raise his objections to the ODAP elimination; he believes it should be maintained as a high-visibility EOP entity.

Attachments

I. INTRODUCTORY

-- Appreciate opportunity to meet with Caucus; committed to meeting with Caucus on a regular basis; will be attending the Caucus dinner on September 24.

-- Have met several times with Caucus' Chairman, Congressman Mitchell, and have found him to be extremely helpful in bringing new ideas and in relating your concerns; look forward to continuing to work with him and each of you to help fight unemployment, discrimination, and urban decay.

-- Want to use this morning's meeting as forum to review what we have done and plan to do, and to hear your views about our shared problems.

II. EQUAL OPPORTUNITY/AFFIRMATIVE ACTION

A. Civil Rights -- (Suggest that you mention some of the major actions you have already taken; many have been done without fanfare and aren't well remembered.)

-- Opposed as unconstitutional the Biden-Roth Bill limiting courts' power to order busing.

-- Proposed plan, in Adams vs. Califano, to desegregate public colleges in southern states; plan now been accepted by most of those states and will lead to integration of the student bodies and faculties of their black and white public colleges.

-- Issued memo to Cabinet Secretaries urging compliance with Title VII of the Civil Rights Act (employment discrimination).

-- Initiated reorganization study of the civil rights agencies to make them more effective; while study not yet completed, it is clear that EEOC will not be eliminated or consolidated but will remain as the focal point for enforcement of the civil rights laws.

B. The Bakke Case -- (This is extremely sensitive; would probably be counterproductive to describe position in Justice brief, for the Caucus is unalterably committed to the University's position in the case; their commitment is due to a belief that the education of minorities will suffer a severe setback if the University loses and to a belief that uneducated minorities will increase unemployment; discuss instead principles involved.)

-- Recognize the potential of this case to set a precedent for enforcement of affirmative action goals; personal commitment to affirmative action and goals is well-known and deeply-held, as is personal opposition to rigid quotas.

-- No decision has yet been made about whether a brief will be filed or on what side -- if filed.

-- A review of the case indicates clearly that the trial record is vague on many key parts of the special admissions program used by the medical school; one of the major decisions to be made is whether the case should be remanded to determine exactly how the admissions program operated -- was it a strict quota system or was it a goal system?

-- Whatever position the government takes in the case, it will be very clear in the brief that government's commitment to affirmative action is unwavering.

III. WELFARE REFORM

(Details of the program are generally known by the Caucus; you might mention highlights and then briefly review their major concerns.)

A. Program Elements

-- Will assure 1.4 million jobs for low income families.

-- Will improve benefits for millions: the basic benefit of \$4200 for single parent families is higher than the AFDC benefit in 14 states.

-- Will simplify administration of welfare, thereby insuring that fraud and error will be reduced; the reduction in fraud and error will help alleviate public concerns about programs assisting the poor.

B. Concerns About This Program

-- Recognize the concern that a mother with a child between 7 and 14 might have to work to continue to receive full benefits; the work required is only part-time and not intended to interfere with the mother's need to be home after school; this provision may be difficult to pass, for some Members of Congress want to require full-time work by mothers with children in those age brackets; a few Members even want to lower the age of 7 to 3; believe our provision is best compromise.

-- A work requirement is not workfare. Workfare, which is advocated by Senator Long, requires recipients to work off the benefits received under welfare; this program provides assistance and a job requirement in many instances, but in other instances does not require work.

-- Still committed to implementation of the program nationwide, so as to permit reform to occur as soon as possible; will oppose efforts to limit the program to a few cities as a test of the program.

IV. URBAN REVITALIZATION

A. Urban Policy

-- Committed to developing a comprehensive urban policy by early next year.

-- That policy is now being developed by an interagency task force headed by Pat Harris; the task force will be meeting with you right after this meeting this morning.

-- Your advice and help is needed in the development of the policy.

B. Actions to Date

-- The comprehensive urban policy will supplement actions already taken; we have not ignored the cities to date but believe that further action is needed; actions taken to date include:

-- proposed \$400 million Urban Development Action Grant to provide HUD with discretionary funds to meet urgent needs of distressed cities;

-- \$500 million increase in the Community Development Block Grant Program; proposed new formulas to permit HUD, in awarding community development funds, to adequately assist older cities; Caucus' help in freeing the community development bill from conference is needed;

-- proposed and signed an extension and increased counter-cyclical aid for hard-pressed cities.

C. Targeting of Cities for Assistance -- (Caucus is supporting, and Congressman Mitchell mentioned to you in his meeting, a proposal to target Federal efforts in chosen cities; the Federal efforts would be coordinated much better than now, and volunteer and private sector assistance would be used; the idea is to show what the Federal government can do for cities with a concentrated effort.)

-- Just received this morning a similar recommendation for targeting of Federal resources in selected cities from Jack Watson.

-- Believe the concept has substantial merit and want to look at it seriously; would like Caucus to work with Jack in developing details of concept.

V. UNEMPLOYMENT PROBLEM

A. Minority Business -- (Recommend mentioning what has been done, but not being too specific on the details of the Minority Business Statement, since that is to be announced next week.)

-- Vernon Weaver is moving quickly to correct the problems in the 8(a) program, to make certain that funds provided for minority businesses are going to truly minority businesses; expect to have the 8 (a) program back in full operation very soon.

-- Committed to meet the 10% set-aside requirements of the public works program; Eizenstat and Kreps met last week at the White House with representatives of surety companies, lending institutions and the construction industry to reaffirm our strong commitment to the set-aside and our intention to do everything possible to meet the 10% requirement.

-- Have reactivated the Interagency Council for Minority Business Enterprise and will be meeting with them at the White House next week.

-- Expect to announce at that meeting a series of steps being taken to increase minority business opportunities; among the major steps will be instruction to all executive departments to double their purchases from minority firms during the next two fiscal years, thereby raising the Federal purchases from minority firms to about \$1 billion.

B. Job Programs -- (This area is clearly regarded as the most serious one by the Caucus, particularly in light of last week's black unemployment figures -- 14.5%, and 40.4% for black youth, while white unemployment remained the same; the Caucus will be pressing you to take immediate action on black unemployment and on Humphrey-Hawkins; as indicated in the cover memo, the Caucus will be urging a War on Joblessness to be coordinated by the Vice President.)

-- Continue to regard unemployment as the nation's most serious domestic problem; said that in the campaign and have not retracted.

-- Commitment to balance the budget is not at the expense of full employment; fully recognize that the revenues needed to balance the budget by 1981 can only be obtained through a full employment economy.

-- The unemployment figures from last Friday were extremely upsetting; believe we had been making progress on unemployment -- had been reduced from 8% last November to 6.9% in July; but the latest statistics for blacks and black youths are horrifying and cannot be tolerated.

-- As soon as figures were disclosed, contacted Schultze and Marshall for immediate analysis and recommendations for action; Marshall's report will be here today (attached is Schultze's suggested response to this problem).

C. Actions to Date

-- Economic Stimulus Package:

- + 310,000
- public service jobs (CETA) -- increase of 415,000 to 725,000 by early '78
 - public works -- 228,000 jobs during next two years
 - youth employment -- 200,000 jobs for youth
 - these programs are only now beginning to take effect; when they are fully in effect we expect unemployment to decline significantly.
 - Humphrey-Hawkins (See attached memo from Charlie Schultze)

THE CHAIRMAN OF THE
COUNCIL OF ECONOMIC ADVISERS
WASHINGTON

September 6, 1977

MEMORANDUM FOR STU EIZENSTAT

FROM: Charlie Schultze ^{CS}

SUBJECT: Policy Responses to the Black Unemployment
situation

There are two sets of actions that the Administration can take - short term and longer term.

Short Term Measures

We can improve the targeting of existing programs without the need for legislative approval. Specifically, where CETA jobs are involved the Secretary of Labor could immediately contact all prime sponsors and urge them to increase enrollments of the most severely disadvantaged in areas of high unemployment. The programs involved include:

- 240,000 CETA stimulus jobs to be filled in the next six months.
- The 150,000 non-PSE, non-youth employment and training opportunities under CETA for which funds have already been appropriated.

Youth employment programs can be similarly targeted, especially:

- The Young Adult Conservation Corps (Title I of the Youth Employment and Demonstration Projects Act).
- The Summer Youth Employment Program (the President could promise a review of the formula for distribution of jobs next summer so that areas of highest youth unemployment are given higher priority).

Long Term Measures

The persistence of the Black unemployment problem dictates that we prepare a thorough analysis of the options available to

us. As you know, an interagency group (DOL, DPS, OMB, and CEA) has begun a study of the problem of structural unemployment. The President could tell the Black Caucus about this group and say that he has directed them to focus on the unemployment problems of Black and other minority groups. In particular, the effort should emphasize:

- The role of private sector employment opportunities.
- Special problems of minority youth.
- A review of the administrative and legal problems in current programs which often make it difficult for the Department of Labor to concentrate jobs and training among groups whose unemployment is highest.
- The interrelationship between the problem of Black unemployment and those problems considered by your Urban Policy Task Force.

Caution:

I think we must move on the problem of Black unemployment. But I also think it would be extremely unwise to announce any major new initiatives or even to set any specific deadlines at tomorrow's meeting.

THE WHITE HOUSE

WASHINGTON

September 6, 1977

MEMORANDUM FOR THE PRESIDENT

FROM: Charlie Schultze *CS*

SUBJECT: Talking Points on Humphrey-Hawkins

A. Areas of Agreement

I suggest you start on a positive note:

- o indicate support for the goals of the bill;
- o list some of the specifics which you find highly desirable. You might then point out that in negotiations with sponsors of the bill, the Administration has come forward with proposals that incorporate the following specific items, which are fully consistent with the Humphrey-Hawkins Bill. (These are not the only areas of agreement.)

1. A legislative commitment to full employment.
2. More specifically, a congressional declaration of national policy that all adult Americans (16 years of age or over) able and seeking work should have full opportunities for useful employment at fair wages.
3. The establishment of a planning mechanism under which the President sets out and the Congress reviews economic goals and targets for 5 years ahead with respect to employment, unemployment, output, income, and inflation.
4. A requirement that the President specifically recommend to the Congress each year the overall economic policies needed to reach those goals.

Get out of committee

5. Similarly, a requirement that the President recommend to the Congress each year structural policies relating to employment and unemployment, balanced regional growth, and public and private capital formation as are needed to reach those goals.
6. A requirement that the President annually provide to the Congress a review of existing programs of a countercyclical nature and make recommendations to the Congress as necessary.

There are more areas of agreement than disagreement.

B. Negotiations to date and remaining areas of disagreement.

1. Background

- o A high level task force within the Executive Branch has been working for some time to develop a compromise on the Humphrey-Hawkins bill that would be acceptable both to its supporters in Congress and to this Administration.
- o My staff has recently exchanged alternative revised draft bills with members of the Congressional staff. While we were encouraged about the prospects for some agreement, a number of important differences remain. We have set a date for beginning another round of discussions to try to iron out those differences.

2. Major Differences Between the Administration and Congressional Supporters of Humphrey-Hawkins

The key provisions of the Humphrey-Hawkins bill that the Administration opposes are as follows:

- o The 3 percent adult unemployment goal with a fixed timetable, and a prohibition against retreating from that level, regardless of the inflationary situation or for any other reason.

- o The provision for "last resort" public service jobs at prevailing wages. (Presumably in addition to the public service jobs in your welfare reform program.)
 - o Language that appears to create confrontation between the Administration and the Federal Reserve.
 - o Language that specifies in some detail the kind of planning the President must do, and that creates a large Advisory Committee to help him.
3. Why the Administration Opposes These Provisions
- o The bill deprives the President of the flexibility he needs to conduct overall economic policy.
 - The unemployment goals are too rigid.
 - The bill gives the President no flexibility for modest adjustments in economic policies when inflation threatens.
 - o The bill authorizes a "last resort" public sector jobs program at prevailing wages. The Administration in its Program for Better Jobs and Income proposes to create about 1.4 million public service jobs. Adding a "last resort" public sector jobs program on top of this, before the PBJI program even goes into effect, would be very unwise.
 - o The planning language would result in duplication of work done elsewhere in the Government and saddle the President with a large advisory committee to whom he would have to submit his fiscal and economic plans in advance.

PROFILE--MEMBERS--CONGRESSIONAL BLACK CAUCUS

<u>MEMBER</u>	<u>COMMITTEE ASSIGNMENT</u>	<u>WHEN ELECTED</u>	<u>1976%</u>	<u>DISTRICT DATA</u>
Yvonne Burke (D-Calif-28)	#28-Appropriations	1972	80.2	Major City: Los Angeles 70% central city; 30% suburban 54% white collar; 31% blue collar 40% black
Shirley Chisholm (D-N.Y.-12)	#10-Rules	1968	87	Major City: New York 100% central City 37% white collar; 45% blue collar 54% black <u>**Probable topic of discussion will be urban decay (cities).</u>
William Clay (D-Mo-1)	#9-Education & Labor #7-Post Office & Civil Service Chairman-Civil Service Subcommittee	1968	65.5	Major City: St. Louis 100% suburban 46% white collar; 33% blue collar 54% black <u>**Probable topic of discussion will be urban decay (cities).</u>
Cardiss Collins (D-Ill-7)	#11-Government Operations Chairman-Manpower & Housing Subcommittee #14-International Relations	1973	84.8	Major City: Chicago 100% central city 35% white collar; 49% blue collar 55% black <u>**Probable topic of discussion will be urban decay (cities).</u>
John Conyers (D-Mich-1)	#9-Government Operations #5-Judiciary Chairman-Crime Subcommittee	1964	92.4	Major City: Detroit 92% central city; 8% suburban 41% white collar; 42% blue collar 70% black <u>**Probable topic of discussion will be urban decay (cities).</u>

<u>MEMBER</u>	<u>COMMITTEE ASSIGNMENT</u>	<u>WHEN ELECTED</u>	<u>1976%</u>	<u>DISTRICT DATA</u>
Ronald Dellums (D-Calif-8)	#16-Armed Services #2-District of Columbia Chairman-Fiscal & Government Affairs Subcommittee	1970	62.1	Major City: Oakland 50% central city; 50% suburban 66% white collar; 22% blue collar 21% black
Charles Diggs (D-Mich-13)	Chairman-District of Columbia #4-International Relations Chairman-Africa Subcommittee	1954	89	Major City: Detroit 100% central city 32% white collar; 48% blue collar 66% black
Walter Fauntroy (Delegate-D.C.)	#10-Banking, Finance, & Urban Affairs Chairman-Historic Preservation & Coinage Subcommittee #3-District of Columbia	1971		Major City: District of Columbia
Harold Ford (D-Tenn-8)	#19-Ways and Means	1974	60.7	Major City: Memphis 10% central city; 16% suburban 37% white collar; 44% blue collar 19% black
Augustus Hawkins (D-Calif-29)	#5-Education and Labor Chairman-Employment Oppor- tunities Subcommittee #5-House Administration Chairman-Printing Subcommittee	1962	85.4	Major City: Los Angeles 57% central city; 43% suburban 36% white collar; 47% blue collar 59% black <u>**Will probably want to address full employment in detail.</u>
Barbara Jordan (D-Texas-18)	#16-Government Operations #12-Judiciary	1972	85.5	Major City: Houston 100% central city 40% white collar; 40% blue collar 44% black
Ralph Metcalfe (D-Ill-1)	#12-Interstate & Foreign Commerce #10-Merchant Marine & Fisheries Chairman-Panamal Canal Subcommittee #16-Post Office & Civil Service	1970	92.3	Major City: Chicago 100% central city 46% white collar; 35% blue collar 89% black

Parren Mitchell (D-Md-7)	#9-Banking, Finance & Urban Affairs Chairman-Domestic Monetary Policy Subcommittee #5-Budget Chairman-Human Resources Task Force Chairman-Congressional Black Caucus	1970	94.4	Major City: Baltimore 100% central city 37% white collar; 40% blue collar 74% black <u>**Will probably initiate discussion regarding minority business enterprise.</u>
Robert Nix (D-Pa-2)	Chairman-Post Office & Civil Service #5-International Relations	1958	73.5	Major City: Philadelphia 100% central city 49% white collar; 33% blue collar 65% black
Charles Rangel (D-N.Y.-19)	#11-Ways and Means	1970	97	Major City: Harlem 100% central city 49% white collar; 27% blue collar 59% black <u>**Probable topic of discussion will be urban decay (cities) and drug abuse.</u>
Louis Stokes (D-Ohio-21)	#21-Appropriations #7-Budget Chairman-Community and Physical Resources Task Force	1968	83.8	Major City: Cleveland 87% central city; 13% suburban 37% white collar; 44% blue collar 66% black

THE WHITE HOUSE
WASHINGTON

September 7, 1977

Hamilton Jordan

The attached was returned in
the President's outbox. It is
forwarded to you for appropriate
handling.

Rick Hutcheson

RE: 1980 DELEGATE SELECTION RULES

THE PRESIDENT HAS SEEN.

THE WHITE HOUSE

WASHINGTON

6 September 1977

*Ham
J*

MEMORANDUM FOR THE PRESIDENT

FROM:

HAMILTON JORDAN *H.J.*

SUBJECT:

1980 Delegate Selection Rules

Next weekend, the Democratic Party Commission ("Winograd Commission") charged with revising the delegate selection rules for the 1980 Convention meets in Detroit. Pat Caddell, Rick Hutcheson, Mark Siegel and Anne Wexler are members of the Commission; inevitably, the positions they take will be interpreted as your positions. You need to be aware of the proposals which they, and I, recommend be taken at the Detroit meeting.

In general, I favor maintaining the delegate selection rules which were in effect in 1976 -- with some minor changes. (The most significant change from 1976 was made by the last Convention, which abolished the "loophole" primary.)

The most controversial proposed change would increase the percentage of the vote in a congressional district needed for a candidate to receive delegates from the current 15%, to 25%. In addition, the proposed rule change would make the 25% mandatory. The current rule is not mandatory -- many states award delegates to candidates receiving substantially below 15%.

Arguments in favor of the 25% threshold: 1. it would award delegates only to those candidates who demonstrate significant support in a congressional district, and not award any delegates to those who do poorly; 2. it would help build consensus around viable candidates, in the absence of the loophole primary, by blunting the factionalizing effects of strict proportional representation; and 3. it would make it more difficult for splinter candidates and one issue campaigns to amass delegate strength.

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In a 1980 race between yourself and one strong challenger, the proposal probably would not have much impact. Against one not very strong challenger, it could allow for an early elimination of the challenger. In a field with two or more challengers, the 25% proposal would have a substantial effect in your favor.

Some party liberals oppose the 25% proposal, arguing that: (1) 25% is too high; (2) that minority viewpoints as well as strong candidates, should be given a fair share of delegates; and (3) that a 25% cutoff could produce many situations where one candidate wins all of the delegates in a CD, with as little as 25% of the vote. Some, on the DNC staff, argue that the advantages of the proposal may not be worth the criticism it would bring.

Ken Bode (New Republic) and Alan Baron have written articles in their respective publications charging that the 25% proposal is an effort by the White House to insulate the President from challenge in 1980. Some Party liberals might use this issue as a vehicle for mobilizing anti-Carter sentiment.

_____ 25% cutoff (I recommend) _____ 15% cutoff (1976 rules)

*How about a mandatory
20%?*

Other issues which the Commission will discuss:

I recommend that we maintain a provision in the present rules which says that if a state party makes a good faith effort to bring its state laws into compliance with party rules, but fails, then the state party should not be penalized. For example, the Illinois party is required (by the 1976 Convention) to try and change from a loophole to a proportional presidential primary. If Gov. Thompson vetoes this effort, then Illinois should be permitted to select delegates under its existing law, rather than be forced to scrap its presidential primary for a caucus-convention system.

I recommend that we neither push nor oppose giving voting delegate privileges to some or all of: Members of Congress, Governors, State Party Chairpersons. There is a surprising amount of sentiment for voting ex officio representation for future Democratic Conventions. Although this proposal runs against the recent trend in party reform, which holds that all voting

delegates should be popularly selected, it would not be politic for us to get in the middle of this fight.

I recommend that we support greater use of at-large delegates to improve affirmative action in the delegate selection process. The present rules provide that 25% of the delegates from every state should be used to include public and party officials, and traditionally underrepresented Democrats, on state delegations to National Conventions. Some states ignored this provision in 1976. We would favor mandatory use of the at-large delegate positions to balance state delegations, if the delegation selected to that point were poorly balanced, and raise the 25% figure to 35% to insure better representation. (This would not be a quota, as there would be no guarantee that a delegation would be perfectly balanced even if all at-large positions were used for affirmative action purposes.)

*Mandatory ok - in doubtful
about 35% - may be too high*

THE WHITE HOUSE
WASHINGTON
September 7, 1977

Stu Eizenstat
Bob Lipshutz

The attached was returned in the President's outbox today and is forwarded to you for your information and appropriate handling.

Rick Hutcheson

cc: The Vice President
Midge Costanza
Hamilton Jordan
Frank Moore
Jody Powell
Jack Watson

RE: BAKKE

ADMINISTRATIVELY
CONFIDENTIAL

THE PRESIDENT HAS SEEN.
THE WHITE HOUSE
WASHINGTON

September 6, 1977

MEMORANDUM FOR THE PRESIDENT

FROM: STU EIZENSTAT
BOB LIPSHUTZ

SUBJECT: Bakke

Stu
Bob

Stu - Bob
I agree to
a) Strong affirmative
action
b) no rigid quotas
Remanding may be
ill advised -
Jump into drafting
process -
J.C.

Attached are our comments on the Bakke brief. We conclude that substantial revisions are necessary. In particular, the brief should:

- 1) strongly endorse affirmative action;
- 2) clearly differentiate affirmative action from quotas; and
- 3) request that the Supreme Court remand the case to gather the facts necessary to determine whether the University of California's program actually operates as a rigid quota.

Remanding the case is the least controversial way of dealing with it. Remand is appropriate since the evidence is vague on a number of key issues. Justice agrees that the factual record is poor but apparently feels that remand would be unfair to Bakke, since the University bears much of the responsibility for the sorry state of the record. We believe, however, that--from the perspective of the United States--the issue is too critical to be decided in the absence of knowledge of all relevant facts.

If you agree with our recommendations, we believe it would make sense for us to sit down with the Justice lawyers who will actually be doing the rewriting and explain our concerns to them. In any event, we should certainly have an opportunity to review the brief after it has been revised and before it is filed.

Even if it is decided not to request a remand, we would hope that the other substantive suggestions in this memorandum are seriously considered.

THE WHITE HOUSE

WASHINGTON

September 6, 1977

MEMORANDUM FOR THE PRESIDENT

FROM: STU EIZENSTAT
BOB LIPSHUTZ

Stu
Bob

SUBJECT: The Bakke Brief

The brief which the government files in the Bakke case will not simply be a legal document. Rather, it will be seen as a statement of this Administration's policy on an issue--affirmative action--which is an integral part of large numbers of Federal programs. Our position should be set forth as clearly as possible.

Your policy in this area is and has been that you vigorously support affirmative action as a necessary tool in the effort to overcome the legacy of discrimination, but that you oppose rigid quotas. The brief should say that. It should also specifically identify and support the several government programs which enforce affirmative action requirements. The brief should then describe as clearly as possible the difference between acceptable affirmative action devices, such as goals, and impermissible quotas. Finally, the brief must consider the principles developed in light of the particular facts of this case.

The balance of this memo outlines the general problems we see in Justice's brief, as well as a section-by-section analysis which is somewhat more specific. If the Administration's position on this important and controversial issue is to be set forth in an accurate and comprehensible fashion, the brief should be rewritten.

I. PROBLEMS WITH THE BRIEF

A. Lack of Commitment to Affirmative Action

The brief, as now written, does not clearly express this Administration's firm commitment to affirmative action. Such a statement of commitment is needed for both legal and political reasons. The brief, however, appears internally contradictory on this point; while the tone of some sections is supportive of affirmative action, the tone of others could be seen as distinctly unfriendly to such programs.

In a fundamental sense the brief is, in its own word, too "dispassionate." There should be more consistent advocacy of this Administration's policy and programs.

B. Failure Clearly to Identify the Characteristics of Permissible Affirmative Action Programs

The brief does not clearly articulate the distinction between affirmative action and quotas. It determines that the University of California's program is impermissible, but it does not explain why. The result is that the brief offers little or no guidance to universities or others sincerely wishing to employ principles of affirmative action in a constitutional manner.

There is no bright line separating quotas from affirmative action, but we have a responsibility to capture the distinction as clearly as possible. The difference can be drawn in the following terms:

-- Affirmative Action

The purpose of affirmative action programs is to assist our society in overcoming the effects of discrimination. Because of discrimination--which was overt until the recent past and often exists today in subtler forms--it is often necessary to--

1) recruit minority or female candidates for university admissions (or jobs) in an affirmative manner;

2) evaluate the potential of minority applicants in a sensitive fashion, realizing that a black with less impressive paper credentials may in fact have as much potential as a more highly credentialed white; and

3) decide consciously to select some minorities from among those applicants having roughly comparable potential. Here it is appropriate--as in most other human endeavor--to set realistic goals toward which to strive.

Within this basic framework affirmative action programs are flexible, and they pay close attention to qualifications. While the qualifications of minority applicants are evaluated with special sensitivity, they are viewed in the context of the overall applicant pool. The potential of the lowest ranking minorities accepted should be roughly comparable to that of the lowest ranking whites. If there are not sufficient qualified minority applicants the goal is simply not met, and no penalties are imposed.

The ultimate objective of affirmative action programs is not proportional representation of certain groups in various professions. Rather the aim of such programs is to hasten the day when they are no longer needed--when the vestiges of discrimination have been eliminated and men and women of all races can compete freely and fairly in an atmosphere where no one is concerned with race or sex.

-- Quotas

Unlike affirmative action programs, quotas are rigid. They do not respect qualifications. Minority applicants with markedly less potential than the lowest ranking whites will be accepted simply to meet a quota. The long range objective of quotas is to insure proportional representation of various groups in universities, professions, etc. In short, quotas--unlike goals--have no sunset provision.

-- Implications for Brief

The distinctions between affirmative action programs and quotas are not always easy to apply, but they exist and should be articulated in the brief. In addition to lack of clarity, moreover, even where it is most lucid the brief is too narrow. It correctly argues that an applicant's race may be taken into account in evaluating his or her potential, but it strongly implies that this is the only legitimate use of race. In fact, as noted above, affirmative action programs also consciously consider race to insure that some minorities are indeed selected from among applicants having comparable potential. The brief should recognize and support both uses of race in the selection process.

C. Lawfulness of the University's Program: Possibility of Recommending REMAND

The narrow issue in this case is whether the University's special admissions program operated in a constitutional manner. The brief concludes that it did not. Here it equivocates, however, stating that the program might be found permissible if the facts were clearer. (At p. 86, the brief says that the Supreme Court should not exclude "the possibility that a similar program, or indeed the Medical School's own program, could be sustained on an adequate record.")

We agree that the facts are poorly developed in the lower court record, as the brief itself indicates in several other places. For that reason, it would make sense to request that the Court make no finding on the constitutionality of this

particular program but instead remand the case for further factual development. Requesting a remand is the simplest and least explosive way to deal with the lawfulness of the University's program; it is also a responsible legal position.

Briefly, there are several areas of disputed facts. First, the University has contended that its program was in fact open to disadvantaged applicants of all races. If true there may not be a legal infirmity, since a court would likely find no constitutional problem with creating a special program for disadvantaged applicants generally.

Even if, as seems likely, the program was aimed specifically at minorities, other crucial pieces of evidence are missing:

1) How did the program operate in fact? Was this a rigid quota, in which 16 minorities were selected regardless of how their qualifications compared with those of white applicants? Or did the University set a goal of 16 minorities which it earnestly tried to meet, assuming it could find candidates whose qualifications roughly compared at least to the lower ranking whites admitted? While the record suggests that the program was overly rigid, it is not clear on this critical issue. On one occasion, for example, the University had accepted 16 minority applicants but one declined. Instead of filling the vacancy with another minority applicant--and there were minorities on the waiting list for the special program--it apparently selected a white. (See footnote at p. 7.) Hence there may have in fact been more flexibility and concern for qualifications in the program than appears at first blush.

2) Was it rational for the University to set a target of 16 percent? If, given the size of the likely pool of minority applicants, that figure is unrealistically high, then the school may have had to blink at qualifications in order to meet it. There is, however, no evidence on how this figure was selected.

Given the sorry state of the record developed by the parties to the suit, we should not ask the Court to declare the University's program unconstitutional. Instead the brief should outline the governing principles, explain that the record is not sufficiently clear to permit a reasoned application of those principles, and request that the case be remanded for fuller factual development. If it is determined that the University in fact utilized a rigid racial quota, then the program should be declared unconstitutional.

D. Tone of the Brief

The brief as now written is replete with problems of tone. Certain phrases such as "race conscious," while terms of art, could be misunderstood by the public and the media and would be better replaced by a phrase such as "minority sensitive" (with minority defined to include blacks, Hispanics, and Asian Americans). In addition to problems of phrasing, however, certain sections of the brief are simply insensitive--even offensive--and if taken out of context would be damaging. Examples of such passages, which should be modified or deleted, are found below in the section-by-section analysis of the brief.

II. SECTION-BY-SECTION ANALYSIS

As is customary, the brief begins with a short statement of the issues presented, then outlines the interest of the government, states the facts in the case and summarizes the opinions of the lower courts. Finally, the lengthiest portion is devoted to the argument.

A. Issues Presented

While later stating (p. 24) that the case cannot properly be reduced to the question of whether race may be taken into account in making admissions decisions, it appears from the statement of questions on p. 1 that the government believes this to be the overriding issue. The questions presented should be rephrased to eliminate this inconsistency.

B. Interest of the United States

Here there should be a forthright statement of support for Federal affirmative action programs. The reference (p. 3) to the government's "dispassionate" posture should be removed.

C. Facts and Lower Court Opinions

These sections should be rewritten--particularly to emphasize the inconclusive nature of the record--if we decide to ask the Court to remand the case for fuller factual development.

D. Argument

The argument has three prongs:

1) as a general proposition, race may be taken into account to remedy prior racial discrimination (p. 27);

2) the University of California could have properly concluded that an admissions program sensitive to race was needed to address the effects of past bias against minorities in the medical profession (p. 58); but

3) the program actually developed by the University was not constitutional (p. 79).

As already noted, the third prong of the argument should be reconsidered. Instead of a flat declaration of unlawfulness, a remand to produce a better record might be appropriate. Even with respect to the first two prongs, however, there are several specific problems in addition to the more general ones previously noted, including:

1. Pages 27-32 summarize the Supreme Court decisions permitting consideration of race for the purpose of overcoming the effects of discrimination. That section should make it clear--perhaps at the bottom of p. 29--that the ultimate objective of any minority sensitive remedy is to produce a situation of complete racial neutrality.

2. Pages 32-48 are potentially damaging. The purpose of this section is simply to argue that any resort to race should be closely scrutinized by the courts, a position which should be taken but which can be stated in two pages. Instead the brief makes the point so vociferously, and at such length, that it appears to be opposed to affirmative action programs generally.

For example, the caption on p. 32 reads, "Racial Classifications Favorable to Minority Groups are Presumptively Unconstitutional." It would better read, "Rigid Classifications Based on Race Should Be Carefully Scrutinized." At p. 37, the brief argues that "any resort" to race has potentially adverse consequences--a position which appears to cut against any affirmative action programs--as does the discussion at p. 39 to the effect that the minority beneficiaries of such programs will inevitably be stigmatized. Similarly unhelpful is the suggestion on p. 46 that only white "altruists"--read "wishy washy liberals"--would be interested in establishing affirmative action programs.

Generally, the tone of pages 32-48 could be perceived as hostile to affirmative action. The section should be revised and shortened considerably.

3. Pages 48-58 purport to detail the ways in which race may be used to overcome the effects of discrimination. This is the most important section of the brief, the place where the government should spell out the distinctions between goals and quotas. Indeed, much of the brief's best work is contained in this section. Yet, as noted above, the argument is too narrow, strongly implying that race may be considered only in the process of evaluating paper credentials.

The brief also explicitly declines to cast the argument in the familiar "goal v. quota" terminology. While it is true that the terms have not heretofore been well defined, they constitute the language in which the public will conduct the debate, and better delineation is imperative.

4. At page 58, the brief begins to apply its general principles--which unfortunately have not been developed with sufficient precision--to the University of California's program. Pages 58-68 argue credibly that discrimination has hindered the participation of minorities in the medical profession.

5. At page 68, however, the gears shift, and pages 68-72 (like 32-48) may not be perceived as supportive of affirmative action. The purpose of this section is to analyze the University's "further justifications" for a special admissions program. The analysis is unnecessary, however, since the brief has already argued--correctly--at pp. 58-68 that prior discrimination against minorities in the medical profession is sufficient to justify affirmative action. These remarks at pp. 68-72--such as an expression of doubt that "minority students will enrich the classroom experience of white students" (p. 68)--should be either eliminated or severely modified.

6. At pp. 79-86, the brief details the argument that, despite the evidentiary deficiencies, the University's program should be declared unconstitutional. We have already indicated why we believe a remand on this issue should be seriously considered. Moreover, the section inartfully suggests that too many minorities may have been admitted (pp. 81, 83), that Asians should not have been included (p. 84), and that the program should have been limited to blacks (p. 85).

It is true that the purpose of affirmative action programs is to remedy discrimination. If it is clear that discrimination against Asians in the medical profession has largely been redressed--and the evidence suggests that it may have been--then it may be appropriate to modify the program to concentrate on blacks and Hispanics. The phrasing of any such suggestion must be delicate, and the idea that an affirmative action program should be limited to blacks alone is both legally and politically unsound, particularly in the Hispanic community.

CONCLUSION

In order to present this Administration's position, the brief should:

- 1) strongly endorse affirmative action; *agree*
- 2) clearly differentiate affirmative action from quotas; and *agree*
- 3) request that the Supreme Court remand the case to gather the facts necessary to determine whether the University of California's program actually operates as a rigid quota. *?*

**Electrostatic Copy Made
for Preservation Purposes**

THE WHITE HOUSE
WASHINGTON

September 7, 1977

Charles Schultze

The attached was returned in
the President's outbox. It is
forwarded to you for your
information.

Rick Hutcheson

RE: LETTER FROM JOHN BOWLES IV
ON BUSINESS CONFIDENCE

5
SC

THE PRESIDENT HAS SEEN:

JOHN BOWLES IV
10 HANOVER SQUARE
NEW YORK, N. Y. 10005

cc Schultze
C

August 31, 1977

The President
The White House
Washington, D.C.

Dear Mr. President:

Pat was overjoyed with your thoughtfulness and the inscription on the picture.

I was appreciative of being invited to the lunch last Wednesday.

On numerous occasions members of your staff have asked what is wrong with the stock market or business confidence - fundamentally the same question.

Unfortunately, there is very little room for maneuver between the twin specters of inflation and "possible" recession. If one doesn't get you the other will.

Nevertheless, your blunt summary of Al's and Larry's forecasts was precise. I hope it will be included in your tax message.

The financial community is fully aware that there will be a reform component to the message. It is also aware that the art of the possible will undoubtedly preclude legislation until late next year.

The uneasiness of business confidence lies in a perception of uncertainty on your part regarding capital spending specifically and capital ownership in general.

**Electrostatic Copy Made
for Preservation Purposes**

page 2 -

If you were to come down hard on the need for increased capital spending - and even Les Thurow was forceful on this one - and if you were to be as specifically incisive as you have been on Energy and the Panama Canal, then you would do a lot for business confidence. You could probably develop significant business support for your complete package in the long fight to passage ahead.

The business and financial community is waiting for you to make a priority commitment to increased economic activity based upon the encouragement of capital investment in plant and equipment.

With best regards.

Sincerely,

A handwritten signature in blue ink, appearing to be the initials 'TL' followed by a horizontal line.

THE WHITE HOUSE
WASHINGTON
September 7, 1977

Zbig Brzezinski
Bert Lance

The attached was returned in
the President's outbox. It is
forwarded to you for appropriate
handling.

Rick Hutcheson

RE: PROPOSED 1978 SUPPLEMENTAL
APPROPRIATION FOR NSC

THE PRESIDENT HAS SEEN:

THE WHITE HOUSE
WASHINGTON

MEMORANDUM FOR: THE PRESIDENT
FROM: BERT LANCE *Bla*
ZBIGNIEW BRZEZINSKI *ZB*
SUBJECT: Proposed 1978 Supplemental Appropriation
for the National Security Council

We are requesting authorization for the Office of Management and Budget to prepare for submission to the Congress a request for fiscal year 1978 supplemental appropriations to cover the salaries and related expenses of four additional National Security Council staff members. The National Security Council does not request an increase of four in its staff, but the funds that will enable it to fill its remaining four open positions up to the approved ceiling of 68 FTP.

The NSC has voluntarily accepted a budget cut of \$300,000 in spring of 1977; this request is for the restitution of \$160,000.

After closely reviewing the current staffing expenses and the FY 1978 NSC budget appropriation, OMB is satisfied that these costs cannot be absorbed by that budget as it now stands.

Approve Disapprove

J

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THE PRESIDENT HAS SEEN.

6:50 pm Departure

THE WHITE HOUSE
WASHINGTON

THE PRESIDENT'S SIGNING OF
THE PANAMA CANAL TREATIES
Wednesday, September 7, 1977
Pan American Union Building
Washington, D. C.

6:50 pm

The President, accompanied by Mrs. Carter, Mrs. Johnson and President Ford, boards motorcade on South Lawn.

MOTORCADE DEPARTS South Grounds en route Pan American Union Building.

(Driving time: 2 minutes)

6:52 pm

MOTORCADE ARRIVES Pan American Union.

PRESS POOL COVERAGE
CLOSED ARRIVAL

The Presidential Party will be met by:
Ambassador Evan Dobbelle, United States
Chief of Protocol
Ambassador Manuel Ramirez, OAS Chief
of Protocol

6:53 pm

Escorted by Ambassadors Dobbelle and Ramirez, President and Mrs. Carter, Mrs. Johnson, and President Ford proceed en route Office of the Secretary General.

6:54 pm

The Presidential Party arrives Office of the Secretary General.

The Presidential Party will be met by:
Secretary General Alejandro Orfila

SPECIAL NOTE: An interpreter will be available as President and Mrs. Carter enter the Office of the Secretary General. The reception will provide an opportunity for them to greet approximately fifteen Heads of State whom they have not met previously. Mrs. Johnson and President Ford will also be provided an interpreter and will mingle among the guests.

7:25 pm

The President, accompanied by Secretary General Orfila and General Torrijos, departs Office of the Secretary General en route Hall of the Americas.

SPECIAL NOTE: Mrs. Carter will be escorted to her seat on the stage. Mrs. Johnson and President Ford will be escorted to their seats in the first row of the hall by an aide.

7:27 pm

President Carter, accompanied by Secretary General Orfila and General Torrijos, enters the Hall of the Americas, proceeds to the center of the signing platform and takes a seat to the right of Secretary General Orfila. General Torrijos is seated to the Secretary General's left.

FULL PRESS COVERAGE
LIVE NATIONWIDE TELEVISION
ATTENDANCE: 850

7:30 pm

Secretary General Orfila introduces Heads of Delegation.

SPECIAL NOTE: As each Head of Delegation is introduced, he will stand and remain standing until all have been introduced. At the conclusion of the introductions, Secretary General Orfila will indicate that the Heads of Delegation should be seated.

- 7:36 pm Brief remarks by Secretary General Orfila, concluding in the introduction of President Carter.
- NOTE: Secretary General Orfila will speak in Spanish. A translation ear plug will be available by the President's seat. The remarks will not be translated to the audience; however, translation will be provided to all media audience.
- 7:40 pm PRESIDENTIAL REMARKS.
- 7:44 pm Presidential remarks conclude.
- 7:45 pm Secretary General Orfila introduces General Torrijos.
- 7:46 pm Remarks by General Torrijos.
- NOTE: General Torrijos will speak in Spanish. Remarks will not be translated to the audience.
- 7:48 pm Remarks by General Torrijos conclude.
- 7:49 pm Secretary General Orfila announces the signing of the Treaties.
- 7:50 pm Signing of the Treaties by President Carter and General Torrijos.
- Herb Hansell, State Department Legal Advisor, will bring the Treaties to the signing table from behind the platform and assist in the signing. Both President Carter and General Torrijos will sign four times; there are two treaties, a copy of each in both Spanish and English.
- NOTE: The entire signing ceremony will take place while seated.

7:54 pm

Conclusion of the signing ceremony.

President Carter and General Torrijos shake hands with Secretary General Orfilia and then proceed to the far left of the platform where they begin to shake hands with each Head of Delegation, working their way to the right end of the platform from whence they will depart the Hall of the Americas.

8:01 pm

President Carter and General Torrijos depart the Hall of the Americas and proceed to a holding room where they will be joined by Mrs. Carter, Mrs. Johnson and President Ford.

8:02 pm

President and Mrs. Carter, Mrs. Johnson and President Ford proceed to motorcade for boarding.

8:05 pm

MOTORCADE DEPARTS Pan American Union en route South Grounds.

8:07 pm

MOTORCADE ARRIVES South Grounds of the White House.

NOTE: The Presidential Party will have twenty minutes of private time before forming a receiving line in the Blue Room.

#

8:30 PM

THE PRESIDENT HAS SEEN.

THE WHITE HOUSE

WASHINGTON

MEMORANDUM FOR THE PRESIDENT AND MRS. CARTER

FROM: GRETCHEN POSTON *GP*

SUBJECT: DINNER SCENARIO - September 7, 1977
8:30 P.M.

(6:00 P.M.) Dress Rehearsal - East Room.

8:30 P.M. *Heads of delegations arrive Southwest Gate via motorcade from Pan American Union signing for entrance to Diplomatic Room.

*All other invited guests arrive East Gate and proceed through lower drive to parking on East Executive Avenue, and enter through East Gate.

Guests proceed through East Colonnade to East Garden and enter through Diplomatic Room.

(Rain - Guests enter through East Gate and proceed through Colonnade and into Residence.)

Escort envelopes distributed at top of stairs into Main Hall and guests enter East Room through North Entrance.

Wine and juice served in East Room.

8:40 P.M. The PRESIDENT and MRS. CARTER, President Ford, and Mrs. Johnson arrive Blue Room and stand at Seal for receiving line.

Guests exit East Room through Green Room, into cross hall, through line and into State Dining Room for dinner, IN ORDER OF PROTOCOL.

9:00 P.M. Dinner is served.

9:45 P.M. Strolling Strings perform as dessert is served.

After-dinner guests arrive via bus to East Gate and proceed to ground floor of Residence for champagne and white wine - East Lobby to East Garden to Diplomatic Room (East Lobby via East Colonnade to Diplomatic Room in case of rain.)

10:00 P.M. Remarks by the PRESIDENT.

Conclusion of dinner.

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Cont.

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Memorandum for the President and Mrs. Carter
From: Gretchen Poston
Subject: Dinner Scenario - September 8, 1977
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10:00 P.M. Guests depart State Dining Room to Blue Room and Green Room for coffee. Balcony opened for guests.

(Doors from Blue and Green Rooms closed to cross hall.)

10:05 P.M. The PRESIDENT and MRS. CARTER, President Ford, and Mrs. Johnson to Seal at Blue Room to form receiving line for after-dinner guests.

After-dinner guests to State Floor and through receiving line.

(During receiving line for after-dinner guests, dinner guests are to be seated for entertainment in East Room IN ORDER OF PROTOCOL.)

10:20 P.M. The PRESIDENT introduces program, and program begins.

11:00 P.M. Conclusion of entertainment.

*Heads of delegations are escorted from East Room IN ORDER OF PROTOCOL and proceed to Blue Room for coffee and champagne, as they await their cars on South Grounds.

All other guests depart East Room, downstairs, and exit East Gate.

As cars are announced on South Grounds, guests depart from Balcony. NOTE: IN ORDER OF PROTOCOL.

NOTE: guests arriving for after-dinner entertainment will have arrived East Gate on bus. Departure will also be on bus at East Gate.

*Rain Alternative: Heads of delegations are escorted from East Room downstairs to Diplomatic Room for coffee and champagne, as they await their cars on South Grounds.