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THE PRESIDENT HAS ~~SEEN~~

THE WHITE HOUSE

WASHINGTON

January 7, 1976

MR. PRESIDENT:

Attached are papers that David Mathews promised you during your meeting last Friday.

I have taken the liberty of transmitting a copy to Bob Hartmann.

Jim Connor

A handwritten signature in black ink, appearing to be 'J. Connor', written in a cursive style.



THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE
WASHINGTON, D. C. 20201

January 5, 1976

MEMORANDUM FOR THE PRESIDENT

Through: Jim Connor

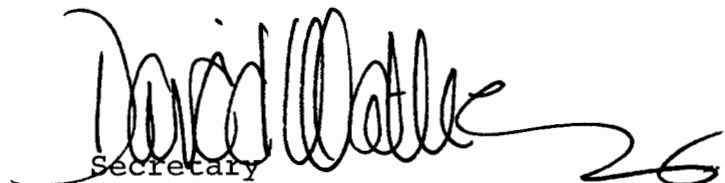
I appreciated the opportunity to meet privately with you on Friday to discuss in some detail matters of mutual concern relating to HEW.

Here are selections from a series of "white papers" from the Secretary to the staff that I have been using to suggest either new directions for management or new policy directions on some major social issues.

Since you were so supportive of the somewhat different course I am now trying to pursue in the management of the Department and since you expressed an interest in the policy concepts we were trying to develop on major issues, I have attached those papers directly relating to the topics we discussed. Our plan for reforms of the process of promulgating regulations will follow shortly and on the schedule I described earlier, so will the report on recommended improvements in the overall organization of HEW.

The general ideas that you asked about on the need to focus on the quality of human services, are outlined in the address (attached) to the American Public Welfare Association.

Thank you again for the time that you are willing to devote to working on the difficult but very important issues before the Department.


Secretary

Attachments

1. Qualitative Activism, A '76 Strategy for HEW
2. Public Outrage and The Processes of HEW
3. A "New" Initiative on Desegregation
4. Joint Statement on Affirmative Action



THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE
WASHINGTON, D. C. 20201

REMARKS BY
THE HONORABLE DAVID MATHEWS
SECRETARY OF HEALTH, EDUCATION, AND WELFARE

Before
American Public Welfare Association
New Orleans, Louisiana
December 19, 1975

QUALITATIVE ACTIVISM: A '76 STRATEGY FOR HEW

There are the inevitable questions about what a new Secretary is like and how he or she is going to handle all the matters that are before the Department--in particular if he is going to handle them in any way different from that of his predecessors. You deal with HEW daily and I think you are entitled to some report on that issue.

To talk about initiating a totally new approach seems to me pompous but my friends within the Department have strongly advised that I go ahead and admit that I am taking what they find to be a somewhat different approach to the Department, with somewhat different handles for managing the agency.

It seems to me that every Secretary has to make an assessment of where the Department is in the context of the times in which he serves and that of necessity every Secretary should start out on a somewhat different course since the "times" do change. However, I am convinced that no Secretary can invent a new emphasis on his own motion; he or she can only add the weight of the Office to impulses that already exist in the Department.

These "times" suggest to me four particular strategies for the Department for 1976.

First of all, look at the chart of the Gross National Product in contrast with the chart of increasing Federal expenditures. It's elementary to conclude that the second curve will inevitably level off to approximate the first curve. That means, in terms of our Department, which came to its maturity in the 60's and learned to express itself through the creation of new programs with massive budgets, that it has to find some other ways to be active and useful or be ground down in its own frustrations.

Its opportunities for activism through quantitative means, that is through more and larger programs, are obviously going to be limited. The most viable options for the Department then have to be in qualitative improvements. The focus of our attention needs to be "where the rubber meets the road." And for us, that point is at the impact between the individual and the hundreds of programs administered by or sponsored by the Department. To try to improve the quality of that influence--to try to make as humane as possible our administration of humane programs--or to facilitate that in the providers through whom we work--is an open and worthy challenge.

From this strategy two other conclusions follow: First of all, it is imperative for the Department to spend some considerable attention on those processes which effect individuals or individual provider institutions most directly. For that reason you can anticipate increased attention to such processes as the promulgation of regulations. And secondly, we need more permanent mechanisms for reading citizen reaction to what the Department--or more commonly what the Congress through the Department--does. I do not think we can expect to judge accurately impact or the relationship between program and people without being able to read, in a more systematic fashion, the response of the public to what we have done, are doing, or anticipate doing.

The second sign of the "times" is an obvious diffusion of responsibility for programs in health, education and welfare, and a less obvious but more serious separation of authority and responsibility. The Department itself is certainly not the sole arbitrator of all of these matters. As a matter of fact, not only do we have to deal with other branches of government but properly, and as you know, we also have to deal with other levels of government.

The appropriate response to this widespread diffusion of responsibility and authority is a strategy of strengthening partnerships with all of the other "actors," in particular with the states. States argue persuasively that in the last 20 years they have developed new capacities for delivering social services and need a different kind of relationship with the Federal government than the relationship that obtained in the 50's and 60's. This is the reason I have encouraged partnerships with states and getting along with them--not simply because we wanted to be nice, but because if the sense of the "times" is correct, partnerships are indispensable to what we want and need to accomplish.

The third sign of the "times" seems to me to be a great uncertainty in mood. That public frustration has been reported in every news survey that I have seen in the last three months. It is coupled with a clamor in the public debate over social policies which is reflective of the same uncertainty about direction.

As a historian, it seems to me that we are at the end of one era about to go on somewhere else, where we are not exactly sure. For that reason, I think the Department has an obligation to contribute perspective as well as administrative decisiveness. It is appropriate, even essential, for the

Department to talk about ideas and to make some investment in improving the quality of the public debate on matters of policy for health, education and welfare. In a time of uncertainty, being a bit philosophic or at least working for a broad perspective, may be the most practical thing we can do.

It also follows from this strategy that the Department needs to be especially open to new and different ideas and to supporting new ventures on a pilot basis.

The fourth sign that I see, which has implications both for the Department and for others, is a concerted attack on governmental bureaucracies at all levels and of all kinds.

But rather than fearing this controversy, I would suggest to all of us who head departments and bureaus and institutions that it might be somewhat useful, in that it will inevitably raise the second question, which is "why?" When we get to that point we will probably discover that the bureaucracy is us. The bureaucracy is simply the product of an accumulation of what we as a people have wanted and we will be forced to deal with the fact that we want very different things and that we have embodied those conflicting demands in our bureaucracies. We may even find out that nobody is more frustrated about the bureaucracy than the bureaucrats themselves. Most

importantly we will have relearned that all choices in government are forced choices between competing values.

The controversy need not be viewed as a punitive exercise but as a chance for the American people in bureaucracies to talk to the American people not in bureaucracies. That could be very healthy exercise and I will be suggesting to the Department at every opportunity that it try to view it that way.

The final observation I would like to make is to point out that acknowledging all these problems doesn't seem to me to be properly equitable with being overwhelmed by them. The most persistent invitation I have is to admit that the whole business of the Department is overwhelming and frustrating and will just positively do anybody in. I would be the last to tell you that it is simple, but it seems to me that to point out problems is not necessarily to be overwhelmed by them--any more than to say it is raining when it rains is to be paranoid.

I still hold to the conviction that this is a great architectural era for those who are willing to take advantage of it as such. Uncertainty and frustrations with what is are not only the forces of our fears; they are also the forces that have been associated with all of man's pioneering.

It is essential to know what the signs of the times are. But it is more essential to know that the difference is really not in the times; it is always in us.

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THE PRESIDENT HAS SEEN

PUBLIC OUTRAGE AND THE 'PROCESSES'
OF HEW

There is every evidence that the American people are deeply troubled by their relationship to the Federal Government. As Jimmy Breslin put the problem recently, "there is a country of the United States and a Government of the United States; the two are not necessarily the same."

Whether true or not, the public feels that the Government invades their privacy, intrudes into their legitimate pursuits and manipulates and entraps to achieve its purposes.

Of course there remains a deep conviction about the general necessity of Government and a deep appreciation of its particular accomplishments. But it would be a mistake to assume that those ancient convictions disprove the existence of widespread disenchantment.

The dissatisfaction cuts across class regional, and ideological lines. At its heart is a feeling that the servant has become the master, Government seems remote, insensitive and a barrier, if not a burden. Government is not an agent for solving a problem, it is, to an increasing number of citizens, the problem itself.

It follows then that there is no "program" of Government that can speak to this issue. It is not that programs are not important it is that they are not relevant to this particular and most critical problem.

This public distress with Government will necessarily focus on the largest department of Government, HEW. And all of our programs will not put this Humpty Dumpty back together again. The public is asking essentially "process" questions and "program" answers will only frustrate them more.

The public whether in the various regional conferences and hearings we have held around the country or in the meeting with the interest groups here on the Department is asking much the same kinds of process questions.

The public has concluded that we do in fact legislate and judicate and therefore they question the adequacy of what we do by the normal standards for legislating and adjudicating. In effect they want to be assured that we too observe "due process." Additionally and in that same vein they question the general openness of our processes. They want to know the opportunities for public communication and the "publics" with whom we do in fact communicate. Also they want to know the processes for incorporating those public views into our decision making.

Of all of the processes of the Department the public now places a high priority on those particular functions that bear directly on the lives of individuals or institutions. But outside of investigations, regulations, and perhaps correspondence, we seem to have some difficulty in identifying those points in our decision making process that had most directly the lives of people and the operations of institutions.

Often pursuing these practical questions of reforming process in the Department gets blocked by a reaction to what is perceived to be the immorality of concentrating on means (process) rather than ends (programs). One obvious retort is that the greatest lesson of recent history is that process, whether in the conduct of Government or in the pursuit of military action, carries with it a moral imperative that can not be subordinated to the morality of the ultimate goal.

In this ~~same~~ vein perhaps it should be noted, that we are having to face the unsettling doubt that our formula for success (facts equal answers; answers solve problems) may be a bit off. The efficacy of answers may be inseparable from the style or fashion in which they are given; that is to say, process may be the hidden variable, which if left out of the formula, renders it only partially useful.

The fact of the matter seems to be that none of the major social dilemmas before the country are susceptible to clear answers or dramatic solutions. What would appear useful would be a theory of social action that could focus on working out better answers rather than producing "final solutions." And a theory with "process" at its center would certainly come closer to meeting those specifications.

Revised: 11/28/75, McKenzie

A 'NEW' INITIATIVE ON DESEGREGATION

(A Preliminary Paper)

The growing problems associated with school desegregation in the large urban areas, the evidence of changing alliances on civil rights in Congress, the search for alternatives, and, most certainly, the political-legal-moral imperative of desegregation -- all suggest the need for some new ways to look at and approach the issue. Although the desegregation issue is not confined to urban populations, it is true that in urban areas desegregation presently poses the more volatile consequences.

The highly focused concentration on particular methods for school desegregation ignores the larger problems of urban crisis and default. These larger problems warrant discussion of more comprehensive strategies for building stable communities hospitable to the interests of all citizens. The impact of economic stress on social motivations is an overwhelming reality impossible to ignore. And the shift from a macro to a micro focus for social imperatives, especially as reflected in the new emphasis on ethnicity, is a powerful force now reshaping our political processes.

The moving forces now do seem to reflect:

- the fear for life in our cities;
- the concern for economic survival;
- the desire to get some greater degree of control over the decisions and institutions that affect our daily lives;

- the impulse to build humane communities, not just larger cities;
- and the desire to find an anchor for our sense of self in a more particular, often ethnic, identification.

An approach emphasizing "comprehensiveness" (perhaps a kind of social environmentalism) suggests there is profit in looking beyond the school (although not neglecting it) for devices which would enable us to build viable humane communities that find productive rather than destructive uses for racial, ethnic, social class and other differences. (Perhaps an amalgamation of the deschooling and desegregation thrusts is in order.) For example, we might put special emphasis on recreation, social, special education, career education, etc. programs that could be organized along new (integrated) lines as ways of getting away from established patterns.

There is, further, the implication in this line of speculation that it would be useful, before the fact of a desegregation crisis, to invest in community-coalition building efforts. Success or difficulty in desegregation seem to correlate most highly, not with the use of any particular method, but with the degree of community support that the schools maintain. Such an approach might be useful too in promoting a greater sense of local control.

All this speculation begs, for the moment, a discussion of the appropriate role for the federal government. The emphasis, at first, is necessarily on what might be done rather than who might do what.

In all cases, too, these are concepts to be discussed (as contrasted to official policy) and the purpose of this summary paper is to further such discussions.

THE PRESIDENT HAS SEEN.....

A JOINT STATEMENT BY

THE SECRETARIES OF LABOR AND HEW

To the Interdepartmental Committee
on Affirmative Action

AFFIRMATIVE ACTION IN EMPLOYMENT AT
INSTITUTIONS OF HIGHER EDUCATION

Pursuant to Section 202 of Executive Order 11246 (30 FR 12319), as amended by Executive Order 11375 (32 FR 14303), institutions of higher education performing as prime contractors or subcontractors under federal nonconstruction contracts are prohibited from discriminating against any employee or applicant for employment because of race, color, religion, sex or national origin and are required to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to the aforementioned factors.

The Executive Order's affirmative action requirement is intended to ensure prompt achievement of full and equal employment opportunity through the establishment of specific procedures. In order to implement this objective in nonconstruction employment, including employment by institutions of higher education, such as colleges and universities, the Department of Labor has promulgated various regulations set forth in 41 CFR Part 60-1 et seq. The principal regulation in this area is known as "Revised Order No. 4", 41 CFR Part 60-2, which requires prime contractors and subcontractors with 50 or more employees and a contract of \$50,000 or more to develop a written

affirmative action program for each of their establishments. The Department of Health, Education, and Welfare acts as compliance agency for higher education contractors subject to the requirements of Revised Order No. 4.

In August, 1975, the Department of Labor developed and approved a format for the development of affirmative action programs by institutions of higher education (40 FR 37064) which the Department of Health, Education, and Welfare uses in securing compliance with such requirements.

Equal employment opportunity matters at institutions of higher education are subjects of strong concerns and views by the Government, the institutions, their employees and potential employees, and various other persons, organizations and agencies. In order to receive such views and concerns as they might affect the Government's implementation of Executive Order 11246, as amended, the Department of Labor requested information and held public fact-finding hearings ending on October 10, 1975, with the record held open until November 15, 1975, for the submission of written statements (40 FR 30166, 37129).

Having fully considered the administrative record of these proceedings, we have decided on the following actions:

1. The Department of Labor and the Department of Health, Education, and Welfare will undertake a joint review of existing regulations including procedures for compliance reviews, preaward clearances and reviews, and the development and implementation of affirmative action programs. This review is intended to ensure the further development of policies and procedures by both the institutions themselves and the Departments which will result in the expansion of employment opportunities for minorities and women.

Specific attention will be given during this review to any revisions of existing regulations which are necessary to accomplish this objective in the context of the unique problems facing institutions of higher education as described in the hearings referenced above.

2. The Department of Labor and the Department of Health, Education and Welfare will explore with other public and private agencies various approaches for increasing the supply of minorities and women qualified for academic employment. These approaches would seek to encourage minorities and women to achieve graduate and professional education necessary for academic employment.

3. All institutions of higher education now holding federal contracts or subcontracts, because of concurrent receipt of federal grants, are also subject to the requirements of Title IX of the Education Amendments of 1972. Regulations issued by the Department of Health, Education, and Welfare under that Title currently require the development and implementation of internal grievance procedures for resolving discrimination complaints. Institutions of higher education will be encouraged to develop and implement internal grievance procedures for resolving discrimination complaints by employees under the Executive Order Program as well. These procedures can serve as a salutary and expeditious means for resolving many equal employment issues. Internal grievance procedures might be established separately for each higher education establishment or might be developed for the joint use of a group of such establishments, such as an entire state higher education system. Such procedures might involve either binding or advisory arbitration. The findings of arbitrators in these proceedings will be considered by the Government in the conduct of its own complaint investigations, compliance reviews, and enforcement measures under Executive Order 11246.


4. In order to facilitate the development of acceptable affirmative action programs by institutions of higher education, including the analysis of minority and female

utilization in faculty employment, the Departments of Labor and Health, Education, and Welfare will work with public and private agencies to develop improved data on minority and female availability for academic and other professional employment, and to make such improved data readily accessible to these institutions.

5. In order to provide the Government with continuing advice and recommendations on equal employment matters in higher education, the Departments of Labor and Health, Education, and Welfare will initiate procedures under the Federal Advisory Committee Act to establish an interagency advisory committee. Membership would include persons from academic and related areas, and would encompass faculty, administration, minorities and women.

We believe that the measures outlined above will help to expand significantly the employment opportunities of minorities and women in the area of higher education and will further the Government's nondiscrimination and affirmative action mandate under Executive Order 11246 as amended.


Secretary of Labor


Secretary of Health,
Education & Welfare

Jim -

These came back in Outbox --

seems like more attached than we sent it

in --- Any special action?

no

Trudy