

Introductory provisions

1. Name and definition of the country:

The area of jurisdiction of the interim government shall be that territory known as the Mandated Territory of South West Africa as defined in Article 1 of the Mandate of 17 December 1920, and will be known during the interim period as South West Africa/Namibia until before independence a final decision regarding a name has been arrived at.

2. Nature of State:

South West Africa/Namibia is a republican democratic state which accepts the principle of free economic structure and the inviolability of property ownership and the Roman Dutch Law and traditional law as if at present exists in the country, will be the ruling law.

3. Flag and National Anthem:

These items shall be referred to an expert committee as soon as possible for recommendation to the Conference.

4. Official languages:

For the period of the interim government the present dispensation shall be retained.

5. Seat of the central government: Windhoek

Governments on the second tier (representative authorities) may determine their seat of government at choice.

Protection of fundamental rights

1. The following fundamental rights shall be binding on the legislative, executive and judicial authorities.
2. The principle of human dignity shall be inviolable and shall be respected by all incumbents of state authority.
3. Every person has the right of free unfolding of his personality to the extent that it does not affect the rights of others or is inconsistent with the public order and morals.
4. The life, freedom and physical inviolability of every person shall be unassailable and may be assailed only on the strength of a legal direction.
5. All people are equal before the law. No person may be benefited or prejudiced on account of his origin, sex, language, race, colour, creed or political convictions.
6. Freedom of religion shall be guaranteed.
Freedom of movement will be guaranteed.
7. Every person shall have the right to express his opinion in words, writing or symbols to the extent that it does not affect the rights of others or is injurious to the state.

8. Freedom of the press is guaranteed; this right shall be restricted by general legal provisions, protection of the state, the youth and personal honour and reputation.
9. The right to possess property be it individually or collective shall be guaranteed.
10. Expropriation may only take place if the public interest requires it and if it is authorised by a legal provision in the case of expropriation reasonable compensation shall payable.
11. Every person shall have the right to be active in society, to assemble and to establish political parties; political parties or groups with a Marxist-Leninistic ideology shall be prohibited as being inimical to the state.
12. Where a fundamental right is restricted by legislation, such legal provision shall be of a general nature and shall not apply to an individual.
13. In no case may a fundamental right be affected or abolished in essence.
14. The Supreme Court of the Republic SWA/Namibia shall decide on:

(a) the interpretation of sections in the law on

as well as any other legislation applying to the Republic;

(b) the protection and enforcement of fundamental rights.

15. When the Supreme Court is approached on the interpretation and enforcement of fundamental rights the same procedure shall apply as for the civil procedure in that court.

Central Government

1. Definition of the different authoritative organs of the Central Government:

The central authority shall consist of the following organs, namely:

- (a) a head of state who shall be called the President;
- (b) and executive authority which shall be called the Ministers' Council;
- (c) a legislative authority which shall be called the National Assembly;
- (d) judicial authority which shall fall under the Supreme Court of the Republic of SWA/Namibia.

2. Executive Authority

(a) President:

(i) Manner of appointment: The President of the interim government shall be appointed by the South African State President in consultation with the Ministers' Council.

Term of office: For the duration of the interim government.

Discharge: In the same manner as the appointment, i.e. by South Africa's State President in consultation with the Ministers' Council.

Deputy in case of illness or absence:

(ii) Qualifications: The President must be able to qualify for election as member of the National Assembly.

(iii) Oath of office: A suitable oath of office shall be designed.

(iv) Powers and functions:

(aa) The President shall act as symbol of unity and shall represent the governments of the Republic of South Africa and the Republic of SWA/Namibia.

(bb) The President shall exercise all powers and perform all functions conferred upon him by law.

(cc) The President have the power to conclude agreements on behalf of the government.

(dd) All powers and functions of the President shall be exercised and performed on the advice and with the consent of the Executive Council of the Republic of South Africa or the Ministers' Council.

(v) Remuneration of the President: The President shall be remunerated by the National Assembly from funds appropriated for the purpose.

(b) Prime Minister and Ministers' Council:

(i) Prime Minister:

Manner of appointment and discharge:

The Prime Minister shall be designated by the National Assembly by means of an absolute majority; discharge shall be effected in the same manner.

Term of office: For the duration of the interim government.

Deputy: If the Prime Minister because of illness or absence cannot perform his duties and functions, the Ministers' Council shall appoint a deputy from its own ranks for a stated time.

Qualifications: The Prime Minister shall be a member of the National Assembly and shall therefore have the same qualifications as other members of the National Assembly.

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CONSTITUTIONAL COMMITTEE (WORKING COMMITTEE)

RESOLUTIONS: 24 JANUARY 1977

Minister's Council

Number and manner of appointment and dismissal (p. 12)

1. The Minister's Council consists of a Minister who will act as Chairman and one Minister for each population group represented in the National Assembly.
2. Members of the various population groups as represented in the National Assembly, acting in consultation with their electoral colleges, individually elect and dismiss their own representatives in the Minister's Council, with the proviso that in the event of a serving Minister's dismissal such Minister shall retain his office until such time as a new member be appointed by the representatives concerned. In the event of a Minister dying or any other circumstances rendering it impossible for a Minister to perform his functions, a substitute shall be appointed by and from the group of representatives concerned in the National Assembly, to act until such time as a new member of the Minister's Council be appointed by the group concerned in the manner set forth above.
3. Should a particular population group as represented in the National Assembly decide not to nominate one of their own number as member of the Minister's Council, such group may appoint another member of the National Assembly, in the same manner as is applicable to the appointment of Ministers, to

serve as their representative in the Minister's Council, with the proviso that in such an event that group which is not represented by a member from their own ranks in the Ministerial Council shall be entitled to nominate a deputy-Minister to assist their appointed representative in the Minister's Council. The said deputy Minister does not become a member of the Minister's Council but shall perform all duties allocated to him by the Minister's Council.

Powers and Functions of the Ministerial Council (p. 18)

(i) The Minister's Council carries out all duties allocated to it by law (i.e., the laws of the South African Government as well as those of an interim government).

(ii) The Minister's Council is empowered to negotiate with the South African Government with a view to ultimate independence and to sign agreements (such agreements, of course, to be enacted in most cases in the name of the President).

(iii) The Minister's Council formulates legislation and submits such legislation to the National Assembly.

(iv) The Minister's Council draws up the budget for submission to and approval by the National Assembly.

(As proposed)

Signing of official documents by the President and the Minister's Council.

All documents of an executive nature are signed by the President and countersigned by a member of the

Minister's Council.

(As proposed)

Composition and Operation (Function) of the Minister's Council

(1) All decisions/resolutions, by the Minister's Council are taken by means of a concensus but the Minister's Council may also agree by means of a concensus that a certain decision be taken by a normal or a two-thirds' or a three-quarters' majority.

(Already resolved)

(2) Paragraph (ii) of the proposal is deleted.

(3) Paragraph (iii) to stand over.

II. LEGISLATIVE AUTHORITY

a) Constitution:

That the following paragraph be inserted at the top of the paragraph....., preceding the proposal of the KAVANGO Delegation, for consideration:

Should the National Assembly feel certain that there are persons who cannot under the present ruling be represented in the National Assembly, the latter Assembly is empowered to institute by law, in accordance with the Declaration of Fundamental Rights, further electoral college(s) and to arrange for means whereby such persons may be represented in the National Assembly and in the Minister's Council.

CONSTITUTIONAL COMMITTEE (WORKING COMMITTEE)

RESOLUTIONS: 26 JANUARY 1977

Legislative Authority

(a) Composition

1. That each of the eleven population groups shall designate its own members in the National Assembly through its representative authority or electoral college, according to its own procedures.

The number of each population group's members in the National Assembly has not yet been decided upon.

2. (That) Should the National Assembly be convinced that there are persons who cannot under the present arrangement be represented in the National Assembly, the latter Assembly is empowered to institute by law, in accordance with the Declaration of Fundamental Rights, further electoral college(s) and to arrange for means whereby such persons may be represented in the National Assembly and in the Minister's Council.

(b) Term of National Assembly

Not yet discussed.

(c) Convocation, dissolving and prorogation.....

Not yet discussed.

(d) Qualifications for members of National Assembly

Not yet discussed.

(e) Legislative powers and functions of National Assembly

Not yet discussed.

(f) Procedure of the National Assembly

(i) Method of voting in the National Assembly

1. The National Assembly exercises its powers by majority vote, with the proviso that such majority shall include the majority of the members of each delegation.
2. Should the National Assembly be unable to come to a decision because the required number of members of one or more, but of not more than three, delegations does not support a measure, the measure shall be referred to the representative authority or electoral college of the delegation concerned for its decision.
3. A representative authority or electoral college to which a measure has been referred by the National Assembly for its decision must come to such decision within one month of the matter being so referred.
4. Should the Representative Authority/Electoral College then decide, according to its own rules of procedure, in favor of the measure in question, the majority of the members of the delegation concerned in the National Assembly shall be deemed to have voted in favor of the measure in question.

before his election, or if he is an unrehabilitated insolvent, or has been declared mentally unsound by a competent court, or if he is the incumbent of a full-time post for which he is remunerated by the Central Authority of, or any representative authority (second-tier government) in the Republic of South West Africa.

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- (e) Legislative powers and functions of the National Assembly: The National Assembly shall be the legislative authority in the Republic.

The South African Parliament and Government shall retain legislative and executive powers for the duration of the interim government, in respect of defence, foreign affairs, transport, finance and exchange, inland security, telecommunications and posts.

In respect of the following entrenched departments the National Assembly shall have full legislative powers: Customs, Excise and sales policy; company tax; immigration and passport control; mining excluding surface rights; national roads, water, power and energy; national resources and revenue therefrom; information; economic matters; trade and industry; control over financial institutions; third-party insurance and insurance; unemployment and labour; traffic; national health; geological survey; registration of deeds; registration and control of companies; trademarks and patents; finance

and distribution; loans and audit; fisheries; justice; public service (those departments transferred); sports and recreation; environmental control and nature conservation; licences; prisons; agricultural technical services and marketing; population registration and statistics.

Legislative powers in respect of these entrenched departments may be delegated by the National Assembly to representative authorities (second-tier governments), but ~~any~~ naturally be revoked at any time; in the case of conflicts between laws of the National Assembly and representative authorities on these entrenched subjects, the laws of the National Assembly shall have superior validity.

The following fields of legislation shall be unentrenched:

Agricultural credit and land tenure; forestry; education except tertiary education; social welfare, pensions and community development; arts and culture; traditional administration of justice; exploitation of surface rights; loan powers; staff and traditional local authorities.

Any representative authority (second-tier authority) may request the National Assembly to transfer any of the unentrenched legislative functions to such representative authority and shall be entitled to such transfer

(i) Manner of voting in the National Assembly

1. Kavango-Bushman-proposal: "As this legislation is only in respect of an interim government, the National Assembly shall exercise its legislative powers with an ordinary majority vote, provided that at least half of the members of each electoral college shall be included in such majority."
2. Coloured-Baster-proposal: "The National Assembly shall take its decisions with an ordinary majority vote provided that at least two members of each electoral college shall be present during such voting."
3. White-proposal: "The National Assembly shall decide by means of consensus, but the National Assembly may also by means of consensus agree that a particular question may be decided by means of an ordinary or a two-third or a three-quarter majority."
4. Nama-proposal: "A draft bill submitted to the National Assembly shall be approved by ordinary majority of votes but if such bill should affect the political rights of any member of any population group or a population group in its entirety and/or if such bill should alter the powers and functions of the second-tier authority and/or restrict them general consensus of the National Assembly shall

PETITION FOR THE ESTABLISHMENT OF AN

INTERIM GOVERNMENT

CONSIDERANCE

ON THE BASIS of our Declaration of Intent and with the recognition of the Supremacy of God AND THE SERIOUS DESIRE TO -

- + lead South West Africa to full independence;
- + implement the Resolutions of the Constitutional Conference as soon as possible;
- + and to draw up a final Constitution for our country which will be accepted by all the population groups currently represented in the Constitutional Conference,

the Government of the Republic of South Africa is requested to establish an interim government for South West Africa on the following constitutional basis:

5. Damara and Tswana-proposal: The same as the Kavango/Bushman proposal.
6. Herero-proposal: Reserved.
7. Caprivian-proposal: Reserved.
8. Owambo-proposal: Reserved.

(ii) Chairman and Standing Orders:

The National Assembly shall elect a chairman from its own ranks and draft its own orders.

(iii) Quorum: At least half of the members of the National Assembly shall form a quorum.

(iv) Freedom of speech: There shall be freedom of speech in the National Assembly.

(g) Conflicting legislation:

(i) The provisions of the law to provide for the establishment of the interim government may naturally be repealed or amended only by the South African Parliament; laws of the National Assembly in conflict with this act shall be invalid.

(ii) Laws of the National Assembly conflicting with the provisions in South African legislation in respect of those subjects on which the South African legislator reserved legislative and executive powers, shall be invalid.

(iii) Laws of the National Assembly in respect

legislation in this connection.

- (iv) In case of conflicts between laws of the National Assembly and representative authorities (second-tier authorities) in respect of subjects allotted to the representative authorities shall have superior force, but in all other cases laws of the National Assembly shall have superior force.

4. Judicial Authority

- has been placed on this*
- (i) There shall be a Supreme Court of South West Africa consisting ^{of} as many judges as may be determined by the Ministers' Council from time to time.
- (ii) Unless provided otherwise by law, the Supreme Court of South West Africa shall have jurisdiction over criminal and civil matters and all others matters in respect of which jurisdiction is conferred upon it by law.
- (iii) The Supreme Court of South West Africa shall have jurisdiction on all matters in which the validity of legislation by the National Assembly as well as the representative authorities and other inferior legislators crop up.
- (iv) Until such time as the National Assembly should provide otherwise by law, the Appellate Division of the Supreme of South Africa shall retain the

the Supreme Court of South West Africa and decide upon them as it has in respect of decisions of courts of provincial and local divisions of the Supreme Court of South Africa, and any legal provisions or court rules which in respect of any appeal against a decision of a court of such a provincial or local division are applicable shall apply mutatis mutandis in respect of an appeal against a decision of the Supreme Court of South West Africa.

- (v) Judges of the Supreme Court of South West Africa shall be appointed by the Ministers' Council.
- (vi) The Ministers' Council may dismiss a judge from his post only on the grounds of misconduct or inefficiency and any such dismissal shall be reported to the National Assembly within a month which may confirm or set aside the dismissal.
- (vii) The retirement age of judges shall be 70 years.
- (viii) Remuneration and other conditions of service of judges shall be determined by the Ministers' Council.
- (ix) The seat of the Supreme Court of South West Africa shall be Windhoek.

Representative authorities (or decentralised authorities) - the so-called second-tier authorities

1. Composition and regulation:

(i) In respect of population groups such as the Basters, Whites, Bushmen, Caprivians, Kavango, Coloureds, Namas and Wambo the existing authoritative bodies established by law, shall be accepted as the representative authorities for those population groups and the laws concerned under which they were established shall be retained as their constitutions. These constitutions as far as they concern unentrenched departments may be repealed or amended only by the National Assembly with the approval and at the request of the representative authority concerned.

(ii) For population groups such as the Damara, Tswana and Herero where on the establishment of an interim government no representative authorities exist, no representative authorities shall be established, but the present delegations to the Conference shall form the electo-

ral college for purposes of the election of members of the Ministers' Council and National Assembly.

2. Qualifications for members of the representative authorities:

Representative authorities shall decide by themselves on the qualifications of their members, except for the following minimum qualifications:

18 years old, born in the Republic of South West Africa or admitted there for permanent residence, having lived in the Republic uninterruptedly for at least one year before election or nomination to the representative authority.

3. Area of jurisdiction of a representative authority:

- (i) A representative authority shall have a personal say over all those persons who according to legislation of the representative authority concerned are members of the population group for which the representative authority concerned is established, in respect of matters granted to the authority concerned.

(ii) In so far as the powers and functions of representative authorities range over land and land tenure, they refer only to such land (except land within local areas exclusive of land of traditional tribal authorities) as forms part of traditional areas of land and land belonging to members of the population group which falls under the relative representative authority's jurisdiction.

4. Seats of representative authorities:

The choice of seats of the various representative authorities shall be left to the authorities concerned.

5. Power and functions of representative authorities:

(i) Representative authorities shall act as electoral colleges for the election of members of the National Assembly.

(ii) Representative authorities shall advise the National Assembly in respect of all those matters referred to them by the National Assembly or which affect the interests of the population group concerned for which a representative authority is established.

(iii) Where existing representative authorities

perform duties under entrenched departments they shall for the duration of the interim government continue to perform such duties under the authority of the interim government, with the possibility that the interim government may, by means of legislation, amend, re-regulate or claim the performance of such duties.

- (iv) Where existing representative authorities already perform duties of the unentrenched departments, they shall retain those powers for the duration of the interim government and from the nature of the case their legislation shall have superior force of law above that of the National Assembly.

6. Procedure:

The procedure of existing representative authorities in connection with the holding of meetings, passing of legislation, quorum, organisation of meetings, etc. shall be retained or left to the authority concerned.

Local authorities (the so-called third-tier authorities)

1. The factual reality of the existence of white, brown and black townships at present is recognised and accepted.
2. Every separate township at present in existence and every separate township to be established in future shall be managed by its own authoritative body.
3. This arrangement shall, however, not apply to authoritative institutions on local level managed according to traditional custom law institutions. Such local institutions shall be developed by the representative authority for the area concerned after consultation with the traditional authority. In particular the following arrangements shall apply to these traditional local authorities:
 - (a) Local authorities managed in homogeneous areas according to traditional institutions and customs will fall under the authority and control of the relative representative authority.
 - (b) The acquisition of property within such local authorities shall be controlled by the representative authority concerned.

(c) Where necessary the representative authority concerned shall establish open township areas where any person will be able to obtain right of ownership of property;

(d) and if the representative authority concerned should in an unreasonable manner refuse to establish an area within a local authority for free acquisition of property rights the central government shall have the power to establish such an area;

(e) in case where areas within traditional local authorities are opened up to free acquisition of property, local authority business shall be performed by an elected town council or board shall be elected by all voters without any discrimination on the grounds of race, colour, sex and creed.

4. The authoritative bodies for existing town, or towns still to be established, shall be elected by the voters of the area over which the local authoritative bodies concerned have jurisdiction; who are entitled to vote will be determined by way of separate legislation but there shall be no discrimination on the grounds of race, colour, sex or creed.

5. The authoritative body for every township shall be able to exercise powers over the following subjects:

The provision of electricity, water and sewerage, the construction and maintenance of streets, bridges, etc.; the application of traffic measures and the improvement and development thereof for the community; purchase of property and expropriation under legal authority for permissible public aims; the establishment of milk depots, cold rooms, manufacture and distribution of ice; acquisition of equipment, machinery apparatus; the construction and maintenance of municipal buildings; construction of and control over the erection of buildings and the application of building regulations; the provision and control of sanitary services; establishment of libraries and museums and their control; establishment of graveyards; layout and control of railway sidings, aerodromes and the provision of public transport and control thereof.

6. In town areas adjoining one another an overhead board shall be instituted on which the authoritative body of each town forming part of the area for which such overhead board is established, shall nominate

and powers of which board shall be:

- (a) to bring about co-ordination between the different townships;
- (b) to co-ordinate and control activities and the rendering of services and to eliminate overlapping thereof;
- (c) to co-ordinate planning;
- (d) to make arrangements between mutually dependent townships in connection with the rendering of services and administrative functions;
- (e) to ensure that valuations for the purpose of property rates are done on the same basis for all townships concerned;
- (f) to take steps in collaboration with the relative authoritative bodies of the townships and other authorities to prevent undesirable social conditions;
- (g) to plan the creation and layout of new urban areas;
- (h) to co-ordinate the estimates of the different townships;
- (i) to exercise any other powers over which such an overhead board may reach agreement.

7. For local bye-laws the approval of the overhead board shall be obtained before they are confirmed by the Ministers' Council, except in the case of traditional local authorities where such local rules and regulations are to be approved by the representative authority concerned.

RIGHT TO PROPERTY

1. The different ways in which property may be acquired and lost need not be provided for in the law for the establishment of the interim government, except for the provisions given under Chapter II on the protection of fundamental rights.

2. As the interim government will have full powers on the acquisition of property and the free acquisition of property rights for all persons in the Republic of South West Africa is a matter belonging to the normal course of government the law advisers have no recommendation to make at this stage.

Pretoria

14 January 1977

~~SECRET/SENSITIVE/EYES ONLY~~

March 31, 1977

MEMORANDUM FOR: THE VICE PRESIDENT
FROM: DAVID AARON
SUBJECT: Should You Meet With Vorster?

I understand Tony Lake, in his heart of hearts, thinks any contacts with Vorster should be left to a lower level -- the State Department. He feels that a trip by you will be difficult, if not impossible, to fulfill.

My analysis is this:

-- In Rhodesia, Smith is faltering on his internal option. The black groups are in disarray, but the front-line countries appear to want to move toward some solution. There are reports that Vorster is willing to push Smith back into the Geneva negotiations and to insist that Smith drop his interpretation of the Kissinger principles.

-- In Namibia, we are reaching a turning point with the Turnhalle Conference. Once that body has delivered, it is my judgment that the internal option will go forward and we and the world will be confronted with a fait accompli, changeable only by force.

-- America's strategy has been to wink at apartheid and encourage good behavior on the part of Vorster on Rhodesia and Namibia. The South Africans have interpreted this as meaning we don't care about majority rule -- only about Communist incursions which turbulence in Rhodesia and Namibia might bring about. They have therefore sought to solve the turbulence -- Communist problems with internal options -- figuring that will get us off their back.

To get them moving, we will have to convey quite seriously the message that we want to see majority rule in all the South African countries but that we are willing to ease up on them in South Africa while we solve Namibia and Rhodesia first.

~~SECRET/SENSITIVE/EYES ONLY~~

DECLASSIFIED

E.O. 12958
per 4/27/06 NSC ltr re NSC 06-036
BY CS NARA DATE 5/11/06

I believe that we are at a point where decisive and bold action is necessary and just might work. The odds are still against making major progress in either Namibia or Rhodesia, but there is a finite chance that a strong intervention by us in the next couple of months could be decisive in

-- getting the Geneva negotiations moving again on Rhodesia,
and

-- getting Turnhallee turned off and a new, broader political process started involving SWAPO and the rest of the Namibians.

I therefore believe that a visit by you would be desirable, but I strongly believe you should minimize the "shuttle diplomacy" aspects and your personal involvement in Southern Africa by making sure the visit takes place in Europe in connection with other activities. The main message we have is for Vorster, and it is that the game is up. A big PR safari to Southern Africa will make it harder for the South Africans to hear that message and will, as Lake suggests, build expectations that cannot conceivably be either controlled or fulfilled. But a meeting with Vorster in Vienna could be decisive in turning him around and, in the current circumstances, is the least we can do if we are serious.

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

*3/27 -
Letter from
our office
J*

April 8, 1977

MEMORANDUM FOR THE PRESIDENT

FROM: ZBIGNIEW BRZEZINSKI *ZB.*

SUBJECT: The Vice President's Proposal Regarding Africa

I would like to register my dissent from the proposal -- and I have discussed it with the Vice President, who feels that I should convey it to you.

My view is as follows:

1. If the Owen mission is successful, or at least not a failure, it would be appropriate for the Vice President to meet with Vorster, but outside of South Africa. A meeting in South Africa would require also some additional meetings with dissenting elements as well as further meetings with at least some neighboring African presidents. This would turn the meeting into a tour, with all of its attendant visibility, expectations, and misconceptions.
2. Assuming the Owen visit was relatively successful, a meeting between the Vice President and Vorster outside of Africa could be a useful follow-up, as outlined in the Vice President's memorandum. However, in that case we need to have a much clearer notion of what we mean by "progressive transformation" of South African society in order to be able to discuss it meaningfully with Vorster. This can be done in time for such a meeting, but it will also have to be accompanied by a broader definition of our likely role in Africa, especially in regard to the developing direct and indirect Soviet presence. Our credibility with the South Africans otherwise will not be very high.

3. If the Owen mission is not successful, I really see very little merit in the Vice President meeting with Vorster. He will not singlehandedly and in a single meeting alter Vorster's point of view. What we are putting before Vorster is really, in the final analysis, an alternative historical vision of his own society. The acceptance of that alternative vision is not very likely in the atmosphere that is likely to be generated by the failure of the Owen mission. At that stage, an emissary of less prominence than the Vice President -- although still someone who commands your personal confidence -- would seem to me to be preferable, generating less visibility and fewer expectations. Moreover, such an emissary could spend a few days in sustained conversations with Vorster without some of the attendant complications inherently connected with the prominence of the Vice President.
4. I realize the above goes counter not only to the Vice President's recommendation but to your own thinking on the subject, but I feel that I ought to register these views with you.



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