

**NLWJC - Kagan**

**DPC - Box 015 - Folder 001**

**DPC [Domestic Policy Council] -  
Weekly Reports [2]**

DPC - Weekly report  
PRESIDENT  
10-11-98

THE WHITE HOUSE  
WASHINGTON

October 10, 1998

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MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed  
Elena Kagan

SUBJECT: DPC Weekly Report

**1. Education -- Charter Schools Legislation:** The Senate approved bipartisan charter schools legislation on Thursday by voice vote, and we expect the House to pass the identical bill prior to adjourning. As you know, the bill (which we had a substantial hand in drafting) would amend the federal charter school grant program to (1) encourage states to issue more charters; (2) give charter schools greater flexibility while ensuring that they meet performance goals; (3) provide for charter schools to receive their fair share of funding from federal education programs; and (4) promote ways for high-performing charter schools to help revitalize other public schools.

**2. Education -- Vocational Education Legislation:** Congress passed the Carl D. Perkins vocational education reauthorization bill on Thursday. The bill is the third and final piece of legislation -- following the workforce investment act and adult education act -- carrying out your "G.I. Bill for Workers" proposal. The bill consolidates numerous existing programs and set-asides into a single grant to states that combines flexibility with strong accountability mechanisms. Consistent with your general approach on education issues, the bill focuses on ensuring that students meet high standards (both technical and academic) by requiring states to develop a standards-based plan and to use their new funds to implement it. In addition, the bill specifically allows vocational education funds to support School-to-Work and "Tech-Prep" activities.

**3. Education/Crime -- White House Conference on School Safety:** You are scheduled to host the White House Conference on School Safety on Thursday. Other participants in the Conference include the Vice President, the First Lady, Mrs. Gore, experts in education and youth violence, community leaders, teachers, parents, and students. The conference will be downlinked by satellite to almost 600 locations -- including Jonesboro, Paducah, Pearl, and Springfield -- and will be cybercast over the Internet.

In addition to releasing the first Annual Report on School Safety, you can announce at the Conference: (1) a plan to create a Federal School Crisis Response team, which will assist local communities in much the same way that FEMA assists communities in response to natural disasters; (2) a plan to overhaul the Safe and Drug-Free Schools program so that it targets funds to communities with the greatest need, rewards the use of proven practices,

and requires schools to provide school safety report cards to parents and the public; (3) a set of grants totaling \$60 million to provide 2,000 school safety officers to schools with serious crime problems; (4) a commitment to trace all firearms recovered in schools to their sources; (5) a demonstration program, with coordinated funding from the Departments of Education, Justice, and HHS, to help schools, law enforcement, mental health agencies, and community groups to develop and implement coordinated, community-based efforts to address school safety and youth violence problems; (6) a commitment by four retailers (K-Mart, Walmart, Dockers/Levi Strauss, and JC Penney) to give back a percentage of their profits from the sale of school uniforms to schools to develop comprehensive school safety plans; and (7) a year-long public awareness campaign by MTV focusing on the problems of and solutions to school and youth violence.

**4. Children and Families/Welfare Reform -- Human Services Act:** Congress passed the Human Services Reauthorization Act on Thursday. The bill reauthorizes Head Start (with a number of improvements we recommended), as well as LIHEAP and the Community Services Block Grant. Perhaps even more notably, the bill also includes the first-ever authorization for individual development accounts, which you long have promoted as a critical component of comprehensive welfare reform.

**5. Housing/Welfare Reform -- Welfare-to-Work Housing Vouchers:** Congress approved in the VA/HUD appropriations bill your full request for 50,000 welfare-to-work housing vouchers. These new housing vouchers are the first ever to be linked to welfare reform, which is probably why Congress approved them. (Prior to this action, Congress had not approved a real increase in housing vouchers for four years.) The new vouchers present an exciting opportunity to improve how local welfare, employment, and housing agencies work together. We are working with HUD on ways to highlight the availability of these new vouchers.

**6. Welfare Reform -- Welfare-to-Work Partnership Survey:** The Welfare-to-Work Partnership's second annual survey of businesses, released last week, shows continuing success in the employment of welfare recipients and some remaining challenges. The survey shows that welfare recipients hired by Partnership companies earned an average starting wage of \$7.20 per hour, which is comparable to other entry level hires. About 76 percent of these recipients held full-time positions and 24 percent held part-time jobs, which also is comparable to non-welfare entry-level hires. Perhaps most striking, the Partnership companies promoted former welfare recipients at a significantly higher rate than is usual for non-welfare entry-level hires. According to the survey, the companies reported child care and transportation as significant barriers to hiring and retaining welfare recipients, but only about one-third offered services to overcome these barriers. The survey also found that non-Partnership companies are hiring former welfare recipients at an active rate: one-quarter had hired someone off welfare in 1997 and one-third expected to hire someone in 1998.

**7. Tobacco -- CDC Report on Youth Smoking:** The Center for Disease Control released a study on Thursday showing that between 1988 and 1996, the number of children who become regular smokers increased by 73 percent. This increase resulted in an additional 1.5 million children becoming regular smokers over the eight year period. The study also showed that in 1996 alone, 1.8 million Americans became regular smokers, of whom 66 percent, or 1.2 million, were under the age of 18. This means that in 1996, about 3300 young people became regular smokers each day; as you know, about one-third will die early as a result.

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THE WHITE HOUSE  
WASHINGTON

October 3, 1998

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MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed  
Elena Kagan

SUBJECT: DPC Weekly Report

**1. Tobacco -- State Settlement:** Rumors continue about an upcoming settlement between the states and the tobacco companies, as R.J. Reynolds and Brown & Williamson returned yesterday to the negotiating table. The parties, however, still have not worked out some difficult problems -- most prominently, how to prevent companies that do not join the settlement from gaining a competitive advantage -- and the return of RJR and B&W to the table may make resolution of these issues even more complicated. As you know, some plaintiffs' lawyers continue to suggest a broadening of the current negotiations to include the federal government. Both the states and the companies, however, have responded negatively to these proposals, fearing that the intrusion of the federal government would queer the deal they have been working on for so many months.

**2. Health -- Medicare Managed Care Program:** As you know, Friday marked the last day that HMOs participating in Medicare could decide whether to stay in the program for the upcoming year. Preliminary data from HHS indicates that some 25 companies in 320-400 counties serving 240,000-300,000 beneficiaries -- about 5 percent of the six million beneficiaries now in Medicare HMOs -- have decided to withdraw from the program. Most affected beneficiaries will have the option of joining another HMO in the same county. But in 60-100 counties, some 30,000-75,000 beneficiaries -- less than two percent of the total -- will no longer have any HMO option and will have to return to traditional fee-for-service coverage. Secretary Shalala has recommended that in these 60-100 counties we (1) expedite the approval of new plans, and (2) allow plans that have just withdrawn to come back into the market with increased premiums and/or decreased benefits. She argues that these steps will allow us to say that we have done everything possible to ensure that Medicare beneficiaries have access to managed care plans. We believe, however, that the second part of the Secretary's recommendation would reward bad actors and create perverse incentives for the future. We will meet with the Secretary and Erskine Monday to resolve our differences on this matter (and if necessary, come to you), so that we can announce our response as soon as possible.

**3. Health -- CHIP Waiver Request:** Governor Thompson is pushing HHS to approve a waiver that would allow Wisconsin to use federal match dollars from the Children's Health Insurance Program (CHIP) to provide insurance coverage for parents as well as

children. Thompson has broad support in Wisconsin for this proposal (including among some traditionally Democratic constituencies), and last week Senators Lott and Roth sent a letter to Secretary Shalala saying that she should grant the waiver and suggesting that they would seek legislation next year if she did not do so. HHS so far has refused to approve any waivers from CHIP, reasoning that we should first get the baseline program off the ground. HHS also has serious substantive objections to Thompson's proposal, believing that CHIP dollars were designed for children rather than adults, and that granting waivers of this kind could prevent us from reaching our goal of covering five million children. Many supporters of the CHIP program in Congress agree with HHS, including Senators Hatch, Rockefeller, Jeffords, and Chafee and Congressmen Dingell and Waxman. We believe that HHS should refuse the waiver request and work with this bipartisan group of legislators to try to defeat any legislative attempt to reverse this ruling.

**4. Health -- Statistics on Uninsured:** You asked last week about the increase in the uninsured population since 1993. About 43.4 million Americans are now uninsured, up almost 10 percent from 39.7 million in 1993. Among the total number of uninsured are 10.7 million children, up from 9.6 million in 1993. As we noted last week, the number of uninsured children did not increase at all last year, in part because of our focus on children's health. We anticipate that within two years, we will see a noticeable decline in the number of uninsured children as a result of the full implementation of CHIP. In contrast, the number of uninsured people ages 55 to 64 increased by 7 percent last year, validating the need for your initiative to increase coverage options for this population. We will soon send you a more detailed memo shortly describing the new Census data and outlining additional policy options.

**5. Health -- Dean Ornish:** We have worked with Dr. Ornish in recent weeks to obtain funding for his research on the impact of diet on prostate cancer. The conference report on the DOD appropriations bill now includes \$2.5 million for this research initiative. Although Ornish had hoped for a \$5 million grant, he was very pleased with this amount. Ornish also has requested that we provide assistance in his ongoing efforts to obtain Medicare reimbursement for his diet treatment plan. Ornish will meet with high-level officials at HCFA later this month to discuss this issue, and we will ensure that they give his proposal full and fair consideration. We also discussed ways for him to engage members and staff of the Medicare Commission on this issue. Ornish is pleased with the Administration's responsiveness and asked us to pass along his personal appreciation to you.

**6. Education -- Charter Schools:** We are hopeful that Congress will pass charter school legislation prior to adjourning this year. House and Senate staff met last week to pre-conference the bill, and reached agreement on virtually every issue. We think that they will finish their work within the next few days, and that the leadership then will bring up the bill for a vote. The NEA and AFT continue to be lukewarm to the legislation, but we do not now anticipate that any Democrats will try to derail it.

**7. Education -- Class Size Reduction:** We are talking with Democrats in Congress about whether to insist on a scaled-down class size reduction initiative in the Labor-HHS-Education appropriations bill. Senators Murray and Harkin have developed a proposal to provide \$500 million in new Title 1 funds specifically for class size reduction. Secretary Riley believes that if we push hard enough, we can get the Republicans to sign on to this kind of proposal. Senate Democrats appear supportive of this approach. House Democrats, however, have sent mixed signals about whether to get a class size initiative in the bill or leave it out and preserve a campaign issue. We will continue to engage them on this matter.

**8. Welfare Reform -- Noncustodial Fathers Study:** The Manpower Demonstration Research Corporation released last week the first full-scale study of a program focusing on the non-custodial fathers of children on welfare (the Parents' Fair Share program, which was created by the Family Support Act). The results were generally disappointing. The program, which operated in 7 cities, raised child support payments by an average of \$173 or 7 percent, but failed to improve participants' employment status or earnings level. We are currently holding discussions with policy experts and government officials to try to find more effective approaches. Many states are using their Welfare-to-Work funds to serve the fathers of children on welfare, and we want to make sure that these funds are put to the best possible uses. We are hoping to have policy proposals ready for this year's budget and State-of-the Union.

**9. Welfare Reform -- Federal Welfare-to-Work Hiring Numbers:** Federal agencies hired 926 former welfare recipients last month, bringing the total number hired to 7,087 since April 1997. As you recall, our goal is to hire 10,000 welfare recipients by the year 2000, so we are well on our way to success in this area.

**10. Crime -- COPS Grants:** You asked last week about the total number of law enforcement officers that the COPS program has funded. The program now has provided \$5.2 billion to fund over 88,000 new and redeployed officers across the country. We will probably reach the 100,000 mark ahead of schedule -- in the middle of Fiscal Year 1999, rather than at the end of Fiscal Year 2000. As you know, however, there is a lag of about 18 months between the time funding is provided to hire police officers and the time the officers actually hit the street.

**11. Crime -- NAPO Event:** You are currently scheduled to participate in the NAPO Top Cops Award ceremony on Friday. Although we are still considering message options, we probably will recommend that you blast Congress for failing to pass legislation that would extend education benefits to surviving children of law enforcement officers killed in the line of the duty, despite widespread bipartisan support. At the same time, you could criticize Congress for failing to pass a host of measures that would continue our progress in fighting crime.

*OKS Mark  
Have suggestions*

**12. Drugs -- Medical Marijuana:** Five states (AK, WA, OR, NV, CO) and the District of Columbia have medical marijuana initiatives on their ballots for November 3. We are working with ONDCP and other federal agencies on a targeted media and outreach strategy to inform the public about the Administration's position on this issue. The strategy will place special emphasis on D.C.'s medical marijuana initiative, and will include communications to local opinion leaders, elected officials, churches, and law enforcement officials. There are currently eight states with medical marijuana statutes.

**13. Children and Families -- Head Start Reauthorization:** We expect that Head Start Reauthorization (part of the Community Services bill that also includes LIHEAP and IDA demonstrations) will pass by the end of next week. The bill coming out of conference is generally quite good -- authorizing the program at levels near your request and adding an important new "school readiness" goal for Head Start grantees. The bill does include a requirement -- championed by Congressman Goodling and insisted upon by the Republicans in conference -- that a greater percentage of Head Start dollars be spent on activities to promote quality. Currently, 25 percent of dollars are set aside for quality improvement; this bill requires that 60 percent be set aside in fiscal year 1999, 50 percent in 2000, 47.5 percent in 2001, 35 percent in 2002, and 25 percent in 2003. Unless we obtain additional investments in Head Start in the future, this requirement will prevent us from reaching our goal of serving one million children by 2002.

**14. Community Empowerment -- CDFI Fund:** The CDFI Fund awarded \$75 million to 190 institutions last week. Of the total, \$44 million in loans and grants went to 42 CDFIs in 21 states, \$2.9 million in technical assistance grants went to an additional 70 CDFIs, and \$27.9 million went to traditional insured depository institutions that have increased their lending to distressed areas or invested in CDFIs. We are working closely with Treasury to ensure appropriate funding of your Fiscal Year 1999 CDFI budget request.

THE WHITE HOUSE  
WASHINGTON

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September 26, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed  
Elena Kagan

SUBJECT: DPC Weekly Report

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**1. Tobacco -- State Settlements and Federal Recoupment:** Rumors about a state settlement with the tobacco companies continue to run rampant. We heard in the middle of last week that the states were only days away from wrapping up an agreement that would give them about \$200 billion and a limited set of advertising restrictions. We heard on Friday, however, that new disputes had emerged and that there is not likely to be a settlement this week.

In preparation for a settlement, the NGA and NAAG are asking Congress to pass legislation extinguishing the federal government's claim to any share of the money that the companies will pay the states. (As you know, the federal government is entitled to an average of 57 percent of any state recovery of Medicaid expenditures; although the states will try to argue that the tobacco settlement is not -- or at least is not primarily-- a Medicaid recovery, the Justice Department will disagree strongly.) Governor Bush, who already has a settlement in hand, is pressing especially hard for this legislation.

During a meeting with Erskine last week, Governor Chiles urged the Administration to support compromise legislation on this subject, predicated on the agreement we reached with the NGA in the context of the McCain legislation. Under this approach, the federal government would relinquish its claim to a state recovery if but only if the state agrees to use half its money on a menu of seven items: child care, child welfare, the maternal and child health block grant, the substance abuse block grant, the safe and drug free schools program, Eisenhower education grants, and the state match for the children's health insurance program. Erskine, Secretary Shalala, Jack Lew, Bruce Lindsey, and we believe that this solution is a good one, and Erskine responded fairly positively to the proposal. Such legislation, however, would involve a serious budget issue, because the Congressional Budget Office currently scores the federal share of state tobacco recoveries as worth \$1.2 billion over five years. Chiles apparently has a plan for the states to reimburse the federal government this amount, thereby making the legislation budget-neutral, but neither we nor OMB has yet seen his proposal.

Kagan

**2. Health -- Medicare Managed Care Program:** A number of major HMOs currently participating in the Medicare program are likely to pull out of select markets prior

Chris - Please answer for next week's  
weekly.

to the October 1st plan enrollment deadline. As of this writing, we expect these defections to affect between 100,000 and 500,000 Medicare beneficiaries -- about five to seven percent of the five to six million beneficiaries participating in Medicare HMOs; these individuals will have to find a new HMO (if one is available) or return to traditional fee-for-service coverage. The HMOs will blame excessive regulation and inadequate payment rates for their actions. Many health economists, however, note that (1) most of these plans comply with similar regulations in the private sector, and (2) the plans are "cherry picking" among regions for those with the most generous payment rates and/or the largest HMO market shares.

The industry is now urging HHS to stop the anticipated exodus of plans from the Medicare program by allowing them to increase premiums or reduce benefits, particularly drug coverage. HHS is currently evaluating the effects of such action on HMO participation in the program, and will brief Erskine on Monday. In the meantime, we are consulting with key members of Congress and aging advocates (like AARP). Although some Republican members may use this development to impugn our patients' bill of rights proposal (arguing that increased regulation leads to decreased health care choices), so far we have found little sympathy among the Republicans most knowledgeable about health care issues for the HMOs' position.

**3. Health -- Number of Uninsured:** The Census Bureau will release on Tuesday new statistics showing that the number of uninsured Americans has increased by about 1.7 million, from 41.7 million in 1996 to 43.4 million in 1997. According to the Bureau, the number of uninsured children remained constant at 10.7 million, and the number of uninsured poor stayed at about 11.2 million. The increase in uninsured appears to consist mostly of Americans who are working and earning income above the poverty level, but whose firms do not provide affordable coverage. Although some of these individuals may have come off the welfare rolls (becoming ineligible for Medicaid because they now make too much money), the total increase far exceeds the size of this welfare-to-work population. Most of the increase probably reflects general trends in employer-based coverage, particularly among small to mid-sized firms. We will continue looking into this matter, and provide you with whatever further information we can discover.

*How much has # of uninsured increased since 1993?*

**4. Health -- FDA Commissioner Update:** The Senate Labor and Human Resources Committee last week reported out by voice vote the nomination of Jane Henney as FDA Commissioner. Although the vote was very encouraging, we remain concerned that one or more conservative Republicans (perhaps Senator Nickles) will object to bringing the nomination to the floor for a vote. We will work closely with Senator Domenici, Henney's homestate Senator, to try to prevent this from happening.

**5. Health/Crime -- Event on Elder Abuse and Fraud:** We have prepared an event for you on elder abuse and fraud, scheduled for either this week or next. At the event, you would announce a new HHS study finding that more than 500,000 Americans aged 60 and

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over were the victims of abuse or neglect in their own homes during 1996. You also would note the extent to which fraudulent telemarketers target older Americans as their primary victims. To combat these problems, you would: (1) announce the creation of a new national center on elder abuse, which will train officials to detect and respond to elder abuse; (2) call on Congress to reauthorize the Older Americans' Act, which helps states to prevent and redress elder abuse; (3) launch a new partnership between the Justice Department and AARP to create Elder Fraud Prevention Teams; and (4) release a small amount of grant money to prosecute telemarketing scams and other forms of fraud against the elderly.

**6. Crime -- COPS Grants:** The Vice President will announce this week a total of \$370 million in grants to hire or redeploy about 11,000 more police officers. This total includes over \$100 million for Los Angeles and other communities in California to hire 800 new police officers, and \$200 million in COPS MORE grants for communities across the nation to redeploy almost 10,000 officers.

*What does this mean for the total?*

**7. Welfare Reform -- New Employment Statistics:** The Census Bureau's new statistics on income and poverty show that the rate of employment among former welfare recipients is at an all-time high. Thirty-four percent of the individuals who received welfare in 1997 were working in 1998 -- the highest percentage ever reported. This employment rate has risen by nearly 60 percent since you took office and by about 28 percent since you signed the welfare law (from 21 percent in March 1993 to 26 percent in March 1996 to 34 percent this year). These numbers indicate that the movement from welfare to work is proceeding apace even while the caseloads decline and the harder cases begin to predominate. We are continuing to analyze these trends, with an eye toward putting together another welfare event (perhaps also involving new caseload numbers and state work participation rates).

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**8. Welfare Reform -- National Child Support Case Registry:** HHS will initiate this week a new national database of child support cases, called the Federal Case Registry. This database will make it easier to locate deadbeat parents, especially if they have moved to a different state. HHS will check the Registry daily against an existing database of new employees; when it finds a match, it will report the information to the state, which then will arrange to garnish the wages of the delinquent parent. You proposed this mechanism for finding delinquent parents in 1994, and two years later Congress made it part of the welfare law. The new system has extensive privacy protections in place to guard against any unauthorized use of child support data. We expect USA Today to run an article on Monday about the new database, as well as the Administration's other efforts to increase child support collections.

**9. Education -- Congressional Agenda Event:** We are working with Senator Daschle's and Congressman Gephardt's offices on a rally event in which you and Congressional Democrats would call on the Republican Leadership to devote just one day before Congress leaves to voting on your education agenda. Though we are still discussing with Congressional staff the particular education programs to highlight, we probably will

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make class size the centerpiece of the event. As you know, Senator Murray has introduced legislation to enact your full class-size proposal, and has identified offsets to pay for it. In addition, she and Senator Harkin have prepared a scaled-down class-size initiative that would involve about \$500 million in additional Title 1 funding. Democrats on the Hill want to call attention to these efforts and to the Republicans' refusal to give them serious consideration.

**10. Education -- Charter School Legislation:** We are continuing to work with congressional staff to bring charter school legislation to the floor of the Senate. Senator Harkin promised Secretary Riley last week that he would refrain from offering his amendment to the bill so long as no other Senators offer amendments. We are currently not aware of any other amendments, and we are working with congressional staff on a consensus manager's package to bring to the floor within a week.

**11. Food Safety -- Salmonella Report:** USDA will release on Monday a report showing that your science-based food safety program -- called the Hazard Analysis Critical Control Point (HACCP) program -- has led to an almost 50 percent reduction in the frequency of salmonella in broiler chickens and an almost 40 percent reduction in the frequency of salmonella in swine. We leaked this report to the Washington Post, which ran an excellent story in Sunday's newspaper and may run a supportive editorial tomorrow. The new data comes just as the Agricultural Appropriations conference begins deliberations on funding for your food safety initiative.

**12. National Service -- AmeriCorps Recruitment:** You recently asked about the status of AmeriCorps recruiting and the feasibility of a proposal to locate AmeriCorps recruiters in military recruiting offices. AmeriCorps is currently recruiting very successfully, and it expects to pass the 100,000-member milestone this fall. ~~(By way of comparison, it took the Peace Corps two decades to reach the 100,000 member mark.)~~ AmeriCorps has identified a number of ways to improve recruiting further, but believes that it should steer clear of proposals involving closer links to the military. AmeriCorps already relies to a limited extent on the Selective Service: the acknowledgment sent to people who register for the draft asks if the person would like more information about joining the Armed Forces or AmeriCorps. Republican members of Congress have criticized this arrangement as interfering with military recruiting efforts, and Rep. Ron Paul has introduced legislation to prohibit the practice. Given this response to a much more limited kind of joint arrangement, AmeriCorps is reluctant to locate recruiting personnel in military offices.

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**13. Children and Families -- After-School Poll:** Secretary Riley participated in the release of a new national poll on Thursday finding that Americans overwhelmingly endorse the expansion of after-school programs. Ninety-three percent of those surveyed said they favor making safe, educational programs available to all children in the hours after school, with strong support across party lines and among parents and non-parents. In addition, 80

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percent said they would be willing to use additional federal or state tax dollars to fund after-school programs in their community at a cost of \$1,000 per child, even if doing so raised their individual tax bills by \$10 a year. The Secretary also announced a new partnership among the Administration, NBC, "People Magazine," the Ad Council, and the Entertainment Industry Foundation to create a new public service announcement campaign to support the expansion of high-quality after-school programs in public schools.

THE WHITE HOUSE  
WASHINGTON

September 11, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed  
Elena Kagan

SUBJECT: DPC Weekly Report

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**1. Health Care -- Medicaid and the Patients' Bill of Rights:** You are currently scheduled to participate in an event on Thursday to announce the application of the patients' bill of rights to the Medicaid program and call on Congress to pass legislation extending these protections to all Americans. As of this writing, Senator Lott does not intend to bring the patients' bill of rights to the Senate floor for a vote. But Senator Daschle is challenging Lott every day to schedule a vote, and a presidential event this week will increase the pressure on Lott to do so.

**2. Health Care -- Assisted Suicide:** The House and Senate are both expected to take action on assisted suicide next week. We expect the full House to approve the Hyde-Hatch bill, which would empower the Drug Enforcement Agency to prosecute physicians who assist the suicide of a patient. We also expect the Senate Judiciary Committee to approve this bill, although we think that the full Senate will be unable to pass the legislation in the limited time left in the session. As you recall, we have opposed this legislation (while underscoring your opposition to assisted suicide) on the ground that the fear of DEA enforcement action of the kind specified in the bill would deter physicians from appropriately prescribing already underutilized pain relief medications for the terminally ill. The AMA and a host of other national health care organizations (most of which also oppose physician-assisted suicide) have joined us in taking this position.

In advance of his mark-up, Senator Hatch has asked us to submit an alternative piece of legislation prohibiting assisted suicides. We are inclined not to do so because we simply do not have enough time to work through the real difficulties involved in developing medically sound legislation prohibiting physician-assisted suicides. In addition, putting forward an alternative proposal of this kind now would anger most respected health care organizations and the whole Oregon delegation, particularly Senator Wyden. Instead, we are working with the Department of Justice on a letter proposing to establish (either by statute or by executive action) a new advisory board to (1) develop guidelines on appropriate (and inappropriate) uses of controlled substances for terminally ill patients and (2) recommend the best mechanism or method to enforce these guidelines. The board's members would include doctors, nurses, consumers, ethicists, and law enforcement officials and would report back to Congress and the

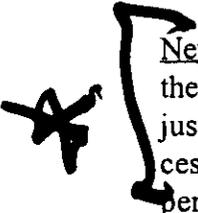
Administration within a specified time period. If you do not favor this suggested way of proceeding, please let us know.

**3. Health Care – Vice President’s Event in New Hampshire:** The Vice President is scheduled to join Governor Shaheen in New Hampshire on Friday to discuss a number of the Administration’s health care priorities. The Vice President will highlight the approval of New Hampshire’s new Children’s Health Insurance Program, the application of the patients’ bill of rights to federal health plans, a new grant to the State to provide support services to disabled individuals going to work, and perhaps an initiative related to programs for older Americans.

**4. Education – Charter Schools Legislation:** We are attempting to broker an agreement to bring charter schools legislation to the Senate floor for a vote, in the face of a recent objection by Senator Harkin. As you recall, a bipartisan coalition on the Senate Labor and Human Resources Committee last month approved a charter schools bill, which is generally similar to the bill that the House passed last year. Harkin, however, is holding up the bill in an effort to insert a provision permitting a small portion of the funds to support “innovative” non-charter schools in states (such as Iowa) where charter schools are not permitted. Senate Republicans oppose this provision because it undermines one purpose of the bill -- to provide incentives to states to enact charter schools legislation. We are trying to break the resulting logjam by helping Harkin to find other funding streams for innovative non-charter schools and/or by suggesting possible legislative compromises, such as a small demonstration program to support these schools. It is unclear whether either Harkin or the Republicans will accept such approaches.

**5. Immigration – Agricultural Guestworkers Program:** We are beginning meetings this week with a bipartisan group of legislators on proposals to reform the agricultural guestworker (H-2A) program; at the same time, we are continuing to oppose an H-2A provision, sponsored by Senator Wyden, that the Senate attached to the Commerce-Justice-State Appropriations bill. Secretary Herman wrote a strong letter of opposition to the Wyden amendment when it came to the floor, arguing that it would severely weaken labor protections for migrant farmworkers. Although the amendment passed by a large majority (68 votes), Democratic support for it has declined in recent weeks, in part because of increasingly fierce labor opposition; in addition, no one in the House (Republican or Democrat) appears to have a strong interest in including this provision in the final bill. We have told Wyden that we would like to work with him on reforms to the H-2A program, but want to do so through a bipartisan working group that will try to develop consensus legislation (outside the appropriations process) addressing the concerns of both growers and farmworkers. This working group -- which probably also will include Senators Kennedy, Graham, Feinstein, Abraham, and Coverdell and Representatives Lamar Smith, Berra, and Berman -- will meet for the first time this week. Wyden is unhappy with this approach, preferring to negotiate with us directly on changes to his appropriations rider. Erskine is meeting with him this week to discuss the differences in our approach to this issue.

**6. Welfare Reform – Caseload Decline:** The rate of decline in welfare caseloads is continuing to hold steady across the nation, at about 2 percent each month and 20 percent each year. (Of course, as the rolls get smaller, this steady rate of decline produces a progressively smaller number of people leaving the rolls each month). For example, the rolls declined by 6 percent between March and June of 1997 and by an identical 6 percent between March and June of 1998. Caseload decline has slowed down some in the states with the largest overall rates of decline since 1993, such as Wisconsin, Idaho, and Wyoming (which all showed declines of more than 80 percent during this period); at the same time, however, caseload decline has quickened in some other, slower-starting states.

 **7. Tobacco – Smokers' Quitting Rates:** A study published in the latest issue of the New England Journal of Medicine found that smokers were four times more likely to quit if their health insurance plan paid the full cost of smoking cessation services, rather than paying just half. The researchers found that with full coverage, 10 percent of smokers per year use cessation services and 2.8 percent successfully quit smoking; with half coverage, only 2.4 percent use cessation services and 0.7 percent quit. The study involved 90,000 enrollees in the Puget Sound health maintenance organization. In preparation for your FY 2000 budget, we are examining ways to make cessation services more affordable within the Defense, Veterans, Medicaid, Medicare, and federal employees health systems. New proposals to help current smokers quit could complement your continued call for comprehensive legislation to stop children from smoking before they start.

**8. Children and Families – Child Care Appropriations:** The Senate Appropriations Committee has approved \$182 million in new funding for the Child Care and Dependent Block Grant (CCDBG). This is the exact amount that you requested in new discretionary funding as part of your child care initiative. Because you requested that large mandatory spending increases (from tobacco revenues) go toward CCDBG, you recommended that these additional discretionary monies fund new efforts to enforce quality standards and provide scholarships for child care workers. In the absence of your proposed mandatory spending increases, we and the child care community think that the Senate committee was right to apply the additional discretionary monies to the block grant. We and OMB will work to maintain at least this level of increased support for CCDBG.

THE WHITE HOUSE  
WASHINGTON

September 19, 1998

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MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed  
Elena Kagan

SUBJECT: DPC Weekly Report

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**1. Education -- Charter Schools:** Senator Harkin continued this week to prevent charter school legislation from coming to the Senate floor. As you recall, Harkin is insisting that the legislation set aside funds for innovative non-charter schools in states (such as Iowa) that have not passed charter school legislation. Harkin is motivated in part by a desire to get money for Iowa and in part by opposition toward the charter school movement. Senator Coats will not compromise with Harkin, arguing that the set-aside would minimize the difference between charter and non-charter schools and decrease incentives for states to pass charter legislation. Coats also may be responding to leadership pressure to use all available excuses to deny you a legislative accomplishment. Secretary Riley is scheduled to talk with Senator Harkin this weekend to urge him to drop his objection; in particular, Riley will explore with Harkin whether there is some other effective way to support innovative public schools in Iowa. If Riley does not succeed in convincing Harkin to back off, we probably will ask you to make a phone call to Harkin.

**2. Education -- Single Sex Schools:** Senator Kay Bailey Hutchison is threatening to offer her single-sex schools amendment to the early literacy bill -- a move that almost certainly would prevent passage of the bill -- unless we work with her to develop a version of the amendment that we could accept as part of the Labor-HHS-Education appropriations bill (or an omnibus appropriations package). As you recall, Hutchison's amendment expressly allows school districts to use funds from Title VI of the Elementary and Secondary Education Act for single-sex schools, so long as the districts provide comparable educational opportunities to students of both sexes. The Department of Education believes that this amendment is unnecessary (because it simply restates the governing legal standard) and confusing (because it may lead school districts to believe that some other standard governs non-Title VI funds). Given the nature of these reservations, we probably could work out mutually agreeable language with Hutchison. But most women's groups and a number of Senate Democrats (including Senators Kennedy and Harkin) appear to have much more fundamental objections to the Hutchison amendment; they would like substitute language that makes single-sex schools a good deal harder to establish. Because of their strong feelings on this issue, we have not yet agreed to negotiate with Hutchison; we are going to have further discussions this week with the groups and Senate staff.

**3. Education -- Block Grants/Class Size:** The House passed education block grant legislation on Friday by a vote of 212-198. Congressman Clay offered your class size proposal as an amendment during the debate. Republicans defeated the amendment by a vote of 216-190, thus putting themselves on record as opposing measures to reduce class size in the lower grades. We do not expect the Senate to take up the block grant legislation.

**4. Children and Families --Head Start Reauthorization:** The House passed a generally good Head Start Reauthorization bill on Monday, after Congressman Goodling agreed to strip several highly controversial provisions -- involving, for example, vouchers and the Davis-Bacon Act -- that the Republicans had added in committee. The Senate already has passed a strong reauthorization bill, and we hope for a speedy conference and a bill signing next month. Both the House and the Senate bills reauthorize the program at sums near your request and add important new goals for the program, such as "school readiness." The most important issue left for conference concerns how to allocate new funds between quality improvement and program expansion. We have advocated a careful balance between improving quality and serving more children, very much along the lines of the Senate bill; the House bill puts more of the new money into quality improvements, such as salary enhancements. We will work in conference for the Senate version, but expect to see some middle-ground position emerge from conference.

**5. Crime -- COPS Grants:** The COPS Office released last week over \$20 million in grants to 27 jurisdictions to hire 331 officers. The office is now ready to release another \$300 million in grants, including: (1) \$200 million in COPS MORE grants to allow 600 law enforcement agencies across the country to redeploy 10,000 officers; (2) \$100 million for Los Angeles to hire over 700 new police officers (with a long-awaited waiver of the normal matching requirement); and (3) \$6 million to four other law enforcement agencies in California to hire an additional 82 officers.

**6. Crime -- Juvenile Crime Legislation:** The House attached two major juvenile crime bills that it had passed during the past year -- H.R. 3, a penalties bill which we have opposed, and H.R. 1818, a prevention bill which we have supported -- to a noncontroversial bill coming from the Senate to reauthorize funds for the Center for Missing and Exploited Children. The amended bill passed on the suspension calendar by a vote of 280-126, thereby setting up a conference on the juvenile crime measures. Senate Democrats will oppose the appointment of conferees, but they may eventually have to back down and accept a conference on juvenile crime. We will continue meeting with them this week to discuss how best to proceed on this issue.

**7. Health Care -- Medicare Home Health Update:** Ways and Means Subcommittee Chairman Bill Thomas unveiled a proposal last week to modify the home health care reimbursement provisions passed in the Balanced Budget Act. As you recall, home health providers (including Val Halamandaris) have complained that these provisions set rates too low and prevent providers from offering quality service to Medicare beneficiaries. The

Thomas proposal would raise payment rates overall, while also lessening geographical disparities in reimbursement. Although not fully satisfying the industry, the proposal goes a long way toward meeting their objections. (Val, for example, sent generally positive signals about it.) The primary problem with Thomas's approach is that it would cost \$1.4 billion over 5 years -- and that it takes this amount out of the budget surplus. We believe that House Democrats will hold firm in opposing the proposal's surplus financing, but that they will feel real pressure to propose an alternative financing mechanism. The difficulty, of course, is that the Medicare offsets that could pay for Thomas's home health proposal are themselves politically nonviable. We will meet with the Democrats next week to discuss how to proceed on this sensitive issue.

**8. Welfare Reform -- New Federal Child Support Case Registry:** HHS is almost ready to put in place a new national database of child support cases, called the Federal Case Registry. This registry -- another of the critical building blocks of the interstate child support system proposed in your 1994 welfare reform bill and enacted in 1996 -- will make it easier to locate deadbeat parents, especially if they have moved to a different state. HHS will check the Registry daily against an already operative database of employees (the National Directory of New Hires, which was created in October 1997 and is updated daily with "new hire" information submitted by employers). When this computer check produces a match, HHS will report information about the delinquent parent to the state in which child support is owed; the state then will arrange to garnish the wages of the parent. States will begin to submit their child support case data to HHS on October 1; HHS expects to have 30 states in its system by the end of October and 40 states by the end of the year. The National Directory of New Hires already has made it easier to find delinquent parents (the Directory helped locate one million parents in just its first nine months of operation); the addition of the Federal Case Registry will increase still further the ability of states to find and proceed against deadbeat parents.

**9. Welfare Reform -- Research Grants:** HHS awarded \$3 million in grants to 10 states and 3 counties last week to study what happens to families coming off the welfare rolls. The research studies will track employment and earnings; returns to welfare; participation in Food Stamps, Medicaid, child support, and child welfare programs; and family and child well-being. Florida's study is specifically designed to explore the impact of welfare reform on different ethnic groups, and Arizona's study is directed in part toward the State's large Native American population. Massachusetts will examine, among other matters, the first group of families to hit the State's 24-month time limit. Several of the states also will track what happens to families who have been diverted from the welfare rolls.

**10. Immigration -- H-2A Agricultural Guestworkers:** We met several times last week with Democratic Members of Congress interested in the H-2A visa program for agricultural workers to inform them that we would continue to oppose the H-2A provision on the Senate's Commerce-Justice-State (CJS) appropriations bill, but that we would engage in a broad-based process to consider future legislative reform of the program. Senators Wyden and Graham co-sponsored the provision on the CJS bill, but Hispanic groups, labor unions,

and their many Democratic friends in Congress (including Senator Kennedy and Congressmen Berman and Becerra) just as strongly oppose it. We believe that there is good reason for this opposition, because the Wyden/Graham amendment would weaken labor protections for migrant farmworkers. At the same time, we believe that the growers have legitimate concerns about the program, and that we should take a hard look at the way it operates. After several meetings, Wyden and Graham decided that they would continue to push their amendment on the CJS bill, but that they also would join a working group (which will include as well Kennedy, Berman, and Becerra) to consider different ways to reform the H-2A program. We will begin meetings of this working group this week, in the hopes of developing a consensus proposal and introducing it at the beginning of the next session of Congress. In the meantime, we believe that we are in a strong position to defeat the Wyden-Graham amendment, especially because anti-immigrant Republicans also oppose it.

**11. Community Empowerment -- Regulation B:** We have heard that the Federal Reserve may be coming close to approving a change in Regulation B, which implements the Equal Credit Opportunity Act, to allow (but not require) banks to collect data on the race and income of loan applicants. The Administration sent a letter to the Fed last Spring, arguing that this change in the regulation would allow banks to assess their outreach and approval practices for a variety of loans, including loans to small businesses. The Fed considered and rejected a similar proposal in December 1996, but may change its mind between now and the end of the year because of the Administration letter, supportive letters from several large banks, and recent changes in the composition of the Board of Governors.

THE WHITE HOUSE  
WASHINGTON

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August 7, 1998

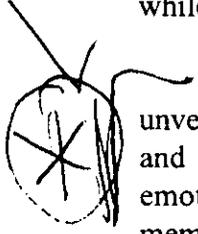
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MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed  
Elena Kagan

SUBJECT: DPC Weekly Report

**1. Health Care -- Patients' Bill of Rights Event:** You are scheduled to go to Kentucky on Monday to participate in an event on patients' bill of rights legislation. In line with your pledge to the Democratic caucus last week, you will highlight the many shortcomings of the Republican bills and show how they differ from the Kennedy-Dingell-Ganske alternative. The President of the Kentucky Medical Association, a lifelong Republican, is currently scheduled to give a speech at this event, expressing the AMA's disappointment with the Republican proposals. Other major provider and consumer organizations will repeat the same message and praise your leadership on this issue. In addition, you will announce at this event that the Federal Employees Health Benefits Program is now ready to implement an anti-gag rule -- thus taking still another step in our continuing effort to bring all federal health programs into compliance with the patients' bill of rights, even while Congress delays in passing legislation.



**2. Health Care -- Elder Abuse:** We are working on an initiative that you could unveil as early as Thursday to respond to continuing reports of elder abuse. By that time, HHS and NIH should be ready to release reports documenting the physical, psychological, emotional, and financial abuse which older Americans suffer, often at the hands of family members. As part of the initiative, you would (1) announce the creation of a new center on elder abuse; (2) release new Justice Department grants to help identify and prevent elder abuse; and (3) call on Congress to reauthorize the Older Americans Act, which includes services to help elders at risk for abuse. We also will work with aging advocates and others to help highlight some of the best practices in the states to crack down on elder abuse. This initiative complements your recent efforts to ensure that patients in nursing homes receive high quality services, and we will try to draw that connection.

**3. Health Care -- Home Care Reimbursement:** Home care providers are pressing Congress to modify a Medicare reimbursement policy passed as part of last year's Balanced Budget Act. In that Act, Congress established a phased-in prospective payment system, similar to the system that has constrained hospital payments, to curb the dramatic increase in home health expenditures (from \$4.7 billion in 1990 to \$17.2 billion in 1997). Now home care providers are claiming that the new policy reduces rates too much, penalizes efficient providers, and disproportionately harms some providers who serve very ill patients. A number

of the providers' complaints appear to have some validity, but there is little HCFA can do about them without new legislation. Congress would like to respond, but so far has failed to devise a viable alternative. Budget-neutral changes in the reimbursement policy cannot attract sufficient support because they inevitably would hurt as many home care providers as they would help. But non-budget-neutral revisions also have significant problems, because they would require new and almost certainly unpopular Medicare offsets. In response to this difficulty, Congressman Thomas and other members of the Ways and Means Committee have begun to allege that the Administration bears primary responsibility for solving the problem. We expect pressure to grow even stronger over the next month or so for the Administration to identify new Medicare savings and provide cover for using them for this purpose.

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**4. Education -- National Board for Professional Teaching Standards:**

Congressman Goodling agreed to drop the provision in the Higher Education Act to prohibit funding for the National Board for Professional Teaching Standards in exchange for OMB's promise to accept the CBO's scoring of the student loan program. Goodling also agreed not to attack the Board in any other legislation that Congress will vote on this year. While this deal protects the Board for the time being, we expect Goodling to pursue his vendetta against the Board in next year's reauthorization of the Elementary and Secondary Education Act. Our efforts over the last few weeks have demonstrated that although the Board enjoys broad bipartisan support in the Senate, it has no real following in the House; in addition, our efforts have shown that even champions of the Board have questions about certain aspects of its work -- particularly about the very high cost of certification. We will continue to work closely with Governor Hunt and others on a strategy to shore up support for the Board among members of Congress, including by urging the Board to make needed reforms.

**5. Education -- Bilingual Education:** The House Republican Leadership scheduled Congressman Riggs's bilingual education bill for a floor vote on Thursday, but pulled the bill at the very last minute. Democratic opposition to the bill was strong, and a few Republicans from New Mexico, Texas, and Florida also might have voted against it. It is unclear whether the Leadership will schedule new time for the bill in September.

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**6. Community Empowerment -- Empowerment Zones:** A bipartisan coalition of Senators including Senators Jeffords, Leahy, and Warner last week introduced legislation that would provide grant funding for the second round of Empowerment Zones (EZs). This bill, the result of months-long negotiations between Administration and Senate staff, not only would provide flexible grants to the second-round EZs (as the Administration's earlier proposal did), but also would provide: (1) funds for a new demonstration program called Rural Opportunity Communities (ROCs) to spur economic development in communities that cannot qualify for the EZ/EC program; (2) a new pool of money for high-performing EZs and ECs that have exhausted their existing resources; and (3) a preference for high-performing first-round ECs that are applying for a second round EZ. In the next weeks, DPC, OVP, and NEC will continue to work closely with HUD and USDA in procuring additional cosponsors for this

legislation, and will work to secure its passage as part of any revenue-related legislation coming out of the Senate Finance Committee.

**7. Crime -- Concealed Weapons Legislation:** The House Judiciary Committee approved legislation last week to expand the right of certain persons to carry concealed weapons across interstate lines. As originally introduced -- upon the request of the Fraternal Order of Police -- this bill would have allowed current and former law enforcement officers to carry concealed firearms across state lines. As amended in the Judiciary Committee -- with strong support from the NRA -- the bill also would allow private citizens with permits to carry concealed weapons in their home states to do the same in any other states that permit concealed weapons.

Currently, 29 states must issue concealed-weapons permits upon request to all persons not prohibited from owning a firearm (generally, convicted felons); 13 states may issue concealed-weapons permits, but retain some discretion in approving and denying applicants; one state -- Vermont -- does not even require a permit to carry a concealed weapon; and only seven states flatly prohibit the carrying of a concealed weapon. Thus, the practical effect of the legislation passed last week is to allow millions of gun owners to carry concealed and loaded weapons on an interstate basis in 43 of the 50 states. We are considering making this legislation a central piece of the gun event you will do in California next week (which also will focus on Brady), but first must consult with Grey Davis and others.

**8. Crime -- Law Enforcement:** The House Crime Subcommittee is scheduled to mark up legislation next week to provide college scholarships to the children and spouses of local law enforcement officers killed in the line of duty. You called on Congress last year to pass this legislation, after signing a bill in 1996 to provide such scholarships to the dependents of slain federal officers. Similar legislation passed the full Senate in May.

**9. Gay and Lesbian Issues -- Sexual Orientation Executive Order:** The House last week voted down an amendment, sponsored by Congressman Hefley, to prohibit funding to implement your executive order of May 28 banning discrimination based on sexual orientation in the federal civilian workforce. The vote was 252 to 176, with 63 Republicans rejecting the Hefley measure. A recent Wall Street Journal/NBC News Poll showed that 72 percent supported the order, while only 20 percent opposed it.

**10. Children and Families -- After-School Programs and Service:** You recently asked us to look into a proposal from a White House Fellow to earmark 15 percent of proposed funding for the 21st Century Community Learning Centers program for after-school programs run through the Corporation for National Service (CNS). Strengthening the connection between service and after-school activities is important, and service is in fact already a significant part of the current 21st Century program. But specific earmarking from an Education Department program to the CNS might be disadvantageous for both programs for the following reasons: (1) funds from the Education Department come with

many more restrictions on their use than CNS dollars; (2) additional earmarking would drain the 21st Century program of needed resources (the Administration's budget proposal already targets 10 percent of program funding to community-based organizations, and the House Appropriators cut our budget request from \$200 million to \$60 million); and (3) this kind of earmarking would lessen our ability to promote greater utility of public school buildings during after-school hours. We will, however, continue to explore ways in which we can provide greater support and funding both to traditional after-school learning programs and specific service-oriented programs.

*C.I.C.*

## THE WHITE HOUSE

WASHINGTON

September 4, 1998

THE PRESIDENT HAS SEEN

9-8-98

## MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed  
Elena Kagan

RE: DPC Weekly Report

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**1. Health Care -- FDA Commissioner Update:** Jane Henney's confirmation hearing before the Senate Labor Committee this week went well. The two major remaining roadblocks are: an unpopular regulation on the dissemination of information about off label uses of prescription drugs; and a likely hold by Senator Nickles and others who may attempt to trade her nomination for a nomination they care about or to make hay over FDA's approval of RU-486. We are pushing to have Dr. Henney voted out of committee within the next two weeks and are developing a strategy to get her confirmed in this session.

**2. Health Care -- Medicare Commission:** The Medicare Commission is scheduled to meet again September 8th and 9th. Senator Breaux says he is most interested in reforms that include: some type of prescription drug benefit; changes in the cost sharing structure to reduce the need for inefficient Medigap policies; and having health plans compete for Medicare business through regional bids. This last idea is similar to an approach advocated by Bob Reischauer that assumes Medicare pays the median bid and Medicare beneficiaries pay for the additional costs of more expensive plans. While we believe this concept has some promise, it is unlikely to achieve significant savings at least for the foreseeable future.

**3. Health Care -- FEHBP Premium Increases:** After Labor Day, OPM will announce that FEHBP plans will have a 10 percent increase in premiums. This follows an 8 ½ percent increase from last year. OPM believes that these hikes will closely reflect the premium increases expected in other private sector health plans. We are reviewing all available data to determine if FEHBP growth rates are significantly exceeding other private health plans and, if so, why. The increase also somewhat undermines the arguments of those who advocate using an FEHBP type system for Medicare. It may well be, however, that one important constraint on OPM to be more efficient is its statutory obligation to include all health plans who wish to participate in its health care system, which limits its ability to use market leverage to get better prices from a fewer numbers of plans.

**4. Consumer Product Safety -- Advanced Air Bags:** You will announce on Thursday a new proposed rule that will require *advanced* air bags in American cars and light trucks. The new air bags will be safer than the air bags that are now in many cars while preserving the significant

benefits of air bags. Air bags have saved almost 3,500 lives, and they are projected to save 3,000 lives each year once they are in all cars. But we also now know air bags have killed 113, mostly young children and small-sized adults. The proposal you will announce should help prevent virtually all of these deaths. It will also make air bags more effective than the 20-35 percent depowered bags now being installed in most new vehicles. The rule will expand the crash dummy family by adding 1-, 3-, and 6-year-old child dummies, and a 5-foot female dummy, to the standard 170-pound male dummy that is now the only dummy used to test air bags. The rule also will add a 30-mph crash test with belted and unbelted male and female dummies to test the entire safety system. This test will replace the less effective, but industry-favored sled test now in use. The proposal will require companies to phase in advanced air bags into their fleets beginning in model year 2003. The Department of Transportation estimates that advanced air bags could save 640 additional lives each year. The new air bags will add \$4-126 to the cost of each vehicle depending on the technology that is used. The rule will be supported by consumer and safety groups. Car companies have already publicly announced their opposition to replacing the sled test. There is significant media and Congressional interest in the rule.

**5. Welfare Reform -- Food Stamp Fraud:** We are preparing three anti-Food Stamp fraud announcements for you to make as part of a radio address on the 12th or the 19th. We have prepared directives that will: 1) Ensure that Food Stamp recipients who die are immediately removed from the rolls, by requiring the Social Security Administration to share its death records with Food Stamp program; 2) Require USDA to develop a plan to create an interstate matching system to ensure Food Stamp recipients are not receiving benefits in multiple states; and 3) Require Treasury to collect (through offset of federal payments and other means) unpaid fines owed by retailers that have violated Food Stamp rules, such as exchanging Food Stamps for cash.

**6. Welfare Reform -- Wisconsin:** September 1st marked the one-year anniversary of implementing Wisconsin Works (W2). Caseloads are down 68% in the past year alone, and there are only 11,000 families left on welfare in Wisconsin. Five counties have no one left on cash assistance, and over half of the counties have fewer than 10 cases. The state reports that the average starting wage for people leaving welfare is \$6.77 an hour, which puts a typical family 25 percent above the poverty line even after paying a child care co-payment (the state pays a share of child care costs for low income working families whether or not they receive welfare).

A recent study of people leaving the welfare rolls in Wisconsin shows encouraging results. The study found that 70% of those who left the rolls did not return; the 30% who did return did so within four months of exiting. Leavers were more likely to: have more education; be white, or to a lesser extent Hispanic, and U.S. citizens; have fewer children and other adults in the household; not be receiving SSI for the mother or children; and have more work experience and higher earnings in the two years before they left the rolls. Families were generally better off when they left welfare, though small families did better than large families. Over half of all families saw their income rise when they left welfare, though slightly less than half of families with more than three children experienced income gains. Leavers had earnings well above their income on

9-8-98

welfare, and these increased over time. All leavers earned about \$1,000 more during the quarters they were not receiving AFDC than they did while they were on AFDC.

**7. Welfare Reform -- Rockefeller Institute Research:** Last week, we met with Dick Nathan, director of the Rockefeller Institute, about a nationwide study his group is doing on the effect of welfare reform on the culture of the welfare office. Already, the study has found a surprising degree of bureaucratic change. Nathan finds a strong and consistent change in signaling by all levels of government on the importance of work and time limits which has been matched by immense change in individual welfare recipient behavior, particularly in terms of increased work. Nathan believes the broad public support for time-limited welfare linked to work has resulted in a "detoxification of welfare" that now makes it politically feasible to provide services to help people get and keep jobs. While sanctions have become more frequent, they tend to be selective and graduated. Based on extensive interviews with front-line staff, he finds most workers support the welfare reform changes and see them as an opportunity to help people improve their lives. He is also struck by the amount of devolution from states to localities. A major concern is the importance of good information systems for oversight, evaluation, and helping front-line workers do their job. We will explore what more can be done to help in this area.

**8. Drugs -- Youth Drug Use and Attitudes:** On Tuesday, the National Center on Addiction and Substance Abuse (CASA) at Columbia University released its 1998 Back to School Teen Survey. One thousand teens, age 12 to 17-years-old were surveyed, as well as over 800 teachers and 800 principals. The survey found the transition from age 12 to 13 as a critical turning point in use of, access to, and attitudes towards drugs. The survey found that at age 13, teens were about three times more likely than a 12-year-old to know other students who use and sell marijuana, acid, cocaine, or heroin; to learn where to buy drugs and from whom to buy them; and to report students who use and sell drugs.

For the third straight year, the number of high school teens reporting that drugs are used, sold, and kept at their school has risen: from 72% in 1996 to 78% in 1998. Meanwhile, only 18% of high school principals believe that their schools are not drug-free. Teens who attend religious services four times a month were significantly less likely to smoke cigarettes or marijuana, or drink alcohol than those who did not regularly attend services. Although nearly half of teens reported that their parents never discussed the dangers of drugs with them, the 43% of teens who never smoked marijuana cite their parents as having the most influence over their decision. On the other hand, 50% of those who do smoke marijuana cite their friends as most influential. Teens who used one substance were found to be much more likely to use another. For instance, 79% of teen smokers also smoke marijuana, compared with 14% of teens who have never smoked. And of teens who smoke marijuana, 45% also smoke cigarettes, as compared with only 3% of non-marijuana smokers.

**9. Crime -- Senate Democratic Crime Bill:** Senate Democrats will introduce an omnibus crime bill on Thursday. While we have not reviewed the legislative language, we understand the

9-8-98

bill will be primarily comprised of Administration and legislative proposals already before the Congress -- and is intended to give Senate Democrats a consensus piece of legislation to rally around between now and the November elections. Provisions in the draft bill include: a patchwork of school safety and juvenile crime proposals that mirror the Administration's juvenile crime strategy; a prospective gun ban for violent juveniles; funding for high-intensity gang activity areas; an extension of the COPS program and the Violence Against Women Act; funds for drug treatment and testing; a reauthorization of the Drug Office; funds to improve state criminal history records, communications systems and forensic labs; money laundering improvements; new drug, gang, and gun penalties; and portions of the Administration's International Crime Bill.

**10. Education -- McKay Event:** On Wednesday, you will visit an elementary school in Orlando with Buddy McKay to announce the release of a report by the Department of Education on the gap in NAEP achievement levels of 4th graders in high- and low-poverty schools. While the gap in reading and math achievement is significant, there are recent signs of improvement, particularly in math. However, the continuing gap allows you to point to the need for the education investments you have proposed: smaller class sizes and well-prepared teachers; modernized schools; after school programs; America Reads; and extra support for disadvantaged children to enable them to master the basics through increases in Title I funding. You will also announce the release of over \$16 million in COPS school-based partnership grants to 155 law enforcement agencies across the country. The grants will be used by policing agencies to work with schools and community-based organizations to address crime at and around schools using principles of community policing.

**11. Political Reform -- Campaign Finance Reform Letter:** We have prepared a letter for you to send Lott and Daschle next week calling on the Senate to join the House and pass Shays-Meehan/McCain-Feingold this Fall. There is a good possibility McCain and Feingold will try to bring their legislation to the floor next week.

MR PRESIDENT.

The campaign finance letter  
was sent on Friday at  
Rahm's urging. I had it  
auto-penned on your behalf.

Phil Caplan  
9/5

August 15, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed  
Elena Kagan

SUBJECT: DPC Weekly Report

**1. Tobacco -- Legal Update:** As you know, a Fourth Circuit panel invalidated the FDA's tobacco rule yesterday, holding (2-1) that the Food, Drug, and Cosmetic Act does not give the FDA authority to regulate tobacco products. The Justice Department immediately decided to seek review of the decision by the en banc Fourth Circuit. Those knowledgeable about the Fourth Circuit think we have about a 50 percent chance of obtaining en banc review. If the Fourth Circuit rejects the petition for an en banc rehearing, the Justice Department will file a petition for certiorari in the Supreme Court.

The industry's settlement talks with the states are scheduled to resume on August 24th, but some believe that the industry may decide not to return to the table. The latest gossip is that a serious split has developed between Philip Morris and R.J. Reynolds, with the former still preferring to reach a resolution, but the latter inclined to take its chances in court. (RJR apparently now believes that PM is using the settlement talks to gain a competitive advantage over the rest of the industry.) The next case scheduled to go to trial (on September 14th) is Washington State's, which everyone considers to be in very bad shape.

In the event that the states do reach a settlement with the tobacco companies, we will have to decide how much money to claim as the federal government's. As you recall, the federal government is entitled on average to 57 percent of the monies collected by the states in Medicaid recoupment actions. The Justice Department has developed a theory under which the federal government could make a claim for even more -- in fact, for every penny that the states collect from the tobacco companies. The Department, unfortunately, has failed to develop a similarly creative theory under which we could relinquish our claim to this money in exchange for the states' commitment to use it for specified purposes (e.g., tobacco control programs or child care). The Department currently believes that we would need Congressional approval to effect such a bargain.

The Justice Department continues to doubt -- but still (at least ostensibly) to consider -- the viability of bringing an action against the industry for the tobacco-related costs incurred by federal health programs. We understand that Justice Department staff will brief the Attorney General on this issue this coming Friday. The Civil Division currently has many reservations about bringing such a suit, but its most essential claim is that the federal

government can sue the companies only for the harm suffered by each individual (and named) Medicare beneficiary (an essentially impossible proposition), rather than for the costs incurred by the entire Medicare program. Professor Larry Tribe of Harvard Law School called the Attorney General on Friday to dispute this conclusion (he is sure that the federal government has an independent claim for tobacco-related costs, existing separate and apart from any individual beneficiary's claim for damages), but we do not yet know how their discussion went. (Our own view is that neither the Civil Division nor Tribe should be so certain about this question; the answer is not nearly as clear as each would have it.) The Antitrust Division has just begun to look at potential claims against the industry, based on an alleged conspiracy to refrain from producing a safer cigarette, but fears that the federal government may not have legal standing to bring such an action. Professor Einer Elhauge, also of Harvard Law School, has written Joel Klein a memo urging that the federal government does indeed have standing to bring suit against what he terms "the most socially destructive antitrust conspiracy of the century." We will continue our discussions with the Justice Department on these questions.

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**4. Crime -- Early Warning Guide:** We are working with the Departments of Justice and Education to complete the Early Warning Guide to school violence that you recently directed Secretary Riley and the Attorney General to develop; we should be ready to announce

the release of the guide prior to the start of this school year, probably in your August 22nd radio address. The guide will be a user-friendly document with practical suggestions to help principals, teachers, and parents identify and address the early signs of youth violence. The guide also will provide advice on how to respond to violent incidents if they occur. The departments will post the guide on the Web and mail about 250,000 copies to schools and communities on the day of your announcement.

**5. Crime -- Probation/Parole Study:** The Justice Department will release on Sunday a survey of the nation's probation and parole population in 1997. The survey will show that a record 3.9 million adults were on probation or parole in 1997. This number reflects a 2.9 percent increase from 1996, which is roughly consistent with the average annual increase of 3 percent since 1990. Of the 3.26 million probationers, 54 percent were convicted felons, 28 percent were misdemeanants, and 14 percent were drunk or impaired drivers. Of the 685,000 parolees, nearly all (96 percent) were convicted felons. Texas and California had the greatest number of probationers and parolees (538, 500 for Texas and 408,900 for California); four states (Nevada, Maine, New Hampshire, and Arizona) reported more than a 10 percent increase in their probation populations; and nine states reported more than a 10 percent increase in their parole populations.

**6. Crime -- Brady Law Statistic:** We thought we should clarify some statistics on the Brady Law to which you referred in California. Background checks have stopped nearly a quarter of a million (or 242,000) prohibited handgun purchases since the Brady Law took effect in February of 1994. Checks stopped 69,000 prohibited purchases last year alone, of which about 62 percent were based on felony convictions or indictments. Thus, the Brady Law stopped about 42,780 felons -- *or an estimated 18 per day* -- from purchasing handguns in 1997.

**7. Drunk Driving -- New Statistics:** The Transportation Department announced on Friday that the rate and number of alcohol-related traffic fatalities dropped in 1997 to their lowest levels since the Department began keeping these statistics in 1975. The percentage of all fatal crashes that involved alcohol fell from nearly 41 percent in 1996 to 38.6 percent in 1997 -- the first time ever that the rate dropped below 40 percent. At the same time, 1997 saw the lowest total number of alcohol-related traffic fatalities, with these fatalities dropping by a full 5 percent among 16 to 20 year olds. Last year's statistics are part of a long-term trend: the number of alcohol-related fatalities has dropped by more than a third since 1982.

**8. Health -- Patients' Bill of Rights:** Senator Lott sent you a letter last week that chided you for threatening to veto the Republican patients' rights bill and asked you to urge Senate Democrats to enter into an agreement to limit debate and amendments on the legislation. The letter is consistent with Lott's strategy of attempting to blame Senate Democrats for his refusal to bring the bill to the floor of the Senate. We believe that this letter presents a good opportunity to reiterate your concerns about the Republican Leadership bills, while expressing your continued commitment to work toward a good bill on a bipartisan basis.

We accordingly have drafted a letter to Lott that lists the shortcomings of the Republican bills (in much the same way as you did in Kentucky) and restates your insistence on strong legislation. The letter also contrasts your own willingness to work across party lines with the Republicans' decision to develop their bills through a purely partisan process, without consulting Democrats, holding hearings, or considering the proposals in committee. We plan to release the letter sometime this week.

**9. Health -- Physical Fitness Council:** Secretary Shalala recommended to the DPC last week that the Administration transfer responsibility for the President's Council on Physical Fitness and Sports to the United States Olympic Committee (USOC), while retaining the current mechanism for appointing members. The Secretary believes that the Council currently suffers from chronic underfunding, and that the USOC would provide the Council with needed financial support. Senator Stevens of the Appropriations Committee also favors this approach, as long as the Administration and Congress retain authority over appointments. We think that the Council is now falling short in its mission to promote physical fitness and that this proposal -- which probably will require new legislation -- therefore merits serious consideration. We will give you a recommendation when you come back from vacation.

**10. Welfare Reform -- New Caseload Numbers and Study:** HHS will release new welfare caseload numbers on Friday to coincide with the two-year anniversary of the welfare reform law. We do not have the exact numbers yet, but we expect to see a caseload reduction of several hundred thousand in the last three months. HHS also will announce \$1.6 million in technical assistance grants to help states promote job retention and advancement.

At around the same time, the Manpower Demonstration Research Corporation will release an encouraging study of welfare reform in Los Angeles, funded in part by HHS. In 1995, Los Angeles shifted to a job-focused welfare program, based largely on the positive results from nearby Riverside county. The early results from Los Angeles are promising: after six months, welfare recipients in the program were 34 percent more likely to be employed and had 46 percent higher earnings than other welfare recipients. In addition, the program reduced welfare costs by just under 10 percent.

The Los Angeles study adds to the multitude of evidence contained in HHS's first report to Congress on the success of the TANF program in promoting work opportunities. Almost every state now requires personal responsibility contracts, and most states have adopted a work-first model, with 32 states expecting clients to work within six months. For the first time, half of all low-income single mothers with children under six -- the population most affected by welfare policy -- are working, a dramatic increase from 35 percent in 1992. And state evaluations of welfare programs consistently show employment increases of between 8 and 15 percentage points.

**11. Welfare Reform -- San Diego Immigrant Policy:** We are currently considering how to respond to the possibility that San Diego County will take actions in its food stamp and

TANF programs that are ostensibly directed at illegal immigrants, but that may harm U.S. citizen children. The county for many years has asked all people applying for TANF and food stamps whether they are illegally in the country, even if they are requesting assistance only for their citizen children. The county now may begin to send to the INS names of illegal aliens that it obtains through this process -- and to send a letter to all current welfare and food stamp recipients indicating its intention to do so. These actions may well deter undocumented parents from applying for assistance for their citizen children. Although we probably have legal authority to stop the county from taking these actions under the food stamp program, we have no similar legal authority under TANF. In a meeting with HHS and USDA last week, we agreed that USDA would attempt to point out to the county, in a relatively low-key way, the pitfalls of proceeding with its intended policy -- for example, the potential budget costs to the county as more children have to rely on county-funded nutrition programs, and the possibility of triggering regulatory action by the USDA that will force the county to separate its food stamp and TANF application processes. If this approach fails to work, we will determine whether to take the threatened regulatory action.

**12. Food Safety -- Food Safety Council:** We expect the National Academy of Sciences to release next week a report recommending better coordination of the government's food safety structure and more even allocation of resources between FDA and USDA. In response to this report, we have prepared an executive order setting up a Food Safety Council, consisting of all relevant agencies and White House offices, which will set common food safety priorities and produce a coordinated food safety budget. The Council also will take charge of reviewing the specific recommendations in the NAS study and reporting back to you on appropriate further actions. HHS and USDA are somewhat anxious about the proposed Council, fearing that it could constrain their current budgetary authority or create a desire for a single food agency. We and NPR believe, however, that the government's food safety efforts are currently too fragmented and that the Council can serve a very useful coordinating function. Assuming we can clear up remaining issues with the agencies (they are especially fearful of White House participation in the Council), you could announce the creation of the Council in early September.

**13. Education -- Single-Sex Schools:** The Education Department has been working for the past six months with the New York City school system to develop a rationale and evidence to support the continued operation of its Young Women's Leadership Academy. The Education and Justice Departments initially believed that the most promising approach, consistent with prevailing interpretations of Title IX and the Equal Protection Clause, would be to find evidence that the school is an appropriate remedial response to gender discrimination. The Departments, however, now have concluded that there is insufficient evidence to support this approach. In a meeting last week, they acceded to the strong view of the DPC and Counsel's Office that they nonetheless should allow this school to continue, rather than close it down, force it to admit boys, or order the establishment of an all-boys school. The Department's new approach will be to work cooperatively with the New York City school system to (1) develop evidence that students in the all-girls school and students

in coed schools currently are afforded “comparable learning opportunities” and (2) set up some kind of mechanism, preferably fairly informal, to monitor the continued existence of comparable opportunity over time.

6-7-99

THE WHITE HOUSE  
WASHINGTON

June 4, 1999

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## MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed  
Elena Kagan

SUBJECT: DPC Weekly Report

**1. Crime/Guns -- House Republican Bill:** Congressmen Hyde and McCollum are still working on the juvenile justice bill to be marked up in the House Judiciary Committee this week. McCollum's existing bill, which has bipartisan support and is likely to form the basis of the new bill, is very different from the one passed in the House two years ago. Most significantly, it preserves the "core mandates" intended to protect juveniles in state custody, and conditions juvenile justice funds only on states' adoption of graduated sanctions schemes for juvenile offenders (as the just-passed Senate bill and our proposal do), rather than on the adoption of laws subjecting juveniles to prosecution as adults (as the old House bill did). We are hopeful that these aspects of the McCollum bill will remain unchanged, but conservatives no doubt will try to reinsert some of the old House bill's provisions. The \$500 million program that the current McCollum bill sets up is essentially a block grant that states can use for a wide variety of purposes, including graduated sanctions programs, juvenile drug and gun courts, and new prosecutors, probation officers, and juvenile judges. We are working with Congressman Conyers on a strategy to beat back objectionable Republican amendments; we also may try, as we did successfully in the Senate, to establish a set-aside of some of the funds authorized in the legislation for prevention activities.

Hyde and McCollum are now adding gun provisions to this bill, but the exact content and scope of these provisions remain uncertain. It is possible that Hyde and McCollum will add the measures recently passed in the Senate (background checks at gun shows, juvenile Brady, child safety locks, and a juvenile ban on assault weapons) plus additional provisions to raise the age for handgun purchases (but not for handgun possession, as in our proposal) from 18 to 21; similarly raise the age for long gun purchases; require background checks for explosives purchases; prohibit the dissemination of bombmaking instructions on the Internet; increase penalties for gun traffickers and individuals who transfer guns to juveniles; and require mandatory sentences for juveniles who use guns to hurt others on school property. Hyde and McCollum may try, however, to water down the measures passed in the Senate -- particularly the gun show provision -- and to keep other provisions to a minimum in order to ensure broad Republican support. They also plan to include a contentious IDEA provision, passed in the Senate over the vigorous objection of Senator Harkin, to allow school officials to discipline disabled

children in the same manner as they can discipline other students for bringing guns to schools. We are working with Congressman Gephardt's office to maximize Democratic support for a set of strong gun provisions.

**2. Crime -- Gun Free-Schools Report:** The Education Department is planning to release within a few weeks the Gun-Free Schools Act report for the 1997-98 school year. The report will show that about 3,000 students were expelled for bringing a gun to school during the year -- only half the number expelled in the previous year. The Department believes that some school districts, particularly in California, are underenforcing the Act, and is putting together a plan to work with states and school districts on enforcement issues.

**3. Crime -- Study on Citizen Perceptions of Police:** The Department of Justice's Bureau of Justice Statistics released on Thursday the results of a survey on police protection conducted in 12 cities: Chicago, Kansas City, Knoxville, Los Angeles, Madison, New York, San Diego, Savannah, Spokane, Springfield, Tucson, and Washington, DC. The study found widespread support for local police: 85 percent of the residents surveyed said that they were satisfied with the police who served their neighborhoods, and only three percent reported that they were very dissatisfied. Although white residents were more likely than black residents to be satisfied with local police, both reported high levels of satisfaction: 90 percent for white residents, and 76 percent for black residents. In each of the 12 cities, residents who had been victims of violent crime and those who were fearful of crime in their neighborhoods reported less satisfaction with the police. About 30 percent of the residents of each city had some contact with the police within the past 12 months. In addition, a large percentage of respondents were familiar with community policing, with 54 percent reporting that police officers practiced community policing in their neighborhoods and 60 percent indicating that police had worked with neighborhood residents within the last year on crime prevention and safety issues.

**4. Education -- D.C. College Access Act:** The House recently passed the D.C. College Access Act to provide greater higher education opportunities to D.C. residents, but at a cost greatly in excess of the Administration's similar proposal. Under the House-passed bill, the federal government would pay the difference between in-state and out-of-state tuition for any qualified D.C. undergraduate attending a public college or university in any of the 50 states. The bill also would provide grants of up to \$3,000 annually to D.C. residents who choose to attend a private college or university in D.C., Maryland, or Virginia. Initial projections indicate that this bill would cost two or three times as much as the \$17 million proposal included in your FY 2000 Budget. The Administration's proposal, now incorporated in legislation introduced by Senator Jeffords, would limit subsidies to D.C. residents with family incomes of less than \$50,000 who attend college or university in D.C., Maryland, or Virginia; the subsidy would be the difference between in-state and out-of-state tuition for students attending

public colleges and universities and up to \$2,000 annually for students attending private institutions. Secretary Riley sent a letter to the Senate noting the Administration's support for the intent of the House-passed bill, but expressing reservations about the design of the subsidy and urging adoption of Senator Jeffords' alternative proposal.

**5. Tobacco -- Treasury Ruling on Smoking Cessation:** The Treasury Department is ready to issue a tax ruling that the cost of smoking cessation products prescribed by physicians is a medical expense for purposes of income tax treatment. (Current tax law allows taxpayers to deduct medical expenses, including drugs prescribed by physicians, to the extent they exceed 7.5 percent of income). The ruling uses new evidence on the addictiveness and harmfulness of smoking to reverse an opinion issued in 1979 prohibiting taxpayers from deducting the cost of these products.

**6. Health Care -- Arkansas' 1915(b) Waiver Proposal:** You recently asked about Arkansas' 1915(b) waiver proposal to use a managed care delivery system to provide intensive case management services to children with special mental health needs. As you know, Arkansas believes that this demonstration will ensure that these children receive inpatient, outpatient, and rehabilitation services in a coordinated and cost-effective fashion. HCFA has now concluded that the Arkansas proposal meets the necessary standards for managed care demonstrations (including requirements that enrollees have a choice of providers, access to specialists, and an effective complaint and appeals process) and expects to approve the waiver by the middle of this month.

**7. Health Care -- Dissemination of Contaminated Polio Vaccine:** You recently asked for an evaluation of Walter Kyle's contention that the distribution of contaminated polio vaccine by the FDA between 1955 and 1963 and again in 1977 is responsible for the spread of a variety of viruses that cause cancer and immune depressive diseases, such as HIV. Mr. Kyle is correct that the FDA released several batches of polio vaccine between 1955 and 1963 that were contaminated with a simian virus called SV40. Researchers at the FDA and NIH have concluded, however, that exposure to these vaccines is not associated with a significantly increased rate of cancer or other disease. The FDA also has concluded, after testing numerous lots of polio vaccine from 1977 and surrounding years, that no additional distribution of contaminated vaccine took place in these years. The vast majority of the scientific community stands behind FDA's findings on this issue. Given these findings, medical ethicists at the Centers for Disease Control do not believe there is any need to discuss the chance that polio vaccine is contaminated by simian viruses before obtaining parents' consent to vaccination.

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DPC - weekly report

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THE WHITE HOUSE  
WASHINGTON

August 15, 1998

THE PRESIDENT HAS SEEN  
8-17-98

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed  
Elena Kagan

SUBJECT: DPC Weekly Report

**1. Tobacco -- Legal Update:** As you know, a Fourth Circuit panel invalidated the FDA's tobacco rule yesterday, holding (2-1) that the Food, Drug, and Cosmetic Act does not give the FDA authority to regulate tobacco products. The Justice Department immediately decided to seek review of the decision by the en banc Fourth Circuit. Those knowledgeable about the Fourth Circuit think we have about a 50 percent chance of obtaining en banc review. If the Fourth Circuit rejects the petition for an en banc rehearing, the Justice Department will file a petition for certiorari in the Supreme Court.

The industry's settlement talks with the states are scheduled to resume on August 24th, but some believe that the industry may decide not to return to the table. The latest gossip is that a serious split has developed between Philip Morris and R.J. Reynolds, with the former still preferring to reach a resolution, but the latter inclined to take its chances in court. (RJR apparently now believes that PM is using the settlement talks to gain a competitive advantage over the rest of the industry.) The next case scheduled to go to trial (on September 14th) is Washington State's, which everyone considers to be in very bad shape.

In the event that the states do reach a settlement with the tobacco companies, we will have to decide how much money to claim as the federal government's. As you recall, the federal government is entitled on average to 57 percent of the monies collected by the states in Medicaid recoupment actions. The Justice Department has developed a theory under which the federal government could make a claim for even more -- in fact, for every penny that the states collect from the tobacco companies. The Department, unfortunately, has failed to develop a similarly creative theory under which we could relinquish our claim to this money in exchange for the states' commitment to use it for specified purposes (e.g., tobacco control programs or child care). The Department currently believes that we would need Congressional approval to effect such a bargain.

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DPC - Weekly report

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THE WHITE HOUSE

WASHINGTON

8-3-98

July 31, 1998

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MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed  
Elena Kagan

SUBJECT: DPC Weekly Report

**1. Health Care -- Patients' Bill of Rights:** The Senate adjourned this week without bringing patients' bill of rights legislation to the floor. Earlier this week, Senators Chafee, Lieberman, and Graham introduced their own bill of rights proposal. The proposal includes all of the rights recommended by your Quality Commission, in addition to enabling individuals to sue health plans for economic (but not non-economic or punitive) damages in federal court. This enforcement scheme is an attempt to split the difference between the provision in the Kennedy bill, which allows individuals to sue health plans in state court for all damages, and the provision in the Republican Leadership bill, which relegates individuals to a schedule of civil monetary penalties that bears no relation to the amount of damages actually suffered.

Senator Lott is placing pressure on Republicans not to co-sponsor the Chafee-Lieberman bill, and Senator Specter is the only Republican likely to join it. At the same time, Senators Daschle and Kennedy have criticized the bill, especially its enforcement provision, as inadequate. We have kept our distance from the bill, both because most Senate Democrats do not yet want to compromise and because early Administration support for such an approach could *decrease* the likelihood of eventually getting a strong bill out of the Senate. We have tried, however, to refrain from any sharp criticism of the bill, given that it is in fact a quite strong piece of legislation. Our task for this month is to emphasize the differences between the Republican and Democratic bills, so that when the Senate Republicans return, they feel a need to engage seriously with the Administration and Senate Democrats on this issue.

**2. Health Care -- DeSario Case and Guidance:** The Department of Health and Human Services will issue a guidance letter to all state Medicaid directors this week on their obligations to cover medical devices. The guidance comes in the wake of a controversial decision by the U.S. Court of Appeals for the Second Circuit in the DeSario case, holding that Connecticut could limit coverage to a list of approved medical devices, which the State had compiled by reference to the needs of the average Medicaid beneficiary. The HHS guidance letter will adopt a contrary interpretation of the law, stating that although states may set some limits on coverage of medical devices, they must take into account when doing so the special needs of Medicaid beneficiaries with disabilities. The guidance also will remind the states of their obligation to provide notice of any coverage restrictions, and to put in place a public and timely appeals process. Some Governors will complain that HHS's interpretation will increase

their Medicaid expenditures; and although most disability advocates will welcome the letter, some will complain that it allows states to impose certain restrictions, rather than requiring them to pay for all medically necessary devices. We believe that the letter represents the best possible balance between these competing interests.

**3. Tobacco -- Legislative Update:** House Republicans have decided not to introduce tobacco legislation next week, as originally planned, and are arguing among themselves as to whether to do so when they return from recess. Speaker Gingrich and Congresswoman Pryce (whom Gingrich appointed to head the tobacco effort) continue to want to pass a skinny tobacco bill, with a counteradvertising campaign, some access restrictions, limited FDA authority, and no lookbacks or price increase. Other prominent Republicans, however, argue that such a bill will be subject to attack by Democrats and that there is no advantage in reviving this issue. If the Republicans do decide to bring a bill to the floor after recess, Democrats are ready with numerous amendments, including two full substitutes: the comprehensive Hansen-Meehan bill and a new Waxman bill that replaces an up-front price increase with lookback penalties of huge proportions.

Senator Hatch is talking with Democrats -- particularly Senator Conrad, to whom a great many Democrats defer on tobacco -- about possible compromise legislation, but their talks have not yet progressed very far. Conrad is willing to make some compromises on price and perhaps even on lookbacks, but he is insistent that liability protections be put into the bill only in conference and that they be limited to an \$8 billion annual cap. Hatch wants more extensive liability protections, and remains adamant that they go into the bill prior to conference (even though he knows that Senators Gregg and Leahy will again try to strip the liability protections on the floor). We have been talking to both sides in an effort to move them closer together, but something more dramatic is probably necessary to break the current impasse.

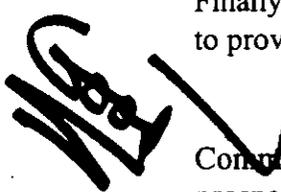
**4. Tobacco -- State and Federal Suits:** The settlement discussions between the industry and the state attorneys general "recessed" late last week, with industry negotiators saying that they needed further guidance from the CEOs of the companies. The talks so far have focused on non-monetary issues, with both sides apparently assuming that the industry will pay about \$200 billion. Opinions are very mixed as to whether the AGs and industry will return from the recess ready to strike an agreement.

We continue to have discussions with Justice Department attorneys about the possibility of filing suits against the companies for federal Medicare costs. (We say "suits" because the most likely way to bring such litigation is to file not a single national suit, but a number of suits in different states.) They continue to be very resistant, arguing that these suits probably would be thrown out of court on a motion to dismiss, and that this result would subject the Department to criticism that it brought litigation for political reasons. Other attorneys experienced in tobacco litigation -- Dick Scruggs, Stan Chesley, John Cole, etc. -- have far greater confidence that federal suits could survive a motion to dismiss and that such suits could bring the tobacco companies to the table and force them to make substantial concessions (perhaps even before

motions to dismiss are decided). The Attorney General may raise this matter with you when she sees you this week.

**5. Tobacco -- New CDC Data:** The Centers for Disease Control released a study on Thursday indicating that minority populations would be more likely than whites to quit smoking in response to a cigarette price increase. The study found that controlling for income and education, blacks are twice as responsive as whites to price increases, and Hispanics are even more price responsive. For example, the study found that about 25 percent of 18-24 year old Hispanic smokers and approximately 10 percent of 18-24 year old black smokers would quit smoking in response to a 10-percent cigarette price increase, while only about 1 percent of white smokers of the same age would do so. The study examined data on adults only, finding that in African-American and Hispanic communities price responsiveness decreased with age, while among whites, price responsiveness remained steady.

**6. Welfare Reform -- Medicaid 100-Hour Rule and Anniversary Event:** You are scheduled to participate in an event this week to mark the progress of welfare reform over the past two years and announce steps to ensure that even more families make a successful transition from welfare to self-sufficiency. Most important, you can announce new administrative action (repealing the so-called 100-hour rule) to allow states to provide Medicaid to two-parent working families. (Old welfare rules precluded states from providing Medicaid to these families if the adults worked more than 100 hours each month.) You also can announce the release of HHS's first report to Congress on the new welfare law. This report focuses on the dramatic gains made in moving welfare recipients into work opportunities. Because this month is also the one-year anniversary of enacting the \$3 billion Welfare-to-Work program, we are also planning for you to announce new formula grants to 5 states (MD, VA, WV, NM, NH). Finally, we may recommend that you use this opportunity to endorse the House and Senate bills to provide Individual Development Accounts for low-income families.

 **7. Education -- Charter Schools:** The Senate Labor and Human Resources Committee reported out the charter schools bill unanimously last week, increasing the prospect that Congress will send this bill to you in September. We are attempting to work out one remaining issue with Senator Coats before the bill comes to the floor, so that we can avert a controversial amendment that could derail the bill's smooth passage. Coats wants to modify a requirement in existing law that charter schools use a lottery to select students if the school is oversubscribed. Coats thinks that charter schools should be able to guarantee slots for the children of founders and siblings of students already enrolled, as well as to use certain kinds of selective admission requirements (e.g., an audition for a performing arts school). We are working with the Education Department and Coats to see if we can accommodate Coats' concerns through new administrative guidance, without violating current law and without opening the door to abuses that could increase the number of racially identifiable schools.

**Education -- D.C. Charter Schools:** We are working with Congress to address a potential shortfall of funding for charter schools in the District of Columbia during the next academic year. The budget developed earlier this year by the Control Board and the D.C. Government significantly underestimated the number of students likely to attend charter schools, providing only \$12 million of the approximately \$30 million needed for full per-pupil allocations to support the 4,000 students projected to attend charter schools this year. Although the original D.C. appropriations bills introduced in the House and Senate included only the \$12 million recommended for charter schools, the House has added \$20 million from the federal payment, with the support of the Administration. In the Senate, we are encouraging a manager's amendment on the floor either to provide additional funding for charter schools out of the D.C. surplus or to direct the Control Board to find an offset within the D.C. budget for additional funding.

**Education -- National Board for Professional Teaching Standards:** In preparation for the conference on the Higher Education Act, we are working on a strategy for eliminating the Goodling provision that prohibits continued funding for the National Board. This fight will be very difficult, given (1) the overwhelming majorities by which this bill passed both Houses; (2) Goodling's apparent unwillingness to compromise on the issue; and (3) the lack of interest in the Board among House Democrats. There is bipartisan support for the Board in the Senate, and we are working closely with the NEA and AFT, Governors Hunt and Voinovich, and a variety of business leaders to put pressure on conference members to remove the Goodling provision. At the same time, we are working on compromise proposals that would give Goodling the ability to say that he corrected abuses or problems in the program, relating for example to the high salary of the Board's President and the high financial cost of seeking board certification.

**10. Education -- Ed-Flex:** The Senate Labor and Human Resources Committee reported out an Ed-Flex bill which would allow all states to waive federal education requirements if they have academic standards, assessments, and accountability measures in place. We worked hard to improve the bill, and it now reflects the principles you announced at last winter's NGA meeting. The prospects for floor action are not clear at present.

**11. Crime -- Prison Population:** The Justice Department will release a report on Sunday showing that in 1997, the nation's adult prison population grew by 61,186 men and women -- a 5.2 percent increase from 1996, but lower than the average annual growth of 7 percent since 1990. The total number of federal and state inmates reached over 1.24 million adults, with 1.13 million inmates in state prisons (a quarter in California and Texas alone) and 112,900 in federal prisons. The report shows that since 1990, the inmate population increased by 60 percent. Violent offenders were responsible for much of this growth, accounting for a full 50 percent of the increase.

**12. Service -- Work-Study Funds:** New figures show that colleges and universities are spending more work-study funds on community service, but that there is still much room

for improvement. According to the data, the average college/university spent 10 percent of its work-study funds on community service in 1996-97, up from 7 percent in 1994-95. As you know, a law enacted in 1992 required schools to spend at least 5 percent of work-study funds on community service. In 1996-97, 9 percent of all schools failed to meet this requirement, as compared with 24 percent two years earlier. (The Education Department does not penalize schools that fail to meet this requirement.) Only 12 percent of schools use more than 20 percent of their funds for service, and only 2 percent of schools use more than half their allocation for service. We are beginning discussions with the Education Department and Corporation for National Service on possible ways to improve these numbers.

THE WHITE HOUSE  
WASHINGTON

7-29-98

'98 JUL 27 PM 8:05

July 24, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed  
Elena Kagan

SUBJECT: DPC Weekly Report

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**1. Health Care -- Patients' Bill of Rights:** The House passed the Republican Leadership's Patients' Bill of Rights on Friday by a 216-210 margin, while defeating the Dingell-Ganske substitute by a 217-212 vote. The Democratic Leadership believes that the Administration's veto message helped secure the strong showing (including about 10 Republican cross-over votes) for Dingell-Ganske. The Senate appears likely to postpone a vote on patients' bill of rights legislation until after recess. Senators Chafee, Lieberman, and Graham will unveil compromise legislation later this week. From all reports, it will be a strong package that has no poison pills and includes many if not all of the patients' protections we have supported. The enforcement mechanism is still unknown, but the Senators may allow suits in federal (but not state) courts for economic (but not non-economic) damages. We still do not think that this bill will attract much support -- perhaps as few as two to four Republican votes.

You have two events scheduled next week in which you can raise patients' rights. You will meet with key members of the disabilities community on Wednesday to discuss a range of issues, and can take the opportunity to plug a strong bill. (Members of the community are joining with Senator Kennedy and other Democrats for a rally in support of Daschle-Kennedy the day before.) In addition, you are tentatively scheduled to go to a health care facility on Long Island with Republican Congressman Michael Forbes on Saturday to highlight his support for the Dingell-Ganske bill, as well as to announce that the Department of Defense is now ready to come into compliance with the Patients' Bill of Rights.

**2. Health Care -- Provider Taxes:** After your line-item veto of legislation permitting New York to use provider taxes to fund its Medicaid program, we notified all states that we would seek legislation giving the Secretary of HHS authority to waive enforcement action against states with impermissible provider taxes so long as they drop these taxes and begin complying with the law. We also informed states that if Congress did not grant us this authority by August, we would have to begin enforcement proceedings. It is now becoming clear that Congress will not pass this legislation. States that have complied with the law see no reason to forgive states that have not. States that have not complied with the law do not believe we will enforce it in any event. As a result, no one has pushed this legislation. In a meeting with Erskine last week, we discussed whether and when to start enforcement activities. We arrived at a consensus, pending consultation with HHS

Remember  
a very public  
evening

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and DOJ lawyers, to delay action until after the Congress adjourns so that neither Congress nor the states can charge that we have provided insufficient time to pass the necessary legislation.

**3. Tobacco -- Court Decision on Second Hand Smoke:** A Federal district court judge in North Carolina ruled for the tobacco companies in a case challenging the EPA's finding, in a 1993 risk assessment, that environmental tobacco smoke (ETS) is a Class A carcinogen causing lung cancer in adults. (The decision left standing the EPA's finding that ETS causes respiratory harm to children.) The court found that the EPA "disregarded information and made findings based on selective information; deviated from its risk assessment guidelines; failed to disclose important opposing findings and reasoning; and left significant questions without answers." The ruling has no direct impact on federal, state, or local second-hand smoke rules, but the industry may try to use it to lobby against new restrictions or ease existing ones. The decision also will make second-hand smoke litigation much more difficult to win. We hope to be able to announce an appeal of this decision very shortly. We also can unveil a new EPA public service announcement that targets ETS in the home by informing parents of ways to protect their children from second hand smoke.

**4. Education -- NEA/AFT International Teachers Congress Speech:** You are scheduled to speak on Wednesday to the International Congress of Teachers, an international teachers organization tied to both the NEA and the ATF. Because national education standards are commonplace in most other industrialized countries, this forum provides a good opportunity to restate the case for national standards and tests, and to renew your threat to veto the Labor-HHS-Education appropriations bill for blocking work on the tests and failing to support necessary education investments. We also may use the occasion to highlight Congress's failure to fund summer job programs.

**5. Disability Issues -- ADA Anniversary Event:** You will commemorate the eighth anniversary of the Americans with Disabilities Act on Wednesday by signing a directive recommended by your Task Force on Employment of Adults with Disabilities. As you recall, you created the Task Force by executive order in March, and it is co-chaired by Secretary Herman and Tony Coelho. Its mandate is to help bring the employment rate of adults with disabilities "as close as possible" to that of the general population. The directive will instruct DOJ, EEOC, and SBA to do outreach on the ADA, and instruct HHS to do outreach on a state option, enacted as part of the Balanced Budget Act, to enable people with disabilities to buy into Medicaid as their earnings increase. In addition, you will announce that we are working with Senators Kennedy and Jeffords on additional health care legislation for people with disabilities who want to return to work. The disabilities community will greet this announcement very warmly because the Kennedy-Jeffords bill is their top priority. The current version of the bill costs \$5 billion over five years, but we are working with the Senators' staff on a more affordable alternative.

**6. Crime/Guns -- Appropriations Votes:** During floor consideration of the Commerce-Justice-State appropriations bill last week, the Senate voted on several important gun issues. First, the Senate defeated (61-39) Senator Boxer's amendment to require federal gun dealers to provide a child safety lock with every handgun sold, while passing (72-28) Senator Craig's amendment to

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require dealers only to make safety locks available. Second, the Senate defeated (69-31) Senator Durbin's amendment to hold adults liable for failing to store firearms away from children. Third, the Senate passed (69-31) Senator Smith's amendment to prohibit the FBI from collecting a fee for Brady background checks when the National Insta-Check System (NICS) goes into effect in November. If the FBI cannot charge a fee for checks, DOJ estimates that the cost to the federal government will be \$75 million in the first year, with the potential to rise in subsequent years. In the wake of this vote, we are planning an event in early August in which you would (1) call for a five-day waiting period even after NICS goes into effect, (2) release a long-planned DOJ rule on funding the NICS through user fees, and (3) attack the Smith amendment as a veiled attempt to gut the Brady law. These actions should attract a great deal of attention, particularly after last week's tragic shooting in the Capitol.

**7. Drugs -- Methamphetamine Penalties:** The House Judiciary Committee marked up legislation last week to equalize federal penalties for methamphetamine trafficking and crack cocaine trafficking. Under current law, 10 grams of pure meth triggers the 5-year mandatory sentence and 100 grams of meth triggers the 10-year sentence; under the House bill, 5 grams of meth would trigger the 5-year sentence and 50 grams would trigger the 10-year sentence. Consistent with our prior statements, we endorsed the concept of equalization, but not at these low levels. At the same time, the Senate passed an amendment to the Commerce-Justice-State Appropriations bill offered by Senator Hutchison that would undermine DEA's regulatory authority over precursor chemicals that can be used to manufacture drugs such as methamphetamine. The amendment would (1) increase the difficulty of proving that drug sellers have violated record-keeping and reporting provisions of the Controlled Substances Act, and (2) decrease the penalties on drug sellers for violating these provisions. These measures would weaken the Comprehensive Methamphetamine Control Act you signed in 1996 by making it easier for drug sellers to divert legal chemicals into the manufacture of methamphetamine, and we will strongly oppose them.

**8. Welfare Reform -- Urban Institute Study:** A study to be released this week by the Urban Institute shows that people moving from welfare to work enjoy significantly increased income, even if they move into low-wage, part-time jobs. The study -- *Does Work Pay? An Analysis of the Work Incentives Under TANF* -- examines how monthly income for a family of three changes as a family member moves from no work to a part-time minimum wage job to a full-time minimum wage job, and finally to a full-time \$9.00 per hour job. The study calculates these changes in 12 states (AL, CA, CO, FL, MA, MI, MN, MS, NJ, NY, TX, WA). Not surprisingly, the lower the welfare payment, the greater the incentive to work. (For example, moving from welfare to a part-time minimum wage job increases family income by 38 percent in Washington and 108 percent in Mississippi.) Across all 12 states, family income increases by an average of 51 percent in the transition from welfare to a part-time minimum wage job, with income growing by another 20 percent between part-time and full-time minimum wage work and still another 16 percent between a full-time minimum wage job and full-time work at \$9.00 per hour.

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The study confirms that federal and state policies make a big difference in making work pay. In particular, the EITC helps families maintain income as they lose other benefits over time. For

\* // example, in Mississippi the EITC almost doubles the increase in family income between welfare and a part-time job -- from 67 percent to 108 percent. In New York, EITC makes the difference between a 19 percent and 45 percent increase in income.

9. **Welfare Reform -- Washington State Report:** A recent survey by the State of Washington shows relatively high levels of employment and earnings for people who left welfare between December 1997 and February 1998. The study found that 68 percent of people who have left welfare are currently working, at an average hourly wage of \$8.42. Total family income for these families, including child support, was 137 percent of the federal poverty level. Though Washington has a generous child care program, only 31 percent of families reported using subsidized care. More than half responded that they did not need subsidies because they received care for free.

\* { 10. **Welfare Reform -- Mayor Giuliani's New Plan:** In a speech last week, Mayor Giuliani announced that he would transform New York from the welfare capital of the country to its work capital, by requiring everyone able to work to do so. Giuliani's new approach is similar to that adopted in Wisconsin -- which is unsurprising given that he recently hired Jason Turner, Governor Thompson's former welfare reform guru, to head New York's welfare program. Although not publicly backing away from the workfare program he has championed, the mayor is now making workfare only one part of a comprehensive work-first, employment-focused approach which includes unsubsidized and subsidized private sector employment. The mayor announced that under this approach, he would transform every welfare office into an employment center, divert as many applicants as possible to work so that welfare is the last rather than first resort, require mothers with newborns to attend a parenting class, expect those with disabilities not severe enough to qualify for disability payments to work (in specialized settings if necessary), and compel those with substance abuse problems to participate in work and treatment.

look good ✓ The Mayor's new approach sets very high expectations for both recipients and the welfare system. An approach this ambitious will have a lot to overcome given New York City's size, bureaucracy, political dynamics, and continuing high unemployment. But if welfare reform can make real headway in New York City (as well as in California, which has lagged behind the rest of the country), it can succeed anywhere. HHS intends to contact city officials to determine whether we can give them any assistance in implementing this far-reaching program.

good 11. **Welfare Reform -- NGA Report on Employment Retention:** The National Governors Association will release a report next week on how states can help people remain employed once they have left welfare. The report emphasizes that "work first" means not simply placing people in entry level jobs, but working with people after they are employed to help them keep their jobs, avoid returning to welfare, and advance within the labor market. The report suggests that states should: promote learning at the workplace; help people get jobs that give them access to career ladders; improve the quality of "transitional employment" by combining it with education, training, career guidance and job placement; and improve access to education and training that complements work. The report also encourages: ongoing case management and mentoring; access to supportive services such as child care, transportation, health care, housing; and financial incentives such as the federal

and state earned income tax credits. We are working with HHS to put out a press release praising the report and highlighting once again an NGA report issued in May (which we previously described to you) showing that states are investing more than ever before in child care and work opportunities.

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**12. Children and Families -- Nutrition Bill:** With Administration support, the House on Monday passed a reauthorization bill for the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC); the Summer Food Service Program; the Farmers Market Nutrition Program; the Nutrition Education and Training Program; and State administrative support for the School Lunch Program. The bill advances your after-school care agenda by incorporating a variety of Administration recommendations, such as enabling States that are enrolled in the School Lunch and Breakfast Program to provide snacks to children in after-school education and enrichment programs, and allowing institutions that provide after-school care for "at-risk" school children aged 12 through 18 to participate in the Child and Adult Care Food Program. The bill also strengthens protections against WIC fraud and abuse, and requires states participating in WIC to provide program participants with education on drug and alcohol abuse. The Senate is expected to act on its bill shortly.

**13. Children and Families -- Child Care:** The House Government Reform and Oversight Committee unanimously passed the Quality Child Care for Federal Employees Act last week, and both the House and Senate are likely to pass the bill by unanimous consent before they recess. The legislation in part mirrors the executive memorandum you issued in March to improve federally-sponsored child care in the executive branch, by ensuring proper background checks of child care providers, and achieving full accreditation of child care facilities. The pending legislation also applies to child care sponsored by the judicial and legislative branches of the federal government, and includes additional important provisions, such as: (1) giving GSA new oversight responsibilities for most federally-sponsored child care and directing GSA to develop, issue, and enforce uniform health and safety standards; and (2) authorizing agencies to use appropriated funds for child care subsidies for their low-income employees.

THE WHITE HOUSE  
WASHINGTON

July 21, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed  
Elena Kagan

SUBJECT: DPC Weekly Report

**1. Health Care -- Patients' Bill of Rights Update:** Congressional Democrats were thrilled with the two patients' bill of rights events you held last week. The media gave these events good coverage, but expressed skepticism about whether Democrats really want to pass legislation this year. Our best response to these doubts -- regardless of whether we want legislation or a political issue -- is to remain nonpartisan in tone, as you did in your remarks. As of now, both the House and the Senate may bring patients' bill of rights legislation to the floor this week. In the House, the Republican Leadership is attempting to pass a rule for separate up or down votes on the Republican Task Force bill and the Dingell/Ganske legislation. Under this scenario, the Task Force bill may pass, but with few or no Democrats and with a few Republican defectors. The Dingell/Ganske bill probably will receive about 200 votes. In the Senate, the Leadership will allow amendments, as well as complete substitutes, to the Republican bill; for this reason, the Senate is likely to produce a stronger bill than the House even though the Senate Republican bill is the weakest proposal on the table. It is still unclear whether Senators Chafee and Graham will introduce a bill. If they do, it is likely to have a full set of patient protections and an enforcement mechanism that is stronger than the limited civil monetary penalties in the House Republican bill but not as strong as the state-court enforcement option in the Dingell-Ganske bill. Because of the partisan divide on this issue, this kind of compromise approach may receive little support.

**2. Health Care -- Nursing Home Enforcement:** Senators Grassley and Breaux will release next week a scathing GAO report on inadequacies in nursing home care across the country. This report will criticize HCFA sharply for failing to monitor or oversee nursing home quality. As you know, we have worked with HHS to develop a strong initiative, including both legislative proposals and administrative actions, to make improvements in this area. The package provides for criminal background checks on nursing home workers, strengthened penalties for nursing homes that fail to meet standards, and closer federal oversight of state enforcement mechanisms. (The briefing memo we sent you described the initiative more fully.) Your announcement of this package today should blunt the impact of the GAO report, though it still will receive media attention.

**3. Health Care -- Long Term Care:** Congressman Mica, the Chairman of the Government Oversight Committee with jurisdiction over the Federal Employees Health Benefits

Program (FEHBP), is planning to mark up a bill this week that would allow federal employees to purchase private long-term care. We have serious concerns about Mica's proposal, primarily because it does not ensure that the packages offered will be high-quality. We are developing an alternative proposal on this subject to include in a broader long-term care package that you can announce later this summer. In the meantime, OPM will write Mica a letter noting your longstanding interest in this issue while raising concerns about his proposed policy.

**4. Tobacco -- Meetings with Hatch:** Bruce Lindsey, Larry Stein, and we met with Senators Hatch, Feinstein, Torricelli, and Breaux last week to explore options for moving their tobacco bill in the Senate. As you know, the bill is based on the June 20th settlement, but with a slightly higher price and somewhat increased lookbacks. We expressed some concerns about the FDA provisions in his bill, and noted our fear that the absence of any company-specific lookback penalties and the scope of the liability provisions -- including not only a liability cap, but also a prohibition on class actions and punitive damages -- would prevent the bill from gaining strong Democratic support. Because Torricelli and Feinstein said that a significant number of Senate Democrats look to Senator Conrad for guidance on this issue, we all agreed to have another meeting, this time with Conrad in attendance. That meeting will take place on Tuesday afternoon. Following the principals' meeting, we also sat down with Hatch's staff to discuss further his FDA proposal. Although we continue to have some differences on this issue, the meeting went well; there is little reason to think that the FDA issue would stand in the way of a deal if everything else could be satisfactorily resolved.

**5. Tobacco -- Counteradvertising Campaign:** We are exploring with ONDCP whether to incorporate tobacco counteradvertising in our national youth anti-drug media campaign. Although ONDCP's \$195 million budget must go toward anti-drug ads, we could encourage the television networks to use some of the matching funds they provide to air anti-tobacco messages. If we decide to go down this route, we would work with HHS and public health groups such as the Campaign for Tobacco Free Kids to propose programming ideas and produce specific advertisements.

**6. Crime -- Values-Based Anti-Crime Initiative:** You are scheduled to unveil a new values-based violence prevention initiative at an event on the South Lawn this Wednesday. The initiative will support the efforts of community organizations, including faith organizations, to provide values-based instruction and activities for at-risk youth to improve public safety. Some of the activities undertaken by the grant recipients, in partnership with law enforcement, schools, courts, and service providers, include gang intervention, gun abatement, truancy prevention, mentoring, drug and alcohol abuse, conflict resolution, and job training. The initiative will provide grants of between \$75,000 and \$150,000. The grant recipients are located in 16 cities: Salinas, CA; Los Angeles, CA; Washington, DC; Miami, FL; Chicago, IL; Indianapolis, IN; Baltimore, MD; Detroit, MI; Kansas City, MO; Hempstead, NY; Portland, OR; Philadelphia, PA; Charleston, SC; San Antonio, TX; Richmond, VA; and Seattle, WA.

**7. Crime -- Appropriation for Youth Crime Gun Interdiction Initiative:** The Senate now has joined the House in fully funding your Youth Crime Gun Interdiction Initiative. The new funding will allow us to place additional ATF agents in each of the 27 cities in which the initiative is now operating; it also may enable us to expand the initiative to other cities.

**8. Education -- Charter School Legislation:** The Senate Labor and Human Resources Committee is scheduled to mark-up a charter schools expansion bill this week. The bill will contain many of the provisions we have recommended, and has solid bipartisan support. We will work to convince Democrats to use other bills -- perhaps including the Ed-Flex bill discussed below -- as a vehicle for forcing votes on other education priorities, so that we have a chance of moving this bill expeditiously through the Senate and to conference. In addition, we are planning to release an estimate of charter school enrollment for the upcoming school year and two Education Department reports -- one on what parents should look for in charter schools, the other on what guidelines chartering agencies should set -- at your speech to Boys Nation this Friday.

**9. Education -- Ed-Flex Legislation:** The Labor and Human Resources Committee also is scheduled to mark-up a Frist/Wyden Ed-Flex bill this week. As you know, the 12 states now participating in the Ed-Flex demonstration program have authority to waive most requirements in the major federally funded elementary and secondary education programs. The Frist-Wyden bill would give this flexibility to any state meeting specified requirements. We and the Education Department have worked hard with Frist and Wyden's staff, as well as with the NGA, to ensure that the preconditions for participation in Ed-Flex are sufficiently stringent -- *i.e.* that states get waiver authority only if they have in place standards and assessments, school report cards, and procedures for intervening in failing schools. You announced support for this kind of approach at the last NGA Winter meeting. Democrats and most of the education community are at best lukewarm to this bill; even if Senate Democrats support it in committee, they are likely to use it as a vehicle for trying to move higher priority items, such as our class size reduction initiative. Republicans also may attempt to use the bill as a vehicle for their favorite proposals -- *e.g.*, vouchers and block grants -- so its ultimate fate is quite uncertain.

**10. Food Safety -- Appropriations Victory:** The Senate passed last week, by a vote of 66-33, an amendment offered by Senator Harkin to restore \$68 million for funding of your food safety initiative. Harkin's amendment funded the increase by requiring the tobacco industry to take over the administrative costs associated with the USDA's tobacco program. We worked closely with Harkin and consumer groups to promote the amendment, and several newspapers, including the Los Angeles Times, published strong editorials in support. We will continue this effort to ensure that we get a good result on this issue in conference.

**11. Welfare Reform-- Wellstone Amendment on Work Requirements:** As part of its passage of the Higher Education Act, the Senate approved an amendment offered by Senator Wellstone, by a vote of 55-43, to allow states to count up to two years of vocational education or college toward the welfare work requirements. States currently can count one year of vocational

education toward the work requirements, subject to a 30% cap on the percentage of the caseload that can count this activity as work; the cap would continue to apply under the Wellstone proposal. Supporters of the amendment argued that it would help welfare recipients increase their earning potential and improve the chances of their permanently leaving the welfare system. Opponents argued that it would weaken the work requirements, which are the lynchpin of the welfare law and the engine for caseload reduction. We understand that House Republicans will try to eliminate the Wellstone amendment in conference.

One possible compromise might be to let college attendance count for up to half of a person's work requirement (*i.e.*, 10-15 hours) for up to two years. Amended in this way, the law would expect college students receiving welfare to perform some work, but would recognize the difficulty of juggling work, classes, and parenting responsibilities. Of course, if the Republicans succeed in simply knocking out the Wellstone amendment, we will continue our efforts to encourage states to use the existing flexibility in the welfare law (and in work-study programs) to accommodate college students.

**12. Welfare Reform -- Illegal Immigrants:** HHS will issue a list this week of "federal public benefits," which illegal immigrants are not eligible to receive under the welfare law. The list includes adoption assistance and foster care, child care, low-income heating assistance, Medicare, Medicaid, the Social Services Block Grant, the new Child Health Insurance Program, and TANF, as well as 20 smaller programs. The list excludes community health centers and maternal and child health programs, which will continue to be available to all comers. House Republicans (*e.g.*, Lamar Smith) may argue that HHS should not have excluded these programs, but there are good policy reasons and a sound legal basis for doing so. At the same time, DOJ will issue a proposed rule instructing providers of federal public benefits on how to determine whether a potential recipient is an illegal alien. The rule requires a provider to look at documents for everyone, unless the provider has applied for and received a temporary waiver. Providers will view this requirement as a serious administrative burden, but the law left little room for any alternative approach.

**13. Abortion -- Congressional Update:** A series of contraception- and abortion-related votes occurred last week in the House, and we expect more next week. First, the House passed by a vote of 224-198 the Lowey proposal to require health plans participating in the FEHBP to provide coverage of contraceptives. Second, the House passed by a vote of 276-150 legislation making it illegal to transport a minor across state lines in order to avoid a state's parental consent law. Third, a House committee passed an amendment offered by Congressman Istock to require parental consent for Title X family planning services. We can expect the House to turn this week to the Partial Birth Abortion Act and the "Mexico City" international family planning restrictions.

**14. Community Empowerment -- Community Reinvestment Act (CRA):** According to a report by the National Community Reinvestment Coalition (NCRC), the private sector has pledged more than \$1 trillion going forward in loans to distressed communities, with more than

95 percent of these financial commitments made since 1992. The NCRC also reported that there have been 23 times more financial commitments to distressed communities from banks in the past 5½ years than in the previous 15 years. In addition, lending commitments under the CRA have increased 69-fold from the pre-1993 era -- from an average of \$2.6 billion per year between 1977 and 1992 to about \$180 billion per year in the past 5½ years. Despite the success of your Administration's reform of CRA, some in Congress are working to attach riders to the Credit Union Membership Access Act which would gut the program. Over the next weeks, the NEC, DPC, and Treasury will monitor this situation closely.

THE WHITE HOUSE  
WASHINGTON

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July 21, 1998

MEMORANDUM FOR THE PRESIDENT

7-22-98

Copied  
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FROM: Bruce Reed  
Elena Kagan

SUBJECT: DPC Weekly Report

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THE WHITE HOUSE  
WASHINGTON

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July 21, 1998

MEMORANDUM FOR THE PRESIDENT

7-22-98

Copied  
Reed  
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FROM: Bruce Reed  
Elena Kagan

SUBJECT: DPC Weekly Report

**1. Health Care -- Patients' Bill of Rights Update:** Congressional Democrats were thrilled with the two patients' bill of rights events you held last week. The media gave these events good coverage, but expressed skepticism about whether Democrats really want to pass legislation this year. Our best response to these doubts -- regardless of whether we want legislation or a political issue -- is to remain nonpartisan in tone, as you did in your remarks. As of now, both the House and the Senate may bring patients' bill of rights legislation to the floor this week. In the House, the Republican Leadership is attempting to pass a rule for separate up or down votes on the Republican Task Force bill and the Dingell/Ganske legislation. Under this scenario, the Task Force bill may pass, but with few or no Democrats and with a few Republican defectors. The Dingell/Ganske bill probably will receive about 200 votes. In the Senate, the Leadership will allow amendments, as well as complete substitutes, to the Republican bill; for this reason, the Senate is likely to produce a stronger bill than the House even though the Senate Republican bill is the weakest proposal on the table. It is still unclear whether Senators Chafee and Graham will introduce a bill. If they do, it is likely to have a full set of patient protections and an enforcement mechanism that is stronger than the limited civil monetary penalties in the House Republican bill but not as strong as the state-court enforcement option in the Dingell-Ganske bill. Because of the partisan divide on this issue, this kind of compromise approach may receive little support.

**2. Health Care -- Nursing Home Enforcement:** Senators Grassley and Breaux will release next week a scathing GAO report on inadequacies in nursing home care across the country. This report will criticize HCFA sharply for failing to monitor or oversee nursing home quality. As you know, we have worked with HHS to develop a strong initiative, including both legislative proposals and administrative actions, to make improvements in this area. The package provides for criminal background checks on nursing home workers, strengthened penalties for nursing homes that fail to meet standards, and closer federal oversight of state enforcement mechanisms. (The briefing memo we sent you described the initiative more fully.) Your announcement of this package today should blunt the impact of the GAO report, though it still will receive media attention.

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THE WHITE HOUSE  
WASHINGTON

THE PRESIDENT  
7-7-98

July 2, 1998

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MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed  
Elena Kagan

SUBJECT: DPC Weekly Report

**1. Tobacco -- Legislative Strategy Update:** We and Larry Stein believe that we should proceed along two fronts in our effort to get tobacco legislation back on track. On the first track, we must try to bring increased pressure to bear on Senator Lott to pass a comprehensive bill. To this end, we have worked with the public health community (which is generally demoralized and weak) on various grassroots activities over the congressional recess. We also have worked with Senator Daschle's office on a strategy for continuing to force votes on tobacco legislation on the Senate floor. Our preferred approach (which we think we can persuade Sen. Daschle to adopt) is to offer a tobacco amendment that makes no spending decisions (and so refutes somewhat the "tax-and-spend" argument) and therefore is not subject to a point of order (and so requires only 50 votes). Democrats could offer this amendment on either the VA-HUD appropriations bill or the product liability bill this week. We do not expect this amendment to win, but hope that it will make Lott recalculate the costs of killing comprehensive legislation. On the second track, we should explore with Lott and other Republicans what they need to support comprehensive legislation and whether a new deal is in reach. We will discuss with Erskine as soon as he comes back how to proceed with this part of our strategy.

**2. Tobacco -- Executive Orders:** We are also working on additional executive actions on tobacco to keep the pressure on Congress over the coming weeks. As you know, your announcement of a new HHS survey of youth tobacco use received a very favorable response. We are now completing a directive to HHS and DOJ to make the recently released tobacco documents more accessible to the public health community, the scientific community, litigants, and the general public. Although these documents are currently available on the Internet, no one can make effective use of them because they have not been organized in any comprehensible manner. The directive will require the departments to (1) create a user-friendly database and/or index of the documents and make this database and/or index widely available, and (2) require scientific analysis of the documents for information advancing public health goals. We are also exploring directives to (1) produce counteradvertisements on youth smoking for use by states and serve as a clearinghouse for state-produced counteradvertisements; (2) ban underage smoking on federal property and deny filming privileges on federal property for movies that portray youth smoking; (3) require strict enforcement of a Goals 2000 provision to ban smoking in facilities receiving federal funds to

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provide children's health care, day care, education, or library services; and/or (4) require OSHA to issue within a year a standard protecting workers from environmental tobacco smoke.

**3. Health Care -- HIPAA Enforcement:** You are scheduled to announce on Tuesday that the federal government will take additional action against insurers who are circumventing the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Earlier this year, we received a number of troubling reports that insurers were giving financial incentives to agents to avoid or delay enrolling Americans with pre-existing conditions, in contravention of the intent of HIPAA. Although the number of reports has declined since you directed HCFA to send guidance to insurers in March, insurer misconduct of this kind may still be a problem. To help ensure full compliance with HIPAA, you will direct the Office of Personnel Management (OPM) to take all appropriate action -- up to and including termination of a participating health plan from the Federal Employees' Health Benefit Plan (FEHBP) -- if the agency determines that a plan is engaging in insurance practices that are inconsistent with the letter or spirit of HIPAA. FEHBP, which contracts with 350 carriers and has 9 million enrollees, also will require health plans to certify that they are abiding by HIPAA before they can participate in the program. You also will direct HCFA to report any abuses they discover to OPM, and you will announce that the National Association of Insurance Commissioners has agreed to report any violations of HIPAA to OPM.

**4. Health Care -- CBO Cost Estimates of Patients' Bill of Rights:** The Congressional Budget Office (CBO) is expected to release on Thursday estimates of the cost of the Dingell/Ganske/Kennedy patients' bill of rights legislation. We anticipate that the CBO will project that this legislation will increase premiums by about 4 percent for the average employee, which amounts to about \$7 a month (a cost that will be split between employers and employees). We are working on a positive roll-out strategy for this estimate to buttress our claim that the benefits of such legislation are more than worth the modest costs. Opponents of this legislation will try and use the estimates to argue that the patients' bill of rights will increase health care costs and the number of uninsured. Assuming we are successful at portraying these costs as moderate, the primary outstanding issue on patients' bill of rights legislation will concern the appropriate enforcement mechanism. We will send you an options memo soon on how best to position the Administration on this issue.

**5. Health Care -- Report on Low-Income Medicare Beneficiaries:** Families USA will release a report early this week showing that over 3 million low-income Medicare beneficiaries are eligible for but not enrolled in the Qualified Medicare Beneficiary (QMB) program. The QMB program pays Medicare copayments and deductibles for beneficiaries below 100 percent of poverty and pays premiums for beneficiaries below 135 percent of poverty. (Prior to last year's Balanced Budget Act, premium assistance went to beneficiaries below 120 percent of poverty). Many beneficiaries, however, are not aware of this assistance or have difficulty applying for it. To respond to this problem, we are preparing a multi-faceted effort by SSA and HCFA to enroll eligible beneficiaries in QMB by: (1) encouraging simple

mail-in applications; (2) posting information about QMB in SSA offices; (3) including information about QMB in the pamphlets going to all Medicare beneficiaries this fall, and in annual cost-of-living-adjustment (COLA) notices received by Social Security beneficiaries; and (4) creating a new task force to find other ways to enroll eligible beneficiaries. We are preparing to announce these measures just around the time the Families USA report is issued.

**6. Health Care -- Medicare Handbook:** Secretary Shalala decided recently not to release this year's version of the Medicare handbook, which was supposed to inform beneficiaries of their new program options. The draft of the handbook that the Secretary received was unintelligible, and the Secretary decided that it would confuse beneficiaries. The Secretary instead instructed HCFA to send beneficiaries a short pamphlet providing basic information on the new choices and making clear that beneficiaries can remain in fee-for-service plans. Senator Breaux and Congressman Thomas sharply criticized the Secretary's decision, but advocates generally supported it on the ground that the handbook as written would have misled beneficiaries.

**7. Health Care -- Catholic Health Plans and Medicare:** We have reached agreement with the Catholic Health Association (CHA) on a way to allow Catholic health plans to become Medicare contractees even though they will not provide abortion services. Under this approach, Catholic health plans will disclose that they do not cover abortion services and Medicare will reduce payment to the plans by a small amount. (Beneficiaries of Catholic plans needing an abortion can go to fee-for-service providers.) We are meeting with HHS to determine whether to implement this plan through new legislation or administrative action; we should conclude this matter in a few weeks.

**8. Health Care -- FDA Commissioner Nomination:** We are working with Senator Domenici to introduce Jane Henney to as many Senators as possible. In meetings last week, most Senators appeared open to her candidacy. Senator Coats, who is expected to be the lead Republican on the Labor committee for this confirmation, expressed discomfort with Henney's link to Senator Kennedy and David Kessler, but also acknowledged that Doc Bowen, President Reagan's HHS Secretary, strongly supports the nomination. We will continue to work with Domenici on this nomination, and to try to secure a hearing date before the August recess; right now, we are cautiously optimistic about Henney's prospects.

**9. Crime -- Youth Handgun Safety:** You are scheduled to participate in an event on Wednesday that will focus on keeping firearms out of the hands of children. You will announce a final Treasury Department regulation requiring all federally licensed gun dealers to display signs (17" by 22" in size) warning prospective gun purchasers that: (1) misuse of handguns is a leading contributor to juvenile violence and fatalities; (2) safely storing and securing firearms will help prevent the unlawful possession of handguns by juveniles, stop accidents, and save lives; (3) federal law prohibits, except in certain limited circumstances, anyone under 18 from knowingly possessing a handgun, or anyone from transferring a handgun to persons under 18; and (4) a knowing violation of the prohibition against

transferring a handgun to a juvenile is, under certain circumstances, punishable by up to 10 years in prison. You also will endorse in principle Child Access Prevention (CAP) legislation introduced by Senators Durbin and Chafee to impose legal liability on adults who allow juveniles access to firearms. We are working with the Justice Department and staff from Durbin's and Chafee's offices to improve this legislation by carefully defining the standard of liability and toughening the penalties for violating it.

**10. Drugs -- National Anti-Drug Media Campaign:** You are scheduled to announce on Thursday that the national anti-drug youth media campaign -- currently a pilot project in 12 cities -- is now going nationwide. New television ads will appear during prime time on all the major networks that night; new radio ads will begin to air in the top 100 markets; full-page print ads will run in 25 major newspapers; specialized spots with targeted anti-drug messages will appear in 75 media markets reaching approximately 80 percent of the population; a new web site will open on the internet; and a national 800-number, featured in all of the new ads, will become operational. Your comments at the announcement will be linked by satellite to five regional events and 200 community watch parties.

**11. Drugs -- Drug Courts and Arrestee Data:** You are currently scheduled to make two drug-related announcements in your radio address next week. First, you will release new Drug Use Forecasting (DUF) data from the Justice Department showing that the number of arrestees testing positive for most drugs -- and especially for cocaine and crack -- is down in most cities, but that the number testing positive for methamphetamines is climbing (after falling substantially last year) in key Western and Midwestern cities. Second, you will announce \$27 million in Justice Department grants to implement and enhance drug court initiatives in 150 cities across the nation. We also are exploring a new policy announcement to promote coerced abstinence programs.

**12. Civil Rights -- EEOC and Fair Housing Initiatives:** We have been working with the EEOC, Congressional staff, and civil rights leaders to try to maximize funding for the Commission while avoiding a rider prohibiting the EEOC from using its funds to hire employment testers. Some months ago, Speaker Gingrich testified that he would support your proposed increase in funding for the EEOC conditioned on a number of "reforms," the most controversial of which relates to the use of testers. The EEOC in fact has no plans to hire testers with FY99 money, but wants to avoid a rider, which will be difficult to remove in future years. We are exploring whether a letter from the EEOC committing not to use FY99 money to employ testers would enable us to avoid a rider and secure a significant funding increase. The civil rights community supports this strategy so long as we do nothing to signal that testing is an illegitimate tool for civil rights enforcement. Ironically, the House VA-HUD appropriations subcommittee mark-up includes \$7.5 million (we requested \$10 million) to fund your proposal for a nationwide program using testing to measure housing discrimination and facilitate enforcement actions against those who violate fair housing laws.

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**13. Welfare Reform/Housing -- Welfare-to-Work Housing Vouchers:** The House Appropriations Committee included \$100 million in the VA/HUD appropriations bill for 17,700 welfare-to-work housing vouchers. Although this appropriation is only one-third of our request, it is more than double the Senate committee level of \$40 million for 7,000 vouchers, and represents significant progress for this new Administration initiative. The House language on how to distribute and use the funds is virtually identical to our proposal, whereas the Senate establishes a narrower demonstration program. We are continuing to push for our full request.

**14. Welfare Reform/Community Empowerment -- Individual Development Accounts:** The Coats/Harkin IDA demonstration program was included in the Human Services Reauthorization bill passed unanimously out of the Senate Labor and Human Resources Committee last week. The bill authorizes \$100 million over four years to provide matching funds for low-income individuals who save to buy a home, pursue higher education, or start a small business. It is not clear whether the House will include a similar program in its Human Services Reauthorization bill, which will be marked up after the recess. The DPC and NEC have worked with staff for Senators Coats and Harkin to improve their legislation, and we are exploring an appropriate time and place to announce your support for the IDA program.

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**15. Abortion -- RU-486:** Just prior to recess, the House passed an amendment to the agriculture appropriations bill that would prohibit the use of FDA funds for the testing or approval of RU-486. The amendment, which passed by a vote of 223-202, represents the first time that Congress has interfered with the drug approval process at the FDA. In response to press inquiries about this vote, we criticized Congress for restricting scientific research that can offer women the safest possible medical choices. We are reaching out to the pharmaceutical industry and scientific community during this recess to minimize chances that the Senate will pass a similar amendment.

**16. Education -- Ed-Flex:** Just prior to Congressional recess, Senators Frist and Wyden introduced a new bill, strongly supported by the NGA, to extend Ed-Flex to all fifty states. The bill is generally constructive, but it does not incorporate all the accountability measures of the current Ed-Flex program -- e.g., a requirement that states have standards and assessments in place and that they submit a statewide reform plan to the Secretary. We will work with Frist, Wyden, and the NGA to improve the bill's accountability provisions. In the worst-case scenario, the Education Department can send up an alternative Ed-Flex bill.

**17. Education -- Education Block Grant:** Also just prior to the Congressional recess, the House Education and the Workforce Committee passed a block grant bill by a straight party-line vote to consolidate 31 federal education programs, including Goals 2000, Eisenhower grants, technology literacy grants, afterschool grants, and school-to-work grants. The bill also would expand Ed-Flex to all fifty states, but in a way that fails to link increased

flexibility to real accountability for high standards. Secretary Riley sent a letter to Rep. Goodling indicating that he would recommend a veto.

**18. Children and Families – Head Start Reauthorization:** The Senate Labor and Human Resources Committee unanimously approved the Human Services Reauthorization bill, which would reauthorize Head Start, the Low-Income Home Energy Assistance Program, and the Community Services Block Grant programs, while establishing a new demonstration program for Individual Development Accounts (see above). Sponsored by Chairman Jeffords and Senators Kennedy, Coats, and Dodd, the bill included most of the Administration's priorities, including an increase in the new Early Head Start program over the next five years. The bill will be named after Senator Coats, who is retiring this year. We will be working with the bipartisan sponsors of the bill to secure full Senate approval as quickly as possible. In the House, there are danger signals: the Education and the Workforce Committee may schedule a mark-up on the legislation in July, but Subcommittee Chairman Riggs has indicated an interest in attaching several highly controversial measures to the bill, such as Head Start vouchers.

6-23-98

THE WHITE HOUSE  
WASHINGTON

June 19, 1998

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Kagan  
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MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed  
Elena Kagan

SUBJECT: DPC Weekly Report

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**4. Health – Vice President’s Family Conference:** The Gores will host their annual family conference next week, which will focus on health care. In addition to urging Congress again to pass a patients’ bill of rights, you and the Vice President will announce an executive directive on children’s outreach and a multi-faceted national health initiative for older Americans. The initiative for the elderly includes: new preventive benefits for Medicare beneficiaries; a national Internet site for Medicare beneficiaries; and a new nationwide public/private Medicare council with over 80 organizations that is designed to encourage prevention and wellness among older Americans and to ensure that they have the information they need to select the best possible health plan. To highlight the new preventive benefits, the First Lady will release a new public service announcement on osteoporosis, featuring her and Mrs. Gore. You also will reiterate your commitment to comprehensive anti-tobacco legislation and announce an executive directive to develop a survey on youth smoking (see above).

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THE WHITE HOUSE  
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June 19, 1998

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Elena Kagan

SUBJECT: DPC Weekly Report

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6-15-98

THE WHITE HOUSE  
WASHINGTON

June 11, 1998

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MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed  
Elena Kagan

SUBJECT: DPC Weekly Report

**1. Tobacco -- Senate Update:** The Senate passed several important amendments to the McCain bill this week. The Craig-Coverdell amendment, approved by a 52-46 vote, authorizes about \$2 billion per year for anti-drug efforts. Although we support most of these efforts, the money for them would come out of the funds previously reserved for public health programs: if the appropriators were to provide the full amounts authorized for these anti-drug efforts, funding for smoking cessation, education, and counteradvertising programs would decrease by about 80 percent. The amendment also prohibits the use of federal monies for needle exchange and allows states to give education vouchers to students who have been the victims of school violence.

The Senate also passed by a vote of 50-48 the Gramm tax-cut amendment. The Gramm amendment would cost \$16 billion over the first four years and an additional \$30 billion in the next five years; in these years, all the cost would come out of tobacco revenues. After 2008, the estimated cost of the proposal would increase dramatically to over \$10 billion each year; one-third of all tobacco revenues would go to pay for this tax cut, with other revenues (presumably the surplus) accounting for the rest. The amendment would provide all couples with annual incomes below \$50,000 a new tax deduction of \$825 this year, rising to \$3,300 in 2008, and would provide full deductibility of health insurance for the self-employed.

Finally, the Senate passed by a vote of 66-33 an amendment sponsored by Senators Kerry and Bond to require states to spend 25 percent of the funds they receive under the bill on child care subsidies. (States would have to spend another 25 percent of their funds on the menu of programs we negotiated with the NGA, which includes child care subsidies; states could do whatever they wished with the remaining 50 percent of their funds.)

As a result of these votes, key groups have expressed concern about the diminishing dollars available to them. The Governors have drafted a letter objecting to the state financing section of the bill because the funding level has dropped below the \$196.5 billion over 25 years originally provided in the bill (the same level contained in the June 20 settlement). The Governors also may object to the further restrictions placed on state spending by the passage of the Kerry-Bond amendment. At the same time, public health groups such as the Campaign for Tobacco Free Kids, the American Cancer Society, and the American Heart Association are

deeply concerned that sufficient funding will not be available for anti-smoking programs. Erskine, Secretary Shalala, and we met with them on Friday to explain that the bill would not move through the Senate without funding for tax cuts and anti-drug programs, and to urge them to work hard over the next few days to achieve final passage.

With the addition of a tax cut and anti-drug programs, Republicans should find it more difficult to oppose the bill. Many Republican Senators, however, harbor a very deep hostility to this legislation, and they read new polls to suggest that obstructing it will have little electoral consequence. Senator Lott sharply criticized the bill on this Sunday's talk shows and indicated that it would not pass the Senate. He noted that the Senate still had not dealt with the issues of tobacco farmers or attorneys' fees and that either issue could cause the legislation to explode. (Actually, the Senate has rejected two amendments to cap attorneys' fees -- one limiting fees to \$250 per hour and the other limiting fees to \$1,000 per hour -- but apparently Lott believes this issue remains open.) He also indicated that while there were not 50 votes in the Senate to defeat the legislation, there also were not the 60 votes necessary to pass it.

You will be speaking on Monday to 150 high school Presidential scholars and can use the event to urge swift passage of the tobacco legislation.

**2. Education -- National Testing:** The National Academy of Sciences (NAS) released an interim report last week, as required by last year's Labor-HHS-Education appropriations bill, on the feasibility of linking scores from existing commercial and state reading and math tests to each other and/or to NAEP. The NAS concluded that it is not technically feasible to compare student scores on different tests to each other and/or to the NAEP standards. This conclusion of course undermines Rep. Goodling's argument that existing tests could be used to accomplish the purpose of a national test in reading and math. We do not expect, however, that this report will dampen his opposition to our testing initiative. Indeed, earlier this week, he received assurances from the Republican leadership about supporting an anti-testing rider on this year's appropriations bill. (The leadership provided these assurances when they decided to remove an anti-testing provision, as well as a sweeping education block grant provision, from the conference report on the Craig-Coverdell education tax bill; as you know, they believe that removing these provisions will make it harder for you to veto the bill.)

**3. Crime -- PRIDE Study:** The National Parents' Resource Institute for Drug Education (PRIDE) will release on Thursday its annual survey on teen drug use and violence for the 1997-98 school year. We have not yet seen the data on drug use among teens, but PRIDE has shared with us some of its findings on school violence. The study finds that the percentage of students who reported carrying a gun to school decreased by over a third since the 1993-94 school year -- from 6 percent to 3.8 percent (or nearly 1 million students). Of those students who brought a gun to school, almost half did so six or more times, over half threatened to harm a teacher, and nearly two-thirds threatened to harm another student. Drug use was very high among students carrying guns: 30 percent used cocaine in the month prior

to carrying a gun to school; 32 percent used stimulants such as methamphetamine; and 31 percent used hallucinogens. Perhaps most important, the survey reaffirms the effectiveness of involving kids in after-school programs and school activities. Students who did not bring guns to school were 53 percent more likely to be involved in after-school programs and 34 percent more likely to be active in school activities (such as band and sports teams) than those who carried guns.

**4. Child Care -- House Legislation:** The First Lady and Secretary Shalala joined House Democrats last week as they unveiled a comprehensive child care bill that includes all the pieces of your child care initiative, plus a tax credit for families with a stay-at-home parent and children under four years of age. The \$20 billion package will be sponsored by more than 100 members. The proposal does not specify funding sources.

**5. Child Care -- After-School Event:** You are currently scheduled to announce on Wednesday \$40 million in grants for after-school programs. These grants, the first awarded under the new 21st Century Learning Centers Program, will allow 315 schools in 36 states to establish or expand after-school initiatives. You also will release a new report, titled *Safe and Smart: Making the After-School Hours Work for Kids* and jointly authored by the Departments of Justice and Education, which finds that quality after-school programs decrease juvenile crime and improve the academic performance of participating children. This event, also involving the First Lady and Vice President, will support our efforts to expand the 21st Century Learning Centers Program in this year's appropriations process.

**6. Health -- Patients' Bill of Rights:** Larry Stein and Chris Jennings met with Rep. Dingell last week to discuss patients' bill of rights legislation. Dingell said he would work closely with the Administration in the event that he and Rep. Norwood begin to talk seriously about developing a unified bill to be brought to the floor by way of a discharge petition. For the moment, Dingell believes (and we agree) that he should stand firmly behind his bill as written, including its state-court liability enforcement provisions, rather than signal any willingness to compromise. Dingell noted, however, that the CBO may soon issue a high estimate of the costs associated with his bill's enforcement provision. We have heard that the Republican leadership has insisted on reviewing the CBO's estimate before it is released and is subjecting the CBO staff to relentless pressure. We will talk with Dingell about an appropriate response when we learn more about the CBO's estimate.

**7. Health -- Vice President's Announcement of the Quality Forum:** The Vice President is scheduled to unveil on Wednesday a planning committee to establish a "Quality Forum," a private sector entity that will develop and disseminate uniform standards for high-quality health care. Your Quality Commission recommended establishing this Forum, and you asked the Vice President to oversee the process. In conjunction with this announcement, we are releasing a report that highlights the many shortcomings of the current system: the report will note, for example, one study's estimate

that preventable errors in hospital care lead to 180,000 needless deaths each year. Developing uniform measures of quality and encouraging health plans to adopt these measures has great potential to improve health outcomes, increase confidence in the health care system, and save costs. We will describe this effort as the natural complement to our patients' bill of rights proposal in the effort to promote health care quality.

**8. Health -- FDA Commissioner:** We plan to announce the nomination of the new FDA commissioner, Jane Henney, as soon as the Senate completes consideration of the McCain bill. (We do not think it would be helpful either to confirming Henney or to passing the tobacco bill to announce her nomination in the middle of the current debate in the Senate.) So far, advance word of her nomination has prompted neither major objections nor strong support. It is possible that Republicans will try to portray Henney as a David Kessler protégé essentially chosen by Senator Kennedy. One positive development is that Senator Domenici has agreed to accompany Henney on courtesy visits to Republican members of the Senate Labor Committee.

**9. Housing/Welfare Reform -- Welfare-to-Work Housing Vouchers:** The Senate Appropriations Subcommittee for VA and HUD last week voted in favor of a demonstration program that would give \$40 million to seven cities or counties for 7,000 "self-sufficiency" housing vouchers targeted to people moving from welfare to work. The seven sites chosen were New York City, Los Angeles, Cleveland, Miami-Dade County, Anchorage, Charlotte, and Prince George's County. Although the Subcommittee provided substantially fewer welfare-to-work vouchers than the Administration requested -- 7,000 instead of 50,000 -- the vote is a good first step for the Administration's initiative. The Chair of the VA/HUD Subcommittee in the House (Jerry Lewis) has expressed interest in the program, and we are hopeful that he will support a greater number of vouchers.

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**10. Welfare Reform -- Portland Study:** HHS is preparing to release an evaluation of Portland, Oregon's mandatory welfare reform program which shows that the program has led to increased employment and earnings and reduced welfare expenditures. The study, conducted by Manpower Demonstration Research Corporation as part of HHS's national evaluation of welfare-to-work strategies, tracked over 5,500 recipients from 1993 through mid-1996. The study found that after two years, participants in the program had earnings that were 35 percent higher and employment levels that were 11 percent higher than comparable individuals in the control group. Participants also received 17 percent less in welfare payments than people in the control group; 41 percent of program participants still received welfare after two years, as compared with 53 percent in the control group. The program had a measurable positive impact both for people with few barriers to employment and for people considered harder to place.

Portland required all welfare recipients with children older than one year to participate in its program and sanctioned 21 percent of recipients for failure to comply with program rules. (The sanction rate is in the mid-range for comparable programs.) The

program generally had a strong employment focus, but a significant number of participants also participated in short-term education and training activities. The staff emphasized child care arrangements in their case management, and the program had relatively high child care usage and costs. The program, however, did not increase overall welfare costs.

✓ **11. Welfare Reform -- New Jersey Family Cap Study:** Secretary Shalala has sent you a memo on the draft Rutgers University study issued last week which concluded that New Jersey's family cap policy has resulted in a "small but non-trivial" effect on abortion rates (an estimated additional 240 abortions per year). As the memo relates, both New Jersey and HHS have raised serious questions about the study's methodology and findings. Rutgers is currently revising the study in response to these criticisms. A total of 22 states have adopted a family cap policy since the passage of the welfare law (up from 15 states that had waivers to implement this policy).

✓ **12. Disabilities -- Bunning-Kennelly Legislation:** The House last week passed legislation, sponsored by Reps. Bunning and Kennelly and supported by both the Administration and the disability community, to move SSDI and SSI beneficiaries into the workforce by using a "pay for performance" approach. People on the SSDI and SSI rolls currently get rehabilitation services through state vocational rehabilitation agencies, which receive reimbursement for their costs. Under Bunning-Kennelly, beneficiaries could choose their own rehabilitation providers from among a number of public and private entities. Providers that successfully assist beneficiaries to leave the rolls and return to work would receive a percentage of the disability benefits saved. These payments would continue as long as the person remained off the rolls, up to a maximum of five years. The premise of the bill is that providers will have a greater interest in their clients' long-term success if they are rewarded for results rather than reimbursed for costs. Notwithstanding widespread support for this approach, the bill's fate in the Senate is uncertain. Senators Jeffords and Kennedy may not want to move the bill unless it is paired with their proposal to extend Medicare and Medicaid benefits to those leaving SSDI or SSI. We have a number of problems with the Jeffords-Kennedy bill, including its cost (estimated at over \$1 billion each year) and complexity. We are meeting this week with staff for the Senators to discuss these issues, as well as the possibility of moving the Bunning-Kennelly bill forward.

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