

**NLWJC - Kagan**

**DPC - Box 015 - Folder 003**

**DPC [Domestic Policy Council] -  
Weekly Reports [4]**

THE WHITE HOUSE  
WASHINGTON

November 21, 1997

## MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed  
Elena Kagan

SUBJECT: DPC Weekly Report

**1. Health -- Quality Commission Bill of Rights:** Your endorsement of the Quality Commission's bill of rights was well received. Many groups representing consumers, providers, and labor stated strong support for these consumer protections. In addition, Congressional Democrats are pleased with your position; Sen. Daschle and Rep. Gephardt both indicated strong interest in working with the Administration on this issue. The business community's response was relatively muted; only the National Federation of Independent Business came out strongly against the proposals, on the ground that they would raise health care costs and impose an intolerable burden on small businesses. As Chris mentioned in his memo to you, a recent analysis by Lewin and Associates concluded that the cost of these consumer protections would be modest --about ½ percent to 1 percent of premiums. We will continue our work with moderate Republicans and Democrats in Congress to develop legislation that you can endorse early next year.

**2. Health -- Mental Health Parity Regulation:** As you know, the Administration is currently considering how to implement the provision in last year's mental health parity legislation that exempts health plans from complying with the parity requirement if they can show that the cost of doing so would increase premiums by more than 1 percent. Two options are under discussion. The first would allow health plans to claim an exemption only after they have complied with the parity requirement for at least six months. The second would allow health plans to claim an exemption even before complying with the parity requirement, based on projections from their most recent cost data. Some of the lawyers believe that the second option represents the more natural reading of the legislative language, although all agree that both options are legally defensible. DPC, HHS, and the mental health community favor the first approach; OMB, Treasury, and the business community favor the second. The involved agencies plan to meet with Erskine this week to review the options and try to arrive at a consensus.

**3. Crime -- Police-Public Contact Survey:** The Justice Department released a survey on Saturday showing that an estimated 45 million Americans -- roughly 1 in 5 -- have face-to-face contact with police officers each year. The survey shows that police initiate a bit less than a third of these contacts; most of the others occur when citizens report a crime, seek other assistance, or offer information to police officers. About 1 percent of those who came in contact with police reported that the police threatened or used force against them. Half of these individuals were black or Hispanic; almost two-thirds reported that their own actions -- such as threatening the police or

resisting arrest -- may have provoked the police action. According to the survey, persons in their twenties are most likely to have contacts with police, while the elderly (aged 60 and older) are least likely. Males are slightly more likely than females to have police contacts (23 percent of males vs. 19 percent of females), and whites are somewhat more likely than blacks or Hispanics (22 percent of whites vs. 16 percent of blacks and 15 percent of Hispanics). Only teenagers and Hispanics reported that police officers initiated the contacts more often than they did.

**4. Welfare -- U.S. Conference of Mayors Report:** The U.S. Conference of Mayors released a 34-city survey on Friday regarding implementation of the welfare law. The survey found that states have failed to consult appropriately with cities about welfare reform. The survey also concluded that although local private sector employers are willing to hire welfare recipients, many cities do not have enough low-skill jobs to meet the welfare law's work requirements. This finding rests on cities' unsubstantiated estimates of the number of low-skill jobs available and the number of city residents applying for them; it also conflicts with several other recent studies, including one by former OMB Program Associate Director Isabelle Sawhill. In any event, our new \$3 billion welfare-to-work program will give cities additional resources to hire or place welfare recipients.

**5. Race -- Attached Materials:** We are attaching to this memo a recent article by William Julius Wilson on strategies for achieving racial equality. In a recent memo, we quoted this article's thesis that the best way to make racial progress today is to focus on "issues and programs that concern families of all racial and ethnic groups, so that individuals in these groups can honestly perceive mutual interests and join in a multiracial coalition to move America forward." As you know, we believe that you should make this insight central to the Race Initiative and the President's Report that will conclude it. We thought you would like to read the entire article. We are also attaching a recent article by Harvard professor Orlando Patterson, who largely agrees with Wilson's views.

# Racism Is Not The Issue

By Orlando Patterson

**W**hy are we having a national argument on race? By all objective measures — recent opinion polls, demographic data and academic studies — race relations between blacks and whites have never been better. What is more, the majority of African-Americans are content, even optimistic, about their interactions with European-Americans, according to a close reading of a recent Gallup Poll, for example, and other surveys.

This viewpoint has also been forcefully argued by the scholars Stephan and Abigail Thernstrom in their new book, "America in Black and White." While I differ with many of their arguments, particularly with their opposition to affirmative action, their basic premise is correct — that relations between the races are getting better, as are the conditions of most African-Americans.

Nonetheless, civil rights leaders insist that this belief is dangerously wrong because they think that America remains mired in racism. Social scientists like Stephen Steinberg of Queens College in New York indict America for its retreat from policies supporting racial equality; Carl Rowan, a syndicated columnist, has just published a book called "The Coming Race War," and the journalist David K. Shipler has titled his pessimistic book about race "A Country of Strangers."

Finally, President Clinton has placed the resolution of the so-called crisis on his list of potential historical legacies.

But let's get the facts straight. According to the most recent census data, blacks have virtually closed the gap with whites not only in the percentage graduating from high school but also in the percentage graduating from junior college.

Black full-time workers have also started to close the income gap, according to census data. From 1970 to 1995, the average annual income of white men declined by 3 percent, to \$34,741, while that of black men increased by 11 percent to \$27,136.

Nonetheless, major problems still remain for the bottom quarter of the African-American population — 26

percent of all black families and 41.5 percent of their children remain trapped in poverty. The situation is no longer worsening, but it is no better than conditions were a quarter century ago.

Nor have we seen the end of racism, as some conservatives like Dinesh D'Souza have absurdly announced. About 20 percent of white Americans are still at least mildly racist (meaning, among other things, that they are averse to living in neighborhoods with only a few minority families), according to my research using polls, including one in 1994 by the National Opin-

## Poor blacks need good jobs, not bromides on race.

ion Research Center. But because blacks make up only 13 percent of the population, this means that for every two blacks there are still three white racists.

We have made great progress, but there is still a long way to go. Here is what we should be asking: How does racism hurt the lives of African-Americans? For the poorest among them, is racism the real problem? Do ordinary black Americans think that race is their biggest problem?

When it comes to earnings and self-esteem, racism may be less of a problem for the poorest blacks and more of a problem for middle-class blacks who are in direct competition with whites for jobs, status and power. This is the main reason that I think we need affirmative action for another 15 years or so. Isolated from critical networks of influence and economic power, middle-class blacks badly need affirmative action to level a playing field that for 300 years favored whites.

Certainly, poor blacks are hurt by racial discrimination — mostly in biased police behavior and draconian drug-sentencing laws that result in horrendous incarceration rates for young men. But as the sociologist William Julius Wilson emphasized more than 19 years ago, race is of secondary importance when it comes to the economic conditions of poor blacks. Poor blacks, like poor whites, are impoverished partly because they attend bad schools, come from broken families and live in broken communities. But

*Orlando Patterson, a professor of sociology at Harvard, is the author of "The Ordeal of Integration: Progress and Resentment in America's 'Racial' Crisis."*

the basic problem is that the poor, no matter how hard they work, earn too little to pull themselves out of poverty.

Indeed, in a Gallup Poll taken in June, poor blacks said that money, not racism, was their biggest problem. This poll, which measured race relations, found that three-quarters of blacks considered their own relations with whites to be good, and indeed, had a close white friend. The same poll found, however, that 53 percent of blacks were dissatisfied with their incomes. Unsurprisingly, for poorer African-Americans, the figure was much higher.

If money is the problem and not racism, why do many leaders, white and black, warn that America's racial problems are getting worse? This pessimism results from a strange collision of interests.

White liberals believe to some degree the stereotype that African-Americans are a dependent and chronically victimized group. Any problem associated with blacks is simply assumed to be racist in origin. Emphasizing failure and crisis is also an effective way to argue for more government intervention.

Black political leaders also have a vested interest in maintaining that a racial crisis exists. Their legitimacy and a good part of their livelihood depend on defending entitlement programs.

On the right, leaders and scholars exaggerate the crisis in race relations to highlight the failures of liberal programs.

The news media give all these wrong-headed beliefs their full attention. In the tabloids and on the television news, articles about urban crime and racial incidents are common. Even leading newspapers play the "racism forever" game, partly out of a misguided and patronizing liberalism. For instance, in reporting the results of the June Gallup Poll referred to earlier, most newspapers stressed the one pessimistic finding: that a majority of black respondents thought that relations between the races were generally getting worse — an impression drawn from the press itself.

Newspapers ignored the more accurate and positive finding: the great majority of respondents reported that their own experiences with whites were good and getting better.

Martin Luther King's dream of an integrated America has not been deferred. The nation is overcoming what was once its greatest flaw, racism. Denying its persistence is naive and reactionary. But ignoring the country's extraordinary progress, while exaggerating racism's impact, is counterproductive as well. It obscures and diverts attention from what is now our greatest shame — chronic poverty and growing income inequality — and it plays right into the hands of those on the right and left who promote the vile dogma of racial separatism.

**The New York Times**  
Sunday, November 16, 1997

## The New Social Inequality and Affirmative Opportunity

*William Julius Wilson*

**A**s the turn of the century approaches, the movement for racial equality needs a new political strategy. That strategy must appeal to America's broad multi-ethnic population, while addressing the many problems that afflict disadvantaged minorities and redressing the legacy of historical racism in America.

The nation seems to have become more divided on issues pertaining to race, especially since the first O. J. Simpson murder trial. And affirmative action programs are under heavy assault. Americans' understanding of the meaning and significance of race has become more confused. Many Americans are puzzled by complex racial changes—not only the growth of socioeconomic inequality among African-Americans, but also the sharp increase in joblessness, concentrated poverty, and welfare receipt among the black poor living in ghettos. Such changes have unfolded in the aftermath of the passage of comprehensive civil rights legislation in the 1960s and the subsequent enactment of affirmative action programs and the antipoverty efforts of the Great Society. By now, some three decades later, not only have many changes transpired for African-Americans and for American race relations. In addition, broad public sympathy for those minority individuals who have suffered the most from racial exclusion has waned.

Indeed, many white Americans have turned against public programs widely perceived as benefiting only racial minorities. Several decades ago, efforts to raise the public's awareness and conscience about the plight of African-Americans helped the enactment of civil rights legislation and affirmative action programs. By the 1980s, however, black leaders' assertions that black progress was a "myth"—rhetoric used to reinforce arguments for stronger race-based programs—ironically played into the hands of conservative critics. Although this strategy may have increased sympathy among some whites for the plight of black Americans, it also created the erroneous impression that federal antidiscrimination efforts had failed. And it overlooked the significance of the complex racial changes that had been unfolding since the mid-1960s. Perhaps most pernicious of all, arguments for more and more race-based programs to help blacks fed growing white concerns, aroused by demagogic messages, that any special efforts by politicians to deal with black needs and complaints were coming at the expense of the white majority.

While these developments happened in politics, Americans confronted jarring new economic conditions. National and international economic transformations have placed new stresses on families and communities—stresses that are hardly confined to blacks. Along with African-Americans, large segments of the white, Latino, and Asian populations are also plagued by growing economic insecurities, family breakups, and community stresses. Such conditions are breeding grounds for racial and ethnic tensions. In this social climate, conservatives have attempted to unite white Americans around anger at the government and racial minorities. Their political message seems plausible to many white taxpayers, who see themselves as being forced to pay for programs that primarily benefit racial minorities.

In this essay I suggest how progressives can redefine the issues so that the concerns of both the larger American population and the racial minority population are simultaneously addressed. Progressives can pursue policies that unite rather than divide racial groups, thus opening the way for the formation of a multiracial progressive coalition in national politics.

### **The Changing Climate for Race-Based Programs**

When affirmative action programs were first discussed in the 1960s, the economy was expanding, and incomes were rising. It was a time of optimism, a time when most Americans believed that their children would have better

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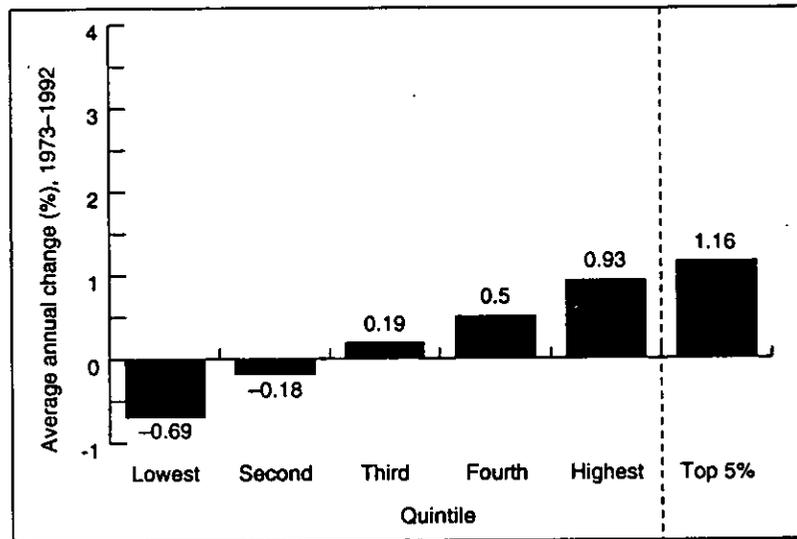
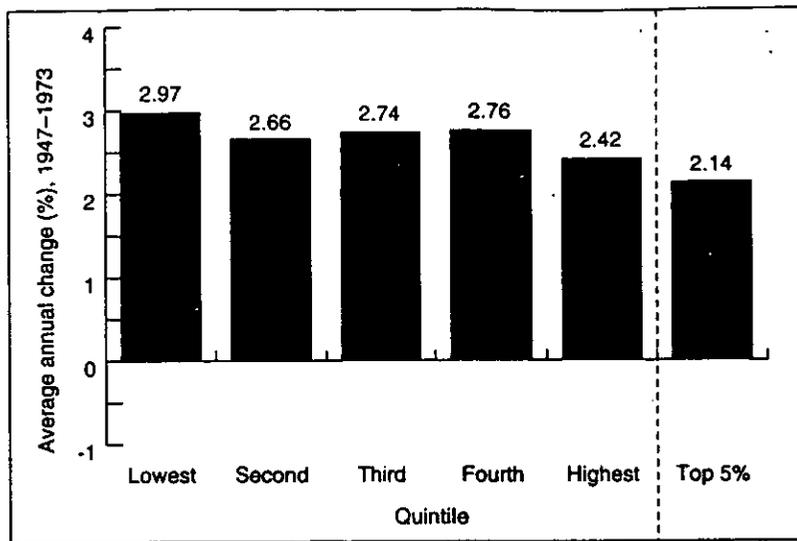
lives than they had. During such times a generosity of spirit permits consideration of sharing an expanding pie.

In the decades immediately after World War II, all income groups experienced economic advancement, including the poor. A rising tide did indeed lift all boats. In fact, as revealed in figure 1, between 1947 and 1973 the lowest quintile in family income experienced the highest growth in annual income, "which meant that the poor were becoming less poor in both relative and absolute terms" (Bronfenbrenner et al. 1996, p. 14). But this pattern began to change in the early 1970s. Growth slowed, and the distribution of inflation-adjusted income started to become more unequal. Whereas average income gains from 1973 to 1992 continued for the higher quintiles (but at a rate considerably slower than that of the previous two decades), the two lowest quintiles actually experienced annual declines in income during this period. Wage data since 1979, based on percentiles instead of quintiles (see figure 2), show a pattern quite similar to the trends in family income. The wages of those at the top have continued to climb in recent years, while those at the bottom have fallen steadily.

Thus the downward trend in wages during the past two decades has lowered the incomes of the least well-off citizens. This trend has been accompanied by a growing sense among an increasing number of Americans that their long-term economic prospects are bleaker. And they would not be reassured to learn that the United States has had the most rapid growth of wage inequality in the Western world. In the 1950s and 1960s the average earnings of college graduates was only about 20 percent higher than that of high school graduates. By 1979, it had increased to 49 percent, and then it rapidly grew to 83 percent by 1992. "When the American economy rebounded from a recession in the early 1990s, roughly 2 million new jobs were created per year, but a large percentage of these offered wages below \$8 an hour (or about \$16,000 a year), with few if any health benefits and not much opportunity for advancement" (Bronfenbrenner et al. 1996, p. 117).

In sum, since the late 1970s, real wages (that is, wages adjusted for inflation) have fallen in the United States. Wage disparities between those with college degrees and those without have widened considerably. Working-class Americans feel economically pinched, barely able to maintain current standards of living even on two incomes. Many are insecure about keeping their jobs and fear that they will never be able to afford to send their children to

Figure 1. Family Income in the United States



Source: Adapted from Bronfenbrenner et al. (1996). The 1947 figures are from *The Statistical History of the United States, Colonial Times to 1970*. The 1969 and 1992 figures are from the Bureau of the Census, *Income of Families and Persons in the United States, 1990*. Figures are adjusted for inflation based on constant 1992 dollars.

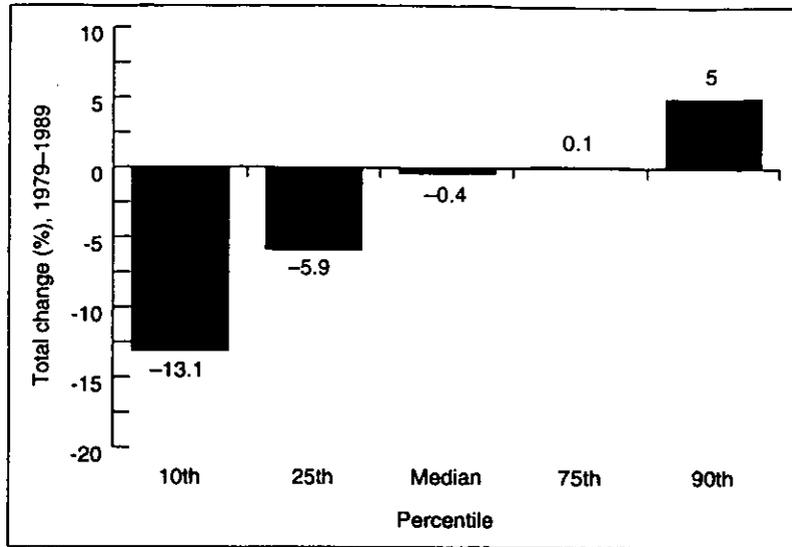
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Source: Econon 1982-1

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Figure 2. Wage Growth in the United States



Source: Adapted from Bronfenbrenner et al. (1996). Data reported in the Council of Economic Advisors, *Economic Report of the President, 1995*. Wages are in constant 1982-1984 CPI-U-X1 dollars.

college. Many believe that for all their hard work, their children's lives will be worse than theirs. For example, a 1995 Harris poll, conducted for *Business Week*, revealed that only one-half of all parents expected their children to have a better life than theirs; nearly seven out of ten believed that the American dream has been more difficult to achieve during the past ten years; and three-quarters felt that the dream will be even harder to achieve during the next ten years (cited in Bronfenbrenner et al. 1996).

Unfortunately for those who support race-based programs, this period of economic hard times has not been an ideal climate for a national debate on affirmative action. Despite the recent economic recovery and low rates of unemployment, most families continue to struggle with declining real wages, increasing job displacement, and job insecurity in a highly integrated and highly technological global economy. During periods when people are beset with economic anxiety, they become more receptive to simplistic ideological messages that deflect attention away from the real and complex sources of their problems, and it is vitally important that political leaders channel

citizens' frustrations in more positive or constructive directions. For the past few years and especially in 1995, immediately after the congressional elections of 1994, just the opposite frequently occurred. The poisonous racial rhetoric of certain highly visible spokespersons has increased racial tensions and channeled frustrations in ways that severely divide the racial groups. Instead of associating citizens' problems with economic and political changes, these divisive messages have encouraged them to turn on each other—race against race. As I pointed out in a *New York Times* editorial (Wilson 1992), this was a theme repeatedly emphasized by Bill Clinton during his 1992 campaign for the presidency.

Many white Americans have turned against a strategy emphasizing programs that they perceive as benefiting only racial minorities. There has been a growing concern, aroused by demagogic messages, that the politicians' sensitivity to black complaints had come at the expense of the white majority. And undifferentiated black complaints have aggravated the situation because they have reinforced a perception that, whatever our efforts, nothing really works, and a lot of time, energy, and money have been wasted.

#### The Rising Significance of Class

By the beginning of the 1980s, the accomplishments of the civil rights struggle were clear; among them were the rising numbers of blacks in professional, technical, managerial, and administrative positions. Progress was also evident in the increasing enrollment of blacks in colleges and universities and the growing number of black homeowners. The expansion of participation in these areas was proportionately greater for blacks than for whites because such a tiny percentage of blacks had held property or pursued higher education before this time. As Jennifer Hochschild has pointed out, "One has not really succeeded in America unless one can pass the chance for success on to one's children" (1995, p. 44). Until the 1960s, doing so was quite difficult even for the few members of the old black middle class. Empirical research in the early 1960s provided no evidence that class could rival the powerful effects of race on black occupational and income achievements. In other words, states Hochschild, blacks "experienced a perverse sort of egalitarianism—neither the disadvantages of poverty nor the advantages of wealth made much difference in what they could achieve or pass on to their children. Discrimination swamped everything else" (p. 44).

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Research by social scientists, however, reveals that between 1962 and 1973, class began to affect career and generational mobility for blacks as it had regularly done for whites (Wilson 1980; Featherman and Hauser 1978; Hout 1984). In particular, blacks from the most advantaged backgrounds experienced the greatest upward mobility. For the first time in American history, more advantaged blacks could expect their success to persist and cumulate. These trends have continued since 1973 but at a slower rate (Hochschild 1995, p. 44). On the other hand, among the disadvantaged segments of the black population, especially the ghetto poor, many dire problems—joblessness, concentrated poverty, family breakup, and the receipt of welfare—were getting even worse between 1973 and 1980.

The differential rates of progress in the black community have continued through the 1980s and early 1990s. Family incomes among the poorest of the poor reveal the pattern. From 1977 to 1993, the percentage of blacks with incomes below 50 percent of the amount designated as the poverty line, what we call the poorest of the poor, increased from 9 percent of the total black population in 1977 to 17 percent in 1993. In 1977, fewer than one of every three poor blacks fell below one-half of the poverty-line amount, but by 1993 the proportion rose to more than one-half (these figures and those that follow have been adjusted for inflation). In 1993 the average poor black family slipped further below the poverty level than in any year since 1967, when the Census Bureau started collecting such data (U.S. Bureau of the Census, 1994).

From 1975 to 1992, while the average income of the lowest quintile of black families in the United States declined by one-third and that of the second-lowest quintile declined by 13 percent, the average income of the highest quintile of black families climbed by 23 percent and that of the top 5 percent by 35 percent. Although income inequality between whites and blacks is substantial and the financial gap is even greater between the two races when wealth is considered—total financial assets, not just income (Oliver and Shapiro 1995; Wolff 1995)—in 1992 the highest fifth of black families nonetheless secured a record 49 percent of the total income among black families, compared to the 44 percent share of the total income received by the highest fifth of white families, also a record. So while income inequality has widened generally in America since 1975, the divide is even more dramatic among black Americans. If we are to fashion remedies for black

poverty, we need to understand the origins and dynamics of inequality in the African-American community. Without disavowing the accomplishments of the civil rights movement, black leaders and policymakers now need to give more attention to remedies that will make a concrete difference in the lives of the poor.

#### The Achievements and Limits of Affirmative Action

The demands of the civil rights movement reflected a general assumption on the part of black leaders in the 1960s that the government could best protect the rights of individual members of minority groups, not by formally bestowing rewards and punishments based on racial group membership, but by using antidiscrimination legislation to enhance individual freedom. The movement was particularly concerned about access to education, employment, voting, and public accommodations. From the 1950s to 1970, the emphasis was on freedom of choice; the role of the state was to prevent the formal categorization of people on the basis of race. Antibias legislation was designed to eliminate racial discrimination without considering the proportion of minorities in certain positions. The underlying principle was that individual merit should be the sole determining factor in choosing candidates for desired positions. Because civil rights protests against racial discrimination clearly upheld a fundamental American principle, they carried a degree of moral authority that leaders like Martin Luther King, Jr., were able to repeatedly and effectively emphasize.

It would have been ideal if programs based on the principle of freedom of individual opportunity were sufficient to remedy racial inequality in our society. But long periods of racial oppression can result in a system of inequality that lingers even after racial barriers come down. The most disadvantaged minority individuals, crippled by the cumulative effects of both race and class subjugation, disproportionately lack the resources to compete effectively in a free and open market.

Eliminating racial barriers creates the greatest opportunities for the better-trained, most talented, and best-educated members of minority groups because these members possess the resources to compete most effectively. These resources reflect a variety of advantages—family stability, financial means, positive peer groups, good schooling—provided or made possible by their parents (Fishkin 1983).

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By the late 1960s, a number of black leaders began to recognize this. In November 1967, Kenneth B. Clark said, "The masses of Negroes are now starkly aware of the fact that recent civil rights victories benefited a very small percentage of middle-class Negroes while [poorer blacks'] predicament remained the same or worsened" (Clark 1967, p. 8). Simply eliminating racial barriers was not going to be enough. As the black economist Vivian Henderson put it, "If all racial prejudice and discrimination and all racism were erased today, all the ills brought by the process of economic class distinction and economic depression of the masses of black people would remain" (Henderson 1975, p. 54).

Accordingly, black leaders and liberal policymakers began to emphasize the need not only to eliminate active discrimination but also to counteract the effects of past racial oppression. Instead of seeking remedies only for individual complaints of discrimination, as specified in Title 7 of the Civil Rights Act of 1964 (which prohibits employers from discriminating against individuals on the grounds of race, color, religion, gender, or national origin), they sought government-mandated affirmative action programs designed to ensure adequate minority representation in employment, education, and public programs.

But if the more advantaged members of minority groups benefit disproportionately from policies that embody the principle of equality of individual opportunity, they also profit disproportionately from affirmative action policies based solely on their racial group membership (Fishkin 1983). Minority individuals from the most advantaged families tend to be disproportionately represented among those of their racial group most qualified for preferred status, such as college admissions, higher-paying jobs, and promotions. Thus policies of affirmative action are much more likely to enhance the socioeconomic positions of the more advantaged minority individuals than the positions of the truly disadvantaged (Loury 1984 and 1995).

To be sure, affirmative action was not intended mainly to benefit the more advantaged minority individuals. As William L. Taylor, the former director of the United States Civil Rights Commission, has stated, "The focus of much of the [affirmative action] effort has been not just on white-collar jobs, but also on law enforcement, construction work, and craft and production in large companies—all areas in which the extension of new opportunities has provided upward mobility for less advantaged minority workers"

(Taylor 1986, p. 1714). As Taylor also notes, studies show that many minority students entering medical schools during the 1970s were from low-income families.

Affirmative action policies, however, did not really open up broad avenues of upward mobility for the masses of disadvantaged blacks. Like other forms of "creaming," they provided opportunities for those individuals from low socioeconomic background with the greatest educational and social resources. A careful analysis of data on income, employment, and educational attainment would probably reveal that only a few individuals who reside in the inner-city ghettos have benefited from affirmative action.

Since the early 1970s urban minorities have been highly vulnerable to structural changes in the economy, such as the shift from goods-producing to service-producing industries, the increasing polarization of the labor market into low-wage and high-wage sectors, the destabilizing innovations in technology, and the relocation of manufacturing industries outside the central city. These shifts have led to sharp increases in joblessness and the related problems of highly concentrated poverty, welfare receipt, and family breakup, despite the passage of antidiscrimination legislation to correct discriminatory patterns through litigation and the creation of affirmative action programs that mandate goals and timetables for the employment of minorities (Wilson 1987, 1995).

On the other hand, affirmative action programs have helped to bring about sharp increases in the number of blacks entering higher education and gaining professional and managerial positions. Moreover, as long as minorities are underrepresented in high-paying, desirable positions in society, affirmative action programs will be needed. Nonetheless, in response to cries from conservatives to abolish affirmative action altogether, some liberals have argued for a shift from affirmative action based on race to one based on economic class or need (Kahlenberg 1995).

The major distinguishing characteristic of affirmative action based on need is the recognition that the problems of the disadvantaged—low income, crime-ridden neighborhoods, broken homes, inadequate housing, poor education, cultural and linguistic differences—are not always clearly related to previous racial discrimination. Children who grow up in homes plagued by these disadvantages are more likely to be denied an equal chance in life because the development of their aspirations and talents is hindered by their en-

vironment, regardless from affirmative opportunities because they suffer from the same problems, but the problem is not the same.

An affirmative action policy that results in the systematic exclusion of individuals from higher education because of the standard criteria used is not affirmative action because the standard criteria are relative to the cumulative disadvantages faced by individuals limited by race, segregated neighborhoods, the particular skills that are not valued, the quality of de facto schools, and the parents whose experience ultimately affects the child's performance (Heckman 1995).

Thus if we were to use SAT scores as a criterion for admission, like SAT scores, would be denied admission because they are not as well prepared as the others. An affirmative action policy could create a situation where individuals like those at Harvard represent the best of the black community, but because they are not as well prepared as the others, they would therefore be denied admission. Those who are not burdened by these disadvantages would therefore be able to succeed on conventional tests.

The extent to which affirmative action is effective for promoting policies that recognize the real potential to succeed is limited by the use of inflexible criteria of numerical guidelines that ignore individual ground handicaps. The potential to succeed on conventional test scores may be

vironment, regardless of race. Minorities would benefit disproportionately from affirmative opportunity programs designed to address these disadvantages because they suffer disproportionately from the effects of such environments, but the problems of disadvantaged whites would be addressed as well.

An affirmative action based solely on need, however, would result in the systematic exclusion of many middle-income blacks from desirable positions because the standard or conventional measures of performance are not sensitive to the cumulative effects of race. By this I mean having one's life choices limited by race, regardless of class, because of the effects of living in segregated neighborhoods (that is, being exposed to styles of behavior, habits, and the particular skills that emerge from patterns of racial exclusion), because of the quality of de facto segregated schooling, and because of the nurturing by parents whose experiences have also been shaped and limited by race, which ultimately affects the resources they are able to pass on to their children (Heckman 1995).

Thus if we were to rely solely on the standard criteria for college admission, like SAT scores, even many children from black middle-class families would be denied admission in favor of middle-class whites who are not weighed down by the accumulation of disadvantages that stem from racial restrictions and who therefore tend to score higher on these conventional measures. An affirmative action based solely on need or economic class position could create a situation in which African-Americans who are admitted to Harvard represent the bottom half of the socioeconomic continuum in the black community, while those who are in the top half tend to be excluded because they are not eligible for consideration under affirmative action. They would therefore be left to compete with middle- and upper-income whites who are not burdened by the handicaps of race—as their higher scores on the conventional tests reflect.

The extent to which standard aptitude tests like the SAT and tests used for promoting police officers are measuring not privilege but real merit or the real potential to succeed is not readily apparent. Ideally, we should develop flexible criteria of evaluation or performance measures, as opposed to numerical guidelines or quotas, that would not exclude people with background handicaps, including minority racial background, who have as much potential to succeed as those admitted without those handicaps. While some test scores may correlate well with performance, they do not necessarily

measure important attributes that also determine performance, such as perseverance, motivation, interpersonal skills, reliability, and leadership qualities. Accordingly, since race is one of the components of being disadvantaged in this society, the ideal affirmative action program would emphasize flexible criteria of evaluation based on both need and race.

The cumulative effects of historical discrimination and racial segregation are reflected in many subtle ways that result in the underrepresentation of blacks in positions of high status and their overrepresentation in positions of low status. Some of these problems can be easily addressed with affirmative action programs that are at least in part based on race; others have to be combated by means of race-neutral strategies. As indicated earlier, less-advantaged blacks are extremely vulnerable to changes in our modern industrial society, and their problems are difficult to solve by means of race-based strategies alone—either those that support equality of individual opportunity, such as the Civil Rights Act of 1964, or those that represent affirmative action. Now more than ever, we need broader solutions than those we have employed in the past.

#### **From Preference to Affirmative Opportunity**

Given the current political climate and the new social inequality, any program designed to significantly improve the life chances of disadvantaged minorities, including increased employment opportunities, would have to be broadly applicable. That is, it would have to address the concerns of wide segments of the U.S. population, not just those of minority citizens.

Almost two decades ago, Vivian Henderson argued that “the economic future of blacks in the United States is bound up with that of the rest of the nation. Politics designed in the future to cope with the problems of the poor and victimized will also yield benefits to blacks. In contrast, any efforts to treat blacks separately from the rest of the nation are likely to lead to frustration, heightened racial animosities, and a waste of the country’s resources and the precious resources of black people” (Henderson 1975, p. 54).

Henderson’s warning seems to be especially appropriate in periods of economic stagnation, when public support for programs targeted to minorities—or associated with real or imagined material sacrifice on the part of whites—tends to wane. The economy was strong when affirmative action programs were introduced during the Johnson administration. When the

economy turned down, public support increasingly soured.

Furthermore, in political affairs, observers note that whites “only as a result of economic mairing and economic mairing such preferrence for an era with.” They also argue that changes in society have led to a new era of change in society.

The Democrats increasingly were represented by virtually separate public services became whites. In an era of segregation seemed to constitute themselves as public services that many of the whites.

White reaction Over the past fifty years, there has been a trend toward desegregation. For Americans supported to 95 percent. In the past five years, public accommodations (1994).

Nonetheless, racial segregation programs to aggressive roll blacks in instances, blacks in high-level polls, whites over blacks. Whereas the government is not supported more than one-third of the government “has a strong

economy turned down in the 1970s, the public's view of affirmative action increasingly soured.

Furthermore, as Joseph A. Califano, Johnson's staff assistant for domestic affairs, observed in 1988, such programs were generally acceptable to whites "only as a temporary expedient to speed blacks' entry into the social and economic mainstream." But as years passed, many whites "saw continuing such preferences as an unjust insistence by Democrats that they do penance for an era of slavery and discrimination they had nothing to do with." They also associated the decline in public schools not with broader changes in society but with "forced integration" (Califano 1988, p. 29).

The Democrats also came under fire for their support for programs that increasingly were misrepresented as being intended for poor blacks alone. Virtually separate medical and legal systems developed in many cities. Public services became identified mainly with blacks, private services mainly with whites. In an era of ostensible racial justice, many public programs ironically seemed to constitute a new and costlier form of segregation. White taxpayers saw themselves as being forced through taxes to pay for medical and legal services that many of them could not afford to purchase for their own families.

White reaction to race-based problems has several dimensions, however. Over the past fifty years, there has been a steep rise in white support for racial desegregation. For example, although in 1942 only 42 percent of white Americans supported integrated schooling, by 1993 that figure had skyrocketed to 95 percent. Public opinion polls reveal similar patterns of change during the past five decades in white support for integration with regard to public accommodations, mass transportation, and housing (Bobo and Smith 1994).

Nonetheless, the virtual disappearance of Jim Crow attitudes toward racial segregation has not resulted in strong backing for government programs to aggressively combat discrimination, increase further integration, enroll blacks in institutions of higher learning, or enlarge the proportion of blacks in high-level occupations. Indeed, as evidenced in the public opinion polls, whites overwhelmingly object to government assistance targeted to blacks. Whereas eight of every ten African-Americans believe that the government is not spending enough to assist blacks today, only slightly more than one-third of white Americans feel this way. The idea that the federal government "has a special obligation to help improve the living standard of

blacks" because they "have been discriminated against so long" was supported by only one in five whites in 1991 and has never exceeded more than one in four since 1975 (Bobo and Kluegel 1994). And the lack of white support for this idea is unrelated to such background factors as age and education level.

Of course, the most widely discussed racial policy issue in recent years has been affirmative action. Despite a slight decrease in opposition to affirmative action programs in education and employment between 1986 and 1990, sentiments against these programs remain strong. In 1990, almost seven in ten white Americans opposed quotas to admit black students in colleges and universities, and more than eight in ten objected to the idea of preferential hiring and promotion of blacks.

Such strong white opposition to quotas and preferential hiring and promotion should not lead us to overlook the fact that there are some affirmative action policies that are supported by wide segments of the white population, regardless of racial attitudes. Recent studies reveal that, while opposing such "preferential" racial policies as college admission quotas or job hiring and promotion strategies designed to achieve equal outcomes, most white Americans approve of such "compensatory" affirmative action policies as race-targeted programs for job training, special education, and recruitment (Bobo and Smith 1994; Bobo and Kluegel 1993; Lipset and Schneider 1978; Kluegel and Smith 1986; Kinder and Sanders 1987). For example, in the 1990 General Social Survey, 68 percent of all whites favored spending more money on schools in black neighborhoods, especially for preschool and early education programs. And 70 percent favored granting special college scholarships to black children who maintain good grades (Bobo and Smith 1994).

Accordingly, programs that enable blacks to take advantage of opportunities, such as race-targeted early education programs and job training, are less likely to be "perceived as challenging the values of individualism and the work ethic." In other words, compensatory or opportunity-enhancing affirmative action programs are supported because they reinforce the belief that the allocation of jobs and economic rewards should be based on individual effort, training, and talent. As sociologists Larry Bobo and James Kluegel (1993) put it: "Opportunity-enhancing programs receive greater support because they are consistent with the norm of helping people help themselves. In addition, opportunity-enhancing programs do not challenge principles of

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equity. Indeed, requirements that beneficiaries of such programs make the effort to acquire the training and skills needed to improve their economic positions are fully consistent with reward on the basis of individual effort.”

Unlike preferential racial policies, opportunity-enhancing programs have popular support and a relatively weak connection to antiblack attitudes (Bobo and Smith 1994). For all these reasons, to make the most effective case for affirmative action programs in a period when such programs are under attack from many quarters, emphasis should be shifted from numerical guidelines to opportunity. The concept that I would use to signal this shift is “affirmative opportunity.”\* By substituting “opportunity” for “action,” the concept “affirmative opportunity” draws the focus away from a guarantee of equality of results, which is how “affirmative action” has come to be understood. It echoes the phrase “equal opportunity,” which connotes a principle that most Americans still support, while avoiding connotations now associated (fairly or not) with the idea of affirmative action—connotations like quotas, lowering of standards, and reverse discrimination, which most Americans detest.

However, by retaining the term “affirmative,” the concept keeps the connotation that something more than offering formal, legal equality is required to overcome the legacy of slavery and Jim Crow segregation. As a society, we also have the continuing moral obligation to compensate for the enduring burdens—the social and psychological damage—of segregation, discrimination, and bigotry. To practice affirmative opportunity means to renew the nation’s commitment to enable all Americans, regardless of income, race, or other attributes, to achieve to the highest level that their abilities will permit. In this sense, the phrase echoes President Johnson’s 1965 Howard University commencement speech on human rights, which was uniformly praised by black civil rights leaders.

To repeat, polling data suggest that Americans support the idea of affirmative action programs to enable people to overcome disadvantages that are not of their own making. This should be done, however, by using flexible

\*My views on affirmative opportunity have greatly benefited from my discussions with Noel Salinger of the Irving B. Harris School of Public Policy at the University of Chicago. Salinger helped me to draft several memoranda on affirmative action for the White House, and my views here were initially developed in those memoranda.

criteria of evaluation, not numerical guidelines or quotas. The obvious rejoinder is that "using flexible criteria" is another way of saying that lower standards will be permitted. On the contrary, using flexible criteria of evaluation will ensure that we are measuring merit or potential to succeed rather than privilege. In other words, we want to use criteria that would not exclude people who have as much potential to succeed as those admitted who have more privileged backgrounds.

The differences in average test scores, touted by some opponents to compensatory social programs and affirmative action, are largely measures of differences in opportunities between the advantaged and the disadvantaged, especially in equal access to high-quality child care and good schooling (Heckman 1995; Neal and Johnson 1995). Flexible criteria accommodate the need to design metrics of ability that predict success and that are not captured by such tests. Indications of these attributes may be obtained from letters of recommendation, past performance, or other measures. Mayor Richard Daley's use of merit promotions in the Chicago Police Department, which are based on such factors as job performance and leadership ability, is an example of how such criteria can be used.

Relying on flexible criteria may be a way of replacing the goals and timetables currently used by government agencies and contractors. Having said that, I should also note that it will be extremely important to calibrate the use of flexible criteria in practice. They must be presented as a way of expanding the pool of qualified applicants by making attributes other than raw test scores count more. Flexible criteria must be applied in thoughtful ways, based on the experience of what works in certain situations and particular institutions. Otherwise, the practice will be infected with arbitrariness, which would quickly undermine public support.

### **New Social Rights for All Americans**

Affirmative opportunity efforts remain vital to a progressive strategy and central to the continuing quest for racial justice in America. But affirmative opportunity programs alone are not enough. They ought to be combined with appropriate race-neutral public policies in order to address economic insecurities that now affect many groups in an era of rising social inequality.

In thinking about social rights today, we must appreciate that the poor and the working classes of all racial groups struggle to make ends meet and

that even the middle Americans across race and job security, despite the availability of all quality of public education in poor neighborhoods.

Not surprisingly, surveys. For the last strong public backing training efforts, to it indicated that almost increase to pay for cut out of ten Americans system of the United the eve of President nearly two-thirds of "so that all Americans what." Finally, recent Center at the University of Michigan (University of Michigan Survey 1988-94).

Despite being one of these concerns—providing skills training, improving child care, and reducing neighborhood crime—would eventually benefit the especially poor minorities provided that they are given a better off.

A comprehensive strategy to reduce inequality should be based on opportunity-enhancing policies to reduce inequality. To repeat, criteria of evaluation in education should be based on

that even the middle class has experienced a decline in its living standard. Americans across racial and class boundaries worry about unemployment and job security, declining real wages, escalating medical and housing costs, the availability of affordable child care programs, the sharp decline in the quality of public education, and crime and drug trafficking in their neighborhoods.

Not surprisingly, these concerns are clearly reflected in public opinion surveys. For the last several years, national opinion polls consistently reveal strong public backing for government labor-market strategies, including training efforts, to increase employment opportunities. A 1988 Harris poll indicated that almost three-quarters of its respondents would support a tax increase to pay for child care. A 1989 Harris poll reported that almost nine out of ten Americans would like to see fundamental changes in the health care system of the United States. A September 1993 *New York Times*-CBS poll, on the eve of President Clinton's health care address to the nation, revealed that nearly two-thirds of the nation's citizens would be willing to pay higher taxes "so that all Americans have health insurance that they can't lose no matter what." Finally, recent surveys conducted by the National Opinion Research Center at the University of Chicago reveal that a substantial majority of Americans want to see more money spent on improving the nation's educational system and on halting the rise in crime and drug addiction (General Social Survey 1988-94).

Despite being officially race-neutral, programs created in response to these concerns—programs that increase employment opportunities and job skills training, improve public education, promote better child and health care, and reduce neighborhood crime and drug abuse—would disproportionately benefit the most disadvantaged segments of the population, especially poor minorities. Social programs, too, can further racial justice, provided that they are designed to include the needy as well as the somewhat better off.

A comprehensive race-neutral initiative to address economic and social inequality should be viewed as an extension of—not a replacement for—opportunity-enhancing programs that include race-based criteria to fight social inequality. To repeat, I feel that such programs should employ flexible criteria of evaluation in college admission, hiring, job promotion, and so on, and should be based on a broad definition of disadvantage that incorporates

notions of both need and race. Although recent public opinion polls indicate that most Americans would support race-based programs intended to enhance opportunities, mobilizing and sustaining the political support for such programs will be much more difficult if they are not designed to reach broader segments of the American population.

Other programs that can be accurately described as purely race-neutral—national health care, school reform, and job training based on need—would greatly benefit not only racial minority populations but large segments of the dominant white population as well. National opinion poll results suggest the possibility of a new alignment in support of a comprehensive social rights initiative that would include such programs. If such an alignment is attempted, perhaps it ought to feature a new public rhetoric that would do two things: focus on problems that afflict not only the poor but the working and middle classes as well; and emphasize integrative programs that would promote the social and economic improvement of all groups in society, not just the truly disadvantaged segments of the population.

In the new, highly integrated global economy, an increasing number of Americans across racial, ethnic, and income groups are experiencing declining real incomes, increasing job displacement, and growing economic insecurity. The unprecedented level of inner-city joblessness represents one important aspect of the broader economic dislocations that cut across racial and ethnic groups in the United States (Wilson 1996). Accordingly, where economic and social reforms are concerned, it hardly seems politically wise to focus mainly on the most disadvantaged groups while ignoring other segments of the population that have also been adversely affected by global economic changes.

Unfortunately, just when bold new comprehensive initiatives are urgently needed to address these problems, the U.S. Congress has retreated from using public policy as an instrument with which to fight social inequality. Failure to deal with this growing social inequality, including the rise of joblessness in U.S. inner cities, could seriously worsen the economic lives of urban families and neighborhoods.

Groups ranging from the inner-city poor to the working- and middle-class Americans who are struggling to make ends meet will have to be effectively mobilized in order for the current course taken by policymakers to be changed. Perhaps the best way to accomplish this is through coalition poli-

tics that promotes ration of the earned income child care programs, coalition is needed to process.

Because an effective response to be addressed need for economic assistance for the minority poor. (social inequality and social racial and ethnic groups may become allies in socially problems perceived

In the absence could find themselves: cent proposals in the posed spending cuts from programs targeted represent only one-fifth even more clear-cut v Unless progressives will ever vote to finance new social inequality. social programs.

Instead of recognizing ities that have led to e seek to assign blame to individuals alike with e ethic, or motivation. financing any social p limited number of welfare checks. Consighted retreat from p tressing that progress public policy direction intimidated and paral

tics that promotes race-neutral efforts—such as jobs creation, further expansion of the earned income tax credit, public school reform, access to excellent child care programs, and universal health insurance. A broad-based political coalition is needed to successfully push such programs through the political process.

Because an effective political coalition in part depends upon how the issues to be addressed are defined, it is imperative for leaders to underscore the need for economic and social reform that benefits all groups, not just America's minority poor. Changes in the global economy are creating growing social inequality and situations which intensify antagonisms between different racial and ethnic groups. Yet groups who often see themselves as antagonists may become allies in a reform coalition to redress common problems—especially problems perceived as caused by forces outside their own control.

In the absence of a broad, effective coalition, disadvantaged groups could find themselves in a very vulnerable political position. According to recent proposals in the House of Representatives, more than two-thirds of proposed spending cuts from the federal budget for the year 2000 would come from programs targeted for low-income citizens, even though these programs represent only one-fifth of the current federal budget. And the situation is even more clear-cut when we consider possibilities for new social programs. Unless progressives can build broad coalitions, it is unlikely that Congress will ever vote to finance the kinds of reforms that are needed to combat the new social inequality. The momentum is away from, not toward, adequate social programs.

Instead of recognizing and dealing with the complex and changing realities that have led to economic distress for so many Americans, policymakers seek to assign blame and associate the economic problems of families and individuals alike with such personal shortcomings as lack of initiative, work ethic, or motivation. Consequently, there is very little support in favor of financing any social programs, even the creation of public service jobs for the limited number of welfare recipients who reach a time limit for the receipt of welfare checks. Considering the deleterious consequences that this shortsighted retreat from public policy will have for so many Americans, it is distressing that progressive groups, far from being energized to reverse the public policy direction in which the country is now moving, at times appear intimidated and paralyzed by today's racially charged political rhetoric.

Comprehensive solutions for the new social inequality stand little chance of being adopted or even seriously considered if no new political coalition begins pressing for economic and social reform. Political leaders concerned about the current shift in public policy will have to develop a unifying rhetoric, a progressive message that both resonates with broad segments of the American population and enables groups to recognize that it is in their interest to join a reform coalition dedicated to moving America forward.

### **Bridging the Racial Divide**

Given America's tense racial situation, especially in urban areas, the formation of a multi-ethnic reform coalition will not be easy. Our nation's response to racial discord in the central city and to the growing racial divide between the city and the suburbs has been disappointing. In discussing these problems we have a tendency to engage in the kind of rhetoric that exacerbates, rather than alleviates, urban and metropolitan racial tensions. Ever since the 1992 Los Angeles riot, the media has focused heavily on the factors that divide rather than unite racial groups. Emphasis on racial division peaked in 1995 following the jury's verdict in the O. J. Simpson murder trial. Before the verdict was announced, opinion polls revealed, whites overwhelmingly thought that Mr. Simpson was guilty, while a substantial majority of blacks felt that he was innocent. The media clips showing public reaction to the verdict dramatized the racial contrasts: blacks appeared elated and jubilant; whites appeared stunned, angry, and somber. America's racial divide, as depicted in the media, seemed wider than ever.

The country's deep racial divisions certainly should not be underestimated, but the unremitting emphasis on these gaps has obscured the fact that African-Americans, whites, and other ethnic groups share many concerns, are beset by many similar problems, and have important values, aspirations, and hopes in common.

For example, if inner-city blacks are experiencing the greatest problems of joblessness, their situation is nevertheless a more extreme form of economic difficulties that have affected many Americans since 1980. Solutions to the broader problems of economic marginality in this country, including those that stem from changes in the global economy, can go a long way toward addressing the problems of inner-city joblessness, especially if the applica-

tion of resources included (Wilson 1996). Distorted problems promote a severity in the problems that races together, not apart.

Because the problem is severe, a vision of interdependence is more important than that promoted by all leaders.

A new democracy is so divisive that we must work together in a coalition to realize that if political policies draw back, just minority audiences. Concern families of all groups can honestly discuss the need to move America forward.

Despite legacies of past events, a politics of racial groups is very important above all popular interests and work to fashion progressive new measures.

tion of resources includes wise targeting of the groups most in need of help (Wilson 1996). Discussions that emphasize common solutions to shared problems promote a sense of unity, regardless of the different degrees of severity in the problems afflicting different groups. Such messages bring races together, not apart, and are especially important during periods of racial tension.

Because the problems of the new social inequality are growing more severe, a vision of interracial unity that acknowledges racially distinct problems but at the same time emphasizes transracial solutions to shared problems is more important than ever. Such a vision should be developed, shared, and promoted by all leaders in this country, but especially by political leaders.

A new democratic vision must reject the commonly held view that race is so divisive that whites, blacks, Latinos, and other ethnic groups cannot work together in a common cause. Those articulating the new vision must realize that if a political message is tailored to a white audience, racial minorities draw back, just as whites draw back when a message is tailored to minority audiences. The challenge is to find issues and programs that concern families of all racial and ethnic groups, so that individuals in these groups can honestly perceive mutual interests and join in a multiracial coalition to move America forward.

Despite legacies of racial domination and obstacles thrown up by recent events, a politics about problems and solutions relevant for people across racial groups is very possible in the United States today. Political leaders—above all popular Democrats—should forcefully articulate such a message and work to fashion the multiracial coalitions that must be at the heart of any progressive new majority in American democracy.

THE WHITE HOUSE  
WASHINGTON

November 14, 1997

## MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed  
Elena Kagan

SUBJECT: DPC Weekly Report

**1. Family -- Adoption Legislation:** You are scheduled to sign new adoption legislation on Wednesday, in an event giving a prominent role to the First Lady. The legislation is a huge step forward in promoting adoption and improving our nation's child welfare system. The final bill largely incorporates the Administration's proposals in this area. In particular, the bill (1) makes clear that children's health and safety are the paramount concerns of the public child welfare system; (2) clarifies the "reasonable efforts" standard; (3) speeds up court hearings for children in foster care and generally requires states to initiate proceedings to terminate parental rights after a child has been in foster care for 15 of the previous 22 months; (4) provides states with financial incentives to increase the number of children who are adopted; (5) reauthorizes the Family Preservation Program (staving off an expected battle next year) and increases its funding; (6) ensures health coverage for adopted children with special needs by requiring states to provide coverage through Medicaid or the new child health program; (7) expands HHS's authority to issue waivers to states for child welfare and foster care demonstration projects; and (8) breaks down barriers to adoptions across state lines by prohibiting states from denying a suitable out-of-state adoption when no in-state adoption is available.

**2. Health -- FDA Reform Legislation:** You are scheduled to sign FDA reform legislation on Friday. This legislation reauthorizes the very successful user fee program that has enabled the FDA to speed the approval of new drugs. The bill also codifies the REGO reforms, emphasizing agency performance and accountability, that the Vice President successfully implemented at the FDA in 1995 and 1996. In the course of considering the legislation, Congress deleted or amended the provisions (involving, for example, off-label uses of drugs and devices) to which consumer advocates most strongly objected. We worked closely with Senator Kennedy in the effort to ensure consumer protections, and he happily cast the 100th vote in the Senate's unanimous passage of this legislation.

**3. Health -- Quality Commission:** You are scheduled to accept the Quality Commission's Bill of Rights on Thursday. We plan to submit a memo to you early this week summarizing the Bill of Rights and recommending an appropriate response. We are also reviewing possible executive actions to improve the quality of health care in the federal government. We will discuss these proposals in the memo as well. As a lead-up to your announcement on Thursday, we have

asked the board of the Journal of the American Medical Association (JAMA) to brief the Vice President, Secretary Shalala, and Secretary Herman on its upcoming issue, which is dedicated entirely to concerns about health care quality. JAMA representatives are previewing this issue at the National Press Club on Tuesday, and an event with the Vice President on the same day should take advantage of media interest and provide a good basis for your announcement later that week.

**4. Health -- Satcher Nomination:** The Senate adjourned before acting on the nomination of Dr. David Satcher, notwithstanding a 12-5 committee vote in favor of confirmation. Senator Ashcroft placed a hold on the vote on the ground that Dr. Satcher supports the Administration's position on late term abortion. Some have suggested that the Senator took this action solely to position himself for a 2000 Presidential run. Dr. Satcher has never played a prominent role in the abortion debate and has disavowed any intent to use the Office of the Surgeon General to forward any "abortion rights agenda." Dr. Satcher continues to enjoy the strong support of a number of Republican Senators (Frist, Nickles, Jeffords) and of virtually every credible health care group in the nation, including the AMA. Although we are optimistic that the Senate will vote to confirm Dr. Satcher soon after returning in January, we will work hard throughout the recess to ensure that this nomination does not become a referendum on partial birth abortion.

**5. Health -- HHS Study on Take-Up Rates for Health Insurance:** You recently asked about an HHS study showing a decline in take-up rates for health insurance. The study reported on 10-year trends in access to and participation in employer-sponsored health insurance. It found that between 1987 and 1996, the proportion of workers with access to employer-based insurance remained constant at about 82 percent. The proportion of workers accepting that coverage, however, declined from 93 to 89 percent. The decline was most pronounced for young and low-income people; only about 75 percent of the individuals in each of these groups with access to insurance decided to purchase it. The study noted that the decline in take-up rates occurred during a period when premiums increased three times as much as wages. These findings confirm what the Administration has long recognized -- that affordability of insurance is as important as access to insurance. We hope that we will have an opportunity to build next year upon our efforts in granting Medicaid waivers and enacting the Children's Health Insurance Program to provide premium assistance for uninsured Americans.

**6. Tobacco/Health -- Florida Tobacco Settlement and Children's Coverage:** You asked last week whether we could agree to Florida's proposal to keep all the money it will gain from settling with the tobacco industry on condition that it use that money to expand children's health coverage. Current law gives us little room to enter into this kind of arrangement. The statute explicitly requires us to collect a specified share of any Medicaid dollars that states have recaptured. If we do not, private plaintiffs are likely to bring *qui tam* suits on behalf of U.S. taxpayers against Florida and other settling states; recovery in such suits would be split between the federal treasury (70-85 percent) and the private plaintiffs (15-30 percent). Of course, the federal government would have no right to recover (and any *qui tam* suits would fail) if the monies gained from the settlement were not Medicaid-related. But the Department of Justice believes that the damages Florida claimed -- and the amount it received in the settlement -- derive

from costs to the Medicaid program. Given these circumstances, we think it most fruitful to pursue a legislative solution to the problem of allocating tobacco funds between the federal and state governments -- preferably through a comprehensive national settlement, but if necessary (in the event no comprehensive settlement is reached) through legislation authorizing states to retain all Medicaid funds recaptured in tobacco litigation provided they use these funds for agreed-upon purposes.

**7. Tobacco -- Proposed Legislation:** A number of Senators introduced tobacco legislation in the last two weeks. Sen. McCain introduced a bill precisely incorporating the terms of the settlement, except for the addition of provisions to protect tobacco farmers. Sen. Hatch introduced legislation increasing the cost of the settlement from \$368 billion to \$397.5 billion, raising (but not eliminating) the cap on penalties for failing to reduce youth smoking, and amending the FDA provisions, though not in a way that the public health groups will view as much of an improvement. Sen. Kennedy introduced a bill raising the cost of the settlement to more than \$600 billion, primarily by increasing the tobacco excise tax by \$1.50 over three years; the Kennedy bill does not provide tobacco producers with any relief from litigation. Sen. Lautenberg introduced a similar bill, costing \$494 billion.

No one has introduced comprehensive legislation in the House, and last week the Speaker indicated interest in breaking the settlement into a number of separate bills and acting on each as a consensus emerges. Also last week, Rep. Bliley said that he would not move legislation until the tobacco companies release 864 documents currently at issue in Minnesota's lawsuit. (The trial court found that these documents fall within the crime/fraud exception to the attorney-client privilege, but the tobacco companies have appealed this ruling.) Gingrich's and Bliley's statements may suggest a strategy of delay, but could as well have some altogether different meaning.

We are continuing to seek a bipartisan process for enacting comprehensive tobacco legislation. Both the Speaker and Sen. Lott, however, are proceeding slowly -- in part because they have had to attend to more immediately pressing matters, in part because they have not yet settled on an overall tobacco strategy, and in part because so many Members wish to play a role in developing tobacco legislation. We and John Hilley are keeping in close touch with Congressional leadership so that we can take advantage of whatever opportunities emerge in the next few months.

**8. Welfare -- Cessna Event:** At an event in Wichita on Monday, you will dedicate a new state-of-the-art welfare-to-work facility at Cessna Aircraft Company, which is one of the founding members of Eli Segal's Welfare to Work Partnership. You will announce (1) that in six months 2,500 companies from all 50 states have joined the Welfare to Work Partnership -- far exceeding the goal of 1,000 set at the launch of the Partnership; (2) that the U.S. Chamber of Commerce has committed to enlist every local chamber of commerce in persuading their members to join the Welfare to Work Partnership; (3) that welfare caseloads fell 236,000 in July 1997, 1.9 million in the 11 months since you signed the welfare law, and 3.8 million since you took office; and (4) that the Departments of Labor and Health and Human Services are issuing new work-focused welfare regulations (see below).

**9. Welfare -- New Regulations:** The Administration will announce two sets of new regulations on Monday: (1) proposed regulations from HHS to states operating the TANF program (essentially, the regulations for the entire welfare law), and (2) interim final regulations from the Department of Labor to states and localities receiving grants from the \$3 billion Welfare to Work fund you won in the balanced budget agreement. The welfare to work regulation should arouse little comment. The TANF regulation, by contrast, may provoke extensive reaction from both Governors and advocates. As we told you in a prior weekly report, we worked extensively with HHS on this regulation. In the end, we were able to resolve all issues in a way that we think reinforces the importance of the law's work requirements while giving states flexibility to design welfare reform programs and a fair opportunity to correct any failures.

Under the TANF regulations, states that fail the work rates will be levied a penalty based on performance -- how close they came to meeting the rates. States will have the opportunity to correct or eliminate violations through a corrective compliance plan, and states that make substantial progress during their corrective compliance period will be eligible for a reduced or eliminated penalty. To protect states from unreasonable risk, the penalty for failing to meet the two-parent participation rate will be proportional to the size of the two-parent caseload in the state.

The regulation creates a system of disincentives to prevent states from gaming the work requirements, either by placing hard-to-employ individuals in state maintenance-of-effort programs (where the work rates do not apply) or by reclassifying the benefits received by these individuals as child-only (so that the individuals do not figure in the state's calculation of work rates). If the Secretary finds that a state has diverted recipients into a state program or reclassified benefits as child-only to evade the work requirements, she will refuse to reduce or limit the size of any penalties levied for failing to meet the work rates or time limits. The same disincentives apply when a state places individuals receiving child support payments in its state maintenance-of-effort program so as to prevent the federal government from gaining a share of these payments.

The regulation, like the law, allows states to reduce the required work participation rate by the percent the caseload has declined since 1995, so long as the lower caseloads are not due to new eligibility restrictions. HHS initially proposed that states should not get a credit for caseload reductions attributable to enforcement measures like fingerprinting, but ultimately agreed to change this position.

The regulation also addresses Sen. Murray's concerns about victims of domestic violence without threatening the integrity of the work rules. Under the regulation, a state will not be penalized for failing to meet work rates or time limits if its failure to do so is attributable to granting waivers to victims of domestic violence -- provided that the waivers are temporary and that they are accompanied by services to help the individual prepare for work and self-sufficiency. Sen. Murray may think that the regulation does not go far enough, but we think it represents the best accommodation of the full range of interests.

**10. Immigration -- Central Americans/Haitians:** The D.C. appropriations bill, as finally enacted, includes provisions to (1) give amnesty to certain Nicaraguans and Cubans, (2) ensure application of the old immigration law's standards to certain Guatemalans, Salvadorans, and East Europeans, and (3) reduce the number of unskilled worker visas and diversity visas. Although the bill provides no relief to Haitians, we were able to secure commitments from the Republican leadership to consider legislation on this issue early next session. These commitments allowed the Attorney General to announce that the Department of Justice would suspend the deportation of any Haitians covered by the proposed legislation for approximately six months.

**11. Crime -- Crime Statistics:** The Justice Department released new crime data on Saturday from the annual National Crime Victimization Survey (NCVS). The highlights of the survey were included in this week's radio address. Crime victimization rates are today at their lowest level since the inception of the NCVS in 1973. The murder and violent crime rates fell 10 percent and property crime rates fell 8 percent in 1996. The decreases are even more significant when viewed over time: since 1993, violent and property crime rates dropped 16 percent and 17 percent respectively, and murder rates dropped a stunning 22 percent. Equally notable, these reductions were felt by all Americans -- by men and women alike, and by individuals from every racial group and income level.

**12. Crime -- Juvenile Crime:** The final Commerce/Justice/State appropriations bill contains significant new funding for our key juvenile crime priorities. The bill authorizes and funds a new \$250 million Juvenile Accountability Incentive Block Grant, 45 percent (\$113 million) of which must be spent on prosecutors, probation officers, and juvenile gun and drug court programs. Our budget contained \$150 million in direct funding for the same purposes. In addition, the Labor-HHS appropriations bill provides substantial new funding (\$40 million) for afterschool programs through the 21st Century Schools Program at the Department of Education. We proposed \$63 million for afterschool programs in our budget.

**13. Race/Education -- Urban Education Initiatives:** DPC staff met this week with senior representatives of several national organizations interested in urban education, including the Council of Great City Schools, the U.S. Conference of Mayors, the National Urban League, the Rainbow Coalition, the AFT and NEA, and MALDEF. Our staff provided a broad overview of education proposals under consideration for FY 1999, including (1) the College-School Partnership initiative to increase college enrollment among low income and minority students by providing mentoring and other support services and (2) the Education Opportunity Zone initiative to provide increased educational assistance to high-poverty districts that agree to adopt a standards-based reform agenda involving the end of social promotions, the removal of bad teachers, and the reconstitution of failing schools. The groups generally liked these proposals, but expressed a wide range of views about student accountability provisions. The AFT felt strongly that even the mentoring initiative should include a requirement that students meet certain academic standards, while the civil rights groups expressed opposition to any performance requirements.

**14. Race/Education -- California Bilingual Education Ballot Initiative:** Opponents of bilingual education in California have collected enough signatures to place an initiative on the June

1998 ballot to require that Limited English Proficient (LEP) children be taught in English (specifically, in "sheltered English immersion" classes for one year and then in ordinary English-language classes) unless a parent requests bilingual instruction. A recent Los Angeles Times poll found that over 80 percent of Californians supported such an initiative, including 84 percent of Latino voters. Most Hispanic groups have come out against the initiative, as has the California Teachers Association and Sen. Boxer. Other education groups and most public officials (Gov. Wilson, Lt. Gov. Davis, Attorney General Lungren, and Sen. Feinstein) have not yet taken positions on the initiative. The DPC has convened a working group with representation from the Department of Education and other White House offices to review the educational, legal, and political issues this initiative raises and provide you with appropriate analysis and advice. At this early stage, everyone in the group agrees that you should refrain from taking a formal position on the initiative.

**15. Race -- Service Initiatives:** We are working with the Corporation for National Service and the PIR on several race-related service initiatives that you might want to take a part in announcing. The actions are designed to lead up to Martin Luther King Day, which Congress officially designated in 1994 as a day of service -- "a day on, not a day off" -- in recognition of Dr. King's belief in service activities. The CNS will award \$225,000 in mini-grants to 70 communities to organize local days of service in observance of Martin Luther King Day. In addition, Harris Wofford wants to promote something called the "Kindness and Justice Curriculum," which is the brainchild of a youth service group involving Dexter King. The group is encouraging schools and students to do acts of "kindness and justice" in the two weeks leading up to Martin Luther King Day, to discuss them in class, and to post them on the Web. Finally, we are exploring ways to encourage interracial dialogue in the Corporation's service-learning programs, where children serve together and then reflect on that experience in school. These efforts can build on successful AmeriCorps service projects, like the CityYear program, that focus on diversity issues as part of the service experience.

THE WHITE HOUSE  
WASHINGTON

THE PRESIDENT HAS SEEN  
11-9-97

November 8, 1997

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MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed  
Elena Kagan

SUBJECT: DPC Weekly Report

32821

**1. Immigration -- Central Americans/Haitians:** House and Senate Republicans have concluded their negotiations over the legislative package intended to provide relief to certain Central Americans. The final package (to be incorporated in the D.C. appropriations bill) provides amnesty to Nicaraguans and Cubans, while ensuring application of the old immigration law's standards to Guatemalans, Salvadorans, and nationals of former Soviet bloc countries. Notwithstanding our best efforts, the bill provides no relief to Haitians. The bill also cuts in half unskilled worker visas (from 10,000 to 5,000 annually), and reduces diversity visas by 5,000 as well (from 50,000 to 45,000 annually).

Because this package provides no relief to Haitians, Senator Moseley-Braun yesterday threatened to put a hold on the D.C. appropriations bill unless the Administration agrees to suspend the deportation of certain Haitians pending Congress's reconsideration of this issue next year. We quickly convened meetings involving the Departments of State and Justice, NSC, the Office of Legislative Affairs, the Office of Public Liaison, and others to discuss our options. We decided to ask Sen. Moseley-Braun and Rep. Conyers to seek commitments from the House and Senate leadership to consider Haitian legislation by a date certain. (In the Senate, Sens. Mack and Abraham appear to be on board this proposal.) With such commitments in place, the Attorney General could and would announce a decision to exercise prosecutorial discretion to suspend the deportations of individuals covered by the bill until Congress has had an opportunity to pass it.

32821

If we cannot get commitments (or, at a minimum, informal assurances) from the Republican leadership to consider the Haitian issue next session, the Attorney General probably would not be able to exercise her prosecutorial discretion in this manner. In that event, you could decide to issue a Deferred Enforced Departure (DED) order to grant temporary relief to Haitians, as you said you would do to protect Central Americans in the absence of legislative action. The NSC might well recommend such an action on the basis of foreign policy considerations, though the Justice Department currently has some concerns about it. Everyone agrees, however, that we should not take this step without careful consideration and preparation -- i.e., we should not take it within 24 hours of a Senator's threat to hold an appropriations bill. Thus, if the AG cannot invoke her discretionary authority, we will attempt to convince Sen. Moseley-Braun that we share her objectives, that we are carefully considering ways of providing administrative relief to Haitians, and that she should drop her hold of the D.C. appropriations bill and allow this consideration to proceed.

**2. Immigration -- INS Reorganization:** The House Judiciary Subcommittee on Immigration held a hearing yesterday on the Commission on Immigration Reform's proposal to disband the INS and reallocate its functions among the Departments of Justice, State, and Labor. The subcommittee did not invite witnesses from the Administration, but Bruce sent a letter to the Chair and Ranking Member (Rep. Lamar Smith and Rep. Watt) informing them of the Administration's intent to review the Commission's recommendations and work with the subcommittee to improve the management and administration of the nation's immigration system.

**3. Education -- National Testing:** The House passed on Friday the Labor-HHS Appropriations Bill, which included a compromise on national testing that we worked out with Rep. Goodling. The compromise language allows test development to proceed under NAGB's control with the \$16 million we asked for in our FY 1998 budget, but delays pilot testing until October 1998. The final legislation also directs the National Academy of Science to study (1) the feasibility of linking existing state and commercially available tests to each other and NAEP; (2) the technical quality of the national test items now under development; and (3) a set of issues, of concern to the Black and Hispanic Caucuses, regarding the use and misuse of test results. We were able to ward off any requirement for future congressional authorization to proceed with implementation of the national tests. We will have a repeat of this battle a month before the 1998 elections. Assuming we prevail, pilot testing will begin in the fall of 1998, field testing will commence in the spring of 1999, and the tests will be ready for full implementation in the spring of 2000. The attached chart shows how the final compromise solution compares to both our original plan and the House-passed Goodling Amendment.

**4. Education -- Charter Schools:** The House also passed on Friday charter schools legislation that you previously had endorsed. The bill provides incentives to states to issue more charters, to give charter schools greater autonomy while ensuring that performance goals are met, and to allocate to charter schools their fair share of state funding. Earlier in the week, the Department of Education sponsored a national charter schools conference that drew over 800 participants, including charter schools operators and teachers. The conference gave participants the opportunity to become familiar with Education Department resources, to share lessons and strategies with each other, and to provide advice to the Education Department on the implementation of the charter schools program.

**5. Education -- Vouchers/Coverdell:** The House defeated a bill last week to permit local school districts to use Chapter 2 block grant funds for vouchers for low income students. The vote was 228 to 191, with 35 Republicans voting against the bill. In the Senate, proponents of the Coverdell proposal to permit tax-free IRA's for K-12 education again failed to end a filibuster. The vote was 56-44.

**6. Health -- Quality Commission Update:** We have tentatively scheduled an event on November 20 in which you will accept the Quality Commission's Consumer Bill of Rights and announce support for federal legislation (though not necessarily an Administration bill) to enforce certain consumer protections. We are also working with HHS on executive actions to apply the

Commission's recommendations to federal government programs. As you know, the consumer protection issue has received much attention recently because of statements from Republican leaders (Lott, Nickles, Arme) urging the business and insurance communities to oppose Federal legislation in this area. Sen. Lott supposedly has told businesses to "get off your butts and get out your wallets" and Rep. Arme has labeled any effort in this area "Clinton II." These statements are not playing well with the press or public. (Indeed, the 85 Republicans who have joined legislation by Rep Norwood (R-GA) going far beyond what the Quality Commission will recommend may have their doubts about these statements.) But the concern of the business community about premium increases is growing, and we will have to position ourselves carefully on this issue.

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**7. Health – Children's Health Outreach Initiative:** As you know, three million children are now eligible for but not enrolled in Medicaid. Many more children will be eligible for but not enrolled in the new children's health insurance program (CHIP). We have been meeting with HHS, NEC, and the First Lady's office to develop ideas for a major children's health outreach initiative. Policy options could include: simplifying Medicaid eligibility rules; distributing a model single application form for both programs; taking off restrictions on certain funds so that states can use them for outreach; and making it easier to enroll children in these programs at schools and child care referral centers. We are also considering other private sector outreach initiatives, such as having businesses that market health plans to parents promote enrollment. Finally, we hope to form a public/private steering committee that would continue to develop and encourage innovative outreach efforts. This committee could include representatives from HHS, NGA, Americorps, America's Promise, prominent non-profit foundations, provider groups, and children's advocacy groups. If you and/or the First Lady are interested, we could design an event to announce this initiative.

**8. Crime -- Brady Bill:** The Department of Justice expects to sign a memorandum of understanding (MOU) next week between the Attorney General, the Ohio Attorney General, and the Franklin County Sheriff (OH) to ensure that all handgun purchasers in Ohio are subject to background checks. Since the Supreme Court's decision in Prinze, the Ohio Bureau of Criminal Identification and Investigation (BCI&I) has conducted background checks only on consenting purchasers. Under the proposed MOU, the Franklin County Sheriff will conduct background checks on any non-consenting purchasers. Arkansas is now the only state in the country not conducting background checks on all purchasers.

**9. Crime -- Stalking Report:** The Attorney General may release a report next week showing that an estimated 1.4 million women are the victims of stalkers each year, and that as many as 1 out of 12 women will be stalked during the course of their lives. The Justice Department simultaneously will release a manual of "best practices" for prosecutors to address the stalking problem.

**10. Race -- Equal Employment Opportunity Commission Reforms:** You recently asked about how to improve the performance of the EEOC and obtain additional resources for it. As you know, the EEOC has come under attack from all sides for inefficiency and delay in resolving cases. At the same time, Congress has denied the Administration's requests for additional funding to cope

11-9-97

with expanded case filings (from 62,135 in FY 1990 to a projected 80,000 in FY 1997), choosing to provide marginal or no increases in resources.

For the last several months the DPC has led a review (also involving OMB, PIR, NEC, OPL, and the Counsel's office) of the primary federal offices involved in civil rights enforcement. Our goal is to propose a coordinated package of reforms for the EEOC and the civil rights offices at DOL HUD. HHS. Education, and DOL. With respect to the EEOC in particular, our review has suggested several ways to improve the performance of the agency. The most important, favored by employers and civil rights advocates alike, is a swift expansion of the EEOC's mediation program. Along with other changes at the Commission, including the improved use of technology and additional staffing, this reform could substantially increase the average speed of resolving complaints and reduce the EEOC's current backlog. We are working closely with OMB to determine the most appropriate level of resources to devote to this effort.

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a significant  
part of it!

**KEY ELEMENTS OF THE PRESIDENT'S PLAN FOR NATIONAL TESTS**

<b>CLINTON PLAN</b>	<b>HOUSE BILL</b>	<b>FINAL AGREEMENT</b>
<b>Authorizes development of first-ever voluntary national tests in 4th-grade reading and 8th-grade math</b>	<b>NO -- total ban on development of national tests</b>	<b>YES -- authorizes immediate development of national tests</b>
<b>Puts independent, bipartisan NAGB in charge of tests</b>	<b>NO</b>	<b>YES</b>
<b>Provides \$16 million in FY98 for test development</b>	<b>NO -- no money for national tests</b>	<b>YES -- \$16 million for tests in FY98</b>
<b>Can proceed with pilot testing, field testing, and test administration without further authorization from Congress</b>	<b>NO -- would have required Congressional authorization before proceeding</b>	<b>YES -- does not impose requirement for future authorization from Congress</b>
<b>Begin pilot testing in 1998 (scheduled for March)</b>	<b>NO -- prohibits pilot testing</b>	<b>YES -- begin pilot testing in October 1998 instead of March</b>

Copies to Christy Anthony

THE WHITE HOUSE  
WASHINGTON

October 31, 1997

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed  
Elena Kagan

SUBJECT: DPC Weekly Report

THE PRESIDENT WAS SEEN  
11-4-97

Let's

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page 3  
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**1. Education -- National Testing Initiative:** As you may know, Rep. Obey announced a compromise testing provision for the Labor-HHS Appropriations bill last Wednesday, with the support of Rep. Porter and Sens. Specter and Harkin. The provision allowed development of the tests to continue, but prohibited their implementation without congressional authorization. The provision also prohibited the use of the tests for high stakes purposes, such as promotion decisions. We had informed Obey and the other conferees in advance that this proposal would be unacceptable to us, and we immediately warned of a veto. (With help from Sens. Bingaman, Kennedy, and Dorgan, we enlisted 37 Senators to sign a letter expressing support for such a veto.) At the same time, Rep. Goodling and his conservative supporters denounced the compromise proposal because it permits continued development of the tests. The conferees have so far refused to make changes to their testing provision, but because of the continuing controversy on this issue, they have not yet filed a conference report.

We are now working closely with John Hilley and others to engage Speaker Gingrich and Sen. Lott in discussion about a number of compromise proposals, either to go into the conference report or to break the impasse after a veto. These compromise ideas include: (1) limiting participation in the test to 50 percent of the nation's fourth and eighth grade students in the first two years of implementation; (2) appropriating money for NAGB to link existing standardized tests to the national tests, so that a state or school district can compare the performance of individual students to national standards without having to administer the national test; and (3) prohibiting the development of national tests in other subjects and grades without congressional authorization.

**2. Education -- Charter Schools and Vouchers:** The House passed a special rule on Friday linking the bipartisan Riggs-Roemer charter schools bill with the HELP voucher bill, also sponsored by Rep. Riggs. The rule, which passed 214 to 198, provides that the House will separately vote on the two bills, but automatically join them if they both pass. Earlier this week, OMB issued a SAP warning that if the charter bill were amended to include the voucher provisions, senior advisors would recommend a veto. Further House action is scheduled for Tuesday.

**3. Health -- Kyl Amendment and Nancy-Ann Min DeParle's Confirmation:** Republicans are refusing to confirm Nancy-Ann Min DeParle to be Administrator of HCFA until we reach an accommodation with them on a proposal offered by Sen. Kyl to modify the Medicare

provisions of the Balanced Budget Act. Under the Act, physicians may enter into private contracts with Medicare eligible individuals, but only if they waive the right to receive any Medicare reimbursements (for those patients or any others) for two years. Sen. Kyl wishes to allow physicians to enter into these private contracts without forfeiting their ability to receive Medicare payments for their treatment of other Medicare beneficiaries. The issue is very complicated. Sen. Kyl argues that the public would benefit from a system enabling wealthy patients to assume their own medical costs. But our Democratic base and most advocacy organizations believe that the Kyl Amendment's encouragement of private contracting would reduce the access of non-wealthy Medicare beneficiaries to the best doctors -- and in areas with a physician shortage, to any doctors at all. The Amendment also might create opportunities for fraud, as doctors try to bill both private individuals and the Medicare program for delivery of the same services. Whatever the merits, we and HHS think that we should refuse to consider, or even testify about, the Kyl proposal until Nancy-Ann is confirmed. To do otherwise would only reward this kind of hostage-taking.

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4. **Health -- NIH Ground Breaking and Cancer Trials Initiative:** The Vice President will join Secretary Shalala on Tuesday to dedicate a new building for clinical research on the NIH campus that will be named for Senator Mark Hatfield -- a longstanding advocate of NIH during his years as Senate Appropriations Chair. We are currently working with NIH and HHS on an appropriate announcement for the Vice President to make at this event. We have decided not to announce the Medicare cancer clinical trials initiative that you and Chris recently discussed, both because we are still reviewing cost estimates and because we think you should highlight this initiative at an event focused on the war against cancer. Parenthetically, because 80 percent of men with prostate cancer are over 65, the NCI has indicated that coverage of these clinical trials will represent a major contribution to the effort to diagnose, treat, and eventually cure prostate cancer.

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5. **Health -- Kassebaum-Kennedy Implementation:** We have convened an interagency group (HHS, Treasury, and Labor) to follow up on recent reports that insurance companies are giving incentives to insurance agents not to enroll high-risk individuals. HHS has no sure way of determining the extent of the problem, but state insurance commissioners believe that recent publicity has served to curtail these practices. We are nonetheless pushing HHS to take administrative action to ensure nationwide compliance with the law. In response to our entreaties, HHS is reviewing its authority to send a notice to all states (1) interpreting the law to prohibit this insurance company practice; (2) advising states to enforce the law accordingly; and (3) emphasizing our commitment to enforce the law ourselves if the states fail to do so, through the back-up enforcement authority the statute provides.

6. **Tobacco -- Medicaid Letter:** We reached an agreement with HHS and the Justice Department last week on a letter to be sent to all 50 states regarding the federal government's claim to certain monies received from settlements between states and the tobacco industry. The letter, which is scheduled to be sent on Monday, lays down the legal marker that the Justice Department and HHS felt was needed to prevent any waiver of the federal government's rights. But the letter has a non-threatening tone and explicitly recognizes that forthcoming national legislation may well address the distribution of tobacco funds between the federal and state governments. In preparation

*C. Jennings*  
C. Jennings

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for the letter's release, we met with the Florida Deputy Attorney General and staff from Governor Chiles' office. The meeting went surprisingly well, with the Florida representatives indicating that they would not object to a low-profile letter that simply states our view of current law. We will roll out the release of this letter carefully, including by giving advance notice to the NGA, APWA, and appropriate Members of Congress.

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**7. Immigration -- Central Americans:** House and Senate conferees are continuing to legislate a package designed to provide relief for certain Central Americans from the deportation provisions of the 1996 immigration law. Two key issues remain uncertain: the visa cap -- particularly Chairman Abraham -- opposes the House proposal to eliminate the worker category (10,000 visas annually) as a tradeoff for providing relief to Central Americans. The Senate is considering a counter proposal to reduce the annual number of unskilled visas and diversity visas by 5,000 each. (The diversity category provides 50,000 visas each year for individuals from underrepresented countries. The category is mostly used by nationals from Europe.) Second, some Members are now seeking to expand the final legislation to cover immigrants from former Soviet bloc countries. And as you know, the CBC is pushing to extend the legislation to the Guantánamo Haitians. We have prepared a letter from you urging that Congress provide the same relief to the Haitians as it does to most Central Americans. We are talking with the legislative affairs office about timing issues, but think we probably should send this letter on Monday or Tuesday.

**8. Crime -- Surplus Military Weapons:** The CJS Appropriations Conference Report may include a provision to allow the importation of certain surplus military weapons. Years ago, the U.S. government gave or sold at very low cost millions of these weapons to foreign governments as a form of military assistance. We have repeatedly opposed their importation because their low cost and ease of conversion to fully automatic weapons make them attractive to criminals. We successfully fought a similar provision in the Treasury-Postal Appropriations bill. The language we have seen for the CJS conference report is more limited in scope than the Treasury-Postal version; the provision would allow the importation of nearly one million M1 Garand rifles, but retain the bar against M1 carbines and .45 caliber semiautomatic pistols. We are working with John Hilley and Rahm to try to remove this provision.

**9. Crime -- COPS Program:** The COPS Office announced on Thursday \$62 million in grants to fund 1,000 new police officers. The funds will add community police officers in 47 states, bringing the total number of police officers funded by the Clinton COPS Program to 65,000.

**10. Welfare -- New Regulations:** We expect to publish regulations within the next few weeks for both the \$3 billion welfare-to-work program included in the Balanced Budget Act and the Temporary Assistance for Needy Families program established by the welfare law. The regulations for the \$3 billion program are straightforward and should provoke little comment. The TANF regulations are both more complicated and more significant, involving a number of issues that will determine the meaning and efficacy (or lack thereof) of the law's work requirements. We hope that

we can release both sets of regulations on November 17th, the day you are scheduled to dedicate Cessna's new welfare-to-work facility in Wichita.

In our conversations with HHS on the TANF regulations, we have insisted on holding states accountable for outcomes -- particularly in putting welfare recipients to work -- while maintaining state flexibility in designing and implementing welfare reform efforts. Most important, we are seeking to ensure that states do not circumvent the work participation rates -- either by segregating their hardest-to-employ cases in separate state programs that are not subject to work requirements or time limits (but that count towards the state's maintenance of effort), or by arbitrarily reclassifying families with parents living in the home as "child only" cases in order to avoid work rates and time limits (the law rightfully exempts child-only families from such requirements to avoid burdening grandparents and other non-parent caregivers). Relatedly, we are trying to discourage states from maintaining waivers that have less stringent work requirements than the new law has, by limiting the ability of any state that does so to get high performance bonuses, caseload reduction credits, and breaks on penalties. Finally, we are trying to structure a penalty system that is firm, fair, and credible -- that will give states a "second chance" to come into compliance with work and other requirements, but will impose penalties if they still fail to do so. Depending on how our discussions with HHS go, we may give you a decision memo on certain specific issues in the regulation within the next week or two.

**11. Welfare -- Domestic Violence Amendment and Regulations:** As you know, Sen. Murray long has advocated a proposal that would allow states to exclude victims of domestic violence in calculating whether they have met the law's work rates and time-limit requirements. This week, the conferees voted not to include her amendment in the Labor-HHS bill. DPC, OMB, and HHS all have had serious reservations about Sen. Murray's approach on the ground that it would give states a way to escape the welfare law's work rules and time limits, while failing to provide victims of domestic violence with the services they need to become self-sufficient. The draft TANF regulations discussed above take a different and better approach. The regulations will authorize HHS to excuse states from penalties if they fail to meet the work rates because they have given waivers to victims of domestic violence, so long as the exemptions are temporary and the state also provides services to help these women become self-sufficient. We are still discussing with HHS the issue of excusing states from penalties attached to the 5-year time limit; we hope to develop a middle ground approach at the staff level.

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**12. Welfare -- Welfare Indicators Report:** HHS has prepared the first annual report on Indicators of Welfare Dependence, required by a 1994 law authored by Senator Moynihan, and plans to send it to the Hill next week. The report reflects the advice of a bipartisan advisory board created by the law, which includes state welfare directors (Gary Stangler, Gerald Miller, Eloise Anderson), researchers (Judy Gueron, Marvin Kosters, Kristin Moore) and advocates (Bob Greenstein, Wade Horn). The law required HHS and the advisory board to develop a definition of welfare dependence and to track, through an annual report, changes in the incidence of dependence. This report defines a family as "dependent on welfare" if more than 50 percent of its total yearly income comes from TANF, food stamps, or SSI and this income is not associated with work (i.e., no one in the family

is working in a subsidized or unsubsidized job at the same time). This first annual report shows that 4.8 percent of Americans were dependent on welfare in 1993 (the most recent year for which the data were available).

THE PRESIDENT HAS SEEN  
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THE WHITE HOUSE  
WASHINGTON

October 17, 1997

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Mark?

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed  
Elena Kagan

SUBJECT: DPC Weekly Report

**1. Health -- Breast Cancer Event:** You are scheduled to announce several new initiatives on breast cancer in your radio address next week. The most important is an FDA final rule establishing nationwide quality standards for mammography. The rule, which addresses accreditation, facilities, personnel, equipment, and performance standard alternatives, should receive praise from physicians, mammography facilities, and advocacy groups alike. You also will discuss a new education campaign at NIH to ensure that health care providers and women know about recommendations that women ages 40-49 have regular mammograms; new outreach efforts to encourage minority Medicare beneficiaries to get regular mammograms (see also item 4 below); reforms in the balanced budget providing copayments for mammograms; and the First Lady's annual mammography campaign. Finally, you will announce the release of several new PSAs on mammograms.

**2. Health -- Quality Commission Bill of Rights:** The Quality Commission has finished a draft of the bill of rights that you requested it submit to you this fall. The draft includes a wide range of consumer protections, including access to specialists and emergency services, provisions for participation in treatment (e.g., anti-gag rules), and choice of health plans. At this point, the Commission will not recommend an enforcement mechanism for the bill of rights, which will help mitigate criticism from the business community. The Commission will meet to discuss the draft this week and plans to submit it to you by mid-November. Chris has leaked highlights of the draft to USA Today for publication on Monday or Tuesday, and we expect significant coverage in other papers.

**3. Health -- Children's Coverage:** DPC and HHS staff had an encouraging meeting with NGA representatives on outreach efforts for the new children's health care program. The states seem receptive to new ideas on working through schools and child care centers to identify uninsured children. State officials also have expressed great interest in a proposal we made to allow wider use of a \$500 million fund established by the welfare law to help ensure that children moving off the welfare rolls retain Medicaid coverage. Under this proposal, states could use the fund for outreach activities directed toward enrolling children in either Medicaid or the children's health program.

**4. Race -- Vaccination Study and Health Care Proposal:** The Center for Disease Control released a study on Thursday showing that vaccination levels for minority children have reached an

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all-time high and that the disparity in vaccination levels for white and minority children is at an all-time low. Dr. Satcher announced the study's findings, and we arranged for the Race Advisory Board to issue a statement. The new rates provide evidence that carefully constructed and targeted health care initiatives, supported by adequate resources, can help reduce some of the existing health disparities among racial and ethnic groups. We can use these kinds of statistics to prepare the way for a new health care proposal, currently being fine-tuned by DPC, HHS, and OMB, to address racial disparities in six carefully selected areas: infant mortality, breast and cervical cancer, heart disease and stroke, diabetes, AIDS, and immunization. This proposal will include nationwide measures on each of the six health conditions to go into effect in the next two years, as well as intensive five-year pilot projects in thirty communities focused on one or another of the six conditions (say, a project on diabetes on an Indian reservation or a project on AIDS in an inner city). The stated aim of the proposal will be to eliminate racial disparities in these six areas by 2010.

**5. Race -- Higher Education Affirmative Action Suit:** The conservative organization that successfully represented the plaintiffs in Hopwood filed suit in Federal district court this week alleging that the University of Michigan's admissions policies unconstitutionally discriminate against white students. A diversity plan called the Michigan Mandate has increased minority enrollment at the school from 12.7% in 1986 to just over 25% this year. The plaintiffs' complaint charges that in making admissions decisions, the University adhered strictly to a set of grids that specify different minimum grade point averages and standardized test scores for white and non-white applicants. University officials have responded that they used the grids only as one of many guidelines, rather than as a rigid barrier to admission. As you know, the DPC is preparing a proposal, which will be joined to the NEC's new version of the Chaka Fattah bill, that would promote minority access to higher education by supporting partnerships between universities and low-income intermediate and high schools. The DPC is also working with Sylvia and the communications people to highlight your commitment to diversity in higher education in a Race Initiative-related speech or town hall.

Handwritten note: *Dr. Satcher*

We are also attaching to this memo a list of other policies, prepared originally for Erskine and Sylvia, that the DPC is developing for possible announcement as part of the Race Initiative.

**6. Tobacco -- Medicaid Reimbursement Letter:** In recent testimony before the Senate Labor Committee, Secretary Shalala indicated that HHS would send letters to states that have settled with the tobacco industry demanding the federal government's normal share (usually around 50%) of state recoupment of Medicaid costs. Many states reacted negatively to the Secretary's comments, maintaining for a variety of reasons that the federal government has no rightful claim to most of the settlement monies. State officials (including Governor Chiles, who put in a call to Bruce) warned us that a letter of the kind Secretary Shalala promised would undermine the willingness of states to cooperate with us on anti-tobacco efforts. Attorneys at both the Justice Department and HHS, however, argue strenuously that failing to send this letter would indicate an intent not to enforce the law and might constitute a waiver of the federal government's claim to these monies. At a meeting with HHS and DOJ, the DPC recommended a compromise solution: sending a letter to all fifty states that simply notes the federal statute governing allocation of Medicaid reimbursements and

Handwritten note: *Secretary Shalala*

then indicates our desire that future tobacco legislation provide for the distribution of funds between the federal and state governments in a mutually acceptable manner. HHS is now attempting to draft such a letter.

**7. Drugs -- Needle Exchange:** As you know, the House version of the Labor-HHS appropriations bill includes a rider eliminating Secretary Shalala's authority to permit the use of federal funds for needle exchange programs upon finding that these programs reduce HIV transmission and do not increase drug use. Recent reports suggest that House Republicans will refuse to drop this provision. At the same time, several members of your Advisory Council on AIDS have threatened to resign because Secretary Shalala has not used this authority. In light of these developments, we have developed a compromise proposal that would allow a community to use federal monies for needle exchange only if the Secretary, the community's chief health officer, and the community's chief law enforcement officer all made the requisite findings. We hope that this proposal can break the congressional logjam over needle exchange; we also think that, if enacted, it could make use of the Secretary's authority much easier.

**8. Education -- National Testing Initiative:** In response to comments made by Senator Lott's staff, DPC and the Education Department have developed some compromise proposals on the national testing initiative that we hope can help us gain Congressional support. These proposals, which we would offer one by one, would: (1) make it possible for states and school districts to link their own tests with the national standards and test, so that a state or school district could compare the performance of individual students to national standards without having to administer the national test; (2) treat 1999 as a "field test" and proceed with full implementation of the national test in 2000; (3) limit participation in the 1999 field test to 50% of all the 4th and 8th grade students in the nation; and (4) evaluate the field test and report the results to Congress before proceeding with full implementation (but not requiring congressional authorization). We hope to discuss these possibilities with Sen. Lott's staff early next week.

**9. Education -- Single-Sex Schools:** As you recall, the Department of Education's Office of Civil Rights (OCR) has told New York City that it must either admit boys to its all-girls school or open a similar all-boys school to avoid violating Title IX. At a meeting last week, the Justice Department expressed the view that Title IX may be inapplicable to this situation, giving OCR no authority over this case. The Justice Department believes, however, that the all-girls school is vulnerable to constitutional challenge unless New York (1) demonstrates that the school compensates for past discrimination against girls in the city school system or (2) establishes a similar school for boys. In light of your request to be involved in this issue (and our own belief that OCR should let New York City operate this school), DPC and the Counsel's Office have asked Education and Justice to prepare a memo on the critical legal and factual questions.

**10. Education -- IDEA Regulations:** The Department of Education will publish proposed regulations next week implementing recent legislation reauthorizing the Individuals with Disabilities Education Act (IDEA). Although the regulation attempts to strike a balance between the goals of parents and disability advocates and those of school districts, states, and teachers' unions, it probably

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will please the former group more than the latter. Perhaps most notably, the regulation requires a hearing officer to hold a hearing with both sides present before he can use the authority, granted by the new law, to remove a misbehaving child from a classroom for up to 45 days. The regulation also reflects the Department's view that the new law requires states to provide services to youths with disabilities incarcerated in adult correctional facilities on penalty of losing all IDEA funds. Governor Wilson has contested this interpretation, insisting that he may decline to provide services to these youths but still remain eligible for IDEA funds. The Education Department has asked the Department of Justice to bring suit against Governor Wilson on this matter (DOJ has not yet determined whether it will do so), while the House Labor-HHS appropriations bill contains a rider supporting Wilson's position.

**11. Child Care -- Conference Plans:** DPC and the First Lady's Office are concluding work on this week's child care conference. We will give you a memo on Monday or Tuesday detailing the conference program and proposed policy announcements. This memo also will give you a sense of the work we are doing to prepare for a much larger policy announcement at the State of the Union.

**12. Immigration -- Central American Legislation:** Last week, the House Republicans unveiled a proposal to give amnesty to Nicaraguans in the country before December 1995; allow certain Guatemalans and Salvadorans to have their suspension of deportation claims heard under the relatively generous standard of the old immigration law; and essentially eliminate the unskilled workers category for legal immigrants. This proposal, like our own legislation, provides relief to Central Americans from the hardships imposed by the 1996 immigration law. The proposal, however, would go further than our proposed approach in granting complete amnesty to Nicaraguans. The Administration has never before supported amnesty, and none of the relevant agencies or White House offices believes that there is a strong substantive argument for doing so here. Further complicating matters, members of the Hispanic and Black Caucuses are now seeking to extend amnesty to other Central Americans and Haitians. And members of Congress who strongly oppose cuts to legal immigration may raise concerns about the elimination of the unskilled workers category. DPC is working with NSC, WH Legislative Affairs and INS/DOJ on a strategy for improving the Republican proposal.

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**13. Immigration -- Rand Study:** The Rand Corporation recently released a study assessing the impact of immigration on California over the past several decades. The study finds that immigration helped fuel California's rapid economic growth from 1960 to 1990, and continues to benefit the state's economy. But the study also details recent problems associated with the combination of a decreased demand for low-skill workers and a steady influx of low-skilled immigrants -- most notably, an increased fiscal burden resulting from use of public services and a downward pressure on some workers' wages. To address these concerns, the Rand study recommends: (1) a more flexible system to allow for more frequent changes to immigration quotas and entry criteria; (2) a reduction in annual immigration levels to somewhere between current levels (800,000) and those in the 1960s (300,000); (3) a greater emphasis on the educational levels of new immigrants; and (4) more proactive federal and state policies to integrate immigrants. Some of these recommendations resemble those in the U.S. Commission on Immigration Reform's final report,

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released last month. The Commission recommended lowering the level of legal immigration to about 550,000 annually, as well as promoting the further integration of immigrants through an "Americanization" proposal (including education, orientation, and naturalization efforts). The DPC will consider the Rand Study recommendations in the context of our evaluation of the Commission's proposals.

**14. Immigration -- Requirements on Sponsors:** Pursuant to the 1996 immigration law, the INS will release guidelines on Monday that require sponsors of certain immigrants to meet a minimum income threshold and to shoulder financial responsibility for those whom they have brought into this country. Under the law, as implemented by these guidelines, each sponsor will have to prepare a legally binding affidavit of support demonstrating an income level of at least 125% of the poverty level. During consideration of the immigration bill, the Administration supported making sponsors financially responsible for immigrants, while working to reduce the income requirement to the final 125% level (on the ground that a higher income requirement would have interfered unduly with legal immigration designed to unify families).

**15. Welfare -- FICA Exemption for Workfare Participants:** Rep. Shaw has decided to drop his legislative proposal to exempt workfare participants from FICA and FUTA. We supported this proposal, but Shaw apparently now thinks that it has no chance of passage given opposition from conservative Republicans (who believe it does too little) and liberal Democrats (who believe it does too much). The Governors are angry about the failure to act on this issue. The DPC is exploring whether there is a way to add the Shaw language to some piece of pending legislation. As for administrative action, the IRS continues (and continues and continues) to consider whether workfare is subject to or, alternatively, exempt from FICA and FUTA under current law.

**16. Crime -- Child Safety Locks:** October 15 was the deadline for federal agencies to comply with your March 1997 directive to provide child safety locks for all handguns issued to federal law enforcement officers. All agencies except the State Department have reported that they are in full compliance. We are following up with the State Department.

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THE WHITE HOUSE  
WASHINGTON

THE PRESIDENT HAS SEEN

10/27/97

October 24, 1997

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## MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed  
Elena Kagan

SUBJECT: DPC Weekly Report

**1. Education -- National Tests:** Rep. Goodling has drafted a new proposal on testing that would (1) continue to prohibit the development or implementation of national tests; (2) require the Education Department to cancel the current contract for test development; and (3) direct the National Academy of Sciences to conduct a study, with NGA and NCSL, of the feasibility of comparing the results from different existing standardized tests as an alternative to implementing national tests. House Republicans have forwarded Goodling's proposal to the Democrats; it is not yet clear whether this proposal is intended as a first step in negotiations, or if it reflects a decision to force a veto. We are working closely with Rep. Obey and others to determine how best to respond. In addition, we are making clear to the press that this "compromise" is unacceptable and would cause you to veto the bill.

**2. Education -- Vouchers/Coverdell:** The House passed the Gingrich/Armeey version of Sen. Coverdell's K-12 education savings account legislation on Thursday. Vote on final passage was 230-198, with 8 Republicans voting against the bill and 15 Democrats voting for it. A Rangel substitute, which would have expanded a school construction bond provision enacted in the balanced budget bill, was defeated by a vote of 224-199. On Friday, the Republicans canceled a mark-up of legislation that would have allowed ESEA Title VI funds to be used to pay for private school tuition. They were evidently unable to muster sufficient Republican support to get the bill out of committee. But Republicans probably will attempt to attach voucher language to the Riggs-Roemer charter schools bill on the House floor next week.

**3. Health -- Consumer Bill of Rights:** The Quality Commission released preliminary consensus recommendations this week responding to your request for a Consumer Bill of Rights. Consumer and business groups alike responded favorably to these recommendations -- though inevitably some groups thought the recommendations went too far and other groups thought the recommendations went not far enough. Because of the generally favorable response, we are planning a White House event to highlight the final recommendations for a Consumer Bill of Rights in mid-November. We are considering whether you should use that event to call for federal legislation providing an enforcement mechanism for at least some of the consumer protections that the Commission has agreed

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upon. (The Commission itself will make no recommendations on an enforcement mechanism in November.)

**4. Health -- Mental Health Parity Regulations:** *The New York Times* reported inaccurately last week on the Administration's likely interpretation of the "1 percent" exemption provision in the mental health parity statute. This provision allows businesses and health plans to opt out of the law's requirements if the costs of coming into compliance increase premiums by more than 1 percent. The *Times* reported that the White House will interpret the provision to allow companies to project that the costs associated with the law would exceed the threshold and to opt out of the law on the basis of that future projection. The mental health community strongly supports a fully retrospective approach, under which no business could obtain an exemption from the law until after paying premiums for the first year of the law's implementation. Some advocates apparently thought that the best way to kill a more prospective approach was to tell the *Times* that we were likely to adopt it. The truth is that HHS has not yet made a recommendation, let alone forwarded a proposed regulation to OMB. Our flexibility in interpreting the law is unclear, but if we have some leeway, we hope to opt for a more retrospective approach.

**5. Health -- Satcher Nomination:** The Senate Labor and Human Resources Committee favorably reported out Dr. Satcher's nomination on Wednesday by a vote of 12-5. Most of the members were effusive in their praise for Dr. Satcher, and called for the Senate to confirm his nomination before the recess. The dissenting members -- in particular, Senator Coats -- fought hard against the nomination because of Dr. Satcher's support for the Administration's position on partial birth abortion legislation. We have some concern that Republicans will try to use Dr. Satcher's confirmation vote as yet another vehicle to attack the Administration on this issue. While we remain generally optimistic that Dr. Satcher will be confirmed, we are working with the communications and legislative affairs offices to mount a strong Administration defense if needed.

**6. Crime -- Assault Weapons Directive:** We are working with Rahm on a directive to the Treasury Department that would (1) reexamine and, if necessary, modify the criteria used to keep non-sporting weapons out of the country; and (2) pending this reexamination, temporarily suspend any pending and future applications for permits to import modified -- or "sporterized" -- assault weapons, including the new Uzi American and Galil Sporter. Although only a limited number of these firearms has come into the country over the past few years (10,000 in 1995, 25,000 in 1996, and 20,000 to date this year), applications are now pending to import as many as 900,000 of these firearms.

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The one issue we have not resolved is whether the Administration should take the additional step of temporarily suspending permits that already have been granted. These permits allow the future importation of about 300,000 sporterized assault weapons. Senator Feinstein is insisting that we temporarily suspend these permits, and she already has told the press that a directive would be meaningless unless it does so. Administration lawyers,

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however, have serious doubts that we have a factual basis for temporarily suspending existing permits, and they worry that a loss on this issue could undermine our ability to defend any future action by Treasury to modify the test for non-sporting weapons. Senator Biden thinks that a loss on the temporary suspension issue would have detrimental political consequences, and that we should not take the action unless we believe a court could sustain it.

We are pressing Treasury, Justice, and White House Counsel lawyers to develop the strongest possible case for suspending existing permits; when we are satisfied that they have done so, we will together evaluate the strength of that case and determine whether to recommend temporary suspensions. We have met with staff for Sens. Feinstein and Biden and Reps. Schumer and McCarthy to brief them on our concerns about this issue. We are also trying to develop some kind of compromise option.

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**7. Crime -- Juvenile Crime Bill:** The Senate clearly will not vote on juvenile crime legislation this year. A pending issue is whether the FY 98 Commerce, Justice, State Appropriations bill will include funding for new juvenile crime and prevention programs (including our prosecutors and afterschool programs) given that Congress has failed to enact authorizing legislation. We recently heard that the CJS appropriators probably will rebuff our efforts to get funding for these programs this year.

**8. Immigration -- Central Americans:** House Republicans are close to unveiling legislation to remedy certain problems the 1996 immigration law created for Central Americans. Although we have yet to see the language, we have heard that it will: (1) grant amnesty for Nicaraguans in the country before December 1995; (2) ensure that certain Guatemalans and Salvadorans will have their suspension of deportation claims decided under the older, more lenient standards; (3) retroactively apply the tougher standards of the new law to the suspension claims of all *non*-Central Americans; and (4) eliminate the unskilled workers category, but clear out the pipeline by grandfathering all individuals with approved visa petitions (about 70-75,000 individuals, representing seven years' worth of immigration by unskilled workers).

The Senate is also preparing a bill granting amnesty to Nicaraguans and protecting Guatemalans and Salvadorans from retroactive application of the new law's tough standards, but probably extending this protection to certain *non*-Central Americans (contra #3, above). This extension would comport with the Administration's proposal. Two other aspects of the legislation are uncertain. First, it is unclear what the Senate will do with respect to the unskilled workers category. Chairman Abraham opposes reducing legal immigration, especially as a tradeoff for protecting illegal immigrants. But he knows that Lamar Smith will support a deal only if it includes this provision, and he therefore may consider a "moratorium" on the category, attached to a broad grandfathering provision (perhaps even broader than we expect from the House). Second, the Senate may decide to provide protection for certain Haitians who are not protected under either the House bill or our own proposal. The CBC is pressing strongly for such protection.

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The DPC has begun an interagency process to consider questions relating to the unskilled workers category and protection for Haitians. In preliminary discussions, both INS and State have indicated support for a moratorium on, rather than elimination of, the unskilled workers category and for a strong grandfathering provision. White House offices are more divided on these questions, with DPC favoring a restrictive approach in line with your comments last week. All interested agencies and White House offices seem favorably inclined to assist certain Haitians, who entered the country under circumstances similar to those of the Central Americans. We will provide you with more information on agency and White House views next week.

**9. Drugs -- Crack Cocaine:** Notwithstanding determined efforts, the Administration's crack cocaine working group (including Justice, ONDCP, and DPC) failed to gain any serious Congressional support for our proposed sentencing revision. No Republican would agree to support a reduction in the current sentencing disparity that involved lowering crack penalties. And in the absence of Republican support, Senators Biden and Kennedy advised us strongly not to press our proposal. The working group is now developing a long-term political, outreach, and communications strategy to take us through next year. Kennedy and Biden recommend preparing a defensive strategy, on the assumption that the Republicans will advance a proposal next session to reduce the sentencing disparity solely by raising powder penalties.

**10. Drugs -- ONDCP Reauthorization:** This week, the House passed by voice vote a two-year reauthorization bill for ONDCP. The Drug Office has numerous concerns with the House bill. Perhaps most troublesome, the bill contains wholly unrealistic numerical targets for drug use reduction within four years. While the Administration took a position opposing the bill, our SAP did not threaten a veto. Senators Biden and Hatch have reached agreement on a much better bill that reauthorizes the Drug Office for seven years and does not include numerical targets. The Senate may take up this bill next week, and both DPC and ONDCP are staying in close touch with Biden's office. Meanwhile DPC and OMB are reviewing ONDCP's own proposed performance standards, which set 10-year targets for reduced drug use. The crime bill required ONDCP to develop such performance measures, which we intend to publish in next year's budget and annual drug strategy document.

**11. Race -- Hate Crimes Conference and Legislation:** In preparation for the November 10th White House Conference on Hate Crimes, DPC has worked with the Justice Department to develop a number of policy announcements. We will give you a memorandum closer to the date of the Conference detailing each of these policy announcements, which mostly focus on improving enforcement of hate crimes laws. The most notable proposal is to endorse an expansion of the federal hate crimes statute to include gender, sexual orientation, and disability. (The law now covers only race, nationality, and religion.) Sen. Kennedy has told us that he will introduce legislation of this kind shortly before or on the day of the Conference.

THE PRESIDENT HAS SEEN  
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There is some dispute within the Justice Department as to the details of the proposed legislation. In particular, various DOJ offices disagree as to whether the statute should require a specific showing of animus for bias crimes involving gender, sexual orientation, and disability. (The current law has no such requirement for bias crimes involving race, nationality, and religion.) The prosecuting offices of the Justice Department argue that without this provision, the statute will cover most gender-related offenses, including all rapes -- and that reviewing all these offenses and selecting the ones most appropriate for federal prosecution will involve a substantial expenditure of resources. The civil rights office of DOJ -- as well as all the advocacy groups -- argue against an added animus requirement on the ground that it would create two classes of hate crimes, one (for gender, sexual orientation, and disability) more difficult to prove than the other (for race, nationality, and religion).

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Senator Kennedy's legislation will not have an animus requirement, and the Attorney General seems to favor this approach as well. Their view is that no such requirement is needed to enable prosecutors to review all covered offenses and make decisions about what cases to prosecute, without substantial additional resources. We will continue to work with DOJ on this issue and make a formal recommendation to you within the next week or two.

**12. Race -- Staff Diversity:** We have just hired Julie Fernandes, an African American lawyer now working at the Justice Department's Office of Legal Counsel, as a new special assistant to work on the race initiative, civil rights matters, and immigration policy. With Julie's addition, over 25 percent of the staff of the Domestic Policy Council are members of minority groups (African American, Hispanic, Asian American, and Native American), and almost 70 percent of the staff are women. We are continuing to seek a diverse staff, and we believe that both of these percentages will increase as we fill three open slots over the next few weeks.

**13. Welfare -- Letter to College Presidents:** At our request, Secretaries Riley and Shalala sent a letter to all college presidents last month explaining how the welfare law affects college students on welfare. The letter encourages colleges to work with states to provide work opportunities that allow students to stay in school. In particular, the letter explains that work-study qualifies as work from our perspective, although the final decision rests with states. The two departments indicated their willingness to work with colleges that have questions or concerns about the impact of the law.

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THE WHITE HOUSE  
WASHINGTON

THE PRESIDENT HAS SEEN  
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October 10, 1997

MEMORANDUM FOR THE PRESIDENT

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FROM: Bruce Reed  
Elena Kagan

SUBJECT: DPC Weekly Report

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**1. Education -- Charter Schools Bill:** Ten Democrats and fourteen Republicans on the House Education Committee voted on Thursday to approve amendments to the Charter Schools Program. The bill would provide incentives to states that allow the number of charter schools to increase, give charter schools significant autonomy, and periodically review charter schools to ensure that academic performance requirements are met. The bill also incorporates your goal of increasing the number of charter schools to 3,000 by the year 2000. Prior to committee action, the DPC and Department of Education worked with members to make substantial improvements in the bill. We believe you should endorse the bill shortly after you return from South America, as one of a series of events to counterattack the Republicans' Education Week October 20-24. *JK*

The Education Department is also preparing to release a study that week showing that students who take 8th grade algebra and advanced math classes are much more likely to go to college -- another good argument for our 8th grade math test.

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**2. Education -- National Tests:** As the Labor/HHS conference proceeds, Reps. Obey, Porter and a number of others have begun to float possible compromises on the national tests. Each of the proposals presumes that we receive the funds and authority to develop the tests under NAGB's control. They differ primarily with respect to the circumstances under which test implementation would be permitted to proceed. Specific proposals -- none of them very attractive -- include (1) requiring specific Congressional authorization before implementation; (2) requiring a majority of states to sign up before implementation could begin; and (3) making test implementation an allowable state and local use of Chapter II funds, but providing no specific funding for initial implementation. A more promising possible compromise would give us an authorization and funding for our test, but also provide new funding to statistically link tests already used by states and local school districts to the NAEP performance standards so that states could continue to administer existing tests and provide students with a statistically-derived score on the national test as well.

Goodling and Ashcroft publicly are hardening their opposition to the tests. Ashcroft has announced that he now has 35 Republican Senators lined up in opposition to the tests (though he has not produced a list of them), up from the 27 he named a week ago. Both Goodling and

Ashcroft have sent Secretary Riley a series of letters continuing to criticize steps the Education Department had taken prior to its temporary halt on test development.

In addition, Goodling announced at Thursday's scheduled mark-up on America Reads that he was postponing action on the bill until we reversed our position on national testing. In reality, Goodling is under strong pressure from the right wing on his committee not to advance a reading bill that reflects our priorities. Consequently, Goodling is now in the position of blocking two key steps to improve early reading -- higher standards and tests and a reading program that helps families, schools and volunteers help kids learn to read.

On Wednesday, John Doerr, Jim Barksdale and 4 additional high-tech CEO's met with Gingrich, Lott, Goodling, and a number of other Republicans in both houses to urge them to support the tests. Feedback from their meetings as well meetings Legislative Affairs has had suggest that both Lott and Gingrich are urging that a compromise be found.

**3. Welfare -- Exempting Workfare from FICA Taxes:** Rep. Shaw appears to have abandoned his effort to exempt workforce from the FLSA, and come around to our view that we should only address FICA and FUTA taxes. We have expressed support for a new proposal he introduced this week to exempt workfare participants from FICA and FUTA. Unlike Shaw's earlier proposals, this one applies only to employment taxes: it does not exempt workfare participants from minimum wage, health and safety, antidiscrimination, and other worker protection laws; neither does it undermine the welfare law's work requirements. Governors strongly support the legislation, though many think it does not go far enough; unions will not actively oppose it. The Department of Labor has some concern that employers will try to interpret the FICA/FUTA exemption to cover not only participants in traditional workfare programs, but also recipients of subsidized private sector jobs. DPC and the Department agree, however, that we can address this potential problem through regulation. It is unclear what vehicle Shaw will use to move his legislation. He tried to add the proposal to a tax technicals bill in the Ways and Means Committee on Thursday, but had to withdraw it as non-germane before a vote could be taken.

**4. Welfare -- Senator Murray's Proposal:** As you may know, Senator Murray has long advocated a proposal that would wholly exclude individuals with a history of domestic violence from the welfare work requirements and time limits. Currently, states can exempt these women from work requirements and time limits, but still must put 30 percent of their overall caseload to work and move 80 percent off of welfare after 5 years. Under Senator Murray's approach, if 10 percent of the caseload were granted domestic violence waivers, then only 20 percent of the total caseload would have to work and only 70 percent would be subject to the time limit. This proposal has passed the Senate several times -- most recently as part of the Labor-HHS appropriations bill -- but has always been dropped in Conference. Murray now is lobbying the Administration to make a push for the amendment.

DPC and HHS have told Murray that we have serious concerns with her approach and have suggested some alternative language. (We also have made clear that irrespective of any legislation, we are intending to address this issue in regulations.) We believe that adoption of the Murray proposal would (1) give states a way to "game" the work rates and time limits by handing out waivers to people whether they need them or not, and (2) encourage states to ignore these women, rather than giving them the services, supports, and work opportunities that will help them become self-sufficient. Our preferred approach is for HHS to excuse states from penalties for failing to meet work rates if the states show (1) that their failure is attributable to granting temporary waivers to victims of domestic violence and (2) that they have provided these women with needed services. We believe that this approach will both limit states' ability to game the system and ensure that states provide needed services to victims of domestic violence.

**5. Welfare -- California Caseload Numbers:** New data from California show that caseloads there have begun to drop steeply. In 1993 and 1994, the welfare rolls rose in the State; in 1995 and 1996, the caseloads fell, but only by 2 percent and 7 percent respectively. The rate of decline this year has nearly doubled from last, with caseloads dropping 7 percent in only seven months. The LA Times carried an article on Thursday noting this caseload "plummet." Twenty two percent of the nation's welfare recipients live in California.

**6. Welfare -- Studies on Welfare Reform:** We have received some preliminary data from two studies tracking individuals who left the welfare rolls in Massachusetts and Maryland. The Massachusetts study found that six months after going off welfare, about 50 percent of these people were working; about 30 percent had other means of support or had left the state; 9 percent had children who had grown too old to qualify; and 6 percent were in the process of reapplying for welfare. The average wage of former recipients was \$6.72 per hour, with the majority of those employed working in the clerical, sales, health care, and service industries. The Maryland study similarly found that 54 percent of former recipients were working within three months of leaving the rolls and that four-fifths were still off the rolls after six months. The study did not account for the remaining recipients, but plans to do so in a follow-up report to be released next year. The study found that welfare recipients with younger children were more likely to return to the rolls. It found no increase in foster care caseloads as a result of welfare reform.

**7. Welfare -- Review of SSA's Children's Disability Determination Process:** In a meeting with you last month, disability advocates expressed concern about the process for redetermining the eligibility of 288,000 children for SSI benefits under the new childhood disability standard. At that meeting, you stated that you had asked SSA to send you a report on its process in 30 days. While that meeting was going on, Ken Apfel was testifying at his confirmation hearing that he would begin a "top-to-bottom" 30-day review of the process as soon as he was confirmed. He was confirmed a few weeks later. SSA has requested that, instead of having two overlapping 30-day reviews, we have a single 30-day review beginning from the date of Apfel's confirmation. Advocates appear to be comfortable with this revised timetable, and we have approved it.

**8. Adoption -- Senate Legislation:** A bipartisan group of Senators led by Rockefeller and Chafee and including Craig, Jeffords, Dewine, Bond, Coats, Levin and Landrieu have announced agreement on child welfare legislation called the Promotion of Adoption, Safety and Support for Abused and Neglected Children Act (PASS). As you know, the House passed a child welfare bill last spring, but Senate action had been stalled. Like the House bill, PASS incorporates many provisions of your Adoption 2002 proposal. It also includes other measures that we support, including judicial reforms and reauthorization of the Family Preservation and Support Act. The Senate bill, however, also contains a provision that we do not like to "delink" federal adoption assistance from means-tested programs (effectively providing such assistance regardless of income). We do not believe this provision will increase the number of adoptions; in addition, it costs \$2.4 billion and is paid for with an offset that the Administration had hoped to use for other priorities (such as child care). We therefore are working with HHS, OMB, and the First Lady's Office to develop a less expensive and more sensible proposal that Chafee and Rockefeller might accept.

*This is a Rockefeller*

**9. Health Care -- Surgeon General Confirmation:** The Senate Labor and Human Resources Committee held its confirmation hearing for Dr. David Satcher this Wednesday. The hearing went extremely well, and Senators on both sides of the aisle praised Dr. Satcher. Few controversial issues were raised. He was not questioned on many of the high profile issues we were expecting, including needle exchange and AIDS research in Africa. It appears likely that the full Senate vote on Dr. Satcher's confirmation will take place as early as the week of October 20.

**10. Health Care -- Kassebaum-Kennedy Implementation:** As you know, there was a story in *The New York Times* last Sunday that reported that some insurers are giving agents incentives to not enroll high-risk populations. Such actions are completely inconsistent with the spirit of the Kassebaum-Kennedy law. We are meeting with HCFA, the agency responsible for administering this provision of the new law, to review all of the Federal and State statutory authority to stop such practices. We will keep you apprised as we move forward.

DPC - weekly report

THE WHITE HOUSE  
WASHINGTON

October 10, 1997

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed  
Elena Kagan

SUBJECT: DPC Weekly Report

**1. Education -- Charter Schools Bill:** Ten Democrats and fourteen Republicans on the House Education Committee voted on Thursday to approve amendments to the Charter Schools Program. The bill would provide incentives to states that allow the number of charter schools to increase, give charter schools significant autonomy, and periodically review charter schools to ensure that academic performance requirements are met. The bill also incorporates your goal of increasing the number of charter schools to 3,000 by the year 2000. Prior to committee action, the DPC and Department of Education worked with members to make substantial improvements in the bill. We believe you should endorse the bill shortly after you return from South America, as one of a series of events to counterattack the Republicans' Education Week October 20-24. The Education Department is also preparing to release a study that week showing that students who take 8th grade algebra and advanced math classes are much more likely to go to college -- another good argument for our 8th grade math test.

**2. Education -- National Tests:** As the Labor/HHS conference proceeds, Reps. Obey, Porter and a number of others have begun to float possible compromises on the national tests. Each of the proposals presumes that we receive the funds and authority to develop the tests under NAGB's control. They differ primarily with respect to the circumstances under which test implementation would be permitted to proceed. Specific proposals -- none of them very attractive -- include (1) requiring specific Congressional authorization before implementation; (2) requiring a majority of states to sign up before implementation could begin; and (3) making test implementation an allowable state and local use of Chapter II funds, but providing no specific funding for initial implementation. A more promising possible compromise would give us an authorization and funding for our test, but also provide new funding to statistically link tests already used by states and local school districts to the NAEP performance standards so that states could continue to administer existing tests and provide students with a statistically-derived score on the national test as well.

Goodling and Ashcroft publicly are hardening their opposition to the tests. Ashcroft has announced that he now has 35 Republican Senators lined up in opposition to the tests (though he has not produced a list of them), up from the 27 he named a week ago. Both Goodling and

Ashcroft have sent Secretary Riley a series of letters continuing to criticize steps the Education Department had taken prior to its temporary halt on test development.

In addition, Goodling announced at Thursday's scheduled mark-up on America Reads that he was postponing action on the bill until we reversed our position on national testing. In reality, Goodling is under strong pressure from the right wing on his committee not to advance a reading bill that reflects our priorities. Consequently, Goodling is now in the position of blocking two key steps to improve early reading -- higher standards and tests and a reading program that helps families, schools and volunteers help kids learn to read.

On Wednesday, John Doerr, Jim Barksdale and 4 additional high-tech CEO's met with Gingrich, Lott, Goodling, and a number of other Republicans in both houses to urge them to support the tests. Feedback from their meetings as well meetings Legislative Affairs has had suggest that both Lott and Gingrich are urging that a compromise be found.

**3. Welfare -- Exempting Workfare from FICA Taxes:** Rep. Shaw appears to have abandoned his effort to exempt workforce from the FLSA, and come around to our view that we should only address FICA and FUTA taxes. We have expressed support for a new proposal he introduced this week to exempt workfare participants from FICA and FUTA. Unlike Shaw's earlier proposals, this one applies only to employment taxes: it does not exempt workfare participants from minimum wage, health and safety, antidiscrimination, and other worker protection laws; neither does it undermine the welfare law's work requirements. Governors strongly support the legislation, though many think it does not go far enough; unions will not actively oppose it. The Department of Labor has some concern that employers will try to interpret the FICA/FUTA exemption to cover not only participants in traditional workfare programs, but also recipients of subsidized private sector jobs. DPC and the Department agree, however, that we can address this potential problem through regulation. It is unclear what vehicle Shaw will use to move his legislation. He tried to add the proposal to a tax technicals bill in the Ways and Means Committee on Thursday, but had to withdraw it as non-germane before a vote could be taken.

**4. Welfare -- Senator Murray's Proposal:** As you may know, Senator Murray has long advocated a proposal that would wholly exclude individuals with a history of domestic violence from the welfare work requirements and time limits. Currently, states can exempt these women from work requirements and time limits, but still must put 30 percent of their overall caseload to work and move 80 percent off of welfare after 5 years. Under Senator Murray's approach, if 10 percent of the caseload were granted domestic violence waivers, then only 20 percent of the total caseload would have to work and only 70 percent would be subject to the time limit. This proposal has passed the Senate several times -- most recently as part of the Labor-HHS appropriations bill -- but has always been dropped in Conference. Murray now is lobbying the Administration to make a push for the amendment.

DPC and HHS have told Murray that we have serious concerns with her approach and have suggested some alternative language. (We also have made clear that irrespective of any legislation, we are intending to address this issue in regulations.) We believe that adoption of the Murray proposal would (1) give states a way to "game" the work rates and time limits by handing out waivers to people whether they need them or not, and (2) encourage states to ignore these women, rather than giving them the services, supports, and work opportunities that will help them become self-sufficient. Our preferred approach is for HHS to excuse states from penalties for failing to meet work rates if the states show (1) that their failure is attributable to granting temporary waivers to victims of domestic violence and (2) that they have provided these women with needed services. We believe that this approach will both limit states' ability to game the system and ensure that states provide needed services to victims of domestic violence.

**5. Welfare -- California Caseload Numbers:** New data from California show that caseloads there have begun to drop steeply. In 1993 and 1994, the welfare rolls rose in the State; in 1995 and 1996, the caseloads fell, but only by 2 percent and 7 percent respectively. The rate of decline this year has nearly doubled from last, with caseloads dropping 7 percent in only seven months. The LA Times carried an article on Thursday noting this caseload "plummet." Twenty two percent of the nation's welfare recipients live in California.

**6. Welfare -- Studies on Welfare Reform:** We have received some preliminary data from two studies tracking individuals who left the welfare rolls in Massachusetts and Maryland. The Massachusetts study found that six months after going off welfare, about 50 percent of these people were working; about 30 percent had other means of support or had left the state; 9 percent had children who had grown too old to qualify; and 6 percent were in the process of reapplying for welfare. The average wage of former recipients was \$6.72 per hour, with the majority of those employed working in the clerical, sales, health care, and service industries. The Maryland study similarly found that 54 percent of former recipients were working within three months of leaving the rolls and that four-fifths were still off the rolls after six months. The study did not account for the remaining recipients, but plans to do so in a follow-up report to be released next year. The study found that welfare recipients with younger children were more likely to return to the rolls. It found no increase in foster care caseloads as a result of welfare reform.

**7. Welfare -- Review of SSA's Children's Disability Determination Process:** In a meeting with you last month, disability advocates expressed concern about the process for redetermining the eligibility of 288,000 children for SSI benefits under the new childhood disability standard. At that meeting, you stated that you had asked SSA to send you a report on its process in 30 days. While that meeting was going on, Ken Apfel was testifying at his confirmation hearing that he would begin a "top-to-bottom" 30-day review of the process as soon as he was confirmed. He was confirmed a few weeks later. SSA has requested that, instead of having two overlapping 30-day reviews, we have a single 30-day review beginning from the date of Apfel's confirmation. Advocates appear to be comfortable with this revised timetable, and we have approved it.

**8. Adoption -- Senate Legislation:** A bipartisan group of Senators led by Rockefeller and Chafee and including Craig, Jeffords, Dewine, Bond, Coats, Levin and Landrieu have announced agreement on child welfare legislation called the Promotion of Adoption, Safety and Support for Abused and Neglected Children Act (PASS). As you know, the House passed a child welfare bill last spring, but Senate action had been stalled. Like the House bill, PASS incorporates many provisions of your Adoption 2002 proposal. It also includes other measures that we support, including judicial reforms and reauthorization of the Family Preservation and Support Act. The Senate bill, however, also contains a provision that we do not like to “delink” federal adoption assistance from means-tested programs (effectively providing such assistance regardless of income). We do not believe this provision will increase the number of adoptions; in addition, it costs \$2.4 billion and is paid for with an offset that the Administration had hoped to use for other priorities (such as child care). We therefore are working with HHS, OMB, and the First Lady’s Office to develop a less expensive and more sensible proposal that Chafee and Rockefeller might accept.

**9. Health Care -- Surgeon General Confirmation:** The Senate Labor and Human Resources Committee held its confirmation hearing for Dr. David Satcher this Wednesday. The hearing went extremely well, and Senators on both sides of the aisle praised Dr. Satcher. Few controversial issues were raised. He was not questioned on many of the high profile issues we were expecting, including needle exchange and AIDS research in Africa. It appears likely that the full Senate vote on Dr. Satcher’s confirmation will take place as early as the week of October 20.

**10. Health Care -- Kassebaum-Kennedy Implementation:** As you know, there was a story in *The New York Times* last Sunday that reported that some insurers are giving agents incentives to not enroll high-risk populations. Such actions are completely inconsistent with the spirit of the Kassebaum-Kennedy law. We are meeting with HCFA, the agency responsible for administering this provision of the new law, to review all of the Federal and State statutory authority to stop such practices. We will keep you apprised as we move forward.

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DPC Weekly report

'97 SEP 27 PM 1:55

THE WHITE HOUSE  
WASHINGTON

THE PRESIDENT HAS SEEN  
9-29-97

September 26, 1997

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed  
Elena Kagan

SUBJECT: DPC Weekly Report

**1. Food Safety -- Initiative on Imported Fruits and Vegetables:** We developed and leaked a food safety initiative last week to preempt expected criticism (including a major article by Jeff Gerth of the New York Times) that fast track legislation would endanger the nation's food supply by increasing imports of fruits and vegetables. The initiative: (1) calls for legislation authorizing the Food and Drug Administration (FDA) to halt imports of fruits, vegetables, or other food from any foreign country whose food safety systems and standards are not on par with those of the United States (the USDA currently has this authority over meat and poultry); (2) commits to seeking sufficient funds in Fiscal Year 1999 to enable the FDA to create a significant international inspection force; and (3) directs the FDA to issue guidance on good agricultural and manufacturing practices for fruits and vegetables, dealing with such matters as sanitation, worker health, and water use. We are still considering whether to add to this package a legislative proposal requiring "country of origin" labeling on produce, meat, and other food products. We like this proposal as a matter of policy, but do not yet know whether it would help or hurt the effort to enact fast track legislation.

**2. Education -- National Testing -- Test Development:** The group working on test specifications completed its work almost two weeks ago and included a controversial proposal to permit students to use calculators while taking the math test. Diane Ravitch, Checker Finn, Bill Bennett, and their Congressional allies reacted negatively both to the content of this proposal and to the continuation of any work on test development under the Department of Education's auspices. At our urging, Secretary Riley issued a statement opposing the calculator proposal, lauding the Senate-approved plan for placing NAGB in charge of the tests, and announcing that the test contractor would not develop any test items until NAGB approves the test specifications. This move reassured our Republican supporters that we will not proceed independently of NAGB. Bill Goodling, however, denounced Riley's statement, alleging that NAGB would become a "national school board" and vowing to continue his fight against the tests.

**3. Education -- National Testing -- Filibuster Threats:** On Thursday, Sen. Ashcroft released a letter signed by 27 Republican Senators expressing opposition to the tests, urging the conferees to support the Goodling amendment, and threatening to filibuster the Labor-HHS appropriations bill if the conference report includes support for the testing initiative. Fourteen of the signatories had voted in favor of the Senate-passed compromise testing plan, but switched



✓ **7. Immigration -- Commission Report:** The U.S. Commission on Immigration Reform will release its final report to Congress on Tuesday. The final report reiterates many of the recommendations made in interim reports during the Commission's six-year tenure. The report also contains two new recommendations: (1) a "structural reform" proposal to divide all functions now performed by the Immigration and Naturalization Service (INS) among a new bureau at the Department of Justice, a new undersecretaryship at the Department of State, and the Employment Standards Administration at the Department of Labor; and (2) an "Americanization and integration" proposal to help new immigrants become full participants in our national community. The DPC has begun a process (involving NPR, OMB, the Counsel's Office, and the interested agencies) to review the Commission's proposal to restructure the immigration system. As might be expected, the Justice Department (and particularly the INS) is quite anxious about this review process. In addition, DPC staff will work with the staff of the Race Commission to review the Commission's Americanization proposal.

✓ **8. Immigration -- Expiration of Law:** Section 245(i) of the Immigration and Nationality Act, which permits certain illegal immigrants to file here for legal status instead of at U.S. consulates abroad, is set to expire on Tuesday. Congress will consider a three-week extension of the provision on Monday as part of the continuing resolution. The current Senate version of the Commerce-Justice appropriations bill contains an open-ended extension of the provision, as requested by the Administration, but the current House version does not contain any extension at all. As you know, the provision mainly benefits those already on track for legal residency who overstay their visas while their residency applications are pending. If the provision expires, thousands of immigrants will have to choose between remaining in the U.S. illegally or leaving the country, probably for several years, until they can obtain green cards at consulates abroad.

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✓ **10. Tobacco -- Congressional Meeting:** You will host a meeting on tobacco with the bipartisan congressional leadership on Wednesday. We think you should challenge them to work together to draft bipartisan legislation by the end of the year and to make tobacco the first issue they take up in 1998. We believe the prospects are good for a bipartisan bill to emerge in the Senate. Two days after your meeting, the Vice President will hold a tobacco event in Tampa to highlight Florida's success in taking on the tobacco industry and to build public support for tobacco legislation. We are working with the Vice President's office to plan a series of regional town halls on tobacco in the months to come.

✓ **11. Welfare Reform -- Fair Labor Standards Act:** Rep. Clay Shaw is continuing his effort to draft a bill that will address state concerns about the cost of workfare programs. His first draft was attractive to several Democratic Governors (including Carper and Chiles), but not

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9-29-97

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DPC - weekly report

'97 SEP 27 09:55

THE WHITE HOUSE  
WASHINGTON

THE PRESIDENT HAS SEEN  
9-29-97

September 26, 1997

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed  
Elena Kagan

SUBJECT: DPC Weekly Report

*Laura -  
Please check with the  
Staff Secretary to see if  
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is cut off. When you have a  
good copy, please give it to Mike,  
Maria E, Chuck Ruff, Rob Weiner.  
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Rep. & Sen.  
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DPC staff*

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THE PRESIDENT HAS SEEN

9-29-97

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'97 SEP 21 PM2:18

THE WHITE HOUSE  
WASHINGTONTHE PRESIDENT HAS SEEN  
9-24-97

September 19, 1997

## MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed  
Elena KaganSUBJECT: DPC Weekly Reportcopied  
Kagan  
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**1. Education -- Labor-HHS-Ed Appropriations:** The Labor-HHS-Ed appropriations conferees are expected to meet next week. In addition to securing adequate funding for your priorities, we are working to make sure that the final bill rejects block granting and provides the funds and authority to proceed with national testing. We believe it will be relatively easy to remove the block grant provision from the Senate bill, given the failure of a similar amendment in the House to generate support. To win on our testing initiative, we must cast the House vote on the Goodling Amendment as yet another indication of the Republican Party's indifference to improving public education. Your radio address and charter schools event on Saturday were key steps in that strategy; we are now developing additional events involving the Vice President, Secretary Riley, and others. We are also urging business leaders and opinion leaders (e.g., Checker Finn and Diane Ravitch) to help make the case for the national tests as authorized by the Senate (i.e., with NAGB as overseer). Finally, we are continuing to look for ways to reduce the opposition of the Black and Hispanic Caucuses, either through adjustments to the testing proposal or agreements on other issues, such as school construction.

**2. Education -- Vouchers:** The District of Columbia Appropriations bill, as passed by a House subcommittee last week, includes a provision authorizing funds for private school tuition vouchers. (The bill would provide vouchers worth \$3,500 to about 2,000 parents.) We sent a SAP to Congress last week saying that senior advisors would recommend a veto if the bill comes to you with this provision. Republican supporters of the voucher proposal may make use of a new Harvard University study of Cleveland's voucher program. The study, which received significant press attention last week, found high levels of student achievement and parental satisfaction among those receiving vouchers. The Education Department argued, in response to press inquiries, that (1) the study examined students in only two of the forty-one schools participating in Cleveland's voucher program, and (2) the Administration's basic case against voucher programs rests on the harm they do to children who do not use vouchers and remain in public schools. Later in the year, the Ohio Department of Education will release the results of a state-commissioned evaluation of the Cleveland voucher program, which will cover all participating schools. We do not know what this study will show.

**3. Education -- Proposition 209 and Hopwood:** A University of California Task Force charged with examining declines in minority enrollment in the wake of Proposition 209 has

recommended dropping the SAT as an admission requirement. The group based its recommendation on projections that continued use of the test would cause Hispanic enrollment to decline by as much as 70% at the system's flagship campuses, and lead to similar declines in African-American enrollment. Governor Wilson denounced the Task Force's recommendation, which probably will not be voted on until the spring. Earlier this year, Texas responded to the Hopwood decision by taking action similar to the UC Task Force's recommendation. A new law, signed by Governor Bush, requires automatic admission of students in the top 10% of their high school classes to the state university of their choice; these students need not provide any standardized test scores.

Our efforts to develop policy responding to Proposition 209 and Hopwood have focused not on changing university admissions standards (we do not think the federal government usefully can do much in this area), but on getting universities to partner with high schools and middle schools in economically deprived areas to provide mentoring and academic support. (The University of California Task Force also has recommended establishing such mentoring programs.) Our efforts in this direction seemed to us to dovetail with NEC's work on the Chaka Fattah proposal, and we are now encouraging NEC to make this partnering initiative a significant part of the revised Fattah proposal.

**4. Health -- Children's Health Implementation:** The DPC is pushing HHS to move quickly to disseminate information and guidance to states regarding implementation of the new children's health initiative. In the past two weeks, the Department has published state funding allotments and has issued a document showing what information states will have to supply in their applications for funding. In addition, HHS has given detailed briefings on the program to the NGA, members of Congress, and interest groups. But much more needs to be done. We are working to distribute additional materials to the states, providers, consumers, and other interested parties in October -- the first month the program goes into full effect. In addition, we are developing events for you and/or the First Lady to highlight the program and provide information about it.

**5. Health -- FDA Reform:** After months of delay, the Senate is scheduled to pass an FDA reform bill next week. At the same time, the House version of the bill will come before the full Commerce Committee. There is great interest in enacting an FDA reform bill this year because failure to do so will result in the expiration of the Prescription Drug User Fee Act (PDUFA), which has significantly expedited the FDA's review of new drugs. The Administration has two principal concerns about the Senate version of the bill. First, the bill would prevent user fees from going into effect unless the FDA receives "full funding" -- a triggering mechanism that may interfere with the Administration's future budget decisions. Second, the bill would preclude the FDA from reviewing new medical devices for uses other than the manufacturer's intended use. We believe these issues can be resolved prior to the bill coming to you for signature.

**6. Health -- AZT Trials:** An editorial in *The New England Journal of Medicine* this week criticized U.S.-funded clinical trials designed to discover ways to reduce maternal-infant transmission of HIV in developing countries. The article, which received significant press coverage, compared the trials to the Tuskegee syphilis test because some participants in the trials receive placebos, while others receive a drug with proven benefits (AZT). HHS officials (including Drs. Varmas and Satcher) believe that the criticism is misguided, as does Dr. Harold Shapiro, the Chair of the National Bioethics Advisory Commission, and many other well-respected ethicists and scientists. In addition, international experts convened by the World Health Organization -- and ethical review boards in each of the countries in which the studies are occurring -- have determined that the studies are scientifically well-founded, ethical, and essential to the fight against AIDS. The studies are designed to find effective AZT treatments that are simple and affordable enough to use in developing countries, given poor economies and low standards of public health care. Giving placebos to some participants -- which is equivalent to the local standard of care -- is necessary to obtain reliable and timely information about these experimental AZT regimens.

**7. Health -- Dr. Satcher:** Your nomination of Dr. Satcher to be Surgeon General has been well received. Dr. Satcher made many successful courtesy visits on the Hill last week. Many members, including Senators Frist and Jeffords, issued supportive statements. Most important, Senator Lott said that he saw no reason why Dr. Satcher should not be confirmed. We will continue to seek endorsements from members and advocacy organizations. We are hopeful that the confirmation hearings will begin in the next couple of weeks.

**8. Welfare -- Fair Labor Standards Act:** In the wake of Speaker Gingrich's pledge to fix what he called the Administration's effort "to undermine and destroy welfare reform" by applying the minimum wage and other labor protections to workfare participants, Rep. Clay Shaw is trying to garner bipartisan support for a bill to address state concerns about the cost of work programs. Shaw's latest version (1) provides an exemption from FICA and FUTA that seems to cover not only workfare participants, but other working welfare recipients, including those in subsidized private sector jobs; (2) contains a set of definitions that could be read to suggest that working welfare recipients are not regular employees for purposes of other labor laws (although Shaw insists that this is not his intent); and (3) limits required work hours -- again, apparently for all working welfare recipients, not just workfare participants -- to the sum of the welfare grant and food stamps, less any child support collected by the state, divided by the minimum wage.

Although this draft legislation appeals to a bipartisan group of governors (Governors Carper and Chiles like it), it is not attracting much support in the House. Blue Dog Democrats are criticizing the draft on the ground that it significantly weakens work requirements; in low-benefit states, the bill would result in welfare recipients working less than 20 hours each week, with the remaining hours spent in activities such as job search. Liberal democrats (and unions) are criticizing the draft on the ground that it weakens labor protections for welfare recipients. And the Republican leadership is criticizing the draft on the ground that it does not sufficiently

weaken labor protections for welfare recipients. Given this criticism, Shaw may well go back to the drawing board.

**9. Welfare -- Privatization of Food Stamps and Medicaid:** The Department of Agriculture has received a waiver request from Arizona to privatize food stamp and Medicaid operations in Eastern Maricopa County (representing 13% of the state's caseload). Under the welfare law, USDA must act on a request to privatize food stamp operations -- either by approving it, denying it, or seeking additional information -- within 60 days. This 60-day clock will run on October 3. Even apart from broader concerns about privatization, Arizona's demonstration proposal suffers from a serious defect: because the state wants to test many aspects of the social service system in Maricopa county (essentially creating a mini-replica of Wisconsin Works), it will be very difficult to isolate the effects of privatization on social service delivery. At a meeting last week, USDA, DPC, and OMB agreed that USDA should meet the October 3 deadline by asking Arizona for further information addressing this issue. Congressional Republicans have not resurrected the privatization issue this fall, and we should not do anything to provoke them before November.

**10. Welfare -- Child Support Computer Systems:** As you know, as many as eight states (California, Michigan, Illinois, Pennsylvania, Ohio, Maryland, D.C., Nevada, and Hawaii) will not meet the October 1 deadline -- established in the 1988 Family Support Act and already extended from 1995 to 1997 -- for putting in place a statewide child support computer system. California is probably two to three years away from meeting this goal. Under current law, any state failing to meet this deadline loses both federal child support funds and TANF funds.

You recently asked whether the Administration should endorse Senator Feinstein's proposed approach to this problem: a six-month moratorium on imposing penalties on states that are not in compliance with the computer systems requirement. We and Secretary Shalala agree that supporting this proposal would signal to states that we are not serious about enforcing child support rules and might slow state progress toward completing computer systems. In addition, the Feinstein proposal does not actually accomplish anything because even under current law, states have until December 31 to inform HHS that they have failed to meet the October 1 deadline and the ensuing process for imposing penalties will take several additional months.

We do think, however, that some change in current law is necessary. Rep. Shaw has asked us to work with him on a bipartisan basis to develop legislation providing HHS with additional penalty options -- e.g., the loss of 5-15% of federal funds -- so that HHS can sanction states for noncompliance while not depriving them of all TANF and child support funds. We believe a proposal of this kind can be enacted before HHS has to withhold TANF and child support funds from any state under the current law.

**11. Welfare -- Children's SSI Terminations:** Rep. Shaw and other House Republicans held a press conference last Wednesday to rebut claims by advocates that the children's SSI cuts are too severe. They released a new GAO report that validates SSA's new childhood disability

*we can't let this happen left's dream*  
*MS*

standard, judging it to be consistent with the welfare reform law, not overly strict, and fairly administered. They also praised a recent random sample study by SSA of 40 children whose benefits were terminated, arguing that it showed the new standard is fair. Advocates have attacked the SSA study. SSA continues to tell the press that the disability standard it adopted is consistent with congressional intent and that it is working hard to make sure the standard is administered fairly. At his confirmation hearing, Ken Apfel committed to a "top-to-bottom" review of the SSA's administration of the new standard within 30 days of his confirmation; this promise echoed the one you recently made to disability advocates. Some press stories have reported erroneously that Apfel committed to reviewing the standard itself, and not just SSA's administration of it.

**12. Crime -- Brady Law:** The Center to Prevent Handgun Violence released a study on Friday showing that the Brady Law has helped to disrupt illegal gun trafficking patterns. According to the study, states that did not require background checks for handgun purchases prior to the Brady Law became less important as source states for gun traffickers after enactment of the law. The study suggests that the few jurisdictions that have stopped doing background checks in the wake of the Supreme Court's decision may be inviting gun traffickers to locate in their communities. We issued a statement from you highlighting the study and its findings.

DPC Weekly Report

THE PRESIDENT HAS SEEN  
9-7-97

THE WHITE HOUSE  
WASHINGTON

'97 AUG 29 PM3:19

August 29, 1997

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed  
Elena Kagan

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Reed  
Kagan  
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SUBJECT: DPC Weekly Report

**1. Education -- National Testing Initiative:** A team from the White House and Department of Education worked throughout the week to refine and implement our strategy for defeating the Goodling amendment. Among the key steps taken:

Legislative

- Secretary Riley announced that we will send up legislation at the beginning of next week to put NAGB in charge of the tests. This announcement helped to solidify support in the business community; it also may help to reenlist support from Diane Ravitch and other conservative opinion leaders. Rep. Riggs told us that he would talk with Rep. Goodling about using the NAGB legislation as a basis for a compromise. We remain doubtful that Goodling wants to compromise (or that Riggs will do so without him), but we encouraged Riggs to proceed.
- Secretary Riley made calls to key members in both houses in an effort to shore up our support and explore avenues for compromise. Many similar staff-level conversations have also taken place.
- Reps. George Miller, Bill Clay, and Matthew Martinez are sending a "Dear Colleague" letter in support of the tests and in opposition to the Goodling amendment.

Outreach

- Supporters in the education and business community have stepped up their efforts to contact key members of Congress; a number have also submitted op-eds in support of the tests.
- OPL and DPC have set up meetings with African-American and Hispanic groups in an effort to address their concerns.
- We have enlisted the support of mayors and governors from participating cities

and states.

### Communications

- Your radio address will discuss the importance of national standards and note the threat your initiative faces in Congress.
- Secretary Riley will participate in an event in Philadelphia on Tuesday with Mayor Rendell and Superintendent Hornbeck to highlight impressive test score gains over the last two years -- including gains among LEP students on tests in English.
- The Vice President will do an event on the testing initiative on Thursday and will enlist the support of business leaders in a conference call on Wednesday.

**2. Food Safety:** As you know from yesterday's daily, Secretary Glickman held a press conference today to announce new proposed legislation to give USDA enhanced authority to enforce food safety laws. To emphasize the coordinated nature of our food safety policies, the Secretary also announced that the FDA would seek similar enforcement authority. Both pieces of legislation will go to Congress next week.

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'99 MAY 1 PM 12:45

THE WHITE HOUSE  
WASHINGTON

THE PRESIDENT HAS SEEN  
5-4-99

April 30, 1999

Copied  
Reed  
Kagan  
Podesta

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed  
Elena Kagan

SUBJECT: DPC Weekly Report

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agenda*

**1. Health Care -- Bicameral Meeting of Democrats on Medicare Reform:** Congressman Gephardt and Senator Daschle hosted a meeting on Wednesday between House Democrats (e.g., Dingell, Rangel, Stark, Waxman, Pomeroy) and moderate Senate Democrats (e.g., Breaux, Conrad, Graham, Lieberman) to discuss Medicare reform. The Senate Democrats insisted on the need for a viable reform proposal; the House Democrats objected on both political and policy grounds to most of the Senators' ideas. Although the meeting was somewhat confrontational in nature, it concluded with an agreement to work with each other and the Administration to evaluate a number of competitive models and determine whether any consensus is possible. We are encouraged by this development, but will have to find a way to ensure that participating in these discussions does not limit your own options and/or risk problematic leaks.

**2. Health Care -- Report on Importance of Medicare to Women:** The Vice President will join the Older Women's League (OWL) on Monday to release a new report showing that women disproportionately depend on the Medicare program. The report will show that three-fifths of the Medicare population at age 65 -- and two-thirds of the Medicare population at age 85 -- are women. The report also will document how much money older women spend on health care (27 percent of their income by age 85), how many chronic illnesses they face (three of four have two or more chronic conditions), and how much they rely on prescription drugs (eight of ten take prescription medications regularly, with most of the costs paid out-of-pocket). At the event, OWL will indicate its support for the approach the Administration is taking to address the challenges facing the Medicare program. In particular, the group will endorse your proposal to dedicate part of the surplus to Medicare, your commitment to provide prescription drug coverage, and your opposition to increasing the eligibility age in the absence of a policy to prevent this change from leading to a larger uninsured population.

**3. Health Care -- Asthma Initiatives:** The First Lady will visit Draper Elementary School in Washington, D.C. on Tuesday to announce a new legislative proposal to fight childhood asthma and to help launch a new asthma screening program run by the American College of Allergy, Asthma, and Immunology. The nationwide screening program will identify children with asthma and educate their parents about appropriate treatment. The

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legislation will authorize a new \$68 million initiative to: (1) invest in research to determine the causes of asthma and to develop ways of reducing children's exposure to asthma triggers; (2) assist states and providers to implement effective disease management strategies -- including school-based programs that teach children how to manage their asthma -- to reduce asthma-related hospitalizations, emergency room visits, and deaths; and (3) conduct a new public information campaign to reduce children's exposure to asthma triggers.

 4. **Health Care -- CHIP Program:** The Senate Finance Committee held a very positive hearing on Thursday to discuss the progress that HCFA has made in implementing the Children's Health Insurance Program (CHIP). Senator Roth opened the hearing by saying that the members were there to "focus on a success story." In her testimony, Nancy Ann Min DeParle noted that CHIP enrolled almost 1 million children in its first year and is on target to enroll 2.5 million children by the year 2000 -- a large step toward our goal of covering an additional 5 million children through both Medicaid and CHIP. She also said that the new toll-free number for children's health outreach (1-877-KIDS NOW), which you and the First Lady launched in February, already has received over 40,000 calls from parents interested in learning about free or low-cost health insurance options for their children. Witnesses from the Center for Budget and Policy Priorities and state Medicaid departments also praised the Administration for its implementation of the program and its record of initiating and supporting outreach efforts

5. **Drugs -- Arrestee Drug Use:** The Department of Justice's National Institute of Justice released on Thursday a report on drug use among arrestees in 1998. The study found that marijuana was the most commonly found drug in tests of male arrestees, with use particularly high among young male arrestees (aged 15 to 20): more than half of such youths tested positive for marijuana. Cocaine remained the most commonly found drug among female arrestees; although cocaine use declined slightly among male arrestees nationwide, in more than half of the sites surveyed for the study, more than one-third of adult male arrestees still tested positive for cocaine. High rates of methamphetamine use remained largely confined to Western cities, with over 20 percent of both male and female arrestees testing positive for this drug in San Diego, Las Vegas, Spokane, Sacramento, and Salt Lake City. Finally, opiate use remained stable nationwide, with nearly 70 percent of confirmed heroin users also testing positive for cocaine. While opiate use remained very low among juvenile arrestees nationwide, heroin use among these youth increased significantly in New Orleans, Philadelphia, and St. Louis.

6. **Tobacco -- FDA Rule:** As you know, the U.S. Supreme Court agreed last week to review the decision of the U.S. Court of Appeals for the Fourth Circuit striking down the FDA's tobacco rule. The Court is expected to hear arguments this fall and decide the case sometime prior to the summer of 2000. Options available to the Court include (1) agreeing with the Fourth Circuit that the FDA has no statutory authority to regulate tobacco products or advertising; (2) agreeing with the district court that the FDA has statutory authority to regulate tobacco products, but not the advertising for those products; or (3) holding that the

5-4-99

FDA has statutory authority both to regulate tobacco products and tobacco advertising. If the Court finds that the FDA has statutory authority to regulate tobacco advertising, litigation will continue in the lower courts regarding whether the advertising restrictions imposed by the FDA are consistent with the First Amendment. (No court has yet ruled on this issue, and the Supreme Court is very unlikely to address it.) While the Supreme Court considers the case, the only part of the rule that will be in effect is the requirement that retailers check photo identification of any tobacco purchaser who appears to be under the age of 27. Interestingly, however, we may begin to see some voluntary decisions to refuse tobacco advertisements: the New York Times last week became the first major newspaper to announce that it would no longer run such advertisements.

**7. Tobacco -- Recoupment Issue:** The Campaign for Tobacco Free Kids and the American Heart Association issued a report on Thursday highlighting how few states are investing tobacco settlement funds in programs to prevent youth smoking. The report found that only nine states -- California, Florida, Maryland, Massachusetts, Montana, Oregon, Virginia, Washington -- are currently using funds for this purpose. Although other states could choose to join these nine in the future, the report found that at least 25 states are not now considering any proposal to use settlement funds to reduce youth smoking. We issued a statement expressing disappointment that so few states are devoting settlement funds to youth tobacco prevention programs, and reiterating our refusal to waive federal claims to the funds without a commitment from the states to support such programs.

**8. Education - Class-Size Study:** Secretary Riley joined Senator Patty Murray and various education leaders on Thursday to announce the most recent findings of Project STAR -- the Tennessee study that has tracked the performance through high school and beyond of a group of students taught in small classes (with 15 to 18 students) in grades K-3. The study's findings show that these students had higher grade-point averages in high school, better graduation rates from high school, and a higher probability of attending college.

THE PRESIDENT HAS SEEN  
5-10-99

THE WHITE HOUSE  
WASHINGTON

99 MAY 7 PM 7:45

May 7, 1999

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Reed  
Kagan  
Podesta

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed  
Elena Kagan

SUBJECT: DPC Weekly Report

*He should  
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1. **Education -- Achieve Math Test:** Achieve, Inc. -- a nonprofit group focused on education reform -- announced Monday that it will create a new challenging 8th grade math test to improve the performance of U.S. middle school students in mathematics. Ten states -- Illinois, Indiana, Maryland, Massachusetts, Michigan, New Hampshire, North Carolina, Vermont, Washington, and Wisconsin -- already have agreed to give the test, and more states are expected to sign up in the future. The result, of course, will be exactly what you proposed (and Congress rejected): a voluntary national test in eighth grade math that will measure student performance against world-class standards. Achieve also intends to train teachers and provide lesson materials in participating states to prepare students for the test.

2. **Education -- Charter Schools:** The Department of Education released on Friday its annual charter school report, which showed continued growth of the charter school movement. (We released an accompanying statement from you praising this progress.) The report found that the number of charter schools grew by more than 50 percent in 1998 -- to about 1,100 schools in 34 states and the District of Columbia, serving a total of about 160,000 students. The report also found that charter schools tend to serve a diverse group of students and that they often have many more applicants than they can accommodate. According to the report, the primary obstacle to charter school formation remains lack of start-up funding. This finding underscores the importance of your proposed 30 percent increase in funding for this purpose in the FY 2000 budget. It also highlights the need for a new rule, proposed last week, to ensure that new charter schools receive the federal funding for which they are eligible within five months of opening. This regulation implements provisions of the Charter School Expansion Act, which you signed last year.

*\**

3. **Health Care -- Families USA Report on Medicaid Enrollment:** Families USA will release a study on Thursday stating that welfare reform is primarily responsible for the recent decline in Medicaid enrollment. The study asserts that 675,000 low-income people became uninsured as a result of welfare reform, that the majority of these people were children under 19, and that the number of uninsured people is likely to increase further as welfare reform is fully implemented. Although HHS has not seen the full study, experts in the department believe that the methodology used is problematic. They think that the study ascribes to welfare reform increases in the uninsured population actually attributable to (1) the decline of small firms that

5-10-99

offer any health insurance coverage, (2) the decrease in contributions by employers to health insurance costs (which makes health insurance less affordable), and (3) the decline in the number of people with sufficiently little income to qualify for Medicaid. Although HHS will make these points in response to the study, we expect a spate of negative press stories. We will reiterate your longstanding and strong commitment to health coverage for this population (including your insistence on maintaining the Medicaid entitlement during the debate on welfare reform), and emphasize that your proposals have given states vastly increased options to cover working families under Medicaid as well as to insure children under the new CHIP program.

**4. Crime -- Federal Gun Prosecutions:** You recently asked about the NRA's claim that the number of federal firearms prosecutions has decreased in this Administration. It is true that the Bush Administration brought a higher total number of gun cases in federal court. For the most part, however, these prosecutions involved minor offenses. The number of federal prosecutions of serious gun offenders (persons serving sentences of over 5 years) is up by nearly 30 percent in this Administration. In addition, better federal coordination with state and local law enforcement has contributed to a 25 percent increase in the number of criminals sent to prison for state and federal weapons offenses since you became President.

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Reed  
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Podesta

THE WHITE HOUSE  
WASHINGTON

4-5-99

April 3, 1999

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed  
Elena Kagan

SUBJECT: DPC Weekly Report

99 APR 5 11:11

**1. Health Care -- Democratic Patients' Bill of Rights Event:** You are scheduled to join Democratic members of Congress in Philadelphia on Friday to highlight the need for strong, enforceable patients' bill of rights legislation -- and to contrast the proposal we favor with the weak version of the bill reported out of the Senate Labor Committee just before recess. At the event, you can announce an Internet-based petition, which is intended to attract over one million signatories, in support of a strong, enforceable patients' rights bill. You also can announce the OPM "call letter" that takes the final step in requiring all participating FEHBP insurers to come into full compliance with the patients' bill of rights.

**2. Health Care -- Medicare Annual Cap on Rehabilitative Services:** You recently asked about the \$1500 annual cap on Medicare payments for outpatient physical therapy and other rehabilitative services. This cap was included in the Balanced Budget Act at Congressman Thomas's insistence; we had opposed it for fear that it would have an adverse impact on chronically ill beneficiaries. Providers and advocates are now arguing that the cap has had just such an impact, pointing to a recent study showing that almost 13 percent of Medicare beneficiaries incur significant out-of-pocket expenditures as a result of the cap. Senator Grassley has proposed legislation that would allow Medicare beneficiaries to exceed the cap if they have an illness that clearly requires additional services. This proposal, however, may prove very costly; we are scoring it now as well as reviewing alternatives.

**3. Health Care -- Medicare Toll-Free Line:** HHS instituted on Thursday a new nationwide toll-free telephone line, 1-800 MEDICARE, to help Medicare beneficiaries learn about the new health care options available to them under Medicare+Choice. Callers can talk to a customer service representative in English or Spanish to get information about the Medicare program generally and/or about particular Medicare health plans in a community.

**4. Tobacco -- Medicaid Recoupment:** We met this week with the major public health groups to discuss ways to build support for our proposal to ensure that a portion of the tobacco settlement funds goes to prevent youth smoking. We urged them to develop a political and communications plan focused on the effectiveness of such programs and the refusal of many states to use settlement money for this purpose. To use just a few examples: the Oklahoma legislature is considering using the money to eliminate highway tolls; Louisiana's governor has

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proposed paying off state debt and funding gene therapy research with the funds; and Rhode Island's governor has proposed using the first installment to balance the budget (which has set off a fierce debate in the legislature). In addition, many states purporting to spend the tobacco funds on public health or tobacco use prevention are merely supplanting current spending, effectively freeing these funds for other uses. The public health community so far has been utterly ineffectual on this issue, but we hope participants in the meeting emerged with a better understanding of the political situation we face and some more effective strategies for dealing with it.

**5. Tobacco -- Oregon Verdict:** A jury in Oregon last week ordered Philip Morris to pay \$81 million in damages (including \$79.5 million in punitives) to the family of a man who died of lung cancer after smoking for 40 years. The verdict was the largest ever against a tobacco company, exceeding the \$51.5 million verdict awarded by a California jury against Philip Morris earlier this year. Shares of tobacco companies fell sharply this week as a result of the verdict.

**6. Welfare -- Child Support Computer Systems:** You recently asked about an HHS policy denying federal reimbursement to states that entered into contracts for child support and child welfare computer systems without first receiving federal approval. HHS has applied this policy strictly, refusing federal payments even when the federal government clearly would have approved the contracts. In the past, HHS has denied federal funds to California, Hawaii, Kansas, Nevada, and Pennsylvania on these grounds. In recently reviewing this policy, however, HHS officials discovered that it is in conflict with the department's current policy on Medicaid computer systems -- even though the two policies are interpretations of the same regulation. When it comes to Medicaid computer contracts, HHS provides reimbursement even in the absence of prior approval if the contract meets departmental requirements and the state institutes controls to ensure that it will seek advance approval in the future. HHS officials are now trying to reconcile the two policies; they probably will decide to adopt an agency-wide policy similar to the policy that now is applied in the Medicaid program.

**7. Welfare -- Food Assistance:** You recently asked what we could do to ensure that families obtain needed food assistance, in light of some reports that more working families are seeking help from private food banks. We are working to address these issues on two fronts: first, to ensure that states follow the current food stamp law by providing assistance to all eligible individuals who seek assistance; and second, to develop and implement new initiatives to make the food stamp program more accessible to working families.

We have taken numerous steps in recent months to ensure that states follow the food stamp law. USDA has launched a number of investigations of state and local practices, including an inquiry in New York City which found that local welfare offices were not allowing individuals to apply for food stamps on their first visit to the office. (USDA issued a formal warning to New York that it would impose penalties if the city were to continue these practices; around the same time, a federal district court judge issued an injunction prohibiting the practices and requiring the

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bill you signed last year. We expect that the GAO will criticize earlier NHTSA studies, but confirm the soundness of the new studies and conclude that .08 BAC laws can be effective in reducing alcohol-related deaths, especially in combination with ALR laws.

THE WHITE HOUSE  
WASHINGTON

May 28, 1999

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Reed  
Kagan  
Podesta

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed  
Elena Kagan

SUBJECT: DPC Weekly Report

**1. Health Care -- Patients Bill of Rights Discharge Petition:** Congressman Dingell filed a resolution Thursday to begin the process for a discharge petition to bring patients' rights legislation to the House floor. Although Congressmen Norwood and Ganske did not cosponsor the resolution, they were happy with Dingell's decision to file it because they think it may put pressure on the Republican leadership to move a bill through committee. Also at the end of last week, Senators Lott and Daschle began negotiations on a time agreement to bring patients' rights legislation to the floor of the Senate.

\* **2. Health Care -- Jeffords-Kennedy Legislation:** The Senate leadership agreed Thursday to schedule a floor vote on the Jeffords-Kennedy Work Incentives Improvement Act immediately after the recess. We believe you should highlight the importance of the bill and its progress through the Congress when you deliver the President's Award of the Committee on Employment of People With Disabilities at an event on Friday.

**3. Disabilities -- Employment of People with Disabilities in the Federal Workforce:** We have worked with the Vice President's office to prepare two executive actions to help increase the employment of people with disabilities in the federal workforce. The first is a directive from OMB to all federal agencies to implement an employment plan for people with disabilities. This directive will ensure that agencies (1) recruit people with disabilities for positions at all levels; (2) establish policies to provide reasonable accommodations for applicants and employees with disabilities; (3) provide people with disabilities with opportunities for training and advancement; and (4) collect data on the percentage of adults with disabilities in the federal workforce. The second action is an executive order, to be followed by regulations, to change the civil service rules to eliminate existing disparities between people with psychiatric disabilities and people with other disabilities. We are discussing making these announcements at next week's disabilities award event (see above) or at the upcoming White House mental health conference.

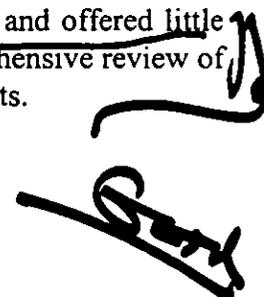
**4. Welfare Reform -- GAO Study on Welfare Outcomes:** The Ways and Means Human Resources Subcommittee held a hearing Thursday to publicize a GAO study on the results of welfare reform legislation. The study concluded that welfare reform has dramatically increased the number of people moving from welfare to work. Summarizing

THE PRESIDENT WAS SEEN

6-3-99

2

seven state studies of welfare recipients who have left the rolls (most of which we have reported to you previously), the GAO determined that between 61 percent (Tennessee) and 71 percent (Washington) of former recipients were working at the time of follow-up and between 63 percent (Maryland) and 85 percent (Indiana, South Carolina, Washington, and Wisconsin) had worked at some point since leaving welfare. Clay Shaw summarized the findings by saying that welfare reform was "the most successful piece of legislation in this half century." Some other participants at the hearing expressed greater caution, noting in particular that many of the jobs for welfare recipients paid low wages and offered little opportunity for advancement. We will provide you soon with a comprehensive review of the GAO report as well as the other information presented by the panelists.

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THE WHITE HOUSE  
WASHINGTON

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July 10, 1998

MEMORANDUM FOR THE PRESIDENT

MR. PRESIDENT

7-13-98

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FROM: Bruce Reed  
Elena Kagan

RE: DPC Weekly Report

**1. Tobacco -- State Attorneys General:** Next week, the state attorneys general will meet to consider a possible new agreement between the states and the tobacco industry. The industry is interested in a new "state-only" deal that would give the states the \$200 billion over 25 years they negotiated last year in return for settling the state cases. No federal or state legislation would be required. The deal would produce a price increase of 30-35 cents per pack, but would not say anything about FDA authority, farmers, lookback surcharges, or federal investments in research, counteradvertising, cessation and so on (although states would have substantial funds to invest in counteradvertising, tobacco education and prevention, etc.). The industry would agree to the advertising restrictions from the Minnesota settlement (no billboards, no promotional products, no film placements). Apart from settling the state cases, the industry would receive none of the liability protections of the June 20th agreement.

If such a deal materializes, we believe we should 1) embrace it, and try to bring the attorneys general to the White House to announce it; and 2) challenge Congress to finish the job by passing a streamlined bill that includes a smaller (e.g. 50-cent) tax increase to pay for targeted tax cuts (marriage penalty, long-term care), along with FDA authority, counteradvertising, and lookback surcharges. We'll still need to figure out what to do about farmers (paid for by the industry) and whether we can persuade the states to use a portion of their settlement for tobacco control, children's health, and/or child care. The state-only deal may take some pressure off Hill Republicans on tobacco (although it's not clear they were feeling much pressure anyway). But they remain under intense pressure to find revenue for a tax cut, and they can hardly sustain the argument that it's better to use Social Security and the surplus than tax tobacco.

**2. Tobacco -- House and Senate Legislative Activity:** When the House returns from recess, we can expect Rep. Pryce to unveil the Republican Leadership's tobacco legislation. Although we have not yet seen the legislative language, we are preparing to say that it will not save lives because it lacks a significant price increase and contains weak advertising restrictions (OMB and Treasury are preparing draft estimates based on likely scenarios). In addition, Representative Waxman is planning an event to highlight that members of the Republican House Leadership have taken hundreds of rides in recent years on tobacco industry corporate jets, paying only commercial fares for trips worth tens of thousands of dollars.

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In the Senate, Senators Conrad and Kerry are approaching Domenici and Gorton about a streamlined bill that would settle the state cases in return for a 75-cent price increase (with another 50-cent increase in five years if teen smoking is not cut in half), FDA authority, warning labels, and other public health provisions, but no new federal programs. Three-quarters of the money would go to the states, which would have to spend one-third on tobacco control and one-third on our menu, with one-third unrestricted. The rest of the money would go for a marriage penalty tax cut. The industry would be required to pay for Ford's tobacco farmer program over the next ten years. Domenici does not seem very interested in a comprehensive bill, even at 75 cents, and Gorton raised concerns about the FDA authority and the proposal's lack of attorneys' fees limitation (a state-only settlement would diminish Gorton's interest as well)

3. **Tobacco -- Executive Memoranda on Industry Documents:** On Friday, July 17, in your remarks to Girls Nation, you will announce two directives to make tobacco industry documents far more accessible to the public. The first directive will require HHS to develop a plan for a user-friendly database and/or index of the documents and make them widely available. The second directive will instruct DOJ to file a brief to support the State of Minnesota's effort to make public an industry-created index to their documents. The release of this index would provide the public with a critical roadmap to industry documents and may identify documents that have not yet been produced.

4. **Tobacco -- Study on African Americans and Nicotine:** On Tuesday, the Journal of the American Medical Association published a study revealing that African American smokers have higher levels of metabolized nicotine than whites or Mexican Americans. This is true even though African Americans smoke fewer cigarettes per day than white smokers. This finding may help explain why African American smokers have more difficulty in quitting smoking, and are at higher risk of developing and dying from lung cancer than whites, and will prompt more research in this area.

5. **Education -- Charter Schools:** The Education Department is completing its second year evaluation of charter schools, as well as a guide to help chartering agencies (e.g., state and local school boards) do a better job selecting charter schools and holding them accountable. We will package these reports together for you to release, perhaps at an AFT/NEA event on July 29. The Senate Labor and Human Resources is expected to mark up a charter schools bill on July 22. The bill strengthens incentives for states to promote charter schools, and provides greater flexibility for charter schools while demanding increased accountability. There is growing resistance from the education community to passing a charter schools bill this session, and growing pressure on Democrats to drag their feet on the bill. We continue to support the committee in its efforts, and believe the bill will ultimately be reported out of committee.

7-13-98

6. **Education -- Bilingual Ed:** The Education Department has completed work on its bill to overhaul bilingual education, and it is ready for transmittal if and when needed. Next week, we will begin consultations with House Democrats, seeking their views on whether an alternative to Riggs is needed, and sharing with them the approach in our bill. In addition, we are working closely with the Education Department and other agencies to make sure we have a robust package of steps you can take or propose, in addition to changes in the bilingual education program, that will actually make it possible for students to succeed in learning English. These steps include strengthening Head Start to better prepare LEP students for school, forming partnerships to help school districts recruit and train qualified teachers, and using technology to train teachers of LEP students and help students acquire English skills. We anticipate completing work on the entire package within the next 2 weeks.

7. **Health Care -- Patients' Bill of Rights Update:** Next week, we are planning two events to increase your visibility on the patients' bill of rights legislation. The first is a roundtable with physicians and patients who have had bad experiences with managed care plans, such as being denied access to a specialists, that would have benefited from a patients' bill of rights. We are currently working with the American Medical Association to see if they would be willing to host this event. The second event could be with the Democrats on the Hill. It may also be possible to highlight Congressional Budget Office estimates of the Dingell-Kennedy-Ganske legislation, which we expect will project premiums to increase 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 also looking to see if we could unveil a new Families USA report that highlights what states are doing in this area. On the Hill, the Senate Republicans are working on their patients' rights bill. We expect that their legislation will contain many, but not all of the patients' protections, including some type of modest enforcement provision.

8. **Health Care -- 25th State Approved for Children's Health Insurance Program (CHIP):** Next week, HHS is planning to approve Utah and Maryland, which will represent the 24th and 25th states for CHIP. Taken together, these 25 state proposals will provide health care coverage for more than 2 million uninsured children. We should highlight this, possibly through a public event with these Governors, both of whom have expressed interest in participating. If you are not available, we may want to consider having the Vice President do this event.

9. **Children and Families -- Well-Being Report:** Next Wednesday, the Federal Interagency Forum on Children and Family Statistics will release its second annual report, *America's Children: Key Indicators of Well-Being*, which you called for in 1997 by Executive Order. The report compiles regularly measured and representative Federal Government statistics on children. This year's report will show positive trends in the overall condition of the nation's children, including decreases in childhood mortality (with infant mortality at an historic low); increases in childhood immunization; dramatic decreases in the number of children with high blood lead levels; lower teen birth rates; and higher college graduation rates. The report will also point to high levels of cigarette smoking, alcohol consumption, and drug use among children; high numbers of children without health insurance (10.6 million in 1996, up from 9.8 million in

7-13-98

1995); an increase in low-birth-weight babies; and no significant change in the number of children in poverty (about 20 percent). We will try to time the CHIP approvals to coincide with this data, and the First Lady will highlight the findings in her weekly column the following week.

**10. Welfare Reform -- Child Support Penalties Bill Coming to You for Signature:**

With our strong support, the House and Senate have passed legislation that makes a number of positive changes to child support law. The bill creates more sensible penalties for states that fail to meet the 1988 Family Support Act's requirement to establish state-wide child support computer systems. Instead of the current draconian penalty of withholding all federal child support funds -- a penalty unlikely ever to be imposed -- it puts in place smaller, automatic, and escalating penalties, ranging from 4% of funds for the first year to 30% for the fifth year that a state fails to implement such a system. A dozen states may face penalties. The largest is California, which is still years away from having a functioning system. Los Angeles County unsuccessfully sought an exemption from its portion of California's penalty on the grounds that its system has performed well even if the state has not, but Republicans opposed it.

The bill provides a new formula, proposed by an Administration-led working group, for distributing child support incentive funds based on states' performance on a number of key child support goals, such as paternities, child support orders, and collections, rather than simply cost effectiveness as under current law. It will also make it easier for states to establish medical support orders in cases where the non-custodial parent has private health insurance, by putting in place a process to create a medical support order form that all companies will recognize.

While the bill is a good one, we have not pushed for an event in connection with the signing because it could serve to emphasize how long it has taken some states to comply with the 1988 law requiring state-wide computer systems, and because the press may choose to stress the fact that the bill significantly reduces penalties for those states that have not yet put them into place.



after the law's enactment. Most states, with USDA's approval, decided to make the cuts at the last possible moment, so the vast majority will occur between now and August 22. At our urging, Congress recently enacted legislation allowing USDA to sell food stamps to states for distribution to legal immigrants and other individuals made ineligible by the welfare law. This measure will allow states to continue nutrition subsidies to these people without incurring the administrative costs of setting up separate programs. Washington State, Massachusetts, and New York already have signed up for this option, and USDA expects more states to do so.

5. **Welfare -- Press Reports:** As you know, the Washington Post ran a front-page banner headline on the day after your trip to Missouri saying "Welfare Rolls Continue Sharp Decline." In the wake of the Post story, several good articles on welfare reform have appeared, including the attached, uncharacteristically positive New Republic TRB column by Michael Kelly.

↳ Bauer

you should call Keely  
& teach him future articles  
& point out 2 glaring ones -

① I did not have nothing to  
do w/ 88 Bill - The Gov Carter & I were  
② USA Cadet spent countless hours  
w/ WH Congress - I even participated  
in Accept Allans March up

③ we were active not passive  
w/ welfare - I granted for now in 3 yrs  
then Reagan & Bush continued & talked  
about it repeatedly cutting them  
HHS led talks etc

# TRB

FROM WASHINGTON

## A promise kept

Last August, when President Clinton signed into law the bill that promised to end welfare as we know it, many in the administration itself regarded the measure as a great gamble. To some liberals, the gamble was insupportable. The Urban Institute, in a famous study, predicted that the new law would impoverish 2.6 million people, including 1.1 million children.

Next week marks the first anniversary of the welfare bill's enactment, and the White House is trumpeting. And trumpet it should. As Bruce Reed, the president's assistant for domestic policy, boasted on August 12, the nation's welfare caseloads

have been reduced by 3.4 million, or an astonishing 24 percent, since Clinton became president, and they are declining still. The rolls fell by 1.9 million in the first three and a half years, before passage of the welfare reform act, and they fell an additional 1.45 million in the nine months from the enactment of the law through May of this year, the last month for which figures are available. If the trends of the first nine months are found to have continued, Reed said, the caseload will have fallen by a total of 2 million by the end of the first full year of the welfare law. "These numbers are a stunning success, totally unprecedented in the history of welfare," said Reed. He is right.

Since the beginning of 1993, the welfare rolls in Wyoming have fallen by 68 percent; in Wisconsin, by 54 percent; in Oregon, by 48 percent; in Tennessee, by 47 percent; in Oklahoma and South Carolina, by 46 percent; in Indiana, by 45 percent; in Kansas, by 41 percent; in North Dakota, by 40 percent; in Alabama and Florida, by 38 percent; in Michigan, by 36 percent; in New Jersey and New Hampshire, by 30 percent—and so on.

There are a number of reasons for the good news, and some of them have little

to do with the welfare law itself. One obvious reason is the boom economy. But the economy cannot be the primary cause. No remotely comparable decreases in welfare occurred during the fat years of the 1980s; indeed, there have been only two years in which caseloads fell by more than 250,000 in all of welfare's six decades. "The left is trying to say it is only the good economy driving this, but the last time you saw decreases of this magnitude was during the Korean War," says Robert Rector, a welfare policy analyst at the Heritage Foundation.

Another obvious cause of the good news that has nothing to do with Clinton or his welfare law was the passage of an earlier reform, the 1988 Family Support Act. It was this measure that allowed states to apply for waivers from federal welfare requirements and to begin experimenting with the work

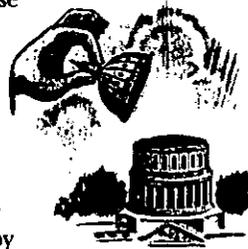
requirement programs that are an important factor in driving the rolls down. The Clinton administration's role here was the largely passive one of granting waivers.

Still, the law worked out between a Republican Congress and a Democratic president made an immense difference. It ended cash welfare as an entitlement, and it changed the enforcement role of the federal government from ensuring that states met their obligations toward a relentlessly expanding welfare state to ensuring that they meet their obligations toward shrinking the welfare state.

And the famously dire predictions of the Urban Institute? They are, it turns out, no longer operative. Sheila Zedlewski, the policy analyst who wrote the pessimistic report, now says that the number of people pushed into poverty by the law has turned out to be "significantly different" than predicted. Again, the economy helped. Also, in contravention to liberal assumptions, the states did not seize upon the opportunity of reduced federal mandates to starve their citizens. In Zedlewski's careful words, "As we have seen the Food Stamp changes play out, the number of states that have applied for and received waivers [from the requirement to force unemployed adults off the Food Stamp rolls] because of local high unemployment rates or surplus labor areas is higher than people were estimating a year ago."

But the most important factor affecting the prophecy of disaster was at least partially Clinton's doing. The 1996 law's most radical measure eliminated Supplemental Social Security aid to elderly and disabled legal immigrants. Clinton argued, in his usual amazing fashion,

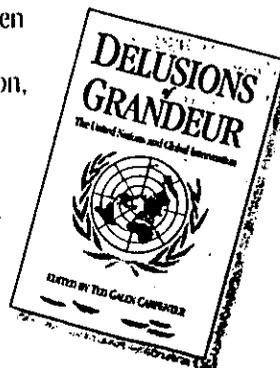
*continued on page 41*



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expanded west to the Oder-Neisse Line and acquire German cities such as Breslau and Königsberg. Further, Poland was allowed to "ethnically cleanse" its new territory; 10 million Germans were expelled to West Germany. These arrangements were solidified by treaty between Poland and East Germany.

Although the German Federal Republic has abandoned all territorial claims, there is good reason for Poland to be concerned and to clamor for inclusion in the NATO military alliance. However, it should be possible to reassure Poland and guarantee her borders less expensively than what the NATO expansion will cost the American taxpayers.

KURT G. STRAUSS  
Tucson, Arizona

## The killing fields

To the editors:

The mind reels at the character of justice that Pol Pot's inhumanity demands ("Overdue Process," July 14 & 21). But your Cambodian hall of villains is incomplete. You chastise China for its interference in the internal affairs of Cambodia but have apparently forgotten that Cambodia's neutrality was first compromised by the North Vietnamese and the "sanctuaries" they established along the southern reaches of the Ho Chi Minh Trail. And you are altogether too modest about America's own contribution to the creation of the killing fields.

Between 1969, when Richard Nixon first ordered the secret bombing of the Vietnamese bases in Cambodia, and 1973, when the U.S. Congress finally halted it, more than a half-million tons of bombs were dropped on the country. The mounting toll of civilian deaths, the CIA-backed overthrow of Prince Sihanouk by Lon Nol in 1970 and the U.S. invasion just weeks later all served to antagonize Cambodian society, making the ranks of the Khmer Rouge swell from an estimated 2,500 in 1969 to an army of 50,000 just three years later—the army which Pol Pot would unleash on its own country.

Your vision of justice might have been achieved at the end of the '70s after Vietnam's invasion of Cambodia ended the slaughter and crushed the Khmer Rouge; unfortunately, our vengeful Vietnamese policy and desire to court Beijing actually allowed the communists to regroup and eventually assert power again. The scenario of Pol Pot on trial is not without merit; let's just hope the court doesn't go searching for accessories.

DAVID SEPPA  
Denver, Colorado

that his signing of a law that liberals regarded as a betrayal of liberalism was a reason that liberals should vote to reelect him. Let Clinton fix Clinton.

Well, he did. In the recent budget deal between the White House and Congress, the president accomplished the restoration of SSI benefits to all immigrants who were legal before August 22, 1996, the date of the welfare bill. That restored benefits to half a million deserving people. This and other measures, including funding to provide work for unemployed Food Stamp recipients, that were negotiated into the budget agreement have, in Zedlewski's words, "gone a large way towards fixing the problem." Zedlewski says she cannot say precisely how much she would now cut her estimate of the number of people pushed into poverty by the welfare law, but she notes that fully half of the Urban Institute's previous estimate of 2.6 million came from projections of those who would be hurt by the denial of Supplemental Social Security payments and Food Stamps.

So Clinton has done what he has said he would do. He is the president who will have ended welfare as we know it. If this holds, Clinton will deserve credit for a great historic and moral achievement.

If this holds. In Clintonism, there are no last acts. In May, the White House issued a long-awaited Labor Department ruling on whether welfare recipients placed in work programs under the terms of the welfare reform law and state laws were covered by federal and state minimum wage laws and other labor laws and regulations. Yes, they were covered, said the ruling, to the tune of twenty-five separate statutes. The GOP authors of the welfare law, and Republican and Democratic governors, said that the ruling would make it impossibly expensive for states to continue the work programs that are critical to a continued decline in the welfare rolls.

Congressional Republicans proposed language in the budget reconciliation bill to overrule the Labor Department rulings. But the White House wouldn't budge, except on the one, minor, issue of whether welfare recipients on work programs should be eligible for the earned income tax credit. The president threatened to veto the budget bill unless the offending language was removed. As it stands, the ruling that sharply curtails the ability of the states to enact effective welfare-to-work programs remains in force. Without serious workfare programs, the good news will level off, and then turn bad when the economy softens. If Clinton does not wish to be undone, he must once again undo.

MICHAEL KELLY

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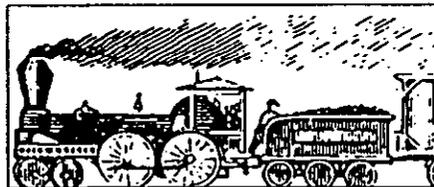
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DPC Weekly Report

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August 2, 1997

THE PRESIDENT HAS SEEN  
8-4-97

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed  
Elena Kagan

SUBJECT: DPC Weekly Report

**1. Welfare – Budget Bill:** The final welfare provisions of the budget bill prompted a front-page New York Times headline declaring "In Budget Bill, President Wins Welfare Battle." First, the bill guarantees Medicaid and SSI benefits to legal immigrants on the rolls in August 1996 and to legal immigrants residing in the U.S. on that date who have since become -- or in the future become -- disabled. Second, the bill includes a \$3 billion welfare-to-work program, which has all the critical components of our original proposal: it establishes DOL as the administering agency; routes formula money through Private Industry Councils, thereby giving mayors effective control over its distribution; contains a fairly sizable competitive grant fund; allows the funds to be spent on a wide range of programs; targets funds to the hardest-to-place welfare recipients; and contains strong anti-displacement provisions.

Third, the bill contains a good welfare-to-work tax credit, which gives companies that hire long-term recipients a credit for 35% of wages up to \$10,000 for the first year and 50% for the second year. Fourth, the bill continues Medicaid coverage for children who will lose SSI under the new definition of childhood disability contained in the welfare law. Fifth, the bill does not contain any provision to exempt workfare recipients from the FLSA and other worker protection laws (though we did agree, in exchange for making the child tax credit refundable, to a provision that benefits received by working welfare recipients would not qualify as wages for purposes of the EITC). Sixth, the bill also does not contain any provision allowing privatization of Medicaid and Food Stamp operations, in part because Governor Bush rejected a compromise that Texas run a substate demonstration covering up to 50% of recipients.

The best analysis of the welfare provisions comes from usually devoted supporters of the Republican Party. Robert Rector of the Heritage Foundation told the Washington Post that "the Republicans appear to have capitulated on almost every welfare issue." And Michael Tanner of the Cato Institute told the New York Times that "the President got everything he wanted and then some."

The Republicans have made clear that they intend to return to the issue of how worker protection laws apply to welfare recipients, perhaps on the Labor-HHS appropriations bill. In final budget discussions, we indicated some willingness to exempt workfare participants from FICA and FUTA, and we can offer that compromise again in a future fight on this issue. We also may not have

seen the last of the privatization issue; House Republicans are upset at Governor Bush for declining a substate demonstration project, and they may take another run at enabling some state (perhaps Wisconsin) to privatize part of its Medicaid and Food Stamp operations. While awaiting these battles, we will work closely with DOL on implementing the new welfare-to-work program.

**2. Health -- Budget Bill:** We are very pleased with the health provisions in the budget agreement, especially the children's health package. After your statement at the NGA about the importance of a strong benefits package, we were able to secure a provision requiring States to choose from one of four packages: (1) the FEHBP model; (2) the benefits package of the most popular state HMO; (3) the state employee plan; and (4) the actuarial equivalent of any of the above three packages, provided it offers the same or better benefits for vision, hearing, mental health, and prescription drugs. In the overwhelming majority of states, this provision will ensure that children receive a strong package of benefits, including these four drug services. During final negotiations, we also succeeded in inserting several provisions that give further assurance that states will use the new funds to cover uninsured children, rather than to supplant existing funding. In the days following the agreement, newspapers quoted the General Counsel of the Children's Defense Fund as saying that the initiative will do "extraordinary good for millions of children" and the President of the American Academy of Pediatrics as saying that the package represented an "extraordinary commitment" to children's health care. We are now working on an implementation strategy to encourage and assist states to use the new investment to cover as many uninsured children as possible.

**3. Health -- Diabetes Announcement:** You are scheduled to announce on Friday -- probably with Speaker Gingrich -- new investments in the budget relating to diabetes. These investments include: \$150 million over five years for Type I diabetes research (most common in children); \$150 million for diabetes prevention, treatment, and research in the Native American population (the diabetes rate among Native Americans is nearly 3 times the national rate); and a new Medicare benefit for diabetes prevention. The American Diabetes Association (ADA) has said that this new package of investments is the most significant development for diabetes since insulin was discovered in the 1920s. You are also scheduled to announce a new collaborative effort between HCFA, ADA, and the National Committee on Quality Assurance to develop new standards of care for diabetes. Diabetes experts believe that this collaborative effort will significantly improve care for diabetics.

**4. Health -- Medicare Fraud:** We are preparing to release next week several new initiatives responding to the recent finding that the Medicare program lost \$23 billion last year due to overpayments, fraud, and abuse. We hope to be able to announce that HCFA is immediately halting payments to providers identified in the report as committing fraud and that HCFA is undertaking comprehensive audits of providers identified as potentially defrauding the government. We also will announce a new quarterly report by HHS and DOJ on all fines, decertifications, and ongoing investigations of fraud and a new award for state and local governments and other organizations that have made outstanding efforts to eliminate fraud and abuse. Last, but not most important, we suggest

that when you sign the budget bill into law, you highlight the significant anti-fraud provisions that it contains.

**5. Education -- National Testing Initiative:** Rep. Goodling intends to offer an amendment to the Labor-HHS appropriations bill in September that would prohibit the Education Department from spending any FY 1998 funds on the development or administration of national tests. We thought the vote would be held last week and worked hard to mobilize supporters of the testing initiative -- including the AFT, NEA, Business Roundtable, National Alliance of Businesses, Chief State School Officers, and Council of Great City Schools -- to contact members. But if the vote had occurred last week, we might well have lost. While Democratic support was generally strong (with the exception of the Hispanic Caucus, discussed below), we would have held very few Republican votes. Even Rep. Riggs and Rep. Livingston, who originally were inclined to oppose the Goodling amendment, shifted their position later in the week, in part because of strong pressure from right wing groups, home schoolers, Lynn Cheney, and others. We may be able to ameliorate Republican concerns over the next month by agreeing to have the National Assessment Governing Board oversee the tests.

The Hispanic Caucus has suggested that it might vote en bloc with Mr. Goodling. Members of the caucus object to our current intent to provide the 4th grade reading test only in English. They have asked the Department of Education to create a Spanish language version of the test that students with limited English proficiency could take instead. We are continuing to consult with members of the Caucus and are exploring ways of addressing their concerns, while maintaining our position that students should be expected to read in English.

**6. Tobacco:** We have completed the public consultation phase of our review of the tobacco settlement, and we will be ready to present you with recommendations shortly. In one of our last meetings, we told Democratic members from tobacco states that they should let their constituents know that the Administration will insist that any settlement do right by tobacco farmers. We have asked Dan Glickman to go to tobacco markets in North Carolina and Virginia later this month to deliver the same message.

DPC Weekly report

THE WHITE HOUSE  
WASHINGTON

THE PRESIDENT HAS SEEN  
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MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed  
Elena Kagan

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SUBJECT: DPC Weekly Report

**1. Health -- Pediatric Labeling:** You, the Vice President, and the First Lady are scheduled to participate in an event on Wednesday to announce a proposed FDA regulation to ensure that drug companies test their products for use in children and provide information to pediatricians and other health care professionals on correct dosage levels for children. The drug industry's failure to test and label their products for use in children causes serious harm. Doctors may prescribe incorrect doses of drugs, resulting in under- or over-medicating fragile patients; alternatively, they may decline to prescribe needed medications altogether, for fear of giving the wrong dose and harming their patients. For example, doctors rarely prescribe protease inhibitors for children suffering from AIDS because they do not know how to do so safely. Pediatricians, children's hospitals, consumer advocates, and AIDS groups strongly endorse this regulation.

**2. Health -- Implementation of Children's Health Initiative:** We have started a process with HHS, OMB, the First Lady's office, and others to ensure effective implementation of the children's health initiative. By next week, we will have a complete schedule for issuing guidelines and regulations to help the states interpret the new legislation and design children's health plans. The schedule also will list meetings with state representatives (Governors, Medicaid Directors, etc.), children's advocates, health care providers, and others who are interested in the initiative. We will evaluate how you, the First Lady, and Secretary Shalala can most effectively highlight the new opportunities to cover uninsured children. In addition, we are now reaching out to foundations to determine their interest in using private dollars for outreach efforts designed to cover the 3 million children currently eligible for, but not enrolled in, Medicaid. The foundations have expressed some interest, and we will keep you informed of developments.



**3. Immigration -- Commission Report:** The U.S. Commission on Immigration Reform is preparing a report on structural reforms to the current immigration system. A draft of the report comments favorably on a proposal to abolish the Immigration and Naturalization Service (INS) and delegate its main functions to the Departments of State, Labor, and Justice. Under this scenario, the Department of Justice would have responsibility for immigration enforcement, including the Border Patrol, investigations, detentions, and deportations; the State Department would perform functions relating to immigration benefits, services, and visa processing; and the Department of Labor would have responsibility for all workplace-related immigration activities.

The report also discusses other options for structural reform, including establishing a new Cabinet-level department or independent agency on immigration and/or creating an Office for Immigration Policy at the Domestic Policy Council. The Commission will release its final report in late September. We said last week that we would give careful consideration to the Commission's recommendations; the Attorney General, though stating strong support for the job the INS is doing, also expressed a willingness to consider significant structural changes. Either DPC or REGO will begin an interagency process to evaluate the Commission's report and other proposals for structural reform of the immigration system.

**4. Crime -- Community Policing Grants:** On Thursday, the COPS Office released \$92 million to fund approximately 1,300 police officers in 48 states. To date, the COPS program has funded an estimated 63,000 police officers and deputies.

**5. Education -- Testing Lawsuit:** The NAACP Legal Defense Fund filed a federal suit this week against the Johnston County School District in North Carolina, challenging a year-old policy requiring all students in grades 3 through 8 to achieve a specified score on North Carolina's reading and math tests before going on to the next grade. The plaintiffs claim that the high-stakes testing policy discriminates against African American and Hispanic students, because (1) these students disproportionately fail to attain the specified score and (2) the tests are not valid measures of individual student performance in school. The plaintiffs also claim that the district's test procedure discriminates against special education students by failing to provide accommodations, such as extra time. The case is one of the first ever to challenge state education standards and high stakes testing. The DPC has requested a briefing from the Justice Department this week to discuss the appropriateness of filing an amicus brief in support of the school district.

**6. Tobacco:** The U.S. Court of Appeals for the Fourth Circuit will hear oral argument on Monday in the tobacco industry's challenge to the FDA rule. Walter Dellinger will argue for the government. We will not know which judges will hear the case until Monday morning.

**7. Welfare -- Welfare-to-Work Partnership:** You will travel to St. Louis on Tuesday to highlight the success of welfare reform and underscore the critical role of the private sector. You will join Eli Segal in announcing that over 500 companies have joined his welfare-to-work partnership and that about 200 companies in St. Louis alone have committed to hiring welfare recipients. The two of you also will announce the Welfare to Work Partnership's new toll-free hotline and web page to help companies hire welfare recipients. Most important, you will be able to announce new caseload numbers: the rolls declined by an additional 200,000 people in May for a 1.4 million drop in the nine months after you signed the welfare law and a 3.4 million drop (24% of the caseload) since you took office.

**8. Welfare -- New York and California Plans:** State officials in New York and California finally reached agreement on welfare plans last week. The New York law requires that all individuals able to work accept any workfare assignment offered to them. New parents are exempt from the work requirement until the infant is 3 months old, with extensions allowed

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until the age of one. The plan also exempts from work those who are over 60, ill or incapacitated, or needed in the home because of the illness or incapacity of a family member. In response to a recent notorious case where a woman with a history of heart trouble died on a work assignment, counties must make work assignments consistent with an individual's limitations and consider an individual's medical reports. In addition, counties must allow workfare on college campuses for students on welfare (an idea Mayor Giuliani has resisted).

The plan increases the amount of earnings that can be disregarded for welfare purposes. Child care will be provided for children under 13 whose parents are assigned to work. The final plan preserves current benefit levels, rejecting Governor Pataki's proposal to gradually drop benefits as a family approaches the five-year time limit. After five years, families with children can move to a "safety net" program that offers non-cash benefits (using state rather than federal funds). Also in this program are those without children and immigrants not eligible for federal funds. Finally, New York chose to take advantage of a new state option to purchase food stamps from USDA for people who will lose food stamps under the welfare law. New York will buy food stamps for elderly or disabled legal immigrants and legal immigrant children, which will preserve benefits for about two-thirds of the legal immigrant population.

After a confrontation in California last month that culminated in Governor Wilson's veto of a Democratic bill, the Governor and the legislature reached an agreement earlier this week. They compromised on a plan to limit current welfare recipients to 24 continuous months of benefits and new recipients to 18 continuous months of benefits, with a six-month extension option. At the end of this period, recipients must leave the rolls for at least one year before they can requalify for benefits. Able-bodied adults must work or be in training for at least 20 hours a week; in the year 2000, that requirement increases to 32 hours a week. Women with infants are exempt from the work requirements for three months to one year, at the county's option. Children can continue to get aid after their parents reach the five-year lifetime limit. The state also enacted a lifetime ban on welfare for convicted drug felons. Democrats were unable to win approval of a provision that would assist legal immigrants losing federal food stamps.

**9. Welfare -- Child Support Enforcement:** You asked recently about a recent GAO study criticizing the nation's child support system. As you know, child support collections increased from \$8 billion in 1992 to \$12 billion in 1996. But during that time, the percentage of cases in which support is collected remained nearly constant at 20 percent. The main problem is that states have not moved quickly enough to automate their collection systems. Eight states, with about 40% of the nation's welfare caseload, will fail to meet the October 1, 1997 deadline for setting up computer registries needed to implement the 1988 Family Support Act. A much greater number of states need to do substantial work to update their computer systems to implement the provisions of the new welfare law. In response to state deficiencies in this area, Reps. Hyde and Woolsey have introduced legislation that would give all responsibility for child support collection to the federal government. The Administration has opposed this bill, arguing that the states should retain primary responsibility for this function. Given the inadequacies in child support enforcement, however, we must devise proposals for improving state systems. We

accordingly have established an interagency working group, involving HHS, Treasury, and Justice, to track state efforts and consider a range of options for improving child support enforcement.

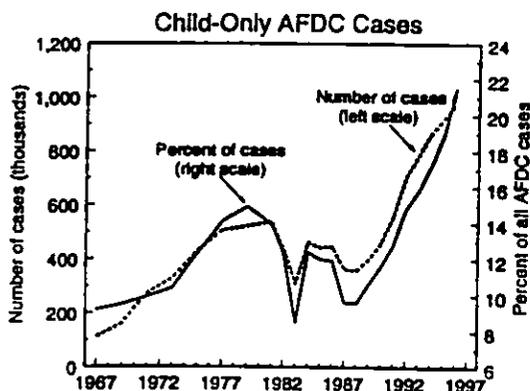
**10. Welfare -- CEA Analysis of Child-Only Cases:** In response to a recent item in CEA's weekly economic briefing on the growth of child-only welfare cases (attached), you asked whether certain features of the welfare law need to be fixed. The issue is that one part of the law (work requirements) appears to treat states with growing numbers of child-only cases unfavorably, while another part of the law (time limits) is too generous to such states. Because child-only cases count when measuring a state's caseload reduction credit, a growing child-only caseload reduces the size of that credit -- and means a state must put more people to work. On the other hand, a state with more child-only cases can grant more "hardship exceptions" to the 5-year time limit. This is because child-only cases are included in the denominator of the 20% hardship-exception calculation even though none of these families (which are excluded from the time limit elsewhere in the law) need the exception.

We do not believe a fix is needed at this time. On the caseload reduction credit, the tremendous decline in welfare caseloads is already making the work participation rates far easier to meet than expected. In addition, letting states exclude child-only cases in calculating the credit might give states a positive incentive to create child-only cases by sanctioning parents. On time limits, we are loath to re-open the issue of hardship exceptions so early in the implementation process, especially given that many groups (battered women, people with disabilities, grandmothers, etc.) are pressing for more, rather than fewer, exceptions to the lifetime limit.

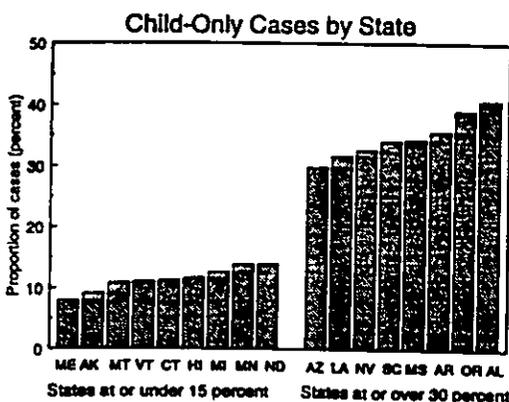
TREND

**The Growth of Child-Only Welfare Cases**

Single mothers with children represent the largest fraction of the welfare caseload. But recent years have seen tremendous growth in the number of "child-only" cases. Although a full explanation remains elusive, the surge in child-only cases has some immediate implications for welfare reform.



The facts. Child-only cases accounted for 21.5 percent of all AFDC cases in 1996, up from 9.6 percent in 1988 (see upper chart). The number of such cases increased from 360,000 to 980,000, resulting in nearly 1.7 million children in child-only AFDC households in 1996. Variation across states is also considerable: In 1996, child-only cases were 30 percent or more of the cases in eight states and 15 percent or less in nine others (see lower chart).



Why has the child-only caseload grown? Child-only cases fall into four main categories:

- caretaker is a non-recipient relative
- parent is an SSI recipient
- parent is an ineligible non-citizen
- parent has been sanctioned

Only scattered information is available about the reasons for growth in child-only cases, but it suggests that growth has probably occurred in each category.

**Implications for TANF.** Further analysis should provide a better understanding of the causes, but some immediate implications for welfare reform can be drawn from the way child-only cases are treated under Temporary Assistance for Needy Families (TANF):

- **No work requirement.** Child-only cases are not subject to work requirements. Hence, the changing composition of the caseload must be taken into account on a state-by-state basis to estimate accurately the number of work-related placements or the caseload reduction needed to meet work requirements. Estimates that ignore the growth of child-only cases overstate the difficulty of meeting work requirements, substantially for some states.

① No lifetime limit. Child-only cases are not subject to the 5-year lifetime limit on TANF benefits. The growth of child-only cases means a substantial portion of TANF children will be protected from loss of benefits.

And, for TANF aficionados:

- Caseload reduction and hardship exemption. Work requirements and the 5-year lifetime limit do not apply to child-only cases. But, curiously, child-only cases are included in computing the change in a state's caseload after 1995, which is used to reduce the state's caseload work requirements. Child-only cases are also included in determining the number of cases that fall under the "hardship exemption" to the 5-year lifetime limit on eligibility: That is, states may exempt for hardship a number of otherwise "non-exempt" cases equal to 20 percent of the total caseload. As a result, given two states that are equally successful in reducing the non-exempt caseload, it appears that the state with the higher proportion of child-only cases will have a harder time meeting work requirements and an easier time meeting the 5-year time limit.

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