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THE WHITE HOUSE
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THE PRESIDENT HAS SEEN
7-21-97

July 19, 1997

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MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Elena Kagan

SUBJECT: DPC Weekly Report

1. Tobacco: Secretary Shalala and Bruce met this week with the Senate Democratic tobacco task force (chaired by Senator Conrad), tobacco industry lawyers, tobacco growers (accompanied by Governor Hunt), and former industry scientists who became whistleblowers. The growers urged us to maintain the current tobacco quota and price support program; require industry to use mostly U.S.-grown tobacco; and provide transition assistance as the demand for cigarettes falls. The meeting with the whistle blowers, which the Vice President led, focused on scientific research on nicotine and "reduced risk" cigarettes. Next week, we expect to brief the House Democratic tobacco task force, begin meetings with key committee chairmen, and wrap up our meetings with the public health community. We also will continue our interagency meetings on regulatory, legal, and financial issues, which are focusing especially hard on issues relating to FDA jurisdiction and financial penalties. Finally, we will complete an executive order restricting smoking in federal buildings, which you can sign on July 30.

2. Education -- California Law School Investigation: In response to a complaint filed by several civil rights organizations, the Office for Civil Rights (OCR) at the Department of Education decided last week to open an investigation of the current admissions policies at three University of California law schools: Boalt Hall, UCLA, and UC-Davis. (The Department initiated a similar investigation of the Texas higher education system in February, not in response to an individual complaint, but as part of a routine compliance review.) The investigation will determine whether the schools' admissions policies violate Title VI of the Civil Rights Act, which prohibits federally funded entities from discriminating on the basis of race. If the Department of Education finds that these schools have violated Title VI, it first will attempt to reach an agreement without litigation; then, if its settlement attempts fail, the Department may either start formal administrative proceedings to cut off funds to the schools or refer the matter to the Justice Department to bring suit seeking elimination of the discriminatory practices.

To prove a violation, the Department will have to show that current admissions practices have a discriminatory effect on minority students and that these practices are not needed to predict success in college. (Current Title VI law does not require that the government show discriminatory intent on the part of the federally funded institution.) Preliminary analysis shows a significant disparity in the admission rate for African-American, Hispanic, Asian-American,

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and Native American students, as compared to white students, at the three law schools under investigation. The law schools, however, will probably make the argument that this disparate impact is attributable to the use of test scores in the admissions process. The investigation then will focus on whether these test scores are valid predictors of success in college and whether there are alternative, non-discriminatory ways for colleges to predict success.

3. Education -- National Testing Initiative I: At an event on Friday with school principals, you will announce that many of the nation's largest cities -- probably including New York, San Francisco, and Chicago -- have agreed to participate in your testing initiative. We also think we will be able to add a few more states to the list of participants, including Colorado and Delaware.

4. Education -- National Testing Initiative II: At the request of Congressman Goodling, the House subcommittee mark of the Labor/HHS/Education appropriations bill includes a provision preventing administration of our 4th and 8th grade tests until the National Academy of Sciences completes an evaluation of their development and testing. The Education Department already had decided to contract with NAS for such an evaluation, and so has no fundamental objection to this provision. The Department and DPC, however, are working carefully with Mr. Obey's staff to ensure that the timelines set for the evaluation will allow states to begin administering the tests on schedule.

Diane Ravitch and Checker Finn criticized our testing initiative last week, in an article in the Weekly Standard and a letter in the Washington Times, for failing to give governing authority over the national tests to NAGB. We have held off from seeking legislation to give NAGB this authority because Congressman Riggs, who chairs the relevant subcommittee and supports the testing initiative, advised us to attempt to appease Goodling before doing so. In light of these new criticisms, however, we are talking with congressional staff about whether to push for a provision in this year's appropriations bill that would give authority over the tests to NAGB.

5. Education -- National Testing Initiative III: As you heard on Air Force 1, Secretary Riley met last week with Chris Edley and representatives of a number of civil rights groups to discuss their concerns about the testing initiative. Their primary fear is that states and school districts will provide parents with only the child's individual score (rather than with school and district scores), which would prevent parents from using the tests to hold teachers and school administrators accountable. (Participants at the meeting also expressed some concern that schools will use the tests for high-stakes purposes -- tracking, promotion, etc. -- without taking into account other indicators of performance.) The Department agrees that parents should receive all of this data, but believes that adding a reporting requirement would make it more difficult to convince states and cities to sign up for the test. The Department also notes that states and school districts increasingly provide complete testing data, in part because of Title I requirements. While neither the Department nor the DPC would require reporting of this data at this juncture, we believe that your speeches should emphasize, even more than they do now, that

test results should be incorporated into school report cards and used to hold schools and school districts accountable.

6. Health -- Medicare: After a day-long caucus yesterday, House and Senate Republican leaders remain divided on the issues of means-testing Medicare premiums, increasing the age of eligibility to 67, and requiring a \$5 copayment for home health services. They did, however, agree to the provision in the House bill on Medical Savings Accounts, which would allow 500,000 recipients to participate in the demonstration project.

The Administration held two meetings with the Senate "Mainstream" Coalition to discuss its Medicare "reform" agenda. We stated strong support for an income-related premium, but only if our policy concerns were met. We seemed to convince the members that the Treasury Department should administer the program. We emphasized the revenue loss (\$8.9 billion vs. \$3.9 billion), administrative costs (\$30-50 million vs. \$10 million), 2-3 year income reporting lag, and potential for major privacy violations if HHS were the administering agency. Although some members expressed concern about persuading House Republicans to accept a Treasury-administered approach, Senator Chafee said that "it should be Treasury or nothing."

Our presentation on the eligibility age issue focused on the Coalition's recent proposal to offer 65 and 66 year-olds access to the Medicare program through a \$54 per month premium assessed for the rest of the senior's lifetime. Although we raised concerns that such a premium would be unaffordable for many elderly (thus not adequately addressing the uninsured problem) and would end up shifting billions of dollars of costs to the states (because of mandated low-income beneficiary buy-in requirements and SSI eligibility), we agreed to provide the Coalition with technical assistance as they developed options.

7. Health -- Immunization Event: On Wednesday, you and the First Lady will announce that we are ahead of schedule in meeting our immunization goals. In 1996, 90 percent of America's two-year-olds received the most critical vaccines. You also will announce a new child care regulation that requires the immunization of all children in federally funded child care. Senator Bumpers will attend the event, as will our probable Surgeon General nominee -- CDC's Dr. David Satcher. Although the clearance process on Dr. Satcher is not complete, this event provides a good opportunity to showcase his extraordinary accomplishments.

8. Health -- FDA Reform: We are approaching the final round of negotiations with members of the Senate Labor and Human Resources Committee on a major FDA reform bill. The primary issue on the table concerns a provision to allow drug manufacturers to provide physicians with peer-reviewed articles that outline as yet unapproved, but apparently effective uses of prescription drugs. If we can reach a compromise on this issue, final passage of the bill could come as early as September. If we cannot agree on a compromise bill by that time, the provisions in current law that authorize user fees will expire and FDA will have to start laying off individuals reviewing new drug products.

9. Health -- Needle Exchange: Your public health advisors at HHS are on the verge of concluding that needle exchange programs not only reduce the spread of AIDS, but also do not increase drug use. (Current law requires the Administration to make both these findings before allowing local communities to use CDC funding for needle exchange programs.) General McCaffrey, however, has not yet agreed with the public health advisors, and we do not want to make a recommendation to you until the General has had further conversations with Dr. Varmus and others. Many in the AIDS community are disappointed that we have not yet used our authority to allow federal funding. Doing so now, however, may interfere with our efforts (so far successful) to prevent the House Appropriations Committee from entirely stripping the Administration of this authority.

10. Welfare -- Budget Update: During their caucus yesterday, House and Senate Republican leaders and committee chairmen agreed to a provision in the House spending bill excluding workfare recipients from the Fair Labor Standards Act and other employment laws (though requiring payment of the minimum wage for hours worked). The Senate version of the spending bill did not have any similar provision. The Republicans also agreed to a provision in the Senate bill that HHS run the \$3 billion welfare-to-work program, with TANF agencies in charge of local administration. The House bill provided, in accord with Administration policy, that DOL run the program, with PICs as the key local actors. We are fighting hard to reverse the leadership's position on both these issues. As far as we know, Republicans have not yet reached agreement on other critical welfare issues, including disability and health benefits for legal immigrants and privatization of Food Stamp and Medicaid operations.

11. Welfare -- NACo Report: A report released this week by the National Association of Counties concludes that "counties are making welfare reform work by using the flexibility granted in the new law to develop innovative programs that are best suited to their local needs." The report profiles successful efforts in four counties (Fulton County, GA; Santa Clara County, CA; Dade County, FL; and Hennepin County, MN) to provide transportation, child care, and public sector jobs; to assist legal immigrants losing federal benefits; and to create collaborative partnerships between the public, private, and non-profit sectors. The report notes that NACo opposed the welfare law, but commends the Administration and Congress for addressing counties' primary concerns: funding for job creation and benefits for legal immigrants. The report also emphasizes that "the need for transportation services is tremendous. It was the most common thread that linked all counties and outpaced all other concerns as their most urgent need. The reauthorization of the Intermodal Surface Transportation Efficiency Act including new funds to help those who are making the transition from welfare to work is therefore paramount."

12. Crime -- Juvenile Crime Bill: On Tuesday and Thursday, the Senate Judiciary Committee met to mark up Senator Hatch's juvenile crime bill. While the Committee did not get much work done, it did vote down Senator Kohl's amendment on child safety locks by a one-vote margin. Senator Hatch offered to work with Democrats over the weekend to limit the number of pending amendments (87) and complete action on the bill next week.