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THE WHITE HOUSE  
WASHINGTON

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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/Armev 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.

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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.

**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.

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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.