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Mar. 20, 1998 - DPC Weekly Report

THE WHITE HOUSE
WASHINGTON

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March 20, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Elena Kagan

SUBJECT: DPC Weekly Report

1. Tobacco -- Senate Commerce Committee Activity: We have been meeting regularly with staff for Sens. McCain and Hollings, as they try to put together a comprehensive tobacco bill that a bipartisan coalition on the Commerce Committee can support. McCain is very pleased with our cooperation, as we are with his genuine desire to gain our support, and he is aiming to complete a mark-up before the April recess. But at least two serious obstacles remain. First, many Republicans -- including Sens. Jeffords and Hatch, who are not on the Committee, but whom McCain feels he must work with closely -- object to our proposal on FDA authority. Whereas we want Congress to affirm that the FDA can regulate tobacco products under its normal drug-and-device authority, these Senators want Congress to create a separate -- and we believe, less potent -- statutory scheme to govern the regulation of tobacco products. We have met with a bipartisan group convened by McCain and Hollings -- including staff for Sens. Hatch, Jeffords, Kennedy, and Conrad -- to discuss this issue, but so far have made little progress. One problem is that the Republicans have no incentive to give us what we want on FDA jurisdiction until they know whether we will approve the limits they want on the tobacco companies' liability.

But how can we get any

Second, Sen. Daschle will pressure Democrats on the Committee to oppose any bill with liability protections, regardless of what else is in it. Daschle argues that if Congressional Democrats give up liability limits as an issue now, they will find it more difficult to get what they want on spending priorities later. (The Commerce Committee bill will not address the issue of how to spend the revenues it generates.) But because McCain believes he must include some liability limits in his bill -- he is leaning toward the Chafee-Harkin model of a cap on annual damages, with no limitations on class actions or punitives -- Sen. Daschle's approach poses a risk of wholly derailing the Commerce Committee effort. Although Daschle will not be able to control the votes of Hollings, Ford, or Breaux, he could persuade Inouye, Wyden, and Kerry, who are now generally supportive of McCain's effort, to repudiate the legislation. At that point, McCain might decide to abandon the project, rather than face a partisan attack on this issue. Erskine and Larry will talk with Daschle this week to ask him not to discourage Committee Democrats from supporting an otherwise good bill.

2. Tobacco -- State by State Numbers: In a speech to the PTA on Monday, the Vice President will unveil new Treasury Department statistics demonstrating that your tobacco plan

will cause a significant reduction in youth smoking -- and therefore in premature deaths -- in every state in the nation. As you recall, you announced last month that over the next five years, your plan would deter 3 million American teens from smoking and prevent one million from dying prematurely. The new Treasury statistics break down these figures on a state-by-state basis, showing for example that California alone will have 83,000 fewer tobacco-related deaths. We are giving these numbers to the state Attorneys General for separate announcements on the same day; after the Vice President holds a conference call with them in the morning, many will hold news conferences to release the numbers and demand that Congress pass bipartisan, comprehensive tobacco legislation. Later in the week, Deputy Secretary Larry Summers will give a speech at the George Washington University School of Public Health on the economic costs of smoking.

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3. Crime and Drugs -- Conference on Drug Treatment: The Justice Department, ONDCP, and HHS will hold a three-day conference on drug treatment in the criminal justice system next week. The conference will explore effective drug treatment services, obstacles to their adoption, and gaps in scientific knowledge on drug addiction. The Attorney General will unveil a new legislative proposal -- developed pursuant to your January 12, 1998 directive -- to allow states to use their Federal prison construction and substance abuse treatment funds to provide a full range of drug testing, treatment, and sanctions for offenders under criminal justice supervision.

4. Crime and Drugs -- Probation Study: The Department of Justice will release the first survey of the nation's 3.2 million probationers on Sunday. The survey found that:

-- Forty percent of all probationers were under the influence of alcohol, and another 14 percent were on drugs, at the time they committed the criminal offense for which they were sentenced.

-- Almost 70 percent of probationers reported past drug use, 32 percent during the month of their arrest. Overall, 67 percent had used marijuana, 31 percent crack or other forms of cocaine, 25 percent stimulants, 20 percent hallucinogens, 15 percent barbiturates, and 8 percent heroin or other opiates.

-- Almost half of all probationers reported having been tested for drug use while on probation. This figure rose to 65 percent among those who had used drugs during the month before their criminal offense, and to 74 percent among those who committed their offense to obtain drug money.

-- About 17 percent of all probationers reported participating in a drug treatment program during their sentence, but this percentage rose as the severity of their prior drug use increased. More than half -- or 52 percent -- of probationers who were on drugs when arrested had participated in a drug treatment program.

-- Sixty four percent had driven a car while drunk or drugged; 50 percent had been involved in a domestic dispute while drunk or high; and 35 percent had consumed as much as a fifth of a gallon of alcohol in a single day.

5. Crime -- COPS: The COPS Office will announce on Thursday \$58 million in hiring grants to 285 police departments to fund about 900 additional officers. This announcement will put the total number of officers funded through the COPS Program at over 72,000.

6. Health -- Patients' Bill of Rights I: Rep. Gephardt is insisting that the Democratic Leadership's version of patients' rights legislation include whistleblower protections for hospital employees. Although we are sympathetic to these protections, we believe their addition to the bill would diminish the prospect of passing legislation this year. Rep. Dingell believes equally strongly that including whistleblower protections would be a strategic mistake, because they would prevent Blue Dog Democrats like Reps. Stenholm, Tanner, and Barry from supporting the bill. Indeed, Dingell has said that he would reconsider his decision to be the bill's lead sponsor in the House -- still further decreasing the chance of Congressional action -- if these provisions were added. We will continue to work with Gephardt, Dingell, and the Blue Dogs to see if compromise language can be developed. The Democrats are currently scheduled to introduce their bill as early as Wednesday.

7. Health -- Patients Bill of Rights II: Larry Stein and Chris Jennings had a good meeting on Thursday with Rep. Norwood, the Republican sponsor of patients' rights legislation in the House. Norwood believes there is strong bipartisan support in the House to pass this legislation, and wants to work with us to achieve this goal. We agreed that we should aim to pass a bill by July, and that the House would have to act first to put pressure on the Senate. Norwood said he would continue to support a strong enforcement scheme for patient protections, in part because he thinks such a scheme is necessary to maintain the backing of the AMA and consumer groups. He also indicated that he and his Republican colleagues would oppose any provisions mandating insurance plans to provide certain benefits.

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8. Health -- Children's Health Implementation: HHS will announce the approval of Ohio's and California's children's health program next week. Because of the size and strength of these programs, we may want to highlight their approval at the White House, possibly with the Vice President participating in your absence. Also within the next ten days, HHS will make a decision on whether to approve New York's children's health proposal. New York's application has a controversial provision involving provider taxes that may lead HHS to disapprove it. The plan also takes insufficient steps to ensure that federal dollars not substitute for health insurance currently covered by the private sector.

9. Health -- Assisted Suicide Law: We met this week with representatives of the Catholic Health Association (CHA) to discuss the Justice Department's likely ruling that doctors in Oregon who assist their terminally ill patients to commit suicide, in conformance with state law recently enacted through referendum, do not violate the federal Controlled Substances Act

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prepare response

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(CSA). CHA informed us that Sen. Hatch and Rep. Hyde will introduce legislation amending the CSA to prohibit such action as soon as the Department issues this ruling. CHA is working with Hatch and Hyde on ways to draft legislation so that it will not inhibit physicians from the appropriate use of painkillers for the terminally ill, such as incorporating physician review boards into the prosecutorial and/or sentencing process. We will try to delay the release of the Justice Department's ruling until we have developed a roll-out strategy, including a position on federal legislation prohibiting physician-assisted suicide. You can expect a memo from us on that subject immediately after your return from Africa.

10. Education -- Coverdell Bill: Democrats defeated a cloture motion on the Coverdell bill last week after the Senate Majority Leader prevented them from offering any amendments. We expect a compromise to be worked out next week, and the Democrats to proceed with our plan of offering our school modernization proposal as a substitute. Although many in the education community are actively supporting this amendment, we expect it to be defeated on a party-line vote. If that happens, Coverdell will pass because the Democrats do not have enough votes to sustain a filibuster. As of now, however, there are sufficient votes to sustain a veto.

11. Education -- Teacher Training Program: At a mark-up of the Higher Education Act this week, the House Education and Economic Opportunity Committee rejected your teacher training proposal, which would provide scholarships to students who will commit to teaching in high poverty school districts. The Committee instead approved a much smaller and less well-focused provision sponsored by Rep. Goodling, which would provide grants to Governors to address a range of teacher preparation issues such as raising certification standards. To make matters worse, the Committee decided to fund this teacher preparation block grant by eliminating federal support for the National Board for Professional Teaching Standards. We are working with Gov. Hunt and the National Board staff to reverse this action on the House floor, including by demonstrating strong bipartisan gubernatorial support for the Board. At the same time, we are attempting to ensure that the Senate Education and Labor Committee produces a better teacher training provision.

12. Political Reform -- Free Television Time: We persuaded Senate Republicans last week to remove language from the Supplemental Appropriations bill that would prohibit the Federal Communications Commission (FCC) from establishing a system of free television time for candidates for federal office. The Republicans will add this rider to another bill, however, unless we can find some compromise approach to the issue. Sen. McCain is the key to a settlement, and we are meeting with his staff this week. One possible solution is for the FCC to put off issuing a Notice of Rulemaking to establish a system of free TV, and instead issue a simple Notice of Inquiry to review the issue. After your Advisory Committee on Public Interest Obligations of Digital Television Broadcasters has completed its work later this year, the FCC could determine to go ahead with a rulemaking.

14. Community Empowerment -- Brownfields: The Vice President announced last week the 16 winners of EPA's \$28 million Brownfields Showcase Communities program.

Callahan
Sullivan
Gibson
Walker
Tucker
Hunt
Harris
Holt
Hutchinson
Kerry
Lujan
Mack
Mead
Mills
Pete
Rohrabacher
Santorum
Scheidt
Shelton
Strom
Tanner
Trent
Walters
Wicker
Woolsey
Young

2
Walker
Emanuel
Bankhardt
Walker
Street

Among the selectees were Baltimore, Chicago, Dallas, Kansas City, Los Angeles, St. Paul, Salt Lake City, Seattle, and Trenton. The program was very popular, with over 231 communities submitting applications, and we are exploring the possibility of funding a second round in the future.