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June 19, 98 - DPC Weekly Report

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THE PRESIDENT HAS SEEN
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THE WHITE HOUSE
WASHINGTON

June 19, 1998

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MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Elena Kagan

SUBJECT: DPC Weekly Report

1. Tobacco -- Meeting with Senator Hatch: As you requested, Erskine, Larry, and we met with Senator Hatch to discuss his alternative tobacco legislation. Although Hatch would not give us a copy of his bill, his remarks suggested that it differs little from the June 20th settlement. We do not think this bill could command majority support (let alone the 60 votes needed to invoke cloture) in the Senate. The liability provisions (not only an annual liability cap, but also a prohibition on punitive damages and class actions) should make it unacceptable to most of the 60-plus Senators who just two weeks ago voted to strip the much weaker liability protections from the McCain bill. In addition, the payment and lookback provisions (probably resulting in an increase of about 75 cents per pack, plus abatable surcharges) would be too small -- and the FDA provisions too weak -- for most Democrats. Hatch himself admits that this legislation would not pass the Senate without the strong support of Senators Lott and Daschle. But even if Lott were to become sufficiently nervous to enter into a deal of this kind; Daschle almost surely would refuse to do so. The bill, at least as it now stands, is simply too close to the June 20th agreement to obtain the support of more than a handful of Democrats. Our meeting with Hatch -- and the present state of his bill -- reinforced our conviction that we need to spend some time putting pressure on Republican senators before we enter into any compromise discussions.

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2. Tobacco -- Medicare Suits: We have asked the Department of Justice to analyze the possibility of bringing suit against the tobacco companies for losses suffered by the Medicare program as a result of tobacco-related disease. This suit would be an analogue to the suits brought by 42 states for losses suffered by their Medicaid programs. We expect the Justice Department to note the significant possibility of losing such a suit, perhaps even within a few months. (One large problem is that the Medicare statute does not clearly authorize suits against third-party tortfeasors, as the Medicaid statute does; the suit thus would be subject to an immediate motion to dismiss.) We and the Counsel's Office will transmit to you the Justice Department's analysis, and also will advise you on how such a suit would affect our broader youth smoking strategy.

3. Tobacco -- Events: We are preparing a directive for you to announce on Monday (at the Gores' family conference) to initiate work on a new survey to measure youth smoking. This survey, which HHS will develop and conduct, will provide the most accurate possible

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measure not only of overall youth smoking rates, but also of the distribution of youth smoking among different tobacco companies and brands. The survey, which the McCain bill would have mandated, also would form the basis of any lookback surcharges imposed in future tobacco legislation. We also are considering a number of other tobacco-related announcements, including a new Treasury report on the effect of price increases on youth smoking (to highlight the insufficiency of the expected no-money House bill) and a directive preventing movie makers from using federal lands (e.g., military installations and national parks) if their movies contain or glamorize youth smoking.

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

5. Health -- Medicare and Hyde Amendment: Secretary Shalala will transmit a letter to Senator Nickles on Tuesday that reaffirms the Health Care Financing Administration’s longstanding policy to apply the Hyde Amendment to the Medicare program. Prior to the release of the letter, we will hold meetings with the women’s advocacy organizations, the Catholic Health Association (CHA), and Senator Nickles’s staff. In our meeting with the CHA, we will offer a way for Catholic health plans to decline to provide any abortion services (even those permitted under Hyde) and still become Provider Sponsored Organizations eligible to receive Medicare payments.

6. Health -- FDA Commissioner Nomination: You are tentatively scheduled to announce on Tuesday that Jane Henney is your nominee for FDA Commissioner. We do not expect Henney to have an easy road to confirmation, but we are working closely with Sen. Domenici, her home-state sponsor, to ensure that she gets the best possible send-off.

7. Health – Patients’ Bill of Rights Legislation: The Republican House Leadership is expected to release proposed health care legislation next week, which apparently will include a watered-down patients’ bill of rights initiative combined with “Health-Mart” and “multi-employer welfare association” (MEWA) provisions. The patients’ bill of rights initiative almost certainly will lack both a strong enforcement mechanism and any “body-part mandates” (e.g., for breast reconstruction following a mastectomy). The Health-Mart and MEWA provisions probably will enable small businesses to exempt themselves from state

health regulations (including state-passed patients' bills of rights) and lead to further segmentation of the insurance market (i.e., separating healthy from sick populations). The Republican initiative also may include some inefficient tax incentives. As of now, we are not sure whether this bill will satisfy Congressman Norwood's desire for a patients' bill of rights initiative. If it fails to do so, we expect him to work with Congressman Dingell on a discharge petition to bring strong bill of rights legislation to the House floor.

8. Drugs -- Drug Courts: In response to your interest in drug courts, we are preparing an event in which you will announce the release of the latest Justice Department drug court grants. Approximately 150 jurisdictions will receive \$27 million in grants to help plan, implement, enhance, or evaluate drug courts. Some of the cities receiving grants are San Francisco, Omaha, Little Rock, Washington, D.C., and Atlanta. We may want to combine this announcement with the nationwide launch of our anti-drug media campaign, tentatively scheduled for July 9.

9. Drugs -- PRIDE Survey: The National Parents' Resource Institute for Drug Education (PRIDE) released on Thursday its annual report on teen drug use. The report shows that drug, alcohol, and tobacco use by teens generally dropped during the 1997-98 school year -- the first across-the-board declines since the 1990-91 school year. Among the most notable declines: (1) marijuana use among junior and senior high students fell from 15% to 13% and from 36% to 33%, respectively, last year; and (2) cigarette use by junior high students fell from 32% to 29% last year -- the first such decline in the 11-year history of the PRIDE survey. The single discordant note in the report is that students in the 12th grade reported slight increases in their use of cigarettes, cocaine, uppers, and downers.

10. Drugs -- Pulse Check Report: ONDCP will release on Thursday its biannual Pulse Check report on the use and distribution of illicit drugs in 30 cities. The information contained in Pulse Check is gathered from ethnographers, law enforcement officials, and drug treatment providers. Some of the report's key findings include: (1) methamphetamine has continued its spread eastward and is now considered an emerging drug in Baltimore and Columbia, MD; (2) heroin use is stable or rising, with young users who snort or smoke the drug increasing across the country; (3) crack is failing to attract new users, although powder cocaine use is rising among the affluent in a few areas; and (4) marijuana use is widespread, crossing economic and social groups. Director McCaffrey is planning to unveil the Pulse Check report with DEA Administrator Tom Constantine and NIDA Director Alan Leshner.

11. Crime -- Brady Handgun Checks: The Justice Department will release on Sunday a report on Brady checks conducted in 1997. The report shows that state and local officials conducted 2.5 million background checks last year and prevented 69,000 sales of handguns. About 62 percent of the 69,000 rejections were for felony convictions or current indictments; 9 percent were for domestic violence misdemeanors; 6 percent were for fugitive status; and 2 percent were for domestic violence protective orders. The report also states that from February 28, 1994 (the Brady Law's effective date) through the end of 1997, background

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checks have prevented 242,000 handgun sales to prohibited purchasers. We previously have used a slightly higher figure (300,000 sales), based on a Justice Department estimate that could not fully separate sales of handguns and long guns.

12. Crime -- Modified Assault Weapons: We successfully deflected an attempt last week to add a rider to the Senate Treasury-Postal appropriations bill that would have undermined our recent decision to prevent the importation of modified assault weapons. The rider would have grandfathered more than a hundred thousand of these weapons into the country. To prevent the rider from passing, we helped craft an alternative amendment to reimburse importers for a limited number of firearms (roughly 2,000 to 3,000) that were in or en route to bonded warehouses when we announced our administrative action. This amendment, which also provides for the destruction of these weapons, passed instead of the broad rider originally proposed.

13. Crime -- Zero Tolerance: As you know, you signed a law in 1995 requiring all states to adopt a zero-tolerance standard for underage drinking and driving by October 1, 1998. On June 29, South Carolina will become the 50th state to enact a zero tolerance law. Delaware's zero tolerance law, however, does not fully comply with the federal standard and must be amended.

14. Education -- Teacher Education: Senator Bingaman has proposed an amendment to the Higher Education Bill (to be taken up by the Senate next week), which would impose new accountability requirements on teacher education programs. The amendment would require teacher education programs to publish the percentage of their students passing state teacher certification tests, and would cut off financial aid to students in programs with less than a 70 percent pass rate. The amendment has the strong support of the NEA, but is opposed by the higher education community and Senators Jeffords, Coats, Kennedy, and Dodd. We are working with Bingaman and Kennedy to find an approach that retains the amendment's strong emphasis on accountability without penalizing students for the low quality of their program.

15. Education -- Charter Schools: The Senate Human Resources Committee will mark up a bill to expand the charter schools program when the Senate returns from its July 4th recess. The House passed a similar bill last summer, which you supported. We are working with Sen. Kennedy to ensure that the Senate's version of the bill enables charter schools to expand more rapidly, while making sure they are held accountable for outcomes.

16. Welfare Reform -- GAO Report: The GAO issued a report last week showing sharp increases in the proportion of welfare recipients going to work. The GAO found that in three of the seven states studied (California, Louisiana, and Maryland), the proportion of welfare recipients who obtained jobs more than doubled between 1995 and 1997 and in another two states (Oregon and Wisconsin), the proportion increased by more than 70 percent. In one state (Texas), the proportion declined very slightly. In the last state (Connecticut), data

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on jobs was not available, but there was a substantial increase in the number of families leaving welfare because of increased earnings.

17. Welfare Reform -- Conference of Mayors Report: The U.S. Conference of Mayors released a report Friday on welfare reform in urban areas. A survey of 125 mayors included in the report indicates that while they see some cause for optimism after the first 18 months of welfare reform, they remain concerned about creating enough jobs and connecting people to those jobs. They note especially the lack of adequate child care, transportation, and affordable housing near employment. The report also estimates that the number of welfare recipients in urban areas needing jobs over the next five years could exceed by about 350,000 the number of jobs created in that time. HHS has methodological questions about this overall projection, noting for example that the study ignores welfare recipients who are already working and can take advantage not only of new jobs, but of turnover in the existing labor market. The study, however, clearly shows significant disparities among urban areas in the size of projected job gaps. In areas such as Fort Worth, Las Vegas, Little Rock, Miami, Phoenix, and San Francisco, projected job growth exceeds the expected number of job seekers; in areas including Detroit, Providence, Newark and Cleveland, the projected ratio of low skill job seekers to jobs is very high.

18. Welfare Reform -- Civil Rights Guidance: A number of agencies, including HHS, DOJ, EEOC, and DOL, have drafted guidance on the application of civil rights laws to welfare reform, particularly work requirements and time limits. The guidance notes, for example, that a racially neutral criterion that exempts disproportionately few racial minorities from the five year time-limit is permissible, but only so long as the state has a substantial and legitimate justification for this criterion and there is no comparably effective alternative that would exempt more minorities. HHS intends to share this guidance in the coming weeks with civil rights groups, advocates, and the states. Although we share HHS's view that the guidance is useful, we are somewhat concerned that the states may interpret it as imposing new requirements, rather than simply showing how existing law applies to new programs. We accordingly are working with HHS to ensure a smooth roll-out of this draft guidance to the states.