

NLWJC – Kagan

Hard Drive – Folder 9

M E M O R A N D U M

TO: Don, Ann, Rahm

FROM: Eli

RE: Possible Presidential Involvement/Action on "Tuskegee Study"

DATE: Thursday, January 30, 1997

A quick report on a meeting this afternoon with Kitty Higgins, Elena Kagan, HHS Chief of Staff Bill Corr, and Assistant Secretary for Health Philip Lee.

Background

As you know, between 1932 and 1972 the Public Health Service (now part of HHS), together with the Tuskegee Institute, conducted a long-term study of untreated syphilis known as the "Tuskegee Study." For the purposes of the study, federal, state and local officials allowed about 400 African-American men to go untreated for syphilis, even though treatment was available. (11 of these men are still alive.) The study was stopped only after it became public in 1972. The government then agreed to provide medical care to the victims and their families for the rest of their lives.

The Governments Study

In 1996, CDC and HHS sponsored a Tuskegee Syphilis Study Committee (technically the Presidents committee, although I do not believe he has ever publicly commented on the issue). In May, 1996, the Committee issued a report which recommended that the President apologize on behalf of the government. The report also suggested initiatives in minority health, training for health care workers serving in minority communities, and a clearinghouse to help investigators conduct ethically responsible research. The study has gotten a great deal of media attention, much of it focussed on the fact that the incident has fueled African-American distrust of government and public health authorities.

HHSs Request for a Presidential Event or Message

HHS is now requesting some kind of Presidential involvement -- ranging from a proclamation or press statement, to an actual Presidential event. They initially asked that this happen before February 10th (which is clearly impossible), because that is when an HBO movie about the Tuskegee Study will premiere; at the very least, they would like to do this by the end of February, which is African-American History Month.

HHS was arguing that the President should simply issue an apology, since that was the Committees main recommendation. Apparently, HHS was not prepared to act on any of the Committees other recommendations. Kitty, Elena and I agreed that it is almost certainly not worth Presidential involvement unless we can show real action. HHS promised to report back ASAP with possible steps that could be taken.

The key questions are:

Is this issue worth the Presidents involvement, even if we can show action?

If so, is it better to quietly issue a proclamation or statement or to design an actual event?

If not, should HHS do something on their own?

Please advise; once we receive more options from HHS, we plan to hold another meeting on this issue.

MEMORANDUM

TO: ELENA KAGAN
CYNTHIA RICE

CC: KEN APFEL
JOHN MONAHAN

FROM: ANNE LEWIS

RE: COMMENTS ON DRAFT TEXAS LETTER

DATE: MARCH 31

I do not think the Texas letter as it currently stands takes a strong enough position.

The language is very cautious and I believe could be read as a more ambiguous signal than we intend to send. Suggestions for strengthening it are:

3rd graph Rewrite : HHS believes states must bear in mind Section 1902 of the SSA which establishes the principle that

Delete the qualifier, "In general ..."

4th graph: Add a sentence which explicitly states that while the Medicaid principle is the basis for our guidance, we do not wish to imply that the incentives in Medicaid are analogous. (HHS can craft appropriate language.)

7th graph: Rewrite: "HHS endorses the search for increased efficiency and accelerated innovation through the use of outside contractors. At the same time, however, we emphasize that contract terms must assure program integrity and embody incentives that tightly align contractors interests with program goals. Further, contract terms must provide for the kind of complete and transparent data that allows for meaningful evaluation and on-going competition."

August 5, 1997

MEMORANDUM FOR BRUCE REED

GENE SPERLING
ELENA KAGAN

FROM: Jose Cerda
Emil Parker
Ellen Seidman
Paul Weinstein

SUBJECT: NEC/DPC Economic and Community Empowerment Work Group

I. Proposed Membership

DPC: Paul Weinstein, Jose Cerda, Cynthia Rice, Diana Fortuna
NEC: Jonathan Kaplan, Emil Parker, Peter Orzag, Ellen Seidman
OVP: Jonathan Weiss, Julian Potter
CEA: Sandy Korenman
OMB: Michael Deich, Steve Redburn
CEQ: Keith Laughlin
Treasury: Michael Barr,
Office of the Comptroller: Matt Roberts
HUD: Paul Leonard, Gloria Robinson
Labor: Ray Uhalde
HHS: David Garrison, Don Sykes
Transportation: Jan Lieber
Interior/BIA: (need candidate)
SBA: Ruth Sandoval
USDA: Carl Willock
EPA: Tim Fields, Harriet Tregoning
Energy: Mark Mazur

II. Look Back

A. Ask CEA, Treasury, and OMB to review economic and other data on major Administration economic development initiatives, including CRA reform, Empowerment Zones/Enterprise Communities, CDFI program, reform of Low Income Housing Tax Credit and Mortgage Revenue Bond Program, Public Housing Reform, Home-Ownership Initiative, SBA One Stop Career Centers/Job Training, and the Brownfields pilot program.

B. CEA survey of data and literature on urban and rural economic development

C. Clinton record on issues with impact on race.

Overall Economy:

1. Impact of 1993 Economic Plan

2. Impact of 1997 Balanced Budget Agreement

III. Implementing New Initiatives in Balanced Budget Agreement

Welfare Jobs Initiative -- The reconciliation bill includes the President's proposal to create \$3 billion Welfare to Work Jobs Challenge to move long-term welfare recipients into lasting, unsubsidized jobs. These funds can be used for job creation, job placement and job retention efforts, including wage subsidies to private employers, transportation and other critical post-employment support services. The Labor Department will provide oversight but the dollars will be placed, through the Private Industry Councils, in the hands of the cities who are on the front lines of the welfare reform effort.

Welfare-to-Work Tax Credit -- This provision will give employers an added incentive to hire long-term welfare recipients by providing a credit equal to 35% of the first \$10,000 in wages in the first year of employment, and 50% of the first \$10,000 in wages in the second year, paid to new hires who have received welfare for an extended period. The credit is for two years per worker to encourage not only hiring, but also retention.

Brownfields Tax Incentive - The tax incentive will be available for three years. The Treasury Department estimates that this \$1.5 billion tax incentive will leverage more than \$6 billion for private sector cleanups nationwide, allowing redevelopment of 14,000 brownfields. It is not yet clear whether EPA and HUD will be successful in securing funding for their proposed expansion of the Brownfield pilot program

Increased CDFI Budget Allocation -- The House has agreed to fund the program at \$125 million next year.

2nd Round of Empowerment Zones -- the reconciliation bill includes, a second round of EZs --15 urban and 5 rural EZs. The new EZs will benefit from a different blend of tax credits from first-round EZs. They will be eligible for the Brownfields tax incentive, special expensing of business assets, and qualification for private-activity bonds. The selection of the new Empowerment Zones is a major initiative on its own.

DC revitalization plan

IV. Possible New Initiatives

This list is by no means exclusive; we expect members of the group to suggest other proposals and areas for exploration.

The Ten Best Mayors Tour -- The working group would identify the ten most successful mayors, Democrats and Republicans, and go and meet with them and their staffs to discuss their best economic development ideas: Lead DPC/NEC.

Affordable Housing and Housing Mobility -- Look at a possible expansion of vouchers and AT proposals to address housing discrimination and mobility issues: Lead HUD/ NEC.

Expand Low-Income Housing Tax Credit (LIHTC)-- The President fulfilled in 1993 his commitment to make this credit permanent. LISC has proposed lifting the cap on the LIHTC

to allow for expanded use of the credit targeted to the development of housing for individuals moving out of public housing: Lead Treasury and HUD.

Fannie Mae/Freddie Mac/Federal Home Loan Banks/Farm Credit System -- these organizations and systems remain a relatively untapped resource of housing and economic development lending for low-income individuals and underserved communities and business groups: Lead Treasury and HUD.

Serving the "Unbanked" -- Treasury is engaging in an effort to further expand lending, investment, and basic banking services to the unbanked. This includes an initiative to provide money to financial institutions to insure that REASONABLE ATM use is free for individuals living in distressed communities, financial education programs, etc.: Lead Treasury.

Metropolitan Coordination and Collaboration -- Proposals to encourage region-wide coordination, especially in areas such as welfare-to-work, transportation, environment and education: Lead OMB, CEQ with extensive DOC, DOT, and HUD participation.

Sustainable Development -- Brownfields is the best example this Administration has of combining good environmental policy with sound economic development design. CEQ has undertaken a large effort to review current best practices of sustainable development. The working group needs to task them with coming up with their best ten ideas to promote the cleanup of the environment and encourage private investment in our cities: Lead EPA, CEQ, Treasury, HUD.

Small/Minority/Women-Owned Business Equity Capital, Entrepreneurship -- Policy proposals could be considered in areas including microlending, CDFI tax credits, and CRA credit for additional categories of bank investment: Lead Treasury, SBA.

CRA Principles for Nonbanks. Explore methods of applying CRA principles to nonbank providers of financial services; e.g., mortgage companies, insurance and securities firms: Lead Treasury, DPC, NEC.

Welfare-to-Work Tax Credit -- monitor utilization and explore options to channel some portion of the tax credit benefits to nonprofits: Lead Treasury, NEC, DPC.

August 12, 1996

MEMORANDUM FOR JACK QUINN

FROM:Ken Apfel

SUBJECT:Food Stamp Eligibility

We had a conversation about whether children of noncitizen parents are eligible to participate in the Food Stamp Program if the children are United States citizens. I asked my staff to research this issue. This memo outlines how citizen children are treated under current law and how this would differ under enacted welfare reform legislation.

Under current law, only citizens and legal immigrants are eligible to receive food stamps. For households that meet the Programs income eligibility criteria, the amount of food stamps provided is based on household size and household income. A household without any income would receive the maximum benefit established for a household of that size. As household income increases, the size of the food stamp benefit declines.

Under current law, an income eligible household composed of a legal immigrant parent and a citizen child is eligible to receive food stamp benefits for a household of two persons. If the parent is an illegal alien, the citizen child is eligible to receive food stamps for a household of one person. The size of the food stamp benefit would be calculated using a prorated portion of the parents income. In other words, a proportion of the ineligible persons income is included in the determination of eligibility, but the ineligible person is not counted as part of the household in calculating the size of the benefit.

The welfare reform legislation passed by Congress would ban most legal immigrants from receiving food stamps until citizenship. Citizen children would continue to be eligible for food stamps and the size of the benefit would be determined based on procedures similar to those outlined above for households with some eligible and some ineligible members. The one difference is that the welfare reform legislation would give States the option to include all of the income from ineligible household member when calculating benefits, rather than a prorated share. Although it is questionable whether many States would exercise this option because food stamp benefits are 100% Federally funded, it would simplify State administration.

cc:Elena Kagan

Bruce Reed

MEMORANDUM TO THE DIRECTOR

THROUGH: CHARLES KIEFFER

CC: JACK LEW
REBECCA CULBERSON
JILL BLICKSTEIN

FROM: Alice Shuffield
DATE: April 28, 1997
RE: Pending SAPs likely to come up in Tuesdays 7:45 a.m. meeting

Attached are two pending draft SAPs on bills that will go to the House or Senate floor on Tuesday. Upon her return from Philadelphia on Monday night, I spoke to Sylvia Mathews about each of the SAPs. She is concerned about (1) their substance, (2) our short turn-around time for sending them to the Hill, and (3) running them by the President on his day off.

Below is an outline that details the development the SAPs, and explains the short time frame. In addition, it describes or recommends remaining steps to reach final clearance. At this point in the process, the two SAPs will follow different courses of action, but both SAPs prompted Sylvias concern.

1.S. 543 - Volunteer Protection Act of 1997
Pending SAP: Administration Opposes

Sequence of events:

- o First heard of possible scheduling of bill: Thursday, 4/24
- o Motion to proceed to bill appeared: Friday, 4/25
- o LRD developed and circulated the SAP to the agencies: Thursday and Friday, 4/24-25
- o The Senate filed cloture late Friday on the motion to proceed to the bill, with a vote to occur on Tuesday at 2:15.
- o EOP clearance began Monday, 4/28, and the SAP went through numerous iterations and revisions in the EOP clearance process. (Vicki Radd was notified of potential issue on Monday around 2:30 pm.)

On Monday afternoon, we held a conference call with all interested parties, including Bruce Lindsey/Bill Marshall (WHLA), Elena Kagan (DPC), Ellen Seidman/Kathy Wallman (NEC), Victoria Radd (COS), and Tracy Thornton (WHLA). Michael Deich did not participate in the call, but concurred with the product. Attached is the SAP that resulted from that discussion.

Sylvia Mathews saw the statement late Monday night, however, and argues that it mis-represents the Presidents National Service position. She directed Elena Kagan to draft a memo to the President for the Chief of Staff to raise to him on Tuesday. OMB, DPC, NEC, WHLA, and Justice agree that we oppose the bill in relation to product liability, as stated in the attached SAP. But the context of the Presidents Volunteer Summit today, our opposition could be misleading. Another option is that we could simply not send a SAP up

at all.

2.H.R. 1342 - To Provide for a One-Year Enrollment in the Conservation Reserve Program (On Tuesdays House Suspensions Calendar)

Pending SAP: The Secretary of Agriculture will recommend veto.

Sequence of Events:

oReported out of the Committee: April 17, 1997

oPlaced on the House calendar: April 23, 1997

oLRD developed and circulated the SAP to the Agencies: Thursday and Friday, April 24-25

oEOP clearance (with WHLA and COS) began Monday afternoon, April 28

oNeed to send SAP by 2:00 pm Tuesday for House Floor action

USDA wants the statement to say the Secretary would recommend that the President veto the bill. Unfortunately, they have not communicated this to the Hill. OMB, CEQ, and WHLA concur with the Secretaries position, but want to ensure communication with the Hill before we send our statement up.

Sylvia Mathews asked OMB to prepare a memorandum to the President explaining the USDA veto threat. However, given that this is not a senior advisers or a Presidential veto threat, we do not believe a memo to the President is necessary at this time. T.J. will coordinate with USDA in the morning to make sure USDA has consulted with the Hill, and he will talk with Sylvia Mathews before we issue a statement.

MEMORANDUM

TO: BRUCE REED, ELENA KAGAN

FROM: TOM FREEDMAN, MARY L. SMITH

RE: VICTIM INFORMATION AND NOTIFICATION EVERYDAY ("V.I.N.E.")

DATE: NOVEMBER 18, 1997

SUMMARY

In June 1996, in conjunction with his support for a Victims Rights Amendment, the President directed the Department of Justice (DOJ) to "adopt a nationwide automated victim information and notification system." Following the Presidents direction, DOJ established a working group to look into the matter. The working group produced a report that outlines what the DOJ currently does to notify victims. In addition, as part of the FY98 Budget, DOJ has allocated \$8 million for the FBI to try to create a software system to track victims. However, there is no immediate plan for a solicitation to be issued regarding software development.

Earlier this month, Governor Patton and Mrs. Patton from Kentucky met with Rahm Emanuel, Mickey Ibarra, Craig Smith, and Sylvia Mathews. In particular, the Governor highlighted that Kentucky has a statewide automated victim notification system called "Victim Information and Notification Everyday (V.I.N.E.)" that notifies self-selected victims when offenders are scheduled to be released from the states prisons and jails.

Following is background on steps DOJ has taken with regard to victim notification, how it might fit with other DOJ programs, a description of the V.I.N.E. system, statistics on V.I.N.E, and other considerations.

I. BACKGROUND

*In connection with the Presidents support for a constitutional amendment for victims rights, the President directed the Attorney General in June 1996 to "adopt a nationwide automated victim information and notification system," to work with other agencies to ensure victim participation, to "consider legislation that would prohibit employers from dismissing or disciplining employees who are victims of crime and whose participation as victims in criminal proceedings requires them to take time away from their employment," and to work with state officials to "achieve a uniform national baseline of protections for victims."

*In July 1997, DOJ developed a package of legislation that was sent to the Hill. As part of this package, DOJ proposed a bill entitled the "Victims Rights Act of 1997." Section 2 of this proposed bill included a automated victim information and notification system. This bill was never introduced.

*Kim Lesnek, who is a member of the DOJ working group on victims rights, reports that DOJ has done an assessment of current victim notification within the Department. The Bureau of Prisons currently notifies only victims of violent crime on escapes, parole hearings, and release dates.

*The DOJ working group considered the V.I.N.E. system, but did not pursue it. DOJ thought that the V.I.N.E. system did not meet its obligations under current law to make its "best efforts" to notify victims at various stages of federal proceedings. One of Ms. Lesneks main concerns about the V.I.N.E. system was that it required victims to register in the system, and the working group had read current federal law restrictively to require the federal government to proactively contact victims. However, when questioned, Ms. Lesnek admitted that currently federal prosecutors rely on victims to return completed forms, acknowledging that they want to be notified. Accordingly, current federal practice is not that much different in concept from the V.I.N.E. system. Ms. Lesnek indicated that the working group would be willing to take another look at the V.I.N.E. system.

*As part of the FY98 appropriation, DOJ received \$8 million to look into developing a computerized victim-notification system that would link the Bureau of Prisons, the U.S. Attorneys Offices, and the Executive Office of the U.S. Attorneys. However, the working group needs to meet again to actually decide how DOJ will spend the money for developing this system. It had been anticipated that the FBI would take the lead in the development. The FY98 budget also allocated funds for approximately 93 new positions to perform victim notification in the U.S. Attorneys Offices. These positions perform much of the notification by mailing out notices.

*The Victims Rights Working Group has discussed the possibility of working with the federal debt collection team at DOJ in the future. Kathleen Hegerty of the Justice Management Division at DOJ reports that it expects to award a contract for development of software to collect federal civil debt only in January 1998. This software would be installed at the Executive Office of the U.S. Attorneys, the U.S. Attorneys Offices, Main Justice, and any Justice field offices. For instance, if these systems were able to talk to each other, the FBI could code in the victims names at the investigation stage, which could then be used to notify them at later stages in the proceedings such as when judgment is awarded and when the defendant is released from prison.

II. DESCRIPTION OF V.I.N.E.

*Information about inmates housed in local jails, adult correctional facilities, and certain juvenile facilities is available 24 hours a day, seven days a week. Through computer generated telephone calls, all registered persons will be contacted a predetermined telephone number when an inmate is scheduled for release or if an inmate escapes from custody. In addition to victims, law enforcement agencies and the general public have access to housing locations and release information through the 24-hour telephone service.

*Information available through V.I.N.E.

1. Status: If not in custody, the date the inmate was released will be given.
2. Location: Current jail or institutional address and telephone number will be given for inmates currently in custody.
3. Parole eligibility: If applicable, the next scheduled hearing date will be given.
4. Sentence description: If applicable, the tentative release date will be given.

*How a victim registers for V.I.N.E. A person requesting to be notified calls a toll-free number. The system will call the victim for an established period of time or until the requesting party acknowledges the receipt of the release information.

*Frequency of notification. Notification regarding the release of an inmate will be made every 30 minutes for a 24-hour period or until the registered person acknowledges receipt of the information. Notification regarding the release of an inmate from a state institution will be made, if possible, 72 hours before the inmates release. In cases of parole, changes in sentences due to immediate time credits, court-ordered discharges or escapes, the system will begin to call once the inmate is released.

*System Security. The V.I.N.E. system allows each person to register two telephone numbers. The system requires the victim to leave a four-digit, personal identification number (PIN). Use of the PIN is the only way to halt the notification calls.

*Victim Confidentiality. The inmate will not know who is registered under the system. Victims can register anonymously. The victims names are never in the system.

III. STATISTICS (from the V.I.N.E. materials)

*There are presently 3000 correctional facilities that would need to be connected to a computer system in order to achieve national coverage for victims that wish to be notified. A national system would include smaller county jails in addition to state penitentiaries and large jails. 50% of the jails in this country are small facilities.

*At present, Kentucky states that its V.I.N.E. system monitors approximately 170,000 of the countrys approximately 1,000,000 inmates.

*Kentucky estimates that a national V.I.N.E. system would cost approximately \$14.5 million to connect all states correctional facilities and \$24.8 million to operate annually thereafter. This estimate seems low.

*Based on its own experience, Kentucky estimates that a national system could be operational within 24 to 36 months from the initiation of the funding.

*The development of a national database of inmates could be used for other purposes in addition to victim notification. For instance, the Social Security Administration could use this information to suspend benefits to inmates who are housed in county jails. In addition, the information could be used to alert states to collect child support payments when inmates are released.

IV. OTHER CONSIDERATIONS

*Kentucky reports that it has not experienced any complaints similar to those surrounding the notification in Megans law, perhaps because here the notification occurs while the inmate is still incarcerated.

*Kentucky reports that it has experienced no liability problems such as victims suing the state or correctional facilities.

MEMORANDUM TO BRUCE REED

FROM: Ken Apfel

RE: Allowable Work Programs for Individuals Subject to the Food Stamp Time Limit

USDA has contacted my staff regarding three policy issues regarding the current law provision to limit food stamps for three months for childless able bodied adults between the ages of 18-50. This memo describes each issue briefly and provides my recommendations. I would like your input and assistance in providing feedback to the Department. We'll need to resolve these issues quickly. Secretary Glickman is giving a speech to Public Voice on Thursday where he may announce several of these issues contrary to my recommendations.

Should USDA increase the level of "public fanfare" associated with the waivers it provides to States? States can seek waivers from the time limit for areas within the State which have high unemployment or insufficient jobs. About half the States have sought waivers and USDA has generally been approving them or working with the States to make the waivers permissible. The Office of the Secretary is very interested in starting big press events for each new waiver it approves -- in particular they would like to do one for D.C. I understand they may even be holding waiver approvals until this issue is resolved.

I have advised strongly against such a decision since the welfare implementation group has wanted to keep a low profile on the waivers. States and advocates know the Administration is working hard to assist them with waivers. Large press events probably will only earn the Administration and USDA attacks from opponents of the waiver policy -- who to date have been very quiet. I would recommend Diana call Greg Fraiser, USDA's Chief of Staff, and provide him with guidance on how to handle approval of the waivers and urge on-going press coordinate with the welfare reform implementation group.

Should food stamp recipients subject to the 3 month time limit (18-50's) be able to stay on the program if they are participating in a voluntary workfare program? Under the current restriction, childless adults between the ages of 18-50 cannot receive food stamps for more than 3 months in any 36 month period unless s/he is:

- working 20 hours per week or more
- participating in a work or training program 20 hours per week or more
- participating in workfare (no hour restriction), or
- otherwise exempt from the regular employment and training program

Workfare is defined as any program authorized under Section 20 of the Food Stamp Act or a comparable State program. According to the implementing regulations, there are two types of workfare programs: voluntary and mandatory. There are a couple of differences between mandatory and voluntary workfare:

Mandatory	Voluntary
Sanctions for non-	
compliance	Yes No

Required Hours	Generally, benefits negotiated between
----------------	--

Can't exceed 30 per. wk.
 the workfare slot. Can't
 exceed 30 hr. per wk.

divided by the min. wage.the individual and the
 organization providing

FLSA AppliesYes Yes

Who Runs It?A State or a politicalSame.
 subdivision

Let me first describe how I had thought the time limit would interact with workfare under current law. Some States would make an effort to provide workfare slots to individuals who hit the time limit. If an individual hit their 3 month mark, the State might offer them the opportunity to sweep the floors of a local church. The number of hours the individual would have to work at the church each month would equal their benefits/the min. wage or some standardized amount close to but not in excess of that amount. That is about 5 to 7 hours per week if just the food stamp benefit for a single individual is being worked off -- significantly less than the 20 hour requirement for other activities. As long as the individual keeps showing up to sweep, she keeps getting benefits.

If the individual doesn't show up for workfare, the church would report her non-compliance to the State. The State would terminate her benefits for the next month and put her in sanction. So even if the individual went out and got a job for 20 hours per week, she could not regain eligibility until the sanction period was over. This period could range from 3 months to a lifetime period depending on the number of previous sanctions and the State's choice. The sanction may seem like adding insult to injury but there is a certain logic. Compare this woman with a man who was not offered a workfare slot and who loses his benefits after the 3 month period expired. He would not receive a sanction. In fact, if he were able to find a job right away, he could regain eligibility immediately. Since he played by the rules, his change in work behavior would be rewarded while the individual who did not comply with the work requirements is punished.

The States and advocates have suggested that since voluntary workfare is authorized under Section 20, it would be an allowable activity at the end of the three month period. The main differences between voluntary and mandatory workfare is the number of hours required and the sanction policy. An individual can work 1 hour a week and still be in voluntary workfare. Also, if they fail to comply they are not subject to sanction. USDA thinks that since voluntary workfare is described in their own regulations as allowable under Section 20, they have to allow it as an acceptable activity for the 18-50 group. I agree that they have a compelling argument, but disagree that voluntary workfare is a must under current authorities.

USDA could interpret the new statute as only permitting mandatory workfare. They could make an administrative declaration that only mandatory workfare is allowed and follow up with regulations. In addition, USDA has the authority to turn down the voluntary workfare programs now. The current regulations say that if the Secretary can show that the benefits of the voluntary workfare program do not exceed the costs, they don't have to approve it. Given that the voluntary workfare option would only cost money, the Department could turn them down, although it would be a rather touchy approach to the problem.

Even if we agree with the Departments position, USDA can clamp down on voluntary workfare. They could require that voluntary workfare use the same hours requirement as mandatory

workfare -- the benefit divided by the minimum wage. They could also require that States require that the voluntary agency provide some proof that the individual actually came by to set up a placement before continuing the fourth month of benefits.

My staff has informed USDA that my position is the current policy and regulations should be changed. States should no longer be able to provide voluntary workfare to the 18-50 group. This Administration has a solid tradition of supporting tough work requirements. While the structure of the food stamp time limit is unnecessarily harsh, I do not believe that we can allow something as unstructured and loose as voluntary workfare. I suspect USDA will want to discuss this issue further and may involve outside advocacy groups.

Finally, USDA also wants to publicly announce their proposed policy on voluntary workfare. Consistent with my first recommendation, I would strongly recommend against this strategy. The Administration should continue its quiet and very effective method of working with States and advocates.

Please contact me quickly so that we can discuss these issues.

cc:Franklin Raines
Elena Kagan
Diana Fortuna

September 21, 1997

To: Bruce Reed, Elena Kagan

From: Cynthia Rice

cc: Diana Fortuna, Elisabeth Stock

Subj: Status of Federal Welfare Hiring

The National Performance Review prepared a chart, which I will send you, which shows the varied success of agencies to date to meet their federal welfare hiring goals. Both the Executive Office of the President and the Office of Personnel Management have already hired 100% of those they pledged to hire by the year 2000. Also on the high end are the Social Security Administration (25%), the Department of Labor (22%) and HHS (19%). As of August 22nd, however, HUD had met 0% of its goal, Commerce and State 1%, and Justice 2%, EPA and NASA 3%. The Department of Education has hired only one person, 5% of its 21 person commitment.

The National Performance Review staff have been working with all the agencies on their performance. I recently worked with Anne McGuire and Barry Toiv to organize a meeting of agency policy and communications staff to reinforce the importance of 1) improving performance; and 2) managing press inquiries.

I thought it might be useful to send a note from you, Bruce, to all the members of the Domestic Policy Council saying "I thought you would be interested to see this chart comparing agency performance in meeting their federal hiring commitments. As you may know, agencies must report their fiscal year 1997 hires to the National Performance Review by November 15th. Contact Bob Stone at XXX-XXXX for more information." Ill make sure the idea doesnt step on any toes in the VPs office. What do you think?

*1.October 6, 1998

MEMORANDUM FOR THE CHIEF OF STAFF

FROM: Bruce Reed
Elena Kagan

SUBJECT: Meeting with Representative Waxman

Representative Waxman has requested this meeting to discuss Federal recoupment of Medicaid revenues. As you recently told Governor Chiles, we would relinquish our claim to state tobacco recoveries in exchange for the states agreeing to use half their money on the menu of seven items that we negotiated with the NGA as part of the McCain legislation (child care, child welfare, the maternal and child health block grant, the substance abuse block grant, the safe and drug free schools program, Eisenhower education grants, and the state match for the childrens health insurance program). We oppose the NGAs current proposal to eliminate our claims outright, allowing the states to use their funds in an unrestricted manner. While it seems unlikely that this issue will be resolved this year -- and we are not actively seeking a resolution at this time -- we do want to ensure that Senator Hutchison does not succeed in adding an appropriations rider codifying the NGA proposal.

Waxman objects to any attempt to resolve the issue this year, because he believes that any such resolution would deter passage of comprehensive tobacco reform next term. If something has to be done this year, however, Waxman is likely to prefer the position of the public health groups, who are calling for 20 percent of the federal portion of the settlement funds to be spent on tobacco control. Thus, they want 50 percent of the funds for unrestricted purposes, and 40 percent for the state menu, and 10 percent for tobacco control. Waxmans staff told us that they believe it is important to reserve funds from the state settlements for federal tobacco control initiatives, in case the state settlement gives Congress less of an incentive to pass comprehensive reform next year. It is worth noting that an equally, if not more compelling, argument can be made that funds used for this purpose may provide a greater disincentive for the passage of comprehensive reform, because Republicans will claim that we already have passed a bill.

Your goals for this meeting should be to convey:

- (1) we are not actively pursuing a resolution to this issue;
- (2) we will not support any resolution unless it includes, at a minimum, a range of Democratic priorities that are agreeable to all of us;
- (3) our primary objective must be to work together to make sure that the Republicans do not pass a no-strings rider which prevents federal recoupment and allows unrestricted use of the funds;
- (4) we believe that supporting the previously negotiated, NGA-based McCain menu is the best way to do that. Thus, we will support the McCain menu, and we will try to secure some funding for tobacco control as part of it if we can;
- (5) if Republicans agree to other funding restrictions, or agree to reserving a portion for the federal government, then we can discuss at that time which restrictions would help us best achieve our goals.

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September 11, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Elena Kagan

RE: DPC Weekly Report

Health Care -- Medicaid and the Patients Bill of Rights: Next Thursday, you are currently scheduled to participate in a event in which you will announce the application of the patients bill of rights to the Medicaid program. This action will underscore that you are doing all you can to extend patient protections to Federal health plans but will also highlight the need for Federal legislation to extend these protections to all Americans. Although we have not finalized plans for this event, it may be done in conjunction with Members of Congress who also support strong enforceable legislation. As of this writing, it appears that in the absence of significant pressure Senator Lott will not bring the patients bill of rights up for a vote. Senator Daschle, however, is challenging Majority Leader on a nightly basis to schedule votes on this legislation.

Health Care -- Vice Presidents Health Care Event in New Hampshire: Next Friday, the Vice President is scheduled to join Governor Shaheen in a health care event to discuss a number of Administration health care priorities that have received great support in New Hampshire. At this event, the Vice President will highlight the approval of New Hampshire's new Children's Health Insurance Program, the application of the patients bill of rights to Federal Employees Health Benefit plans, a new grant to New Hampshire for support services for disabled individuals going to work, and perhaps an initiative related to programs for older Americans. This series of multi-generational initiatives will be extremely well received by the Governor and the state.

Education -- Charter Schools Legislation: The Administration is continuing discussions with Senate staff to reach agreement to bring a charter school bill to the Senate floor. The bill was approved by full committee with bipartisan support last month, and is generally similar -- with a few important differences that would need to be resolved in conference -- to a bipartisan charter school bill approved by the House last year. The final obstacle to approval by the full Senate appears to be a demand from Senator Harkin permitting a small portion of the funds to support "innovative" non-charter schools, in states where charter schools are not permitted. Senate Republicans (and Senator Kennedy's office) oppose this provision because it undermines one purpose of the bill -- to provide incentives to states to enact charter schools legislation. We are attempting to broker a compromise, either by helping Senator Harkin find ways of directing funds to innovative schools outside the framework of charter schools legislation, or by including in the charter schools bill a small demonstration program to support schools with most of the features of charter schools (i.e., a public school of choice with flexibility and a performance contract) but are located in a state without a charter school law. It is unclear whether either Harkin or the Republicans will accept this compromise.

Welfare Reform -- Caseloads Continue to Decline: Last week, USA Today published a misleading story saying the decline in welfare rolls is slowing. In fact, the rate of

decline is continuing to hold steady nationally, at about 2% per month and about 20% per year. The actual number of people leaving the rolls is smaller but -- because the rolls are smaller -- the rate of decline has stayed the same. For example, the rolls declined by 6 percent between March-June of 1997 and by 6 percent between March-June of 1998 (the article compared the two periods and claimed the national decline had slowed by 20%). However, the article correctly pointed out that caseloads in selected states such as Wisconsin, Idaho and Wyoming, which have experienced declines of more than 80% since 1993, are leveling off.

Welfare Reform -- GAO Report on TANF Surplus: At Congressman Shaw's request, GAO did a report on how states are using their federal and state welfare reform funds. The study confirms the general trend that HHS described in their recent report to Congress on TANF -- that with major caseload declines, many states are spending more per person and investing in services to help people get and keep jobs. Because of caseload declines, the fixed level of federal funding for TANF block grants, and the required level of state maintenance of effort, GAO estimates that there was \$4.7 billion more in combined federal and state resources available for 1997 than there would have been under the old welfare system for the same period. On average, this equates to a 25 percent increase in funding although there is significant state variation. Funding was higher for 46 states, ranging from one percent in Alaska and Connecticut to 102 percent in Wyoming.

GAO found that a number of states significantly reduced state funding on welfare programs, but at least 22 states must still invest more per recipient than they did in 1996 in order to meet the laws maintenance of effort. For example, Michigan reduced its welfare spending by \$42 million, but must increase spending per recipient by about 22 percent just to meet the maintenance of effort requirement. GAO found many encouraging examples of states investing in work-related supports including child care, training, and transportation. While many state officials have adopted the strategy of invest now in helping move the maximum number of people in to the workforce, others have set up rainy day funds to prepare for future changes in the economy. These federal TANF funds remain in the U.S. treasury until they are expended. In the news articles commenting on the GAO report, governors expressed concerns that Congress may be tempted to raid these unspent balances.

Tobacco -- Study on Smokers' Quitting Rates: A study published in the September 3rd New England Journal of Medicine found that smokers were four times more likely to quit if their health insurance plan paid the full cost of smoking cessation services, rather than paying just half. The researchers found that with full coverage, 10 percent of smokers per year use cessation services and 2.8 percent successfully quit smoking, compared to 2.4 percent usage and 0.7 percent quit rates if insurance paid only half the cost. The study involved 90,000 enrollees in the Puget Sound health maintenance organization. In preparation for your FY 2000 budget, we are examining ways to make cessation services more affordable within the Defense, Veterans, Medicaid, Medicare, and federal employees health systems. We believe the proposals to help current smokers quit could be coupled with your continued call for comprehensive legislation to stop children from smoking before they start.

Children and Families -- Child Care Appropriations: The Senate Labor-HHS Education Committee appropriated \$182 million in new funding for the Child Care and Dependent Block Grant. This is the amount that we requested in new discretionary funding as part of your child care proposal. In your proposal, this appropriation paid for a fund for states to enforce quality standards, a research and evaluation fund, and scholarships for child care providers. The Committee, however, did not specifically fund those programs.

Immigration --H-2A guestworkers: Last July the Senate passed an amendment to the CJS appropriations bill, sponsored by Senators Wyden and Graham, that would create a new agricultural guestworker (H-2A) program. Secretary Herman sent a letter to Senator Wyden strongly opposing his amendment because it would severely weaken the labor protections for migrant farmworkers. However, in an attempt to address the concerns raised by growers but also protect the interests of farmworkers, we have committed to engaging in a bi-partisan working group with members of Congress on the issue of H-2A reform. Despite our expressed desire to approach this reform in a careful, bi-partisan fashion, Senator Wyden has continued to press us to work with him directly to improve his bill. We are meeting with Senator Wyden this week to discuss our substantive and procedural concerns with his approach (including trying to do this reform as a last-minute amendment to an appropriations bill). However, our goal is to get his amendment stripped from the CJS bill and to do the real work of forging a consensus reform solution in the context of the bi-partisan group. This group will likely include Senators Wyden, Graham, Kennedy, Feinstein, Abraham and Coverdell and Representatives Lamar Smith, Bishop, Becerra, Watt and Berman.

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MEMORANDUM TO FRANKLIN D. RAINES

THROUGH:Michael Deich

FROM:Alan Rhinesmith
Ken Schwartz

SUBJECT:Weekly Report Covering the Week of October 13, 1997

1. IRS Budget "Surprises" -- This week, responding to the recent wave of bad publicity, Treasury unveiled nearly 200 planned reforms for the Internal Revenue Service designed to improve customer service and the IRS's capacity to resolve taxpayer problems resulting from IRS audits. Treasury has already requested nearly \$100 million in FY 1999 to fund the reforms, and that could go higher. Moreover, there is some likelihood Treasury will seek supplemental funds in FY 1998. Lastly, IRS has informed us they will not RIF any employees in 1998 as planned. This casts doubt on their ability to realize and utilize expected savings from modernization, and to implement needed restructuring in the future.

2. Sampling in the 2000 Census -- In a strategy meeting with John Hilley on how to address the Census sampling language in the CJS Bill, Commerce DOC presented preliminary information on conducting a 2000 census without sampling and the possibility of testing this method during the 1998 Decennial "Dress Rehearsal." Hilley seemed interested in testing BOTH sampling and traditional census methods in the dress rehearsal.

3. Civil Rights -- Civil rights advocates met with DPCs Elena Kagan last week to recommend ideas for improving the state of civil rights, including improving White House coordination of Federal policy and strengthening enforcement of civil rights laws. DPC also met with three Federal civil rights agencies -- EEOC, Justice's Civil Rights Division, and the civil rights offices of Education, HHS, and Labor (including OFCCP). The agencies suggested ideas for upcoming initiatives and potential strategies to help the Administration achieve its requested FY 1999 civil rights enforcement budgets. HTF is working with DPC to develop civil rights initiatives as part of the FY 1999 budget formulation process.

4. Treasury Credit Union Study -- Treasury has released its study evaluating the National Credit Union Administrations supervision of corporate credit unions, the National Credit Union Share Insurance Fund (NCUSIF), and the industry in general. It finds that NCUA is doing an acceptable job of supervising both the NCUSIF and the industry, and does not recommend moving the NCUSIF to another regulator (e.g. FDIC). The study does, however,

characterize the corporate credit union system as fragile and thinly capitalized, and recommends strengthening credit union earnings retention requirements and the NCUSIF's reserve ratio (to 1.5% of insured shares).

5.FTS2001 -- In response to industry comments, GSA is revising follow-on contracts for the FTS 2000, to make the procurement more in line with commercial practices. The Interagency Management Council (a group of agency telecommunications managers) is drafting a letter to GSA Administrator Barram, requesting policy guidance from OMB on the follow-on procurement. We are preparing a more detailed memo on this issue.

6.Debt Collection Improvement Act -- Treasury is forming an interagency steering committee to improve implementation of the Debt Collection Improvement Act. The committee will include agency CFOs and other representatives from the Federal Credit Policy Working Group, and will work to improve systems required to support Treasury offset and cross-servicing. Systems problems that the committee cannot help resolve will be referred to the CFO Council.

4.Quincy Shipyard Loan Guarantee. A provision in the 97 Budget Act instructs the Department of Transportation to guarantee a \$52 million loan to the State of Massachusetts to help reopen and modernize the Quincy, MA Shipyard. Contrary to standard credit reform, the provision requires the State itself to pay the subsidy cost of the guarantee to the Department. Secretary Slater has authority to calculate that subsidy rate and cost, which he estimates as 12% and \$7 million respectively. Now, two events have called the estimate into question and may require the State to pay more. First, DOTs IG is investigating the methodology the Department used to calculate the estimate. And second, a shipbuilding contract designated as a primary financing source for repayment of the loan has fallen through.

May 30, 1997

MEMORANDUM FOR THE PRESIDENT

FROM: GENE SPERLING

RE: NEC Weekly Report

America Reads: The work-study challenge has begun to pick up steam, with 225 colleges now on board. The new regulation waiving the work-study match for reading tutors goes into effect on July 1, and we are looking for a possible event that could highlight that action as well as the summer reading program sites that are now in operation.

Comp Time: We began negotiations on comp time this week. NEC, Legislative Affairs, and Democratic Senate staff met with Senators Jeffords, Ashcroft, and Dewine staff. The Republicans were insistent on using S.4 (the Ashcroft bill which undermines the 40 hour work week) as the starting point for discussions. We reiterated our objections and offered to produce a paper laying out our changes to S.4. We don't expect to reach an agreement until Senate Republicans decide to abandon the most objectionable provisions to S.4 -- those which undermine the 40 hour work week -- and they clearly have not decided to do so yet.

PM/OZ. In coordination with Katie McGinty and Sally Katzen, the NEC held another principals meeting on the EPA's proposed particulate matter and ozone standards. Katie, Sally and I feel it is best to use a few days for informal conversations with Carol Browner and others to hopefully help move us towards a decision consistent with the spirit and letter of the law. As you would expect, outside reaction is very split with environmental and health groups pushing for strong provisions, while Congressman Dingell, whom I spoke with today, continues to threaten us with a "bloody war" over this. It is clear that there is a Breaux-Chafee letter being organized that, while far less strident than Congressman Dingell, will call for a more cautious approach than they believe the EPA is considering.

Volunteers/Tort Reform: We completed work on the volunteer liability bill signing statement. With Legislative Affairs and DPC, we met with the staff of Senators Breaux and Hollings to discuss broader product issues. We will meet with staff of Senator Rockefeller and Mr. Dingell on Monday, as well as have an interagency meeting to continue work on alternatives. The main topics of discussion are joint and several, punitive damages and the statute of repose.

Stock options: Ellen Seidman met with representatives of the high tech and retail industries concerning the bill to restrict tax deductions for stock options submitted by

Senators Levin and McCain. They discussed their reasons for opposing the bill, as well as their assessment of likely legislative strategy. Senator Levin is hoping to talk to Bob Rubin soon.

Real Estate Industry: I met with representatives from the real estate industry to discuss their concerns about depreciation recapture rules. In particular, they want a capital gains tax package to include a cut in the recapture rate -- the rate at which amounts that had been previously deducted as depreciation are taxed upon sale of the property. I reassured them that we had not finalized our position on capital gains, and that we would go back to them if we were to carve out the recapture rules (which is one of the many options available to reduce the cost of a capital gains tax cut). One strategy we will be talking about in our budget meetings is that if we agree to include depreciation recapture schedules in the capital gains tax cut, we will seek to have the clear support from the real estate industry for key parts of our package.

City Jobs Data: Myself, Elena Kagan and others from the NEC and DPC met with Secretary Cuomo to go over a possible "State of the Cities" report that could be presented in conjunction with the U.S. Conference of Mayors. One major issue we talked about was how to show long-term negative trends for city populations and jobs that justify our key urban initiatives without glossing over the progress made over the last couple of years. We decided to run the numbers from 1993-1996 which presented that way, show while there are long-term negative trends, there has been important progress since 1992.

House Republicans on Welfare-to-Work: Elena Kagan and I, along with DPC, NEC, OMB, Labor and HHS staff, met with House Republican committee staff to discuss the Administrations priorities regarding the \$3 billion in welfare-to-work funds. Under the draft Republican proposal circulated yesterday, all of the dollars would be distributed to States by formula, with no dollars directly to city governments, no performance-based funding and no competitive application process. Job creation would not be allowed. We presented the Administration position on these points.

Ron Haskins, the chief Republican welfare staffer, indicated that job creation would be added to the allowable uses and seemed amenable to distributing at least part of the money through a competitive grant process. He did not indicate any flexibility re: strengthening the nondisplacement provisions and was relatively unenthusiastic about performance bonuses. His position on channeling funding directly to cities was unclear. Drafting began today; we will keep you posted.

Historic Homeownership Tax Credit: I met with Dick Moe (President of the National Trust for Historic Preservation) to discuss a proposal for a historic homeownership tax credit. This proposal is based on the existing historic rehabilitation tax credit (which applies to commercial buildings). It would provide a 20 percent tax credit for rehabilitation and reconstruction expenditures for historic homes (or homes in certified historic districts). The goal of the tax proposed credit is to provide an incentive for people to buy, refurbish, and live in older homes, generally in central cities.

One potential problem is that the benefits from this proposal could flow mainly to real estate developers and to those with upper incomes, unless the proposal is well-targeted. We will bring this into our budget process to see if this is an idea worth considering.

Economic Event: The Vice President, Secretary Rubin, Director Raines, Chairman Yellen, and

I briefed the press on Friday on how well the economy has been performing since you took office. We noted the revised GDP growth rate of 5.8 percent during the first quarter of 1997 --the highest in a decade -- and emphasized our three-part economic strategy. The reaction was positive: reporters asked a series of substantive questions on the economy and our budget plans. We also distributed a packet of charts and an updated report card on the economy over the past 4 years which I showed you at the radio address taping.

At your request, we will work with others in the White House to come up with a larger distributional plan on this and other areas where our economic and budget policies have made a major difference.

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July 21, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Elena Kagan

SUBJECT: DPC Weekly Report

1. Health Care -- Patients Bill of Rights Update: Congressional Democrats were thrilled with the two patients bill of rights events you held last week. The media gave these events good coverage, but expressed skepticism about whether Democrats really want to pass legislation this year. Our best response to these doubts -- regardless of whether we want legislation or a political issue -- is to remain nonpartisan in tone, as you did in your remarks. As of now, both the House and the Senate may bring patients bill of rights legislation to the floor this week. In the House, the Republican Leadership is attempting to pass a rule for separate up or down votes on the Republican Task Force bill and the Dingell/Ganske legislation. Under this scenario, the Task Force bill may pass, but with few or no Democrats and with a few Republican defectors. The Dingell/Ganske bill probably will receive about 200 votes. In the Senate, the Leadership will allow amendments, as well as complete substitutes, to the Republican bill; for this reason, the Senate is likely to produce a stronger bill than the House even though the Senate Republican bill is the weakest proposal on the table. It is still unclear whether Senators Chafee and Graham will introduce a bill. If they do, it is likely to have a full set of patient protections and an enforcement mechanism that is stronger than the limited civil monetary penalties in the House Republican bill but not as strong as the state-court enforcement option in the Dingell-Ganske bill. Because of the partisan divide on this issue, this kind of compromise approach may receive little support.

2. Health Care -- Nursing Home Enforcement: Senators Grassley and Breaux will release next week a scathing GAO report on inadequacies in nursing home care across the country. This report will criticize HCFA sharply for failing to monitor or oversee nursing home quality. As you know, we have worked with HHS to develop a strong initiative, including both legislative proposals and administrative actions, to make improvements in this area. The package provides for criminal background checks on nursing home workers, strengthened penalties for nursing homes that fail to meet standards, and closer federal oversight of state enforcement mechanisms. (The briefing memo we sent you described the initiative more fully.) Your announcement of this package today should blunt the impact of the GAO report, though it still will receive media attention.

3. Health Care -- Long Term Care: Congressman Mica, the Chairman of the Government Oversight Committee with jurisdiction over the Federal Employees Health Benefits Program (FEHBP), is planning to mark up a bill this week that would allow federal employees to purchase private long-term care. We have serious concerns about Mica's proposal, primarily because it does not ensure that the packages offered will be high-quality. We are developing an alternative proposal on this subject to include in a broader long-term care package that you can announce later this summer. In the meantime, OPM will write Mica a letter noting your longstanding interest in this issue while raising concerns about his

proposed policy.

4. Tobacco -- Meetings with Hatch: Bruce Lindsey, Larry Stein, and we met with Senators Hatch, Feinstein, Torricelli, and Breaux last week to explore options for moving their tobacco bill in the Senate. As you know, the bill is based on the June 20th settlement, but with a slightly higher price and somewhat increased lookbacks. We expressed some concerns about the FDA provisions in his bill, and noted our fear that the absence of any company-specific lookback penalties and the scope of the liability provisions -- including not only a liability cap, but also a prohibition on class actions and punitive damages -- would prevent the bill from gaining strong Democratic support. Because Torricelli and Feinstein said that a significant number of Senate Democrats look to Senator Conrad for guidance on this issue, we all agreed to have another meeting, this time with Conrad in attendance. That meeting will take place on Tuesday afternoon. Following the principals meeting, we also sat down with Hatch's staff to discuss further his FDA proposal. Although we continue to have some differences on this issue, the meeting went well; there is little reason to think that the FDA issue would stand in the way of a deal if everything else could be satisfactorily resolved.

5. Tobacco -- Counteradvertising Campaign: We are exploring with ONDCP whether to incorporate tobacco counteradvertising in our national youth anti-drug media campaign. Although ONDCP's \$195 million budget must go toward anti-drug ads, we could encourage the television networks to use some of the matching funds they provide to air anti-tobacco messages. If we decide to go down this route, we would work with HHS and public health groups such as the Campaign for Tobacco Free Kids to propose programming ideas and produce specific advertisements.

6. Crime -- Values-Based Anti-Crime Initiative: You are scheduled to unveil a new values-based violence prevention initiative at an event on the South Lawn this Wednesday. The initiative will support the efforts of community organizations, including faith organizations, to provide values-based instruction and activities for at-risk youth to improve public safety. Some of the activities undertaken by the grant recipients, in partnership with law enforcement, schools, courts, and service providers, include gang intervention, gun abatement, truancy prevention, mentoring, drug and alcohol abuse, conflict resolution, and job training. The initiative will provide grants of between \$75,000 and \$150,000. The grant recipients are located in 16 cities: Salinas, CA; Los Angeles, CA; Washington, DC; Miami, FL; Chicago, IL; Indianapolis, IN; Baltimore, MD; Detroit, MI; Kansas City, MO; Hempstead, NY; Portland, OR; Philadelphia, PA; Charleston, SC; San Antonio, TX; Richmond, VA; and Seattle, WA.

7. Crime -- Appropriation for Youth Crime Gun Interdiction Initiative: The Senate now has joined the House in fully funding your Youth Crime Gun Interdiction Initiative. The new funding will allow us to place additional ATF agents in each of the 27 cities in which the initiative is now operating; it also may enable us to expand the initiative to other cities.

8. Education -- Charter School Legislation: The Senate Labor and Human Resources Committee is scheduled to mark-up a charter schools expansion bill this week. The bill will contain many of the provisions we have recommended, and has solid bipartisan support. We will work to convince Democrats to use other bills -- perhaps including the Ed-Flex bill discussed below -- as a vehicle for forcing votes on other education priorities, so that we have a chance of moving this bill expeditiously through the Senate and to conference. In addition, we are planning to release an estimate of charter school enrollment for the upcoming school year and two Education Department reports -- one on what parents should

look for in charter schools, the other on what guidelines chartering agencies should set -- at your speech to Boys Nation this Friday.

9. Education -- Ed-Flex Legislation: The Labor and Human Resources Committee also is scheduled to mark-up a Frist/Wyden Ed-Flex bill this week. As you know, the 12 states now participating in the Ed-Flex demonstration program have authority to waive most requirements in the major federally funded elementary and secondary education programs. The Frist-Wyden bill would give this flexibility to any state meeting specified requirements. We and the Education Department have worked hard with Frist and Wydens staff, as well as with the NGA, to ensure that the preconditions for participation in Ed-Flex are sufficiently stringent -- i.e., that states get waiver authority only if they have in place standards and assessments, school report cards, and procedures for intervening in failing schools. You announced support for this kind of approach at the last NGA Winter meeting. Democrats and most of the education community are at best lukewarm to this bill; even if Senate Democrats support it in committee, they are likely to use it as a vehicle for trying to move higher priority items, such as our class size reduction initiative. Republicans also may attempt to use the bill as a vehicle for their favorite proposals -- e.g., vouchers and block grants -- so its ultimate fate is quite uncertain.

10. Food Safety -- Appropriations Victory: The Senate passed last week, by a vote of 66-33, an amendment offered by Senator Harkin to restore \$68 million for funding of your food safety initiative. Harkins amendment funded the increase by requiring the tobacco industry to take over the administrative costs associated with the USDAs tobacco program. We worked closely with Harkin and consumer groups to promote the amendment, and several newspapers, including the Los Angeles Times, published strong editorials in support. We will continue this effort to ensure that we get a good result on this issue in conference.

11. Welfare Reform-- Wellstone Amendment on Work Requirements: As part of its passage of the Higher Education Act, the Senate approved an amendment offered by Senator Wellstone, by a vote of 55-43, to allow states to count up to two years of vocational education or college toward the welfare work requirements. States currently can count one year of vocational education toward the work requirements, subject to a 30% cap on the percentage of the caseload that can count this activity as work; the cap would continue to apply under the Wellstone proposal. Supporters of the amendment argued that it would help welfare recipients increase their earning potential and improve the chances of their permanently leaving the welfare system. Opponents argued that it would weaken the work requirements, which are the lynchpin of the welfare law and the engine for caseload reduction. We understand that House Republicans will try to eliminate the Wellstone amendment in conference.

One possible compromise might be to let college attendance count for up to half of a person's work requirement (i.e., 10-15 hours) for up to two years. Amended in this way, the law would expect college students receiving welfare to perform some work, but would recognize the difficulty of juggling work, classes, and parenting responsibilities. Of course, if the Republicans succeed in simply knocking out the Wellstone amendment, we will continue our efforts to encourage states to use the existing flexibility in the welfare law (and in work-study programs) to accommodate college students.

12. Welfare Reform -- Illegal Immigrants: HHS will issue a list this week of "federal public benefits," which illegal immigrants are not eligible to receive under the welfare law. The list includes adoption assistance and foster care, child care, low-income heating assistance, Medicare, Medicaid, the Social Services Block Grant, the new Child Health

Insurance Program, and TANF, as well as 20 smaller programs. The list excludes community health centers and maternal and child health programs, which will continue to be available to all comers. House Republicans (e.g., Lamar Smith) may argue that HHS should not have excluded these programs, but there are good policy reasons and a sound legal basis for doing so. At the same time, DOJ will issue a proposed rule instructing providers of federal public benefits on how to determine whether a potential recipient is an illegal alien. The rule requires a provider to look at documents for everyone, unless the provider has applied for and received a temporary waiver. Providers will view this requirement as a serious administrative burden, but the law left little room for any alternative approach.

13. Abortion -- Congressional Update: A series of contraception- and abortion-related votes occurred last week in the House, and we expect more next week. First, the House passed by a vote of 224-198 the Lowey proposal to require health plans participating in the FEHBP to provide coverage of contraceptives. Second, the House passed by a vote of 276-150 legislation making it illegal to transport a minor across state lines in order to avoid a states parental consent law. Third, a House committee passed an amendment offered by Congressman Istook to require parental consent for Title X family planning services. We can expect the House to turn this week to the Partial Birth Abortion Act and the "Mexico City" international family planning restrictions.

14. Community Empowerment -- Community Reinvestment Act (CRA): According to a report by the National Community Reinvestment Coalition (NCRC), the private sector has pledged more than \$1 trillion going forward in loans to distressed communities, with more than 95 percent of these financial commitments made since 1992. The NCRC also reported that there have been 23 times more financial commitments to distressed communities from banks in the past 5 years than in the previous 15 years. In addition, lending commitments under the CRA have increased 69-fold from the pre-1993 era -- from an average of \$2.6 billion per year between 1977 and 1992 to about \$180 billion per year in the past 5 years. Despite the success of your Administration's reform of CRA, some in Congress are working to attach riders to the Credit Union Membership Access Act which would gut the program. Over the next weeks, the NEC, DPC, and Treasury will monitor this situation closely.

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July 31, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Elena Kagan

RE: DPC Weekly Report

Health Care -- Patients Bill of Rights Update: The Senate adjourned this week without bringing up the patients bill of rights for a vote or debate. Your radio address and the event the Vice President participated in with Senate Democrats on Friday, focused on the Senate Republicans lack of action and emphasized the key weaknesses in their bill. Earlier this week, Sens. Chafee, Lieberman, and Graham introduced their own patients bill of rights proposal. With the exception of Sen. Spector, this legislation is not likely to receive any additional Republican support, since the bill is much closer to Daschle-Kennedy than the Senate Leadership proposal and because Sen. Lott is placing extraordinary pressure on Republicans not to cosponsor the bill. It is important to note that, in some ways, the new bill goes even further than your Quality Commissions recommendations. Yet, we have not yet embraced this legislation because early Administration support would not be helpful to Sen. Chafee or improve the likelihood of eventually getting a strong bill out of the Senate. Moreover, Senate Democrats do not yet want to compromise until it becomes clear that it is necessary to do so.

The most contentious issue on the patients rights legislation continues to be the enforcement mechanism. As you know, the Dingell-Ganske/Daschle-Kennedy bill provides for state-court enforced remedies for patients who have been harmed by wrongful actions taken by health plans. The Republican Leadership's approach utilizes civil monetary penalties, which are completely inadequate because their penalties are largely based on the degree to which health plans are in compliance, rather than providing damages to patients whose health plans actions harm or kill them. Chafee-Lieberman attempts to split the difference between these two bills with federally-enforced remedies that would provide for economic/compensatory damages but not punitive awards. Sens. Daschle and Kennedy have already stated this approach is inadequate. But this is probably more for positioning reasons than for serious policy objections. To underscore how serious we are about passing a strong patients bill of rights this year, we need to continue our push for such legislation throughout the summer. We need to spend additional time in defining the differences between the Republican and Democratic bills, so that the media recognizes that the distinctions are much more than just the right to sue an HMO. We can achieve this through additional events and outside validation by groups and policy experts.

Health Care -- DeSario Case: Earlier this year, the second circuit of U.S. Court of Appeals ruled in favor of the state of Connecticut Medicaid policy that was used to deny beneficiaries of needed medical equipment. This ruling infuriated the disability community and moved them to appeal the decision. Because HHS concluded that Connecticut's coverage policy is excessively restrictive and discriminatory to people with disabilities, it believes the ruling is incorrect. Although states can apply restrictions to coverage of medical equipment by basing the coverage decision on the health care needs of the entire

Medicaid population, they cannot make decisions on the entire needs of the population without taking note of the special needs of the disability population. In addition, states must have a publicly known and timely appeals process. HHS is planning on sending a clarifying guidance letter next week to all states. We decided to hold this letter until after this weekends NGA conference because the Departments interpretation will likely not be well received by many Governors. While the Governors will be relieved that the guidance does not limit their authority to restrict coverage, it will likely broaden many states coverage rules and potentially increase Medicaid expenditures. While disability advocates will welcome this letter, they will wish that it went further by requiring coverage of all medically necessary devices.

Tobacco -- House Legislative Update: House Republicans may unveil their tobacco legislation as soon next week. Although we have not yet seen legislative language, the seven bullet points they released before the July 4th recess indicate that it will be a watered-down bill, with no price increase, weak advertising provisions, and limited FDA authority. House Democrats expect to have a Rules Committee fight over whether they will be allowed to offer a substitute. We have been helping Representative Waxman prepare for the possible contingencies. While the Hansen-Meehan bill is an option, Waxman is also drafting a bill that does not include an up-front price increase but contains very large lookback penalties which will effectively function as a price increase.

Tobacco -- New CDC Data: The CDC released a study on Thursday which indicates that lower income, minority, and younger populations would be more likely to quit smoking and reduce their cigarette consumption in response to a price increase. Controlling for income and education, blacks are twice as responsive as whites to price increases and Hispanics are even more price responsive. These differences indicate that cigarette price increases would lower smoking rates and enhance public health outcomes especially for minorities. Specifically, the study found that about one quarter of 18-24 year old Hispanic smokers and approximately 10 percent of 18-24 year old black smokers are estimated to quit smoking altogether in response to a 10-percent price increase in comparison with about 1 percent of white smokers of the same age. With the exception of whites, the effect of price on smoking rates declines with age. The study examined data on adults only.

Service -- Using Work-Study Funds for Community Service: Some time ago, you and Harris Wofford discussed how to encourage schools to use work-study funds for community service by college students. For the past three years, colleges and universities have been required to report how much of their federal work-study funds are spent on community service. According to the data, the average college/university spent 10% of its work-study funds on community service in 1996-97, which is up slightly from 7% in 1994-95. Out of a total of 3,250 schools, only 12% use more than 20% of their funds for service, and only 2% of schools use more than half their allocation for service.

Under a 1992 law, schools must spend at least 5% of work-study funds on community service. In 1996-97, 9% of all schools (290) failed to meet this requirement. This is down significantly from 24% two years earlier, but still high. The law defines community service broadly for the purposes of the 5% minimum. Any job that is designed to improve the quality of life for local residents or solve a local problem qualifies. For example, jobs in a college library may qualify depending on whether there are other libraries in the community. The Education Department does not penalize schools that fail to meet this requirement.

We will not know the impact of America Reads on these numbers until October, when data from

1997-98, the first year of that program, is complete.

Welfare Reform -- Minorities on Welfare Reform Caseload: The New York Times report on the increasing share of minorities on the welfare caseloads highlights some important trends and issues that we will explore further. In the meantime, it's helpful to put the information in context.

First, the racial/ethnic composition of welfare caseloads has been changing gradually over the last 25 years: whites rose from 38 percent in 1973 to a peak of 42 percent in 1983 and have dropped steadily to 35 percent in 1997. The proportion of blacks has generally declined, from 46 percent in 1973 to 37 percent in 1997. As the New York Times points out, the most significant trend is the increase in the Hispanic portion of the caseload, from 13 percent in 1973 to 23 percent in 1997. However, this is not too surprising given the rapid increase in the Hispanic population overall. The question is how welfare reform may be affecting these historic trends. National data on the racial/ethnic characteristics of welfare recipients are only available through June 1997, so it is hard to gauge the impact of the past year when welfare reform efforts accelerated so rapidly. Some states have more recent data which they shared with the Times, and which may reveal more significant trends. It is also worth noting that the caseload data only tells who is currently on the rolls; it does not tell the rate at which different groups are entering and exiting.

Second, the number of white, black and Hispanic families receiving welfare have all dropped since 1994 (when caseloads peaked), but the rate of decrease has been greater for whites than blacks, with an even slower decline for Hispanics.

9497% Change

Whites 1.9M 1.4 M -26%

Blacks 1.8M 1.5 M -18%

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Third, the changes are more dramatic than the actual mix of who is left on the caseloads, at least on a national basis. While the story pointed out important trends, the conclusion that the composition of the caseload has changed dramatically seems unwarranted.

9497

Whites 37% 35%

Blacks 36% 37%

Hispanics 20% 23%

Fourth, there is some encouraging evidence from Census data that the employment rates of former welfare recipients are increasing even faster for minorities than for whites (although the actual rates and the disparity between groups remains disturbing). Between 1996 and 1997, the percentage of all prior year welfare recipients who were employed in the next year increased by 28%. The increase was highest for blacks (33%), followed by Hispanics (22%) and whites (21%).

Finally, there is longstanding evidence that minorities on welfare disproportionately share characteristics that may make it harder to leave the rolls: lower education levels, lower marriage rates, larger families, employment and housing discrimination, and isolation from areas with jobs.

Welfare Reform -- Welfare Reform Anniversary Event, including Medicaid 100-hour rule: On

August 5th, you will participate in a Welfare Reform Anniversary Event to mark the progress we've made over the past two years and announce steps we're taking to ensure even more families make a successful transition from welfare to self-sufficiency by ensuring that those leaving welfare for work have health coverage and accumulate assets. We will release HHS' first Report to Congress on TANF and announce regulations waiving old welfare rules that prevented some states from providing Medicaid to two parent families who go to work (100 hour rule). In addition, you will endorse the House and Senate Individual Development Accounts proposals to help low income families save and build assets (Coats/Harkin in Senate, Souder/Hall/Kasich in House). Since August 5th is also the one-year anniversary of enacting the \$3 billion Welfare-to-Work grants, the Department of Labor will release Welfare-to-Work formula grants to 5 more states (MD, VA, WV, NM, NH). Finally, we can release the latest numbers showing that federal agencies have now hired 5,714 new workers off the welfare rolls.

Crime/Drugs -- Treasury-Postal Appropriations: (1) Firearms Clips. A Feinstein amendment to ban the importation of large capacity ammunition clips was tabled by a vote of 54-44. The amendment would have banned the import of clips which were grandfathered under the 1994 assault weapons ban. (2) Drugs. Legislation sponsored by Sens. Biden and Hatch to reauthorize ONDCP was added to the bill by voice vote. The Administration supports the Hatch-Biden version of the reauthorization bill.

Crime -- Prison Population: On Sunday, the Justice Department will release a report showing that in 1997, the nation's adult prison population grew by 61,186 men and women -- a 5.2% increase from 1996. Last year, the total number of federal and state inmates reached over 1.24 million adults -- a 60% increase over the inmate population in 1990. However, last year's increase (5.2%) is lower than the average annual growth of 7% since 1990. Between 1990 and 1996 (the last year this particular data was available), violent offenders were responsible for much of the growth among state prisoners, accounting for 50% of the increase during the 6-year period. In addition, the number of female prisoners increased by 6.2% in 1997 to a total of 79,624; women now comprise 6.4% of all prisoners -- up from 5.7% in 1990.

Of the total 1997 prison population, state prisons held 1.13 million inmates and federal prisons held 112,900 inmates. California and Texas together held more than a quarter of all state prisoners. Nine states reported prison population increases of at least 10 percent, with HI (23%), WV (15%), AK (14%) and ME (14%) reporting the largest increases. States reporting decreases include: OR, MT, NM, and D.C.

Education -- Charter Schools: The Senate Labor and Human Resources Committee reported out the charter schools bill unanimously, and without amendment. Before the bill comes to the floor, there is one remaining issue to be worked out with Sen.Coats, regarding a requirement in existing law that charter schools use a lottery to select students if the school is oversubscribed. Sen.Coats wants the Education Department to provide guidance that interprets that requirement flexibly, enabling charter schools to guarantee places for the children of founders and siblings of students already enrolled. Coats may also push for guidance that would make it easy for charter schools to have selective admission requirements, rather than being open to all interested applicants. We are working with the Education Department to find reasonable accommodations to these issues, without opening the door to abuses that could increase the number of racially identifiable schools. Our preference is to craft Education Department guidance that is satisfactory to Sen.Coats.

Education -- National Board for Professional Teaching Standards: In preparation for the

conference on the Higher Education Act, we are working on a strategy for eliminating the Goodling provision that prohibits continued funding for the NBPTS. This will be a difficult fight. Goodling appears as dug in on this issue as he has been on national tests. There is little interest in the Board among House Democrats on the conference committee, and though there is bipartisan support for the Board in the Senate, the prospects for sustaining a veto are weak in light of the overwhelming majorities that supported the bill in both Houses. While few members on either side of the aisle share Goodling's antipathy toward the Board, some of his attacks (e.g., the high salary of the Board's President and the high financial cost to teachers for seeking board certification) appear to resonate even with supportive Democrats. Our overall strategy is to work with the Board to find compromise language that responds to the criticisms that are being made while preserving the federal funding stream. We are also working closely with NEA and AFT to shore up support among key House Democrats, and will work with Governor Hunt at the NGA meeting this weekend to mobilize Republican Governors and business leaders who support the Board.

Education -- Ed-Flex: The Senate Labor and Human Resources Committee reported out an Ed-Flex bill which makes all states eligible to receive the authority to waive federal education requirements if they have academic standards, tests and school-by-school accountability measures in place. The bill reflects the principles in the Administration's proposal you announced at the NGA meeting last winter, and we have indicated our support for the bill. Senate Democrats tried to stall the bill with a range of amendments, but ultimately, and unhappily, let it pass. The prospects for floor action are not clear at present.

Education -- DC charter schools: The Administration and congressional staff have been exploring ways to address a potential shortfall of funding for DC charter schools this academic year. The budget developed earlier this year by the Control Board and the DC Government significantly underestimated the number of students likely to attend charter schools, providing only \$12 million of the approximately \$30 million needed for full per-pupil allocations to support the 4,000 students projected to attend charter schools this year. While the original DC appropriations bills introduced in the House and Senate included only the \$12 million recommended for charter schools, the House version of the bill has added \$20 million from the federal payment, a move supported by the Administration. Meanwhile, a manager's amendment offered to the bill on the Senate floor may include a provision either to fully fund charter schools out of the DC surplus or direct the Control Board to determine an offset within the DC budget to fully fund charter schools. The Administration will continue to work with Congress and the Control Board in the coming days to make sure there is full funding available to the schools.

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August 7, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Elena Kagan

RE: DPC Weekly Report

Health Care -- Home Care Reimbursement Controversy Update: Home care providers across the nation are pushing Congress to modify the Medicare reimbursement change included in last years Balanced Budget Act. As you will recall, these changes (a phased in prospective payment system similar to the one that has effectively constrained hospital payments) were made to address the unprecedented increases in home health expenditures -- from \$4.7 billion in 1990 to \$17.2 billion in 1997. Less than a year into implementation of these changes, home care providers are advising Members that these cuts are too severe, penalize efficient providers, and are unfair to providers who serve a disproportionate numbers of sicker patients. There appears to be some validity to these concerns in certain areas. Your letter to Val Halamandaris of the National Association for Home Care, advising him of your commitment to develop an administratively feasible, budget neutral fix was well-received. Congress also wants to respond, but has been unable to develop a politically and economically acceptable alternative. It appears that a budget neutral policy cannot receive sufficient political support because it ends up being more of a "re-arranging the deck chairs" approach that alienates as many Members as it pleases. However, putting more money on the table would require extremely unpopular Medicare offsets. On Thursday, in frustration, Rep. Thomas and some other Members of the Ways and Means Committee criticized HCFA for its lack of response. We will continue to look at all options, but it now appears that the only way to pass an acceptable alternative will be to find some more Medicare savings. However, it is highly likely that the Congress will push hard for us to deliver on some political cover and savings to mitigate the payment problems now being experienced by the home care providers.

Health Care -- Patients Bill of Rights Event: On Monday, you are scheduled to attend a large patients bill of rights event in Kentucky. Consistent with your discussion with the Democratic caucus, you will use this event to highlight the numerous shortcomings of the Republican Leadership bills. The President of the Kentucky Medical Association, a lifelong Republican, is currently scheduled to participate in this event and discuss the AMAs disappointment with the Republican bills. Other major provider and consumer organizations will also validate this message and praise your leadership for putting progress ahead of partisanship. We have been working with the House Democratic Leadership and the Departments on how best to differentiate these bills, and Secretary Shalala has submitted an op-ed highlighting the important differences. Finally, at this event, you will announce that the Federal Employees Health Benefits Program (FEHBP) is implementing anti-gag regulation as part of your continuing efforts to bring all Federal health programs in compliance with the patients bill of rights, even as Congress delays passing legislation.

Health Care -- Elder Abuse: We are working on an initiative that you could potentially unveil in an event late next week that responds to continuing reports of problems of elder

abuse. HHS and NIH have been working on reports that document emotional, physical, psychological, and financial abuses of older Americans, often by family members. This initiative would include: announcing new Justice Department grants to help identify and prevent elder abuse; creating a new center on elder abuse, and renewing the call on Congress to reauthorize the Older Americans Act, which includes services to help elders at risk for abuse. We will also work with aging advocates and others to help highlight some of the best practices in the states to crack down on elder abuse. This initiative compliments your recent initiative to ensure that patients in nursing homes are provided with the highest quality services possible.

Education -- National Board for Professional Teaching Standards: Mr. Goodling has agreed to drop his provision in HEA prohibiting funding for the National Board for Professional Teaching Standards, in exchange for the Administrations agreement to resolve differences in OMB and C.O. scoring of the student loan program. Goodling also agreed not to offer amendments to end federal support to NBPTS to other legislation this year, such as the Labor-HHS-Education appropriations bill. While this deal protects the Board for this year, we expect Goodling to pursue his agenda against the Board in next years reauthorization of the Elementary and Secondary Education Act. Our efforts over the last few weeks have demonstrated that while the Board enjoys broad bipartisan there is little deep support for the Board in the House, and that even Senate supporters of the Board have questions about its operation. We will continue to work closely with Gov. Hunt and the NBPTS on a strategy to shore up support for the Board in both the House and Senate.

Education -- Bilingual Education: Rep. Riggs bilingual education bill was scheduled for a floor vote Thursday evening. However, the Republican leadership pulled the bill before it could come to a vote. The Democratic whip counts indicated strong Democratic unity and the Hispanic Caucuses believes there would have been Republican opposition to Riggs from some in the New Mexico, Texas and Florida delegations. The bill could still come up after the recess, though Riggs is likely to have difficulty getting floor time in September.

[ELENA: THE FOLLOWING IS USEFUL PRIMARILY TO SEE IF HES GOT ANY REACTION OR GUIDANCE FOR US. IF YOU DONT WANT THAT NOW, ID PROBABLY DROP IT]

Education -- National Education Goals Panel: The National Education Goals Panel met last week to begin discussing the future of the National Education Goals and the NEGP. The Panel is scheduled to complete its deliberations on this issue in early December. Governor Hunt has asked for our guidance on how we would like the panel to handle this issue. Thus far, there appears to be a bipartisan consensus among the governors on the panel, supported by Secretary Riley, that it is important to continue to have national education goals in some fashion, beyond the year 2000. There is also agreement that there must continue to be a mechanism to monitor progress toward reaching the goals, though little certainty that NEGP in its current form is the right mechanism for carrying out that function. Along with Secretary Riley, we believe that you, rather than the Goals Panel or the governors alone, ought to lead an effort to examine what has been accomplished in the near-decade since the goals were established, and what the Nations education goals ought to be for the future. However, we also believe that it will be much more difficult now than in 1989 initiate a process for establishing new goals, or even reaffirming the existing ones. It will be more difficult for control of the process to be shared between the Administration and the Governors to the relative exclusion of other parties and even if we could, much more difficult to establish bipartisan consensus with the Governors. Yet, a more open process could be even more difficult to bring to a productive conclusion. Despite the concerns, we are beginning to think through a strategy for how to proceed in this area.

Community Empowerment -- Empowerment Zones/Enterprise Communities (EZ/EC): Last Friday, a bipartisan coalition led by Sens. Jeffords, Leahy, and Warner, introduced legislation that would provide grant funding for the second round of Empowerment Zones. This bill, the result of month-long negotiations between the Administration and Senate staff, differs from the Administration's earlier bill in several key areas. In addition to providing flexible grants to the second round EZs the bill would provide: 1) funds for a new demonstration program called Rural Opportunity Communities (ROCs) to spur economic development in communities that cannot qualify for the EZ/EC program; 2) a new pool of money for well-performing ECs and EZs that have exhausted their existing resources; 3) a preference for high-performing first round ECs who are applying for a second round EZ. In the coming weeks, DPC, OVP, and NEC will continue to work closely with HUD and USDA in procuring additional cosponsors for this legislation and work to secure its passage as a rider on revenue-related legislation out of the Senate Finance Committee.

NOTE: (Elena, in response to your e-mail, OVP is still waiting to get sign-off from the Vice President about delaying the report from the Commission on Digital Broadcasting until late November. They have asked therefore that we include an update for POTUS next week.)

Crime -- Concealed Weapons Legislation -- On August 5th, the Judiciary Committee favorably reported legislation (H.R. 218) expanding the right of certain persons to carry concealed weapons across interstate lines. As originally introduced -- and proposed by the Fraternal Order of Police -- this bill would have allowed current and former law enforcement officers to carry concealed firearms across state lines. As amended in the Judiciary Committee -- and with strong support from the NRA -- the bill would also allow private citizens with permits to carry a loaded and concealed weapon in their home states to be able to do the same in other states that permit concealed weapons.

Currently, 29 states are required to issue concealed weapons permits to persons not prohibited from owning a firearm (generally, a convicted felon); 13 states may issue concealed weapons permits, but retain some discretion in approving and denying applicants; 7 states prohibit the carrying of a concealed weapon; and only 1 state -- Vermont -- does not require any permit or license to carry a concealed weapon. The practical effect of H.R. 218, as amended, is to allow millions of gun owners to carry concealed and loaded weapons on an interstate basis in 43 of the 50 states.

Crime -- Law Enforcement: On Friday, the House Crime Subcommittee is scheduled to mark up legislation to provide college scholarships to the children and spouses of local law enforcement officers killed in the line of duty. In 1996, you signed legislation to provide such scholarships to the dependents of slain federal officers; last year, you called on Congress to expand these educational benefits to families of state and local law enforcement as well. Similar legislation passed the full Senate in May.

Gay and Lesbian Issues -- Sexual Orientation Executive Order Upheld: The House blocked a measure, sponsored by Rep. Hefley, that would have prohibited funding to implement your May 28 executive order which prohibits discrimination based on sexual orientation in the federal civilian workforce. By a vote of 252 to 176, the House rejected arguments that this executive order would lead to affirmative action for gays and lesbians. Sixty-three Republicans joined 188 Democrats and the one independent in voting against the measure. The DPC, along with Counsels Office and OPL, worked closely to ensure that House members had information to rebut arguments about special preferences. A recent Wall Street Journal/NBC News Poll showed that 72 percent supported the order against antigay bias in

federal agencies, while only 20 percent opposed it.

Children and Families -- After-School Programs and Service: You asked us to look into a proposal from a White House Fellow to earmark 15 percent of proposed funding for the 21st Century Community Learning Centers program for after-school programs run through the Corporation for National Service (CNS). Strengthening the connection between service and after-school activities is important, and service is in fact already a significant part of the current 21st Century program. However, specific earmarking from an Education Department program to the CNS might be disadvantageous for both programs: (1) funds from the Education Department come with many more restrictions on their use than CNS dollars; (2) additional earmarking would drain the 21st Century program of resources (the Administrations budget proposal already targets 10 percent of program funding to community-based organizations, and the House Appropriators cut our budget request from \$200 million to \$60 million); and (3) it would lessen our ability to promote greater utility of public school buildings during after-school hours. We will, however, continue to explore ways in which we can provide greater support and funding both to traditional after-school learning programs and specific service-oriented programs.

Welfare Reform -- Minorities on Welfare Reform Caseload: The New York Times report on the increasing share of minorities on the welfare caseloads highlights some important trends and issues that we will explore further. In the meantime, it's helpful to put the information in context.

First, the racial/ethnic composition of welfare caseloads has been changing gradually over the last 25 years: whites rose from 38 percent in 1973 to a peak of 42 percent in 1983 and have dropped steadily to 35 percent in 1997. The proportion of blacks has generally declined, from 46 percent in 1973 to 37 percent in 1997. As the New York Times points out, the most significant trend is the increase in the Hispanic portion of the caseload, from 13 percent in 1973 to 23 percent in 1997. However, this is not too surprising given the rapid increase in the Hispanic population overall. The question is how welfare reform may be affecting these historic trends. National data on the racial/ethnic characteristics of welfare recipients are only available through June 1997, so it is hard to gauge the impact of the past year when welfare reform efforts accelerated so rapidly. Some states have more recent data which they shared with the Times, and which may reveal more significant trends. It is also worth noting that the caseload data only tells who is currently on the rolls; it does not tell the rate at which different groups are entering and exiting.

Second, the number of white, black and Hispanic families receiving welfare have all dropped since 1994 (when caseloads peaked), but the rate of decline has been greater for whites than blacks, with an even slower decline for Hispanics.

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Third, the changes are more dramatic than the actual mix of who is left on the caseloads, at least on a national basis. While the story pointed out important trends, the conclusion that the composition of the caseload has changed dramatically seems unwarranted.

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Fourth, there is some encouraging evidence from Census data that the employment rates of former welfare recipients are increasing even faster for minorities than for whites (although the actual rates and the disparity between groups remains disturbing). Between 1996 and 1997, the percentage of all prior year welfare recipients who were employed in the next year increased by 28%. The increase was highest for blacks (33%), followed by Hispanics (22%) and whites (21%).

Finally, there is longstanding evidence that minorities on welfare disproportionately share characteristics that may make it harder to leave the rolls: lower education levels, lower marriage rates, larger families, employment and housing discrimination, and isolation from areas with jobs.

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December 19, 1997

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Elena Kagan

SUBJECT: DPC Weekly Report

1. Welfare -- Welfare-to-Work Competitive Grants: The Department of Labor will release a notice in early January seeking welfare-to-work competitive grant applications. DOL will award a total of \$711 million in five rounds of competition, two in FY 1998 and three in FY 1999. Projects will be funded for up to three years. Both public and private entities may apply, including state and local governments and community and faith-based organizations. We worked with DOL to ensure that the notice seeks projects designed to place welfare recipients into jobs quickly and to provide the support services and skills training they will need to succeed in the work force. Like the activities supported by formula funds (the rest of the \$3 billion welfare-to-work program), these projects must serve long-term welfare recipients with multiple barriers to employment. DOL intends to award about 70 percent of competitive funds to projects in cities with high concentrations of poverty and about 30 percent to projects in rural areas. The first round of applications will be due in March.

2. Crime -- COPS: The Justice Department last week announced \$47 million in grants to fund an additional 800 police officers under the COPS Program. The grants went to law enforcement agencies in 32 states, and included a grant to New York City to fund 300 officers. The announcement brings the total number of officers funded under the COPS Program to 66,000.

3. Crime -- 3-1-1 Community Policing Number: Dallas launched a new citywide 3-1-1 non-emergency response system last week. Dallas residents will be able to call 3-1-1 and request any city service 24-hours a day, seven days a week. Baltimore celebrated its one-year anniversary as the nation's first 3-1-1 project on October 1. The 3-1-1 initiative in Baltimore has helped to reduce the volume of calls to 9-1-1 by 25 percent and to cut the average response time to emergency calls by two-thirds.

4. Crime -- Brady Handgun Checks: Ohio signed an agreement with the Justice and Treasury Departments last week to conduct background checks for all handgun sales. Arkansas is now the only state not conducting background checks. Despite an opinion issued by Arkansas Attorney General Winston Bryant that the state has the necessary authority, the Governor continues to refuse to allow the checks. As a result, Attorney General Bryant has asked the Treasury and Justice Departments to name him the designated chief law enforcement officer authorized to conduct background checks statewide. The proposal is currently under consideration by both Departments.

5. Tobacco -- Document Disclosure: Chairman Bliley released last week 834 tobacco industry documents that his committee had subpoenaed. The documents do not seem to contain any smoking guns, but reveal the industrys persistent efforts to conduct and support

"scientific" research to support its litigation positions. More documents may come to light over the next month, as a result of either judicial rulings or additional congressional subpoenas. Chairman Bliley worked very closely with Rep. Dingell in demanding and releasing the documents; this cooperation may bode well for the progress of tobacco legislation in the House when Congress returns in January.

6. Tobacco -- Smoking Cessation: You recently asked about the possibility of funding smoking cessation efforts through national tobacco legislation. As the CEA informed you, a recent study in the Journal of the American Medical Association found that intensive smoking cessation programs can be among the most cost-effective of preventive intervention programs -- more cost-effective, for example, than mammography screening. Because of the proven success of these programs, you have stated that expansion of smoking cessation activities is a critical element of comprehensive tobacco legislation. The settlement itself proposed that \$1 billion annually for the first 4 years and \$1.5 billion annually thereafter would go to smoking cessation efforts. We have protected this level of funding in the budget process, rejecting proposals to use this projected revenue for non-smoking-related programs. This level of funding would be insufficient to allow the exact method of providing cessation services studied by JAMA, but neither HHS nor OMB thinks this method the most efficient. HHS is now preparing options for allocating smoking cessation funds, with estimates of how many quitters each option will produce. One potentially effective approach is to provide incentives to managed-care plans to encourage participation in smoking cessation programs.

Weekly Report
April 23, 1998

H-1B

Based on meetings between Sally Katzen and Elena Kagan with House members and their staff, it looks as though the House version of legislation to increase the number of temporary (H-1B) visas for foreign "specialty" workers will contain strong reforms to the H-1B visa program (as we have advocated for several years) and a training component (to insure that U.S. workers can obtain the skills needed by employers.) We expect Reps. Smith and Watt will introduce such a bill sometime next week.(?) We can expect that this issue will move quickly in both the House and the Senate because the current cap (of 65,000) on the number of H-1B visas is expected to be reached by mid-May.

G. I. Bill

[Brian, Im making this up because I think that we should wait to see what happens tonight and tomorrow]

The Senate version of the G. I. Bill, the Workforce Investment Partnership Act, has been scheduled for the floor next week. We clearly support passage of the bill, however there is an amendment to the current Senate bill by Sen. Ashcroft that threatens the Administration legacy on School-to-work that the Administration strongly opposes. However, we have elected not to fight the amendment now in order to move the bill through the Senate. Sen. Kennedy has gotten verbal commitments from Sens. DeWine and Jeffords to work with us in Conference to address our objections to the Ashcroft Amendment.

Weekly Report
September 17, 1998

H-1B Visas

Once again the House Republican leadership has postponed bringing legislation to increase the number of temporary (H-1B) visas for highly skilled foreign workers to the floor; their current plan is to bring the bill to the floor next week. The reason for the delay is that the bill, that does not include adequate protections for U.S. workers and has insufficient training funds, does not appear to have enough votes to pass (partially because of our threat to veto the legislation). Meanwhile, Cecilia Rouse, on my staff, and Peter Jacoby, of White House Legislative affairs, met several times last week Senator Abrahams staff in order to reach an agreement that would include significant additional funding for training and strong protections for U.S. workers. At this time some progress has been made and it is possible that we can reach an agreement in the next week.

H-2A Visas

Last July the Senate passed an amendment to the Commerce-State-Justice Appropriations bill (sponsored by Senators Ron Wyden (D-OR), Bob Graham (D-FL) and Gordon Smith (R-OR)) that reforms the H-2A agricultural guestworker program. Secretary Herman wrote a letter strongly opposing the amendment because it would erode protections for U.S. workers and shift costs and risks from employers to workers and/or the government. Although the bill passed the Senate by a vote of 68 to 31, it has since lost support among Senate Democrats, principally because labor and Hispanic groups have made clear their vehement opposition. Further, the Wyden-Graham amendment has little support in the House -- from either Republicans or Democrats.

Faced with waning support for their bill, last week Sens. Wyden and Graham met with Erskine Bowles, Sally Katzen, and Elena Kagan in an attempt to convince the White House that rather than opposing their bill, we should work with them to make it better. Following that meeting Cecilia Rouse, on my staff, Elena Kagan and Julie Fernandes of DPC, and Barbara Chow and her staff at OMB met twice with the staff of House and Senate Democrats. After giving their bill careful consideration, however, we plan to list this amendment as one of the reasons to issue a veto threat on the CJS Appropriations bill. That said, we have begun a bi-partisan working group (including the Department of Labor and USDA) to consider potential reform to the H-2A program.

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July 10, 1998

MEMORANDUM FOR THE PRESIDENT

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.

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 Fords 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 proposals lack of attorneys fees limitation (a state-only settlement would diminish Gortons 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 Minnesotas 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.

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 Childrens 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 nations 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 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 Acts 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 Californias 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.

*MEMORANDUM

TO: BRUCE REED, ELENA KAGAN, MICHAEL COHEN

CC: MARY SMITH, WILLIAM KINCAID

FROM: TOM FREEDMAN

JULIE MIKUTA

RE: FURTHER INFORMATION ON INTERVENTIONS INTO SCHOOLS

DATE: JUNE 16, 1997

SUMMARY

This Administration has encouraged the fixing of failing schools by closing or reconstituting them, or by reopening them as charter schools. This memo discusses: relevant statutes; Administrative support; and supporters/ critics. Attached is an addendum to the previous table on school takeovers; it focuses on where sanctions have been implemented and what the results have been.

I. RECENT STATUTES: IMPROVING SCHOOLS ACT, 1994 [ESEA]

A. Title I funds [P.L. 103-382]

Title I is the largest single federal investment in schooling, providing almost \$7 billion to schools systems across the country to improve education for children at risk of school failure who live in low-income communities. It reaches more than 6 million children annually, primarily in the early elementary grades. The reauthorization of Title I in 1994 redesigned the program such that its primary aim is now on helping the targetting children to meet high standards.

Title I funds can be applied to the reconstitution of chronically failing schools. So far, they have not been used in this way, according to the Department of Education which plans to investigate this issue.

Students in schools that receive Title I funds are required to meet challenging state standards. Schools or districts in which students fail to reach these goals for 2 years are required to make improvement plans and submit them to the local educational agency (in case of failing school) or the State (in the case of a district). The local education agency or the state must then provide technical assistance. If the school or district makes limited progress for 3 years, corrective actions may be taken. These include: reconstituting personnel, and (in the case of a failing school) creating a charter school. The State reports its overall strategy on how to aid failing schools to the Federal level; reports of individual schools do not pass from state to federal level.

FFB. Distinguished Educator [Sec 1117]

Requires each state to establish a corps of "distinguished educators" who will provide technical assistance to schools and districts farthest from meeting the States student performance standards. Kentuckys program is the model; all of the 53 schools that were assigned a distinguished educator showed improvement by the end of the second year.

II. PREVIOUS ADMINISTRATION SUPPORT

State of the Union Address

The Address does not explicitly mention failing schools. However, when the Department of Education expanded each of the 10 parts of education plan outlined in the speech, two components recommend reconstituting or closing failing schools. They both propose that charter schools replace failing schools in some circumstances.

President Clinton said: "Every state should adopt high national standards."

The Dept of Eds elaboration:

- *urges holding schools and their states or districts accountable for results
- *recommends overhauling or shutting failing schools and allowing charter schools to start over in their place
- *encourages states or districts to use authority under reformed Title I program to hold schools accountable

President Clinton said: "Every state should give parents the power to choose the right public school for their children."

*the Dept of Eds elaboration: advocates fixing failing schools, by reconstituting or shutting and then reopening them if necessary, or creating new charter schools

Secretary Rileys State of American Education Address (2/18/97)

Secretary Riley calls fixing failing schools the "first order of business". Failing schools should be reconstituted or closed if it cant be changed. He praises the efforts occurring in New York, Chicago, Memphis, Atlanta and San Francisco.

III. NON-PROFIT ACTIVITY

The Consortium for Policy Research in Education and the Pew Foundation for School Improvement co-sponsored a working group meeting this spring. Teachers and administrators involved in this process, state and federal representatives and academics attended. A follow-up meeting focusing on defining indicators is tentatively planned for this fall.

IV. LEGAL BATTLES

The Voting Rights Act of 1965 has created obstacles for school takeovers. Opponents charge that a state limits the voting rights of a citys racial minorities when it appoints a group to replace the elected school board or when it reduces the local boards powers. A few CA counties, along with most Southern states, are required by the Act to get Justice Department approval before doing anything that would affect minority voting rights [Ed Week 3/26/97]. In the fall of 1996, Michael Cohen met with officials from TX, CA and NY to discuss this problem.

V. THE DEBATE

Proponents of reconstitution or of turning failing schools into charter schools
*Alveda Celeste King, niece of Martin Luther King, Jr., and head of "Save the Kids, Now!" coalition, supports empowering parents and teachers to operate their own schools [USA Today, 6/16/97]

*attorney Peter Graham Cohn of the NAACP [San Francisco]: "[Reconstitution] is a way to

radically transform the schools", said. "The whole concept has placed San Francisco in the forefront of education innovation. Its a clear benefit." [San Fran Examiner, 8/14/96]

*Ronnie Davis, spokesperson for NYs United Federation of Teachers: supported Chancellor Crews plans to intervene in troubled schools, and said the union would support the intervention even if it means replacing the entire schools staff [NYT, 11/1/95]

*Dianne Ravitch (Asst Sec of Ed Sec of Ed, 91-93; now at the Brookings Institution and NYU) Joseph P. Viteritti (Research Prof in the Wagner School of Public Service in NYU) advocated putting failing schools in NYC on probation and closing them if they do not improve. [Reforming Education Today, 1995]

Proponents who qualify their support:

*Richard Elmore, Harvard University professor: believes radical strategies like reconstitution are the wave of the future but fears the process will be undertaken far too haphazardly: "If a district is going to reconstitute then it had better make sure schools have ample resources and teachers have sufficient professional-development opportunities. Otherwise, it's just inviting failure." [Ed Wk, 3/97]

*Susan Fuhrman, a professor of educational policy at Rutgers University and director of the Consortium for Policy Research in Education: the limited research indicates that the threat of sanctions motivates teachers and administrators and the most promising approaches provide substantial technical assistance and professional development to teachers (e.g. in Chicago, KY and MD) but the research also says these approaches are costly and that underfunding is a significant obstacle to success

Opponents

*the NAACP opposed transferring control of Clevelands schools to Mayor White in 1996
*teachers unions across country

MEMORANDUM FOR ERSKINE BOWLES

THROUGH:Franklin D. Raines

FROM:Sally Katzen

SUBJECT:Heads-up on FDA Final Rule on Quality Mammography Standards

We have just concluded review of an FDA final rule that establishes nationwide quality and safety standards for mammography facilities. The final rule, which implements the Mammography Quality Standards Act (MQSA), combines five proposed regulations addressing accreditation, facilities, personnel, equipment, and performance standard alternatives.

The rule strikes an appropriate balance between imposing new costs on mammography facilities (which can limit patient access to mammography services) and improving our ability to protect womens health. Although the provisions of the rule are highly prescriptive, FDA pushed the performance standards as far as they could given the state of the art in this area.

As part of the White Houses efforts to promote breast cancer awareness, the President is expected to announce the rule this Saturday in his radio address. While FDA received over 19,000 comments on the proposal, the final rule is generally expected to be well-received by the public, including physicians, mammography facilities, and advocacy groups.

Please call me if you have any questions.

cc: Maria Echaveste
Rahm Emanuel
Thurgood Marshall, Jr.
John Hilley
Ann Lewis
Sylvia Mathews
Bruce Reed
Gene Sperling
Chris Jennings
Elena Kagan
Victoria Radd
Barry Toiv
Michael Waldman
Kathy Wallman
Josh Gotbaum
Larry Haas

*

May 19, 1998

TOBACCO EVENT

DATE: May 20, 1998
LOCATION: South Lawn
BRIEFING TIME: 9:30 am
EVENT TIME: 9:45 am
FROM: Bruce Reed

I. PURPOSE

To endorse Senator McCains Managers Amendment and urge the Senate to pass this comprehensive tobacco legislation this week.

II. BACKGROUND

This is an opportunity to applaud the Senate for taking up comprehensive, bipartisan legislation to dramatically reduce teen smoking, and to announce your support for the McCain bill. You will urge the Senate to move swiftly to pass Senator McCains Managers Amendment, which is currently before the Senate, and announce that you would be pleased to sign it into law. Specifically, you will announce your strong support for the improvements made to the McCain bill which will help reduce youth smoking and protect the public health.

You will be surrounded by 1400 youth ages 10-14 from the local D.C. area who participate in the National Campaign for Tobacco-Free Kids and will be holding a rally to push for tobacco legislation on the steps of the Capitol with Senators McCain and Conrad following this event. Approximately 150 public health advocates, tobacco control advocates, and tobacco farmers will also be in the audience.

The specific improvements made to the McCain bill include:

*Tough industry-wide and company-specific surcharges that will finally make reducing youth smoking the tobacco companies bottom line;

*Protection for all Americans from the health hazards of secondhand smoke in public buildings;

*No antitrust exemption for the tobacco industry;

*Strong licensing and anti-smuggling provisions to prevent the emergence of a contraband market and prosecute violators;

*A dedicated trust fund to provide for a substantial increase in health research funding as we move into the 21st Century, a nationwide counteradvertising campaign to reduce youth smoking, effective state and local programs in tobacco education, prevention, and

cessation, law enforcement efforts to prevent smuggling and crack down on retailers who sell tobacco products to children, assistance for tobacco farmers and their communities, and funds for the states to make additional efforts to promote public health and protect children; and

A higher, \$8-billion-a-year cap on legal damages, which will only be available to tobacco companies that finally change the way they do business, by agreeing to accept sweeping restrictions on advertising, continue making annual payments and lookback surcharges even if those provisions are struck down, make substantial progress toward meeting the youth smoking reduction targets, prevent their top management from taking part in any scheme to promote smuggling, and abide by the terms of the legislation rather than tying it up in court.

III. PARTICIPANTS

Briefing Participants:

The Vice President
Secretary Shalala
Secretary Riley
Bruce Reed
Elena Kagan

Event Participants:

The Vice President
Tara Lipinsky, 1998 Gold Medal Figure Skater and Spokesperson for the National Campaign for Tobacco Free Kids.
Emily Broxterman, Campaign for Tobacco Free Kids National Youth Advocate Winner, Overland, Kansas

IV. PRESS PLAN

Open Press.

V. SEQUENCE OF EVENTS

- You do a brief photo-line in the Oval Office with Tara Lipinsky, Emily Broxterman, two Regional Youth Advocate Winners, representatives from each of the 8 schools present at the event, Bill Novelli, President of the Campaign for Tobacco Free Kids and Matt Myers, Senior Legal Counsel for the Campaign for Tobacco Free Kids.
- You will then be announced into the South Lawn accompanied by the Vice President and youth from the Campaign for Tobacco-Free Kids.
- The Vice President will make remarks and introduce Tara Lipinsky.
- Tara Lipinsky will make remarks and introduce Emily Broxterman.
- Emily Broxterman will make remarks and introduce you.
- You will make remarks and then depart.

VI. REMARKS

Remarks provided by Speechwriting.

March 30, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Elena Kagan

SUBJECT: Tobacco Update

Senator McCain announced a comprehensive tobacco bill today for mark-up on Wednesday in the Senate Commerce Committee. The bill is not perfect, and we will continue to seek improvements. But it represents real progress (see the attached chart comparing the McCain bill with the June 20th settlement and your positions), and it should enhance the prospects for enacting comprehensive tobacco legislation in this session of Congress.

The Commerce Committee is likely to pass the bill this week with bipartisan support. Among Republicans, Senators Stevens, Gorton, Hutchison, Snowe, and Frist are likely to vote yes; Senators Burns and Ashcroft are likely to vote no; Senators Abraham and Brownback are undecided; and Senator Lott probably will recuse himself. Among Democrats, Senators Hollings, Wyden, Breaux, and Kerry are likely to vote yes; Senators Rockefeller and Dorgan will vote no; and Senators Bryan, Inouye, and Ford are undecided. The mainstream public health groups (Heart Association, Cancer Society, etc.) called the bill an encouraging step forward, but Drs. Koop and Kessler probably will criticize the bill because it contains some liability limits and increases the price of cigarettes less than they would like. The industry responded to McCain's announcement by saying that it would not agree to the legislation, but many observers believe that the industry has taken this position only to prevent the price from increasing still further.

Erskine gave the Administration's response to the bill in your absence. At a previously scheduled speech at the Center for National Policy (given before McCain made the liability provisions of the bill more acceptable to the public health community), Erskine said that the bill laid a good foundation for future efforts, but had room for improvement. In addition to praising Sen. McCain's leadership and process, Erskine lauded the legislation for raising the price of tobacco products substantially, giving the FDA full authority to regulate tobacco products, and including a strong plan to protect tobacco farmers. Erskine criticized the bill for having inadequate lookback penalties, and noted that it did not contain a comprehensive plan for using tobacco revenues to protect the public health and assist children. Erskine said he would not address the liability issues because the rest of the legislation did not yet meet your principles.

The bill emerged from a weeks-long process in which McCain consulted with the Attorneys General, Wall Street analysts, public health leaders, and the Administration. As noted above, at the last moment, McCain changed the liability provisions of the bill -- removing the bar on class actions and probably on punitive damages -- to get the support of at least some members of the public health community. The final bill, which we summarize more fully below, addresses many of your concerns and offers an opportunity for bipartisan accomplishment.

1. Funding and Per-Pack Price Increase. The McCain bill essentially uses your budget numbers, raising approximately \$70 billion over five years (including a \$10 billion up-front payment) and generating a \$1.10 increase in the price of a pack of cigarettes by 2003. The bill prevents the real price of tobacco products from increasing after the fifth year by including a volume adjustment on annual payments. Some in the public health world, as well as a number of liberal Democrats, will criticize the price rise as insufficient, arguing that an almost immediate \$1.50 increase is required to reduce youth smoking dramatically. Your own plan, however, contains the same price increase, and we have estimated that it will help reduce youth smoking by over 40 percent in five years.

2. FDA Regulation. The bill provides full authority to the FDA to regulate tobacco products. To respond to concerns from pharmaceutical companies about the effect of regulating tobacco under normal "drug and device" authority, we agreed to set up a separate chapter in the Food Drug and Cosmetic Act for tobacco products. We managed to do so, however, without ceding any of the authority the FDA has claimed over tobacco. This victory was hard-fought -- Senators Hatch and Jeffords argued strenuously for language defining the FDA's authority more narrowly -- and will be subject to challenge on the floor. Senators McCain and Frist, however, have committed to fighting off weakening amendments, so we are in the best position possible (given a Republican Congress hostile to the FDA) to emerge from the Senate with full FDA authority.

3. Farmers. The bill contains a plan to protect tobacco farmers and their communities, which has the support of Senators Hollings, Ford, and Robb. We do not yet know the full details of this piece of the legislation, but it is designed to address the concerns of both burley and flue-cured tobacco farmers. Needless to say, it will contain funds fully sufficient for these purposes, and accordingly meets your demand to protect tobacco farmers.

4. Lookback Penalties. The bill provides for non-deductible industry-wide lookback penalties capped at \$3.5 billion per year. The industry will have to pay \$80 million for each percentage point by which it misses youth smoking targets between 0 and 5 percent, \$160 million for each percentage point between six and ten percent, and \$240 million for each percentage point over 11 percent. The industry will hit the \$3.5 billion cap at about a 20 percent miss, so any larger miss will be "free." There are no monetary penalties on individual companies for failing to meet youth smoking targets. The bill does contain a provision for taking away the liability protections of any company that misses the youth smoking targets by more than 20 percent, but this provision has a very large loophole and probably will have little effect as currently drafted.

As Erskine noted in his speech, the penalty provisions are the weakest part of the McCain bill. We have raised serious concerns about both the \$3.5 billion cap and the absence of any company-specific penalties. We also will try to tighten the provision that makes liability protections contingent on success in reducing youth smoking. We assume that such amendments should not come in committee, but during debate on the floor.

5. Liability Provisions. As late as Sunday, Senator McCain intended to include liability provisions very close to those in the proposed June 20 settlement. These provisions included a \$6 billion cap on annual liability payments (with any judgments beyond the cap rolled over to the next year), as well as prohibitions on class actions and punitive damages. By Monday morning, however, the public health community (including the mainstream groups) had made clear to McCain that they would denounce the bill if it contained these provisions. McCain accordingly modified the legislation to permit class actions. We think the legislation now allows punitive damages as well, but we have not received the new

language and are not entirely certain. Drs. Koop and Kessler and some liberal Democrats will oppose the bill because of the remaining liability limits.

A simple cap on damages -- without any limitations on class actions or punitive damage claims -- is the least objectionable form of liability protection for the industry. We will try, however, to raise the cap beyond the level set in the McCain legislation; you should note, for the sake of comparison, that the Harkin-Chafee bills cap stands at \$12 billion.

6. Budget Issues. The biggest issue left unresolved by the McCain bill is how to allocate tobacco funds. Although the bill takes care of tobacco farmers, and also provides money for smoking cessation, counteradvertising, and some research, it leaves other spending issues for the Senate floor. Senator Domenicis budget resolution would reserve all tobacco funds for Medicare, not even allowing the spending on farming and public health contained in the McCain bill. The Senate will take up amendments to this resolution tomorrow to make tobacco funds available for class size, child care, NIH, farmers, and other purposes. Many Republicans have raised concerns about the Domenici approach, but they may decide to vote for it, on the theory that as long as they have 60 votes for a tobacco bill, they can waive the budget rules anyway.

When the time comes to engage in serious negotiations over how to allocate tobacco funds, we expect bipartisan consensus on 75-80 percent of the spending (\$10 billion over 5 years for farmers; \$10 billion for cessation, counteradvertising, and other public health programs; \$10-15 billion for NIH; and \$20-25 billion for states). The battle will be over how to divide up the remaining \$15 billion or so. Senate Republicans will seek money for Medicare; House Republicans may push Rep. Archer's proposal for health care tax deductions for small business and the self-employed; and Democrats will push for everything from child care to school construction.

The emergence of the McCain bill is a very positive development. It will attract bipartisan support, and it is close to meeting your principles. We should continue, however, to press for real improvements -- particularly in the bills penalty and liability provisions. Tomorrow, Erskine, Larry, and we will have meetings with Senators McCain, Hollings, and Daschle about how to move forward to enact the strongest possible tobacco legislation.

April 9, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Elena Kagan

SUBJECT: McCain Legislation

With the overwhelming vote in favor of the McCain legislation in the Senate Commerce Committee and the subsequent announcement of the tobacco industry that it will fight this legislation, we have entered into a new phase of our effort to procure a comprehensive tobacco bill to reduce youth smoking. The Commerce Committee vote last week brought new momentum to this legislative effort. The industrys response should only add to that momentum, by making it even harder for Members of Congress to block legislation, lest they look as if they are doing the industrys bidding.

The broad consensus among your advisors is that we should aim for a strong, comprehensive bill that meets our core public health objectives and that the industry might reluctantly swallow in the end. Without industry consent, some provisions in comprehensive legislation (i.e., the most far-reaching advertising restrictions) would be impossible, while other provisions (e.g., narrower advertising restrictions and lookback penalties) would be in litigation for years. We should not compromise our objectives to secure that consent, but at the same time we should not ask for more than we need to achieve our public health goals and in the process destroy any chance of industry acquiescence. In any event, most of your advisors believe that efforts to push the price too far would be counterproductive, because tobacco-state Democrats will join with Republicans to derail a bill that goes as far as some in the public health community might like. Instead, we should try to address the aspects of the McCain bill that are most important to us and to securing broad Democratic support.

Your advisors also agree that the best way to get this kind of bill is to engage in negotiations with Senators Lott, Daschle, McCain, and Hollings that are designed to produce an agreed-upon bill to go to the Senate floor. The greatest danger we face is chaos on the Senate floor, in which some amendments roll back what we already have achieved (e.g., on FDA jurisdiction), while other amendments make the bill essentially unpassable (e.g., by stripping all liability protections while increasing the overall price of the deal).

We recommend against direct discussions with the industry at this stage; we doubt they would level with us anyway. Assuming Senator Hollings is in the room, we should have a decent sense of the industrys concerns, and of course we have more-than-adequate lines of communication to the public health community.

We list below several aspects of the McCain legislation in which we should seek changes during these negotiations. Note that FDA jurisdiction does not appear on this list; we were able to reach an agreement on this issue with Senators McCain and Frist, prior to the Commerce Committee vote, that satisfies all our regulatory needs and objectives.

I. Youth Lookback Penalties

We already have said that Congress must strengthen the lookback penalties in the McCain legislation, by incorporating some company-specific penalties and raising the cap on the industry surcharge. The incorporation of some company-specific penalties is a core demand of the public health community, and is strongly supported by HHS and Treasury. Such penalties, however, may be unacceptable to the industry, and especially to Phillip Morris because of its disproportionately large share of the youth market. (Unlike industrywide penalties, which can be passed on in the form of higher prices, company-specific penalties come straight out of a company's profits.) Bruce Lindsey has noted that even if we need to make demands in this area, we should not let the issue of company-specific penalties become grounds for vetoing the bill. We agree, but think it is important to try to find a way to address this issue.

A number of approaches are available, and we should not now tie ourselves down to any of them. A company-specific penalty developed by Treasury and HHS would impose a \$500 fee for every child by which a company misses the targets (i.e., if a company misses the target by 10,000 children, it would pay a fee of \$5,000,000). This per-child surcharge represents the present value of the profits a company would gain from addicting a teenager over his lifetime. Treasury estimates that the total cost of this penalty -- i.e., across all companies -- could reach as much as \$500 million a year. Another approach, probably more acceptable to the industry, would be to allow suits between companies for redistribution of the industry-wide penalty. Such indemnification suits would create a potential for transforming the industry surcharge into a company-specific penalty scheme, without increasing the overall cost of the penalty provisions. We will continue to try to develop creative solutions in this area so that we can enter negotiations with a range of proposals.

Raising the cap on industry-wide penalties is obviously an easier matter. We would suggest proposing a change from the current \$3.5 billion to \$4 to \$5 billion if possible.

II. Price per Pack and Spending

Price per Pack

2

We should not demand any increase in the McCain bill's funding levels in the first five years, because McCain essentially adopted our own budget numbers (while adding a \$10 billion up-front payment). We recommend waiting until CBO scores the McCain bill before deciding whether to seek any increase in funding levels in later years. (McCain has asked CBO to score his bill by the time Congress returns.) Congressional scorekeepers may well estimate that the yearly payments in the bill will increase the price of cigarettes not by the \$1.10 we estimated, but by the \$1.50 that the public health community has most often demanded. The higher figure may result from assumptions by CBO that (1) states will use the opportunity to increase state excise taxes, further reducing the number of packs sold and (2) the bill will significantly increase the black market for cigarettes, resulting in fewer than expected packs sold through the legitimate retail market. By reducing the number of expected packs sold, both of these changes would increase the per-pack price estimate, because the annual industry payment set in legislation would be spread among fewer packs. Once we know the actual per-pack price increase calculated by Congressional scorekeepers, we will be in a better position to determine whether we should push for a small increase in funding levels after the fifth year.

Spending

We hope for bipartisan consensus on much of the spending: we think Members could agree on approximately \$10 billion over 5 years for farmers; \$10 billion for prevention, cessation, counteradvertising, FDA enforcement, and other public health programs; \$10-15 billion for research (the Republicans may want to limit these funds to NIH); and \$20-25 billion for states. This distribution leaves about \$15 billion on the table, which Republicans will want to spend on Medicare or tax cuts and Democrats will want to spend on programs like child care and school construction.

One issue will concern the use of the state money. Our budget earmarked 57 percent of the state funding for child care, class size, and Medicaid outreach initiatives. As we go forward, we should argue at a minimum for a menu of state programs, such as child care and education, on which states would have to use a significant portion of their funds. For example, in the Harkin-Chafee bill, half of the state funds must be spent on one of 20 listed programs, which include child care, K-12 education, Medicaid, the Child Health Insurance Program, and Head Start.

Another issue, more important in the out-years, concerns the amount of money allocated to paying legal judgments. The June 20th settlement put only a few billion dollars into the tort fund in the first five years, on the theory that lawsuits against the industry would take some time to come to judgment. Congress may well use the same assumption, given competing spending priorities. But once this initial grace period is concluded, Congress must figure out how to fund legal judgments. The June 20th settlement placed a \$5 billion annual cap on judgments, with \$4 billion coming from the industrys base payments to the government and \$1 billion (a kind of copayment) from the defendant companies coffers. The McCain bill establishes a \$6.5 billion cap; McCain contemplated that \$5.2 would come from the industrys base payments, with \$1.3 as a copayment, but his bill does not actually address this issue. Some in the public health world may begin to call for the entire amount to be paid by the companies, outside of their payments to the government. This change, however, would add an enormous amount to the total cost of the deal and could doom prospects for legislation. Room for a tort fund thus will have to be found in the out-years by squeezing some of the spending listed above.

III. Antitrust Exemption

The McCain bill contains antitrust exemptions for the tobacco industry that are not necessary to achieve the goals of the legislation and may have serious anticompetitive effects. As written, the bill exempts any and all agreements designed to "reduce the use of tobacco products by underage individuals." This exemption could cover (among other things) price-fixing agreements of all sorts. The Department of Justice believes strongly, and we agree, that we should oppose all antitrust exemptions, except possibly for a narrowly-drawn exemption designed to allow companies to agree to restrict their advertising and marketing to children.

IV. International Tobacco Control Efforts

As part of the public health spending noted above, we believe we should include significant funding (\$200 million a year) for international tobacco control efforts. These funds should be spent on both governmental and non-governmental efforts to promote public health and smoking prevention efforts abroad.

The McCain bill has several additional international provisions that we would like to

change so that they do not interfere with our diplomatic and trade priorities. For example, although we support the bill's effort to prohibit U.S. government support for promotion of tobacco overseas, we need to ensure that the language does not interfere with USTR's ability to negotiate tariff reductions or interfere with treatment of other products. In addition, the McCain bill contains a provision that the State Department and HHS consider problematic and unenforceable, which would require U.S. companies to abide by the new labeling and advertising requirements when doing business in other countries. The industry strongly objects to these provisions for a different reason, because it views them as a real threat to its international operations.

V. Environmental Tobacco Smoke

The McCain bill would exempt the hospitality industry (restaurants, bars, casinos, etc.) from its environmental tobacco smoke provisions, which ban smoking, except in enclosed and specially ventilated areas, in public facilities. In addition, the bill would allow individual states to "opt out" of all of the provisions, even if the state had no ETS protections of its own. Although HHS strongly opposes the hospitality exception (workers in the hospitality industry face grave risks from second-hand smoke), we doubt it is politically feasible to remove it. We should, however, try hard to eliminate the state opt-out provision, which could leave many of the nations citizens without any protection from ETS. Alternatively, we might consider pushing the Harkin-Chafee approach to this issue, which rather than imposing a ban would provide funds to States that progressively reduce exposure to ETS.

VI. Liability Provisions

We believe we should adhere to the basic structure of the liability provisions in the McCain legislation. If we need to make these provisions a bit tougher, we can try to raise the cap from the current \$6.5 billion to the \$8 billion contained in Harkin-Chafee. Note, however, that doing so only compounds the budgetary issues surrounding the tort fund noted earlier in this memo: to the extent that money for tort judgments come from the industrys payments to the government, that money squeezes out funds for public health and other priorities; conversely, to the extent that money for tort judgments comes over and above the industrys payments to the government, the expected cost of the deal to the industry increases.

Finally, we may want to change the provisions in the McCain legislation that deny the liability cap to certain companies. The current provision, which has received almost no attention, lifts the cap for companies that miss the youth lookback target by more than 20 percentage points if they also have violated the Act or taken action to "undermine the achievement of youth smoking reductions." Because of the vagueness of this standard, the provision may have little or no effect. We should either tighten it (by linking the cap only to objective measures) or discard it entirely. Especially if we try to make the liability provisions tougher in other areas, agreeing to eliminate the provision may prove useful.

VII. Constitutional Issues

The Department of Justice is prepared to recommend changes to the advertising, marketing, and other speech-related provisions of the legislation in the event that the industry does not sign protocols agreeing to these restrictions. The Department also would like us to press for the elimination of all provisions regulating non-commercial speech, such as one

that forbids companies from lobbying Congress, regardless whether the companies offer agreement.

Conclusion

In summary, we would recommend seeking these improvements:

Youth Lookback Penalties

- *Incorporate some company-specific component in the penalty scheme
- *Increase the industry-wide surcharge cap from \$3.5 billion to between \$4 and \$5 billion

Price and Spending

- *No change in annual payment amounts in first five years; wait until CBO scores before deciding whether to seek later changes
- *Ensure spending on research, public health, and farmers, press for spending on child care and education, or at least a menu including these programs

Antitrust Exemption

- *Eliminate the antitrust exemption

International Tobacco Control

- *Support funding for governmental and non-governmental organizations
- *Narrow provision prohibiting U.S. support for promotion of tobacco overseas to ensure it does not interfere with USTR authority to negotiate treaties
- *Remove requirement that companies must abide by new labeling and marketing requirements when operating overseas

Environmental Tobacco Smoke

- *Eliminate "opt-out" provision that allows states to adopt weaker laws

Liability

- *Retain basic structure of liability priorities
- * Consider modifying level of cap and relation of cap to youth reduction targets

Constitutional Issues

- *Recommend changes to minimize Constitutional difficulties

September 21, 1998

MEMORANDUM FOR THE CHIEF OF STAFF

FROM: Bruce Reed
Elena Kagan

SUBJECT: Tobacco Update

This memo (1) advises you of recent conversations we have had with an attorney for the industry, which confirm that the industry has no interest in expanding its expected settlement with the states, in the way suggested by Dick Scruggs, to include the federal government; (2) informs you of a recent NGA/NAAG proposal that Congress pass legislation eliminating the federal governments claim for a portion of state tobacco recoveries, and outlines a compromise proposal that Governor Chiles may suggest to you on Tuesday; and (3) outlines a new idea of Bruce Lindseys to try to use the state settlement discussions to gain clear FDA jurisdiction over tobacco products.

1. Meyer Koplow, the outside counsel for Philip Morris, told us last week that the industry has no interest in bringing the federal government into its settlement discussions with the states. (Our initial conversations with Koplow took place the week before last, but Koplow took some time to speak with his client and get back to us.) According to Koplow, the industry does not think it makes sense to upset the state negotiations, given how close they are to success, in order to pursue a broader settlement whose prospects of completion are highly uncertain. (Koplow, of course, speaks only for Philip Morris, but if Philip Morris is not interested in talking with us, we can bet that no one else is either.)

In explaining this conclusion, Koplow first noted the legal complexities involved in crafting a comprehensive settlement -- in particular, the difficulty of insulating the liability protections and the FDA provisions from legal challenge. Although he thought there was some chance of resolving these issues to all parties satisfaction, he said (correctly) that we would have to do much hard work before knowing whether such a resolution was possible. Koplow also noted the practical difficulties involved in the Scruggs scheme; for example, he believes that the states would not agree to any arrangement that would subtract punitive damages from their share of the money. Finally, Koplow stressed the "psychological" difficulties of attempting to reach an agreement. The industry, according to Koplow, simply does not trust us; it fears that we will bow to political pressure and increase our demands during negotiations.

Koplow left open the possibility that the industry would want to deal with us separately at some future time, after it had completed the state settlement. He noted that Philip Morris wants to resolve all government claims, including potential claims by the federal government. He implied that the kind of deal Philip Morris contemplates would not necessitate legislation and would include (1) money, (2) FDA jurisdiction, and (3) certain marketing restrictions excluded from the state settlement (in part so the industry has something to offer the federal government). He did not specifically raise liability

protections in this context.

2. The National Association of Attorneys General (NAAG) wrote a letter to Congressional leaders last week urging them to pass legislation before Congress adjourns to "clarify that the Health Care Finance Administration should not assert any claims against state tobacco recoveries" (letter attached). We can expect the NGA to support this demand strongly; indeed, Republican Governors probably have talked already with Senator Lott and Speaker Gingrich about moving this legislation. A set of talking points prepared for Democratic Governors, for use in a recent phone call with the Administration, urges us to support the legislation, as does a letter that Senator Graham just sent you (talking points and letter attached).

Governor Chiles is meeting with you on Tuesday, primarily to discuss this issue. (As you know, Florida has a very special interest in the issue because it is one of four states to have completed a settlement with the industry.) Chiles may urge you to support a bill that simply eliminates the federal governments claim to any tobacco recovery, as described above. His staff, however, has suggested that Chiles may come in with a compromise option, predicated on the agreement we reached with the NGA in the context of the McCain legislation. Under this approach, the federal government would renounce its claim to a state recovery only when the state agreed to use half its money on a menu of seven items: child care; child welfare; the maternal and child health block grant; the substance abuse block grant; the safe and drug free schools program; Eisenhower education grants; and the state match for the childrens health insurance program (subject to a six percent ceiling). This approach would give us exactly what we would have gotten from the "state side" of the McCain legislation, and we should seriously consider it -- especially given the alternative legislation that the NGA and NAAG are proposing.

We should note that any proposal restricting the federal governments ability to bring claims against the states will involve serious budget issues. The Congressional Budget Office currently projects that the federal government will recoup \$1.2 billion over five years from state tobacco settlements; we can expect the Office to score even Chiless compromise approach at approximately that amount. The Governors supposedly have agreed on a plan to reimburse the federal government for this cost, under which they would divide the cost amongst themselves based on their share of the total settlement funds. OMB is currently evaluating this proposal.

3. Bruce Lindsey has proposed a more ambitious plan for using our recoupment claims as leverage to get something out of a state settlement. Under the Lindsey plan, we would drop our recoupment claims if a state agreed to (1) take 45 percent of the money unrestricted; (2) use 45 percent of the money for the seven items on our menu; and (3) give over 10 percent of the money to a "tort fund" which would pay legal judgments against the industry. If the judgments failed to exhaust the tort fund, the remaining money in the fund would return to the unrestricted state pot. Conversely, if the judgments exceeded the tort fund, the remaining liability would come out of the restricted state pot -- and if that too were exhausted, would revert to the industry. In exchange for this potentially valuable benefit the industry would agree to FDA jurisdiction -- if possible, through the settlement itself; if not, by dropping its opposition to legislation.

The great virtue of this scheme is that it could make the state settlement partly our victory: if everything works correctly, we would achieve the important goal of full FDA jurisdiction. The scheme, however, raises at least three questions. First, we may not be

able to convert this deal into an effective guarantee of FDA jurisdiction. The legal difficulty of getting regulatory jurisdiction through a settlement is heightened in this scheme because we probably could not be a party to the agreement; moreover, the industrys assurance that it would not fight a legislative solution (even if it is believed) hardly guarantees the result we want in a Congress replete with FDA-haters. Second, even if we could surmount this problem, the states may well refuse to consider this plan, given that it puts more than half of their money at risk of going back to the industry for legal judgments. Third, the left in our own party may react with outrage to this agreement, arguing that we effectively have "bought" FDA jurisdiction by granting the industry relief from liability. We would have to explore these questions more thoroughly before pursuing this option.

September 30, 1998

MEMORANDUM FOR THE PRESIDENT AND VICE PRESIDENT

FROM: Bruce Reed
Elena Kagan

SUBJECT: Federal Tobacco Claims

Over the last few months, we and Bruce Lindsey have had many conversations with Department of Justice attorneys regarding the feasibility of bringing suit against the tobacco companies for Medicare and other losses stemming from the use of tobacco products. We also have asked DOJ lawyers to consult with a number of law professors and trial attorneys who have considered the viability of a lawsuit.

The Department now has concluded that it should not bring suit against the companies. Almost everyone at DOJ agrees that such a suit could be brought consistent with Rule 11 (i.e., with minimum professional standards). Most DOJ lawyers also acknowledge that given the size of the claim and other factors, the companies might well choose to settle the suit (as they are settling state claims) for a substantial sum of money plus public health concessions. DOJ attorneys believe, however, that they should not bring suit unless they would stand a reasonable prospect of actually winning the suit at trial and on appeal (i.e., putting aside all settlement possibilities). The attorneys have concluded that under existing law governing Medicare and other potential federal claims, they cannot meet this standard. The lawyers principally argue that current law precludes the federal government from aggregating (i.e., bringing in a single suit) claims for each Medicare beneficiary's tobacco-related health care costs.

At the same time, most DOJ attorneys appear amenable to settling federal claims against the tobacco companies without bringing a prior lawsuit. (The lawyers reason that although they cannot bring suit against the companies for want of an effective aggregation device, they do in fact have millions of individual claims against the companies, which they could settle all at once.) Under this approach, the government would enter into negotiations with the tobacco companies to resolve potential federal claims; if an agreement were reached, the parties would file in court a settlement agreement and proposed consent decree, which would release federal claims against the tobacco companies in exchange for some combination of monetary damages and injunctive relief. No legislation would be necessary.

We have some reason to believe that the companies -- at least Philip Morris and Lorillard -- would have an interest in entering into this kind of negotiation in the wake of a settlement with the states (which, as you know, is rumored to be in the offing). The principal outside counsel for Philip Morris (Meyer Koplow) recently suggested to Elena that his client wants to resolve all government claims against it, including potential claims by the federal government. He implied that a potential settlement agreement could include money, FDA jurisdiction, and marketing restrictions.

The prospects of actually reaching a good agreement with the companies are uncertain. We

know that the companies want to rid themselves of potential government litigation, primarily so they can spin off non-tobacco assets. But without an actual suit against the companies, we would have relatively little leverage in negotiations. Moreover, we could encounter serious legal difficulties in trying to achieve some of our objectives -- particularly, an assurance of FDA jurisdiction -- through a non-legislated settlement.

We believe the Administration should attempt to engage the companies in such a negotiation, but we wanted your approval first. There is always some risk that Democrats will fret that we are letting the companies off too easily. However, they will be reassured somewhat by the Justice Departments involvement in these negotiations -- and the only relief the companies can get out of these talks is from a suit we have not brought. The advantage of entering into negotiation is that we might be able to get something done on tobacco without Congress -- and if not, we could lay the groundwork for legislative action next year.

Approve: _____

Disapprove: _____

Lets Discuss: _____

November 24, 1998

NOTE TO JOHN PODESTA

FROM:Elena Kagan
Cynthia Rice

SUBJ:Tobacco Issue to be Raised Today by Governor Chiles

At your meeting this afternoon, Governor Chiles plans to give you a proposal regarding the state of Floridas tobacco settlement. Under this plan, the state of Florida would agree to spend 50 percent of its tobacco settlement funds on the menu of items we and the states agreed to in the McCain legislation. In exchange, HCFA would agree not to assert any claim to the state settlement funds.

The Justice Department previously has advised us that there are real legal obstacles to entering into such an agreement without Congressional approval. We will, however, immediately send the Governors proposal to the Department for a legal opinion.

Additional Background on Medicaid Recoupment

Under current law, states must share with the federal government a portion of any Medicaid claims they recover (from any source, including lawsuits and third party insurers). The exact amount of the share is based on the percentage of the states Medicaid costs that are paid by the federal government. This percentage varies by state according to a statutory formula and averages 57 percent nationwide. For Florida, the percentage is 50 percent. Although states do not dispute the federal governments right to recoup Medicaid funds generally, they argue that little or none of the tobacco settlement funds derive from Medicaid claims and thus recoupment should not apply.

In the McCain bill, the federal government waived its claim to a share of Medicaid funds in exchange for a requirement that the states spend 50 percent of their funds on a menu of seven items: child care; child welfare; the maternal and child health block grant; the substance abuse block grant; the safe and drug free schools program; Eisenhower education grants; and the state match for the childrens health insurance program (subject to a six percent ceiling).

MEMORANDUM

TO: BRUCE REED, ELENA KAGAN, MICHAEL COHEN

CC: MARY SMITH, WILLIAM KINCAID

FROM: TOM FREEDMAN
JULIE MIKUTA

RE: EFFECTIVENESS OF INTERVENTIONS INTO SCHOOLS

DATE: JUNE 12, 1997

SUMMARY

Schools or districts that have been taken over, put on probation or reconstituted get mixed reviews. Test scores rarely rise in the first few years of state control. The earliest observable results are seen in the form of reformed fiscal practices, reorganization of management, improvements to site maintenance, and correction of poor record keeping. Districts and states that have recently developed intervention schemes (i.e. Chicago, MD, KY) emphasize improving instructional strategies, whereas older approaches target organizational structure. Attached is an overview of schools/ districts that are seen as improving under state control. There is a lack of research into the effectiveness of these approaches.

NUMBERS OF FAILING SCHOOLS

Baltimore: 50 of the city's 180 schools are eligible for takeover

Chicago: 109 of 554 schools on probation due to low test scores

Michigan: about 130 districts do not meet current standards

Florida: State Education Commissioner identified 158 failing schools based on low scores

Tennessee: for each of past 2 years, fewer than 2% of schools meet state criteria

New York: State Board of Regents identified 57 failing schools in 1995

Indianapolis: 51 of 86 schools placed on probation in 1996 and another 25 issued warnings because failed to meet criteria including attendance, test scores and contact with parents

SUPPORT FOR TAKEOVERS/ RECONSTITUTION

"[Reconstitution] is a way to radically transform the schools", said attorney Peter Graham Cohn of the NAACP [San Francisco]. "The whole concept has placed San Francisco in the forefront of education innovation. It's a clear benefit." [San Fran Examiner, 8/14/96]. [NB: the NAACP opposed transferring control of Cleveland's schools to Mayor White.]

Richard Elmore, Harvard University professor who has studied school restructuring:

*believes radical strategies like reconstitution are the wave of the future: "I'd be surprised if we didn't have a version of it everywhere within the next five years."

*finds reconstitution somewhat appealing: "The threat of dismissal is one of the few ways to make principals and teachers truly accountable."

*fears the process will be undertaken far too haphazardly: "If a district is going to reconstitute then it had better make sure schools have ample resources and teachers have

sufficient professional-development opportunities. Otherwise, it's just inviting failure."
[Ed Wk, 3/97]

Susan Fuhrman, a professor of educational policy at Rutgers University and director of the Consortium for Policy Research in Education:

- *the limited research indicates that the threat of sanctions motivates teachers and administrators
- *the most promising approaches provide substantial technical assistance and professional development to teachers (e.g. in Chicago, KY and MD)
- *the research also says these approaches are costly and that underfunding is a significant obstacle to success

Ronnie Davis, spokesperson for NYs United Federation of Teachers, supported Chancellor Crews plans to intervene in troubled schools, and said the union would support the intervention even if it means replacing the entire schools staff [NYT, 11/1/95]

Dianne Ravitch (Senior Research Scholar in the School of Education at NYU; Asst Sec of Ed and Counselor to Sec of Ed, 91-93) and Joseph P. Viteritti (Research Prof in the Wagner School of Public Service in NYU) advocated putting failing schools in NYC on probation and closing them if they do not improve. [Reforming Education Today, 1995]

WORKING GROUP ON SCHOOL RECONSTITUTIONS

The Consortium for Policy Research in Education and the Pew Foundation for School Improvement co-sponsored a working group meeting this spring. Teachers and administrators involved in this process, state and federal representatives and academics. A follow-up meeting focusing on defining indicators is tentatively planned for this fall.

TITLE I FUNDS AND RECONSTITUTION

Title I funds allow for reconstitution of chronically failing schools. So far, these resources have not been applied, according to the Department of Education which plans to investigate this issue.

LEGAL BATTLES

The Voting Rights Act of 1965 has created obstacles for school takeovers. Opponents charge that a state limits the voting rights of a citys racial minorities when it appoints a group to replace the elected school board or when it reduces the local boards powers. A few CA counties, along with most Southern states, are required by the Act to get Justice Department approval before doing anything that would affect minority voting rights [Ed Week 3/26/97]. In the fall of 1996, Michael Cohen met with officials from TX, CA and NY to discuss this problem.

January 3, 1997

MEMORANDUM FOR TODD STERN

FROM:G. TIMOTHY SAUNDERS
Executive Clerk

DAVID KALBAUGH
Assistant to the Executive Clerk

SUBJECT:Request for President's Signature on Certificates of Appreciation
- Pageant of Peace

We have received from Alison Bracewell, Office of Intergovernmental Affairs, a letter from Pete Torres, Federal Relations Programs, Office of the Resident Representative, Commonwealth of the Northern Mariana Islands (CNMI), requesting that the President sign 19 Certificates of Appreciation for members of a sixth grade class who helped decorate the CNMI Christmas Tree on the ellipse.

According to Alison Bracewell, this request came to the White House without prior notification. We have no record of certificates of this nature being issued in the past. A search of the files in Records Management show further that nothing has been issued to any other individuals who helped decorate the other 50 plus trees on the ellipse this year.

As you know, the Pageant of Peace is primarily run by the Park Service, not the White House. I recommend against issuing these certificates.

PP

January 7, 1997

MEMORANDUM FOR TODD STERN

FROM:G. TIMOTHY SAUNDERS
Executive Clerk

SUBJECT:White House Staff Commission

The attached commission is ready for presentation:

Sally Patricia Paxton, of the District of Columbia

Special Associate Counsel to the President

FF

January 8, 1997

MEMORANDUM FOR TODD STERN

FROM:G. TIMOTHY SAUNDERS
Executive Clerk

SUBJECT:White House Staff Commission

The attached commission is ready for signature:

John D. Podesta, of the District of Columbia
Assistant to the President of the United States of America and Deputy Chief of Staff

FF

January 15, 1997

MEMORANDUM FOR TODD STERN

FROM:G. TIMOTHY SAUNDERS
Executive Clerk

SUBJECT:White House Staff Commissions and Certificates

Shall we prepare White House Staff Commissions for the following new staffers. They include the new members of the senior staff and other individuals that appear on White House Managements latest staff list:

Commissions

Erskine B. Bowles, of North Carolina
Chief of Staff to the President of the United States of America

Sylvia Mathews
Assistant to the President of the United States of America and Deputy Chief of Staff

Brigadier General Donald Kerrick, United States Army
Deputy Assistant to the President for National Security Affairs

James Steinberg
Deputy Assistant to the President for National Security Affairs and Deputy National
Security Advisor

Certificates

Paul Busick
Special Assistant to the President for National Security Affairs

Donald Goldberg
Special Assistant to the President for Legislative Affairs

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Barry Toiv
Special Assistant to the President and Deputy Press Secretary

PP

January 17, 1997

MEMORANDUM FOR TODD STERN

FROM:G. TIMOTHY SAUNDERS
Executive Clerk

SUBJECT:White House Staff Certificate

Shall we prepare a White House Staff Certificate for the following staffer. He is listed
on White House Managements latest staff list:

Michael David Malone, Arkansas (eff. 11/24/96)
Special Assistant to the President and Director of White House Operations

PP

January 21, 1997

MEMORANDUM FOR RICK MUFFLER

FROM: DAVID KALBAUGH
Assistant to the Executive Clerk

SUBJECT: White House Staff Certificate

Please prepare a White House Staff Certificate for the following staffer.

Michael David Malone, Arkansas
Special Assistant to the President and Director of White House Operations
Date: 11/24/96, two hundred and twenty first

PP

January 21, 1997

MEMORANDUM FOR TODD STERN

FROM: G. TIMOTHY SAUNDERS
Executive Clerk

SUBJECT: White House Staff Certificate

The attached White House Office certificate is ready for signature.

Michael David Malone, Arkansas (eff. 11/24/96)
Special Assistant to the President and Director of White House Operations

PP

January 22, 1997

MORANDUM FOR THE PRESIDENT

FROM: TODD STERN

SUBJECT: Appointment of Your Cabinet Nominees

Attached for your signature are the appointment documents for two of your Cabinet nominees who were confirmed by the Senate.

Madeleine Korbel Albright
Secretary of State

William S. Cohen
Secretary of Defense

PP

January 23, 1997

MEMORANDUM FOR PHIL CAPLAN

FROM: DAVID KALBAUGH
Assistant to the Executive Clerk

SUBJECT: Distinguished Federal Civilian Service Citations

We have received for the Presidents signature the citations for Milton Hamilton and James Lee. As you remember, the citation language was approved last November (attached).

FYI: At this point OPM has not scheduled these medals for presentation. They will be getting back to us with possible plans. It looks as if they plan to present these at the Agency level which is quite common.

PP

February 4, 1997

MEMORANDUM FOR TODD STERN/PHIL CAPLAN

FROM: TIM SAUNDERS

SUBJECT: White House Staff Commissions

We are preparing commissions for the following White House staffers. They all appear on White Managements staff list of 1/24/97.

Ann Lewis
Assistant to the President and Deputy Director of Communications (eff. 1/13/97)

Victoria Louise Radd, of the District of Columbia
Assistant to the President and Chief of Staff to the Chief of Staff (eff. 1/20/97)

Bruce Nelson Reed, of Idaho
Assistant to the President for Domestic Policy and Director of the Domestic Policy Council
(eff. 1/20/97)

Gene B. Sperling, of Michigan
Assistant to the President for Economic Policy and Director of the National Economic
Council (eff. 1/20/97)

Daniel K. Tarullo, of Massachusetts
Assistant to the President for International Economic Affairs (eff. 1/20/97)

Elena Kagan, of Illinois
Deputy Assistant to the President for Domestic Policy (eff. 1/5/97)

Brigadier General Donald Kerrick, United States Army
Deputy Assistant to the President for National Security Affairs (eff. 1/7/97) (He will be
"designated" by the President as opposed to being "appointed" as he is active duty military)

Cheryl D. Mills, of the District of Columbia
Deputy Assistant to the President and Deputy Counsel to the President (eff. 1/20/97)

- 2 -

James Steinberg
Deputy Assistant to the President for National Security Affairs and Deputy National
Security Advisor (eff. 12/23/96)

Kathleen Mary Harte Wallman, of Massachusetts
Deputy Assistant to the President for Economic Policy and Chief of Staff and Counselor to
the National Economic Council (eff. 1/20/97)

The following Senior Staffers have received new titles and also appear on White House
Managements new list. Shall we prepare new commissions?

Rahm Israel Emanuel, of Illinois
Senior Advisor to the President for Policy and Strategy and Executive Assistant to the
Chief of Staff [for Policy] (eff. 1/20/97)

Thomas F. McLarty, III, of Arkansas
Counselor to the President and Special Envoy to the Americas (eff. 1/20/97)

Douglas B. Sosnik, of North Carolina
Counselor to the President (eff. 1/20/97)

☐☐

January 28, 1997

MEMORANDUM FOR TODD STERN

FROM: G. TIMOTHY SAUNDERS
Executive Clerk

SUBJECT: White House Staff Commissions

The following White House Staff commissions are ready for signature:

Erskine B. Bowles, of North Carolina
Chief of Staff to the President of the United States of America

Sylvia M. Mathews, of West Virginia
Assistant to the President of the United States of America and Deputy Chief of Staff

☐☐

TIM:

This is a very interesting appointment. Pursuant to P.L. 104-232, of 10/2/96, Gaines is the least Senior member of the Commission and will be bumped from the Commission effective 12/31/99. BUT the law also states that effective 12/31/01 the commission shall consist of only that member who is chair. How does this effect Gaines appointment as chair in 1997?

Dave

☐☐

February 5, 1997

MEMORANDUM FOR TODD STERN/PHIL CAPLAN

FROM: DAVID KALBAUGH

SUBJECT: Paul Craig Commission

Paul Craig was appointed by Order on 1/30/97, in order to attend a meeting of the Nuclear Waste Technical Review Board on 1/31/97. His commission has now been prepared and is ready for signature.

FF

February 6, 1997

MEMORANDUM FOR TODD STERN/PHIL CAPLAN

FROM: TIM SAUNDERS

SUBJECT: Janet Yellen - Cabinet Rank

We have been contacted by Michelle Jolin, Chief of Staff, CEA, who tells us that Ms. Yellen will have Cabinet Rank as Chair of CEA. The Presidents remarks in announcing her on 12/20/96 did not mention Cabinet Rank.

QUESTION:

Will Janet Yellen serve with Cabinet Rank as Chair of the Council on Economic Advisers?

YES _____ NO _____ DISCUSS _____

FF

February 7, 1997

MEMORANDUM FOR TODD STERN
PHIL CAPLAN

FROM: TIM SAUNDERS
Executive Clerk

SUBJECT: Foreign Service Appointments

Attached are the appointment documents for four foreign service promotion lists that were

confirmed by the Senate.

PP

February 10, 1997

MEMORANDUM FOR TIM SAUNDERS
EXECUTIVE CLERK

FROM: TODD STERN
ASSISTANT TO THE PRESIDENT AND STAFF SECRETARY

SUBJECT: Cabinet Rank for Janet Yellen

This is to advise you that following appointment, Janet Yellen will hold Cabinet Rank as Chair of the Council of Economic Advisers. This rank is accorded as a matter of the Presidents discretion and will terminate at the end of her tenure as Chair.

PP

February 10, 1997

MEMO FOR THE RECORD:

Phil advised Tim orally today that he had spoken with the COS who confirmed that Janet Yellen will have Cabinet Rank during her tenure as Chair of the CEA.

David Kalbaugh
Assistant to the Executive Clerk

PP

MEMBERS OF CONGRESS RECEIVING PRESIDENTIAL APPOINTMENTS

NAMERSGD FROM CONGRESSAPPOINTED

Les Aspin1/20/931/20/93
(Secretary of
Defense)

William S. CohenTerm of office expired1/24/97
(Secretary of Prior to appointment
Defense)

Mike Espy1/21/93, eff. 10:00 am.1/21/93
(Secretary of 1/22/93
Agriculture)

Edmund MuskieTerm of office expired5/8/80
(Secretary ofprior to appointment
State)

William SaxbeTerm of office expired1/4/74
(Attorney General)prior to appointment

☐☐

February 18, 1997

MEMORANDUM FOR TODD STERN
PHIL CAPLAN

FROM: TIM SAUNDERS

SUBJECT: Cabinet Rank for Charlene Barshefsky

As you know, Ambassador Kantor and his predecessors have held Cabinet Rank during their tenure of service as United States Trade Representative (USTR). However, in the Presidents remarks of 12/13/96, announcing his intention to nominate Ms. Barshefsky, the issue of Cabinet Rank is not addressed.

Is it your understanding that Ms. Barshefsky will hold Cabinet Rank once appointed as the USTR.

PP

February 18, 1997

MEMORANDUM FOR TODD STERN/PHIL CAPLAN

FROM:TIM SAUNDERS

SUBJECT:White House Staff Commissions

The following White House Staff commissions are ready for signature.

Victoria Louise Radd, of the District of Columbia
Assistant to the President and Chief of Staff to the Chief of Staff (eff. 1/20/97)

Bruce Nelson Reed, of Idaho
Assistant to the President for Domestic Policy and Director of the Domestic Policy Council
(eff. 1/20/97)

Gene B. Sperling, of Michigan
Assistant to the President for Economic Policy and Director of the National Economic Council (eff. 1/20/97)

Daniel K. Tarullo, of Massachusetts
Assistant to the President for International Economic Affairs (eff. 1/20/97)

Elena Kagan, of Illinois
Deputy Assistant to the President for Domestic Policy (eff. 1/5/97)

PP

TIM:

Attached is the "letter of responsibility" for UN Rep. Richardson. I know that these letters have been reviewed at the highest levels of the State Dept. and that we usually just have them signed and returned to State, but for some reason I feel uncomfortable doing so on this one without your OK. It mentions some dicey foreign policy issues (UN Funding etc.).

Do we need to show this to Staff Sec., or would this open a can of worms?

Please advise.

Dave

PP

February 20, 1997

MEMO FOR THE RECORD:

SUBJECT: Certificate of Commendation for Sara Emery

The certificate concept and lanaguage was approved by Todd Stern on 2/12/97. Language was drafted by Tim Saunders and Dave Kalbaugh, and edited by Phil Caplan. Caligraphy done by Rick Muffler on Medal of Freedom stock with gold Coat of Arms on 2/13/97, and framed by Frank Posey with blue border and gold frame.

The certificate was persented to Sara by the President in the Roosevelt Room on 2/14/97, after the taping of his radio address. Dick Emery was also in attendance.

David Kalbaugh
Assistant to the Executive Clerk

PP

February 20, 1997

MEMORANDUM FOR TODD STERN/PHIL CAPLAN

FROM:TIM SAUNDERS

SUBJECT:White House Staff Commissions

Shall we are prepare commissions for the following White House staffers. They all appear on White Managements staff list of 1/24/97.

Lanny Davis
Special Counsel to the President

Adam Goldberg
Special Associate Counsel

William Marshall
Associate Counsel to the President

Karen Popp
Associate Counsel to the President

Also, Peter Erichsen, Associate Counsel to the President (detailee), has been serving at the White House for approximately one year. He has now filled the one year requirement for issuance of a commission to a detailee. We will prepare one for him with your approval.

RP

March 6, 1997

MEMORANDUM FOR TODD STERN/PHIL CAPLAN

FROM:DAVID KALBAUGH

SUBJECT:Bill Joy Commission

Bill Joy was appointed by Order on 2/26/97, at the request of PPO, in order to attend a meeting of the Advisory Committee on High-Performance Computing and Communications, Information Technology, and the Next Generation Internet on 2/27/97. His commission has now been prepared and is ready for signature.

RP

March 25, 1997

MEMORANDUM FOR TODD STERN/PHIL CAPLAN

FROM:TIM SAUNDERS

SUBJECT:White House Staff Commissions

I. We are preparing commissions for the following White House staffers. Most appear on

White Managements staff list of 1/24/97.

Charles Ruff
Counsel to the President

Samuel Richard Berger
Assistant to the President of the United States of America for National Security Affairs

Ann Lewis
Assistant to the President and Deputy Director of Communications (eff. 1/13/97)

Brigadier General Donald Kerrick, United States Army
Deputy Assistant to the President for National Security Affairs (eff. 1/7/97) (He will be "designated" by the President as opposed to being "appointed" as he is active duty military)

II. The following have rather unique titles, as stated by White House Managements latest list. Ok to prepare commissions as stated?

Cheryl D. Mills, of the District of Columbia
Deputy Assistant to the President and Deputy Counsel to the President (eff. 1/20/97)

James Steinberg
Deputy National Security Advisor and Deputy Assistant to the President for National Security Affairs
(eff. 12/23/96) (Need name & State)

Kathleen Mary Harte Wallman, of Massachusetts
Deputy Assistant to the President for Economic Policy and Chief of Staff and Counselor to the National Economic Council (eff. 1/20/97)

- 2 -

III. The following Senior Staffers have received new titles and also appear on White House Managements new list. Shall we prepare new commissions?

Rahm Israel Emanuel, of Illinois
Senior Advisor to the President for Policy and Strategy and Executive Assistant to the Chief of Staff for Policy (eff. 1/20/97)

Thomas F. McLarty, III, of Arkansas
Counselor to the President and Special Envoy to the Americas (eff. 1/20/97)

Douglas B. Sosnik, of North Carolina
Counselor to the President (eff. 1/20/97)

John L. Hilley, of Virginia

Senior Advisor to the President and Director of Legislative Affairs

PP

March 14, 1997

MEMORANDUM FOR TODD STERN
PHIL CAPLAN
HELEN HOWELL

FROM: TIM SAUNDERS

SUBJECT: Appointment of Charlene Barshefsky

Attached is the commission of appointment for Charlene Barshefsky to be United States Trade Representative.

The commission for Ms. Barshefsky should not be signed until after the President approves S.J.Res. 5, the legislative waiver allowing for her appointment.

If the decision is made to send the commission to the President together with S.J.Res. 5, I would suggest that you include a note to the President explaining to him that the bill should be signed first.

PP

March 14, 1997

MEMORANDUM FOR TODD STERN
PHIL CAPLAN

FROM: TIM SAUNDERS
Executive Clerk

SUBJECT: Foreign Service Appointment

Attached is the appointment document for one foreign service promotion list that were confirmed by the Senate.

PP

March 25, 1997

MEMORANDUM FOR TODD STERN

FROM:G. TIMOTHY SAUNDERS
Executive Clerk

SUBJECT:White House Staff Certificate

Shall we prepare White House Staff Certificates for the following staffers. They are listed on White House Managements latest staff list:

Paul Busick
Special Assistant to the President for National Security Affairs

Donald Goldberg
Special Assistant to the President for Legislative Affairs (eff. 1/6/97)

Barry Toiv
Special Assistant to the President and Deputy Press Secretary(eff. 11/24/96)

☐☐
March 20, 1997

MEMORANDUM FOR TODD STERN

FROM:TIM SAUNDERS

SUBJECT:Appointment of Judicial Nominee

Attached for the Presidents signature is the appointment document for one judicial nominees who was confirmed by the Senate.

Merrick B. Garland, of Maryland
United States Circuit Judge for the District of Columbia Circuit

☐☐
March 31, 1997

MEMORANDUM FOR TODD STERN

FROM:TIM SAUNDERS

SUBJECT:White House Staff Commissions

The following White House Staff commission is ready for signature.

Karen Ann Popp, of North Carolina
Associate Counsel to the President

☐☐

April 4, 1997

MEMORANDUM FOR JODIE R. TORKELOSON
ASSISTANT TO THE PRESIDENT FOR MANAGEMENT AND
ADMINISTRATION

CC: TODD STERN
ASSISTANT TO THE PRESIDENT AND STAFF SECRETARY

FROM:G. TIMOTHY SAUNDERS
EXECUTIVE CLERK

SUBJECT:White House Staff Titles

The White House Management Staff list of 1/24/97, shows the staffers listed below with the following titles:

Cheryl Mills
Deputy Assistant to the President and Deputy Counsel to the President

James Steinberg
Deputy National Security Advisor and Deputy Assistant to the President for National Security Affairs

Todd Stern and I recommend that their commissions read as follows:

Cheryl Mills
Deputy Counsel to the President

James Steinberg
Deputy Assistant to the President and Deputy National Security Advisor

[P]

April 7, 1997

MEMORANDUM FOR TODD STERN

FROM:TIM SAUNDERS

SUBJECT:Director of the Office of National AIDS Policy

In a Roosevelt Room ceremony on 4/7/97, the President announced that Sandra L. Thurman will be the new Director of the Office of National AIDS Policy (there was also a Press Office announcement -- both attached).

As you know, this is not a Presidential appointment authorized by law, but rather a White House Office position. Neither of Ms. Thurmans predecessors received a commission of appointment. Patsy Fleming, received a White House Office certificate dated 11/13/94, but Christine Gebbie received nothing.

Shall we prepare a White House certificate for Ms. Thurman?

[P]

April 8, 1997

MEMORANDUM FOR TODD STERN

FROM:TIM SAUNDERS

SUBJECT:White House Staff Commissions

Shall we prepare commissions for the following White House staffers. Most appear on White Managements staff list of 1/24/97.

Charles Ruff
Counsel to the President

Samuel Richard Berger
Assistant to the President of the United States of America for National Security Affairs

Ann Lewis

Assistant to the President and Deputy Director of Communications (eff. 1/13/97)

Brigadier General Donald Kerrick, United States Army

Deputy Assistant to the President for National Security Affairs (eff. 1/7/97) (He will be "designated" by the President as opposed to being "appointed" as he is active duty military)

The following Senior Staffers have received new titles and also appear on White House Managements new list. Shall we prepare new commissions?

Rahm Israel Emanuel, of Illinois

Senior Advisor to the President for Policy and Strategy and Executive Assistant to the Chief of Staff for Policy (eff. 1/20/97)

(Previously appointed as Assistant to the President and Director of Political Affairs - 1/20/93, Assistant to the President and Deputy Director of Communications - 7/6/93,

- 2 -

Thomas F. McLarty, III, of Arkansas

Counselor to the President and Special Envoy to the Americas (eff. 1/20/97)

(Previously appointed as Assistant to the President and Chief of Staff - 1/20/93, and Counsellor to the President - 7/17/94)

Douglas B. Sosnik, of North Carolina

Counselor to the President (eff. 1/20/97)

(Previously appointed as Deputy Assistant to the President for Legislative Affairs - 2/22/94, and Assistant to the President and Director of Political Affairs - 2/19/95)

John L. Hilley, of Virginia

Senior Advisor to the President and Director of Legislative Affairs

(Previously appointed as Assistant to the President for Legislative Affairs - 1/5/96)

Kathleen Mary Harte Wallman, of Massachusetts

Deputy Assistant to the President for Economic Policy and Chief of Staff and Counselor to the National Economic Council (eff. 1/20/97)

(Previously appointed as Deputy Counsel to the President - 11/15/95)

PP

April 10, 1997

MEMORANDUM FOR RICK MUFFLER

FROM: DAVID KALBAUGH

SUBJECT: White House Staff Certificate

Please prepare White House Staff Certificates for the following staffers.

Rear Admiral Paul E. Busick, USCG

Special Assistant to the President for National Security Affairs (Dated:

Donald F. Goldberg, of Ohio

Special Assistant to the President for Legislative Affairs (Date: 1/6/97, two hundred and twenty-first)

Barry J. Toiv, of Maryland

Special Assistant to the President and Deputy Press Secretary (Date: 11/24/96, two hundred and twenty-first)

Thanks.

PP

April 10, 1997

MEMORANDUM FOR TODD STERN

FROM: TIM SAUNDERS

SUBJECT: White House Staff Commissions

The following Senior Staffers have received new titles and appear on White House

Management's staff list. Shall we prepare new commissions?

Rahm Israel Emanuel, of Illinois
Senior Advisor to the President for Policy and Strategy and Executive Assistant to the
Chief of Staff (eff. 1/20/97)

(Previously commissioned as: 1) Assistant to the President and Director of Political
Affairs - 1/20/93; and 2) Assistant to the President and Deputy Director of Communications
- 7/6/93)

Thomas F. McLarty, III, of Arkansas
Counsellor to the President and Special Envoy to the Americas (eff. 1/20/97)

(Previously commissioned as: 1) Assistant to the President and Chief of Staff - 1/20/93;
and
2) Counsellor to the President - 7/17/94)

Douglas B. Sosnik, of North Carolina
Counsellor to the President (eff. 1/20/97)

(Previously commissioned as: 1) Deputy Assistant to the President for Legislative Affairs -
2/22/94; and 2) Assistant to the President and Director of Political Affairs - 2/19/95)

John L. Hilley, of Virginia
Senior Advisor to the President and Director of Legislative Affairs

(Previously commissioned as Assistant to the President for Legislative Affairs - 1/5/96)

April 21, 1997

FOR THE RECORD

SUBJECT: Appointment of Pete Peterson as Ambassador to Vietnam

Pete Peterson was nominated to be Ambassador to the Socialist Republic of Vietnam on
5/23/96. At that time, he was a sitting Member of the House of Representatives (Florida,
2nd District).

Questions arose regarding the "ineligibility clause" of the constitution, as to whether or
not this ambassadorial post was being "created" during the time in which Peterson was
elected.

In a letter to Jesse Helms, Chairman of the Senate Foreign Relations Committee, Counsel to
the President Jack Quinn stated that: It is our opinion, and the opinion of the Office of
Legal Counsel at the Department of Justice that creation of the Office of Ambassador is

vested in the President and that, based on the facts and circumstances of this case, the Office of Ambassador to Vietnam has not yet been created. If the Senate confirms Mr. Peterson, the President will not create the position of Ambassador to Vietnam until after noon on January 3, 1997. Therefore, so long as the Office is created at a time after Mr. Peterson's term of office as a U.S. Representative has expired, he can be appointed to the Office of Ambassador.

However, Rep. Peterson's nomination was returned to the White House (not confirmed) following the Senate's sine die adjournment on 10/4/97.

Peterson was subsequently nominated again during the 105th Congress on 1/9/97, confirmed on 4/10/97, and appointed by the President on 4/11/97.

NOTE: The Congress also passed a possible restriction to the appointment of an Ambassador to Vietnam within the Dept. of Commerce, Justice, State Appropriations Act of 1996, P.L. 104-208, 9/30/96. To summarize, the bill states that no funds can be used to open or operate an embassy in Vietnam, or for personnel assigned to posts in Vietnam unless the President certifies within 60 days that Vietnam is cooperating fully in resolving POW/MIA issues. The President certified such on 12/3/96.

David Kalbaugh

April 15, 1997

MEMORANDUM FOR TODD STERN

FROM: TIM SAUNDERS

SUBJECT: White House Staff Commissions

The following White House Staff commission is ready for signature.

Donald H. Gips, of New Jersey
Chief Domestic Policy Advisor to the Vice President

■ ■

April 16, 1997

MEMORANDUM FOR MICHAEL MALONE

FROM: TIM SAUNDERS
SUBJECT: Pagers for Staff of Executive Clerks Office

Members of my staff must be "reachable" by myself and the Staff Secretarys Office -- Todd Stern -- at all times. There have been occasions in the past when Todd has been unable to reach members of my staff and has specifically asked why they do not have pagers.

Currently, only myself and David Kalbaugh have pagers. Thus, I would like to request that pagers be issued to Bill McCathran, Ed Thomas, and Sherman Williams.

☐☐

April 17, 1997

MEMORANDUM FOR TODD STERN

FROM:TIM SAUNDERS

SUBJECT:Exècutive Order Numbers/Camparisions

The following are the total number of executive orders issued during the first term of each of the following Presidents.

Reagan Executive Orders 1981-1985	213
Reagan Executive Orders 1985-1989	
Bush Executive Orders 1989-1993	166
Clinton Executive Orders 1993-1996	200

President Reagan and President Clinton both issued 10 executive orders between January 20 - April 16 of their second terms.

☐☐

April 18, 1997

MEMORANDUM FOR TODD STERN

FROM:TIM SAUNDERS

SUBJECT:White House Staff Commissions

The following White House Staff commissions are ready for signature.

Samuel Richard Berger, of the District of Columbia
Assistant to the President of the United States of America for National Security Affairs

Ann F. Lewis, of Maryland
Assistant to the President and Deputy Director of Communications

Kathleen Mary Harte Wallman, of Massachusetts
Deputy Assistant to the President for Economic Policy and Chief of Staff and Counselor to the National Economic Counsel

RR

April 22, 1997

MEMORANDUM FOR TODD STERN

FROM:TIM SAUNDERS

SUBJECT:White House Staff Commission

The following White House Staff commission is ready for signature.

Susan M. Liss, of Maryland
Chief of Staff to Mrs. Gore and Special Counsel to the Vice President

RR

April 22, 1997

MEMORANDUM FOR TODD STERN

FROM:TIM SAUNDERS

SUBJECT:White House Staff Commission

The following White House Staff commission is ready for signature.

Charles F. C. Ruff, of the District of Columbia
Counsel to the President of the United States of America

RF

Tim:

This EO does a number of things:

1. Determines and certifies that Burma has committed large scale repression of against the Democratic opposition. I dont know if this is necessarily the wrong way to do this, but it does seem to muddle things up to do it this way as opposed to the normal PD.
2. Declares a National Emergency with respect to Burma (there is no message to Congress mentioned as required by 50 USC 1701 et seq, Dont no if Mac has mentioned anything to you about the message)
3. Delegates certain authorities to the Sec. State and Treasury under section 301 title 3. It seems ok, and does mention that the order be published in the FR as required (although EO are printed anyway).

The lang. in section 5 differs from other EOs with similar language (so please look at that).

Finally I am double checking with State to see if "Burma" is the correct name for the country. (It is sometimes called "Myanmar", although P.L. 104-208 calls it Burma)

dave

RF

Tim:

The number at my brothers house in Houston is (713)499-4985.

Dates: April 26-29

I'll be back in the office on Wednesday the 30th.

Thanks.

dave

☐☐

May 2, 1997

MEMORANDUM FOR TODD STERN

FROM:TIM SAUNDERS

SUBJECT:White House Staff Commission

The following White House Staff commission is ready for signature.

Brigadier General Donald L. Kerrick, USA
Deputy Assistant to the President for National Security Affairs

☐☐

May 6, 1997

MEMORANDUM FOR TODD STERN

FROM:TIM SAUNDERS

SUBJECT:White House Staff Certificates

The following White House Office certificates are ready for signature.

Rear Admiral Paul E. Busick, USCG
Special Assistant to the President for National Security Affairs

Donald F. Goldberg, of Ohio
Special Assistant to the President for Legislative Affairs

Barry J. Toiv, of Maryland
Special Assistant to the President and Deputy Press Secretary

☐☐

May 30, 1997

MEMORANDUM FOR TODD STERN

FROM:TIM SAUNDERS

SUBJECT:White House Staff Certificates

Shall we prepare White House certificates for the following staffers who appear on White House Managements latest staff list.

Marilyn Digiacobbe
Special Assistant to the President and Associate Director of Public Liaison

Jennifer Palmieri
Special Assistant to the President and Deputy Director of Scheduling

Cynthia Rice
Special Assistant to the President for Domestic Policy

Christopher Wayne
Special Assistant to the President and Deputy Director of Advance

May 30, 1997

MEMORANDUM FOR TODD STERN

FROM:TIM SAUNDERS

SUBJECT:White House Staff Commissions

Shall we prepare commissions for the following staffers who appear on White House Managements latest staff list.

Maria Echeveste

Assistant to the President of the United States of America and Director of Public Liaison (eff. 2/9/97)

Craig T. Smith

Assistant to the President of the United States of America and Director of Political Affairs (eff. 2/10/97)

Melanne Verveer

Assistant to the President of the United States of America and Chief of Staff to the First Lady (eff. 3/20/97)

Emily Bromberg

Deputy Assistant to the President and Deputy Director for Intergovernmental Affairs

Lyn Cutler

Deputy Assistant to the President for Intergovernmental Affairs (3/24/97)

Christopher Jennings

Deputy Assistant to the President for Health Policy (eff. 2/9/97)

Robert Benjamin Johnson

Deputy Assistant to the President and Deputy Director for Public Liaison (eff. 2/16/97)

Elena Kagan

Deputy Assistant to the President for Domestic Policy and Deputy Director of the Domestic Policy Council (eff. 1/5/97) (To replace commission with incorrect title)

Minyon Moore

Deputy Assistant to the President and Deputy Director of Political Affairs (eff. 3/3/97)

Dan Rosenthal
Deputy Assistant to the President and Director of Advance (eff. 1/19/97)

Marsha Scott
Deputy Assistant to the President and Chief of Staff for Presidential Personnel (eff. 3/20/97) (Currently holds commission as Deputy Assistant to the President for Political Affairs)

Karen Skelton
Deputy Assistant to the President and Deputy Director of Political Affairs (eff. 3/3/97)

Lanny Breuer
Special Counsel to the President
(eff. 2/18/97)

Michelle Peterson
Associate Counsel to the President
(eff. 2/9/97)

Robert Weiner
Senior Counsel
(eff. 2/17/97)

PR May 1997

FOR THE RECORD:

SUBJECT: Transition Clinton 1 - Clinton 2

The Clerk held discussions with Todd Stern, Assistant to the President and Staff Secretary concerning the transition, the Clerk recommended that there NOT be a mass resignation of all Clinton political appointees. Todd Stern agreed, and no mass resignation was requested.

David Kalbaugh

PR
May 14, 1997

MEMORANDUM FOR TODD STERN

FROM:TIM SAUNDERS

SUBJECT:White House Staff Commission

The following White House Staff commission is ready for signature.

Charles W. Burson, of Tennessee
Counsel to the Vice President

FF

May 20, 1997

MEMORANDUM FOR TODD STERN

FROM:TIM SAUNDERS

SUBJECT:White House Staff Commission

The following White House Staff commission is ready for signature.

Cheryl Mills
Deputy Counsel to the President

FF

May 20, 1997

MEMORANDUM FOR TODD STERN

FROM:TIM SAUNDERS

DAVID KALBAUGH

SUBJECT:Recommendations for Congressional Space Medal of Honor

NASA Administrator Daniel Golden has recommended that Lt. Col. Edward H. White II and Roger B. Chaffee receive the Congressional Space Medal of Honor. Both White and Chaffee died in the January 27, 1967 Apollo fire while training for the first Apollo space flight (along with Gus Grissom who received the Medal posthumously in 1978).

The medal has been awarded 10 times since its establishment by public law in 1969.

President Clinton has presented it twice; to James Lovell in July 1995, and to Shannon Lucid in December 1996 (both Oval Office ceremonies).

NASA has submitted draft citations. If approved medals, which are provided by NASA, would need to be engraved.

FF

May 20, 1997

Tim:

The terms of office for members of this Commission is "life of the commission." With your approval, I will instruct State to leave off the "subject to the conditions/POP language" usually on the commission.

Also, how in the world did the OLC/Counsels office allow the Chairman language to get through without, at least, some sort of statement?

Dave

FF

May 28, 1997

MEMORANDUM FOR TODD STERN

FROM: TIM SAUNDERS
Executive Clerk

SUBJECT: Foreign Service Appointments

Attached are the appointment documents for five foreign service promotion lists that were confirmed by the Senate.

FF

May 6, 1997

MEMORANDUM FOR TODD STERN

FROM:TIM SAUNDERS

SUBJECT:White House Staff Commissions and Certificates

Shall we prepare White House commissions and certificates for the following staffers who appear on White House Managements latest staff list.

Emily Bromberg
Deputy Assistant to the President and Deputy Director for Intergovernmental Affairs

For Certificates:

Marilyn Digiacobbe
Special Assistant to the President and Associate Director of Public Liaison

Thomas Freedman
Special Assistant to the President for Policy Planning [Domestic Policy]

Jennifer Palmieri
Special Assistant to the President and Deputy Director of Scheduling

Cynthia Rice
Special Assistant to the President for Domestic Policy

Jake Siewert
Special Assistant to the President [for Economic Policy]

Richard Socarides
Special Assistant to the President and Senior Advisor for Public Liaison

Christopher Wayne
Special Assistant to the President and Deputy Director of Advance

Paul Weinstein
Special Assistant to the President and Chief of Staff to the Domestic Policy Council

BT

June 2, 1997

MEMORANDUM FOR TODD STERN

FROM:TIM SAUNDERS

SUBJECT:White House Staff Certificate

NSC is requesting that Toby Gati be given a White House Staff certificate. She was a Special Assistant to the President for National Security Affairs from 3/15/93, through 9/16/93.

She is currently Assistant Secretary of State for Intelligence and Research (appointed 11/3/93).

PP

June 12, 1997

MEMORANDUM FOR TODD STERN

FROM:TIM SAUNDERS

SUBJECT:White House Staff Commissions

The following commissions are ready for signature.

Rahm Israel Emanuel, of Illinois
Senior Advisor to the President for Policy and Strategy and Executive Assistant to the Chief of Staff

Douglas B. Sosnik, of North Carolina
Counsellor to the President

John L. Hilley, of Virginia
Senior Advisor to the President and Director of Legislative Affairs

Craig T. Smith
Assistant to the President of the United States of America and Director of Political Affairs

PP

June 12, 1997

MEMORANDUM FOR TODD STERN

FROM:TIM SAUNDERS

SUBJECT:White House Staff Commission

The following commission is ready for signature.

Christopher Charles Jennings, of Ohio
Deputy Assistant to the President for Health Policy

FF

June 13, 1997

MEMORANDUM FOR TODD STERN

FROM:TIM SAUNDERS

SUBJECT:White House Staff Commission

The following commission is ready for signature.

Melanne Verveer
Assistant to the President of the United States of America and Chief of Staff to the First Lady

FF

June 13, 1997

MEMORANDUM FOR TODD STERN

FROM:TIM SAUNDERS

SUBJECT:White House Staff Commissions

The following commissions are ready for signature.

Emily Dena Bromberg
Deputy Assistant to the President and Deputy Director for Intergovernmental Affairs

Lynn Germain Cutler
Deputy Assistant to the President for Intergovernmental Affairs

Robert Benjamin Johnson
Deputy Assistant to the President and Deputy Director for Public Liaison

FF

June 16, 1997

MEMORANDUM FOR RICK MUFFLER

FROM: DAVID KALBAUGH
Deputy Executive Clerk

SUBJECT: White House Staff Certificates

Please prepare a White House Staff Certificates for the following staffers.

Marilyn DiGiacobbe, of New Jersey
Special Assistant to the President and Associate Director of Public Liaison
(Date: March 20, 1997, the 221st)

Jennifer M. Palmieri, of California
Special Assistant to the President and Deputy Director of Scheduling
(Date: March 9, 1997, the 221st)

Cynthia A. Rice
Special Assistant to the President for Domestic Policy
(Date: February 26, 1997, the 221st)

Christopher Wayne, of California
Special Assistant to the President and Deputy Director of Advance
(Date: February 20, 1997, the 221st)

Toby Trister Gati, of New York
Special Assistant to the President for National Security Affairs
(Date: March 15, 1997, the 217th)

PP

June 16, 1997

MEMORANDUM FOR TODD STERN

FROM: TIM SAUNDERS

SUBJECT: White House Staff Commissions

The staffers mentioned below are listed by White House Management as holding the following titles. The titles are somewhat unique, do you have any objections to having them prepared?

Jake Siewert
Special Assistant to the President
(He works within the office of Economic Policy but his title does not reflect his area of responsibility)

Richard Socarides
Special Assistant to the President and Senior Advisor for Public Liaison

Paul Weinstein
Special Assistant to the President and Chief of Staff to the Domestic Policy Council

☐☐

June 17, 1997

MEMORANDUM FOR TODD STERN

FROM:TIM SAUNDERS

SUBJECT:White House Staff Commissions

The following commissions are ready for signature.

Elena Kagan
Deputy Assistant to the President for Domestic Policy and Deputy Director of the Domestic Policy Council (To replace commission with incorrect title)

Minyon Moore
Deputy Assistant to the President and Deputy Director of Political Affairs

Dan Rosenthal
Deputy Assistant to the President and Director of Advance

Marsha Scott
Deputy Assistant to the President and Chief of Staff for Presidential Personnel

Karen Skelton
Deputy Assistant to the President and Deputy Director of Political Affairs

Lanny Breuer
Special Counsel to the President

Michelle Peterson
Associate Counsel to the President

Robert Weiner

Senior Counsel

FF

June 26, 1997

MEMORANDUM FOR TODD STERN

FROM: DAVID KALBAUGH
DEPUTY EXECUTIVE CLERK

SUBJECT: Judicial Nominations

Doug Band, Counsels Office, is requesting that the attached judges be nominated TODAY. As you will see, I have not attached the Presidents decision memos. Doug Band advises that they have been signed, but are still with the President. He is asking that the nominations go forward without submission of the decision memos.

FF

April 10, 1997

MEMORANDUM FOR RICK MUFFLER

FROM: DAVID KALBAUGH

SUBJECT: White House Staff Certificate

Please prepare a White House Staff Certificate for the following staffers.

Richard L. Siewert, Jr., of Massachusetts
Special Assistant to the President
Dated: 2/2/97 (two hundred and 21st)

Richard Socarides, of New York
Special Assistant to the President and Senior Advisor for Public Liaison
Dated: 2/23/97 (two hundred and 21st)

Paul J. Weinstein Jr., of New York
Special Assistant to the President and Chief of Staff of the Domestic Policy Council
Dated: 2/23/97 (two hundred and 21st)

☐☐

July 1, 1997

MEMORANDUM FOR TODD STERN

FROM:TIM SAUNDERS

SUBJECT:White House Staff Commissions

The following commissions are ready for Presidential signature.

Maria Echeveste, of New York
Assistant to the President of the United States of America and Director of Public Liaison
(eff. 2/9/97)

Thomas F. McLarty, III, of Arkansas
Counsellor to the President and Special Envoy to the Americas (eff. 1/20/97)

☐☐

July 3, 1997

MEMORANDUM FOR TODD STERN

FROM:TIM SAUNDERS

SUBJECT:White House Staff Certificates

The following commissions are ready for Presidential signature.

Marilyn DiGiacobbe, of New Jersey
Special Assistant to the President and Associate Director of Public Liaison

Jennifer M. Palmieri, of California
Special Assistant to the President and Deputy Director of Scheduling

Cynthia A. Rice
Special Assistant to the President for Domestic Policy

Christopher Wayne, of California

Special Assistant to the President and Deputy Director of Advance

Toby Trister Gati, of New York
Special Assistant to the President for National Security Affairs

Richard L. Siewert, Jr., of Massachusetts
Special Assistant to the President

Richard Socarides, of New York
Special Assistant to the President and Senior Advisor for Public Liaison

Paul J. Weinstein Jr., of New York
Special Assistant to the President and Chief of Staff of the Domestic Policy Council

□□

July 7, 1997

MEMORANDUM FOR TODD STERN

FROM:TIM SAUNDERS

SUBJECT:White House Staff Commission

The following commission is ready for Presidential signature.

Lanny J. Davis, of Maryland
Special Counsel to the President

□□

PHYSICIANS TO THE PRESIDENT WHO WERE COMMISSIONED OFFICERS

Bush Administration

Burton J. Lee III, M.D. - Appointed "Physician to the President",
4/17/89

Reagan Administration

John E. Hutton, Jr. - Appointed "Physician to the President",
1/2/87

Dr. T. Burton Smith - Appointed "Physician to the President",
1/2/85

Dr. Daniel A. Ruge - Appointed "Physician to the President",
1/22/81

Carter Administration

None

Ford Administration

None

Nixon Administration

Dr. John Lungren - Appointed "Medical Consultant to the President
the United States" 2/13/69

of

Dr. Victor deLuccia - Appointed "Medical Consultant to the
President of the United States" 2/13/69

FF

July 14, 1997

MEMO FOR THE RECORD

SUBJECT: Federal Reserve Board Nominations

On July 10, 1997, we received Bob Nash cover memos for two nominations to the Federal Reserve Board. Roger Walton Ferguson, of New York (for the 1st. Fed. District in Boston) and Edward M. Gramlich, of New York (for the 5th Fed. District in Richmond).

An obvious problem with these nominations was that the Federal Reserve District these individuals were to represent did not match the States that they were to be nominated from (i.e. New York is not within either the 1st or 5th Federal Reserve Districts). (Note: We also already had the one individual that the law allowed for representing the 2nd Fed. District that New York falls within (Alan Greenspan).

In a review of our records, David Kalbaugh determined that in 80+ years of precedent no one had ever been nominated from one State, but slated to represent a district that the State was not within.

The Executive Clerk brought this to the attention of Presidential Personnel (Doug Sheorn) and the White House Counsel's Office (Associate Counsel to the President, Peter Erichsen) and attempted to bring to their attention the precedent for the State of the nominee and the Fed. Districts they represent to match.

Tim then explained the situation to Phil Caplan, who then had a conference call with Peter Erichsen and Patsy Thomasson. Following this, Tim briefed Todd Stern, Assistant to the President and Staff Secretary and John Podesta, Deputy Chief of Staff. John Podesta, Todd Stern, and Phil Caplan all immediately grasped the potential problems these nominations posed.

The following day, we received new cover memos in which the States and Fed. Districts matched (Roger Walton Ferguson, of Massachusetts, for the 1st Fed. District in Boston, and Edward J. Gramlich, of Virginia, of the 5th Fed. District in Richmond). The nominations were delivered to the Senate on July 11, 1997.

David Kalbaugh
Deputy Executive Clerk

July 15, 1997

MEMORANDUM FOR TODD STERN

FROM: TIM SAUNDERS

SUBJECT: White House Staff Certificate

Shall we prepare a White House certificate for the following staffer:

Sean Maloney

Special Assistant to the President and Deputy Staff Secretary

PP

July 21, 1997

MEMORANDUM FOR TODD STERN

FROM:TIM SAUNDERS

SUBJECT:Appointments to Presidents Committee on Critical Infrastructure Protection

On 7/14/97, the President, by Order, appointed Janet Reno, Donald Gips, and General Kerrick to the Committee in order for them to attend a meeting the same day. Their commissions have now been prepared and are ready for signature.

PP

July 28, 1997

MEMORANDUM FOR RICK MUFFLER

FROM:DAVID KALBAUGH

SUBJECT:White House Staff Certificate

Please prepare a White House Staff Certificate for the following staffer.

Sean Patrick Maloney, of New York
Special Assistant to the President and Deputy Staff Secretary
Dated: 7/8/97 (two hundred and twenty-second)

PP

August 4, 1997

MEMORANDUM FOR TODD STERN/PHIL CAPLAN

FROM:TIM SAUNDERS

SUBJECT:Appointment of Nominees

Attached for the Presidents signature are two commissions for individuals confirmed by the Senate on Thursday:

Thomas E. Scott - U.S. Attorney for the Southern District of Florida

Jose-Marie Griffiths - Member of the National Commission on Libraries and Information Sciences

□□

August 11, 1997

MEMORANDUM FOR TODD STERN/PHIL CAPLAN

FROM: TIM SAUNDERS
 Executive Clerk

SUBJECT: Foreign Service Appointment

Attached is the appointment document for one foreign service promotion list that was confirmed by the Senate.

□□

August 14, 1997

MEMORANDUM FOR TODD STERN/PHIL CAPLAN

FROM:TIM SAUNDERS

SUBJECT:White House Staff Commissions and Certificates

Shall we prepare a White House Commissions for the following staffers:

Paul Begala
Counsellor to the President

Sidney Blumenthal
Assistant to the President for Communications

Mickey Ibarra
Assistant to the President for Intergovernmental Affairs

Ann Lewis
Assistant to the President and Director of Communications

Thurgood Marshall, Jr.
Assistant to the President and Cabinet Secretary
(NOTE: Kitty Higgins was appointed as Assistant to the President for Cabinet Affairs)

Stephanie Streett
Assistant to the President and Director of Scheduling

Michael Waldman
Assistant to the President and Director of Speechwriting

Deputy Assistants

James A. Dorskind
Deputy Assistant to the President and Director of Correspondence

Patricia Solis Doyle
Deputy Assistant to the President and Director of Scheduling for the First Lady

- 2 -

Commissions (Contd)

Fred DuVal
Deputy Assistant to the President for Intergovernmental Affairs

James Edmonds
Deputy Assistant to the President and Deputy Director of Speechwriting

Roberta Greene
Deputy Assistant to the President and Deputy Chief of Staff to the First Lady

Judith Ann Stock
Deputy Assistant to the President and Social Secretary

Virginia Cantor
Associate Counsel to the President

Dimitri Nionakis
Associate Counsel to the President

Robert Schroeder
Associate Counsel to the President

Michael Waitzkin
Special Associate Counsel to the President

Shall we prepare a White House Certificates for the following Special Assistants:

Jose Cerda
Special Assistant to the President for Crime Policy

James Covey
Special Assistant to the President for National Security Affairs

Marie Therese Dominguez
Special Assistant to the President and Associate Director of Presidential Personnel

Jeffrey A. Forbes
Special Assistant to the President and Staff Director for Legislative Affairs

- 3 -

Certificates (Contd)

Jay Footlik
Special Assistant to the President and Associate Director of Public Liaison

Anne Luzzatto
Special Assistant to the President for National Security Affairs

Gary Samore
Special Assistant to the President for National Security Affairs

Thomas Shea
Special Assistant to the President and Associate Director of Presidential Personnel

Daniel Wexler
Special Assistant to the President and Associate Director of Public Liaison

FF

August 7, 1997

MEMORANDUM FOR TODD STERN/PHIL CAPLAN

FROM:TIM SAUNDERS

SUBJECT:Appointment of Nominee

Attached for approval is a commission for one nominee who was confirmed by the Senate on Thursday, July 30, 1997:

George A. Omas, of Mississippi
Commissioner of the Postal Rate Commission

FF

August 11, 1997

MEMORANDUM FOR THE RECORD

SUBJECT: LINE ITEM VETO

This is the first use of the LINE ITEM VETO by a President. It was done in the form of "special messages" (see attached letters and cancellations for details -- two sections were canceled from the Tax Bill, H.R. 2014, and one section was canceled from the Budget Bill, H.R. 2015). At the time the special messages were signed, the Congress was in a summer recess. That being the case, the special messages were done in the form of letters to the Speaker and President of the Senate with attachments. (This format was cleared by Bob Damus, General Counsel, OMB. However, Justice insisted on adding the last sentence, "This letter constitutes a special message under section 1022 of the Congressional Budget and Impoundment Control Act of 1977, as amended." Bob Damus and the Clerk felt this was unnecessary but conceded to Justice's concerns.)

The four letters were signed by the President on 8/11/97, in an Oval Office ceremony beginning at 12:30 pm (remarks attached). The letters were delivered by Ed Thomas to the Speaker of the House (delivered to Robin Carle, Clerk of the House at 3:06 pm) and to the President of the Senate (delivered to the Secretary of the Senate Gary Sisco at 3:13 pm)

(receipts attached). Again, the Clerk worked with Bob Damus in determining that the letters should be delivered to the Clerk of the House (not the Speakers office) and the Secretary of the Senate (not the President of the Senates office), as specified in the Line Item Veto Act.

The Clerk also worked with OMB (Sarah Richardson) to ensure that the "special messages" were published in the next days issue of the Federal Register, as specified in the Line Item Veto Act -- a task made unnecessarily difficult by the bureaucratic intransigence of the staff of the Office of the Federal Register.

The Clerk finally contacted staff at the Office of the Federal Register and "strongly suggested" that they be as cooperative as possible with OMB in ensuring that the "special message" be published in the next days Federal Register, as required by law. They were indeed published the next day.

David Kalbaugh
Deputy Executive Clerk

PF

September 4, 1997

MEMORANDUM FOR TODD STERN

FROM:TIM SAUNDERS

SUBJECT:White House Staff Certificate

The following certificate is ready for signature:

Sean Patrick Maloney, of New York
Special Assistant to the President and Deputy Staff Secretary

PF

September 5, 1997

MEMORANDUM FOR THE HONORABLE BRUCE A. LEHMAN
Commissioner of Patents and Trademarks

Pursuant to the Constitution and laws of the United States, including section 3347 of title 5, United States Code, you are directed to perform the duties of the office of Chairperson of the National Endowment for the Humanities.

MEMORANDUM FOR TODD STERN

FROM:TIM SAUNDERS

SUBJECT:Air Force Chief of Staff Commission

The following commission is ready for signature:

Gen. Michael E. Ryan, USAF
Chief of Staff, United States Air Force

PP

October 6, 1997

MEMORANDUM FOR TODD STERN

FROM:TIM SAUNDERS

SUBJECT:White House Staff Commission

The following commission is ready for signature:

James A. Dorskind
Deputy Assistant to the President and Director of Correspondence

PP

October 21, 1997

MEMORANDUM FOR TODD STERN

FROM:TIM SAUNDERS

SUBJECT:White House Staff Commission

Per your request, the following commission is ready for signature:

Michael Waldman, of New York
Assistant to the President and Director of Speechwriting

PP

October 21, 1997

MEMORANDUM FOR TODD STERN/PHIL CAPLAN

FROM:TIM SAUNDERS

SUBJECT:White House Staff Commissions and Certificates

Shall we prepare a White House Commissions for the following staffers:

Virginia M. Apuzzo
Assistant to the President for Management and Administration

Meredith Cabe
Associate Counsel to the President

Audrey Tayse Haynes
Deputy Assistant to the President and Director of the White House Office of Womens
Initiatives and Outreach

(NOTE: This title differs from Betsy Myers who was appointed as Deputy Asst. to the
Pres. and Director for Womens Initiatives and Outreach)

Ellen Lovell
Deputy Assistant to the President and Advisor to the First Lady for the Millennium Program

Capricia Marshall
Deputy Assistant to the President and Social Secretary

Stacie Spector
Deputy Assistant to the President and Deputy Director of Communications

Karen Tramontano
Deputy Assistant to the President and Counsel to the Office of the Chief of Staff

Shall we prepare a White House Certificates for the following staffers:

Lael Brainard
Special Assistant to the President for Economic Policy

Michael Cohen (Detaillee with 1 yr of White House Service)
Special Assistant to the President for Education

Thomas Freedman
Special Assistant to the President for Policy Planning

This list is in addition to an earlier list presented to you on 8/14/97 which is still outstanding.

FF

October 30, 1997

MEMORANDUM FOR TODD STERN/PHIL CAPLAN

FROM:TIM SAUNDERS

SUBJECT:White House Staff Commissions

The following White House Staff (VP Staff) Commissions are ready for signature:

Eli Attie
Senior Communications Director for the Vice President

Kay Casstevens
Director of Legislative Affairs for the Vice President

L. Maurice Daniels
Director of Political Affairs for the Vice President

FF

November 3, 1997

FOR THE RECORD:

PRESENTATION OF MEDALS OF HONOR

In general, the Medal is presented by the President in a White House ceremony.

Our records indicate that throughout the Carter, Reagan, and Bush Administrations, the President, in the vast majority of cases, presented the Medal in a White House ceremony (although we have one example in 1980 where it seems that the President did not make the presentation).

Although, during the Viet Nam era, the President presented approximately fifty percent of the Medals of Honor that were awarded. There were many cases where presentation was made by the service Secretaries or the Vice President. Although I can not attest to the reasons why this was done, it could easily have been due to the very large number of medals that were awarded during this era (i.e. not enough time for the President to make all the presentations). See list prepared by Tom Jones that lists the medals awarded from 1964-1968 for exact number for that time period.

David Kalbaugh
Deputy Executive Clerk

PR

November 17, 1997

MEMORANDUM FOR TODD STERN/PHIL CAPLAN

FROM: TIM SAUNDERS
Executive Clerk

SUBJECT: Foreign Service Appointments

Attached are the appointment documents for four foreign service promotion lists that were confirmed by the Senate.

PR

November 24, 1997

MEMORANDUM FOR TODD STERN/PHIL CAPLAN

FROM:TIM SAUNDERS

SUBJECT:White House Staff Commissions

The following White House Staff Commissions are ready of signature:

Virginia M. Apuzzo, of New York
Assistant to the President for Management and Administration

Paul Edward Begala, of Texas
Counsellor to the President

Sidney Blumenthal, of Illinois
Assistant to the President for Communications

Mickey Ibarra, of Ohio
Assistant to the President and Director of Intergovernmental Affairs

Ann F. Lewis, of Maryland
Assistant to the President and Director of Communications

Thurgood Marshall, Jr., of Virginia
Assistant to the President and Cabinet Secretary

Stephanie Susan Streett, of Arkansas
Assistant to the President and Director of Scheduling

December 11, 1997

MEMORANDUM FOR RICK MUFFLER

FROM:DAVID KALBAUGH
Deputy Executive Clerk

SUBJECT:White House Staff Certificate

Please prepare a White House Staff Certificates for the following staffers.

Michael Cohen, of Maryland
Special Assistant to the President for Education Policy
Dated: 7/1/96, (two hunderd and twentieth)

Jose Cerda III, of Illinois
Special Assistant to the President for Crime Policy
Dated: 4/28/97 (two hundred and twenty first)

Marie Therese Dominguez, of Virginia
Special Assistant to the President and Associate Director of Presidential Personnel
Dated: 4/13/97 (two hundred and twenty first)

Jeffrey A. Forbes, of Minnesota
Special Assistant to the President and Staff Director for Legislative Affairs
Dated: 3/24/97 (two hundred and twenty first)

Anne R. Luzzatto, of the District of Columbia
Special Assistant to the President for National Security Affairs
Dated: 3/24/97 (two hundred and twenty first)

Thomas A. Shea, of New Jersey
Special Assistant to the President and Associate Director of Presidential Personnel
Dated: 5/28/97 (two hundred and twenty first)

Daniel Wexler, of Virginia
Special Assistant to the President and Associate Director of Public Liaison
Dated: 6/22/97 (two hundred and twenty first)

PP

December 12, 1997

MEMORANDUM FOR TODD STERN/PHIL CAPLAN

FROM:TIM SAUNDERS

SUBJECT:White House Staff Commissions

The following commissions for White House staffers are ready for signature:

Patricia Solis Doyle
Deputy Assistant to the President and Director of Scheduling for the First Lady

Fred DuVal
Deputy Assistant to the President for Intergovernmental Affairs

James Edmonds
Deputy Assistant to the President and Deputy Director of Speechwriting

Roberta Greene
Deputy Assistant to the President and Deputy Chief of Staff to the First Lady

Ann Stock
Deputy Assistant to the President and Social Secretary

Virginia Cantor
Associate Counsel to the President

Dimitri Nionakis
Associate Counsel to the President

Robert Schroeder
Associate Counsel to the President

Michael Waitzkin
Special Counsel to the President

■ ■

POSSIBLE RECESS APPOINTMENTS

Richard Fisher, as Deputy United States Trade Representative

Paul Igasaki, Member and Vice Chair, Equal Employment Opportunity Commission

Orson Swindle, Member of the Federal Trade Commission

Mozelle Thompson, Member of the Federal Trade Commission

Nancy Soderburg, Alternate US Representative for Special Political Affairs for the UN and
Alternate Representative of the US to the Sessions of the General Assembly of the UN
(2 Recess Appointments)

■ ■

December 19, 1997

MEMORANDUM FOR PHIL CAPLAN

FROM:G. TIMOTHY SAUNDERS
Executive Clerk

SUBJECT: Special Assistant to the President for Agricultural Trade and Food Assistance:
Appointment of Carl Whillock.

The position of Special Assistant to the President for Agricultural Trade and Food Assistance is a statutorily authorized position within the EXOP for appointment by the President (authorized by law -- P.L. 99-198, 12/23/85; P.L. 99-260, 3/20/86; SEE ATTACHED AUTHORITY SHEET).

As a White House Staff certificate would merely designate Mr. Whillock as a Special Assistant to the President, I feel it might be insufficient in this instance.

We would thus recommend that a standard appointment memo be prepared by Presidential Personnel requesting the appointment of Mr. Whillock as Special Assistant to the President for Agricultural Trade and Food Assistance, as authorized by statute. Previous appointees to this position have been appointed in this manner (see attached examples; although Carl Whillock's immediate predecessor, Marion Berry, was neither commissioned nor did he receive a White House Office Certificate).

If approved, we would then prepare a commission for Carl Whillock as Special Assistant to the President for Agricultural Trade and Food Assistance.

FF

December 22, 1997

MEMO FOR THE RECORD

SUBJECT: Appointment of Federal Judges

Question: When does a judge need to resign from another position or from certain types of clubs/organizations in order to be appointed?

28 USC 453, states that each justice or judge of the United States shall take their judicial oath or affirmation BEFORE performing the duties of office.

In the opinion of the Clerk and from Sheila Joy, DOJ, it would be best if the judge would resign from all previous positions, clubs and organizations BEFORE appointment.

Sheila Joy advised that there were many instances of judges waiting to disinvest from potentially conflicting investments until after appointment but before the oath.

David Kalbaugh
Deputy Executive Clerk

FF

December 23, 1997

MEMORANDUM FOR TODD STERN/PHIL CAPLAN

FROM:TIM SAUNDERS

SUBJECT:Commission for Christine Miller - Federal Claims Court

Ms. Miller was recess appointed by order on 12/10/97. Her commission has now been prepared and is ready for signature.

FF

December 31, 1997

MEMORANDUM FOR TODD STERN

FROM:G. TIMOTHY SAUNDERS
Executive Clerk

SUBJECT:Recess Appointment Commissions

The attached commissions are for individuals recess appointed by order on 12/16/97. The commissions have now been prepared and are ready for signature.

FF

TO:Melanne Verveer
Elena Kagan
FROM:Jennifer Klein
DATE:6/5/97
RE:Title IX Meeting

Attached please find the memo prepared by the Department of Education on the policy options we are considering for the Title IX anniversary. I have not distributed it because it has not yet been cleared by the Department, but I thought it would be helpful to you for this afternoons meeting.

As you can see, the Department does not recommend issuing an Executive Order prohibiting discrimination in federally conducted education programs on the basis of sex. They are concerned that: (1) we will not know before June 17 (the date of the event) which programs will be affected; and (2) we should not issue an order on sex discrimination but not on discrimination based on race and national origin. As Elena and I discussed, I have raised the possibility of doing an Executive Order directing federal agencies to compile a list of programs that would be covered unless there were a persuasive reason not to include them. We should discuss this, as well as their second concern, further at the meeting.

SEPTEMBER 17, 1997

MEMORANDUM FOR TODD/SEAN

FROM: TIM SAUNDERS

SUBJECT: Title IX Reports

We are now receiving these reports from the agencies in response to the President's memo of June 17, 1997, regarding Title IX enforcement.

Per conversation with Jennifer Klein, recommend these be staffed to Jennifer, Elena Kagan, and Maria Echaveste.

September 30, 1997

MEETING WITH BIPARTISAN CONGRESSIONAL LEADERS ON TOBACCO

DATE:Wednesday, October 1, 1997

LOCATION: The Diplomatic Room

TIME:11:15-12:15

FROM:Bruce Reed

John Hilley

I. PURPOSE

To fulfill your commitment to meet with the bipartisan leadership of Congress to launch an effort to enact federal tobacco legislation. This will be an opportunity to demonstrate that this is a priority in your agenda and that you will reach out across party lines to advance this critical public health initiative.

II. BACKGROUND

The Administration is in a strong position to push tobacco legislation through Congress over the next year. Your announcement earlier this month united the public health community for the first time and attracted bipartisan support from the nations Attorneys General and many members of Congress.

Nevertheless, any tobacco bill will have to make its way through a tangle of overlapping committee jurisdictions and agendas. At least six committees in the Senate and four in the House can lay claim to some piece of this legislation, and dozens of members in both parties have a longstanding interest in tobacco from the standpoint of reducing teen smoking or protecting tobacco farmers. Republicans in particular recognize the political potency of the your plan, and are very nervous about being set up for failure in an election year.

The first step must therefore be to reassure the leadership and key committee chairs like Rep. Bliley that the Administration is indeed serious about passing a bipartisan bill, and not just looking to sandbag them in an election year. This meeting is an important opportunity to set the right tone: you are eager to work together to pass bipartisan legislation as early as possible next year, and we are ready to work in a collaborative fashion to get it done.

Our next step should be for representatives of the Administration (including the Vice-President, Erskine Bowles, Secretary Shalala, Secretary Glickman, John Hilley, and Bruce Reed) to meet with the key players in both parties over the remaining weeks of this session, to offer the Administrations expertise and to try to marshal bipartisan coalitions in both houses to prepare bills for introduction in January. It is too early to tell which members are in the best position to lead that effort. (Bliley is a key House Republican; Waxman and Fazio are important House Democrats; Hatch, Lugar, McCain, Jeffords, Mack, Campbell and several Republican moderates may be helpful in the Senate; Conrad, Lautenberg, Kennedy, and others are strong Senate Democrats.) Ideally, we can lay the groundwork for a center-out coalition in the Senate, along the lines of Hatch-Kennedy or the Breaux-Chafee group, and work closely with Bliley, Waxman, and others in the House.

Senate committees have held several hearings on tobacco over the past three months.. Secretary Shalala testified before Jeffords committee last week. The House may hold hearings in late October and early November.

The goal should be to forge a bipartisan vehicle you can endorse in January, and to make that the central focus of next years State of the Union.

Opponents of the legislation will make three types of arguments to slow it down. First, Nickles and others have criticized the Administration for failing to submit full legislative language to Congress and blamed the Administration for any delay in passage of a bill. Second, some will use the complexity of the issue as an excuse to go slow -- perhaps moving only selected portions a bill, and that only after lengthy hearings. Finally, opponents of legislation may focus on flashpoints such as farmers, restrictions on class action suits, or legal fees.

The strongest response to these expected attacks is to rise above partisan bickering, and stress the urgency of solutions that will protect Americas children. Your strong history of leadership on smoking issues will allow you to deploy this strategy effectively and gain public support in any future disagreements with Congress.

III. PARTICIPANTS

Pre-Brief:

The President
The Vice President
Secretary Glickman
Secretary Shalala
Secretary Rubin
Erskine Bowles
Bruce Reed
Rahm Emanuel
Dan Tate
Elena Kagan
Bruce Lindsey
Ron Klain
Chris Jenning

Brief:

Please see attachment.

IV. PRESS PLAN

The meeting is closed to the press. The members of Congress will have an opportunity to meet the press outside the White House following the event.

V. SEQUENCE OF EVENTS

You will make remarks and recognize the Vice President, Speaker Gingrich, Senator Daschle and Representative Gephardt for statements.

VI. REMARKS

Please see attachment.

PARTICIPANTS Attachment

The President
The Vice President
Secretary Glickman
Secretary Shalala
Secretary Rubin
Erskine Bowles
Bruce Reed
Rahm Emanuel
Dan Tate
Elena Kagan
Bruce Lindsey
Ron Klain
Chris Jennings
Don Gips

Senator Tom Daschle
Representative Newt Gingrich
Representative Dick Gephardt

Senator Richard Lugar (R-IN), Chair, Senate Committee on Agriculture
Senator Tom Harkin (D-IA), Ranking Democrat, Senate Committee on Agriculture
Senator John McCain (R-AZ), Chair, Senate Committee on Commerce
Senator Orrin Hatch (R-UT), Chair, Senate Committee on Judiciary
Senator Patrick Leahy (D-VT), Ranking Democrat, Senate Committee on Judiciary
Senator Jim Jeffords (R-VT), Chair, Senate Education and Labor Committee
Senator Edward Kennedy (D-MA), Ranking Democrat, Senate Education and Labor Committee
Senator Daniel Inouye (D-HI), Ranking Democrat, Senate Committee
Senator Frank Lautenberg (D-NJ)
Senator Kent Conrad (D-SD)
Senator Don Nickles (R-OK)

Representative Bob Smith (R-OR), Chair, House Committee on Agriculture
Representative Tom Bliley (R-VA), Chair, House Committee on Commerce
Representative Henry Hyde (R-IL), Chair, House Committee on Judiciary
Representative John Conyers (D-MI), Ranking Democrat, House Committee on Judiciary
Representative Henry Waxman (D-CA)
Representative Vic Fazio (D-CA)
Representative Scott McInnis (R-CO)

REMARKS Attachment

* Thank you for coming to talk about this vital issue for Americas future. (Acknowledge Gingrich, Gephardt, Nickles, Daschle, Bliley) This is an issue that touches on many aspects of American life -- our health, our economy, our laws, and our children -- and I want to acknowledge the hard work of so many of you in this room on this issue. In particular, I want to thank the Vice-President for his very important contribution. You are all here because of the critical role you will play as we work to pass legislation together. It is complicated, but Im confident we can put politics aside and get this done.

* You and I are here because this is a crucial issue for Americas future. Three thousand kids start smoking everyday, and it shortens the lives of one thousand of them. As Ive said before, this is not about money, and it shouldnt be about politics. It should be about trying to reduce this problem of teen smoking. Interestingly, today is the day that the childrens health provisions in our Bipartisan Balanced Budget Agreement go into effect. I hope that we can work together again in that same bipartisan fashion to reduce teen smoking and advance the public health.

*Two weeks ago, I outlined the most significant elements I thought should be contained in a bill. That we reduce teen smoking with tougher penalties, that we not hamstringing FDA authority to regulate tobacco, that we make some changes in the way tobacco is marketed, that we make more progress on other health goals like cancer research and second hand smoke. Finally, and this is very important to me, that we protect farmers and their communities.

*This should not be a partisan issue. Im going to put it at the top of my agenda for the next year, and I hope you will join me in making bipartisan legislation to reduce teen smoking a top priority for all of us in 1998.

*This bill will go through many committees and it affects many people and many states. It is not going to happen by fiat, but after you hold hearings, and work through the difficulties of legislation. And Im sure we will have our differences. But this is too important for us not to get done. And it cant wait until we all agree on every word. We should work together and try to move ahead.

*Ive said what I believe is most important here. Ive asked several members of my administration -- led by the Vice-President and my Chief of Staff Erskine Bowles, along with Secretary Shalala, Secretary Glickman, and Bruce Reed-- to work side by side with you to get this done.

*But I asked you here not just to tell you what I think about the issue but to hear what you think-- how we can work together, how we can get this done. So Ill ask Vice-President Gore to give some of his thoughts, and Id like to hear what directions you are going to take on tobacco legislation, where the problems might be and how we can work together.

QUESTIONS AND ANSWERS

Q. Why dont you submit legislation on tobacco?

A. Were happy to offer Congress our expertise and any other help in translating our principles into bipartisan legislation. I dont think there is any doubt where I stand. The five principles I set out in my plan are very clear. This is the first time I can remember Congress asking us to write the bill -- I recall a somewhat different reaction when we sent up legislation on health care. Members should introduce legislation, hold hearings and move for votes and I will play as constructive a role as possible.

Q. When should a bill pass?

A. It is at the top of my agenda for the coming year. There is nothing more important than saving thousands of children from taking up smoking. Three thousand are starting everyday.

Q. Will negotiations include industry?

A. The industry is a piece of this, but there isn't a need to negotiate with them.

Q. What is the role of the Vice-President?

A. The Vice-President will take a leadership role in the legislation and in building support for our plan.

Q. Will you support limits on liability?

A. Ive said repeatedly that a cap on liability wouldnt be a deal breaker for us. But if were going to do that, we should make sure were passing a strong comprehensive plan to cut teen smoking.

M E M O R A N D U M

TO: BRUCE REED, ELENA KAGAN

FROM: TOM FREEDMAN, MARY L. SMITH

RE: TOBACCO BILLS

DATE: JULY 9, 1997

SUMMARY

Below is a list of bills, in reverse chronological order, that were introduced in both the 104th and 105th Congress that relate to tobacco. (The list was compiled by performing a Nexis search for any legislation that contains the words "tobacco" and "cigarettes.")

Many of the bills relate to topics that are already covered in the proposed settlement agreement such as bills regarding restrictions on advertising and bills aimed at reducing youth smoking.

We have not examined the details of every bill, but there are a few bills that relate to topics that are not covered by the proposed settlement that look interesting:

1. Bills to create conversion funds for farmers. S.804 by Sen. Bradley on 5-15-95; S.598 by Sen. Bradley (D-NJ) on 3-22-95.
2. Bills to disallow deductions for advertising expenses for tobacco products. H.R. 1323 by Rep. McHale (D-PA) on 41-15-97; H.R. 2962 by Rep. McHale (D-PA) on 2-06-96; S. 596 by Sen. Harkin (D-IA) on 3-22-95.
3. A bill to create a tobacco accountability board. H.R. 1881 by Rep. Waxman (D-CA) on 6-12-97. The board would investigate all matters relating to the tobacco industry including (1) any efforts to conceal research relating to the adverse health effects caused by tobacco; (2) any efforts by tobacco manufacturers to mislead the public; (3) any efforts to sell tobacco to children; and (4) any attempt to circumvent regulations of tobacco.
4. A bill to regulate the advertising of tobacco over the Internet. S. 2184 by Sen. Lautenberg (D-NJ) on 10-01-96.

NOTE:

In cases where there is an overlap in topics, the proposed Hill legislation often uses different methodology than does the proposed settlement. For instance, S. 828 proposed by Senator Durbin seeks to reduce youth smoking by 20% in the second year after enactment while the proposed settlement seeks to reduce the level by 30% only in the fifth year after enactment. Let us know if you would like us to pursue any of these comparisons or perform any additional research.

DATE INTRO

BILL NO.

SPONSOR

STATUS

DESCRIPTION OF BILL

6-27-97

S. Res. 104

Sen. Harkin (D-IA)
referred to committee

Resolution to state the sense of the Senate regarding the tax status of payments made as a result of the recent tobacco liability settlement. Under the settlement, any payment by the tobacco manufacturers is counted as a "normal and necessary" business expense and is therefore tax deductible, thereby potentially requiring taxpayers to subsidize up to \$147 billion of the settlement payment. This resolution seeks to prohibit parties to the agreement from claiming tax deductions for these payments.

6-25-97

H.R. 2034

Rep. Bishop (D-GA); 13 cosponsors
referred to committee

A bill to amend section 1926 of the Public Health Service Act to encourage states to strengthen their efforts to prevent the sale and distribution of tobacco products to individuals under the age of 18.

6-24-97

H.R. 2017

Rep. Bishop (D-GA); no cosponsors
referred to committee

A bill to amend section 1926 of the Public Health Service Act to encourage states to strengthen their efforts to prevent the sale and distribution of tobacco products to individuals under the age of 18.

6-12-97

H.R. 1881

Rep. Waxman (D-CA)
referred to committee

Tobacco Accountability Act: A bill to establish the Tobacco Accountability Board. The Board will investigate all matters relating to the tobacco industry including (1) any efforts to conceal research relating to the adverse health effects caused by tobacco; (2) any efforts by tobacco manufacturers to mislead the public; (3) any efforts to sell tobacco to children; and (4) any attempt to circumvent regulations of tobacco.

6-06-97

H.R. 1826

Rep. Elizabeth Furse (D-OR)
referred to House Agriculture Committee

A bill to increase deficit-reduction assessments for participants in the Federal price support program for tobacco and to extend the period during which such assessments will be collected.

6-03-97

S. 828

Sen. Durbin (D-IL); Cosponsors: Sen. Lautenberg (D-NJ), Sen. Harkin (D-IA)
referred to Committee on Commerce

No Tobacco for Kids Act: Directs HHS to conduct annual surveys to determine the number of children who used each manufacturers tobacco products. Requires each manufacturer to make specified annual reductions in child tobacco use, and provides penalties based on total consumer use for failure to meet such requirements. Sets forth performance standards for new manufacturers. Directs that specified amounts of fiscal year penalties shall go to a

Tobacco Enforcement and Education Fund in the Treasury, with any excess to go to the Treasury.

6-03-97

S. 826

Sen. Lautenberg (D-NJ); Cosponsors: Sen. Durbin (D-IL), Sen. Kerry (D-MA)

referred to Senate Environment and Public Works Committee

Smoke Free Environment Act of 1997: A bill to amend the Public Health Service Act to protect the public from health hazards caused by exposure to environmental tobacco smoke.

6-03-97

H.R. 1772

Rep. Waxman (D-CA); no cosponsors

referred to committee

No Tobacco for Kids Act: A bill to provide for the reduction in the number of children who use tobacco products.

6-03-97

H.R. 1771

Rep. Waxman (D-CA); 2 cosponsors

referred to committee

Smoke-Free Environment Act of 1997: A bill to amend the Public Health Service Act to protect the public from health hazards caused by exposure to environmental tobacco smoke

4-24-97

S. 643

Sen. Durbin (D-IL); 3 Cosponsors

referred to Committee on Agriculture

Tobacco Subsidy Reduction Act of 1997: Amends the Federal Crop Insurance Act to prohibit the CCC from providing federal crop insurance or reinsurance for tobacco. Amends the Agricultural Market Transition Act to prohibit the Secretary of Agriculture from providing noninsured crop disaster assistance for tobacco.

4-24-97

H.R. 1438

Rep. Degette (D-CO); 43 cosponsors

referred to committee

Tobacco Subsidy Reduction Act of 1997: A bill to prohibit the Federal Government from providing insurance, reinsurance, or noninsured corp disaster assistance for tobacco.

4-17-97

H.R. 1364

Rep. Johnson (R-CT); 12 cosponsors

referred to committee

Child Health Insurance and Lower Deficit Act of 1997: A bill to provide grants to States to provide uninsured children with access to health care insurance coverage and to amend the IRS Code of 1986 to increase the excise taxes on tobacco products for the purpose of funding such grants and reducing the deficit.

4-15-97

H.R. 1323

Rep. McHale (D-PA); 34 cosponsors

referred to committee

Tobacco Advertising Tax Reform Act: A bill to amend the IRS Code of 1986 to disallow deductions for advertising expenses for tobacco products.

4-09-97

H.R. 1263

Rep. Pallone (D-NJ); 40 cosponsors

referred to committee

Child Health Insurance and Lower Deficit Act: A bill to amend the Public Health Service Act to provide access to health care insurance coverage for children and to amend the IRS Code of 1986 to increase the excise taxes on tobacco products for the purpose of offsetting the Federal budgetary costs associated with such insurance coverage.

4-08-97

S.527

Sen. Lautenberg (D-NJ); 5 cosponsors

referred to Committee

Tobacco Disclosure and Warning Act of 1997: A bill to prescribe labels for packages and advertising for tobacco products, to provide for the disclosure of certain information relating to tobacco products.

4-08-97

S.526

Sen. Hatch (R-UT); 23 cosponsors

In Committee.

A bill to amend the IRS Code of 1986 to increase the excise taxes on tobacco products for the purpose of offsetting the federal budgetary costs associated with the Child Health Insurance and Lower Deficit Act.

4-08-97

H.R. 1244

Rep. Meehan (D-MA); 5 cosponsors

referred to committee

Tobacco Disclosure and Warning Act of 1997: A bill to prescribe labels for packages and advertising for tobacco products and to provide for the disclosure of certain information relating to tobacco products.

2-13-97

H.R. 768

Rep. LaHood (R-IL); 34 cosponsors

referred to committee

A bill to restrict the FDA from penalizing retailers for face-to-face tobacco sales that are in accordance with State law.

2-13-97

H.R. 762

Rep. Hansen (R-UT); 5 cosponsors

referred to committee

Youth Protection from Tobacco Addiction Act of 1997: A bill to restrict the advertising and promotion of tobacco products.

2-04-97

H.R. 516

Rep. Baesler (D-KY); no cosponsors
referred to committee

Youth Smoking Prevention Act of 1997: A bill to establish the Federal Authority to regulate tobacco and other tobacco products containing nicotine as a condition to the receipt by a State of the Federal preventive health and health services block grant.

1-23-97

S.201

Sen. Ford (D-KY); no cosponsors
Referred to committee

Tobacco Products Control Act of 1997. A bill to provide for the establishment of certain limitations on advertisements relating to, and the sale of, tobacco products, and to provide for increased enforcement of laws relating to underage tobacco use.

1-09-97

H.R. 410

Rep. Gordon (D-TN); 29 cosponsors
referred to committee

A bill to prohibit the use of any tobacco or tobacco product as a sponsor of an event of the National Association of Stock Car Automobile Racing, its agents or affiliates, or any other professional motor sports associations by HHS or any other instrumentality of the Federal Government.

10-01-96

S. 2184

Sen. Lautenberg (D-NJ); no cosponsors
referred to Senate Commerce, Science and Transportation Committee

Tobacco-Free Childrens Internet Act of 1996: a bill to require the Commissioner of the Food and Drug Administration to issue regulations limiting the advertising of cigarettes and smokeless tobacco over the Internet.

9-26-96

H. Con. Res. 223

Rep. Greene (R-UT); no cosponsors
referred to House Economic and Educational Opportunities Committee

Expresses the sense of the Congress that addiction to nicotine should not be considered a disability for purposes of specified provisions of the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973

9-27-96

H.R. 4245

Rep. Fox (R-PA); no cosponsors
referred to House Commerce Committee

Tobacco Youth Access Act: a bill to restrict the access of youth to tobacco products.

8-02-96

H.R. 3954

Rep. Fox (R-PA); no cosponsors
referred to committee

Control of Youth Access to Tobacco Act: A bill to restrict the access of youth to tobacco

products.

7-16-96

H.R. 3821

Rep. Hansen (R-UT); 8 cosponsors
referred to committee

Youth Protection from Tobacco Addiction Act of 1996: A bill to restrict the advertising and promotion of tobacco products.

7-10-96

H.R. 3779

Rep. Oberstar (D-MN); 16 cosponsors
referred to committee

Tobacco Medicaid Recovery Act of 1996: a bill to amend title XIX of the Social Security Act to reward states for collecting Medicaid funds expended on tobacco-related illnesses.

6-19-96

S. 1892

Sen. Lautenberg (D-NJ); 6 cosponsors
referred to Senate Finance Committee

Tobacco Medicaid Recovery Act of 1996: a bill to reward states for collecting Medicaid funds expended on tobacco-related illnesses

2-06-96

H.R. 2962

Rep. McHale (D-PA); 22 cosponsors
referred to House Ways and Means Committee

A bill to amend the Internal Revenue Code of 1986 to disallow deductions for advertising expenses for tobacco products.

11-16-95

H.R. 2653

Rep. Charlie Rose (D-NC); no cosponsors
referred to House Agriculture Committee

Tobacco Amendments Act of 1995: A bill to amend the Agricultural Adjustment Act of 1938 and the Agricultural Act of 1949 to improve the operation of the Government flue-cured and burley tobacco programs.

11-06-95

H.R. 2585

Rep. Schroeder (D-CO); 26 cosponsors
referred to committee

Smokeless Tobacco Consumption Reduction and Education Act of 1995: A bill to amend the IRS Code of 1986 to increase the excise taxes on smokeless tobacco to an amount equivalent to the tax on cigarettes and to use the resulting revenues to fund a trust fund for programs to reduce the use of smokeless tobacco.

9-28-95

H.R. 2414

Rep. Baesler (D-KY); 3 cosponsors
referred to House Commerce Committee

Youth Smoking Prevention Act of 1995: a bill to establish the Federal authority to regulate

tobacco and other tobacco products containing nicotine.

9-26-95

S. 1295

Sen. Helms (R-NC); 3 cosponsors

referred to Senate Commerce, Science and Transportation Committee

A bill to prohibit the regulation of any tobacco products, or tobacco sponsored advertising, used or purchased by the National Association of Stock Car Automobile Racing, its agents or affiliates, or any other professional motor sports association by HHS or any other instrumentality of the Federal government.

9-20-95

S. 1262

Sen. Ford (D-KY)

referred to Senate Commerce, Science and Transportation Committee

Tobacco Products Control Act of 1995: a bill to provide for the establishment of certain limitations on advertisements relating to, and the sale of , tobacco products, and to provide for the increased enforcement of laws relating to underage tobacco use.

9-07-95

H.R. 2283

Rep. Payne (D-VA); 23 cosponsors

referred to House Commerce Committee

A bill to prohibit the regulation of the sale or use of tobacco or tobacco products by HHS.

9-06-95

H.R. 2265

Rep. Funderburk (R-NC); 53 cosponsors

referred to House Commerce Committee

A bill to prohibit the regulation of any tobacco products, or tobacco sponsored advertising, used or purchased by the National Association of Stock Car Automobile Racing, its agents or affiliates, or any other professional motor sports association by HHS or other instrumentality of the Federal Government.

8-07-95

S. Res. 159

Sen. Bradley (D-NJ); 11 cosponsors

referred to Senate Finance Committee

A resolution to express the sense of the Senate regarding the role of tobacco in leading to addiction, disease, and premature death among children and teenagers, and the role of increased excise taxes in reducing tobacco use by children and teenagers.

8-04-95

S. 1123

Sen. Bingaman (D-NM); no cosponsors

referred to Senate Environment and Public Works Committee

A bill to limit access by minors to cigarettes through prohibiting the sale of tobacco products in vending machines and the distribution of free samples of tobacco products in federal buildings and property accessible by minors.

6-15-95

H.R. 1853

Rep. Meehan (D-MA); 9 cosponsors
referred to House Science Committee

Freedom from Nicotine Addiction Act of 1995: A bill to amend the Federal Food, Drug, and Cosmetic Act to require the reduction and eventual elimination of nicotine in tobacco products.

5-15-95

S. 804

Sen. Bradley (D-NJ); no cosponsors
referred to Senate Finance Committee

Tobacco Consumption Reduction and Health Improvement Act of 1995: A bill to amend the Internal Revenue Code of 1986 to increase the excise taxes on tobacco products, and to use a portion of the resulting revenues to fund a trust fund for tobacco diversification.

4-06-95

H.R. 1455

Rep. Stark (D-CA); 13 cosponsors
referred to the House Ways and Means Committee

Tobacco Health Tax and Agricultural Conversion Act of 1995: A bill to amend the IRS Code of 1986 to increase the tax on tobacco products.

3-22-95

S. 598

Sen. Bradley (D-NJ); cosponsor: Lautenberg (D-NJ)
referred to Senate Finance Committee

Tobacco Consumption Reduction and Health Improvement Act of 1995: A bill to amend the Internal Revenue Code of 1986 to increase the excise taxes on tobacco products and to use a portion of the resulting revenue to fund a trust fund for tobacco diversification.

3-22-95

S. 597

Sen. Lautenberg (D-NJ); 2 cosponsors
referred to Senate Finance Committee

Medicare/Medicaid Solvency Act: A bill to insure the long-term viability of the Medicare, Medicaid, and other federal health programs by establishing a dedicated trust fund to reimburse the government for the health care costs of individuals with diseases attributable to the use of tobacco products.

3-22-95

S. 596

Sen. Harkin (D-IA)
referred to Senate Finance Committee

A bill to amend the Internal Revenue Code of 1986 to disallow deductions for advertising and promotional expenses for tobacco products.

1-23-95

H.R. 636

Rep. Kildee (D-MI)
referred to House Economic and Educational Opportunities Committee

The Tobacco Workers Equity Act: A bill to amend section 207(m) of the Fair Labor Standards Act of 1938 to eliminate the partial overtime exemption for employees that perform services necessary and incidental to the sale and processing of green and cigar leaf tobacco.

00*MEMORANDUM FOR THE DIRECTOR AND DEPUTY DIRECTOR

THROUGH: Joshua Gotbaum

FROM: Health Division Staff

SUBJECT: Status of Tobacco Legislation

Little Progress to Date; Senate Finally Organized to Move Forward

No substantive legislative action has taken place in either chamber to date, but that may finally be about to change. The Senate Republicans firmed up their plans this week for constructing a bill and getting it to the Floor (see Attachment A for an AP story, which describes how Sen. McCain and his Commerce Committee will be in charge). By contrast, the House remains disorganized on tobacco legislation. The next two weeks will be important in the Senate for finding out if the new McCain-centered structure works; the House will apparently be waiting for the Senate to act, so little is expected in the next two weeks in the House.

Myriad DPC Working Groups Consulting with Hill, Developing Policies

DPC staff are working hard to assist Sens. McCain, Chafee & Harkin, Conrad, Ford & Robb, and Rep. Fazio, while simultaneously running an interagency policy process on myriad tobacco topics (e.g., liability, youth lookback penalties, marketing restrictions, licensing of retailers, etc.) OMB staff have been monitoring the DPC meetings and some of the Hill sessions, intervening most actively on funding levels in the draft bills. Josh and HD staff participated in a meeting with Kennedy staff last Thursday on public health funding priorities, and will discuss these same issues with Chafee & Harkin staff early this week.

5 Principles Plus the Budget Priorities

The Administrations goals remain to achieve tobacco legislation that is consistent with the five principles the President announced last September plus the tobacco-financed items (e.g. class size, child care, medicaid outreach, R&D, etc.) in the Budget. On spending items where the Budget was vague (e.g., public health spending, farmers, etc.), we have remained flexible, figuring that if some spending in this area is necessary to get tobacco legislation enacted, we will try to spend what must be spent as wisely as possible.

Tobacco Litigation -- the Documents Play a Wild Card Role

One explanation for the Republicans slow and cautious pace is that the landscape of the issue keeps changing as various tobacco suits wend their way through the courts. Most of the current uncertainty comes from the Minnesota case, as it did previously in the Florida, Mississippi, and Texas settlements. As new documents are released through the trials, the calculus as to whether to grant liability relief to the industry changes, making it that much harder for the Senate to act quickly.

Will This Ever Become Bipartisan?

If tobacco legislation is to be enacted, it must be bipartisan, but most of the Administrations work to date has been with Republicans (e.g., Sen. McCain) or Democrats (e.g., Sens. Conrad, Robb & Ford, Rep. Fazio) separately, though there are continuing efforts to work with Sens. Chafee & Harkin. It is not clear if a bipartisan consensus will emerge during the next two weeks as the Senate Commerce Committee hearing and mark-up process proceeds. At this point, it does not appear likely.

This memo gives a thumbnail sketch of Senate and House actions to date and next steps, then lists the issues that DPC and OMB are following. The next memo we send will include some details about the Administration positions on those issues.

Senate:

*Actions to Date -- several comprehensive1 With comprehensive defined as a bill with sections on revenues, spending (public health, state grants, child care/education, farmers, cessation, and international), liability, FDA authority, marketing restrictions, youth penalties, and licensing1 bills have been introduced, including Conrads S. 1638, Kennedys S. XXXX and its revenue-raising companion, S. XXXX, , Hatchs S. XXXX, and McCains S. 1414/5 (which are the Settlement reduced to legislation language). Jeffords S. XXXX is more limited, focusing on the public health issues within the Senate Labor Committees jurisdiction The Ford (S. 1310) and Robb (S. 1582) bills focus exclusively on tobacco growers. The Conrad bill has the most co-sponsors with 25; McCain/Hatch/Jeffords has the most of the Republican bills at XXX. A group of Senators (Lautenberg, Wyden, xxxx) have indicated the international tobacco policy and spending provisions that any comprehensive bill will need to take, though their proposal has not been prepared in legislative language.

*Prospects -- The main focus this week will be Sen. McCains Commerce Committee, which will be conducting hearings on Thursday, March 12, much of the testimony coming from other Senators on behalf of the bills they have introduced. As it turns out, while the Senate Republicans now have a process, they dont have an agreed-upon bill. McCains own bills (s. 1414/5) are basically the Tobacco Settlement entered into legislative language rather than the result of much judgement, and he will be mixing and matching portions of the original Tobacco Settlement with the other introduced bills to find out what combination will command a majority on his Committee.

The other two main Senate Committee events currently scheduled are Jeffords mark-up of his S. XXX, planned for Wednesday, March 11, and Campbells mark-up of the Indian portions of McCains and Hatchs bills in Senate Indian Affairs on Wednesday as well. Given that McCain has just been empowered to mark-up comprehensive tobacco legislation, Jeffords may or may not end up marking up on Wednesday.

Sens. Harkin, Chafee, Graham, and possibly Lugar will soon be introducing the only bipartisan proposal (specs, not a bill), probably this week, and will probably testify at the Senate Commerce Committee hearing on Thursday.

House

*Actions to Date: Rep. Fazio is modifying Sen. Conrads bill for introduction in the House, and his bill will apparently be endorsed by the House Democratic leadership. His staff have consulted with DPC on suggested changes, and various technical and policy modifications (e.g., increase the amount of funding for class size) have been forwarded. Separately, Rep. Blilely has been active by collecting and then releasing tobacco industry documents, and by conducting several hearings.

*Prospects: Fazio has not indicated when he might move on Conrad, though it could be this week.

DPC Activities -- Policy Development Meetings and Hill Assistance Simultaneously

*Agency working groups, most of them chaired by Elena Kagan, have been working for 3-4 weeks to define consensus Administration positions on the myriad Tobacco Settlement topics for which detailed positions were not developed last fall. Once a position is determined, the Administration would use it as a reference point when commenting on proposed legislation, and in some cases is drafting specs which are then being shared with members staff as they are crafting their proposals. Work on several topics is nearing completion:

- A) youth lookback penalties;
- B) drafting revenue provisions so they are not categorized as excise taxes;
- C) FDA regulatory authorities, especially regarding nicotine, and
- D) collection/release of industry documents regarding marketing to teens, etc.

And work continues on several other areas:

- E) Liability relief;
- F) minority issues;
- G) advertising & marketing restrictions;
- H) antitrust relief
- I) licensing of retailers, distributors, and manufacturers
- J) smuggling

The focus of DPC work with the Hill this week is to provide Sen. McCains office with some requested materials on FDA regulatory authority, teen lookback penalties, and how write revenue provisions so they raise the amount of funds in the Budget and are categorized as miscellaneous receipts instead of excise taxes, thus allowing a Committee other than Finance or Ways and Means to mark-up tobacco legislation.

DPC staff are also beginning to work with Jeffords staff on various topics, and will continue working with Kennedys staff as they prepare Democratic amendments to Jeffords bill to use at Wednesdays scheduled mark-up. The Kennedy staffs plan is to show that the Jeffords bills spending on public health activities is lower than the Settlement, as well as lower than in the Conrad bill.

DPC staff have asked OMB to help explain the Administrations priorities on spending, especially on public health, to Chafee & Harkins offices and to Rep. Fazio's staff. We will continue to avoid writing down specific figures for those items, instead provide ranges of spending that could be acceptable while generally doing what we can to: a) get a deal and b) fund the Budgets priorities (e.g, class size, child care), etc., tolerating what spending on farmers it takes to get tobacco-state dem senators supportive of tobacco legislation.

We have detailed information about many of the tobacco topics mentioned above, but to get this memo to you in a timely fashion, we have not described them all there. We have attached a draft summary funding chart which indicates the approximate funding levels contained in the Conrad, Jeffords, Kennedy, Hatch, and McCain bills, compared with the Budget. We plan to send you some follow-up information on the youth lookback penalties and ways the various bill make funds available to states (with lots of strings, some strings, no strings attached) later this week. Please let us know if there are additional topics upon which you would like detailed information.

Attachments

cc: Deich, Glauthier, Chow, Kieffer, Anderson, Murr, Cogswell, Rhinesmith, Schwartz, White

REATTACHMENT A

Senate to speed up tobacco legislation
work

By LAURIE KELLMAN
The Associated Press
03/06/98 4:45 PM Eastern

The Associated Press

WASHINGTON (AP) -- Frustrated by Congress' plodding work on tobacco policy, Senate committee chairmen next week will seek to fold various proposals into one bill.

In a meeting this week, chairmen fed up with the complex issue's slow pace through Congress' committee system scrapped their March 16 deadline for their own bills, said Senate Commerce Committee Chairman John McCain, R-Ariz.

"Some of the senators there were unhappy because we have these needs but there's no motion," McCain said Friday in an interview. "This is such an unwieldy process."

refine

So he will hold a hearing Wednesday in which the chairmen and top Democrats of the half-dozen panels overseeing tobacco policy will suggest ways to

his bill to ratify a landmark settlement with tobacco companies.

McCain has

In addition, the committee will hear from health groups, the tobacco industry and the administration before it begins to finalize the bill March 25.

said the measure is unlikely to come to the Senate floor for a vote before Congress recesses for Easter.

But consolidating ideas in the Senate alone would not improve Congress' chances to enact a national tobacco policy this year. The House is lagging behind the Senate in work on tobacco legislation, notwithstanding House Speaker Newt Gingrich's comment this week that he expects Congress to pass some form of tobacco policy this year.

Passing such legislation would require lawmakers to bridge vast gulfs on numerous issues, particularly how to spend tobacco industry money that would be paid to the government under a settlement or cigarette tax.

Senior House Republicans say such funds should be used for a tax cut. In contrast, Senate Budget Committee Chairman Pete Domenici, R-N.M., one of the chairman who will testify before McCain's committee, contends the money should be used to save Medicare.

The Clinton administration, meanwhile, has said funds from a tobacco settlement should be used for programs to discourage children from taking up smoking.

But McCain said his "least worry" is the funding issue, "because unless you get a bill, there's not going to be any money."

The Senate has several tobacco bills pending and Environment and Public Works Chairman John Chafee of Rhode Island is expected to introduce his version early next week. But McCain said any other Senate tobacco bill "doesn't matter" under the new plan.

"There's one bill that's going to be considered on the floor of the Senate, and that's the Commerce Committee bill," he said.

Under the June settlement between the tobacco industry and state attorneys general, tobacco companies would pay \$368 billion over 25 years and curb their advertising practices while the attorneys general would drop 40 state lawsuits and the industry would be protected from most other lawsuits as well.

To become law, the settlement must be passed by Congress and signed by Clinton. Tobacco companies have threatened to challenge in court any alternative that forces them to curb their advertising on the grounds that it would violate their First Amendment free speech guarantee.