DPC Weekly—Drafts

WKLY – DRAFTS

November 5, 1999

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Eric Liu

SUBJECT: DPC Weekly Report

1. Health Care – Response to Unreported Deaths Associated with Gene Therapy Trials. You asked for an update on recent reports that gene therapy researchers failed to report six deaths and two serious illnesses of clinical trial participants to the NIH. The researchers were reportedly reluctant to report any adverse events occurring in these clinical trials to the NIH's Office of Recombinant DNA Activities because of concerns that NIH's policy of publicly releasing this information (after removing identifiable patient characteristics to protect privacy) would have an adverse effect on the financial standing of their company. The researchers' failure to report these deaths is a clear violation of the current guidelines regulating research funded by NIH or conducted at institutions receiving NIH funding and can lead to suspension, limitation, or termination of NIH funding for the researchers and their facility. Recognizing these penalties, the investigators are now claiming that they withheld the names of the participants because the population studied is so small that it is impossible to maintain patient confidentiality. NIH and independent entities do not believe that there is a viable confidentiality issue here (since no individually identifiable information is released). HHS is contemplating additional reporting requirements and enforcement action that may be advisable for violation of the NIH guidelines. NIH will discus this issue at the December meeting of the Recombinant DNA Advisory Committee.

2. Health Care – Update on Medical Records Privacy. Late this week, we met with the AMA and the American Psychiatric Association to review their concerns about the proposed regulation and to receive an explanation as to why some of their representatives are suggesting that our privacy regulation would actually undermine current patient protections, rather than augment them. After reviewing the regulation in detail, representatives of the AMA acknowledged that our regulation provides a level of patient protection that is beyond what exists today. While they still would like to have a signed patient consent form before the release of information for any purpose, they pledged to emphasize their positive response to the privacy regulation as a whole and to work out any lingering concerns through an ongoing process with HHS – not through the media. Comments on the regulation are due in early January and we anticipate that the doctors – and hopefully the specialists – will give us constructive suggestions to change the proposed regulation in a manner that strengthens the final product, which is due to be released next February.

3. Health Care – Update on the Jeffords-Kennedy-Roth-Moynihan Work Incentives Improvement Act of 1999. As of this writing, it appears very likely that the Republican conferees on the Work Incentives Improvement Act will complete the work on this legislation in short order. Although we have not been invited to participate in these most recent discussions, it appears likely that the bill will be strong enough to gain your support. The primary outstanding issue continues to be the offsets for this solid bill; however, we expect that resolution on this legislation could be achieved by the end of next week.

4. Health Care – Update on Assisted Suicide. Late this week, we learned that the Senator Nickles is interested in attaching his assisted suicide legislation (the companion bill to the proposal that passed in the House by a 271 to 156 vote) to the bankruptcy bill currently being debated on the Senate floor. Although Senator Wyden's staff believe the unanimous consent agreement effectively prevents attaching the assisted suicide legislation to this bill, if they are successful, it would mean that the Senate may vote prior to the Congress recessing for the year. We continue to avoid taking a very public position on this legislation, preferring to see if the Senate can strengthen the flawed House bill.

5. Crime – Guns. The Juvenile Justice Conference did not meet this week and no meeting has been scheduled. Early in the week, the Republican leadership reported that it wasn't likely that they would bring the bill to the floor before adjournment, and blamed the Democrats for being unwilling to compromise on the gun issue. In response, we worked with the Vice President's staff and congressional Democrats to hold a gun event on Thursday with the domestic violence community calling on the Republican leadership to bring the bill to the floor with the Senate-passed gun safety provisions intact. At the event, the Vice President released a new Department of Justice report with new statistics on domestic violence and firearms. Since the Brady Law took effect, over 32,000 people with domestic violence convictions or restraining orders have been prevented from purchasing firearms by a background check. Later that day, Rep. Carolyn McCarthy and Senators Schumer and Durbin held a separate news conference calling for a Presidential veto threat on any final budget agreement that does not contain legislation closing the gun show loophole.

6. Crime – COPS. We organized a budget strategy meeting on Friday with all of the major national law enforcement groups to assist us in our efforts to obtain additional COPS funding during the budget negotiations. John Podesta and Attorney General Janet Reno chaired the meeting, at which we also held a swearing-in ceremony for our new COPS Director, Tom Frazier. The Fraternal Order of Police, the National Association of Police Organizations and the International Association of Chiefs of Police were among twelve national organizations to participate.

7. Crime – Recent shootings. (1) Honolulu. Because Hawaii has some of the toughest gun laws in the nation, the NRA has used the shooting in Hawaii to prove that gun laws don't work. Hawaii has licensing and registration laws that require local police to approve every handgun purchase by issuing a purchase permit and a 14-day waiting period. The alleged shooter, Byran Uyesugi, owned 17 legally registered firearms. While gun laws may not have prevented Uyesugi's tragic shooting spree, they have clearly helped keep Honolulu's violent crime rate the lowest of any city its size in the nation; and (2) Seattle. In contrast to Hawaii, the state of Washington has weaker gun laws that do not include licensing or registration, however, the state does have a five-day waiting period for handgun sales. The shooter is still unknown and at large and no murder weapon has been found. The ATF is utilizing ballistics technology to trace bullet casings left at the scene of the crime that may help them to determine the suspect's identity.

8. Education – Kiryas Joel Village. After the Supreme Court's 6-3 refusal to hear the case, you asked whether we could assist in the efforts of the Kiryas Joel village in New York to establish a special school district to serve disabled students. The issues involved in this case are church-state issues rather than Individuals With Disabilities in Education Act (IDEA) issues and as a result it would be difficult for us to assist the village. The New York State Legislature did pass a law to help the village, contingent upon a Supreme Court denial of their appeal and the village has already taken action under this new authority and established a special school. There is widespread bipartisan support for the village on this issue and if this new law does not solve this problem or if there are further legal challenges, it seems likely that a satisfactory solution will be found.

9. Education – Police Chiefs Tout after-School. Fight Crime: Invest in Kids, released a survey which revealed that police chiefs believe the best investment to fight crime and reduce youth violence is to fund after-school programs and educational child care. 91% of poll respondents agreed that without more funding for after-school and childcare, "we will pay far more later in crime, welfare and other costs." And, when asked to "guide elected officials" by ranking four strategies to reduce youth violence, 69% responded that "more after school and educational child care" was the most effective strategy. The call for increased funding was also endorsed by the Major Cities Police Chiefs Association, the National Sheriff's Association and the Police Executive Research Forum.

10. Education – Bush Education Speech. Governor Bush gave his third education speech focusing on school safety, discipline and character. He criticized the Safe and Drug-Free Schools program, and said that he would require states and districts receiving Safe and Drug-Free Schools funding to report and publicize their student safety results, and allow students in schools that are "persistently dangerous" to transfer to a safe school. He also proposed a federal-state partnership to prosecute juveniles who bring guns to school or use them illegally and to prosecute adults who provide guns to minors and he called for banning serious juvenile offenders from ever purchasing or carrying a gun. To increase discipline, he called for a "zero tolerance" policy for disruption and legal protection for teachers, principals and school board members enforcing that policy. He proposed an increase in funding for character education and funding programs abstinence programs at the same level as teen contraception programs. He also pledged to protect the religious rights of students and allow faith-based organizations and charities to play a role in after-school programs.

11. Welfare Reform – Research on People Leaving Welfare. Eight of the 13 states and counties who received HHS-funding to study the impact of welfare reform have released interim reports on families who left welfare in late 1996 or early 1997. Despite differences among the programs and places studied, the employment, earnings, and recidivism findings in these sites are quite consistent, and are generally consistent with other "leavers studies" we have summarized for you in the past. Between 50 and 65 percent of former welfare recipients were working immediately after leaving welfare. Between 65 and 75 percent were employed at some point during the year after exit, with average earnings in the quarter after exit ranging from $2,185 to $3,868 (the equivalent of $5.65-$10.00 an hour if they'd worked a 30 hour work week throughout the period). In all sites, earnings steadily rose over the course of the year following exit. Between 5 and 20 percent of leavers were receiving welfare again within three months, with 24 to 35 percent receiving welfare at some point during the year after exit.

Results from the HHS-funded studies of people who left welfare in the early stages of welfare reform are confirmed in a new study tracking people who left Maryland's welfare rolls between October 1996 and March 1999. Even with dramatic caseload declines and Baltimore cases making up a growing percent of those leaving the rolls, the experience of leavers has remained remarkably consistent. Half of all leavers find jobs in the quarter they leave welfare with average earnings of $2,215. Employment persists over time, with two-thirds working at some point after exit. Recidivism rates range from 9 percent in the first quarter after exit to 26 percent after two years. Sanctions account for 10 percent of case closures and there is no evidence that children leaving welfare are going into foster care. These studies likely understate actual employment because they only capture jobs covered in the state Unemployment Insurance system.

Six of the HHS-funded leavers studies also tracked Medicaid and food stamps enrollment of families leaving welfare, confirming the need for the initiatives we have put in place to make sure families are getting the supports they need. Medicaid participation varied greatly, ranging from 25 percent to 76 percent in the first quarter after exit, with a substantially higher percentage of leavers enrolled in Medicaid at some point during the year after exit. Enrollment generally declined over the year and was slightly higher for children than for adults. Food stamps enrollment in the first quarter after exit ranged from 9 percent to 57 percent, again with a much higher percent receiving food stamps at some point during the year. The low-end outlier was San Mateo County, which may reflect higher welfare grant levels in California, where families are earning more when they leave welfare and are therefore less likely to be eligible for food stamps and Medicaid.

12. Immigration – Immigration and Naturalization Service (INS) Restructuring. For the past few months, Administration officials have been negotiating with Representatives Rogers (R-KY) and Lamar Smith (R-TX) on INS restructuring legislation and have made some progress toward reaching an agreement. On November 4, 1999, the House Judiciary Subcommittee on Immigration reported H.R. 2528, *the Immigration Reorganization and Improvement Act of 1999*, as amended, that includes some of the agreed to provisions but the Administration continues to have concerns with this legislation. H.R. 2528 as amended does not ensure that the single, high-level Department immigration official has the appropriate staff support to manage and direct our immigration system full-time. Administration officials will continue to work with Congress to achieve an agreement. If an agreement can be reached with the House, we expect that we can reach an agreement quickly with the Senate and enact legislation this year.

13. Internet Gambling Legislation. This week Senator Kyl unsuccessfully tried to pass his Internet gambling legislation by unanimous consent. We agree with the basic thrust of the legislation which would ban a great deal of gambling on the Internet. However, we have concerns about Senator Kyl's bill, (along with its companion bill sponsored by Rep. Goodlatte), because it creates inconsistencies with current law that DOJ objects to and provides large exemptions for parimutuel wagering. In the House, there was a markup in the Crime Subcommittee where Rep. Goodlatte's bill passed 5-3 without amendment. We have our own bill which does not create inconsistencies, i.e., permit parimutuel wagering on the Internet where it would not be allowed on the telephone, and it does not have an exemption for parimutuel wagering. We have reached out to Rep. Meehan, who is expected to sponsor our bill, at the planned full committee markup next week.

October 29, 1999

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Eric Liu

SUBJECT: DPC Weekly Report

1. **Tobacco – Public Support for Tobacco Tax.** On Thursday, the American Cancer Society, the American Heart Association, and the Campaign for Tobacco Free Kids released poll numbers from a survey of likely voters conducted by the Mellman Group and Market Strategies Inc. While voters are not anxious to raise cigarette prices, it is far more popular than the other options to raise $7 billion to balance the budget: 64 percent would raise the cigarette tax, compared to 13 percent who would cut programs and 6 percent who would use the Social Security Trust Fund. The majority of groups – across parties, regions, age, income, and even smokers -- all favor the cigarette tax over the other alternatives. Specifically among conservative Republicans, 48 percent prefer the tobacco tax, 31 percent want program cuts, and 6 percent would rather use the Social Security Trust Fund. The poll also showed that almost twice as many people thought voting to cut Medicare, spend from the Social Security Trust fund, or cut education spending was a reason to vote against a candidate for Congress than thought voting for a 55 cent cigarette tax increase was. As expected, support for increasing the tax is higher when it's linked to reducing smoking among kids.

2. **Teen Pregnancy – Birth Rates.** On Monday, HHS released data showing significant declines in teen pregnancy and birth rates for the seventh year in a row, and a new guide, developed by the National Campaign to Prevent Teen Pregnancy, to help communities establish successful local teen pregnancy prevention programs. In 1998, there were 51.1 births per 1,000 teens, an 18 percent decrease from the 1991 rate of 62.1, and close to the 1986 record low of 50.2. For girls ages 15 to 17, the 30.4 per 1,000 birth rate is the lowest in four decades. Teen births have fallen in every state and across ethnic and racial groups. The sharpest birth rate declines were among black teens, which fell 26 percent since 1991 to the lowest point since 1960. Also, the teen pregnancy figures, for which there is a lag in reporting, are at the lowest level on record. In 1996, there were 98.7 pregnancies for every 1,000 teen girls – down 15 percent from its high point of 116.5 in 1991.

3. **Crime – Reentry of Offenders.** In response to the Attorney General's letter to you, we are working with the Justice Department to develop an initiative that helps communities address issues relating to offenders returning from prison. About 500,000 inmates will leave prison this year – with many returning to urban areas and in disproportionate numbers to certain neighborhoods. The reentry initiative would help to address community safety concerns as well as support issues for offenders. The initiative would have two main elements: reentry

partnerships and reentry courts. Through reentry partnerships, police and corrections agencies would monitor offenders, and team up with other community service providers to target resources for offenders such as drug treatment, employment services, housing, and counseling services. Reentry courts would use the drug court concept of judicial supervision to oversee offenders on conditional release. Offenders would meet regularly scheduled court appearances on the status of individual accountability plans, with graduated sanctions for failing to meet plan requirements. Reentry courts would work with community service providers to identify and target needed resources for the offender. We are working with Justice on cost and size issues for this initiative for possible inclusion in the FY 2001 budget. In addition, we are reviewing the viability of restricting the unconditional release (no probation or other supervision) of federal offenders through a change in U.S. Sentencing Commission guidelines.

4. **Crime – COPS.** On Thursday, Congressman Weiner (D-NY) held a press conference with Members and law enforcement to launch his "COPS 2000" legislation to reauthorize the COPS program. The Weiner COPS bill is identical to the Biden legislation introduced last week and has 105 co-sponsors. At the press conference, members also stressed the importance of full funding for COPS in the current budget. Next Tuesday, the Attorney General will address the annual convention of the International Association of Chiefs of Police (IACP) where she will focus on the success of community policing and funding for the COPS program. We are also working with Justice and IACP to put together a COPS budget press conference with key police chiefs attending the convention.

5. **Crime – Juvenile Justice Conference.** The Juvenile Justice Conferees have not had any new meetings, and none have been scheduled. While Speaker Hastert has said this week that a bill will be brought to the floor before adjournment (which is expected within the next two weeks), Democrats are not optimistic that this will happen. Democrats are continuing to hold weekly news conferences to maintain pressure on Republicans to pass a Juvenile Justice bill that includes the Senate-passed gun safety provisions before adjournment. This week they held an event with 100 students, associated with a gun violence victims group called the Bell Campaign, who were here to lobby Congress on passing stronger gun laws. Next Monday, they plan to hold an event with grassroots activists here for a national gun violence prevention conference this weekend.

6. **Health Care – Assisted Suicide.** This week, the House of Representatives voted 271 to 156 to pass the Pain Relief Promotion Act of 1999, which would create criminal penalties for the use of a controlled substance in a physician assisted suicide and takes new steps to protect the appropriate provision of palliative care. Seventy-one Democrats joined 200 Republicans in supporting the legislation. Twenty Republicans, 135 Democrats and Representative Sanders voted against it. It is still unclear whether the Senate will take this issue up prior to adjourning for the year, although Senator Nickles has expressed a strong desire in that regard. However, when and if the companion legislation is offered, there is a growing expectation that it will easily pass the Senate. In response to questions about your position on this legislation, we are reiterating your strong opposition to physician assisted suicide, pointing to your enactment of the Federal ban on funding for assisted suicide in 1997. While we cleared the Justice Department's concerns about the bill's enforcement provisions and Federalism implications, we have successfully portrayed you as sympathetic to the legislation's intent and open to its enactment.

7. Immigration – Legalization and Farmworker Proposal. Senators Bob Graham (D-FL) and Gordon Smith (R-OR) have introduced legislation to legalize undocumented farmworkers and to reform the current H2A program which admits temporary foreign agricultural workers to provide farmers with an adequate supply of laborers during the peak periods in the growing season. We have not fully reviewed Senator Graham's legislative proposal and therefore have not commented definitively. However, the Administration has strongly opposed efforts in the past designed to expand the H2A program and does not believe that kind of legislation is necessary or appropriate at this time. The Administration is committed to improving the current H-2A program and is working administratively to reengineer and streamline the H-2A program burdens while maintaining strong worker protections.

8. Education – Teacher Quality Report. The American Council on Education issued a 10-point action agenda for college and university presidents to improve the quality of teacher education. Citing, among other findings, the need for 2.5 million teachers in the next decade, inadequate preparation of teachers to use technology, the academic under-preparation of teachers the action agenda called on school presidents to make teacher education a priority on their campuses by investing greater fiscal and other institutional resources in the quality of preparation programs and increasing educational research.

9. Education – National Education Goals Panel Report. The National Education Goals Panel released a report this week showing that Connecticut's effort to increase educational investment in impoverished areas coupled with state accountability and assistance efforts has resulted in noteworthy score gains on the NAEP test. As you know income and parental education are key indicators of performance on this test but researchers found that the gains in Connecticut were of sufficient magnitude that parental and other background characteristics alone could not account for them and that educational improvement efforts were a factor.

10. Education – Appropriations. The Congress finished work on a compromise education spending bill that both chambers hope to pass by the end of this week. The bill fails to provide resources for your class size proposal or your Title I accountability proposal. It also provides far less than your budget for after school and summer school programs, GEAR-UP, teacher quality initiatives, and educational technology.

THE WHITE HOUSE

WASHINGTON

October 22, 1999

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Eric Liu

SUBJECT: DPC Weekly Report

1. Education – Appropriations and ESEA Updates. As the Labor/HHS/Education appropriations negotiations unfold, we are working to secure funding for key education priorities. The current Republican bill purports to provide $1.2 billion for class size but in fact does not require that a single dollar be spent on hiring new teachers to reduce class size. We are demanding a dedicated $1.3 billion. On accountability, the current bill does not contain your proposed $200 million Title I set-aside fund to turn around failing schools; we are asking for the full amount. Finally, the current bill falls well short of our budget proposals for after-school and summer school programs, as well as teacher quality and recruitment, Hispanic education, and mentoring programs like GEAR-UP; on all of these, we are seeking full funding.

On a separate track, the House yesterday passed its ESEA Title I reauthorization bill, 358-67. The bill has several positive features – public school choice, increases in overall funding – but also has flawed provisions on bilingual programs and other issues. As you know, an Armey amendment to allow vouchers was defeated by a large and bipartisan margin. However, a version of the block grants "Straight A's" bill later passed along party lines. In part because the House is addressing ESEA in piecemeal fashion, it has done nothing thus far on failing schools or social promotion. The Senate, meanwhile, will soon begin its work on ESEA. Sen. Jeffords this week released a prospectus of his comprehensive ESEA bill that does not include your accountability or class size initiatives. As the reauthorization continues in both houses, we will push to incorporate your reform agenda into the legislation.

2. Health Care – Medicare Drug Report. On Monday you will announce that you are directing HHS to conduct a study on prescription drug costs and their impact on Medicare beneficiaries. The study will be due in 90 days, enabling you to highlight its preliminary findings in the State of the Union. You should know that the Vice President today blasted the pharmaceutical industry for attacking your prescription drug proposal and for making millions of older Americans pay the highest prices in the world for needed medications.

3. Health Care – Medicare Provider Give-back Update. The key committees of jurisdiction in the House and Senate marked up their give-back proposals this week. Although both bills dedicate about $1 billion in 2000 and at least $15 billion over 10 years, both remain unfinanced and neither one dedicates surplus dollars to the Medicare trust fund. As a result, these proposals decrease the projected life of the trust fund by at least one year, to 2014. Both the Finance and the Ways and Means committees rejected the Medicare modernization amendments that we supported, although those who voted against indicated they would be open to a reconsideration next year in the context of broader reform. Sen. Roth pledged that he would move to hold hearings on broader reform next year, but made no commitment on a markup schedule. Finally, the administrative actions you took this week were well received, and although the Medicare outpatient issue remains open we are working to resolve it.

4. Health Care – Jeffords-Kennedy. By a 412-9 vote, the House this week passed its version of the Work Incentives Improvement Act. Our strategy in conference will be to strengthen the bill by including the Senate-passed option for states to expand eligibility, and by funding the demonstration project for workers with potentially severe disabilities. Our challenge now is preserving the bill's current offsets and finding additional provisions that we can accept.

5. Health Care – Medical Records Privacy Regulation. Next Friday, you are scheduled to unveil regulations to protect the privacy of medical records – an action you had promised to take if Congress failed to act. The proposed regulations apply to all medical records stored or transmitted electronically. They restrict the non-consensual release of private medical information and limit the amount of information that can be released. They require health plans and providers to inform consumers about how their medical information is being used and give patients access to their own medical files. They also create new criminal and civil penalties for improper use or disclosure of information.

6. Health Care – Labor-HHS Update on Health Priorities. The Labor-HHS appropriations debate has focused largely on education, but we are working to ensure that several health care priorities are not placed at risk. A number of key areas are currently funded below your request. There is, for instance, a shortfall of $134 million for mental health and substance abuse prevention and treatment; $75 million for HIV prevention, and for the prevention of emerging infectious diseases like the West Nile-like virus; $20 million for graduate medical education at children's hospitals; $25 million for the health care access provision advocated by Secretary Shalala; and $48 million for the Administration's nursing home quality initiative.

7. Health Care – Enrollment of Native American Children in CHIP. You asked for an update on our efforts to speed enrollment of Native American children in CHIP. We have recently directed HHS to prohibit cost-sharing in CHIP plans for these children, thus removing a unique barrier to their enrollment. HCFA informed state Medicaid directors of this new policy on October 6th, and the decision was welcomed by advocates as well as by Lynn Cutler.

8. Families – Child Care. Secretary Shalala on Tuesday released a report showing that only 10 percent of children eligible for federal child care assistance actually receive it. The state-by-state percentages ranged from 4 percent in Mississippi to 24 percent in West Virginia. Overall, the study finds that 14.7 million children in low-income families were eligible for subsidies but only 1.5 million children in 1998 did. Your child care initiative would invest $7.5 billion over five years to provide subsidies for an additional 1.15 million children. Sens. Dodd and Jeffords attached an amendment to the Labor/HHS bill adding $818 million for child care subsidies; the provision, which we support, appears to have been dropped in conference.

9. Youth – National Campaign Update. We asked Jeff Bleich for an update on the efforts of the National Campaign Against Youth Violence; his memo is attached. As you will see, Jeff has made contact with a wide array of private sector and nonprofit groups to develop a nationwide media campaign and an ambitious multi-city effort to highlight "what works" in local communities. He has also persuaded Steve Case of America Online to be the first member of the Board and has made offers to a number of others. His greatest challenge, however, has been raising enough funds to sustain the Campaign's basic operations.

10. Civil Rights – NAACP Tourism Boycott of South Carolina. The NAACP has called for a tourism boycott of South Carolina until the Confederate flag is removed from the state capitol and other sites. As you may know, Julian Bond has sent a letter asking you not to attend Renaissance Weekend this year in Hilton Head. The Administration has never taken a position on the flying of the Confederate flag; we are now revisiting the issue.

11. Tobacco – Florida Class Action Case. On Wednesday, a Florida appeals court ruled that the jury in a class action suit involving 500,000 Florida smokers may award punitive damages in a single lump sum rather than one smoker at a time. This was a reversal of an earlier court decision and a significant setback for tobacco companies. The jury, which in July had found that cigarette makers produced a defective and deadly product, is set to begin the damages phase of the trial November 1st. Tobacco stocks have been down sharply since the ruling.

12. Tobacco – International Framework Convention. As you may recall, last May the WHO adopted a resolution calling for a Framework Convention on Tobacco Control by 2003, and Secretary Shalala conveyed the support of the United States. Though formal negotiations will not begin until next May, we have developed guidelines for the U.S. delegation consistent with the Administration's tobacco policy. Our goal is a convention that places general obligations on signatory states to reduce tobacco use, but leaves precise details to each country's domestic legislation. The convention, like any treaty, will require Senate ratification and we will be consulting regularly with members of Congress and other interested parties.

13. Abortion – Partial Birth Abortion Act of 1999. The Senate passed this bill Thursday 63-34, with Sens. Mack, Gregg and Chafee not voting. Of the three, only Chafee would have opposed, leaving us with a narrowly veto-sustaining bloc against the legislation. Senator Durbin's alternative, which included an exception to preserve the health of the woman, failed 61-38. The Senate also adopted, 51-47, a Harkin resolution affirming Roe v. Wade.

October 15, 1999

MEMORANDUM FOR THE PRESIDENT

Waiver — Draft

FROM: Bruce Reed
Eric Liu

SUBJECT: DPC Weekly Report

1. Health Care – Administrative efforts to address Medicare provider reimbursement levels. In the wake of House and Senate provider give-back proposals, we are planning to release a letter from you early next week which outlines every administrative action you can take to help alleviate the provider concerns about reimbursement levels under the Balanced Budget Act of 1997. As of this writing, we have not yet come to a final determination on the Medicare outpatient issue; however, there are nearly 20 other administrative actions we can take that will be able to provide targeted relief to hospitals, nursing homes, and home health agencies. On Friday, we announced that HHS would not recoup Medicare DSH payments to hospitals in Pennsylvania, New York, and other states who had erroneously calculated their DSH payments based on misleading guidance from HCFA. The news was extremely well received by hospitals and many members of Congress in these states. Although this eliminates all retrospective liability, HCFA will have to issue clarifying guidance that disallows these payments after January 1, 2000. Congress will inevitably move to repeal or modify the statute in this regard, unless it scores a significant amount. We anticipate that it will, unless the modification is limited to a short period of time.

Health Care – Legislative efforts to address Medicare provider reimbursement levels. In addition, next week the Senate and the House will be doing full committee markups of their respective BBA give-back bills. Republicans continue to claim that the financing for these provisions come from the on-budget surplus. However, particularly in the early years, it is highly unlikely that there are the resources available to support these claims. Even though they like these provisions, the House Democrats are expected to take the position that all of these provisions must be offset and will reportedly oppose this legislation unless there are true offsets to pay for them.

Health Care – Update on the Jeffords-Kennedy-Roth-Moynihan Work Incentives Improvement Act. Next week, the House Rules Committee is expected to report out the House version of the Jeffords-Kennedy-Roth-Moynihan Work Incentives Improvement Act. It is currently unclear as to how the House will resolve differences between the Ways and Means Committee and Commerce Committee versions of this legislation. In particular, the Ways and Means bill falls short on funding for health care components which are essential incentives to returning to work. The bill does not include: (1) mandatory funding for infrastructure grants which provide an incentive for states to adopt the Medicaid buy-in portion of the legislation; (2)

a mandatory demonstration that allows people who are not yet too disabled to work to buy into Medicaid; and (3) a guarantee of Medicare coverage. The disability community feels strongly that these provisions are essential to the effectiveness of this legislation, and much prefer the Commerce Committee bill, which dedicates mandatory dollars for these provisions and is viewed as the most comparable to the original Senate passed bill. We are working hard with the groups and the Commerce Committee to succeed in producing the strongest possible bill out of the Rules committee. Your Saturday radio address is intended to both put pressure on the Congress to act on this legislation this fall as well as to highlight your longstanding commitment to this issue.

2. Education – ESEA Reauthorization. The House Education and Workforce Committee reported out two education bills this week which could be considered on the floor as early as next week. The first bill was their reauthorization for Title I and several other smaller programs and did not change significantly from the original Chairman's mark. Rep. Andrews offered your accountability language to set-aside 2.5 percent of Title I for failing schools but withdrew his amendment before a vote because of lack of support from Democrats as well as Republicans. Several education groups, including the Council of Great City Schools and the American Association of School Administrators, worked to defeat the Andrews amendment. DPC is continuing to work with the Department of Education to ensure that a strategy is in place to advance your accountability agenda. Democratic committee staff remain optimistic that the provision will ultimately be included.

Education – "Straight A's" bill. The committee also passed, on a party line vote, H.R. 2300 the "Straight A's" bill that would allow states to enter into performance agreements with the Secretary of Education in exchange for almost complete flexibility over the uses of ESEA funding. The National Governor's Association sent a letter to Chairman Goodling indicating that overall the bill is consistent with NGA policy however they have concerns about the bill's targeting provisions.

Education – Additional Supreme Court Activity on Vouchers. The Supreme Court passed on another opportunity to set a precedent on public funding for religious schools. After refusing last week to hear the appeal of an Arizona ruling that allows tax breaks for tuition at religious schools, the Court this week refused to hear an appeal of a Maine lower court ruling that effectively bars the state (which supports a statewide public-private choice program to aid rural areas) from providing direct support to religious schools.

2. Crime – Youth Violence. On Tuesday, you will attend "Voices Against Violence", a Congressional Teen Conference sponsored by Minority Leader Gephardt. Over 350 youth from across the country between the ages of 13-19 will attend the two-day conference. At the conference, you will release the 1999 Annual Report on School Safety jointly prepared by the Departments of Justice and Education. Key findings of the report include: (1) while homicides in schools remain extremely rare (less than one percent of all child homicides), the number of multiple victim homicide events at school has increased; (2) students are less likely to be victimized in school than in previous years; (3) student weapons-carrying and physical fights have declined across sex, grade, and race/ethnicity; and (4) minority students and young students feel less safe at school than others. In addition to the school safety report, you will announce that the Justice Department will send out 200,000 copies of the CD-ROM and youth action guide developed by MTV in partnership with the Justice and Education Departments to community and youth organizations across the nation. You first announced creation of the MTV partnership last October at the White House Conference on School Safety. Since the CD-ROM and youth action guide were unveiled last May, more than 300,000 copies have already been distributed.

Crime – TOP COPS. Next Thursday, at a Rose Garden event, you will honor the police officers who received the National Association of Police Organizations' (NAPO) TOP COPS awards for their courage and heroism in the line of duty. This year, 32 officers from 9 states and the District of Columbia will receive the TOP COPS award. Two of this year's awardees are COPS-funded officers. At the event, you will: (1) urge the Congress to fully fund the COPS Program in the Commerce, Justice, State appropriations bill (subject to progress made on the CJS bill); (2) endorse the Biden COPS reauthorization bill, which closely mirrors our 21st Century COPS proposal and now has 44 co-sponsors [Eric: I thought this might be a good idea; I need to talk to Biden staff if we want to pursue]; (3) release a 5th anniversary COPS report; and (4) highlight FBI crime statistics released over the weekend. You should know that on the same day as our TOP COPS event, the Senate Judiciary Committee plans to hold a hearing on the FALN clemency issue.

Crime – Guns. The FBI will release the final *Crime in the United States 1998* report on Sunday. The report reveals that serious crime, comprising both violent and property crime, decreased nationwide for the seventh straight year. Notably, every region of the nation experienced an overall decrease in crime of between 4 percent to 7 percent. Significant findings include: (1) Murder rates fell to the lowest level since 1967, reflecting a 7 percent decrease over the past year and a 28 percent decrease since 1994; (2) Violent crime rates were down 6 percent since the previous year and reflected an 18 percent decrease since 1994; (3) Arrests for juvenile violent crimes were down 8 percent, yet 12 percent of all murder offenders were under the age of 18; (4) The 93,103 forcible rapes reported to police were the lowest total in a decade, and represented a 4 percent decrease from last year; (5) A total of 7,755 hate crimes were reported: 4,321 racial, 1,390 religious, 1,260 sexual-orientation, 754 ethnic, 25 disability and 5 multiple-bias incidents; and (6) The rates of all property crimes (burglary, larceny/theft, and motor vehicle theft) dropped 6 percent from last year.

3. Hate Crimes. Our hate crimes bill, as well as Senator Hatch's version of the bill, were both included in the CJS Appropriations bill. During the past few weeks, Senator Kennedy and Senator Hatch tried to reach an agreement, but were unable to do so. The Conference is scheduled to begin on Monday evening, and it is likely that hate crimes will be removed entirely from the bill. As the CJS appropriations bill is likely to be vetoed, we are looking for other opportunities to promote our bill. The hate crimes coalition is planning a press conference at the Capitol on Monday. If the CJS conference is still ongoing, the coalition will call on the conferees to keep it in the bill. If the Republicans have taken it out, then the coalition would criticize them and call on the Congress to pass it some other way.

4. Abortion – Partial Birth Abortion. Next week on the floor, the Senate reportedly may take up the Partial Birth Abortion Ban Act of 1999, sponsored by Senator Santorum (R-PA) and 43 others, including Majority Leader Lott. This bill is identical to the two bills you have previously vetoed, excluding an exception to the measure's ban to adequately protect women's life or health.

[illegible]

October 1, 1999

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Eric Liu

SUBJECT: DPC Weekly Report

1. Health Care

Daschle Provider Give-back Legislation. On Friday, Senator Daschle, on behalf of over 30 Democratic Senators (including Senator Moynihan), introduced legislation to moderate the impact of BBA 1997 on Medicare providers. Although final cost estimates were not available at the time of this writing, it is likely to cost in excess of $22 billion over 10 years. The package, which is expected to be well received by most providers, delivers relief to: (1) all hospitals, but particularly teaching and rural facilities; (2) home health providers; (3) nursing homes, including a short term repeal of the therapy caps; (4) hospice care; and (5) implicit financial relief for managed care plans, because any increase in traditional provider payments translates into increased capitated payments to these plans. Senator Daschle and the Democrats who support this bill will suggest that its costs will be fully offset, most likely through closing existing tax loopholes. They will not specify the offsets but will explicitly state that none of them will come from the off-budget Social Security surplus. This will no doubt increase expectations amongst providers that a relatively generous BBA give-back is possible, even outside the context of broader Medicare reform. This will complicate our overall budget and Medicare strategy, but it remains unclear to exactly what degree.

Patients Bill of Rights. We have dedicated two days of events around the tentatively scheduled vote on Patients Bill of Rights in the House next week. They are designed to illustrate how you and the states have done everything possible to extend patient protections to as many Americans as possible but to also underscore that there will be tremendous gaps in protections unless strong, enforceable, Federal legislation is enacted into law. Beyond the radio address, which highlighted the California Patients' Bill of Rights legislation and your proposal to extend protections to the CHIP program, we have arranged for a Monday event with representatives of the over 300 consumer and provider organizations that support the Norwood-Dingell bill to energize them and focus the public on next week's vote. As of this writing, it still appears that the Republican leadership has yet to muster a majority for alternative approaches. Therefore, they are apparently contemplating parliamentary maneuvers designed to either load up the legislation with extraneous provisions or offer an alternative bill that only differs from the Norwood-Dingell bill with regards to its enforcement provisions. Regardless of their strategies, we are working closely with all interested parties to encourage them to focus their support and energy towards passing the Norwood-Dingell bill.

2. Children and Families

Fetal Protection Legislation. On Thursday, the House passed, 254-172, H.R. 2436, the Unborn Victims of Violence Act of 1999, sponsored by Representatives Graham (R-SC) and Canady (R-FL). The bill would make it a separate Federal offense to cause "death of bodily injury" to a "child in utero" in the course of committing certain specified Federal crimes. It uses violence against women as a guise for the legislation's purpose – to identify the fetus in Federal law as a separate and distinct entity, in this case, a distinct victim of a crime. Our Statement of Administration Position noted the Administration's strong opposition to the bill and stated that if presented to you, your senior advisors would recommend that you veto it. The House vote is safely veto-sustaining,and there is no similar legislation pending in the Senate, although Senator Tim Hutchinson (R-AK) reportedly has promised to introduce it. Representative Zoe Lofgren (D-CA) offered a substitute that, while problematic in some areas, laid bare the purpose of the legislation by appropriately focusing on increasing the punishment for violence against pregnant women without identifying a fetus as a separate and distinct victim of a crime.

3. Education

Senate Appropriations. The Senate Labor, Health and Human Services and Education Committee passed an appropriations bill totaling about $92.1 billion (.4 billion above your total request). You released a statement threatening to veto the legislation in its current form because of unacceptable cuts in education programs, but expressing hope that you could work with them to agree on a bill. While its funding levels are better than those of the House version, the Senate bill still fails to invest in some of your key priorities. It does not authorize funding for class size reduction, and cuts funding for education technology. It provides $60 million less than your budget proposal for GEAR UP; $200 million less for after-school programs; and $26 million less for the Reading Excellence program. The Senate bill also does not include your Title I $200 million set-aside to turn around failing schools. Pell Grants, Special education and the Safe and Drug Free Schools program are all funded above your request.

Senate Democrats are offering amendments to improve the funding levels for after-school and other programs. On Wednesday, the Senate defeated an amendment by Senator Murray to authorize your class size program on a largely party line vote. Senators Kerry and Bingaman are planning to offer an amendment on your Title I set-aside for turning around failing schools.

Pay for Performance. In Denver, 15 percent of the city's teachers will participate in a two-year experiment that links individual teacher pay to the performance of their students. Also in Denver, the school board voted this week to condition raises for all administrators to meeting student achievement goals. In Minnesota, teachers have agreed to a pay for performance plan, which relies on peer review rather than student tests scores. And in Jefferson County, Colorado, where Columbine High Schools is, voters will decide in November on a plan that would link property taxes to school performance. At present, 14 states provide rewards to successful schools with 9 states allowing the money to be used as salary bonuses for teachers.

1998 NAEP Writing Scores. One-quarter of students in each grade level are able to write a well-organized, coherent essay—the standards for proficiency on the NAEP writing assessment.

Eighty-four percent of 4th and 8th graders and 78 percent of 12th graders scored at least at the basic level. There were two interesting results among subgroups: 1) twice as many girls reached proficiency as boys and 2) African-Americans and Hispanics from schools on military bases scored higher than their counterparts across the nation. Because standards were raised for the 1998 writing test, comparisons with earlier national assessments are unreliable.

House ESEA Mark-Up. Next week the House Education and the Workforce committee will begin work on ESEA legislation. They are expected to consider Title I, bilingual education, and the House Republican "Straight A's" proposal which is essentially a block grant. It appears that the Chairman's mark on Title I will not include vouchers and while not incorporating all of your proposals will be a bill we can work with. We have not yet seen their bilingual proposal.

4. Crime

Guns. Attorney General Janet Reno will hold a news conference in Denver on Monday with the U.S. Attorney, federal law enforcement, and local officials to kickoff a new gun enforcement initiative called "Colorado Exile." This project is one of the local initiatives created in response to your directive to the Attorney General and Treasury Secretary to work closely with law enforcement to develop a strategy to deter and reduce gun crime. Under Colorado Exile, federal, state and local prosecutors will work together to coordinate their gun prosecutions. The initiative will also have a prevention component and related advertising campaign.

COPS Funding. Next week, the Commerce, Justice, State appropriations conference is expected to meet. OMB predicts that the conferees may fund COPS at the House-passed level of $408 million, under the Senate-passed level of $495 million, and severely below our request of $1.275 billion. We are looking into the possibility of creating a budget message on the COPS Program to highlight the potential funding shortfall early next week.

5. Welfare

Fatherhood Bill. Next week, Representative Nancy Johnson plans to introduce a fatherhood bill with bipartisan support from Represetative Ben Cardin. This bill will contain important eligibility changes included in your Welfare-to-Work reauthorization proposal to help a broader group of low-income fathers work and pay child support with existing Welfare-to-Work funds and to make it easier for communities to use these funds for long-term welfare recipients. Unfortunately, the House bill will not contain any of the $1 billion in new funding you proposed for the Welfare-to-Work program. It will provide $150 million over five years for community-based fatherhood grants to promote marriage, successful parenting, and increase fathers' employment funded through HHS rather than the Department of Labor – essentially a scaled-back version of Rep. Clay Shaw's fatherhood block grant proposal from last year. While we are encouraged by the bipartisan commitment to make the eligibility changes in the current program, including the increased focus on fathers we proposed in Welfare-to-Work reauthorization, we believe we must continue to advocate for an increased investment in the Welfare-to-Work program.

Faith Based Involvement. You requested further information on a variety of topics relating to the involvement of faith based organizations in federal social service activities. You asked if you had signed a law pertaining to the civil liability of charitable activities. The Volunteer Protection Act of 1997 protects volunteers of nonprofit and charitable organizations for personal liability for harm caused by volunteers. The Act does not, however, limit the liability of the charitable organizations themselves for any harm caused by their volunteers. Nor does it limit the liability for any harmed caused by equipment or other tangible items that are donated to charitable organizations (limits that Governor Bush supports), although the Bill Emerson Good Samaritan Food Donation Act of 1996 does give relief form civil liability for donations of certain food products. When this legislation passed, there was recognition on behalf of both Congress and the Administration that the legislation was entering an area traditionally left to the states.

You also asked us to look at Wintley Phipps's, U.S.Dream Academy, Inc, a non-profit headquartered in Columbia, Maryland, which assists children and youth who have a parent or other family members in prison, those who are falling behind in school, those who are at-risk for gang involvement or already involved in gang activity, and those already involved in the criminal justice system. Using a new $100,000 grant from the Department of Labor, the Dream Academy will be creating a new after-school high-tech learning center in Washington, D.C. where participants can receive academic tutorial services, mentoring, character and values based training, and other community services. Because of constraints in the funding source used by the Department of Labor, the D.C. site will not include a faith-based curriculum, but Phipps would like to include faith based involvement, including bible story readings, in future programs funded through other means.

Finally, you noted that Mayor Daley involves churches in the city's after-school programs. Chicago's Lighthouse after-school program contains a tutoring component which involves four faith-based partners in recruiting tutors for the program but their involvement is strictly non-sectarian. Federal funds are not involved in the Lighthouse program. However, the Department of Education has made clear that faith-based groups can be partner with programs funded through the agency's 21st Century Community Learning Centers program. The Department of Education recently distributed a new comprehensive report aimed at assisting faith-based communities in becoming involved in after-school and other Department of Education programs.

Regarding second chance homes, HHS has not provided any guidance to states since the welfare law was enacted; however, extensive reports designed for state policy makers have been released and distributed widely by two reputable policy groups which we think are very helpful.

6. ~~Immigration~~

Immigration and Naturalization Service (INS) Restructuring. Administration officials and Congressional members are nearing an agreement on INS Restructuring legislation but there are a few important outstanding issues relating to the role and staffing of the single immigration official. The Administration's proposal is based on the principle that immigration enforcement and service functions must be separated, with a single immigration official that is responsible for integrating immigration policies and management operations within the Department of Justice.

The Administration is holding firm to these principles and expects to reach agreement with congressional members.

Late Amnesty. This week, we informed Congressional members that we cannot provide administrative relief for members of the "late amnesty" class who cannot prove that they applied for amnesty but were turned away by INS based on an erroneous reading of the amnesty law. However, we expressed our strong support for a legislative fix to help these individuals legalize their immigration status – many of whom have been in the United States for many years working, paying taxes, and establishing homes and families. Senator Reid, members of the Congressional Hispanic Caucus, and others had been urging the Administration to provide administrative relief for this class of individuals.

7. Campaign Finance Reform

McCain-Feingold. You asked for more details on the new, slimmer McCain-Feingold bill. The bill consists of the following two provisions:

A Ban on Soft Money. The bill would prohibit all soft money contributions to the national political parties from corporations, labor unions and wealthy individuals. In addition, state parties that are permitted under state law to accept these unregulated contributions would be prohibited from spending them on activities relating to federal elections, including advertising that mentions a federal candidate. In addition, federal candidates would be prohibited from raising soft money in connection with a federal election. These provisions would prohibit the $100,000, $250,000 and $500,000 contributions that have flowed to the political parties in recent years. A record $262 million in soft money was raised by the parties during the 1996 presidential election cycle. In the first six months of the 2000 cycle, the parties raised $55.1 million, an 80% increase over a similar period in the 1996 cycle. -- McCain-Feingold also doubles the amount of "hard" money individuals may contribute to State parties for use in Federal elections, from $5,000 to $10,000. It increases the amount of "hard" money an individual may contribute in aggregate to all Federal candidates and parties in a single year from $25,000 to $30,000.

Strict Codification of the "Beck" Decision. The bill requires labor unions to notify non-union members that if they file an objection, they are entitled to have their agency fees reduced by an amount equal to the portion of fees used for political purposes.

We recommend you continue to support the Shays-Meehan bill as passed by the House of Representatives for two reasons: First, as a matter of policy, a "soft money" ban without any restrictions or disclosure requirements of third party advertisements will create a flood of money for unregulated issue ads, where the real sponsorship will be totally unknown. This is the key difference between the two bills. Second, we believe legislative strategy dictates that you should support the House bill in order to maximize the Administration's bargaining leverage in conference. While we could devise an even better bill than Shays-Meehan, given these two choices we believe the House bill is the best option.

September 17, 1999

MEMORANDUM FOR THE PRESIDENT

DPC WEEKLY – DRAFTS

FROM: Bruce Reed
Eric Liu

SUBJECT: DPC Weekly Report

Crime

(Earlier Draft)

Texas shooting. ATF has traced two handguns carried by the gunman in the shooting at Wedgwood Baptist Church in Fort Worth, TX. According to trace information, the AMT .380 caliber handgun, and Ruger 9-mm semiautomatic handgun were sold to the gunman, Larry Ashbrook, in 1992 by dealers at a gun flea market in Grand Prairie, TX. It has been reported that Ashbrook had no criminal record.

Juvenile crime legislation. Judiciary Committee leaders met this week to try to resolve issues surrounding the juvenile crime bill conference. No agreement has been reached between Hyde and Conyers on gun or juvenile crime provisions. We have seen a draft of a possible Hyde compromise proposal on guns, which contains flawed provisions on gun shows and large capacity ammunition clips, but acceptable language on child safety locks and juvenile Brady. The proposal also contains a problematic provision that would require FBI to immediately destroy records from the National Instant Criminal Background Check System (NICS). Conyers expressed concern about the gun proposal, and it is unclear whether this version will become part of the conference bill. Conyers and Hyde are continuing their discussions and it is possible that conferees may be called to meet sometime next week.

Appropriations. This week, the House and Senate passed the Treasury-Postal Appropriations conference report. The bill includes full funding some of the Administration's key gun initiatives: (1) Youth Crime Gun Interdiction Initiative (YCGII): The bill contains our full request of $45.2 million for YCGII, an $11.2 million increase. This will allow YCGII to expand from 27 to 37 cities, to provide for more gun tracing and ATF agents to combat gun trafficking; and (2) Integrated firearms Violence Reduction Fund: A total of $X will be provided for more ATF agents to bolster enforcement at gun shows and to support "Brady referral" investigations of illegal attempts to purchase firearms.

HUD gun buyback amendment. Senator Craig (R-ID) has announced his intention to offer an amendment to the VA-HUD appropriations bill on HUD's gun buyback initiative. The amendment, which would generally require that all guns surrendered through buybacks are checked to determine whether they are lost or stolen, would also require that guns valued at over $500 be auctioned to federally-licensed gun dealers. This would essentially mandate the re-sale of the most dangerous and high-powered weapons collected through buybacks. We have also heard that Craig may offer an amendment to limit HUD from using any funds to bring or advise others on civil actions against the gun industry.

Campaign Finance Reform

McCain-Feingold/Shays Meehan: This week the House of Representatives defeated several Republican substitutes and passed the bipartisan Shays-Meehan "Campaign Finance Reform Act." This bill would: 1) completely eliminate federal soft money, as well as state soft money that influences a Federal election; 2) strengthens the definition of "express advocacy" to include radio and TV ads that refer to a clearly identified federal candidate, run within 60 days of an election; or any communication that contains unambiguous and unmistakable support for or opposition to a clearly identified federal candidate, run at any time; 3) improves FEC disclosure and enforcement; 4) and establishes a base-closing style commission to study and develop additional campaign finance reforms.

Because of the lack of votes needed to override a filibuster in the Senate, McCain and Feingold have introduced a scaled-down version of their bill that would be limited to a ban on "soft money." Interest groups including Common Cause have indicated they will support this strategy. However, some Democrats may oppose a stripped down version of this bill because of concerns that former "soft money" dollars would flow into unregulated express advocacy campaigns.

We believe it is premature to abandon the bill that just passed the House. In addition, to insure that we maintain some leverage should a House-Senate conference occur we recommend you continue to publicly support a comprehensive version of McCain-Feingold/Shays-Meehan.

Children and Families

House Republican Fetal Protection Legislation. This week, the House Judiciary Committee passed H.R. 2436, the "Unborn Victims of Violence Act of 1999," which would make it a separate federal offense to cause "death or bodily injury" to "a child in utero" in the course of committing any one of 68 listed federal crimes. This bill, sponsored by Representatives Charles Canady, Lindsey Graham, and Christopher Smith, is a clever and not so thinly veiled attempt to bestow upon a fetus the status of life under federal law. During mark-up, Representative Zoe Lofgren offered an alternative, which would create a new federal crime for injury to the mother, without establishing a new legal status for the fetus. Unfortunately, this substitute failed to rally all of the Democrats, some of whom felt that its provisions were too similar to the underlying bill.

The Department of Justice advises that this bill is not objectionable on constitutional grounds, but sent a letter stating the Administration's strong opposition to it on various policy grounds. It is unclear whether, or how quickly, the bill will reach the floor of the House. We are working with House Democrats to devise a strong substitute that will garner full Democratic support. There is no similar bill pending in the Senate.

Immigration

English Language/Civics Education Initiative: Common Ground Partnerships. On September 16, White House and Education officials met with a representatives of education, literacy, immigration and civil rights organizations to discuss the Administration's FY 2000 budget proposal to invest $70 million in a **English Language/Civics Education Initiative: Common Ground Partnerships.** This initiative will help states and communities provide limited English proficient adults (LEP) with expanded access to high quality English as a Second Language (ESL) programs that are linked to civics and life skills instruction to help them understand their rights and responsibilities as Americans and to navigate our government system, the public education system, workplace, and other key institutions in American life. This initiative will help LEP adults and their families – particularly new American citizens - to become full participants in American society and to foster a greater degree of community cohesion that is based on our shared American ideals and values. The representatives were very supportive of this initiative and plan to advocate for funding of this initiative.

Education

School Leadership Meeting. We hosted a meeting for ten leading school superintendents and academic experts at the White House to discuss the future of school leadership and school system governance. The conversation is a first step toward developing a small package of policy initiatives that look at the future of public education in this country. Further discussions with teachers and principals are being planned.

School Finance Study. The National Research Council issued a report this week on school finance. The report was the result of a Congressionally mandated study. The report recommended additional investment in elementary and secondary education, the development of more performance oriented school finance and employee salary systems, and most noteworthy, a ten-year voucher experiment in urban areas. Thus far, press attention to the report has been minimal.

Elementary and Secondary Education Act Reauthorization. Discussions on the Hill about ESEA reauthorization are continuing with the House Education and Workforce Committee planning to mark-up Title I legislation by the end of the month. On the Senate side, Senator Jeffords is still drafting a comprehensive ESEA bill. Senator Lieberman is also planning to introduce an ESEA bill later this month that will incorporate your class size initiative and your accountability measures but will consolidate many ESEA programs and focus the money more heavily on impoverished school districts.

NPR/Kaiser/Kennedy School Poll. On September 7, National Public Radio released a poll in partnership with the Kaiser Family Foundation and Harvard's Kennedy School that found that Americans think education is so important they are willing to pay substantially higher taxes for specific improvements. Like other surveys of this nature, although parents generally are enthusiastic about their children's schools, they believe other schools in their community aren't as good and schools across the nation are even worse. There is strong support across the board for many improvements - from enforcing academic standards to paying teachers more and fixing up rundown schools -- but a majority opposes vouchers. However, the survey indicates vouchers are a volatile issue, with opinions subject to change, and Americans are even less certain about their opinion on charter schools.

Tobacco

Enforcement of State Laws Forbidding Sales to Minors: As you know, every state has to have a law outlawing tobacco sales to minors, and they must conduct unannounced inspections of retail outlets to ensure that they are following the law. These provisions, known as the Synar amendment for sponsor Mike Synar, were enacted in 1992. Each state has individual, year-by-year targets to meet, and by 2003, every state must ensure that less than 20 percent of its retailers sell tobacco products to minors. This year, for the first time, HHS has made a preliminary finding that 7 states (DE, IA, MO, MN, OR, RI, WY) plus D.C. have failed their yearly targets. Secretary Shalala called the governors and members of Congress from those states to say that the states may submit an appeal outlining extraordinary circumstances which may have prevented them from meeting their rate, and the revised record will be submitted to the Secretary to make a final determination. If extraordinary circumstances are not found, these states would lose a combined $37 million from their Substance Abuse Prevention and Treatment (SAPT) block grant (these funds would be distributed to other states). The penalty, 40 percent of the state's block grant, is required by statute. In this process, the Secretary is indicating the Administration's willingness to work with Congress to revise the statute to base the penalty on degree of noncompliance while maintaining our commitment to reducing youth smoking. As you may recall, we made similar changes to state child support enforcement penalties last year. Senator Durbin is drafting a proposal which sounds promising: it would assess a penalty based on the percentage of the target a state met, while raising the required compliance, by 2008, from 80 to 90 percent. We hope to add some sort of legislative fix to the SAMSHA reauthorization bill now pending in the Senate.

Bidis. You asked if there was anything we could do about bidis, which are small, brown, and often flavored, cigarettes mostly imported from India. On Friday, the Centers for Disease Control (CDC) and Prevention in collaboration with the Massachusetts Department of Public health released a study in CDC's Morbidity and Mortality Weekly Report that surveyed 642 Massachusetts' urban youth and found 40 percent reported smoking bidis in their lifetime and 16 percent reported smoking bidis at least once in the past 30 days. When asked why they used bidis instead of cigarettes, 23 percent smoked bidis because of their "taste," 18 percent reported that bidis are "cheaper," 13 percent of students felt that bidis are "safer" than cigarettes, and 12 percent felt that they are "easier to buy" compared to cigarettes. Research to date shows that bidis are a significant health hazard to users and that they contain three times the amount of carbon monoxide and nicotine and more than five times the amount of tar than cigarettes. There are currently no national statistics on the prevalence of bidi use in the U.S. but a national survey currently being conducted by the CDC will have preliminary results available by spring 2000. According to preliminary Bureau of Alcohol, Tobacco and Firearms estimates, about 129,000 packs of bidis were imported last year, a small fraction of the 217 million packs of cigarettes imported, and the nearly 24 billion packs of cigarettes, both imported and domestic, sold in the U.S., though the Bureau is reviewing its methods to ensure it's properly classifying those imported cigarettes that are bidis as bidis.

We have been meeting with federal agencies that regulate and tax tobacco to discuss what they are doing regarding bidis and to coordinate future action. Currently, the Federal Trade Commission (FTC) considers bidis cigarettes, requiring that the Surgeon General's health warnings appear on the package and in advertising. However, many retailers and importers are not aware that bidis are considered cigarettes under this definition, and packages of bidis are being found without proper warning labels. We could request that the FTC notify all tobacco importers that under the law bidis are considered cigarettes and, therefore, must contain cigarette-like health warnings on bidis packaging and labeling, as well as at all points of sale and in any advertisements. Bidis that contain tobacco are also considered cigarettes by the Treasury Department and are being taxed as cigarettes. The Balanced Budget Act of 1997 imposes permit requirements on all businesses that import tobacco products. Since bidis are considered cigarettes, businesses that import them will have to apply for an importer's permit before January 1, 2000, which will help track the amount entering the U.S. and better ensure tax compliance. Furthermore, bidis are considered cigarettes for the purposes of enforcement checks under the Synar Amendment; however, we do not know whether states incorporate checks for bidis in their retail inspections. The Food and Drug Administration (FDA) is also examining bidis and evaluating whether they fall under their "drug and device" standard for purposes of regulation, although the agency is unlikely to act while the Supreme Court is reviewing its jurisdiction over tobacco products.

Welfare

Out-of-Wedlock Birth Bonus. Last week, HHS awarded the first bonus funds included in the 1996 welfare reform law for the five states with the largest decrease in out-of-wedlock births. California, D.C., Michigan, Alabama, and Massachusetts each received $20 million because they had the largest reduction in the percent of total births that were out-of-wedlock between 1994-1995 and 1996-1997, while also reporting a decline in abortion rates. More evidence is needed to fully understand the factors contributing to the decline in these states. While the 1996 law required states to develop strategies and goals for reducing out-of-wedlock births and established these bonuses as an incentive, some states had already begun encouraging parental responsibility under welfare reform waivers and broader teen pregnancy prevention efforts. California had the largest reduction (5.7%), followed by D.C. (3.7%), Michigan (3.4%); Alabama (2%); and Massachusetts (1.5%.). Altogether, 12 states experienced a reduction, and the national rate held constant over the four-year period measured by the bonus.

Initiatives to Address Poverty. You recently asked us to pull together information about your initiatives for the poor and the trips you have made to poor communities, in response to a Chicago Tribune story in August. We are working with NEC to update and expand documents that were prepared as part of your first New Markets tour which could be released in conjunction with the new Census income and poverty numbers on September 30th. Similar information could also be used for your next New Markets tour. These documents will highlight our accomplishments to help both poor communities and poor families, as well as the initiatives we continue to fight for (including EZ/ECs, CDFI, EITC, CHIP, Head Start, minimum wage, New Markets, child care, Welfare-to-Work, etc). We will make sure the Tribune reporter as well as others get the information.

Federal Hiring. Last week, OPM reported that as of August 22nd, the federal government has hired 14,559 welfare recipients - far exceeding our goal to hire 10,000 individuals by the year 2000. As you may recall, on August 2nd, the Vice President announced our accomplishments to date under the initiative, and personally congratulated three of the six new hires brought on board by the White House, whose success stories were featured in a *USA Today* article. The Vice President has also sent you his *Second Annual Report on the Federal Welfare-to-Work Initiative* which highlights that 70 percent of federal Welfare-to-Work hires are still working in their positions after one year, a rate about twice as high as non-Welfare-to-Work employees hired at similar jobs and pay levels. These results are consistent with the experience of private sector employees involved in The Welfare to Work Partnership. The report also describes strategies that agencies have used to recruit and retain their new employees, such as on-the-job training, mentoring programs, health benefits, assistance with transportation and childcare, flexible work schedules, and information on supports for working families such as the EITC.

Health Care

Medicare Reform and the Hill. Members of Congress on both sides of the aisle in both the Senate and the House have returned from their recess with little appetite for Medicare reform. The only Medicare initiative most Members seem interested is giving health care providers reimbursement relief in the wake of the Medicare cuts included in BBA 1997. Senator Daschle has already announced his intention to introduce a provider give-back bill of over $20 billion over 10 years (versus our $7.5 billion). Congressman Thomas has also indicated his commitment to advocate for a similar amount. Unclear, however, is how the cost of these bills would be offset. Members are just beginning to realize that off-budget Social Security funds are the only surplus dollars available. However, since alternative offsets are similarly unattractive, any initiative in this area may have to be pared down. As Members begin to recognize their dilemma, it is our hope that we will be able to re-ignite their interest in broader Medicare reform as potential cover for a larger infusion of funds to help extend solvency (and buy down debt), fund a prescription drug benefit, and finance a significant provider give-back initiative. Such an approach could help us refocus the Fall debate away from the appropriations problems we face.

Medicare and Trends in Managed Care. Next week, in a speech before the American Medical Association, the Vice President is scheduled to release an HHS report documenting the benefit reduction and plan withdrawal trends of Medicare managed care companies for the year 2000. The report will detail that Medicare HMOs are significantly constraining drug benefits (for instance, the proportion of plans with drug benefit limits of $500 or less will increase by 50 percent in 2000), increasing premiums, and in some parts of the country, have withdrawn completely from particular markets. The Vice President will utilize this report to amplify your veto message and help justify the need for your proposal to reform managed care payments and provide a prescription drug benefit option to all beneficiaries. In addition, the Vice President will reiterate the Administration's strong support for the Norwood-Dingell Patients Bill of Rights legislation, which AMA also strongly supports.

Response to Critical Ads by Pharmaceutical Manufacturers Association (PhRMA). PhRMA has initiated what appears to be a multi-million dollar campaign – as much as $30 to

$40 million – against the pharmaceutical benefit included in your Medicare reform proposal. The ads, which feature an elderly woman named Flo, charge that the Administration's drug benefit would limit access to necessary drugs, create incentives for private plans to drop their coverage, and, as usual, inhibit the industry's investment in research and development. Independent experts and every legitimate aging advocacy organization repudiate the charges in these ads. However, there has not been a coordinated response that can be expected to effectively counter such a large advertising campaign. We are evaluating options, but have been advised that a number of aging organizations are planning to picket PhRMA headquarters to highlight the fact that PhRMA is not representing the best interests of the elderly. The Older Women's League (OWL) is also planning to publicize the fact that PhRMA has threatened to sue them because OWL wanted to use a picture of Flo in their literature to critique the PhRMA campaign. Next week, we plan on meeting with a number of representatives of the drug industry to critique their campaign and to reiterate our request to pull their ads. There are reports that there are a number of drug industry representatives on the PhRMA board who believe it is a mistake to criticize your plan directly. We will keep you apprised of development.

Patients Bill of Rights Update. The Republican leadership still appears to be in disarray over what to do about the Patients Bill of Rights issue. However, it appears more likely that they may support a version of the Coburn-Shadegg bill in an attempt to focus the debate solely on the "right to sue" issues. With this development in mind, we are talking with Congressmen Norwood and Dingell about working with groups opposed to Coburn to more aggressively critique the inadequate enforcement provisions. Although the preference remains to successfully pressure the Republican leadership into agreeing to a vote on the Norwood-Dingell Patients Bill of Rights early this fall, there is a growing recognition that a discharge petition may be necessary in order to force a vote. Recognizing that we will need to continue to pressure the Congress to move in this area, we are tentatively scheduling an October 12th address to a national conference of over 10,000 pediatricians who strongly support this legislation. At this event, we plan on unveiling a new regulation that applies the Patients Bill of Rights to every CHIP plan in the country.

Weekly -
DRAFTS

September 24, 1999

THE ORIGINAL VERSION

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Eric Liu

SUBJECT: DPC Weekly Report

Tobacco – Federal Lawsuit. As you know, the Justice Department filed its complaint against the tobacco industry to recover federal health care costs associated with tobacco related illnesses. The 88 page complaint and 44 page appendix filed in the U.S. District Court in Washington, D.C. specifically named Philip Morris, RJ Reynolds, Brown & Williamson, Lorillard, Liggett, American Tobacco Company, Philip Morris Companies, British American Tobacco, British American Tobacco Investments, Council for Tobacco Research and the Tobacco Institute. The specific counts include liability under the Medical Care Recovery Act, the Medicare Secondary Payer Act, and civil provisions of the Racketeer Influenced and Corrupt Organizations ("RICO") statute.

The charges allege that the defendants have for many years deceived the American public about the health effects of smoking and acted in concert with each other since 1953 in order to further their fraudulent scheme through an "enterprise" that functioned to illegally achieve the shared goals of maximizing profits and avoiding the consequences of their actions. In order to avoid discovery of their fraudulent conduct and the possibility that they might be held accountable, the defendants engaged in a scheme to frustrate public scrutiny by making false and deceptive statements to congressional, judicial and federal agency proceedings and by concealing documents and research that they knew would have exposed their deceit. This tortious and unlawful course of conduct caused consumers to suffer dangerous diseases and injuries and as a consequence the federal government spends more than $20 billion annually for the treatment of injuries and diseases caused by the defendants' products.

The Justice Department ~~seeks damages for health care costs the~~ United States has or will spend as a result of the defendants' actions and disgorgement of proceeds from violation of the RICO statute. In addition, the Department asks for a series of injunctions, including ones to: prevent future wrongful acts; require the industry to disclose all industry documents related to the health consequences of smoking and marketing plans targeting children; require the defendants to fund, but not control, third party educational campaigns informing the public about the health effects of cigarettes and preventing smoking by children; and require the defendants to fund a sustained cessation program for dependent smokers.

Crime -- Juvenile Crime Bill Conference. (1) Conference meeting. The Conferees were expected to hold their second and final meeting on Thursday, but it was postponed. Conferees

Welfare – Housing Vouchers. HUD is ready to award $283 million for housing vouchers to help 50,000 families move from welfare to work. The vouchers will help families move closer to a new job, reduce a long commute, or secure more stable housing so they can perform better on the job, subsidizing their housing costs so they pay no more than 30 percent of their income in rent. These vouchers will be awarded to 92 communities in 35 states, as well as two tribes. These vouchers, secured in last year's appropriations bill, are being awarded mostly on a competitive basis (except for earmarks to some cities mandated by Congress). As you know, we have proposed 100,000 new vouchers in the FY 2000 budget, including 25,000 additional welfare to work vouchers, which neither the House nor Senate bill has funded. OMB is working with HUD on offsets we might be able to propose (if need be) to add the vouchers to the final bill. In the meantime, we seeking an opportunity (such as a budget radio address or a VA/HUD veto) to release the 50,000 vouchers in a way that will underscore our support for working families and how the current bills fall short.

Welfare -- Welfare-to-Work Grants. Next week, Secretary Herman will announce $223 million in competitive grants to 64 local communities for innovative welfare to work efforts focusing on those who need help the most, including a multi-site grant for The Welfare to Work Partnership's efforts in several states. This announcement will mean the program has given competitive grants to 190 grantees totaling $690 million. The Department has also nearly completed making its FY 1999 formula grant awards, last week releasing over $300 million in formula grants to 14 states and Guam. Unless Congress supports our proposal to invest an additional $1 billion in reauthorization, these will be the last grants made from the $3 billion we secured in the Balanced Budget Act. States and communities have up to three years to spend the funds.

Welfare – Individual Development Accounts (IDAs). Last week, HHS released the first grants under the Assets for Independence Demonstration Program to 40 non-profit community-based organization totaling nearly $10 million. The grants will support new five-year demonstration programs to match low-income workers' savings for a first home, post-secondary education, or new business. Each dollar an individual saves will be matched by $8 in federal and local resources. Grantees are scattered across the nation in about half the states, including urban and rural areas. The Republican budget funds IDAs at $10 million, half the level we proposed for FY 2000.

Food Stamps – Quality Control Liabilities. As you may recall, the Food Stamp program's Quality Control (QC) system measures the error rate for each state, using a sample of households to determine what proportion were paid too much or too little in benefits. States whose error rates are above the national average are liable to USDA for their losses. While ensuring states do not pay benefits inaccurately is clearly important, efforts to reduce QC errors can often make it more difficult for working families to access food stamps. For example, since fluctuations in wages are major sources of food stamp errors, many states have required families to report income more frequently in order to lower errors, increasing the number of times a working family has to report to the food stamp office. Thus, we have been working with OMB and USDA to ensure QC consequences do not interfere with our efforts to reach working families. Currently, we plan to give states credit, e.g., not hold them liable, for higher errors caused by a higher or growing proportion of their caseload made up of immigrants or wage earners, and for may meet early next week. (2) Hyde "Compromise." Chairman Henry Hyde floated reports to the media that he has a "compromise" in the works on gun shows that includes a three-day waiting period for persons with questionable arrest records. Hyde provided only a loose description of this provision, and has not released specifics on the bill. Democrats have not signed off on any language and are concerned about the details of his proposal. (3) Motions to Instruct Conferees. House Democrats offered a series of Motions to Instruct Conferees this week. While these motions are not binding, Democrats are using them to highlight gun legislation and to get Republicans on record in support of favorable bill provisions. Most notably, Rep. Zoe Lofgren passed a motion (305- 117) that instructed Conferees to pass a loophole-free gun bill that does not weaken current law.

Crime – COPS Director. On Thursday, we announced that Commissioner Thomas C. Frazier of Baltimore, MD will become the new Director of the COPS program. Frazier has served as Police Commissioner of the Baltimore City Police Department since 1994. In addition to overseeing a major organizational restructuring at the Baltimore Department, Frazier instituted many initiatives supported by the Administration, including Police Corps, a 3-1-1 non-emergency number, and a nationally recognized domestic violence program. Previously, Frazier served over 20 years at the San Jose, California Police Department, where he was instrumental in the implementation of community policing. He is the current President of the Board of Directors of the Police Executive Research Forum.

Education – Appropriations Action. The House Appropriations Labor, Health and Human Services, and Education subcommittee marked-up on September 23. Overall, their bill is $2.8 billion below your budget request. The House bill provides no funding for class size reduction and terminates the GEAR UP program. It also fails to fund your budget request for turning around or reconstituting low-performing schools. It provides $86 million less for the Reading Excellence program; $300 million less for after-school, and $507 million less for Head Start than your request. The bill does meet your request for charter schools and provides additional funding for special education, Pell grants, Impact Aid and the TRIO program.

Education – Private Philanthropy. There was a considerable amount of news in the last week about the wealthy giving to public education. Following the announcement of Bill Gates' scholarship gift last week, Eli Broad said that he is going to give $100 million to help train superintendent, principals, and staff in urban public school systems. Broad has not yet decided how the money will be distributed but he said it will overwhelmingly go to public schools.

Education – Dole Education Speech. On Wednesday, Elizabeth Dole gave a speech outlining the first installment of her education platform. She called for parent-approved locker and backpack searches and drug testing of students, and would require that students' disciplinary records follow them to every school they attend. She proposed a $1,000 per-year tax credit for individuals who donate money to support low-income students in public and private schools; and she recycled proposals from the Republican Congress for tax-free "education savings accounts" and for freeing up federal education funds from federal mandates in exchange for increased accountability for results. She also recycled the Administrations proposal to give parents detailed performance information by posting school-by-school results on the Internet.

errors that were less than $25, which would cut states' liability by about two-thirds. States would then be required to reinvest the amount of the remaining liability in activities that reduce errors without restricting access to the program as well as efforts that promote program access. We believe that this plan will not only help ensure families access to the Food Stamp program, but will also quell state resentment about the program which could fuel future efforts to block grant it.

Immigration --Citizenship Test. Based on a New York Times article, you requested a review of the current citizenship test that is administered by the Immigration and Naturalization Service (INS) as part of the naturalization process. The article was critical of the current citizenship test as lacking uniform standards and not adequately preparing new Americans for the responsibilities of full participation in American society. In January 1999, Pricewaterhouse Coopers (PWC) issued a report on the naturalization process and made recommendations to reengineer the current process including the citizenship test. PWC recommends that the INS establish standardize tests for English and civics and national standards to ensure tests are administered fairly and consistently. DPC is working with the INS to implement the PWC recommendations by next summer. To instill good citizenship skills and at the same time teach English to new Americans, the Administration's FY 2000 budget includes $70 million for the **English Language/Civics Education Initiative** to fund English Language instruction that is linked to civics and life skills instruction.