

From: "Katz, Jeremy L."
To: "Bennett, Jessica C.", "Hughes, Taylor A.", "Jackson, Barry S.", "Smith, Heidi M.", "Hook, Brian H.", "Silverberg, Kristen", "Kavanaugh, Brett M.", "West, Christal R.", "Weinstein, Jared B.", "Boyer, Matthew W.", "Kropp, Emily L.", "Ralston, Susan B.", "Kane, Mary L."
Subject: RE: Night Note 6/16
Sent: Thu, 16 Jun 2005 19:04:26 -0500
[Pending Issues 6-16.doc](#)

From: Bennett, Jessica C.
Sent: Thursday, June 16, 2005 6:47 PM
To: Hughes, Taylor A.; Jackson, Barry S.; Smith, Heidi M.; Hook, Brian H.; Silverberg, Kristen; Kavanaugh, Brett M.; West, Christal R.; Weinstein, Jared B.; Boyer, Matthew W.; Kropp, Emily L.; Katz, Jeremy L.; Ralston, Susan B.; Kane, Mary L.
Subject: Night Note 6/16

Pls note- this information is sensitive; eyes only

Attached is the Policy Time Calendar for this month and next, the Working Group Calendar for this week and next, and the Cabinet Member Schedule for the following week. Brian and Jeremy will send the Pending Issues later.

Thanks,
Jessica
x61475

June 16, 2005

MEMORANDUM FOR ANDY CARD, KARL ROVE, JOE HAGIN, and MIKE GERSON

FROM: KRISTEN SILVERBERG, BRIAN HOOK and JEREMY KATZ

RE: NIGHT NOTE

Cloning. The committee markup is taking place tonight and Rep. Dave Weldon introduced an Administration-supported rider to the Labor/HHS bill that would have denied funds to entities engaged in or funding human cloning. The committee voted down the cloning rider 37-29.

CAFTA. The current legislative plan is to send a clean version of the bill without TAA on Tuesday to the House that could be reported out of committee on Thursday and sent to the floor the following week. However, we think that Hastert doesn't want a bill until we're sure we have the votes. Currently we believe we have 161 Republicans and 15-20 Democrats. Secretary Johanns will work on options regarding sugar, which he will then share with Sen Chambliss.

Appropriations. The House Foreign Aid Appropriations Subcommittee unanimously approved a \$20.3 billion bill today, which is \$2.6 billion below our request. The Millennium Challenge Account was funded at \$1.75 billion (we requested \$3 billion). The bill provides \$2.7 billion to combat HIV/AIDS, tuberculosis, and malaria worldwide, \$131 million above our request and \$502 million more than the previous year. The UN Democracy Fund was not funded (our request was for \$10 M). We will have more detail tomorrow.

The House passed Science-State-Commerce-Justice by 418-7 today.

Patriot Act. WH and DOJ legislative affairs believe the Sanders amendment that passed last night will ultimately get stripped in conference. Even if we are successful, however, a similar amendment could be offered when the 16 sunset provisions are brought up for reauthorization. The legal working group will host a meeting to discuss legislative strategy and make recommendations to principals.

Energy Bill. The Cantwell amendment to require a 40% reduction in oil imports by 2025 failed in the Senate today by a vote of 43-57.

Stem Cell. OLA reports that a Senate vote on stem cell funding seems likely to come in July, and notes rumors that it may be taken up early in the month, immediately following the July 4 recess. Senator Enzi is preparing a stem cell bill that may serve as a substitute for the language passed by the House or an amendment to it. DPC has reviewed the current language and concludes the bill is very problematic as it would violate the President's principle that federal dollars should not encourage the destruction of human embryos.

Other Issues

- Amtrak (Sharp/DPC; Hook) – The House Appropriations Subcommittee on Transportation approved a bill including \$550 million for Amtrak, a cut of Amtrak subsidies by \$657 million. This limitation would not affect the Northeast Corridor, routes running through Pennsylvania, most corridor routes in the Midwest, trains running from Portland, Oregon to Vancouver, or corridor routes in California.
- Asbestos (Ho/DPC; Hook)
- Avian Flu (Leggitt/DPC; Katz) – *There was an AP story today titled “First Human Case Of Bird Flu Found In Indonesia”. However, CDC reports it is not clear if the person is infected or not because the Indonesians are using a different testing method and criteria that show this person is borderline positive (and would not be positive using CDC method). This person was picked up as part of a survey, there is not any illness, and he was clearly exposed via chicken culling. DPC and HSC are leading a policy process for developing an international avian flu strategy.*
- CAFE (Sharp/DPC; Hook) – *Principals will meet tomorrow to discuss light truck CAFE options.*
- CFIUS (Russell/NEC; Katz) – CFIUS reached agreement internally on a unified position. CFIUS met with the Bahraini bank, Arcapita, on 6/15 regarding a proposed compromise solution. It appears at this point as if this issue will be resolved and will not require a Presidential decision.
- Clear Skies (Cooney/CEQ; Hook)
- Cloning (Levin/DPC; Hook) -- The committee markup is taking place tonight and Rep. Dave Weldon introduced an Administration-supported rider to the Labor/HHS bill that would have denied funds to entities engaged in or funding human cloning. The committee voted down the cloning rider 37-29.
- Community College Initiative (Sharp/DPC; Hook) – Chairman Regula recently marked up the Labor HHS Approps bill in subcommittee and included a provision to rescind \$125 million in FY 2005 community college grant funds. The Chairman is unhappy with the way DOL has constructed the grant program this year. He believes that workforce investment boards and one-stop career centers should be eligible for these funds, but we have always viewed this program as community college specific.
- Community Health Centers Poor County Initiatives (Leggitt/DPC; Katz) – On June 23rd HRSA Administrator Betty Duke will announce the criteria for the President’s poor counties community health center initiative which he announced during the campaign. The funding for this initiative was part of the President’s FY06 budget request. Although the grants won’t be awarded until FY06, the announcing of the criteria is important in order to allow for sufficient planning time for grant applications.
- Cooperative Conservation event (Pinero/DPC; Hook) – *The conference is developing well with almost all of the 1,200 invitee slots filled and all speaker slots filled, representing a wide range of stakeholders. Four cabinet secretaries and the EPA Administrator are on the agenda, along with several governors and non-Federal partners. CEQ is working with the agencies on what type of Administration announcements would be appropriate at the conference.*
- Crime/Guns/Lautenberg (Ho/DPC; Hook) – DOJ/OLP formed a study group with the FBI to review the GAO report. The OLP group has developed its recommendations, which are

currently before the AG. DOJ is recommending administrative and legislative changes. DPC will review them in the near future.

- Democracy Fund (OMB; Silverberg) – HACFO is marking up tomorrow and is unlikely to fund the \$10m Democracy Fund announced by the President last year. NSC and OMB are continuing to work to secure funding in the final bill.
- DHS Reorganization (McMillin/OMB; Hook) -- Sec. Chertoff and Dep. Sec. Jackson briefed EOP Principals on elements of their “second stage review” of departmental operations, with a particular focus on a significant reorganization of the current structure. HSC will arrange follow-on briefings for the Chief of Staff and the President in the near future, and will coordinate further work on rollout and implementation issues.
- *Digital Television (Russell/NEC; Katz)* – NEC will host a Principals meeting on Monday on Telecom. Deputies met on 6/7 and discussed: 1) should the Administration publicly support a hard date for a transition from analog to digital television; and 2) do we support some sort of a subsidy to low income Americans who will have their analog TVs become obsolete once the transition takes place? There was agreement that we will not publicly call for a specific hard date, but that we quietly share with the Hill our preference for a hard date of July 2009.
- *Discrimination Claims (Ho/DPC; Hook)* -- The Attorney General had an inquiry from Senator Voinovich asking for DOJ's view on the question whether the Office of Special Counsel has the legal authority to investigate claims of discrimination in the federal workplace based on sexual orientation. DOJ plans to respond with a brief letter stating that, while the relevant statute does not create a separate "protected class" based on sexual orientation, that statute does provide OSC with broad authority to investigate claims based on conduct unrelated to work, which would most often be the basis for claims related to sexual orientation. DOJ's letter will be sent on or about June 22.
- Drug Reimportation (Leggitt/DPC; Katz) – DPC, WHL and HHS met with Senate HELP staff on Friday. Enzi's office has prepared a confidential draft for an importation proposal. We did not take a position on their draft but reinforced the concerns in the December 2004 HHS task force report. Internally, FDA has reviewed the draft and has substantial safety concerns.
- EEO-1 (Sharp/DPC; Hook) – DPC has received cost estimates from EEOC. DPC, OMB, and Barry met today with EEOC officials to discuss policy options given the revised cost estimates.
- EEOC Definition of “Applicant” (Sharp/DPC; Hook) – DOL has informally submitted an NPRM. OMB is working with DOL officials to improve the rule prior to formal submission.
- Economic and Community Development (Halaska/DPC; Hook)
- Elderly Housing (Halaska/DPC; Katz) - Secretary Jackson will be testifying before the Senate Banking Committee on June 16 on a Sarbanes proposal to create an interagency council on elderly housing issues. The council would be modeled on the interagency council on homelessness. Chairman Shelby has indicated his support for allowing the Sarbanes proposal to move forward. Secretary Jackson will indicate a willingness to work with the committee on the issue.
- Endangered Species Act (CEQ; Silverberg) – On 6/3, DPC hosted a deputies meeting with Interior officials to discuss our strategy on ESA. The decision was made to put administrative reform on hold pending legislative reform attempts this session. If the Hill makes no progress, as is anticipated, then the Administration will consider administrative reform proposals. Deputies encouraged Secretary Norton and DOI to speak more publicly

on the issues surrounding ESA to build support for reform. We will also work with outside groups to do the same.

- Faith Based Initiative (Towey/OFBCI; Hook) - JCT published a report in January proposing twelve measures designed to eliminate fraud and abuse related to charities. OFBCI has concerns that a number of the provisions are unnecessary and would burden charities unfairly. Grassley is pushing to include a number of these provisions in the CARE Act. NEC hosted a meeting with Treasury's Office of Tax Policy last week to examine the provisions. Grassley's staff told OLA that they plan to mark up in late June or early July.
- FAA Labor Negotiations (Sharp/DPC; Hook) – On 6/7 FAA briefed DPC and OVP on the upcoming labor negotiations with their air traffic controllers. Since 1998 when the last contract was signed, controllers' compensation has increased 64% and FAA has seen its management flexibility erode. Unions set staffing levels, control schedules, and restrict the introduction of new technologies. FAA is looking to bring its inherited costs under control and recapture its management flexibility, and will be finalizing its specific pay and work rule proposals in July for exchange with the controllers' union. DPC will continue to monitor the negotiations.
- FDIC (Warsh/NEC; Katz)
- *Federal Sentencing Guidelines (Ho/DPC; Hook) – In lieu of a principals meeting before the AG's speech on June 21, DPC will draft a memo to the President summarizing DOJ's proposal to fix the sentencing guidelines.*
- FMLA (Sharp/DPC; Hook) – On 6/3, deputies reviewed DOL's proposed package of regulatory reforms to the FMLA. Deputies support most of the reforms, but there wasn't agreement to let DOL proceed with draft regs. The regulations would draw intense criticism from employer and women's groups, and some question the commitment of the employer community to fighting legislative attempts to undo the regulations. DPC will convene a principals meeting in the coming weeks to develop a recommendation on FMLA reform.
- GSEs (Warsh/NEC; Katz)
- G-8 (Shirzad/NSC; Silverberg)
- Head Start (Halaska/DPC; Hook) – The bill was marked up by Enzi's committee on 5/25. DPC and OLA have serious concerns that the policy does not contain enough reform, and the authorization levels are far above what was in our budget. The committee does plan to continue working and will offer another manager's amendment on the floor, but OLA doesn't hold much hope that we will get what we want.
- Health IT (Levin/DPC; Katz) -- The American Health Information Collaboration (AHIC) charter has gone through staffing and DPC has incorporated the edits. We have sent the revised AHIC to Karl. HHS hopes to publish it in the Federal Register next week.
- Helping America's Youth Initiative (Medina/DPC; Hook)
- Highway Bill (McMillan/OMB; Silverberg)
- *Indian Trust/Cobell (Ho/DPC; Hook) – McCain plans to introduce his bill in the first week or two of July. Officials from Interior, Treasury, and DOJ will meet with McCain's staff (accompanied by WH OLA) to express our interest in a legislative solution but get more details on what is currently under consideration before committing to any statement of principles.*
- Job Training Reform (Sharp/DPC; Katz) – The Senate is hoping to schedule floor time on WIA in June or July. The bill does not include our reforms and has bad religious hiring language.

- Judicial Security (Ho/DPC; Hook) – DPC will host a meeting on Monday to discuss judicial security. Some judges are asking for changes to the way U.S. Marshalls are selected.
- Media Ownership Rules (Russell/NEC; Katz) - The Supreme Court declined to take the case to review the 3rd Circuit court decision to send back to the FCC its media ownership rule. The decision means that the 3rd Circuit's ruling will stand, and the FCC will re-review and issue new justified media ownership rules.
- Medical Liability (Ho/DPC; Silverberg) - House Democrats Baird, Moran, and Ruppensberger introduced medical liability legislation on 5/25. Their bill would cap non-economic damages at \$800,000 and allow that figure to fluctuate with inflation.
- Medicaid Commission (NEC; Katz) – HHS has informally submitted a list of proposed members to the WH. OPA has reviewed and has concerns. NEC will draft a memo for the Chief with HHS' recommendations.
- Medical Device User Fee and Modernization Act (Leggitt/DPC; Katz) - OMB and DPC have extensively reviewed FDA's justification for MDUFMA fee revenue scenarios. We are comfortable with HHS negotiating a fee revenue increase between 4.5% and 9%. Keeping these levels in mind, negotiations should not result in a termination of the program, even if temporarily. Moreover, RIFs are not an option within these funding levels as well.
- Medicare Drug Implementation (Jackson; Katz)
- Methamphetamine (Ho/DPC; Katz) – Principals are convening next Thursday. In addition to quantity-of-purchase restrictions, DOJ supports treating pseudoephedrine as a Schedule V-like drug and restricting sales to pharmacies -- as the proposed Talent-Feinstein bill would do. HHS had strong concerns with this proposal regarding availability of widely used pseudoephedrine products. A potential middle ground would require pseudoephedrine products to be held behind store counters, but not limit sales to only pharmacies. A Senate hearing on the subject is set for June 28th.

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- Native Hawaiian (Ho/DPC; Hook) -- DPC hosted a meeting on 6/10 at OMB's request to discuss the possibility of issuing an Administration views letter opposing the legislation on both constitutional and policy grounds. OPA believes very strongly that issuing such a letter would be premature and should only be done as a last resort. OMB is concerned about losing an opportunity to influence legislation that we have strong concerns over. Principals will meet early next week.
- NCLB (Medina/DPC; Hook)
- *"Open Loop" Technology (Hannegan/CEQ; Katz) - Senator Vitter has a draft amendment that he may offer as part of the energy bill. The amendment would put a one-year moratorium on the use of any "open loop" technology in the Gulf and during that time require a scientific study from NOAA and the Coast Guard on the impact of multiple LNG facilities using "open loop" technology in the Gulf.*
- Personal Stockpiles (Rapuano; HSC; Silverberg) – HHS has prepared a proposal, which Secretary Leavitt will briefly discuss at the HSC Principals meeting.
- Protection of Lawful Commerce in Arms Act (Ho/DPC; Hook) -- House Judiciary Committee has reported its bill. There is some discussion that the House may wait on a vote and let the Senate act, but there is also a possibility that the House will have a vote after recess.

- Real Estate Settlement Procedures Act (Halaska/DPC; Katz) - HUD has been conducting outreach on the Hill on their proposed plan for RESPA reform. After meeting with Chairman Manzullo, they agreed to have him host a briefing for interested Members and senior staff next Thursday. The Chairman still has concerns and HUD is trying to assure him that they plan to do full scale outreach before moving forward with a proposed rule.
- School Choice (Troy/DPC; Hook) -- The President said at policy time that he favors a non-entitlement Pell type grant to high school students. DPC and the Department will be working together to develop a program that meets the President's specifications.
- Secure Flight (Sharp/DPC; Hook) – TSA is expecting to issue an Interim Final Rule in mid-June compelling airlines to submit their passenger manifests.
- Steroids (Ho/DPC; Hook) – Director Walters testified on 6/15 before the House Government Reform Drug Policy Subcommittee, which is holding a hearing on a national drug control reauthorization bill. DPC has cleared talking points for his testimony. Chairman Davis plans to attach his steroids bill to the reauthorization bill during mark-up this Thursday.
- Strategic Petroleum Reserve (Hutto/NSC; Katz) - DOE issued a press release on Friday that the SPR fill will be complete in August at 700 million barrels.
- *TRLA (Warsh/NEC; Katz) – NEC Principals agreed that TRIA could be terminated at year end. If TRIA is extended, Principals agreed on a paired down TRIA that incorporates several reforms that would in effect halve taxpayer's exposure. The memo for the President has gone through staffing although we have suggested that NEC should list the advisors who believe we should argue for allowing the Act to expire, those who believe we should endorse expiration but in a way that allows us to negotiate to a limited reauthorization, and those who favor endorsing reauthorization at the outset.*
- Tricare Rx (Leggitt/DPC; Katz) – The Coalition for Government Procurement filed suit against the DOD/VA in U.S. District Court on March 24.
- Union Financial Transparency (Sharp/DPC; Hook) – OIRA has begun its review of the proposed rule and has asked DOL for stronger justification. OMB is working with DOL to improve the rule in anticipation that it will undergo OMB clearance.
- Universal Service Fund (Russell/NEC; Katz)
- Veterans (Leggitt/DPC; Katz) – We expect a revised copy of the survey answers by tomorrow. We believe the revised draft will be released as part of a House VA Committee hearing they announced last Tuesday. The hearing will take place on June 23rd to discuss veterans' health care modeling.
- *Voting Rights Act (Ho/DPC; Silverberg) – Allyson Ho and Sara Taylor met with Tom Josefiak and sought his guidance. He recommends that we support renewal and also consider a message strategy that acknowledges the progress that has been made. In advance of the 40th anniversary of the VRA, we will need to settle on policy regarding reauthorization of Section 5. DPC will begin a policy process next week to resolve the issue.*
- VNRs (Brosnahan/WHC; Silverberg)