

**From:** "Silverberg, Kristen"  
**To:** "Bennett, Jessica C.", "Hughes, Taylor A.", "Jackson, Barry S.", "Smith, Heidi M.", "Hook, Brian H.", "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:** RE: Night Note 6/14  
**Sent:** Tue, 14 Jun 2005 19:10:44 -0500  
[June 14.doc](#)

---

**From:** Bennett, Jessica C.  
**Sent:** Tuesday, June 14, 2005 8:01 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 6/14

[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. Kristen will send the Pending Issues later.

Thanks,  
Jessica  
x61475

June 14, 2005

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

FROM: KRISTEN SILVERBERG, BRIAN HOOK and JEREMY KATZ

RE: NIGHT NOTE

**DHS Appropriations.** The Senate Homeland Security Appropriations Subcommittee reported its bill today by voice vote. The Subcommittee did not accept the proposed aviation fee increase for TSA (\$1.5b), and reduced TSA by \$250m. Coast Guard was reduced by \$82m from our request, with a \$60m reduction in Deepwater. \$226m was provided for rad/nuke countermeasures, \$20m below our request. On immigration, they provided \$302m for detention facilities, including an additional 2,200 new beds, and \$1.7b for border staffing, including 1,000 new Border Patrol agents. Some smaller cuts were made in other DHS programs, such as \$228m from FEMA; \$100m for Department management; and \$76m from State and Local Preparedness.

**Tax Reform.** The tax reform panel was planning on issuing a report at the end of July. We asked that they wait to issue the report until September. **NEC is preparing an amended Executive Order for the President's signature on Friday.** OLA wants to inform Grassley and Thomas before the President signs the EO. We are concerned that word might spread sooner because Breaux told Delay.

**Federal Sentencing Guidelines.** We are told by DOJ that the AG plans to give a speech on June 21 announcing their preferred sentencing guidelines resolution. We have not seen a draft of the proposal. Assuming it proposes legislation, a Principals' meeting should happen prior to the announcement. We have contacted Ted U and Rachel B to ask for a copy of the proposal asap.

**Health IT.** The American Health Information Collaboration (AHIC) charter has gone through staffing. DPC will forward a revised version mid-day tomorrow. HHS hopes to publish it in the Federal Register by the end of the week.

**Judges.** The Senate confirmed DC Circuit Court nominee Tom Griffith by a vote of 73-24. All Republicans voted in support.

**CC.** The House 302(b) allocations shortchange foreign ops by \$2.6b. OMB believes that the Committee will fund MCC at last year's level of \$1.5b (or a little higher). OLA thinks the Committee might increase the amounts if we offer up suggested cuts to other Presidential priorities, but OMB and NSC agree that we should not propose cuts to other Presidential initiatives at this point.

**Climate Change.** The Vice President will speak to Domenici tomorrow to urge him to oppose the Bingaman amendment and support the President's Climate Change strategy. If that fails, we will suggest revisions to the Domenici proposal.

### Other Issues

- AIDS/International HIV (Thompson/DPC; Hook) -- Labor-HHS Approps Subcommittee Chairman Regula suggested that the Labor-HHS bill not instruct NIH to transfer the \$100m that is HHS' portion of funding for the Global Fund. NIH could still transfer the money but it would no longer be required.
- Amtrak (Sharp/DPC; Hook) –
- Appropriations (Kaplan/OMB; Silverberg) – The House has passed Agriculture, Energy & Water, Homeland Security, Interior, and Mil Quality of Life.
- Asbestos (Ho/DPC; Hook)
- *Avian Flu (Leggitt/DPC; Katz) – We have agreed on a strategy to buy 20 million courses of Tamiflu and 20 million courses of antiviral over the next three fiscal years (2005-2007). OMB and HHS have negotiated the budget offsets. Tomorrow, HHS plans to contact the company that produces Tamiflu (Roche) and agree to a contract for the purchase of 3 million courses of Tamiflu in CY05. We also agreed to provide Roche with a letter of intent to purchase another 7 million does in FY06 which would be delivered in CY06. HHS will begin negotiations with Sanofi for vaccine procurement. The goal is to enter into a contract for 15.2 million courses of vaccine in FY06. It is important to enter into the contract now in order to ensure that they begin production as soon as possible.*
- CAFE (Sharp/DPC; Hook) – Principals will meet on Friday to discuss light truck CAFE options.
- *CAFTA (Shirzad/ NSC; Jackson; Katz) -- Senate Finance Committee voted 11 to 8 in favor of CAFTA. House Ways and Means Committee will take up the mock mark-up tomorrow. Today's vote is an important for a couple of reasons: 1) an amendment on labor rights failed to pass (this would have required renegotiation of the Agreement); and 2) no sugar amendment was offered (signaling a loss for sugar). The only amendment to pass was Sen. Wyden's amendment extending Trade Adjustment Assistance to services. Senator Thomas voted in favor of CAFTA despite strong pressure from sugar interests although he did say "I'll still have the opportunity to vote no" on the final bill. If (as is likely) Ways and Means passes CAFTA out of Committee favorably on Wednesday, we will move to have the President transmit the final bill to Congress on Thursday, with a view to Congressional passage before the July 4th break.*
- CFIUS (Russell/NEC; Katz) –Deputies met this week and are close to resolution.
- China (Hunter/NSC; Katz) – Last week in Shanghai, the EU and China reached a textile agreement. According to European industry, China agreed to quotas until the end of 2007 covering broad categories of textiles that had been the subject of EU investigations. The quotas would grow by 20% each year. The EU also promised not to initiate any safeguard investigations and promised to forgo its safeguards rights in year 2008.
- Clear Skies (Cooney/CEQ; Hook)
- 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.

- Cooperative Conservation event (Pinero/DPC; Hook) – CEQ is on schedule for a three-day conference at the end of August in St. Louis.
- 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) -- At last September's UNGA, the President called for establishment of a UN Democracy Fund to help establish institutions in emerging democracies. He committed to make an initial contribution and challenged other countries to contribute as well. We have not yet identified funds from the '05 budget for reprogramming. OMB is discussing options with the State Department.
- 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) – Senators McCain and Lieberman unveiled "The Save Lives Act" that calls for a hard date of January 1, 2009. The Act will be similar to legislation McCain introduced last year but will reduce the set-top box subsidy from \$1 billion to \$463 million plus administrative costs. 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.*
- 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)
- 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)
- 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.
- Helping America's Youth Initiative (Medina/DPC; Hook)
- Highway Bill (McMillan/OMB; Silverberg)
- Indian Trust/Cobell (Ho/DPC; Hook) – DPC hosted a follow-up deputies meeting at OMB's request to discuss the statement of principles proposed by Interior and DOJ for negotiating with the Hill on a legislative fix. The group reached consensus that Legislative Affairs would accompany the agencies to meet with Senator McCain's staff early next week. They will 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.
- *Media Ownership Rules (Russell/NEC; Katz) - The Supreme Court declined to take the case to review the 3<sup>rd</sup> Circuit court decision to send back to the FCC its media ownership rule. The decision means that the 3<sup>rd</sup> 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 Ruppertsberger 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) – Sen. Gordon Smith has informed Sen. Frist that he will not serve as a nonvoting member. A spokesman for Smith said “Senator Smith feels that he can be a lot more useful” by pursuing reform as a member of the Finance Committee. HHS has informally submitted a list of proposed members to the WH which*

*OPA has reviewed and has concerns with. 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.*
- b(6)
- 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)
- 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 reaching out to the Hill and relevant committees, explaining their thinking and a process for moving forward.
- 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 will testify on Wednesday 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.

- *Trade Adjustment Assistance Expansion (Sharp/NEC; Katz) - Today in the Senate Finance Committee's mock CAFTA markup, Senator Wyden offered an amendment that would allow workers in the service industry dislocated because of trade to access Federal benefits now available only for trade-affected US manufacturing workers. The amendment, which would cost roughly \$3 billion over 10 years, was adopted by voice vote.*
- *TRIA (Warsh/NEC; Katz) – NEC Principals convened last week and agreed on offering two recommendation to POTUS at policy time on the 20<sup>th</sup>: 1) TRIA could be terminated at year end without negatively impacting the macro economy; or 2) if, according to WHLA, a TRIA extension in some form is inevitable, then the Principals agreed on a paired down TRIA that incorporates several reforms that would in effect halve taxpayer's exposure.*
- *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) - NEC hosted a PCC today and is attempting to finalize options which they will circulate on Thursday for final review. NEC will likely host a Principals meeting next week.*
- *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 in June to discuss veterans' health care modeling.*
- *Voting Rights Act (Ho/DPC; Silverberg) – In advance of the 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)*
- *Welfare Reform (Halaska/DPC; Hook) – The next extension needs to be passed by June 30, 2005. DPC continues to work with Congress on how best to proceed.*