

**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 6/15  
**Sent:** Wed, 15 Jun 2005 19:59:43 -0500  
[June 15.doc](#)

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**From:** Bennett, Jessica C.  
**Sent:** Wednesday, June 15, 2005 8:00 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 6/15

**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 15, 2005

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

FROM: KRISTEN SILVERBERG, BRIAN HOOK and JEREMY KATZ

RE: NIGHT NOTE

**Patriot Act.** The House voted 239-187 to prevent the FBI and the Justice Department from using the Patriot Act to search library and book store records.

**Cloning.** Tomorrow in committee markup, Rep. Dave Weldon plans to introduce an Administration-supported rider to the Labor/HHS bill that would deny funds to entities engaged in or funding human cloning. We're told that Chairman Regula is opposed to the rider. Supporters (among Members and the pro-life groups) believe that, but for Regula's opposition, they would have the votes to pass the rider. It may be helpful to raise at senior staff whether someone from the Administration should intervene with Regula.

**Nominations.** The Senate HELP Committee approved Lester Crawford's nomination by voice vote.

**Amtrak.** The House Appropriations Subcommittee on Transportation approved a bill including \$550 million for Amtrak, a cut of Amtrak subsidies by \$657 million. (The President's budget provided no money for Amtrak, but \$360 million for commuter rail service). The bill provides that none of the \$550 million can be used to subsidize the operations of Amtrak routes that lose more than \$30 per passenger. 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.

**CAFTA.** House Ways and Means Committee voted 25-16 in favor of CAFTA. Two Democrats (Reps. Bill Jefferson and John Tanner) voted for the agreement, and one Republican (Phil English) voted against. Two amendments were adopted, one on services and one on labor. Both contain only reporting requirements, and we did not object to their inclusion. Sugar amendments did not receive a vote.

**Labor Unions.** Five unions that are dissatisfied with the AFL-CIO's leadership and organizing efforts formed a new coalition outside the AFL-CIO, but did not officially disaffiliate. The "Change to Win" coalition is comprised of the SEIU, Teamsters, Laborers International Union of North America, United Food and Commercial Workers Union and UNITE-HERE and represents 5 million of the AFL-CIO's 13 million workers.

**OPEC.** OPEC met this morning and decided to raise production quotas by 500,000 barrels per day (to 28 million b/p/d), and authorized an additional 500,000 barrel day increase at the discretion of the OPEC President should conditions warrant. The OPEC President Sheikh Ahmad Al-Sabah is the Kuwaiti Oil Minister and he will reportedly be visiting Washington at the end of June. Oil prices rose \$0.57 on the day.



## 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.
- *Appropriations (Rossman/OMB; Silverberg) – Energy and Water Approps was marked up in Subcommittee. The bill provides \$31.2 billion, \$1.5 billion above our request. OMB has heard that the Corps was funded at \$1 billion above our request. DOE's Office of Science was increased by \$204 million. More money was provided for stockpile stewardship, and Yucca was funded at \$577 million.*
- Asbestos (Ho/DPC; Hook)
- *Avian Flu (Leggitt/DPC; Katz) – HHS sent out a formal letter to the company that produces Tamiflu (Roche) and agreed to a contract for the purchase of 3 million courses of Tamiflu in CY05. We also sent 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.*
- CAFE (Sharp/DPC; Hook) – Principals will meet on Friday to discuss light truck CAFE options.
- *CFIUS (Russell/NEC; Katz) – CFIUS reached agreement internally on a unified position. Today CFIUS met with the Bahraini bank, Arcapita, on 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)
- 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 23<sup>rd</sup> 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) – 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) – 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) – 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)
- *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) -- The AG plans to give a speech on June 21 announcing their preferred sentencing guidelines resolution. We are reviewing a draft of the speech. It presents two legislative options, so we will arrange a Principals meeting prior to the speech.*
- 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 by the end of the week.*
- Helping America's Youth Initiative (Medina/DPC; Hook)
- Highway Bill (McMillan/OMB; Silverberg)
- Indian Trust/Cobell (Ho/DPC; Hook) – DPC recently 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 OLA 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.
- *Judicial Security (Ho/DPC; Hook) – DPC will host a meeting next week 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 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 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 flagged 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.
- MCC (Shirzad/NSC; Silverberg) – Tim Adams would like to hire b(6) who has a key role at MCC. There are concerns about losing him at MCC.
- 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 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 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.
- *TRIA (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 will go into staffing tonight.*
- 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 yesterday and today sent around options for 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 on June 23<sup>rd</sup> 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)