

May 17, 1979

TO: Senator, P.A., Tom, Nels, Mary, Eve, Bob, Jim, Ann H. and Anne S.
FROM: Kevin
RE: Subcommittee Agenda

You are scheduled to have a legislative meeting on Friday at 4:30 which will focus primarily on Judiciary matters. I have asked each of us to prepare a short paragraph on upcoming events in our areas of responsibility. These are set out for you below. Some of the paragraphs will simply bring you up to date on projects and insure us that we can proceed accordingly. Other areas, such as direct election, may require more discussion and further decisions.

Family Farm Antitrust Act

We should have another day of hearings in July and invite representatives from the major farm organizations and perhaps a couple of representatives from big business to testify. We have been in contact with the USDA Legislative Liaison; they are currently studying our bill, so we may also want them to testify. Let us also consider a day of hearings in Indiana. We are actively seeking new cosponsors, and will send out the "Dear Colleague" you suggested early next week. A number of area law firms have contacted us in the last couple of days, so apparently the opposition is getting riled up. We will need to assign a staffer to work with Mike by mid-July to pick up on the bill when he leaves the staff.

Patent Bill

There are now 27 Senators on S. 414, the patent bill, and over half of the Judiciary Committee Senators are supporting the bill. No Senator has announced opposition to S. 414, although foes of contractors retaining patent rights, such as Senator Nelson could try to defeat or amend the bill somewhere down the line. Potential problems could also arise if the Justice Department Antitrust Division challenges the bill, but this now appears unlikely.

Representative Kastenmeier's Subcommittee in the House Judiciary Committee is expected to hold hearings to the companion bill, H.R. 2414, in June. The problem in the House (where a lot of interest has been expressed to us) is that Representative Rodino, who introduced the bill, is not trying to promote it and many Congressmen do not even know that a House bill exists. We have been trying to direct all of our supporters to their Congressmen to rectify this situation.

Funding for the Patent and Trademark Office

You wrote a letter to Senator Hollings (which was reprinted in full in the BNA Patent and Trademark Journal) outlining the problems that have arisen from a continuous underfunding of the Patent and Trademark Office and the resulting stifling of innovation. Senator Hollings' Appropriations Committee staff have indicated to Patsy that they agree with the need to increase the funding at least \$4 to \$5 million, but could not go for the \$14 million recommended by you unless Senator Hollings gave them a directive to do so. I believe that if you would talk directly with Senator Hollings on this issue there is a good chance that Hollings would agree on the need for the full \$14 million. The House Appropriations Subcommittee considering the Commerce Department budget (which includes the Patent Office) has indicated that it will follow Senator Hollings' lead on this issue. Both of these issues are very good business issues for you and are very complimentary to each other.

Bottle Bill

We have scheduled the first day of hearings for June 4. It will be a pro day with favorable witnesses such as bottlers (one from Indiana) and sympathetic economists. We have sent a mailing to all Indiana bottlers informing them of the hearings. We should probably plan at least one more day before trying to move the bill. Although we currently have more co-sponsors than you can shake a bottle at we should not underestimate the opposition from within Kennedy and Metzenbaum's staffs. As soon as we had the date arranged, and before any announcement by you, we had phone calls from the Consumers Union, FTC and Zuckerman about the hearings.

Stanford Daily

We have had three days on this and are scheduled for two more in June. We have mailed out copies of S. 855, which you introduced, and have asked for comments. We should be getting them back shortly. After finishing hearings we should move to a markup and I think you should attempt to amend 855 to cover lawyers-doctor information. Even if we fail, the attempt will be worthwhile and should not derail enactment of the bill. We can expect opposition from N.D.A.A. and other police groups.

Balanced Budget

We are planning our second day of hearings for May 23 with Blumenthal, McClure, DeConcini, and Levin (opposed). We will probably have to have one or two more days for Senators and an untold number if you want to accept House members. After disposing of the Congress we will look toward public witnesses such as the NTU, AFL-CIO, Law Professors, etc. For now it seems we should continue to do exactly what we are doing. At some point down the road we will have to bring it to a vote in Subcommittee, and it most likely will be passed on to the full Committee. It would seem that timing would be important in scheduling this vote.

S.10

S. 10 is now before the Subcommittee awaiting markup. We are negotiating with Hatch's staff about amendments using the Ski Patrol bill as our trade-off in bargaining. We are also trying to hold H.R. 10 at the desk for placement on the calendar as insurance should we run into serious problems with S. 10. However, Hatch's staff has indicated that Hatch would have to "rethink" his support for the legislation if we invoke rule 14 to place H.R. 10 on the calendar because of his strong belief in the integrity of the Committee Process. When questioned about whether that meant withdrawal of support, Hatch's staff was vague. The Committee is now split 3-2 without Hatch on final passage (Heflin is still an unknown and we are negotiating with them about their concerns). We probably cannot get Thurmond's agreement to poll the bill out. An important factor to be considered in the holding of a Subcommittee meeting therefore is a number of pending amendments such as abortion, busing and balancing the budget which someone might choose to put before the Subcommittee. Time is important because the bill will be filibustered on the floor and we will need some time to convince Byrd it ought to be brought up despite this. The ABA, ACLU, religious networks, National Association for Retarded Citizens and about 35 other groups have been actively working on this bill for the last several months. Shep Tate has been working on Heflin along with Ralph Knowles of the ACLU. They are prepared to continue to give their all.

Federal Tort Claims Act

The Federal Tort Claims Act is a legislative effort designed to deal with the federal employees' liability in the case of constitutional torts. The Administration's bill is designed to do away with the individual liability of federal employees and create a government liability. This is a "priority" bill of the Administration. No hearing dates have been set for the bill either in the House or Senate. This bill must also be considered with the FBI charter and the interrelationship of civil liability of FBI agents for charter violations.

Antitrust Amendments

The Antitrust Equal Enforcement Amendment is an amendment to S. 390 which deals with the issue of contribution in price fixing cases. The amendment would permit contribution in price fixing cases thus codifying the Eighth Circuit case, Professional Beauty Supply Inc. et al v. La Maur. Hearings will be held in the Antitrust Subcommittee on the 7th and 8th of June to address this issue. A vote is scheduled in the full Committee on the amendment, no later than June 18, 1979, at which time the bill will be appended to S. 390, which is being held at the desk, awaiting the contribution amendment. They then will be considered together on the floor.

Judicial Discipline

Our Subcommittee has referral only on Senator Nunn's Judicial Tenure bill. Our judicial discipline proposal and Kennedy's were referred solely to DeConcini's Subcommittee on Judicial Improvements. However, by agreement with DeConcini we are having joint hearings on all proposals; the first was on May 8. It dealt, first, with the need for discipline, as seen by several journalists; not much of a record was made. Secondly, judges from the Judicial Conference reported on the Conference's work on the issue. A draft proposal will probably not be approved by the Conference until its September meeting. The Conference approach falls somewhere between the Bayh and Kennedy proposals; the Conference now openly disapproves the Nunn bill. The main objection to our bill voiced by the several judges was our provision for review in the Supreme Court instead of the Judicial Conference. Their general approach to discipline is to allow for as much flexibility and informality in procedures as possible. The next joint hearing is scheduled for June 25, to which we are trying to bring several leading constitutional scholars as witnesses, both to attack the Nunn bill, and to discuss the relative merits of the other proposals. I think there is a good chance that acceptable legislation which can pass the Senate will come out of these proceedings. The House, however, is doing nothing thus far.

Direct Election

The issue with direct election is whether you decide to go forward or not. If the decision is to proceed, I believe it is imperative that there be floor action very soon, since (1) the prospects for passage can only deteriorate as time passes; and (2) delay would muddy your campaign schedule. In particular, the minority issues will hurt us more and more, as recognition of opposition spreads through the press and by personal contacts. Our vote count is so close that only a couple of decisions influenced by the minority views, especially of the Jewish community, can kill us.

The attached estimate on Senator votes is our best present assessment.

The principia pro and con arguments for going ahead are as follows:

PRO

1. things are scheduled to move ahead;
2. it might be difficult to explain why you have decided to pass up an opportunity to move;
3. the chief working interest groups -- i.e., the ABA and League might take it hard; and
4. we have a pretty good shot at passage.

CON

1. it will take your time which could be spent campaigning;
2. the amendment might become a somewhat controversial campaign issue in Indiana -- Bayh still trying to centralize the government and taking more power away from the states; tinkering with the constitution;
3. the Indiana legislature would probably turn down ratification (Bowen's against direct election), but chances are slim that direct election will pass the House before the state legislature has a chance to vote; and,
4. chances of passage might be improved following the presidential election, as they usually are.

Juvenile Justice Act Reauthorization Hearing & Administrator's Nomination Hearing

Within the next three to six months the President will nominate a person to replace John Rector at the Juvenile Justice Office. You will need to chair one day of hearings, about 1 hour in length at that time.

Do you think this is reasonable? We recommend you do it.

Next year the Juvenile Justice Act is up for reauthorization by September 30, 1981. We will need two days of hearings either this fall (Oct-Nov) or next spring (March-April). After the hearings we will have ready a Juvenile Justice Act reauthorization bill for you to introduce. Then we will work on reporting it from the Subcommittee, the full Committee, floor action and a probable House-Senate Conference prior to September 30, 1981.

Do you want hearings this fall or next spring? We recommend this fall if your schedule permits. Next spring you will be in the middle of Indiana action.

Fair Housing

The Fair Housing Act Amendments of 1979, S. 506, have been the subject of three days of testimony so far this year in the Subcommittee. We have planned two more days, May 24 and June 12, 1979, which should complete the series. The general consensus among supporters of the bill is that we should move as quickly as possible to report the bill; since delay may involve us in a situation similar to that the EEOC amendments were in 1972. I believe that we should try to schedule a Subcommittee markup in the last week of June just before the July 4th recess. We should then ask the Committee to place S. 506 on the agenda so that it would come up before the long August recess.

Obviously, I feel that we have a very good chance of getting the bill out of Subcommittee, an unusual feeling in regard to a civil rights bill. Metzenbaum, DeConcini and Heflin have told lobbyists that they will support the bill which, with you, puts us over the top. In addition, we have a chance with Hatch and Simpson, but no chance with Thurmond. Kennedy's staff has been very cooperative and supportive. The White House, on the other hand, seems to blow hot and cold on the bill.

At the 24th hearing, Mathias has said he will chair part of it but, at present, it is not clear how much time he will spend there. I hope you can chair the closing day of June 12 and, of course, chair the Subcommittee markup in the last week of June. Don Edwards has asked that you and he have a meeting (he will come over here if you prefer) with all the lobbyists and others helping on S. 506. Edwards feels the lobbyists need to know what the House and Senate sponsors' plans are, but moreover, it is psychologically important, especially in light of the lukewarm White House support for a show of genuine interest in the bill by the chief Congressional sponsors. To sum up, the time I believe you need to spend on S. 506 during May and June includes (a) part of a hearing morning (an hour or two) on May 24, (b) an hour in the next two weeks in a lobbyists' meeting, (c) a half day of hearing on June 12, and a half day of Subcommittee markup.

S. 721 Civil Rights Commission Authorization Bill

As you know, the Committee reported S. 721 by unanimous consent on May 15. I am trying to work out the same procedure with Byrd's staff (Abby Reed) for us to use on the floor. Since the Committee action indicates this is a real possibility, Abby has said she will try to schedule it before the June recess -- this means fifteen minutes at the most of your time if the bill comes up.

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