

January 21, 1980

MEMO TO: Senator
FROM: Subcommittee Staff
RE: Subcommittee Agenda
COPIES: Tom, Eve, David B., Press, Bob, Ann M., Leg (2), Indiana Department,
and all Subcommittee staff

Set out below is an update of Subcommittee legislation and its status as of today. Currently, there are five Subcommittee bills which are waiting floor action, four at full Committee and six in the Subcommittee. In addition, we will have to conduct approximately eight hearings to process legislation at both the full Committee and Subcommittee. Mary and Ben have prepared separate memos on possible abortion and busing strategies. We will have to meet with you on these topics individually to decide what, if anything, you wish to do to head off possible trouble down the road.

A discussion of the legislation follows:

BOTTLING BILL

The report on the bottling bill is ready and has been circulated to other Committee members. Metzenbaum's people have assured us that they wish to file their dissenting views when the session begins. Therefore, there is nothing standing in the way of floor consideration. However, the best tactic is to amend another bill on the floor because of problems Rodino is creating in the House. The best guess to date is that Rodino will not let the bill out of his Committee any time soon. If you amend another bill with S. 598, the only thing the House has to do is to vote down a motion to strike on the floor. We have been looking at the calendar for possible vehicles which would be appropriate for amendment with S. 598. Two possibilities are a railroad dereg bill which has been reported out of Commerce and the FTC Authorization bill. We will have to examine the problems and possibilities surrounding these in some more depth in the coming days.

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We must anticipate a filibuster from Morgan since we cannot pin him down to anything and his staff has been unwilling to talk time agreement with us. That being the case it is probably best to activate the interest groups and send out a Dear Colleague to revive interest in the bill. We will be trying to get a cloture count in the coming days. You should know that this may require a considerable investment of your time on the floor in light of the filibuster threat and the requirement of gaining cloture.

BALANCED BUDGET AMENDMENT

As you know, the balanced budget amendment is currently pending in the full Committee. Kennedy will apparently abide by his agreement to have a full Committee vote by the 15th of March. Kennedy's staff people are obviously anxious to have you, rather than he, lead the fight in the Committee to defeat the amendment. The votes in the Committee are very close with the difference between success and failure revolving around one or two members. It is probably best for you as well as for Kennedy and the leadership to attempt to defeat the amendment in the Committee and thus avoid a more high profile floor fight closer to the summer. It is possible that your balanced budget legislation, discussed below, can serve as a Judiciary Committee alternative to a balanced budget amendment. If you believe that you would want this to become the Bayh alternative to an amendment we will begin attempting to round up the requisite Judiciary members.

BAYH BUDGET ACT AMENDMENT

As you know, you will be testifying before Muskie's Budget Committee on January 25 on your Tax and Spending Limitation Act. Apparently, Muskie has agreed to two days of hearings on legislative alternatives to balanced budget amendments. As of this time, however, his staff does not believe that he would be willing to do anything else as a way of forestalling a possible constitutional amendment. We will prepare a Dear Colleague to be sent out at the beginning of the session to garner some cosponsors for your legislation. Your statement in front of Muskie's Committee should probably also emphasize the benefits of your legislation and its workability over the constitutional amendment route.

CONSTITUTIONAL CONVENTION PROCEDURES ACT

You have had one day of hearings and we would anticipate, depending upon the Judiciary Committee's schedule, having another day of hearings sometime in late February or early March. Hatch's staff has called and inquired as the feasibility of Hatch chairing a field hearing in Utah on this subject. We had anticipated only two days of hearings on this but would recommend we stay flexible on the off-chance we are able to defeat the budget amendment in Committee. It is unclear at this time how hard Hatch intends to push Subcommittee and full Committee consideration of this bill. However, you will recall that there was some discussion at the criminal code markup of this being part of a deal with Kennedy in terms of allowing the code to be voted on. If a Subcommittee markup is to be held, you will have to be prepared to offer several amendments to Hatch's legislation.

STANFORD DAILY

We would hope to be able to move this bill through the Subcommittee in the near future. It appears from discussions with both Senators and staff that the votes are there to move some type of bill out of the Subcommittee but it is not clear yet in which form: protection for the press only, for those in confidential relationships, or for all third parties. As you recall, the bill you introduced was divided into separate titles so that voting on these different possibilities could be easily accomplished. Although an all third parties bill is clearly your preference, it is no doubt best for us to attempt to vote anything out of Subcommittee and then attempt to reestablish what we have lost in the full Committee. We will set a markup date for consideration of this legislation in the very near future and attempt to get Subcommittee approval before holding a day of hearings at Committee level if necessary. The farther down the road we can proceed before Paul Perito and the D.A.s catch up the better.

FTC AUTHORIZATION

The assault on the FTC is likely to come up on the floor within the next several weeks. Due to your proposed amendment in terms of the mobile home industry, this legislation may take more of your time and attention than it would normally. A key vote will be on one-House legislative veto. As many as 17 amendments may be offered including an amendment which would prevent the FTC from pursuing efforts to lower prices and promote competition in health care, an amendment that would exempt farm coops from jurisdiction of the FTC, one which would terminate the FTC's ability to investigate insurance companies, one to prohibit them from issuing rules in used car areas or for making rules in funeral home situations. As you know, you have an amendment concerning the mobile home industry which would remove the FTC's jurisdiction to prescribe trade regulation rules for warranty performance by mobile home manufacturers. The industry has already been heavily regulated by HUD in the quality of construction of mobile homes and is also subject to the Magnuson-Moss warranty act. The proposed FTC rule would give the agency, as well as HUD the power to assess penalties for noncompliance with regulations. The estimated additional cost of each mobile home necessitated by inspection and repair requirements makes it of dubious overall benefit to the consumer especially in light of already existing HUD jurisdiction.

REGULATORY REFORM

As you recall, Senator Culver's bill was voted out of the Administrative Practice Subcommittee shortly before the recess by a vote of 5-0 with you not participating. It is apparent, however, that the supposed unanimity of the Subcommittee vote may begin to unravel at the full Committee. Opposition and bargaining should become intense in the near future. The omnibus approach may come apart with the pressure.

The full Committee timetable on this legislation is not established at this time. You may want to consider the advisability of introducing an organized Committee oversight proposal being developed in the House by Gillis Long. The aim is to provide an effective means of Congressional control over the regulatory agencies.

POLYGRAPH IN EMPLOYMENT

This remains an issue with a great deal of press and television appeal. The bill is displeasing to retailers, but big business organizations such as the Roundtable take it very seriously. You may want to take another look at it before we put it away for the remainder of this Congress.

JUVENILE JUSTICE AND RUNAWAY YOUTH ACT REAUTHORIZATION

The Juvenile Justice/Runaway Youth Act expires on September 30, 1980. A bill to reauthorize the Act should be ready for introduction by the second week in February. We will need approximately two days of hearings in late February or early March. Also, a Subcommittee markup in late March will be necessary to report to the full Committee which should be ready to act sometime in April. Rather than a major overhaul of the Juvenile Justice Act it is probably best to limit your activities to a somewhat simple four-year extension with a fourth box for the Juvenile Justice office to retain its status quo in OJARS. Since many groups have numerous changes they desire in the Act we should probably attempt to avoid a major overhaul by placing the burden on them to convince you that changes are necessary. The states have not been able to cope with all the changes made in 1977 and your goal should be for compliance with the Act in its present form so as not to confuse the states any further than what they have to do to comply with the act. The major goal should be to attempt to keep the basic structure of the JJ Act intact.

MARTIN LUTHER KING AND FREDERICK DOUGLASS

As you know, your Martin Luther King birthday legislation was reported by the full Committee and your Frederick Douglass bust legislation was reported from the Senate Rules Committee on December 20 along with Congressman Bingham's legislation for a Martin Luther King bust. The House has been attempting to bring the King holiday bill to a vote but has twice failed to get the necessary support. The leadership has been forced therefore to withdraw the bill from floor consideration in both of these attempts leaving the final outcome of this in some doubt. In any event, we should probably not push the holiday legislation in the Senate, especially in light of the holds already existing on the bill, until the House is able to decide if they can move their bill. Your Douglass bust legislation is a different story. If we act on any bill now, this appears to be the most likely candidate. Thurmond, apparently, would not oppose it but, he would also probably like to substitute the King bust legislation for obvious reasons of heading off a King holiday bill.

GUN CONTROL

Both Kennedy and McClure have introduced firearms proposals which will be held at the full Committee since Biden's Subcommittee on Criminal Justice wanted to avoid jurisdiction, if possible. It seems apparent that you cannot cosponsor the Kennedy bill since it differs in several major respects to firearms legislation which you supported in the past. You may want to, however, take a careful look at possibly supporting, although not cosponsoring, the McClure bill when it is considered at the full Committee. It seems likely that this legislation would be reported anyway since ten members of the Committee are currently cosponsors. We will do a more indepth memo for you on both the McClure bill and possible NRA opportunities within several days. You should also know that the NRA has requested a meeting with you to discuss this and other issues in light of 1980.

SPEEDY TRIAL ACT

Title II of the Speedy Trial Act involving the pretrial service agencies expires this year. Although initially the Subcommittee had jurisdiction over this area last year this legislation was held at the full Committee and Biden chaired the hearings with input from the Subcommittee staff. Since this topic will take two or three days of hearings it would probably be best for the bill to again be held at full Committee with Biden chairing the hearings and processing the legislation.

CIVIL RIGHTS IMPROVEMENT ACT

As you know, this is Senator Mathias' bill which he introduced last year and on which the Subcommittee held four days of hearings with Metzenbaum chairing. This legislation provides that states, municipalities and agencies of local units of government may be sued directly under Section 1983 of the Civil Rights Act. Mathias again would like to have some more hearings on this topic and Metzenbaum has tentatively agreed to chair the hearings if you concur. However, because you, Culver and Kennedy will all be involved in campaign activities, Metzenbaum may not be able to chair these hearings and Mathias has requested that he be allowed to chair if the Subcommittee minority will go along with this idea. As you know, it is highly unusual for the minority to chair hearings especially if they are not a member of the Subcommittee. You will also have to consider this request in light of Hatch's request for chairing hearings in Utah on the constitutional convention issue.

SIX-YEAR PRESIDENTIAL TERM

Senator Thurmond has introduced a constitutional amendment for the President to be elected to one six-year term. Both he and Senator Simpson have written to you requesting a hearing on this topic. It may be that you would want to agree to one day of hearings on this issue if Metzenbaum or Heflin can chair. The Subcommittee has not had a hearing on this topic for nine years and there is little chance that the legislation would move. You should be aware that Quayle is a supporter of this proposal and it is a good bet that he would request to testify if hearings were held.

FAIR HOUSING

As you recall, the Fair Housing Amendments Act was a subject of six days of hearings last session. In exchange for an additional day of hearings for the minority an agreement was reached on a date for markup but for a number of reasons we were forced to postpone that meeting date. The agreement, however, should most likely still be in effect and a markup date on this legislation should be forthcoming whenever you decide it is timely to set one. Currently, the votes on this legislation appear to be three to three with DeConcini still maintaining a somewhat undecided posture. It may be that DeConcini wants to strike the administrative procedures section and substitute in its place an expedited hearing before a U.S. magistrate. No one, however, has as yet seen any DeConcini language. In any event, it appears that the House Judiciary Committee has reached an agreement on compromise language and is expected to report their bill in the first week of February. The civil rights groups have agreed on a strategy which would allow us to wait for House action before we proceed and by so doing would either create additional constituent pressure on DeConcini or neutralize his swing vote in the Subcommittee by having a House bill on the Senate calendar.

DEPARTMENT OF JUSTICE AUTHORIZATION

The full Committee is planning to hold its annual authorization hearings on the Department. As usual, you will probably be requested to chair the Civil Rights Division and community relations service portion of the hearings. No dates have yet been set, however, it is possible to schedule both of these sections in one day and therefore to minimize the amount of time you will have to spend on these projects.

CIVIL RIGHTS COMMISSION

One day of hearings will have to be held on the Commission's FY 1980 budget authorization which needs to be reported by May 15. As you recall, last year you authorized \$14 million which now is approximately \$2 million above their FY 80 and 81 request.

CONTRIBUTION AMENDMENT

The Antitrust Equal Enforcement Act has been reported out of the full Committee. The report has been filed, after much delay by Metzenbaum's people, and it is on the calendar waiting for action. Some of the supporters of this legislation have indicated concern with its being brought up at this time because of the possibility of an Illinois Brick amendment. We will be meeting with them to discuss their current feelings on this. We will also have to meet with Metzenbaum's staff to discuss a possible time agreement that may solve the Illinois Brick problem.

CRIMINAL CODE

The Code will be brought to the floor for consideration probably sometime in early February. Most likely the death penalty bill will have to be voted on before the Code can be brought up for consideration. Your solicitation amendment has been the subject of some attack both by the Justice Department and by Senator Simpson who is working to greatly expand its coverage. It also looks like Simpson may offer an amendment making exposure of CIA agents a criminal offense. As you recall, he had a significant interest in this at the full Committee markup. Senator Mathias has been chairing some criminal justice hearings on the dangers of marijuana and he may want to offer his marijuana amendment which, as you recall, he offered at full Committee markup. You will have to decide what posture you want to take in terms of defending your marijuana amendment in the current code. As you know, this version of the Code also incorporates your black powder amendment which should be helpful with the Muzzleloaders at Friendship.

NATIONAL GUARD TORT CLAIMS ACT

This legislation incorporates the National Guard under the terms of the Federal Tort Claims Act, thus giving them the same immunity from personal suits as other government employees have. We have scheduled hearings on this bill for February 27, and are in the process of putting them together. After a day of hearings, we will schedule a markup in the Subcommittee and then move through the Committee and onto the floor. At this point it appears to be fairly noncontroversial and perhaps can be moved with a minimum of flak.

GANNETT LEGISLATION

Early in the second session you will be able to introduce your open courtroom bill which has been drafted in response to the Supreme Court's Gannett decision of last term. As you know, you have already approved the outline of this bill and we will have a full statement prepared for you shortly. This legislation should be popular with lawyers, the press and general civil liberties advocates. The court's opinion has been subject to much controversy and has been widely criticized in the press. It is likely that the court will attempt to drastically modify its Gannett decision this term and the introduction of your bill may be viewed by observers as a helpful step in this process.

ANTIDUMPING LEGISLATION

We will shortly have a memo to you on this Mathias legislation which would prohibit foreign governments from dumping their products on the American market. Cosponsorship of this legislation may be appropriate and would be helpful with small business and particularly Zenith television concerns which you have been involved with in the past. Chris Aldridge agrees that this would be a good position for you.

UNIVERSITY PATENT BILL

This legislation has been reported out of the Committee and a report has been filed. It is ready for floor consideration and should pass the Senate.

PATENT REEXAMINATION

You have already held hearings on this and we should be ready for Committee consideration in early February. Good prospects for favorable action.

INDEPENDENT PATENT OFFICE

You are scheduled to chair joint hearings on this on January 24. We will need an additional day most likely in March.

FAMILY FARM ANTITRUST ACT

Hearings on this have been completed. We are checking as to support in the Antitrust Subcommittee. You may want to try a floor amendment on this one.

In addition to the above, of course, we will have to keep an eye on other potential trouble spots and other opportunities such as Illinois Brick, the FBI Charter and the Tort Claims Act. These, as well as other issues, such as school prayer, may heat up as the session continues.