

NLWJC - KAGAN

EMAILS RECEIVED

ARMS - BOX 001 - FOLDER -003

[02/27/1996 - 03/18/1996]

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Ashley Oliver to Elena Kagan. Subject: choice coalition meeting [partial] (4 pages)	02/27/1996	P6/b(6)

COLLECTION:

Clinton Presidential Records
Automated Records Management System [Email]
OPD ([Kagan])
OA/Box Number: 250000

FOLDER TITLE:

[02/27/1996 - 03/18/1996]

2009-1006-F

wr14

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Ashley Oliver (OLIVER_A) (WHO)

CREATION DATE/TIME:27-FEB-1996 11:36:13.15

SUBJECT: choice coalition meeting

TO: Jack M. Quinn (QUINN_J) (WHO)
 READ:NOT READ

TO: Elena Kagan (KAGAN_E) (WHO)
 READ:27-FEB-1996 11:44:48.20

TO: Nancy-Ann E. Min (MIN_N) (OMB)
 READ:27-FEB-1996 17:14:54.76

TO: James Castello (CASTELLO_J) (WHO)
 READ:27-FEB-1996 12:31:10.18

TO: Martha Foley (FOLEY_M) (WHO)
 READ:27-FEB-1996 13:36:25.56

TO: Jeremy D. Benami (BENAMI_J) (WHO)
 READ:27-FEB-1996 13:18:56.20

TO: Deborah L. Fine (FINE_D) (OPD)
 READ:27-FEB-1996 11:37:11.20

TO: Carol H. Rasco (RASCO_C) (WHO)
 READ:27-FEB-1996 12:14:28.16

TO: Alexis M. Herman (HERMAN_A) (WHO)
 READ:NOT READ

TO: Holly B. Nichols (NICHOLS_H) (WHO)
 READ:27-FEB-1996 12:18:17.51

TO: Jennifer L. Klein (KLEIN_J) (OPD)
 READ:27-FEB-1996 12:44:22.53

CC: Betsy Myers (MYERS_B) (WHO)
 READ:27-FEB-1996 14:12:06.16

TEXT:

The 3:30 meeting today with the Choice coalition core group has been changed to room 472. We still want to meet in Melanne's office in OEOB for a quick meeting at 3:15. Attached is the list of participants for the meeting. The agenda is a follows:

Betsy Welcome and Intros
 Nancy Ann Min Discussion of anti

□

-choice legislation contained in
 appropriations bills

Jack Quinn Presentation of the Administration's position on
 HR 1833

Open Q & A

PRINTER FONT 12_POINT_COURIER

Participants for Choice Coalition Meeting

Withdrawal/Redaction Marker Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Ashley Oliver to Elena Kagan. Subject: choice coalition meeting [partial] (4 pages)	02/27/1996	P6/b(6)

COLLECTION:

Clinton Presidential Records
Automated Records Management System [Email]
OPD ([Kagan])
OA/Box Number: 250000

FOLDER TITLE:

[02/27/1996 - 03/18/1996]

2009-1006-F

wr14

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

February 27, 3:30 pm

OEOB Room 472

White House:

Jack Quinn

Elaina Kagen

James Castello

Melanne Verveer

Alexis Herman

Nancy Ann Min

Betsy Myers

Jen Klein

Groups:

Julia Scott, National Black Women's Health Project

Jeanie Rosoff, Alan Gutmacher Institute

Nancy Zirken, American Association of University Women

Harriet Trudell, Feminist Majority

Kathryn Kolbert, Center for Reproductive Law
and Policy

Vicki Saporta, National Abortion Federation

Patricia Reuss, NOW Legal Defense Fund

Marilyn Keefe, National Family Planning and Reproductive Health
Association

Margaret Conway and Diana Zuckerman, Planned Parenthood

Liz Symonds, Reproductive Freedom Project/ACLU

Jo Blum and Kate Michelman, NARAL

Marcia Greenberger, National Womens Law Center

Judy Lichtman, Women's Legal Defense Fund

Frances Kissling, Catholics for a Free Choice

Patricia Ireland or Lisa Bennett

□

-Haigney, NOW

Kate Michelman, Executive Director, NARAL

Jeff Kleuter, Political Director, Emily's List

□

Participants for Choice/HR 1833 Meeting

3:30 pm, Room 472

February 27, 1996

1. VOTERS FOR CHOICE

Julie Burton, Executive Director

P6/(b)(6)

2. NATIONAL BLACK WOMEN'S HEALTH PROJECT

Julia Scott, Executive

P6/(b)(6)

[001]

P6/(b)(6)

3. NARAL
Jo Blum, Political Director

P6/(b)(6)

4. NARAL
Kate Michelman, Executive Director

P6/(b)(6)

5. THE CENTER FOR REPRODUCTIVE LAW AND POLICY
Kathryn Kolbert, Vice President

P6/(b)(6)

6. NOW/LDF
Patricia Reuss

P6/(b)(6)

7. CATHOLICS FOR A FREE CHOICE
Frances Kissling, Executive Director

P6/(b)(6)

8. NOW
Patricia Ireland

P6/(b)(6)

(may need special clearance)

9. National Abortion Federation
Vicki Saporta, Executive Director

P6/(b)(6)

P6/(b)(6)

- 10. The Feminist Majority
Harriett Trudell

P6/(b)(6)

- 11. Women's Legal Defense Fund
Judy Lichtman, President

P6/(b)(6)

- 12. National Women's Law Center
Marcia Greenberger, Co

□
-President

P6/(b)(6)

- 13. Planned Parenthood
Margaret Conway

P6/(b)(6)

- 14. Planned Parenthood
Diana Zuckerman, Policy Director

P6/(b)(6)

- 15. Alan Gutmacher Institute
Susan Cohen

P6/(b)(6)

- 16. Emily's List
Jeff Kleuter, Research Director

P6/(b)(6)

P6/(b)(6)

- 17. National Family Planning and Reproductive Health
Marilyn Keefe

P6/(b)(6)

- 18. ACLU
Liz Symonds

P6/(b)(6)

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Holly Carver (CARVER_H) (WHO)

CREATION DATE/TIME: 27-FEB-1996 12:13:25.34

SUBJECT: HR 1833 Calls

TO: Jeremy D. Benami (BENAMI_J) (WHO)
READ: 27-FEB-1996 13:19:09.14

TO: Deborah L. Fine (FINE_D) (OPD)
READ: 27-FEB-1996 12:13:35.36

TO: Elena Kagan (KAGAN_E) (WHO)
READ: 27-FEB-1996 12:55:00.91

TO: John P. Hart (HART_J) (WHO)
READ: 27-FEB-1996 13:58:11.23

TO: Betsy Myers (MYERS_B) (WHO)
READ: 27-FEB-1996 14:12:12.70

TO: Lisa Ross (ROSS_LI) (WHO)
READ: NOT READ

TO: Mary Ellen Glynn (GLYNN_M) (WHO)
READ: 27-FEB-1996 12:15:29.76

TO: Patricia A. McHugh (MCHUGH_P) (WHO)
READ: 28-FEB-1996 10:05:17.85

TO: Adam R. Kreisel (KREISEL_A) (WHO)
READ: 27-FEB-1996 12:15:44.78

TO: Brenda Anders (ANDERS_B) (WHO)
READ: 27-FEB-1996 12:23:31.77

TO: Peter Jacoby (JACOBY_P) (WHO)
READ: 27-FEB-1996 13:50:13.81

TO: Barbara D. Woolley (WOOLLEY_B) (WHO)
READ: 27-FEB-1996 12:46:30.94

TO: Floydetta McAfee (MCAFEE_F) (WHO)
READ: 27-FEB-1996 12:43:36.22

TO: Marilyn Yager (YAGER_M) (WHO)
READ: 27-FEB-1996 12:27:12.74

TO: Jennifer L. Klein (KLEIN_J) (OPD)
READ: 27-FEB-1996 14:05:17.49

TO: Nicole R. Rabner (RABNER_N) (WHO)
READ: 27-FEB-1996 13:02:53.66

TEXT:

POTUS has signed off. I understand the letter will go to the Times tonight (Mary Ellen?). CALLS SHOULD BEGIN TODAY AT 2:00 PM. Please feel free to call me at 6-7936 if you have questions. Thanks

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Holly Carver (CARVER_H) (WHO)

CREATION DATE/TIME: 27-FEB-1996 12:41:49.21

SUBJECT: Not for public knowledge

TO: Deborah L. Fine (FINE_D) (OPD)
READ: 27-FEB-1996 12:53:45.36

TO: Jeremy D. Benami (BENAMI_J) (WHO)
READ: 27-FEB-1996 13:33:25.04

TO: Betsy Myers (MYERS_B) (WHO)
READ: 27-FEB-1996 14:12:17.65

TO: Lisa Ross (ROSS_LI) (WHO)
READ: 4-MAR-1996 09:24:54.47

TO: Barbara D. Woolley (WOOLLEY_B) (WHO)
READ: 27-FEB-1996 12:53:57.21

TO: Marilyn Yager (YAGER_M) (WHO)
READ: 27-FEB-1996 12:53:55.68

TO: Floydetta McAfee (MCAFEE_F) (WHO)
READ: 27-FEB-1996 12:44:43.49

TO: John P. Hart (HART_J) (WHO)
READ: 27-FEB-1996 13:58:56.87

TO: Peter Jacoby (JACOBY_P) (WHO)
READ: 27-FEB-1996 13:50:47.71

TO: Lorraine McHugh (MCHUGH_L) (WHO)
READ: 27-FEB-1996 13:36:58.14

TO: Mary Ellen Glynn (GLYNN_M) (WHO)
READ: 27-FEB-1996 14:54:56.73

TO: Brenda Anders (ANDERS_B) (WHO)
READ: 27-FEB-1996 12:49:19.37

TO: Jennifer L. Klein (KLEIN_J) (OPD)
READ: 27-FEB-1996 14:07:34.49

TO: Nicole R. Rabner (RABNER_N) (WHO)
READ: 27-FEB-1996 13:45:24.36

TO: Elena Kagan (KAGAN_E) (WHO)
READ: 27-FEB-1996 12:55:43.91

TEXT:

The letter will not be sent to the hill until tomorrow. Having said that, you should use your best judgment about the people you call at 2 pm and those you hold off on until 4 pm (John?). Let the 2 pm calls know (and the people you have assigned to make calls) that the letter will not be sent until tomorrow and it will not be public knowledge until then. We should let them know that we wanted them to have a heads up in the spirit of consulting with those who are

most concerned about this matter.

Betsey-you should incorporate this into your briefing today but let them know it isn't public knowledge until tomorrow.

Let me know if you have any thoughts/comments. thanks

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Holly Carver (CARVER_H) (WHO)

CREATION DATE/TIME: 27-FEB-1996 13:37:26.85

SUBJECT: HR 1833 Calls

TO: Jeremy D. Benami (BENAMI_J) (WHO)
READ: 27-FEB-1996 13:38:52.14

TO: Deborah L. Fine (FINE_D) (OPD)
READ: 27-FEB-1996 13:54:15.71

TO: Floydetta McAfee (MCAFEE_F) (WHO)
READ: 27-FEB-1996 13:50:32.21

TO: Marilyn Yager (YAGER_M) (WHO)
READ: 27-FEB-1996 13:44:29.02

TO: Barbara D. Woolley (WOOLLEY_B) (WHO)
READ: 27-FEB-1996 13:40:10.65

TO: Elena Kagan (KAGAN_E) (WHO)
READ: 27-FEB-1996 13:37:55.81

TO: John P. Hart (HART_J) (WHO)
READ: 27-FEB-1996 13:59:47.85

TO: Betsy Myers (MYERS_B) (WHO)
READ: 27-FEB-1996 14:12:29.73

TO: Lisa Ross (ROSS_LI) (WHO)
READ: 4-MAR-1996 09:25:29.23

TO: Lorraine McHugh (MCHUGH_L) (WHO)
READ: 27-FEB-1996 13:38:14.14

TO: Mary Ellen Glynn (GLYNN_M) (WHO)
READ: 27-FEB-1996 14:25:17.94

TO: Brenda Anders (ANDERS_B) (WHO)
READ: 27-FEB-1996 13:38:46.25

TO: Peter Jacoby (JACOBY_P) (WHO)
READ: 27-FEB-1996 13:51:24.07

TO: Nicole R. Rabner (RABNER_N) (WHO)
READ: 27-FEB-1996 13:43:45.62

TO: Jennifer L. Klein (KLEIN_J) (OPD)
READ: 27-FEB-1996 14:08:38.01

TEXT:

I'm sorry to do this to you all but I think we need to hold off on the calls for now. I think a couple of conversations need to happen before we begin. I'll keep you posted. thanks

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Holly Carver (CARVER_H) (WHO)

CREATION DATE/TIME:27-FEB-1996 14:24:00.58

SUBJECT: HR 1833 - Make the calls now

TO: John P. Hart (HART_J) (WHO)
READ:27-FEB-1996 14:45:00.49

TO: Elena Kagan (KAGAN_E) (WHO)
READ:27-FEB-1996 17:53:18.48

TO: Jennifer L. Klein (KLEIN_J) (OPD)
READ:27-FEB-1996 14:33:25.47

TO: Deborah L. Fine (FINE_D) (OPD)
READ:27-FEB-1996 15:05:37.92

TO: Jeremy D. Benami (BENAMI_J) (WHO)
READ:27-FEB-1996 15:08:57.78

TO: Floydetta McAfee (MCAFEE_F) (WHO)
READ:27-FEB-1996 14:31:02.86

TO: Marilyn Yager (YAGER_M) (WHO)
READ:27-FEB-1996 14:30:41.16

TO: Barbara D. Woolley (WOOLLEY_B) (WHO)
READ:27-FEB-1996 15:29:56.81

TO: Nicole R. Rabner (RABNER_N) (WHO)
READ:27-FEB-1996 15:38:04.55

TO: Adam R. Kreisel (KREISEL_A) (WHO)
READ:27-FEB-1996 14:25:33.38

TO: Lorraine McHugh (MCHUGH_L) (WHO)
READ:27-FEB-1996 14:25:28.86

TO: Mary Ellen Glynn (GLYNN_M) (WHO)
READ:27-FEB-1996 14:28:47.08

TO: Brenda Anders (ANDERS_B) (WHO)
READ:27-FEB-1996 14:25:37.17

TO: Peter Jacoby (JACOBY_P) (WHO)
READ:27-FEB-1996 16:01:56.98

TEXT:

It is a deliberate strategy to make the calls now--if any of you would like to discuss please call me at 6-7936. thanks

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Holly Carver (CARVER_H) (WHO)

CREATION DATE/TIME:28-FEB-1996 10:14:32.72

SUBJECT: The Letter

TO: Betsy Myers (MYERS_B) (WHO)
READ:28-FEB-1996 10:26:37.26

TO: Lisa Ross (ROSS_LI) (WHO)
READ: 4-MAR-1996 09:26:58.59

TO: Deborah L. Fine (FINE_D) (OPD)
READ:28-FEB-1996 10:16:30.90

TO: Jeremy D. Benami (BENAMI_J) (WHO)
READ:28-FEB-1996 11:46:17.98

TO: John P. Hart (HART_J) (WHO)
READ:28-FEB-1996 11:02:53.99

TO: Jennifer L. Klein (KLEIN_J) (OPD)
READ:28-FEB-1996 10:20:07.69

TO: Elena Kagan (KAGAN_E) (WHO)
READ:28-FEB-1996 10:14:46.94

TO: Floydetta McAfee (MCAFEE_F) (WHO)
READ:28-FEB-1996 11:09:13.03

TO: Barbara D. Woolley (WOOLLEY_B) (WHO)
READ:28-FEB-1996 10:33:16.65

TO: Nicole R. Rabner (RABNER_N) (WHO)
READ:28-FEB-1996 10:20:05.92

TEXT:

You probably know this already but the letter has been delivered. Betsy, John Hart and Leg are distributing to most of the groups. Please let me know if you need a signed copy.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Ashley Oliver (OLIVER_A) (WHO)

CREATION DATE/TIME:28-FEB-1996 19:36:41.92

SUBJECT: results of calls

TO: Alexis M. Herman (HERMAN_A) (WHO)
READ:NOT READ

TO: Nancy-Ann E. Min (MIN_N) (OMB)
READ:28-FEB-1996 21:50:57.53

TO: Nicole R. Rabner (RABNER_N) (WHO)
READ:29-FEB-1996 10:56:49.72

TO: Jeremy D. Benami (BENAMI_J) (WHO)
READ:28-FEB-1996 19:37:07.22

TO: Jennifer L. Klein (KLEIN_J) (OPD)
READ:28-FEB-1996 20:17:58.50

TO: Deborah L. Fine (FINE_D) (OPD)
READ:29-FEB-1996 08:28:11.24

TO: Elena Kagan (KAGAN_E) (WHO)
READ:29-FEB-1996 11:32:35.03

CC: Betsy Myers (MYERS_B) (WHO)
READ:29-FEB-1996 11:40:21.83

CC: Holly Carver (CARVER_H) (WHO)
READ:29-FEB-1996 11:55:46.84

TEXT:

Judy and I talked to basically everyone at the meeting not otherwise on the call list after they received the letter. The reaction was the same as it was at the meeting. They generally were happy with Kate's quote in today's New York Times and indicated that while they will continue to be supportive of the Administration, that is not to give us leeway to underestimate their frustration. They feel that the letter undermined their efforts and unnecessarily exposes the Administration. They thanked us profusely for being brought in. They also requested 1) a Presidential meeting on choice generally, and 2) that the President meet with women who have had the procedure. Again, we would appreciate it if you could e-mail us with the specific results of your calls, and cc Holly (thanks to those of you that already have). Once Betsy tells us about her calls, we'll e-mail you with everything.

Thanks,

Judy and Ashley

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Charles S. Konigsberg (KONIGSBERG_C) (OMB)

CREATION DATE/TIME: 5-MAR-1996 22:56:52.15

SUBJECT: PRELIM. ITEM VETO ANALYSIS/DO NOT CIRCULATE

TO: Robert G. Damus (DAMUS_R) (OMB)
READ: 6-MAR-1996 08:11:20.87

TO: Charles E. Kieffer (KIEFFER_C) (OMB)
READ: 5-MAR-1996 22:58:14.99

TO: Lisa Kountoupes (KOUNTOUPES_L) (OMB)
READ: 6-MAR-1996 09:50:07.18

TO: Joseph Minarik (MINARIK_J) (OMB)
READ: 6-MAR-1996 07:52:59.88

TO: Barry B. Anderson (ANDERSON_B) (OMB)
READ: 6-MAR-1996 08:40:46.27

TO: James J. Jukes (JUKES_J) (OMB)
READ: 6-MAR-1996 09:58:18.58

TO: Jacob J. Lew (LEW_J) (OMB)
READ: 6-MAR-1996 08:30:31.72

TO: James C. Murr (MURR_J) (OMB)
READ: 6-MAR-1996 08:34:51.88

TO: Harry E. Moran (MORAN_H) (OMB)
READ: 6-MAR-1996 08:38:07.73

TO: Betty I. Bradshaw (BRADSHAW_B) (OMB)
READ: 6-MAR-1996 10:26:57.73

TO: Elena Kagan (KAGAN_E) (WHO)
READ: 6-MAR-1996 08:33:32.79

TO: Paul J. Weinstein, Jr (WEINSTEIN_P) (OPD)
READ: 6-MAR-1996 09:34:47.06

TO: FAX (9-622-9260,Clarissa Potter.(Tre (TLXA1MAIL_\F:9-622-9260\C:Clarissa Potter
READ:NOT READ

TO: FAX (9-514-0563,Mike Small/DOJ-OLC) (TLXA1MAIL_\F:9-514-0563\C:Mike Small/DOJ-
READ:NOT READ

TEXT:

PRINTER FONT 12_POINT_COURIER

FOLLOWING ARE MY PRELIMINARY COMMENTS ON THE LATEST HOUSE ITEM

VETO LANGUAGE; PLEASE GET BACK TO ME WITH

COMMENTS/CORRECTIONS/ADDITIONS BY WEDNESDAY NOON. THANKS.

395

□

-5069. PLEASE DO NOT CIRCULATE THIS DOCUMENT; IT HAS NOT
BEEN VETTED THROUGH OMB YET.

Preliminary comments on House Item Veto Offer
(dated March 4, 1996 -- 1:18pm):

PROVISIONS WHICH COULD RENDER ITEM VETO INEFFECTIVE:

1. Lockbox: The lockbox language, set forth in [brackets] as new section 1024, would require the President to: reduce the statutory discretionary spending caps to reflect rescissions of discretionary budget authority; and to eliminate from the PAYGO scorecard any positive balance that would otherwise have accrued from applying the item veto to new direct spending or tax benefits.

This is problematic, especially on the discretionary side, because the automatic lowering of spending caps, would make it difficult to accommodate necessary supplementals later in the year. Consequently, the lockbox's automatic cap reductions would undercut the President's ability to use the item veto effectively.

Suggested improvement in the lockbox mechanism: Provide that the rescinded or canceled amounts be placed in an "emergency reserve" to be available to offset emergency supplementals and other emergency legislation. Although such "emergency legislation" does not legally require offsets, the availability of these emergency reserves might facilitate supplementals and other emergency legislation when needed.

2. Time for transmittal of cancellation message: Earlier versions of item veto had given the President 10 days following enactment of spending/revenue bills to identify items for cancellation; the Administration had recommended 20 days as a more realistic time period. This offer, however, requires that special messages be transmitted "on the same calendar day as enactment of the law to which the cancellation applies." This is utterly unrealistic and unworkable. Appropriations legislation often has to be signed immediately upon presentment to the President in order to continue vital government functions; this would leave no time at all to identify wasteful spending and to prepare cancellation messages. Simply put, this provision guts the item veto.

[When this is corrected, it will be necessary to add conforming amendments to the BEA to clarify that OMB discretionary spending reports and PAY

□

-GO reports, required

under current law to be issued 5 days after enactment of legislation, need to be adjusted following a rescission of discretionary appropriations or suspension of new direct spending or targeted tax benefits.]

3. Effective Dates and Sunset: This Act would become effective upon enactment of a balanced budget (by 2002), and would sunset in FY 2002. Authority to eliminate wasteful spending and special interest tax provisions should be provided immediately -- without delay -- and should be permanent. In addition, in order to be most effective, the cancellation authority should be made applicable to unobligated balances from already enacted FY 1996 appropriations.

4. Nonseverability: The draft contains in [brackets] a nonseverability provision which would invalidate the entire item veto mechanism if any part of the mechanism -- cancellation of

targeted tax benefits, for example -- were to be found unconstitutional. The statute should be severable, so that -- for example -- cancellation of discretionary budget authority could continue, even if cancellation of direct spending or tax benefits is successfully challenged.

5. Definition of Targeted Tax Benefit: The draft language would define targeted tax benefit as "any revenue

□

-losing provision

which provides a federal income tax deduction, credit, exclusion or preference to 100 or fewer beneficiaries" with several exceptions; the definition also includes transition rules that provide special treatment to 10 or fewer taxpayers, with exceptions.

The Treasury Department notes that it will be difficult, if not impossible for anyone to determine the number of persons affected by any particular tax provision. This test requires too much precision and is too easy to avoid or manipulate in the drafting process and by taxpayers. It creates an incentive for tax benefit provisions to be drafted too broadly. In addition, it provides no time limit within which this "100 or fewer" standard must be met.

A definition of targeted tax benefit closer to the original Senate definition is preferable -- i.e., causing a revenue loss and "having the practical effect of providing more favorable tax treatment to a particular taxpayer or limited group of taxpayers when compared with other similarly situated taxpayers."

ADDITIONAL ISSUES:

o Identifying congressional districts: The draft would require that each cancellation message identify "the specific State and congressional district, if any, affected by the cancellation; and the total number and dollar value of all cancellations imposed during the current session of Congress on the State and congressional district..." This requirement is unduly burdensome and unnecessary: unduly burdensome for OMB which will already face the difficult task of carefully vetting each provision of spending and revenue bills immediately upon presentment; and unnecessary because the objective of the cancellation authority is to eliminate wasteful spending wherever it may occur, without regard to geographic distribution.

o Definition of "item of new direct spending": It's unclear what the phrase "relative to the most recent levels calculated pursuant to section 251 of the Balanced Budget and Emergency Deficit Control act of 1985" means. We recommend the following definition:

The term "direct spending" means--

(A) budget authority provided by law other than appropriation Acts;

(B) entitlement authority as defined in section 3(9) of the Congressional Budget and Impoundment Control Act 1974; and

(C) the food stamp program.

of

o Definition of "cancel": This draft is preferable to earlier drafts because the term "cancel" is substituted for the constitutionally problematic term "veto." However, the

definition of "cancel" -- particularly with respect to new direct spending and targeted tax benefits -- is too vague. We recommend the following:

The term "cancel" means--

(A) with respect to "new direct spending," withholding the authority to obligate the United States pertaining thereto, and suspension of legal entitlement to claim any benefits or payments deriving therefrom; and

(B) with respect to "targeted tax benefits," the suspension of legal entitlement to claim any Federal tax deduction, credit, exclusion, preference or other tax benefit deriving therefrom.

o Cancellation effective unless disapproved: The time line for congressional consideration of disapproval bills appears to provide the following: 30 session days for fast

□

-track

consideration of disapproval bills; if the disapproval bill is vetoed, an additional 5 session days for consideration of the veto message; then the cancellations become effective, within an additional 10 calendar days "unless...a disapproval bill is enacted into law." Since 5 session days is provided for review of a veto message, it's entirely unclear why the additional 10 calendar days is needed, in the case of a veto. If a disapproval bill has been vetoed, and not overridden during the 5

□

-day

override period, the cancellation should become immediately effective so as not to needlessly waste budgetary resources on an item which has been cancelled. (This anomaly is likely unintentional and appears to exist because of the peculiar way this section of the bill is constructed.)

o Disapproval bills: are required to be titled "A bill disapproval the recommendations submitted by the President on

....."

Use of the term "recommendations" is inaccurate; the special messages are more than mere recommendations. The term "cancellations" would be more appropriate.

□

Previous Administration comments which have been incorporated: (for EOP use only)

o Uses the word "cancel" with respect to direct spending and targeted tax benefits, instead of "veto" which we objected to on constitutional grounds.

o Inserts "new" before "direct spending" in order to clarify.

o The lock

□

-box mechanism, requiring automatic spending cap reductions, does not appear to apply to the outyears, as in earlier drafts.

o No longer gives JCT authority to determine targeted tax benefits (which Justice objected to on Chadha grounds).

o Latest draft has dropped the Senate provision prohibiting the inclusion of non

□

-emergency items in an emergency bill.

o Deletes the 3

□

-judge court judicial review mechanism but retains the requirement for expedited consideration.

□

Time

□

-line under latest House item veto language: (Session Days)

- DAY 1: Date of enactment of spending or revenue bill; President to transmit special messages on the same calendar day (single special message for each Act)
- DAY 5: Disapproval bills, if any must be introduced in House and Senate
- 7 days following introduction: Committees must report disapproval bills (day 12)
- DAY 30: Congressional consideration of the disapproval bill and any conference report thereon must be completed (conferences may be required because it's in order in the House and Senate to strike specific disapprovals, and it's in order in the Senate to add additional disapprovals).

Track 1: Spending/revenue provisions are cancelled unless, w/in 10 calendar days (excluding Sundays) after the expiration of the congressional review period (above), a disapproval bill is enacted into law has not become law

Track 2: In the case of a veto, 5 session days are provided for consideration of the veto message; the spending/revenue provisions are cancelled within 10 calendar days if the disapproval bill (due to an override)

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Charles S. Konigsberg (KONIGSBERG_C) (OMB)

CREATION DATE/TIME: 6-MAR-1996 10:25:39.77

SUBJECT: More on item veto

TO: Barbara C. Chow (CHOW_B) (WHO)
READ: 6-MAR-1996 21:12:44.43

TO: Charles S. Konigsberg (KONIGSBERG_C) (OMB)
READ: 6-MAR-1996 10:44:09.00

TO: Robert G. Damus (DAMUS_R) (OMB)
READ: 6-MAR-1996 11:47:51.68

TO: Charles E. Kieffer (KIEFFER_C) (OMB)
READ: 6-MAR-1996 10:50:26.53

TO: Lisa Kountoupes (KOUNTOUPES_L) (OMB)
READ: 7-MAR-1996 12:24:13.81

TO: Joseph Minarik (MINARIK_J) (OMB)
READ: 6-MAR-1996 10:26:32.50

TO: Barry B. Anderson (ANDERSON_B) (OMB)
READ: 6-MAR-1996 10:27:28.18

TO: James J. Jukes (JUKES_J) (OMB)
READ: 6-MAR-1996 10:42:42.01

TO: Jacob J. Lew (LEW_J) (OMB)
READ: 19-MAR-1996 15:15:58.21

TO: James C. Murr (MURR_J) (OMB)
READ: 6-MAR-1996 10:49:07.84

TO: Harry E. Moran (MORAN_H) (OMB)
READ: 6-MAR-1996 10:26:06.65

TO: Betty I. Bradshaw (BRADSHAW_B) (OMB)
READ: 6-MAR-1996 10:35:11.21

TO: Elena Kagan (KAGAN_E) (WHO)
READ: 6-MAR-1996 10:33:02.01

TO: Paul J. Weinstein, Jr (WEINSTEIN_P) (OPD)
READ: 6-MAR-1996 14:35:42.15

TEXT:

o The draft language you received from me yesterday is the House's attempt to arrive at a common draft with the Senate; there is now additional language from the Senate on lockbox, which is similar to the language you have, but would also apply the cap reductions to the outyears.

o Domenici's staff tells me that the reason the cancellation message is to be sent up the same day a bill is enacted is to deal w/ the concern that tax provisions which are going to be canceled should be canceled immediately; however, they are willing to

examine reducing the reporting requirements in order to make this more logistically feasible. I will circulate a list of all the reporting requirements so we can develop a pared down list.

o The non-severability provision was included because Stevens believes that if the item veto does not apply to tax provisions and entitlements, it should not apply to direct spending.

As I receive comments from you this morning, I'll incorporate them into the comment document and will recirculate a revised document this afternoon.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Marilyn Yager (YAGER_M) (WHO)

CREATION DATE/TIME:13-MAR-1996 11:47:26.60

SUBJECT: product liabilit

TO: Jacob J. Lew (LEW_J) (OMB)
READ:14-MAR-1996 11:15:16.37

TO: Charles E. Kieffer (KIEFFER_C) (OMB)
READ:13-MAR-1996 15:58:28.30

TO: John Hilley (HILLEY_J) (WHO)
READ:14-MAR-1996 20:24:00.07

TO: Janet Murguia (MURGUIA_J) Autoforward to: Annette E. Jo
READ:13-MAR-1996 11:49:13.40

TO: Bruce R. Lindsey (LINDSEY_B) (WHO)
READ:15-MAR-1996 17:51:17.70

TO: Ellen S. Seidman (SEIDMAN_E) (OPD)
READ:13-MAR-1996 12:55:02.96

TO: Elena Kagan (KAGAN_E) (WHO)
READ:13-MAR-1996 14:18:13.19

TEXT:

I don't know who is working on the SAP, but wish to suggest that in addition to what are our concerns in bill, we also raise some of the issues that we recognize are good in the bill. We have been getting calls from the health companies concerned about bio materials and their comments seemed to make a fair case. If there are some issues that we could highlight in a possitive way it might help later regardless of our final decision on the bill.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Charles S. Konigsberg (KONIGSBERG_C) (OMB)

CREATION DATE/TIME:13-MAR-1996 22:05:33.77

SUBJECT: ITEM VETO MEETING--1PM

TO: Charles S. Konigsberg (KONIGSBERG_C) (OMB)
READ:14-MAR-1996 09:47:59.97

TO: Robert G. Damus (DAMUS_R) (OMB)
READ:14-MAR-1996 08:18:08.30

TO: Charles E. Kieffer (KIEFFER_C) (OMB)
READ:14-MAR-1996 09:19:13.02

TO: Joseph Minarik (MINARIK_J) (OMB)
READ:14-MAR-1996 09:27:37.96

TO: Barry B. Anderson (ANDERSON_B) (OMB)
READ:14-MAR-1996 09:46:09.39

TO: James J. Jukes (JUKES_J) (OMB)
READ:14-MAR-1996 09:18:23.05

TO: Harry E. Moran (MORAN_H) (OMB)
READ:14-MAR-1996 09:00:53.53

TO: Betty I. Bradshaw (BRADSHAW_B) (OMB)
READ:14-MAR-1996 10:59:52.60

TO: Elena Kagan (KAGAN_E) (WHO)
READ:14-MAR-1996 08:38:45.06

TO: Paul J. Weinstein, Jr (WEINSTEIN_P) (OPD)
READ:14-MAR-1996 09:01:47.07

TO: Arthur W. Stigile (STIGILE_A) (OMB)
READ:14-MAR-1996 10:13:04.57

TEXT:

Please let me know asap if you can attend a meeting at 1pm on Thursday to discuss Administration comments on the latest item veto conference draft. (I'll e-mail the location to you later in the morning.)

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Ellen S. Seidman (SEIDMAN_E) (OPD)

CREATION DATE/TIME:14-MAR-1996 09:40:04.81

SUBJECT: products

TO: Elena Kagan (KAGAN_E) (WHO)

READ:14-MAR-1996 10:30:21.49

TEXT:

=====
ATT CREATION TIME/DATE:14-MAR-1996 09:37:00.00

ATT BODYPART TYPE:B

ATT CREATOR: James J. Jukes

ATT SUBJECT: Products (see end)

ATT TO: Ellen S. Seidman (SEIDMAN_E)

TEXT:

=====
END ATTACHMENT 1

=====
ATT CREATION TIME/DATE:12-MAR-1996 13:52:00.00

ATT BODYPART TYPE:H

ATT CREATOR: Charles S. Konigsberg

ATT SUBJECT: PRODUCT LIABILITY

ATT TO: Sally Katzen (KATZEN_S)

ATT TO: Robert E. Litan (LITAN_R)

ATT CC: Alice M. Rivlin (RIVLIN_A)

ATT CC: Jacob J. Lew (LEW_J)

ATT CC: Bruce R. Lindsey (LINDSEY_B)

ATT CC: Martha Foley (FOLEY_M)

ATT CC: Charles E. Kieffer (KIEFFER_C)

ATT CC: James J. Jukes (JUKES_J)

ATT CC: Ingrid M. Schroeder (SCHROEDER_I)

ATT CC: James C. Murr (MURR_J)

ATT CC: Barbara C. Chow (CHOW_B)

ATT CC: Charles S. Konigsberg (KONIGSBERG_C)

ATT CC: John Hilley (HILLEY_J)

ATT CC: Stacey L. Rubin (RUBIN_S)

TEXT:

PRINTER FONT 12_POINT_COURIER

Press reports are that agreement has been reached on product liability. We need to make a decision ASAP within the EOP whether to issue a SAP, a presidential statement, a DOJ letter, or to issue no policy statement.

Normally, Administrations do not issue statements on conference reports -- the rationale being to preserve the President's options. However, we have not always followed this approach depending on the particular circumstances. Following, FYI, is a brief history of our Administration statements on product liability (prepared by Ingrid Schroeder at LRD), as well as the text of statements made last year on the Senate bill:

Product Liability/Civil Litigation/Medical Malpractice:

(I. Schroeder, x53883)

House passed HR 956 on March 10 (265

□

-161). It would cap punitive damages in all civil cases and would cap non-economic (pain and suffering) damages in suits against health providers and insurers. Basis for opposition: Product liability reform should generally be left to the States; punitive damages shouldn't be arbitrarily capped; and differential treatment of "economic" and "noneconomic" (e.g., "pain and suffering") damages is inappropriate. (March 6th Reno/Mikva letter.)

Senate passed HR 956 on May 10 (61

□

-37). It would cap punitive damage awards by juries in product liability cases at \$250,000 or twice compensatory damages (economic and non

□

-economic damages), whichever is greater. Judges could override those limits in "egregious" cases. Punitive damage awards in product liability cases could not exceed \$250,000 for small businesses. Basis for opposition: A May 10th White House statement said the Senate

□

-passed liability bill "in its present form does not go far enough toward balancing the interests of consumers with those of manufacturers and sellers." The statement also stated the Administration's concerns regarding the limits on punitive damages adopted by the Senate and reiterated the Administration's opposition to provisions which would abolish joint and several liability. (A provision limiting punitive damage awards in all civil lawsuits, which was the subject of a May 4th Presidential veto threat, was later limited to product liability cases only.)

Text of May 4, 1995 Statement of the President:

The Senate is engaged in the laudable goal of seeking to reform our legal system. Yesterday they went much too far by

adopting an amendment to cap punitive damages in all civil lawsuits. In its present form the Senate bill sharply limits the damages paid by many classes of offenders who deserve to pay much more to their victims for the harm they have inflicted upon them.

The bill now before the Senate might be called the "Drunk Drivers Protection Act of 1995" -- for what it does is insulate drunk drivers and other offenders from paying appropriate amounts of punitive damages justified by their deeds. I insist that we hold drunk drivers fully responsible. When they cause injury and death to innocent adults and children, we should throw the book at them, not give them a legal limit on damages to hide behind.

The Senate should reconsider its position. At the least, it should remove damage caps on lawsuits involving drunk drivers, murderers, rapists, and abusers of women and children, despoilers of our environment like the Exxon Valdez and perpetrators of terrorist acts and hate crimes.

All of these receive undeserved protection from the present bill. The Senate should reserve its compassion for the people who deserve it. If this bill comes to my desk as it is now written I will veto it, and therefore I encourage the Senate not to vote to limit debate on the bill at this time.

The Administration supports the enactment of limited, but meaningful, product liability reform at the federal level. Any legislation must fairly balance interest of consumers with those of manufacturers and sellers.

□

-30

□

-30

□

-30

May 10, 1995 Statement by the WH Press Secretary:

The Senate

□

-passed product liability bill is a clear improvement on the extreme legal reform measures passed by the House. Unfortunately, the legislation in its present form does not go far enough toward balancing the interests of consumers with those of manufacturers and sellers.

The Senate approach on punitive damages is an improvement on an absolute cap, but it still has flaws. Moreover, the Administration has consistently made clear its opposition to the provision that would make it harder for injured consumers to recover their full damages in cases involving more than one culpable defendant.

President Clinton supports balanced legal reform and will work with a House

□

-Senate conference to address these and other concerns.

□

-30

□

-30

□

-30-

[Contact Ingrid Schroeder at LRD if you need copies of the
White House statements.]

===== END ATTACHMENT 2 =====

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Ellen S. Seidman (SEIDMAN_E) (OPD)

CREATION DATE/TIME:14-MAR-1996 10:42:12.68

SUBJECT: prodcuts problems

TO: Elena Kagan (KAGAN_E) (WHO)
READ:14-MAR-1996 11:00:58.91

TO: Jon Yarowsky (YAROWSKY_J) (WHO)
READ:15-MAR-1996 12:25:18.58

TO: James J. Jukes (JUKES_J) (OMB)
READ:14-MAR-1996 11:15:32.42

TEXT:

These are in page order, not order of importance:

1. Findings and purposes (particularly the findings): These were in the House bill and dropped in the Senate because they were so inflammatory, but they are obviously there to deal with Lopez (yes, I've learned a case name). I would like to say that while there may be problems with the civil justice system, these assertions are unsupported by any record and in fact contrary to [DOJ] research. If we can say something good about civil juries and the constitution I'm for that too.

2. There are federalism issues in a number of places, where the bill tries to define, e.g., an evidentiary standard, that is clearly a matter of state law. See definition of "clear and convincing evidence," "punitive damages." (The definition of clear and convincing was in the Senate bill, but the punitive damages def was not.)

3. On page 14, line 18, the term "or threat of remediation" was deleted from the Senate bill. I couldn't parse that phrase, but undoubtedly EPA will think the deletion is important. We might want to check with them.

4. Section 103(b)(1) - pages 16 and 17 - This is John Yarowsky's favorite demagogue provision. It says that if a foreign manufacturer isn't available for suit, you can bring suit against the seller, thereby putting foreign manufacturers in a better position than domestic manufacturers. We need to be careful how we phrase any objection, but there is fun to be had here.

5. I don't quite understand how the affirmative defenses -- drugs, misuse or alteration, etc. might work in a class action. I think this problem has always been there, but can we make something of it?

6. Statute of limitations/statute of repose. We might think two years is too short, but I think it fair to say the statute of limitations is better than it has been. On the statute of repose, however, in addition to dropping to 15 years, there is a specific non-uniformity provision, which says any SHORTER (but not longer) state statute governs. You (we) might want to compare pages 15 and 18 of the conference report to show how inconsistent this is.

7. Punitives:

The Senate bill said the harm had to be the "result" of the act; this says "proximate cause." That's much tighter. Think of the smoking cases -- death by heart attack may well result from smoking, but my guess is you can't get someone to declare smoking to be a proximate cause.

Take a look at pages 25 and 26 - it's an incredible gift. Since they've dropped the voluteer/state carveout from punitives, paragraph (3) should be deleted. However, since they've let us in on the secret, we can now point out that they have allowed punitives NOT to be limited with respect to others even when they commit crimes, hate crimes, etc.

The factors for additur are absurd, and the conference report on page 21 makes it clear the provision is not to be used -- that gives an opening to

complain even though the factors were in the Senate bill.

Note that the additur doesn't apply to small entities, but we can't complain about this because (i) it was in the Senate bill and (ii) the President implicitly supported it in Texas.

State remittitur is still allowed, but state additur is forbidden

8. There is still several liability for noneconomic damages, which was one of the major points in our May statement.

9. I don't understand the workmens' comp stuff, but it's the same as the Senate, as far as I can see.

10. I don't know how we can get this in, but finding (6) on the biomaterials stuff (page 37) relies on the fact that the FDA regulates the safety and EFFICACY of devices. The very same people who are bringing you this bill want to delete the efficacy provision in the FDA reform act.

11. Finally, there's the whole federalism/uniformity issue. We haven't made the point before publicly, but whether/when cases will get to federal courts of appeals for uniform decisions is very iffy, particularly with the no federal question jurisdiction provision. I think we can say it will not meet the goals of uniformity because of myriad state court interpretations, but we may have to be subtle about it.

See you at 11:30.

ellen

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Ellen S. Seidman (SEIDMAN_E) (OPD)

CREATION DATE/TIME:14-MAR-1996 11:15:49.67

SUBJECT: One more thing on products

TO: Elena Kagan (KAGAN_E) (WHO)
READ:14-MAR-1996 11:21:32.37

TO: Jon Yarowsky (YAROWSKY_J) (WHO)
READ:15-MAR-1996 12:25:55.72

TO: James J. Jukes (JUKES_J) (OMB)
READ:14-MAR-1996 11:16:56.51

TEXT:

On page 21, the bill deletes a section that was in the Senate bill that said that the statute of limitations was tolled if there was a stay or injunction against an action. This is CRITICAL in cases where the defendant goes bankrupt, e.g., breast implants, dalkon shield, asbestos, where a stay WILL be issued against the suit, and the bankruptcy case may take years and then dies, by which time, of course, the statute will have run. Ellen

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Charles S. Konigsberg (KONIGSBERG_C) (OMB)

CREATION DATE/TIME:14-MAR-1996 11:40:44.28

SUBJECT: ITEM VETO DRAFT

TO: Charles S. Konigsberg (KONIGSBERG_C) (OMB)
READ:14-MAR-1996 12:55:59.25

TO: Robert G. Damus (DAMUS_R) (OMB)
READ:14-MAR-1996 11:53:05.73

TO: Charles E. Kieffer (KIEFFER_C) (OMB)
READ:14-MAR-1996 12:39:24.02

TO: Joseph Minarik (MINARIK_J) (OMB)
READ:14-MAR-1996 11:44:48.95

TO: Barry B. Anderson (ANDERSON_B) (OMB)
READ:14-MAR-1996 13:20:17.66

TO: James J. Jukes (JUKES_J) (OMB)
READ:14-MAR-1996 12:37:58.86

TO: Harry E. Moran (MORAN_H) (OMB)
READ:14-MAR-1996 11:41:06.53

TO: Betty I. Bradshaw (BRADSHAW_B) (OMB)
READ:14-MAR-1996 17:19:40.68

TO: Elena Kagan (KAGAN_E) (WHO)
READ:14-MAR-1996 12:27:09.63

TO: Paul J. Weinstein, Jr (WEINSTEIN_P) (OPD)
READ:14-MAR-1996 11:43:26.59

TO: Arthur W. Stigile (STIGILE_A) (OMB)
READ:14-MAR-1996 12:07:42.69

TEXT:

It turns out the the item veto draft I circulated to you this morning, which I received from the Senate Dems this morning, is an earlier draft that you have already seen. I will circulate to you at the meeting, the latest info. I have from the Republican side.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Charles S. Konigsberg (KONIGSBERG_C) (OMB)

CREATION DATE/TIME:14-MAR-1996 21:14:38.71

SUBJECT: ITEM VETO AGREEMENT

TO: Betty I. Bradshaw (BRADSHAW_B) (OMB)
READ:15-MAR-1996 11:00:05.80

TO: Harry E. Moran (MORAN_H) (OMB)
READ:15-MAR-1996 08:35:27.11

TO: Martha Foley (FOLEY_M) (WHO)
READ:15-MAR-1996 10:39:59.62

TO: John C. Angell (ANGELL_J) (WHO)
READ:15-MAR-1996 10:31:55.91

TO: Barbara C. Chow (CHOW_B) (WHO)
READ:15-MAR-1996 10:18:57.07

TO: Elena Kagan (KAGAN_E) (WHO)
READ:15-MAR-1996 08:30:24.04

TO: Paul J. Weinstein, Jr (WEINSTEIN_P) (OPD)
READ:15-MAR-1996 09:02:50.44

TO: Charles S. Konigsberg (KONIGSBERG_C) (OMB)
READ:14-MAR-1996 21:15:06.40

TO: Charles E. Kieffer (KIEFFER_C) (OMB)
READ:14-MAR-1996 22:06:59.46

TO: Lisa Kountoupes (KOUNTOUPES_L) (OMB)
READ:14-MAR-1996 21:19:32.22

TO: Joseph Minarik (MINARIK_J) (OMB)
READ:15-MAR-1996 09:59:46.54

TO: Robert E. Litan (LITAN_R) (OMB)
READ:15-MAR-1996 08:23:05.47

TO: T J Glauthier (GLAUTHIER_T) (OMB)
READ:15-MAR-1996 10:17:25.83

TO: Jacob J. Lew (LEW_J) (OMB)
READ:NOT READ

TO: Barry B. Anderson (ANDERSON_B) (OMB)
READ:15-MAR-1996 08:36:46.84

TO: John A. Koskinen (KOSKINEN_J) (OMB)
READ:14-MAR-1996 21:19:15.57

TO: Kenneth S. Apfel (APFEL_K) (OMB)
READ:15-MAR-1996 08:17:40.86

TO: Gordon Adams (ADAMS_G) (OMB)

READ:15-MAR-1996 11:18:44.01

TO: Nancy-Ann E. Min (MIN_N) (OMB)

READ:15-MAR-1996 08:31:10.85

TO: Robert G. Damus (DAMUS_R) (OMB)

READ:15-MAR-1996 08:31:57.86

TO: LAWRENCE J. HAAS (HAAS_L) (OMB)

READ:15-MAR-1996 08:34:34.82

TO: Jill M. Blickstein (BLICKSTEIN_J) (OMB)

READ:15-MAR-1996 08:26:58.63

TO: Chantale Wong (WONG_C) (OMB)

READ:15-MAR-1996 10:56:17.37

TO: William A. Halter (HALTER_W) (OMB)

READ:15-MAR-1996 10:39:24.92

TO: James C. Murr (MURR_J) (OMB)

READ:15-MAR-1996 08:14:52.11

TO: James J. Jukes (JUKES_J)

READ:15-MAR-1996 08:44:05.11

TO: Janet R. Forsgren (FORSGREN_J) (OMB)

READ:15-MAR-1996 09:32:57.29

TO: Ronald K. Peterson (PETERSON_RK) (OMB)

READ:15-MAR-1996 08:07:28.83

TEXT:

PRINTER FONT 12_POINT_COURIER

\d

TO: ALICE RIVLIN

FROM: CHUCK KONIGSBERG

RE: ITEM VETO AGREEMENT; LIKELY TO BE ADDED TO DEBT CEILING

cc: 2d Floor, Bradshaw, Moran, Murr, Foley, Angell, Chow, Kagin (WH/Counsel), Weinstein (DPC) Republican item

□

-veto conferees and leadership staff have arrived at an agreement on item veto legislation (although final drafting will occur on Friday). Democratic conferees have not been consulted during the negotiations, but Republicans believe they have sufficient agreement to report. The Republican strategy is to add item veto to the debt ceiling bill the last week of March. (We're also hearing that social security earnings limit legislation will be added to the debt ceiling.) Following are the outlines of the agreement (based on conversations with staff, though we have not seen final language yet):

In general, the conferees have tentatively agreed upon the House's enhanced rescission model, rather than the Senate's separate enrollment approach. In addition, they would apply item veto authority to discretionary BA, new direct spending and targeted tax benefits. They are also using the term "cancel" to describe item veto action, rather than the term "veto". All of this is good news from our perspective.

However, several aspects of the agreement should concern us:

- o they're including lockbox (i.e. automatic cap reductions) which would be a disincentive for using the authority;
- o they're not going to allow partial rescissions (although the President could cancel individual projects which are specified in report language);
- o the definition of targeted tax benefits is very narrow, i.e. 100 or fewer beneficiaries;
- o they're reserving to Congress authority to determine what tax benefits are subject to cancellation authority; and
- o they are likely to defer the effective date to 1997.

Details on specific issues follow:

1. In whole or in part: Conferees were debating whether to limit the authority to canceling provisions "in whole" or permitting cancellations "in whole or in part." The compromise they settled on was to limit cancellation authority to amounts "in whole," but to permit the authority to apply down to the level of any project specified in the joint statement of managers, committee report, or authorizing legislation. Therefore, the President could cancel down to the project level, provided the project is specifically mentioned in report language.

□

2. Timing of transmittal: The President will have up to 5 calendar days to submit cancellations.
(The House had been pushing for transmittal of cancellations on the date of enactment, supposedly due to concern about permitting targeted tax benefits and new direct spending to go into effect on the date of enactment, only to be cancelled several days later. However, we convinced Senate staff this would not a problem; in cases, where the time lag would be a concern, the President would simply transmit the cancellation immediately upon signing the bill).

3. Lockbox: Lockbox is still in. The prevailing view was that the purpose of the item veto is to save money -- not to permit a President to shift priorities.

4. Definition of Cancellation: The latest language defines cancellation -- with respect to targeted tax benefits and new direct spending -- as preventing the direct spending or tax provision "from taking legal force or effect." This raises potential constitutional concerns. I passed along to Senate Republican staff DOJ's advice that the definition is more likely to survive constitutional scrutiny if the word "taking" is changed to "having." (The reason is that preventing a law from "taking" effect sounds more like a straight veto, which is unconstitutional; preventing a law from "having" effect sounds more like a suspension which is a constitutional delegation of legislative authority.) Senate staff understand DOJ's argument and will discuss this language change with the House. They're also willing to accept input from us for the joint statement of managers on this issue.

5. Definition of Targeted Tax Benefits: The agreement limits the scope of the President's authority to cancel special interest tax provisions in two ways: first, by adopting the narrow definition of targeted tax benefit as a benefit going to 100 or fewer beneficiaries; and, second, by giving the tax

□

-writing committees

the authority to specify in their tax bills what is a tax benefit subject to the cancellation authority.

6. Severability: The non

□

-severability provision we had objected

to has been dropped. (That provision would have provided that if the courts strike down the tax benefit and direct spending provisions -- the most vulnerable parts of this bill -- the ability to cancel discretionary spending would also fall.)

7. Effective Date: This is the only substantive issue still open; Dole and Gingrich will decide when to make the authority effective. Reportedly, they are deciding between making it effective in 1997, or making it effective upon the earlier of 1997 or enactment of a balanced budget.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: James J. Jukes (JUKES_J) (OMB)

CREATION DATE/TIME:18-MAR-1996 11:59:39.60

SUBJECT: Product Liability Veto Message

TO: Elena Kagan (KAGAN_E) (WHO)
READ:18-MAR-1996 12:19:15.45

TO: Ellen S. Seidman (SEIDMAN_E) (OPD)
READ:18-MAR-1996 12:10:41.64

CC: James C. Murr (MURR_J) (OMB)
READ:18-MAR-1996 12:01:11.58

CC: Jeffrey A. Weinberg (WEINBERG_J) (OMB)
READ:18-MAR-1996 12:00:18.13

TEXT:

Our normal practice would be to ask Justice, as lead agency, to draft a veto message. If either of you is planning to take a first cut at it and would like me to so inform Justice (or if you have already so informed Justice), please let me know. Thanks.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Charles S. Konigsberg (KONIGSBERG_C) (OMB)

CREATION DATE/TIME:18-MAR-1996 13:05:37.90

SUBJECT: URGENT--3PM MEETING

TO: Charles S. Konigsberg (KONIGSBERG_C) (OMB)
READ:18-MAR-1996 13:31:48.20

TO: Robert G. Damus (DAMUS_R) (OMB)
READ:18-MAR-1996 13:33:12.89

TO: Charles E. Kieffer (KIEFFER_C) (OMB)
READ:18-MAR-1996 14:09:01.36

TO: Joseph Minarik (MINARIK_J) (OMB)
READ:18-MAR-1996 14:16:37.28

TO: Barry B. Anderson (ANDERSON_B) (OMB)
READ:18-MAR-1996 13:59:43.46

TO: James J. Jukes (JUKES_J) (OMB)
READ:18-MAR-1996 13:12:16.30

TO: Harry E. Moran (MORAN_H) (OMB)
READ:18-MAR-1996 13:06:15.82

TO: Betty I. Bradshaw (BRADSHAW_B) (OMB)
READ:19-MAR-1996 14:09:14.47

TO: Elena Kagan (KAGAN_E) (WHO)
READ:18-MAR-1996 13:14:38.22

TO: Paul J. Weinstein, Jr (WEINSTEIN_P) (OPD)
READ:18-MAR-1996 13:49:04.51

TO: Arthur W. Stigile (STIGILE_A) (OMB)
READ:18-MAR-1996 13:36:02.66

CC: Jacob J. Lew (LEW_J) (OMB)
READ:18-MAR-1996 14:39:54.99

CC: Jill M. Blickstein (BLICKSTEIN_J) (OMB)
READ:18-MAR-1996 13:17:32.89

TEXT:

There will be an urgent 3pm meeting on item veto in room 248, to review the latest draft. This is close to final language and will be our last opportunity to get any technical changes. Nancy Brandel has copies of the latest draft in 243. Please come prepared to discuss language changes. Thanks.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Ellen S. Seidman (SEIDMAN_E) (OPD)

CREATION DATE/TIME:18-MAR-1996 09:14:59.21

SUBJECT: Products points

TO: Elena Kagan (KAGAN_E) (WHO)

READ:18-MAR-1996 09:23:42.18

TEXT:

I've added three bullets on the top about where we are and made a small change in the bankruptcy bullet. I'm sending these on to Commerce (better something now than perfection later), but if anyone else is going to use these things, we probably should continue working. I'll call Jacoby and see if I can find out what's going on. Ellen

===== ATTACHMENT 1 =====

ATT CREATION TIME/DATE:18-MAR-1996 09:14:00.00

ATT BODYPART TYPE:p

TEXT:

PRINTER FONT 12_POINT_COURIER

TALKING POINTS ON PRODUCT LIABILITY BILL

The President has stated that he will veto H.R. 956 in its present form because it unduly and inequitably impinges of the traditional prerogatives of the states in this area of law and unfairly tilts the legal playing field against consumers.

The Administration has long stated that it supports enactment of limited but meaningful products liability reform at the federal level, but has also stated that any such legislation must fairly balance the interests of consumers with those of manufacturers and sellers and must respect the important role of the states. Following passage of the bill in the Senate, the President stated that, while the Senate bill was an improvement on the far broader House bill, there were two major problems that would lead him not to support it: (i) a cap on punitive damages, which are meant to punish and deter egregious wrongdoing and (ii) establishment of several -- rather than joint -- liability for noneconomic damages such as pain and suffering. The Conference Report on H.R. 956 does not respond to these problems, and in addition, moves backwards toward the House bill by, for example, effectively severely shortening the statute of limitations against a company that goes into bankruptcy or reorganization and shortening the statute of repose from 20 years to 15.

If H.R. 956 becomes law in its present form:

? Injured victims of defective products may not receive the full measure of their damages.

A victim of a defective product who incurs noneconomic damage -- such as pain and suffering -- will have to sue every person or business that contributed to the injury. If one of the wrongdoers has died or gone bankrupt or otherwise become unavailable to suit, the victim will not receive the portion of noneconomic damages for which that wrongdoer is responsible. Under current law, the other wrongdoers pick up this portion of the damages award; under this bill, the innocent victim suffers.

Remember that companies that manufacture and sell defective products stand a much higher than usual chance of going

bankrupt; consider, for example, manufacturers of asbestos or breast implants or intra

□

-uterine devices. For this reason, the situation described above is very likely to occur in products liability cases.

? The incentive for companies to engage in egregious misconduct, such as knowingly manufacturing and selling

defective products, will dramatically increase.

□

The bill's cap on punitive damages invites wealthy potential defendants, deciding whether to manufacture or sell a defective product, to weigh the costs of wrongdoing against the potential gains or profits. Punitive awards prevent sellers and manufacturers from engaging in such coldblooded analysis by making deliberate wrongdoers pay more than the harm they have caused. Under this bill, there is no such deterrence of wrongful conduct.

The provision of the bill allowing judges to exceed the cap in certain circumstances does not cure this problem, given the clear intent of Congress that "the occasions for additional awards will be very limited."

? Injured victims of defective products may not even be able to bring suit.

A victim of a defective product manufactured by a company that has gone bankrupt may not even be able to bring suit under this bill. This is because the bill, unlike the prior Senate version, does not stop the statute of limitations from running when a bankruptcy court (as often happens) issues an order preventing pending lawsuits from going forward and new lawsuits from being brought.

Again, remember that companies that manufacture and sell defective products stand a much higher than usual chance of going bankrupt. For this reason, the change in the bill's statute of limitations provision matters greatly.

===== END ATTACHMENT 1 =====