

NLWJC - KAGAN

EMAILS RECEIVED

ARMS - BOX 024 - FOLDER -006

[02/23/1998]

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Christa Robinson (CN=Christa Robinson/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:23-FEB-1998 11:28:54.00

SUBJECT: FYI Agency Drug/Crime news

TO: Jose Cerda III (CN=Jose Cerda III/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TO: Leanne A. Shimabukuro (CN=Leanne A. Shimabukuro/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TO: Michelle Crisci (CN=Michelle Crisci/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TEXT:

Friday is the annual certification of countries -- Columbia and Mexico will make news.

Shalala and McCaffrey are announcing local drug treatment awards Wednesday.

DOJ is announcing \$140 million for STOP - Domestic Violence Prevention grants - this week. They don't have a date scheduled.

Saturday -- 4th anniversary of the Brady Bill. DOJ thinking about having Reno make a statement at the beginning of her press availability on Thursday.

(POTUS is in San Francisco Friday and is not doing a message event -- all of these items would be received well in N. CA. Do you think POTUS should issue a written statement on Friday on certification, Brady and/or domestic violence grants?)

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Julie A. Fernandes (CN=Julie A. Fernandes/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:23-FEB-1998 13:44:06.00

SUBJECT: Advance copy of the H1-B testimony

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

CC: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TEXT:

I thought you might want to look at this draft of Labor's testimony for Wed. on H1B visas that Ingrid just sent over.

----- Forwarded by Julie A. Fernandes/OPD/EOP on 02/23/98

01:51 PM -----

INGRID M. SCHROEDER

02/23/98 01:39:29 PM

Record Type: Record

To: Julie A. Fernandes/OPD/EOP

cc:

Subject: Advance copy of the H1-B testimony

We will circulate this formally with an LRM.

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

ATT CREATION TIME/DATE: 0 00:00:00.00

TEXT:

Unable to convert ARMS_EXT:[ATTACH.D28]MAIL403241452.026 to ASCII,
The following is a HEX DUMP:

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STATEMENT OF RAYMOND J. UHALDE
ACTING ASSISTANT SECRETARY OF LABOR
before the
THE SENATE JUDICIARY COMMITTEE

February 25, 1998

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Mr. Chairman and Members of the Committee:

Let me begin today, Mr. Chairman, by expressing my sincere appreciation to you for affording me this opportunity to share the views of the Administration regarding immigration, labor market conditions in high-technology industries, and possible reforms in the H-1B nonimmigrant visa program. The Administration shares your interest in the information technology industry, as evidenced by our participation in a recent convocation in Berkeley that addressed Information Technology (IT) work force needs. Further, as you know from Administration proposals advanced beginning in 1993, we believe that the H-1B program needs reform. This employment-based visa program is seriously flawed in its current form and urgently requires the attention of Congress. I would like to commend the Committee for its interest in these issues.

Tight Labor Markets and IT Skills Shortages

It is clear that IT employment is growing rapidly, IT labor markets are tight, and they are likely to remain so. Although this is true for the nation as a whole, given our sustained economic expansion and low national unemployment rate, IT labor markets appear to be particularly affected. Employment of computer systems analysts, engineers, and scientists has been growing by 10% a year -- well above the growth of comparable occupations -- and is expected to continue growing at a comparable rate through 2006. BLS projects that the U.S. will require more than 1.3 million new workers in IT core occupations between 1996 and 2006 to

fill job openings projected to occur due to growth and the need to replace workers who leave the labor force or transfer to other occupations.

The IT skills shortage issue is very controversial. Industry advocates say that hundreds of thousands of jobs cannot be filled and that these vacancies are hurting U.S. competitiveness. Critics say the IT industry: (1) drastically overstates any problem by producing inflated job vacancy data and equating it to skills shortages; (2) continues to lay off tens of thousands of workers (e.g., AT&T recently announced large lay-offs); and (3) fails to tap reservoirs of talent available by using unnecessarily specific recruitment requirements and not providing more training to current IT workers.

One point of contention is the confusion between job vacancies and actual skills shortages. Even if the latest industry survey, which found nearly 350,000 job vacancies in the IT industry is accurate, it does not mean that there is a skills shortage of that same magnitude. Nearly all industries and firms, particularly those with rapid employment growth and high worker turnover, will have large numbers of jobs openings or vacancies without experiencing skills shortages.

Evidence from perhaps the best predictor of skills shortages -- wage growth -- does not suggest acute skills shortages nationwide in the IT industry, but may be consistent with skills shortages in specialized occupational areas and selected local areas. Broad-based Bureau of Labor Statistics (BLS) surveys show increases in IT wages in 1996 and 1997 that are only modestly above comparable occupations, while more specialized industry surveys show much larger wage increases in more specialized, high-skills occupations.

The Administration believes it is essential, regardless of the magnitude of the problem, to

shape public policy to assure that IT workforce needs are met, but that increased immigration should be the last -- not the first -- public policy response to skills shortages. Our first response should be to provide the needed skills to U.S. workers to qualify them for IT jobs.

Tight labor markets and skills shortages create incentives for employers and workers to behave in ways needed to achieve many of the Administration's top priorities: moving welfare recipients, out-of-school youth, and workers dislocated by trade into jobs; providing greater opportunities for lifelong learning; and raising wages and reducing income inequality. Reliance on increased immigration, however, would undercut these market incentives and adversely affect our ability to upgrade the skills of U.S. workers to meet emerging skills shortages.

The existence of a tight labor market causes employers to raise wages, improve working conditions, and provide increased training to enable currently employed workers to keep pace with technology and induce more workers to enter the labor market. The increased demand for trained workers induces educational and job training institutions to teach new skills. With more opportunities for training, workers acquire skills needed to obtain better, higher-paying and more secure jobs, thereby creating open jobs and career ladders for those just entering or reentering the labor market -- young people, welfare recipients, displaced workers, and other disadvantaged groups.

Labor markets are sometimes slow to respond to skills shortages. In these circumstances, it is often argued that foreign temporary workers are needed in the short-term to provide necessary skills while the labor market adjusts and provides U.S. workers with the requisite training. Without needed foreign temporary workers, some argue that the IT industry may adjust to skills shortages in ways that do not serve the short-term or long-term priorities of

the country, either by reducing job creation or by moving jobs overseas. Further, it is argued that IT industries are so critical to our competitive edge in an array of industries and services that disproportionate harm could come to the U.S. economy.

Even in such circumstances, however, the use of foreign temporary workers will interfere with labor market adjustments and makes achieving our other priorities more difficult. It dampens the market signals of increased wages, improved working conditions, and enhanced job security and growth potential so that fewer U.S. workers will be induced to acquire new skills, and fewer employers and institutions will be induced to provide more training and education.

Our primary public policy response to skills mismatches due to changing technologies and economic restructuring must be to prepare the U.S.

workforce to meet new demands. Importing needed skills should usually be a short-term response to meet urgent needs while we actively adjust to quickly changing circumstances.

The Administration already has taken significant steps to increase our capacity for increasing workforce skills. The President continues to pursue comprehensive reform of the Nation's employment and training system by working with Congress to enact the principles embodied in his GI Bill proposal. Moreover, in the historic balanced budget agreement of last summer, the President insisted on and achieved the largest increase in 30 years in the Federal investment to expand the skills of American workers, including:

- the largest Pell Grant increase in two decades -- boosting the maximum from \$2,700 to \$3,000;
- a \$1,500 Hope Scholarship to make the first two years of school universally available through tax credits;

- the Lifelong Learning Tax Credit for the last 2 years of college and continuing adult education and training to upgrade worker skills;
- a 10 percent increase in employment and training resources for dislocated workers and disadvantaged workers and youth to over \$5 billion; and
- a \$3 billion program to help move 1 million people from welfare to work.

Further, the Administration announced several new efforts at the recent Berkeley Convocation to help address the growing demand for information technology workers:

- A Labor Department Technology Demonstration project to test innovative ways of establishing partnerships between local workforce development systems, employers, training providers and others to train dislocated workers in needed high tech skills;
- The expansion and integration of America's Job Bank and America's Talent Bank by the Labor Department to allow employers and workers to list and access job openings and worker resumes in one integrated system.
- A Commerce Department grant program to bring information technology to poor people, particularly to enhance education and life-long learning;
- The convening of four town hall meetings by the Commerce Department to discuss IT workforce needs, identify best practices, and showcase successful models; and
- A joint Education and Labor grant program to expand employer involvement in high technology school-to-work programs.

We think that there is more that we can do to move U.S. workers into high technology

jobs, and we welcome the discussions that may be sparked by this hearing. Given this broader context, let me turn to the need for reform of the H-1B nonimmigrant program.

H-1B Nonimmigrant Program

The H-1B program allows the admission of up to 65,000 workers each year (to stay for as long as six years), ostensibly to meet short-term, high-skills employment needs in the domestic labor market. In principle, this can be an appropriate purpose, consistent with our overall goal of giving priority to improving the skills of U.S. workers.

In practice, however, employers do not have to demonstrate any type of employment need prior to getting a foreign worker. Exacerbating this problem, the Labor Department is limited strictly in its ability to enforce the minimum standards that employers must adhere to.

Employers obtain H-1B foreign workers by filing a labor condition application with the Department affirming that they have complied with four requirements:

- that a wage (not less than the local prevailing rate) will be paid to the foreign workers;
- that no strike or lockout exists;
- that notification has been provided to U.S. workers and their unions; and
- that the employment of H-1B nonimmigrants will not adversely affect the working conditions of U.S. workers similarly employed.

By law, the Labor Department can do no more than review these attestations for completeness and obvious inaccuracies -- to determine whether an employer checked all of the boxes, made no flagrant errors, and signed the attestation. Once the Department has reviewed the attestation, its enforcement has been limited by the fact that foreign worker is unlikely to make a complaint.

Our experience with the practical operation of the H-1B program has raised serious concerns that what was conceived as a means to meet temporary business needs for unique, highly-skilled professionals from abroad is, in fact, being used for a totally different purpose. Some employers -- though a minority of those who use the H-1B program -- seek admission of foreign workers to compete with qualified U.S. workers because temporary foreign workers are tied to one employer and are likely to be willing to work for lower wages and under less favorable working conditions. As a result, relatively large numbers of foreign workers who may well be displacing U.S. workers and eroding employers' commitment to the domestic workforce.

Many employers, to be sure, use the H-1B nonimmigrant program for its stated purpose: to provide U.S. businesses with timely access to the "best and the brightest" in the international labor market to meet urgent but generally temporary business needs. I want to emphasize that the Administration recognizes the need for this legitimate use of the program. But reform of the H-1B program is needed because it does not provide the needed balance between timely access to the international labor market and adequate protection of U.S. workers' job opportunities, wages and working conditions.

Greater protections for U.S. workers are needed because many employers use the H-1B program to employ not the "best and the brightest," but rather entry-level foreign workers who compete with U.S. workers. Minimum education and work experience qualifications for H-1B jobs are quite low -- a 4-year college degree and no work experience, or the equivalent in terms of combined education and work experience. Thus, a foreign worker with the equivalent of a community college degree and a few years of experience can compete with U.S. workers. These

low educational requirements result in nearly 80 percent of H-1B jobs paying less than \$50,000 a year and more than 70 percent of the jobs being in computer-related occupations, physical therapists, RN's and other health-related occupations.

The H-1B program is broken in several respects. First, current law does not require any test for the availability of qualified U.S. workers in the domestic labor market. Therefore, many of the visas under the current cap of 65,000 can be used lawfully by employers to hire foreign workers for purposes other than meeting a skills shortage. Second, current law allows a U.S. employer to lay off U.S. workers and replace them with H-1B workers. Third, current law allows employers to retain H-1B workers for up to 6 years to fill a presumably "temporary" need.

We simply do not believe this is right. The H-1B program does almost nothing to encourage U.S. employers to develop U.S. workers to perform the jobs for which they are seeking nonimmigrants, or to limit their dependency on a nonimmigrant workforce.

As a result of these weaknesses in the program, it has become increasingly evident that the H-1B program is being utilized by some as the basis for building businesses dependent on the labors of foreign workers in relatively low-level computer-related and health care occupations. This is a clear example of companies using H-1B visas for foreign workers that are not needed to meet skills shortages. Such businesses are, in some cases, in unfair competition with U.S. workers and those U.S. businesses that employ mostly U.S. workers. The growth of "job contractors" with work forces composed predominantly or even entirely of H-1B workers, which then lease these employees to other U.S. companies or use them to provide services previously provided by laid off U.S. workers, is cause for serious concern.

Mr. Chairman, the Administration asked the Congress in 1995 to amend the H-1B

nonimmigrant program to address these problems. Unfortunately for many U.S. businesses and workers, these amendments were not enacted. The amendments requested in 1995 were carefully designed to assure continued business access to needed high-skills workers in the international labor market while decreasing the H-1B program's susceptibility to misuse to the detriment of U.S. workers and the businesses which employ them. Briefly stated, the amendments would require employers which seek access to temporary foreign "professional" workers to attest that:

- they have not laid off or otherwise displaced U.S. workers in the occupations for which they seek nonimmigrant workers in the periods preceding and following their seeking such workers; and,
- in certain circumstances, they have taken timely and significant steps to recruit and retain U.S. workers in these occupations.

In addition, the Administration urged enactment of another amendment to reduce the allowable period of stay under the H-1B program from six to three years to better reflect the "temporary" nature of the presumed employment need.

Enactment of these amendments will help employers actually facing skills shortages, including those in the IT industry, obtain needed workers through the H-1B program. Under existing program rules, employers facing skills shortages are disadvantaged because they must compete for available visas (up to the cap of 65,000) on a first-come, first-served basis with other employers that do not face such shortages. Enactment of the proposed amendments would reduce pressure on the visa cap by screening out employers that are not faced with skills shortages and have no interest in recruiting U.S. workers.

A significant number of such employers use the H-1B program as a probationary program for foreign students who graduate from U.S. colleges, without a market test for U.S. workers, to determine if they want to sponsor the foreign student for permanent immigration status. By reducing the use of the H-1B for such purposes, more visas would be available for employers who need to use the H-1B program for its original purpose -- bringing in foreign workers to fill a temporary, critical need that cannot be met by U.S. workers.

Conclusion

Mr. Chairman, let me conclude by repeating that reform of the H-1B program is integral and essential to eliminating abuses under the program and providing greater protections for U.S. workers. At a bare minimum, we must not expand a program as fundamentally flawed as the H-1B nonimmigrant visa program. Further, enactment of these reforms would effectively allocate a greater share of H-1B visas to employers facing actual skills shortages.

I appreciate the interest shown by the Committee Members and staff in our views, and your thoughtful consideration of them. The Department looks forward to continuing to work closely and cooperatively with you and your staff on these issues. Mr. Chairman, that concludes my prepared statement.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Jose Cerda III (CN=Jose Cerda III/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:23-FEB-1998 13:14:16.00

SUBJECT: Statement on Megan's Law

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Leanne A. Shimabukuro (CN=Leanne A. Shimabukuro/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TEXT:

EK:

Rahm asked us to draft a short statement on the Megan's Law non-decision by the Supreme Court this morning (see Leanne's e-mail to you). Leanne's throwing something together right now, so we'll forward a draft to you by about mid-afternoon or so.

Jose'

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Toby Donenfeld (CN=Toby Donenfeld/O=OVP [UNKNOWN])

CREATION DATE/TIME: 23-FEB-1998 20:09:49.00

SUBJECT: Tobacco Event Conference Call

TO: Lisa A. Berg (CN=Lisa A. Berg/O=OVP @ OVP [UNKNOWN])
READ: UNKNOWN

TO: Nathan B. Naylor (CN=Nathan B. Naylor/O=OVP @ OVP [UNKNOWN])
READ: UNKNOWN

TO: Dan J. Taylor (CN=Dan J. Taylor/O=OVP @ OVP [UNKNOWN])
READ: UNKNOWN

TO: Wendy Hartman (CN=Wendy Hartman/O=OVP @ OVP [UNKNOWN])
READ: UNKNOWN

TO: Eli G. Attie (CN=Eli G. Attie/O=OVP @ OVP [UNKNOWN])
READ: UNKNOWN

TO: Patricia M. Ewing (CN=Patricia M. Ewing/O=OVP @ OVP [UNKNOWN])
READ: UNKNOWN

TO: Jerold R. Mande (CN=Jerold R. Mande/OU=OSTP/O=EOP @ EOP [OSTP])
READ: UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ: UNKNOWN

TO: Jodi R. Sakol (CN=Jodi R. Sakol/O=OVP @ OVP [UNKNOWN])
READ: UNKNOWN

TO: Lawrence J. Haas (CN=Lawrence J. Haas/OU=OMB/O=EOP @ EOP [OMB])
READ: UNKNOWN

TO: mdonahue (mdonahue @ os.dhhs.gov @ INET [UNKNOWN])
READ: UNKNOWN

TO: Kimberly H Tilley (CN=Kimberly H Tilley/O=OVP @ OVP [UNKNOWN])
READ: UNKNOWN

TO: Donald H. Gips (CN=Donald H. Gips/O=OVP @ OVP [UNKNOWN])
READ: UNKNOWN

TO: Cynthia A. Rice (CN=Cynthia A. Rice/OU=OPD/O=EOP @ EOP [OPD])
READ: UNKNOWN

TO: Thomas L. Freedman (CN=Thomas L. Freedman/OU=OPD/O=EOP @ EOP [OPD])
READ: UNKNOWN

TO: Bruce N. Reed (CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [OPD])
READ: UNKNOWN

CC: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP @ EOP [WHO])
READ: UNKNOWN

CC: Cathy R. Mays (CN=Cathy R. Mays/OU=OPD/O=EOP @ EOP [OPD])

READ: UNKNOWN

TEXT:

Due to the Secretary Shalala's schedule, and pending any other concerns, we are recommending that the VP and the Secretary do the tobacco announcement on FRIDAY instead on WEDNESDAY.

I'd like to still have the conference call Tuesday morning at 9:30 so we can get started on planning for the event. Thank you.

----- Forwarded by Toby Donenfeld/OVP on 02/23/98 08:07 PM

Toby Donenfeld
02/23/98 05:51 PM

To: Bruce N. Reed/OPD/EOP @ EOP, Elena Kagan/OPD/EOP @ EOP, Thomas L. Freedman/OPD/EOP @ EOP, Jerold R. Mande/OSTP/EOP @ EOP, Cynthia A. Rice/OPD/EOP @ EOP, Patricia M. Ewing/OVP, Donald H. Gips/OVP, Eli G. Attie/OVP, Kimberly H Tilley/OVP, Wendy Hartman/OVP, mdonahue @ os.dhhs.gov @ INET, Dan J. Taylor/OVP, Lawrence J. Haas/OMB/EOP @ EOP, Nathan B. Naylor/OVP, Jodi R. Sakol/OVP, Lisa A. Berg/OVP
cc: Cathy R. Mays/OPD/EOP @ EOP, Laura Emmett/WHO/EOP @ EOP
Subject: Tobacco Event Conference Call

The VP is tentatively scheduled to announce the FDA compliance billboard and radio campaign on Wednesday morning. The President may participate if he is still here in D.C. at that time. We hope Secretary Shalala will be able to join us for the announcement. (HHS is checking her schedule).

We are scheduling a conference call to discuss the event/announcement for tomorrow (Tuesday) morning at 9:30 a.m. Folks from HHS will be on the call.

Please call 456-6777 or 456-6799 code #9867. Thank you.

DRAFT STATEMENT OF THE PRESIDENT
February 23, 1998

This morning the Supreme Court declined to review a challenge to the community notification provision of New Jersey's "Megan's Law," thus leaving intact a crucial tool to protect children from known sex predators. Because of the importance of this law to families and communities, my Administration has defended its constitutionality, enacted a similar federal Megan's Law, and worked with states to establish a national sex offender registry. We will continue to do everything we can to make sure that community notification and sex offender registration laws are enforced and upheld throughout the country.

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Julie A. Fernandes (CN=Julie A. Fernandes/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:23-FEB-1998 13:00:08.00

SUBJECT: WH Immigration working group mtg.

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

CC: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TEXT:

Elena,

The meeting last week went very well. We covered lots of subjects, but we need to make decisions in a few areas.

1. Public Charge

We have received draft guidance from INS on how "public charge" should be determined for purposes of deportation and exclusion under the INA. This has been a bit of a sticky issue of late, largely b/c of confusion that was created in the wake of welfare reform. Both INS and State Dept. field officers have questioned whether current or prior use of Medicaid, food stamps, WIC or other welfare-type benefits necessarily results in a finding that the individual is or is likely to become a "public charge." WIC is clearly not a trigger, and INS issued guidance to that effect last December. INS has drafted guidance on Medicaid and Food Stamps that we need to clear. One question for us is how the guidance should be crafted -- i.e., should it say that x, y, and z are triggers or should it say that it is a totality test (as it currently does), but that q, r, and s and not triggers. Rob Weiner raised the question of whether we should issue a regulation, rather than guidance, to more firmly establish the criteria for field officers and EOIR judges.

Jack Smalligan from OMB has called a meeting for Wed. at 3pm so that we can decide whether to authorize INS to approve its draft guidance on Medicaid, food stamps, and other welfare-like benefits.

Also, the State Dept. recently issued a cable to its consular officials that is inconsistent with INS's current "public charge" guidance. Because this was internal State Dept. guidance, it was not sent to OMB or DPC for clearance. Scott Busby is going to contact folks at State to figure out what they are doing. We may need to convene a meeting with State and INS to get State's guidance to conform with what INS is doing.

2. INS Reform

Several people at the meeting (including Maria) urged us to decide to adopt the CIR recommendation that Labor be empowered to sanction employers for failure to verify whether their employees are authorized to work. According to Steve Mertens, the AG has the authority to delegate this authority to Labor. However, we need to decide whether we want to make this happen. Under the current system, the Labor Dept. checks to determine whether an employer is verifying authorization to work (as demonstrated by whether the I-9 forms have been completed for each employee) as part of a regular labor standards inspection. If they find a

violation, they refer the case to the INS -- Labor has no independent authority to sanction the employer. The INS almost never follows up on these referrals.

I recommend that we push for this change. We will likely catch heat for it on the Hill, primarily from those in Congress who oppose any change that would get tougher on employers who hire illegal workers. This opposition could be significant, but the concept of sanctioning employers for failing to take steps designed to ensure that they hire legal workers in a strong one.

3. Central Americans

As you know, Justice has committed to issuing guidance to asylum adjudicators that explains the legal standard that the BIA and the AG have established for the handling of suspension claims. This guidance would simply spell out the standard, with no modification. Maria raised the issue of doing the same thing by regulation. This reg would not change the standard for "extreme hardship" or anything else; rather, it would codify existing law. Maria thinks that a reg would send a stronger signal to the groups. The only practical difference between guidance and a regulation would be that the reg would also apply to the EOIR. However, the EOIR is already charged with following the law in this area (as developed by the BIA and AG). A reg that codifies the law might be seen as a statement that we don't believe the immigration judges will follow the law without further guidance. John Morton at DOJ stated that they are opposed to a reg b/c of (1) how it would be seen by EOIR; and (2) that it would create a forum (through notice & comment) for the groups to advocate for a change in the legal standard. According to Morton, it was difficult for EOIR to accept having this process taken from them to begin with. Any reg on how the cases should be handled might be seen as further slap.

I recommend going forward with guidance, and ensuring that the process of developing guidance is inclusive (with the groups) and that it will effectively communicate the legal standard as developed by the BIA and AG.

4. Foreign Health Care Workers

Section 343 of the 1996 Immigration Act provides that all foreign health care workers (except doctors) that want to enter the U.S. to work must be certified by a designated U.S. agent. According to Mike Koplovsky at USTR, this is a likely conflict with Chapter 16 of NAFTA which prohibits such certifications. Koplovsky tells me that the Canadians are very upset about this, and may take the U.S. to the NAFTA dispute resolution entity once we begin to enforce this provision, which will happen as soon as the regs are in place.

INS is getting me an update of the status of the regs, etc. According to Bob Bach, there has been some back-and-forth between the AG and the Canadians on this. He is sending me a summary, so that we can know the status of those conversations. We may need, at some point, to ask INS, State, and/or DOJ if, in their respective legal opinions, it is possible to reconcile Sec. 343 with NAFTA.

If there is a conflict, we may have to decide whether to try to amend Sec. 343 to carve out an exception for Canada and Mexico -- according to those who remember when this provision went through, it was largely directed at the problem of Filipino nurses. However, according to some conference language, the Congress knew that there was a potential conflict with NAFTA and passed the provision anyway.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Thomas A. Kalil (CN=Thomas A. Kalil/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:23-FEB-1998 20:23:02.00

SUBJECT: First draft of H1-B memo

TO: Anne H. Lewis (CN=Anne H. Lewis/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TO: Cecilia E. Rouse (CN=Cecilia E. Rouse/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TO: Julie A. Fernandes (CN=Julie A. Fernandes/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TO: Sally Katzen (CN=Sally Katzen/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TEXT:

Attached is the first draft of the H1-B memo to the POTUS. Please let me know if you have any comments -- and whether anyone else needs to look at it. I tried to keep it short and sweet and not elaborate the "pro-con" on raising the cap -- since we are not asking for a decision.

I am currently scheduled to meet with ITAA to discuss follow-up on the Berkeley conference on Wednesday at 3:15 p.m. I scheduled this meeting well before the H1-B flap.

I planned to use this meeting to discuss the next steps on the issues raised by the conference (training incumbent workers, closer partnerships between industry and higher ed, science and math K-12, women and minorities in the IT industry, etc.) and not on the H1-B issue. I will go ahead with this meeting as planned unless anyone thinks it is a bad idea -- people are welcome to join if interested.===== ATTACHMENT 1 =====
ATT CREATION TIME/DATE: 0 00:00:00.00

TEXT:

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INFORMATION

Draft February 23, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: GENE SPERLING, BRUCE REED

RE: ADMINISTRATION POLICY ON SKILLED TEMPORARY FOREIGN
WORKERS

We are providing you with this informational memo on the "H1-B visa" issue because the *New York Times* recently ran a story on the basis of a leaked internal Administration options memo, and because this is an important topic to Silicon Valley companies. You will be interacting with high-tech CEOs during your California trip later this week, and may get asked about this. A suggested Q&A is attached.

Current U.S. law permits 65,000 H1-B visas each year for skilled temporary foreign workers. The computer and health care industries are the primary users of the H1-B program. The annual 65,000 visa cap was met for the first time in FY 1997, and is likely to become a legislative issue in this session of Congress. We expect to reach the limit again in Mya or June, several months before the end of the current fiscal year.

The information technology (IT) industry, along with Senator Abraham, Representative Zoe Lofgren, and other members of Congress, support either the removal of or a significant increase in the H1-B cap. Unions, other worker organizations, Senator Kennedy, Congressman Dingell, and other members of Congress are likely to oppose any increase.

A DPC/NEC working group with representatives from Labor, Commerce, State, and INS has started to meet to develop Administration policy on:

1. Steps we can take to work with industry and institutions of higher education to address the shortage of workers with IT skills;
2. Reforms of the H1-B program (e.g. a prohibition against laying off U.S. workers to replace them with foreign workers); and
3. Whether or not to increase the H1-B cap from its current level of 65,000.

We have tentatively decided that our focus should be on partnering with industry to upgrade the skills of American workers, and not on proposing an increase in the cap at this point. As part of an overall package -- industry commitments to upgrade worker skills and reform of the H1-B visa system -- the interagency group is willing to consider an increase in the H1-B cap if it is truly necessary. However, we do not think that it makes any tactical sense to start with this as our publicly stated position. Furthermore, even a 20,000 to 35,000 increase in the H-1B cap is not likely to solve the problem, given the projected growth in demand for workers with IT skills.

Our next step is to meet with high-tech industry executives to develop an "action plan" that builds on a series of announcements that the Departments of Commerce, Education and Labor made at a January 1998 conference in Berkeley, California.

Q. Mr. President, will your Administration grant more visas to high-skilled foreign workers who are in demand by high-tech industries?

We have made no decision on this issue. In reviewing our options, my Administration's first priority will be to ensure that American workers have the skills they need to fill these jobs, and that they have priority over any foreign workers with similar training. The growing demand for workers with high-tech skills shows how critical my agenda for life-long learning is -- HOPE scholarships to open the doors of college, tax credits for employer investment in life-long learning, and making sure that all of our children are technologically literate.

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Mary L. Smith (CN=Mary L. Smith/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:23-FEB-1998 18:33:41.00

SUBJECT: Draft Answers to McCain Questions

TO: Toby Donenfeld (CN=Toby Donenfeld/O=OVP @ OVP [UNKNOWN])
 READ:UNKNOWN

TO: Joshua Gotbaum (CN=Joshua Gotbaum/OU=OMB/O=EOP @ EOP [OMB])
 READ:UNKNOWN

TO: Cynthia A. Rice (CN=Cynthia A. Rice/OU=OPD/O=EOP @ EOP [OPD])
 READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
 READ:UNKNOWN

TO: Donald H. Gips (CN=Donald H. Gips/O=OVP @ OVP [UNKNOWN])
 READ:UNKNOWN

TO: Jerold R. Mande (CN=Jerold R. Mande/OU=OSTP/O=EOP @ EOP [OSTP])
 READ:UNKNOWN

TO: Thomas L. Freedman (CN=Thomas L. Freedman/OU=OPD/O=EOP @ EOP [OPD])
 READ:UNKNOWN

TO: Bruce N. Reed (CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [OPD])
 READ:UNKNOWN

CC: Jill M. Pizzuto (CN=Jill M. Pizzuto/OU=OMB/O=EOP @ EOP [OMB])
 READ:UNKNOWN

CC: Cathy R. Mays (CN=Cathy R. Mays/OU=OPD/O=EOP @ EOP [OPD])
 READ:UNKNOWN

CC: Donna L. Geisbert (CN=Donna L. Geisbert/OU=OPD/O=EOP @ EOP [OPD])
 READ:UNKNOWN

CC: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP @ EOP [WHO])
 READ:UNKNOWN

TEXT:

Here is a draft cover letter and draft answers to the McCain questions prepared by HHS, DOJ, and USTR. I will also distribute paper copies, if needed. Let me know if you need anything else. Mary ===== ATTACHMEN
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[Note: For the underlined section, preferred by HHS, the Department of Justice would prefer the paragraphs that are in boldface and in italic.]

Dear Mr. Chairman:

The Clinton Administration looks forward to working with you and others in Congress to develop legislation that will reduce teen tobacco use. In addition to the enclosed responses to your questions, we are prepared to provide the appropriate staff to give the Committee the technical assistance you request. We also are providing you with a number of resource documents cited below that we hope will be of assistance as you work to develop comprehensive legislation to protect our nation's children from tobacco related disease and death.

To protect children and adolescents, FDA adopted comprehensive regulations restricting the sale and distribution of nicotine-containing tobacco products in its final tobacco rule issued August 28, 1996. The rule's advertising and access restrictions were based upon a multi-year investigation, and resulted from the analysis of myriad studies and research on issues related to reducing youth tobacco use and the consideration and analysis of more than 700,000 comments submitted in response to its proposed rule. FDA detailed its analysis and findings in two documents: a proposed rule and preamble published in 60 Fed. Reg. 41314 (August 11, 1994); and a final rule and preamble published in 61 Fed. Reg. 44396 (August 28, 1996). Copies of those documents are provided with this response and citations to pages in those documents are provided. In addition, FDA's administrative record contains the studies described in those documents as well as public comments received by the agency. That record is contained on 5 CDs, which are provided. Two new studies on the effect of advertising on young people, and a collection of studies and reviews on the effectiveness of warning labels also are provided. Finally, two other documents are provided: The Institute of Medicine's Report, *Growing Up Tobacco Free, Preventing Nicotine Addiction in Children and Youth* (1994) (IOM); and the Department of Health and Human Services' Centers for Disease Control and Prevention's Report, *Preventing Tobacco Use Among Young People, A Report of the Surgeon General* (1994) (1994 SGR). These two reports contain summary discussions about tobacco advertising and its effect on young people. See especially 1994 SGR Chapter 5 and IOM Chapter 4.

Many of the provisions included in S.1414 would codify the comprehensive regulations on nicotine-containing tobacco products that the FDA adopted in its final Tobacco Rule issued August 28, 1996. The FDA restrictions were carefully crafted on the basis of a multi-year investigation, and resulted from the analysis of myriad studies and research on the effects of advertising, specifically tobacco advertising, on young people and the consideration and analysis of more than 700,000 comments submitted in response to the proposed FDA rule.

The Administration believes, as the Department of Justice has explained at length in the FDA litigation, that the FDA's regulations that restrict the advertising of tobacco products are consistent with the First Amendment, under the currently controlling framework for First Amendment review of restrictions on advertising, set out by the Supreme Court in Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n, 447 U.S. 557 (1980), and subsequent cases. The FDA restrictions would, if implemented, substantially advance the Government's wholly legitimate and compelling interest in curtailing minors' demand for and use of tobacco

products by reducing minors' exposure to tobacco product advertising. Moreover, the FDA's regulations are tailored to serve this objective.

We believe the advertising restrictions in S.1414 that track the FDA regulations are constitutional. Other restrictions contained in S.1414 give rise to constitutional concerns that are not presented by the FDA regulations, such as whether such restrictions would be sufficiently tailored to serve the governmental interest in reducing teenage smoking. In any event, it is important to emphasize that any comprehensive tobacco legislation should provide express statutory reaffirmation of the FDA's jurisdiction and authority to impose additional advertising restrictions based on substantial evidence when the agency determines that such additional restrictions are necessary, efficacious, and constitutionally tailored.

To assist the committee in developing legislation regulating tobacco products, including legislation restricting the advertising of tobacco products, we have provided with this response copies of the two documents which detail the analysis and findings on which the FDA regulations are based: the FDA's proposed rule and preamble published in 60 Fed. Reg. 41314 (August 11, 1994); and the FDA's final rule and preamble published in 61 Fed. Reg. 44396 (August 28, 1996). Our answers to your questions include citations to these documents where appropriate. In addition, the FDA's administrative record contains the studies described in those documents as well as public comments received by the agency. That record is contained on 5 CD's, which are also provided with this response. Two...

We hope this material is helpful and we look forward to providing you and the members of the Committee with any additional assistance that may be needed.

Sincerely,

????

Enclosure

I. BAN ON OUTDOOR ADVERTISING, INCLUDING IN STADIA AND ARENAS

1. What data does the administration have to substantiate that a ban on outdoor advertising, including stadia and arenas, will reduce smoking and, in particular, youth smoking?

The FDA tobacco rule prohibits outdoor advertising within 1,000 feet of public playgrounds and elementary and secondary schools. All other outdoor advertising is restricted to black text on a white background, devoid of color and imagery. FDA's regulations are based on the agency's finding that children and adolescents spend a great deal of time in areas around schools and playgrounds and these areas, therefore, should be free of tobacco product advertising. All other outdoor advertising should be restricted to text information only, which generally is not appealing to young people. (See response to II, below.) Data supporting this conclusion are detailed at 61 Fed. Reg. 44501-08.

2. To what extent do you believe such restrictions can be expected to reduce smoking?

FDA's advertising restrictions are based on quantitative and qualitative studies of cigarette advertising that show that a causal relationship exists between tobacco advertising and tobacco use by young people and that stringent advertising restrictions, when combined with a comprehensive program designed to reduce initiation and use among young people, will have a positive effect on reducing smoking rates and youth tobacco use.

FDA's findings regarding the ability of advertising restrictions to reduce youth tobacco use are summarized at 60 Fed. Reg. 41330-34 and 61 Fed. Reg. 44466-500.

3. **Does the administration support such a ban. If so, why? If not, why not?**

The administration supports appropriate restrictions on outdoor advertising, as evidenced by the FDA tobacco rule (21 C.F.R. 897.30(b)) which prohibits outdoor advertising for cigarettes and smokeless tobacco, including billboards, posters, or placards, from being placed within 1,000 feet of the perimeter of any public playground or playground area in a public park, elementary or secondary school. All other outdoor advertising is limited to black text on a white background (21 C.F.R. 897.32(a)).

The prohibition set forth in Section 101(a)(1), however, would prohibit "any form of outdoor tobacco product advertising, including bill boards, posters, or placards." It does not contain the exception for tombstone advertising in certain locations that is included in the FDA regulation. Because that exception ensures that the FDA regulations are appropriately tailored to

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serve the government's substantial interest in reducing teenage smoking, Section 101(a)(1)'s broader restriction on all outdoor tobacco advertising raises significant constitutional concerns that are not presented by the FDA regulations.

4. **What specific changes, if any, in the legislative language implementing the ban would the administration propose? Please provide specifics.**

As discussed above, the administration's efforts have been focused on supporting the restrictions now codified in FDA regulations. The administration urges Congress to provide statutory confirmation of the existing authority of the FDA to regulate the outdoor advertising of tobacco products. The resources of the administration are available to assist the Committee in determining whether further restrictions are constitutional and otherwise appropriate.

II. BAN ON HUMAN FIGURES AND CARTOON FIGURES IN ADVERTISING

1. What data does the administration have to substantiate that barring the use of human figures and cartoon advertising will reduce smoking, in particular youth smoking?

FDA's regulations restrict advertising, with certain exceptions, to black text on a white background. No color or imagery is permitted. These restrictions encompass a prohibition of human figures and cartoon characters. The restrictions apply to billboards, publications, in-store advertising, and direct mail advertisements. FDA's findings in this area are summarized at 60 Fed. Reg. 41335-36 and 61 Fed. Reg. 44466-68, 44508-13. FDA's *Federal Register* documents contain specific evidence and summaries of studies. See 60 Fed. Reg. 41333-34 and 61 Fed. Reg. 44475-82.

2. To what extent do you believe such restrictions can be counted on to reduce youth smoking?

See response to I.2., above.

3. What entity would you propose to determine what constitutes a human image or cartoon character?

Under the FDA's regulations, the requirement that tobacco advertisements under most circumstances use black text on a white background is enforced by the Food and Drug Administration and the Department of Justice under the provisions of the Food, Drug, Cosmetic Act. That Act provides for the imposition of civil penalties, 21 U.S.C. § 333(f), injunctive relief, 21 U.S.C. § 332, and/or criminal prosecution, 21 U.S.C. § 333(a).

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4. What penalty do you believe is appropriate and should accrue for a violation of the prohibition on material containing figures determined to be human or cartoon?

Under the FDA's regulations, the requirement that tobacco advertisements under most circumstances use black text on a white background is enforced by the Food and Drug Administration and the Department of Justice under the provisions of the Food, Drug, Cosmetic Act. That Act provides for the imposition of civil penalties, 21 U.S.C. § 333(f), injunctive relief, 21 U.S.C. § 332, and/or criminal prosecution, 21 U.S.C. § 333(a).

5. Does the administration support this ban? If so, why? If not, why not?

The administration supports appropriate advertising restrictions, as evidenced by the FDA tobacco rule. Section 101(b) of S. 1414 provides that "[n]o manufacturer, distributor, or retailer may use a human image or a cartoon character or cartoon-type character in its advertising, labeling, or promotional material with respect to a tobacco product." This restriction would go beyond the FDA regulation restricting the use of images in the advertising of tobacco products, which provides that, in general, tobacco advertising must take the form of tombstone advertising but permits images to be used without restriction in an "adult publication," one whose readership is at least 85 percent adult and includes less than two million children. 21 C.F.R. § 897.32(a)(2)(i)-(ii). The provision's broader restriction on the use of images in the advertising of tobacco products would raise significant constitutional concerns that the FDA regulation does not present.

In any event, the administration urges the Congress to provide statutory confirmation of the existing authority of the FDA to regulate the use of images in the advertising of tobacco products. This regulatory approach would ensure that the FDA would be authorized, based on existing and future research, to develop necessary and appropriately tailored supplements to its current restrictions, if and when such supplements are needed.

6. What specific changes, if any, in the legislative language implementing the ban would the administration propose? Please provide specifics.

As discussed above, the administration's efforts have been focused on the restrictions now codified in FDA regulations. The resources of the administration are available to assist the Committee in discussing how these restrictions will be implemented and the associated penalties, and whether further restrictions are constitutional and otherwise appropriate.

III. BAN ON INTERNET ADVERTISING

1. Does the administration support such a ban? If so, why? If not, why not?
2. How can and should a ban on Internet advertising of cigarettes be enforced?

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3. **What, if any, concerns does the administration have regarding the constitutional free speech issues raised by any such ban?**
4. **What specific changes, if any, in the legislative language implementing the ban would the administration propose?**

In response to III.1 - III.4, the administration believes that, because there may be more narrowly tailored means of achieving the government's underlying interest in restricting the advertising of tobacco products on the Internet, the categorical prohibition that Section 101(c) of S.1414 would impose would raise significant constitutional concerns. See Reno v. ACLU, 117 S.Ct. 2329,2348 (1997) (explaining that compelled tagging schemes are obvious less restrictive alternative to banning Internet transmission of content harmful to minors). We would therefore caution the Congress about adopting such a broad measure at this time.

In order to ensure that the government retains necessary flexibility to regulate the advertising of tobacco products on the Internet, we recommend that the Congress provide express statutory confirmation of the FDA's existing authority to regulate such advertising. This regulatory approach will ensure that any future restrictions are targeted at the right forms of Internet advertising and are fashioned in a manner that is appropriately sensitive to First Amendment concerns. Alternatively, we are prepared to work with Congress to fashion a more narrowly focused Internet restriction.

IV. BAN ON POINT-OF-SALE ADVERTISING

1. **What data does the administration have to substantiate that a ban on point-of-sale advertising would reduce smoking, in particular, youth smoking?**

See responses to I.2. and II.1., above, regarding FDA's proposal restricting point-of-sale advertising. In its tobacco rulemaking, FDA found that young people get their information and product imagery from all types of advertising, including at the point of sale. See 61 Fed. Reg. 44509 - 44510. Point-of-sale advertising presents the child with an enticement at the time when purchase is immediately available.

Manufacturers and retailers limited to text- only advertising at point of sale will not be prohibited from promoting products at retail. Adult consumers looking for price and product information will be able to find that information even without imagery and colors, which are particularly attractive to children. While text-only advertising can still be effective with adults, it will have less allure and be less appealing to young people. Children and adolescents, who are less willing than adults to process print information in a leisurely setting (such as reading a

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magazine), will find textual material even less appealing in the few moments spent at the retail counter.

2. Does the administration support such a ban? If so, why? If not, why not?

The administration supports appropriate restrictions on point of sale advertising, as evidenced by the FDA tobacco rule. As discussed above, its efforts have been focused on supporting the restrictions now codified in FDA regulations. The resources of the administration are available to assist the Committee in determining whether further restrictions are constitutional and otherwise appropriate.

3. Is the exemption of point-of-sale advertisement for adult stores and tobacco outlets appropriate?

The administration's focus has been on preventing children and adolescents from using tobacco products. Restrictions on the advertising that makes these products appealing to young people is a vital component of these efforts. FDA's regulations exempt adult-only locations and publications read primarily by adults because the evidence then available showed that advertising in locations where children are never present, such as adult-only locations, or are rarely exposed, as is the case with publications with an insignificant youth readership, would not have a significant adverse effect on efforts to reduce youth tobacco use.

4. **Is it appropriate to grant companies with greater cigarette market share additional point-of-sale advertising rights? If so, why? If not, why not?**
5. **Does such a privilege constitute a statutorily granted competitive advantage? If so, why? If not, why not?**
6. **Does the administration support this grant? If so, why? If not, why not?**
7. **What specific changes, if any, in the legislative language implementing the ban would the administration propose? Please provide specifics.**

Section 101(d) would impose a general prohibition on the use of what is termed "point-of-sale advertising" of tobacco products but would include a significant exception for "adult-only stores and tobacco outlets." Sec. 101(d)(2). The FDA regulations contain restrictions that are targeted at point-of-sale advertising, however, they are not as broad as those set forth in S.1414 primarily because they do not prohibit tombstone advertising. See 21 C.F.R. §§ 897.32, 897.16. The resources of the administration are available to assist the Committee in crafting restrictions on point-of-sale advertising that avoid any significant constitutional concerns that the restrictions on point-of-sale advertising in S.1414 would raise.

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Section 101(d)'s exception permitting manufacturers with a greater market share to engage in more point of sale advertising than their competitors appears inconsistent with the government's asserted interest in restricting such advertising. Granting manufacturers point-of-sale advertising opportunities consonant with market share is unrelated to the objective of reducing youth tobacco use; indeed, it may run counter to that goal. Moreover, the proposal presents constitutional and anti-competitive concerns that should be addressed. The resources of the administration are available to assist the Committee in exploring those concerns.

V. LIMITATIONS ON POINT-OF-SALE ADVERTISING

1. What data does the administration possess to suggest that such limitations will reduce smoking, particularly among youth?

See response to IV.1., above.

2. Does the administration support this provision? If so, why? If not, why not?

The administration supports appropriate restrictions on point of sale advertising, as evidenced by the FDA Tobacco Rule. As discussed above, its efforts have been focused on supporting the restrictions now codified in FDA regulations. The resources of the administration are available to assist the Committee in determining whether further restrictions are constitutional and otherwise appropriate.

VI. BAN ON ADVERTISING RESTRICTION AGREEMENTS

1. **Are such agreements currently against federal or state law? If so, is such a provision necessary?**

Ordinarily, under the free market system, retailers are permitted to decide from whom and to whom they will buy and sell, and on what terms. While an agreement of the sort described -- between a manufacturer and a retailer to limit the ability of a competing manufacturer to display advertising on the retailer's premises -- might be anticompetitive under certain circumstances, such agreements are usually not condemned under the federal antitrust laws. The administration has not undertaken a review of state laws to determine whether such an arrangement would violate the law of any state.

2. **Does the administration support such a provision? If so, why? If not, why not?**

The administration's primary concern is not the relationship of retailers, manufacturers, and distributors between or among one another with respect to advertising. Rather, the

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administration wants to ensure that point-of-sale advertising and promotional material, whatever their source, consist only of black text on a white background.

- 3. Does the administration support the limitation. If so, why? If not, why not?**

See answer to question 2 above.

- 4. What specific changes, if any, in the legislative language implement the ban would the administration propose? Please provide specifics.**

See answer to question 2 above.

VII. GLAMORIZATION OF TOBACCO

- 1. What data does the administration possess to indicate whether and to what extent this provision will reduce smoking, particularly among youth?**

A number of studies (Tye 1990; Terre, Drabman, and Speer 1991; Hazan, Lipton, and Glantz 1994; Thumbs Up! Thumbs Down! 1997) show that depictions of tobacco use in the entertainment media, particularly feature films, are on the increase and exaggerate greatly the actual prevalence of tobacco use in the U.S. population. Research also suggests that adolescents are highly susceptible to pro-smoking messages and images conveyed in entertainment media (Signorielli 1993; Davies 1993; Basil 1997). Focus group research found that young people are able to recall virtually no anti-smoking messages on TV or in the movies, yet they are able quite readily to recall specific movies that portray smoking and to identify actors and actresses who smoke in their entertainment roles (Mermelstein 1997). Deglamorizing tobacco use in the entertainment media can be achieved both by decreasing pro-smoking cues and by increasing anti-smoking cues. A study by researchers at the University of California at Irvine suggests that anti-smoking ads before movies can help inoculate young people against the positive images of smoking that appear in movies. Ninth graders who watched the movie "Reality Bites" (in which the cast smokes in about one-third of the scenes) preceded by a California Department of Health Services anti-smoking ad were much less likely to find smoking exciting compared with teens who watched the movie without the counter-advertisement (Pechmann, 1996).

- 2. What entity does the administration propose will determine what activity constitutes promoting the image or use of a tobacco product?**
- 3. How does the administration envision such a ban will be enforced?**

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4. **Does the administration support such limitations?**
5. **What specific changes, if any, in the legislative language would the administration propose? Please provide specifics.**

In response to Questions VII.2 - VII.5, the administration believes that the scope of the restriction on glamorization in S. 1414 is unclear. For example, is the provision intended only to restrict attempts to promote certain brand names of tobacco products or is it intended to restrict the promotion of smoking generally? If the latter were the case, then the provision would appear to reach some noncommercial speech, raising significant constitutional concerns. It is also not clear what is meant by the use of the word "promoting." Finally, the phrase "appeals to individuals under 18 years of age" could be subject to challenge on vagueness grounds.

Alternatively, no such constitutional concerns would be raised if Congress enacted legislation that would confirm the authority of the FDA to regulate the advertising of tobacco products through such indirect means as the use of product placement agreements.

VIII. RESTRICTIONS ON COLOR ADVERTISEMENTS

1. What data does the administration have to substantiate that a ban on color ads, except in publications with limited youth readership, will reduce smoking particularly youth smoking?

See response to II.1., above.

2. **Does the administration believe that the threshold for the restriction of two million readers is the appropriate threshold?**

FDA's tobacco rule requires that advertising be restricted to black and white text, except in publications that are read primarily by adults or in adult-only facilities. The text-only requirement is intended to reduce the appeal of cigarettes and smokeless tobacco advertising on young people without unduly affecting the informational messages conveyed to adults. Therefore, FDA proposed in its rulemaking that advertising in publications that are read primarily by adults should be allowed to use imagery and color because the effect of such advertising on young people should be nominal. The agency set the definition of adult publication as those whose readers age 18 or older constitute 85 percent or more of the publication's total readership, or those which are read by two million or fewer people under age 18, whichever method results in the lower number of young people. (Magazines with small readership numbers but which appeal to young people may not attract two million young readers but may still be primarily youth oriented; that is, 15 percent or more of their readers are under

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18.) In addition, the agency noted that at some point, the number of underage readers is so great that the publication can no longer be considered to be of no interest to those under 18, regardless of the percentage of the readership. For example, a magazine with a large total readership base may attract as many as 5 million young people, or more, but those numbers would still not be 15 percent of the magazine's readership. See 60 Fed. Reg. 41335-36 and 61 Fed. Reg. 44513-19.

3. How does the administration envision readership demographics being determined?

In its tobacco rulemaking, FDA explained that readership demographics would be determined by measuring the total number of people that read any given copy of a publication. Readership demographics would be measured according to industry standards and, at a minimum, would be based on a nationally projectable survey of people. Two examples of currently available surveys are Simmons's STARS and MediaMark Research Inc.'s (MRI's) TEENMARK. FDA also indicated that it would be willing to work with industry on this issue. See 61 Fed. Reg. 44516-19.

4. How would this restriction be enforced?

The restriction would be enforced by the Food and Drug Administration and the Department of Justice under the provisions of the Federal Food, Drug and Cosmetic Act which provides for the imposition of civil money penalties, 21 U.S.C. § 333(f), injunctive relief, 21 U.S.C. § 332, and/or criminal prosecution, 21 U.S.C. § 333(a).

5. Does the administration support this restriction? If so, why? If not, why not?

The administration supports the regulation in the FDA rule based upon the findings of the Food and Drug Administration regarding the role and attractiveness of images and color in advertising to young people. See, e.g., 61 Fed. Reg. 44467-68, 44509 (1996).

6. What specific changes, if any, in the legislative language implementing the restriction does the administration propose? Please provide specifics.

As discussed above, the administration supports effective restrictions on the use of color and imagery in tobacco advertising. The administration urges Congress to provide statutory confirmation of the existing authority of the FDA to regulate the advertising of tobacco products.

IX. GENERAL QUESTION REGARDING MARKETING/ADVERTISING BAN

1. Can the marketing and advertising restrictions envisioned in the settlement

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be constitutionally imposed, with or without the industry's consent? Please discuss.

The answers to Parts I-VIII above address the government's authority to impose restrictions on advertising and marketing without the industry's consent. We address here the degree to which "the industry's consent" may affect the constitutional analysis of the advertising restrictions.

We believe that the constitutional analysis of such restrictions might be affected if the industry's adoption of those advertising restrictions that either could not be constitutionally imposed upon the industry, or that exceed the restrictions that are imposed by the FDA regulations, were in some way made contingent upon the industry's willingness to adopt them. For example, we believe that the inclusion of such restrictions in state court consent decrees between states and tobacco manufacturers -- rather than in federal legislation -- would significantly increase the likelihood that the restrictions would be upheld if challenged in the future. However, the inclusion of such restrictions in a federal statute that made adherence to such restrictions a condition of the receipt of certain federal benefits would continue to raise substantial constitutional questions. Such a statute, depending on how it were framed, would be subject to substantial challenge under the unconstitutional conditions doctrine.

X WARNING LABELS

1. Does the administration believe that these are appropriate warning labels?

The administration supports the concept of strengthening warning label statement requirements. Several recent studies (Health Canada 1996; Borland, Cappiello, and Hill 1996; Robinson and Killen 1997) and literature reviews (USDHHS 1994; IOM 1994) are available concerning the effectiveness of warning labels in conveying information to consumers. The administration's resources are available to help the Committee evaluate possible improvements to warning label requirements.

2. Does the administration possess data suggesting that these warnings will effectively reduce smoking, particularly youth smoking?

See response to X.1., above.

3. What data suggests that the various new warnings will be as or more effective than the current warning requirements?

See response to X.1., above.

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4. Does the administration support the provisions authorizing specific new labels? If so, why? If not, why not?
5. What specific changes, if any, in the legislative language implementing this provision would the administration propose? Please provide specifics?

As stated above, the administration is available to work with the Committee in determining whether changes to the warning statement requirements are appropriate.

IX. WARNING LABEL SIZE AND LOCATION REQUIREMENTS

1. What data does the administration have to suggest that these specifications will reduce smoking, particularly youth smoking?

See response to X.1., above.

2. Does the administration support these particular specification? If so, why? If not, why not?
3. Does the administration support the exception provided for flip-top cigarette packages? If so, why? If not, why not?
4. What specific changes, if any, in the legislative language to implement these restrictions would the administration propose? Please provide specifics.

The administration, as discussed above, has focused its efforts on supporting the restrictions now codified in FDA regulations. The resources of the administration are available to assist the Committee in determining whether further restrictions are appropriate.

X. SMOKELESS TOBACCO ALTERNATIVE LABELS

1. What data does the administration have to suggest that the various new warning labels will effectively reduce the use of smokeless tobacco, particularly among youth?

See response to X.1., above.

2. Does the administration support the use of these alternative labels?
3. What changes, if any, to the legislative language implementing this provision

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would the administration propose? Please provide specifics.

The administration, as discussed above, has focused its efforts on supporting the restrictions now codified in FDA regulations. The resources of the administration are available to assist the Committee in determining whether further restrictions are appropriate.

XI. ENFORCEMENT OF ADVERTISING, MARKETING AND LABELING RESTRICTIONS

- 1. Does the administration support the enforcement provisions regarding advertising, marketing and labeling? If so why? If not, why not?**

Section 114 of the bill provides FTC with the authority to enforce sections 111 and 112, the provisions relating to warning statement requirements. Section 114 also contains a penalty provision for violations of section 113, the requirement that companies provide ingredient information to the Secretary of HHS pursuant to a new provision of the Federal Food, Drug, and Cosmetic Act, and authorizes the FTC to bring actions to enforce that provision. With respect to sections 111 and 112, section 114 appears to maintain the status quo with respect to warning label enforcement issues. Some other proposed bills would shift that authority to FDA. The administration is available to assist in the Committee in considering these differing approaches. With regard to section 113, which relates to a provision of FDA law, the administration would be pleased to assist the Committee in evaluating whether enforcement authority for the ingredient disclosure requirements may be more appropriately vested entirely in FDA.

- 2. What changes in legislative language, if any, does the administration recommend regarding these provisions? Please provide specific language.**

As discussed above, the administration would be pleased to assist the Committee in evaluating issues related to the enforcement of advertising, marketing, and labeling restrictions, and in developing modifications, if appropriate, to legislative language.

XII. PREEMPTION OF STATE AND LOCAL ACTION

- 1. Does the administration support such preemption? If so, why? If not, why not?**
- 2. What changes in legislative language, if any, does the administration recommend regarding this provision? Please provide specific language?**

The administration generally supports the limited preemption of state and local

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requirements related to the packaging of cigarettes or smokeless tobacco, but does not support the preemption of state and local restrictions on advertising. FDA's current regulations address advertising. Although the regulations are preemptive, the Federal Food, Drug and Cosmetic Act allows states and localities to apply for waivers to be exempted from federal thresholds. This would allow states and localities to enact or retain existing advertising restrictions that would be more stringent.

The administration is available to work with the Committee with respect to the broader issues of preemption raised by other provisions of the bill. The administration is committed to allowing states and localities the maximum flexibility practicable to develop strong public health policies to prevent and reduce youth tobacco use.

XIII. EXEMPTION OF EXPORTS

1. Does the administration support this exemption? If so, why? If not, why not?

No. As the world's leading exporter of tobacco products, the United States has the obligation to guarantee that its companies will behave responsibly no matter where they do business. There should be no exemptions for policies that would safeguard the health and well being of people anywhere in the world.

2. What ramifications does this provision have in the area of foreign relations?

Adopting a less stringent policy towards exported tobacco products would send a negative message to the countries where these products are sold -- that the health and well being of their citizens, particularly their children, are less important than the health and well being of Americans.

3. What changes in legislative language, if any, does the administration recommend regarding this provision? Please provide specifics.

Proposed response: The provision should be revised as follows:

- "It shall be unlawful for any domestic concern or any officer, director, employee, or agent of such concern to make use of the mails or any means or instrumentality of interstate commerce to contribute, either directly or through a foreign subsidiary, joint venture, affiliate, or licensee to--

"(1) the sale or distribution of tobacco products in a foreign country to children; or
"(2) the advertising or promotion of tobacco products in a foreign country in a manner

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that appeals to children.

- “It shall be unlawful for any domestic concern or any officer, director, employee, or agent of such concern either directly or through a foreign subsidiary, joint venture, affiliate, or licensee, to make use of the mails or any means or instrumentality of interstate commerce to cause or contribute to the export from the United States any tobacco product the package of which does not contain a warning label that--

“(1) is in the primary language of the country in which the tobacco product is sold or distributed to consumers; and

“(2) except for the requirement of paragraph (1)--

 “(A) complies with Federal requirements for labeling of similar tobacco products manufactured, imported, or packaged for sale or distribution in the United States;

or

 “(B) complies with the labeling requirements of the foreign country in which the product is sold or distributed to consumers and which the labeling requirements the Secretary of Health and Human Services determines are substantially similar to Federal requirements and are adequately enforced by such country.”

XIV. RESTRICTIONS ON ACCESS TO TOBACCO PRODUCTS

- 1. Does the administration support these provisions? If so, why? If not, why not?**

The administration supports access restrictions based upon FDA’s findings regarding the ability of persons under 18 to purchase tobacco products in the absence of a photo identification requirement. See, e.g., 61 Fed. Reg. 44437-39 (1996).

- 2. How does the administration envision that this provision will be enforced, and can it be enforced effectively?**

FDA currently is enforcing aspects of its restrictions on youth access to tobacco products embodied in the FDA tobacco rule (21 C.F.R. §§ 897.14, 897.16). FDA is enforcing the age and photo ID provisions cooperatively with state and local officials. Because of the enormous number of retailers that sell tobacco, FDA has adopted a cooperative model. By way of comparison, this is how FDA regulations are enforced for dairy farm and retail food inspections in communities across the country—by commissioning the services of state and local officials.

In its initial enforcement efforts, FDA contracted with 10 states. Under these contracts, states are conducting between 200 and 330 unannounced retail compliance checks each month over a period of eight months. Information about the compliance checks is sent to FDA, which issues a warning for the first violation to retailers found selling to the adolescents. These

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retailers will be subject to repeat inspections. FDA will seek a fine of \$250 for the second violation and greater fines for subsequent violations. FDA is in the process of contracting with additional states.

FDA anticipates that state and local contracts will provide effective mechanisms to check compliance with other access restrictions, such as the requirement that all transactions be face-to-face, without the assistance of any electronic device. Commissioned state and local officials will be able to determine compliance with these and similar provisions by visiting facilities, and appropriately documenting observations.

XV. PROHIBITION ON SALE OF LESS THAN A FULL PACK OF CIGARETTES

- 1. Does the administration support this prohibition? If so, why? If not, why not?**

The administration supports this prohibition based upon FDA's findings regarding the ability of persons under 18 to obtain cigarettes when they are sold in units of less than a full pack. See, e.g., 61 Fed. Reg. 44443, 44445-48.

- 2. What change in legislative language, if any, does the administration recommend regarding this provision? Please provide specifics.**

The administration does not recommend any changes in the legislative language.

XVI. STATE LICENSURE TO SELL TOBACCO

- 1. What data, if any, does the administration have to indicate that licensure will effectively reduce access to tobacco by minors?**

Licensure of retailers will give authorities the means of identify those retailers who sell tobacco. States that do not require licensure are having difficulty complying with the Synar amendment, because they have difficulty identifying outlets that sell tobacco products. In addition to providing a list of retailers, the threat of license revocation for noncompliance is extremely motivating to retailers. Furthermore, license fees can be used to cover the cost of enforcement, which is an important determinant of compliance.

- 2. What entity does the administration envision would enforce the licensure requirement if a state should be unable or unwilling to implement the licensure program?**

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The administration supports a licensing program that is operated at the state or local levels. The responsible federal agency should have authority to devise a program and set national standards that the participating state and local programs implement.

- 3. Has the administration developed or formulated the cost of the licensure program? If so, why? If not, why not?**

The administration has not completed work regarding the cost of a licensure program.

- 4. Does the administration support the licensure program? If so, why? If not, why not? *[Sentences that are bold and in italic still are proposed by DOJ without HHS concurrence.]***

The administration supports an effective licensing program. Federal legislation that calls upon states to establish regulatory programs must be sensitive to federalism concerns. *Section 131 would provide two incentives for states to establish licensing programs for retail distributors of tobacco products. States that establish satisfactory licensing programs (1) would avoid imposition of a federal ban on retail distribution of tobacco products within their borders; and (2) would qualify for block grants under section 502. Congress possesses authority, under principles discussed in New York v. United States, 505 U.S. 144, 173-74 (1992), to "offer States the choice of regulating that activity according to federal standards or having state law pre-empted by federal regulation." Congress also possesses authority, under Spending Clause principles discussed in South Dakota v. Dole, 483 U.S. 203 (1987), to condition the receipt of federal funds by states on their implementation of certain regulatory measures. Accordingly, although the section 131 incentives for state licensing may give rise to constitutional challenges, we believe that they are consistent with the Constitution.*

- 5. What changes in legislative language, if any, does the administration recommend regarding this provision? Please provide specifics.**

The resources of the administration are available to work with the Committee in evaluating provisions for a licensing program.

XVII. ANTI-TRUST EXEMPTION

- 1. Does the administration support such an exemption? If so, why? If not, why not?**

The antitrust laws are the most important protector of the free-market economy against anticompetitive actions that would undermine its integrity to the detriment of consumers. Accordingly, exceptions to the antitrust laws should be made only in exceedingly rare instances,

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when the fundamental free market values underlying the antitrust laws are compellingly overwhelmed by a paramount policy objective; and a proposed exemption must be necessary to permit the paramount policy objective to be pursued. The proponents of an antitrust exemption for the tobacco industry thus face a heavy burden, which they have not yet met.

2. Could such an exemption be used to set prices beyond those necessary to deter youth smoking, but to increase profits for the industry?

An antitrust exemption that allowed tobacco firms to set prices jointly could be used by firms to increase prices beyond what is necessary to deter youth smoking and thereby to increase profits at the expense of consumers. It would be very difficult to restrict use of the exemption to its intended purpose, because the tobacco companies would have both the opportunity and the incentive to effect unnecessary price increases and to conceal them under the guise of restrictions on youth smoking. While the resulting collusive price increase would be likely to reduce demand for tobacco products, it would also increase profits for the tobacco companies, at least to the point at which they are collectively charging the "monopoly price." The tobacco companies would thereby be able to use an antitrust exemption to enrich themselves at the expense of those confirmed with smoking habits.

3. What changes in legislative language, if any, does the administration recommend regarding this provision? Please provide specifics.

Before any exemption is considered for enactment, the proponents of the exemption need to meet the burden of demonstrating that this is one of the exceedingly rare instances in which the antitrust laws are incompatible with a clearly paramount policy objective. The administration is extremely skeptical that the proponents of this case will be able to meet that burden.

Even in those rare instances in which that burden is met, any antitrust exemption should be carefully and narrowly crafted to address that objective in the least anticompetitive manner available. If Congress should decide to move forward with consideration of antitrust exemptions for the tobacco industry, the administration would assist in crafting them as narrowly and precisely as possible to achieve their purpose without creating unnecessary anticompetitive effects.

XVIII. APPLICABILITY TO NEW ENTRANTS IN TOBACCO INDUSTRY

[Still have to work this one out.] Whatever the ultimate answer, it should make the following point -- The inclusion of provisions that would enable new entrants to "consent" to restrictions on their advertising would be subject to constitutional review in accord with the principles discussed

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in our answer to question 9.]

**Automated Records Management System
Hex-Dump Conversion**

ADDITIONAL REFERENCES

VII. GLAMORIZATION

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X. WARNING LABELS

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Institute of Medicine. Warnings and packaging. Growing up tobacco free: preventing nicotine addiction in children and youths. Washington, DC: National Academy Press, 1994:236-246.

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Mary L. Smith (CN=Mary L. Smith/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:23-FEB-1998 19:40:37.00

SUBJECT: Food Safety 90-Day Report

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

CC: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

CC: Jerold R. Mande (CN=Jerold R. Mande/OU=OSTP/O=EOP @ EOP [OSTP])

READ:UNKNOWN

CC: Thomas L. Freedman (CN=Thomas L. Freedman/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TEXT:

Elena, OMB and FDA told me the Food Safety 90-day report is completed. Dr. Friedman wanted to mention that the report is completed and set to go out during his congressional testimony on Wednesday. This seems to be ok -- it doesn't seem like much of an announcement for an event. Let me know, Mary

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Toby Donenfeld (CN=Toby Donenfeld/O=OVP [UNKNOWN])

CREATION DATE/TIME:23-FEB-1998 17:58:35.00

SUBJECT: Tobacco Event Conference Call

TO: Lisa A. Berg (CN=Lisa A. Berg/O=OVP @ OVP [UNKNOWN])
READ:UNKNOWN

TO: Nathan B. Naylor (CN=Nathan B. Naylor/O=OVP @ OVP [UNKNOWN])
READ:UNKNOWN

TO: Dan J. Taylor (CN=Dan J. Taylor/O=OVP @ OVP [UNKNOWN])
READ:UNKNOWN

TO: Wendy Hartman (CN=Wendy Hartman/O=OVP @ OVP [UNKNOWN])
READ:UNKNOWN

TO: Eli G. Attie (CN=Eli G. Attie/O=OVP @ OVP [UNKNOWN])
READ:UNKNOWN

TO: Patricia M. Ewing (CN=Patricia M. Ewing/O=OVP @ OVP [UNKNOWN])
READ:UNKNOWN

TO: Jerold R. Mande (CN=Jerold R. Mande/OU=OSTP/O=EOP @ EOP [OSTP])
READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Jodi R. Sakol (CN=Jodi R. Sakol/O=OVP @ OVP [UNKNOWN])
READ:UNKNOWN

TO: Lawrence J. Haas (CN=Lawrence J. Haas/OU=OMB/O=EOP @ EOP [OMB])
READ:UNKNOWN

TO: mdonahue (mdonahue @ os.dhhs.gov@INET [UNKNOWN])
READ:UNKNOWN

TO: Kimberly H Tilley (CN=Kimberly H Tilley/O=OVP @ OVP [UNKNOWN])
READ:UNKNOWN

TO: Donald H. Gips (CN=Donald H. Gips/O=OVP @ OVP [UNKNOWN])
READ:UNKNOWN

TO: Cynthia A. Rice (CN=Cynthia A. Rice/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Thomas L. Freedman (CN=Thomas L. Freedman/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Bruce N. Reed (CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

CC: Cathy R. Mays (CN=Cathy R. Mays/OU=OPD/O=EOP @ EOP [OPD])

READ: UNKNOWN

TEXT:

The VP is tentatively scheduled to announce the FDA compliance billboard and radio campaign on Wednesday morning. The President may participate if he is still here in D.C.

at that time. We hope Secretary Shalala will be able to join us for the announcement. (HHS is checking her schedule).

We are scheduling a conference call to discuss the event/announcement for tomorrow (Tuesday) morning at 9:30 a.m. Folks from HHS will be on the call.

Please call 456-6777 or 456-6799 code #9867. Thank you.

MEMORANDUM

February 23, 1998

TO: Elena
FR: Chris and Sarah
RE: Needle Exchange

The purpose of this memo is to help frame the Administration's options as they relate to the needle exchange issue and to develop a strategy to lay the groundwork for whatever decision is made. Following the confirmation of Dr. David Satcher as Surgeon General and the expiration of the Congressional prohibition on releasing needle exchange funds (which is coming up on March 31th), there will be great pressure for the Administration to take a formal position on this issue.

Background: Congress has given the Secretary of Health and Human Services the authority to release Federal funding for needle exchange programs if she concludes that needle exchange programs decrease HIV transmission and do not increase drug use. The Secretary has already concluded that these programs do decrease the transmission of HIV, but has yet to make a formal finding regarding their impact on drug use. There has been increasing pressure from scientists, the public health community, and the AIDS community regarding the Administration's position on needle exchange programs. The pressure has become more intense as a great number of people believe that the evidence that needle exchange programs do not increase drug use is quite strong. As a result there is a heightened sense among the advocates that the only reason the Administration has not made a positive finding is the fear of the political consequences of such an action.

Although there does appear to be credible information that needle exchange programs do not increase drug use, this is not a widely held view among the public and the law enforcement community. This fact helps explain why another critical player in this discussion, General McCaffrey, continues to send strong signals against any movement in this area.

With the General's opposition in mind and with the confirmation of Dr. Satcher for Surgeon General pending, the Administration hesitated to make any dispositive finding regarding needle exchange. This decision was further validated when during the appropriations process, there was a very real chance that any move to make such a finding would have led Congress to eliminate, altogether, the Secretary's current authority to release funds for needle exchange.

programs. Instead, at least partially as the result of our decision not to act, the authority was not repealed and the Congress limited its intervention to delaying our authority to release funds until March 31. As a consequence, even if the Administration makes a final determination that needle exchange programs do not, in fact, increase drug use, no dollars can be released until the end of March.

There is little question that Dr. Satcher's confirmation and the pending March deadline places extraordinary pressure on the Administration to release findings on the impact of needle exchange programs on drug use. This means we must quickly move to decide how best to position ourselves on this issue and begin to lay the foundation for whatever position we take.

Options: There are currently three options to contemplate as we move forward.

(1) Maintain Status Quo: Maintain our current position that there is not enough information to make a decision as to whether needle exchange programs increase drug use.

The Administration could continue to conclude that there is not sufficient data to make a final determination on the impact of these programs with regard to drug use. Under this option, we would choose to delay the issue until a more appropriate time for a determination (e.g. if ever a more friendly Congress is in place). This position would no doubt anger the AIDS community even though we would, under this resolution, stand a better chance at retaining the Secretary's authority to release funding to needle exchange programs over the long haul. The AIDS community believes that there is more than enough information to conclude that needle exchange programs do not increase drug use and do help reduce HIV transmission. Therefore they would find any efforts by the Administration to further delay this issue to be morally reprehensible. We would also likely be criticized by other elite validators who would find this choice to be a purely political move.

On the other hand, under this option, the Secretary is far more likely to retain her current statutory authority to fund these programs. It would also help us avoid a major confrontation with the Republican Congress on this issue -- a confrontation that many political experts believe we would inevitably lose.

(2) Make and Release a Finding That Needle Exchange Programs Do Not Increase Drug Use. The Secretary could, based on a new study (that could easily be produced by HHS), conclude that needle exchange programs do not increase drug use and release funding for needle exchange programs. With this conclusion, the President would be widely praised by the AIDS community for his moral leadership. The American Bar Association, the American Medical Association, and other influential validators would also, no doubt, praise the Administration. Our position could be described as one of community empowerment and choice rather than the Federal government micromanaging these programs: Federal funds would only be released to those communities that decided themselves to have programs. Having said this, the far right and the law enforcement community could be expected to react extremely negatively to such a move.

Taking this position would, no doubt, create a very visible fight -- a fight which would be difficult to sustain in an election year where the Democrats are trying to win back the House by claiming they are more in touch with the American public. In particular the conservative wing of the party would have no appetite to fight for this position. Republicans would seize upon this issue to illustrate their point that the Democrats are out of touch with the public and in the pocket of certain special interests.

If we choose this option, Congress would inevitably make an effort to remove the Secretary's authority to release funds, and many believe they would be successful. Interestingly, even though it is extremely likely the Secretary could lose all authority to release federal funding, the AIDS community (even acknowledging this) would still likely back this as the only acceptable option.

(3) Make Positive Finding But Do Not Release Funds Unless Local Law Enforcement Community Draws Similar Conclusion. This approach would require the law enforcement community in each particular area applying for funds to draw a similar conclusion to that of the Administration: that needle exchange programs do not increase drug use. This compromise option would help mitigate the inevitable opposition for a positive finding and reduce the chances that the Congress would remove the Secretary's authority. It would also help immunize the Administration from attacks from the right. However, this approach would likely draw a great deal of criticism from the AIDS community, who are likely to approve of nothing less than full victory because they feel it would reduce the number of communities eligible for funding. Also, it is important to note that Republicans would still try and use this issue to their advantage, suggesting that any needle exchange programs will increase drug utilization. As such they would inevitably use option 2 or 3 as a weapon in the upcoming mid-term Congressional elections.

Addendum: Regardless of what decision is made, it is extremely important that we begin to lay the foundation for how we plan to proceed. We will have to think about timing as well as how our decision is rolled out with regard to the AIDS community, the Congress, the law enforcement community. Most important of all, whatever decision we make must be made with a total commitment with all the Administration parties to ensure it is consistently communicated and competently implemented.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Diana Fortuna (CN=Diana Fortuna/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:23-FEB-1998 17:43:08.00

SUBJECT: FICA/workfare conference call this morning

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Cynthia A. Rice (CN=Cynthia A. Rice/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Bruce N. Reed (CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TEXT:

Treasury and the AFL had a conference call this morning that was not very satisfactory to either party. The AFL felt that Treasury didn't have very good answers to their questions/concerns. Treasury felt that there is no way to satisfy the AFL. Everyone wants to know what happens next. Treasury says they will be ready to issue the notice Wednesday if we want; I told them that was probably good but I would get back to them with a definite answer.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Jose Cerda III (CN=Jose Cerda III/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:23-FEB-1998 14:39:39.00

SUBJECT: Proposed Megan Statment

TO: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Michelle Crisci (CN=Michelle Crisci/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

CC: Leanne A. Shimabukuro (CN=Leanne A. Shimabukuro/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TEXT:
Michelle/Laura:

For Rahm and Elena to review. We need to makes sure that at least a non-practicing attorney glances at this --though I think it's pretty safe.
jc3

===== ATTACHMENT 1 =====
ATT CREATION TIME/DATE: 0 00:00:00.00

TEXT:
Unable to convert ARMS_EXT:[ATTACH.D9]MAIL45419145H.026 to ASCII,
The following is a HEX DUMP:

FF575043B0040000010A02010000000205000000030A000000020000DB088FC073B4D2F1260850
8B2A5538969764164A6847758C9F89388F469EE7462CBE7FA67FDACBD0E8F7B0891E9E5B56B46E
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52006500670075006C0061007200

DRAFT STATEMENT OF THE PRESIDENT
February 23, 1998

This morning the Supreme Court declined to review and, thus, left intact the community notification provision of New Jersey's "Megan's Law." Megan's Law provides families and communities with a crucial tool to protect their children from known sex predators. That is why my Administration has defended its constitutionality, enacted a federal Megan's Law, and worked with states to establish a national sex offender registry. We will continue to do everything we can to make sure that community notification and sex offender registration laws are enforced and upheld throughout the country.

Automated Records Management System
Hex-Dump Conversion

**STRENGTHENING PUBLIC SCHOOLS BY RAISING STANDARDS, RAISING
EXPECTATIONS, RAISING ACCOUNTABILITY**

February 23, 1998

"Every American who is willing to work and study hard can now afford college... We've thrown open the doors to higher learning. Now, we must continue working to make sure all our children can walk through them and seize the opportunities of the future. That is why in my balanced budget, I am proposing the largest commitment to K-12 education in history -- a comprehensive plan to raise standards, raise expectations and raise accountability in our schools."

President Bill Clinton

February 20, 1998

Ending Social Promotions. President Clinton announced that, before the next school year begins, the Education Department will release a guidebook that will tell every state, school district and school how to end social promotions -- the practice of promoting students from grade to grade even if they have not learned the material and met academic standards. The President called on the Education Department to help schools design programs that (1) prepare students to meet standards on time (by providing them with grade-by-grade standards and a rigorous curriculum, smaller classes, and well prepared teachers, and by identifying students who need extra help early on and providing them the help they need); (2) provide students who do not meet the standard with immediate help such as after-school and summer school programs; and (3) provide effective interventions for students who must be retained.

Keeping National Standards and Tests on a Bipartisan Track. President Clinton announced today that Secretary of Education Riley has appointed Gov. John Engler (R. Michigan) to serve on the National Assessment Governing Board, the independent, bipartisan body responsible for overseeing the development of voluntary national tests in the basic skills. Gov. Engler fills the NAGB seat representing Republican governors, and joins Gov. Roy Romer (D. Colorado) as the two gubernatorial members of NAGB. Under Gov. Engler's leadership, Michigan was the second state in the Nation to announce its participation in the testing program.

A National Effort to Help States Reduce Class Size. President Clinton called on Congress to enact his proposal for a national effort to reduce class size in grades 1-3 to a national average of 18. Calling for a federal/state partnership to provide smaller classes with qualified teachers so that every student receives personal attention, gets a solid foundation for further learning, and masters the basic skills in reading and math, President Clinton praised recent class size reduction initiatives in state such as California, Nevada and Wisconsin as well as new class size reduction proposals in Delaware and other states.

President Clinton also pointed to findings from a recent evaluation of Wisconsin's SAGE (Student Achievement Guarantee in Education) Program, a statewide initiative to reduce the student-teacher ratio to 15:1 in kindergarten through third grade. The first-year evaluation shows that first grade students in smaller classes, when compared to similar students in schools not participating in the program, made significant gains in reading, language arts and math. The study reported that the smaller class sizes provided by the SAGE program were particularly

effective for improving achievement among low income students and African-American students. When combined with the widely reported findings from the Tennessee STAR program, this study underscores that research, together with the common sense of teachers and parents, shows that reducing class size will help improve student achievement.

Freeing Schools from Red Tape: Accountability and Flexibility in Federal Education Programs. President Clinton announced today that he would send Congress legislation permitting each state to waive most statutory and regulatory requirements in key federal elementary and secondary education programs. To be eligible, a state must be able to waive its own regulations on schools, and must hold schools accountable for results by setting academic standards and measuring student performance, requiring schools to public school report cards and by intervening in low performing schools. School reports cards must show student progress toward meeting academic standards for the school as a whole and disaggregated to demographic subgroups.

The President's proposal would expand the existing Ed-Flex demonstration program, part of the Goals 2000 Act, which is now limited to 12 states under current law. It authorizes state education agencies to waive most statutory and regulatory requirements in federal elementary and secondary education programs, and requires states to provide the same flexibility to local schools with respect to their own education regulations.

President Clinton's proposal will affect all programs in the Elementary and Secondary Education Act, including the Title 1 Program that provides extra help to disadvantaged students, the Safe and Drug Free Schools and Communities Program, the Eisenhower Professional Development Program, and the Perkins Vocational and Applied Technology Education Act. States may not waive civil rights requirements or provisions of the Individual with Disabilities Education Act.

Expanding Ed-Flex is part of a long-standing effort by the Clinton Administration to reinvent federal education programs. Since the 1994 enactment of Goals 2000, the Education Department has cut elementary and secondary program regulations by 69%, administered new programs such as Goals 2000 and School-to-Work without any new regulations; provided waivers to federal education requirements for the first time in history in order to allow states and school districts to use federal education funds in a manner that best support their education reforms. Since 1994, the Education Department has provided nearly 250 waivers to school districts in 49 states. In an additional 140 instances, no waivers were necessary for school districts to carry out the desired activities. Twelve states--Colorado, Illinois, Iowa, Kansas, Maryland, Massachusetts, Michigan, New Mexico, Ohio, Oregon, Texas and Vermont--already participate in Ed-Flex.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Thomas L. Freedman (CN=Thomas L. Freedman/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:23-FEB-1998 10:05:38.00

SUBJECT: Re: HHS A-19 on Ingredient Disclosure in Tobacco Products

TO: Mary L. Smith (CN=Mary L. Smith/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TO: Cynthia A. Rice (CN=Cynthia A. Rice/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TO: Bruce N. Reed (CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TEXT:

Do you agree with OMB on this? I do. The proposal might appear to take the place of our asking for a more comprehensive bill.

----- Forwarded by Thomas L. Freedman/OPD/EOP on 02/23/98
09:56 AM -----

Wm G. White

02/23/98 09:50:14 AM

Record Type: Record

To: Thomas L. Freedman/OPD/EOP

cc: See the distribution list at the bottom of this message

Subject: Re: HHS A-19 on Ingredient Disclosure in Tobacco Products

Josh Gotbaum asked us to seek your views on a legislative proposal that HHS/CDC would like to submit to the Hill this year regarding ingredient disclosure (see attached e-mails for summary.) Although we have no technical objections to the proposal, we recommend not sending this to the Hill this year, since the Administration is not proposing comprehensive tobacco legislation. A very similar proposal as the one HHS/CDC would like to send is also included in the Conrad bill, for which the Administration has expressed support.

Please let us know if you/DPC concur with the OMB recommendation.

Thanks. Greg.

----- Forwarded by Wm G. White/OMB/EOP on 02/23/98 09:39
AM -----

JOSHUA

GOTBAUM

02/21/98 11:31:19 PM

Record Type: Non-Record

To: Wm G. White/OMB/EOP@EOP

cc: See the distribution list at the bottom of this message

bcc:

Subject: Re: HHS A-19 on Ingredient Disclosure in Tobacco Products

I agree. Touch base with Tom Freedman of DPC to make sure they do as well. thanks.

Wm G. White

02/19/98 07:14:15 PM

Record Type: Record

To: Joshua Gotbaum/OMB/EOP@EOP, Jill M. Pizzuto/OMB/EOP@EOP
cc: See the distribution list at the bottom of this message
Subject: HHS A-19 on Ingredient Disclosure in Tobacco Products

HHS has sent us an A-19 legislative proposal for CDC that would expand HHS' ability to obtain specific information on the type and quantity of ingredients in tobacco products. We are seeking your guidance on whether you would like HHS to submit this A-19 proposal to Congress.

HD Recommendation: HD staff have no technical objections to the A-19 (see description below). However, given that the Administration is not submitting tobacco legislation to Congress this year, we recommend that HHS not send this A-19 forward. In addition, similar versions of HHS' A-19 are already included in the Jeffords and Conrad tobacco bills,

Summary of the A-19: The A-19 would do the following 3 things:

- (1) Authorize HHS to obtain brand-specific information on ingredients in cigarette and smokeless tobacco products, including the quantity of ingredients;
- (2) Authorize HHS to report to the public any potential health risks associated with exposure to these ingredients; and
- (3) Amend current law to require manufacturers of tobacco products to disclose their products' ingredients in descending order according to weight, measure or numerical count, as part of the packaging.

Current Law requires the tobacco industry to annually provide to HHS a list of ingredients added to tobacco in the manufacturing of tobacco products. However, the industry is neither required to report the quantity and relative proportion of these ingredients nor provide this information by brand or by company. CDC staff advises that the law firm of Covington and Burling provides this list of ingredients to HHS on behalf of the industry. According to CDC staff, HHS is also required to treat this information as confidential to assure that trade secret information is not released or be subject to FOIA requests.

HHS Rationale for A-19: According to CDC staff, HHS is required to analyze and report to Congress the possible adverse health effects of specific ingredients in tobacco products. In order to carry out this authority, HHS believes they must have information on the quantify and brand-specific use of ingredients in these products. They would also like to provide this information to consumers so that they can make fully informed choices regarding the products they choose to purchase.

The AG Settlement includes similar, but not exactly the same, provisions

as those included in the HHS A-19. The AG settlement would give FDA the authority to evaluate all additives in tobacco products. (See pages 19-20 of the Settlement.) Under the settlement, no non-tobacco ingredient could be used in manufacturing tobacco products unless the manufacturer could demonstrate within 5 years after the enactment of tobacco legislation that such ingredient is not harmful under the intended conditions of use. It would also require the manufacturers to disclose to FDA the ingredients and the amounts in each brand. Finally, it would require manufacturers to disclose ingredient information to the public under regulations comparable to what current federal law requires for food products. The HHS A-19 would have the industry report this information to CDC, as opposed to the FDA.

If you concur, we will advise HHS staff that we have no objection to the concept, but that it doesn't make sense to transmit a small piece of tobacco legislation, while not submitting comprehensive language in support of the Budget. Please let us know how you would like to proceed.

Message Copied

To:

Barry T. Clendenin/OMB/EOP@EOP
Richard J. Turman/OMB/EOP@EOP
Anne E. Tumlinson/OMB/EOP@EOP
Jim R. Esquea/OMB/EOP@EOP
Marc Garufi/OMB/EOP@EOP
Mark E. Miller/OMB/EOP@EOP

Message Copied

To:

jill m. pizzuto/omb/eop@eop
barry t. clendenin/omb/eop@eop
richard j. turman/omb/eop@eop
anne e. tumlinson/omb/eop@eop
jim r. esquea/omb/eop@eop
marc garufi/omb/eop@eop
mark e. miller/omb/eop@eop

Message Copied

To:

Joshua Gotbaum/OMB/EOP
Jill M. Pizzuto/OMB/EOP
Barry T. Clendenin/OMB/EOP
Richard J. Turman/OMB/EOP
Mark E. Miller/OMB/EOP
Jim R. Esquea/OMB/EOP

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Michael J. Sorrell (CN=Michael J. Sorrell/OU=PIR/O=EOP [PIR])

CREATION DATE/TIME:23-FEB-1998 17:18:54.00

SUBJECT:

TO: Janet Murguia (CN=Janet Murguia/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Robert N. Weiner (CN=Robert N. Weiner/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Michael Waldman (CN=Michael Waldman/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Dawn M. Chirwa (CN=Dawn M. Chirwa/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Bob J. Nash (CN=Bob J. Nash/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Doris O. Matsui (CN=Doris O. Matsui/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Mona G. Mohib (CN=Mona G. Mohib/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Ruby Shamir (CN=Ruby Shamir/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Paul E. Begala (CN=Paul E. Begala/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Gene B. Sperling (CN=Gene B. Sperling/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Nelson Reyneri (CN=Nelson Reyneri/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Minyon Moore (CN=Minyon Moore/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Elisabeth Steele (CN=Elisabeth Steele/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Trooper Sanders (CN=Trooper Sanders/O=OVP @ OVP [UNKNOWN])
READ:UNKNOWN

TO: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Suzanne Dale (CN=Suzanne Dale/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TQ: edley (edley @ law.harvard.edu @ INET @ LNGTWY [UNKNOWN])
READ:UNKNOWN

TO: Maria Echaveste (CN=Maria Echaveste/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TO: Jon P. Jennings (CN=Jon P. Jennings/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Ananias Blocker III (CN=Ananias Blocker III/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Laura K. Capps (CN=Laura K. Capps/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Emil E. Parker (CN=Emil E. Parker/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Laura K. Demeo (CN=Laura K. Demeo/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Cheryl D. Mills (CN=Cheryl D. Mills/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Robert B. Johnson (CN=Robert B. Johnson/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Lynn G. Cutler (CN=Lynn G. Cutler/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Sidney Blumenthal (CN=Sidney Blumenthal/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Beverly J. Barnes (CN=Beverly J. Barnes/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Peter Rundlet (CN=Peter Rundlet/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Angelique Pirozzi (CN=Angelique Pirozzi/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Sylvia M. Mathews (CN=Sylvia M. Mathews/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Thurgood Marshall Jr (CN=Thurgood Marshall Jr/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Susan M. Liss (CN=Susan M. Liss/O=OVP @ OVP [UNKNOWN])
READ:UNKNOWN

TO: Ann F. Lewis (CN=Ann F. Lewis/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Mickey Ibarra (CN=Mickey Ibarra/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Marjorie Tarmey (CN=Marjorie Tarmey/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Andrew J. Mayock (CN=Andrew J. Mayock/OU=WHO/O=EOP @ EOP [WHO])

MEMORANDUM FOR THE PRESIDENT

FROM: JUDITH A. WINSTON

THROUGH : ERSKINE BOWLES
SYLVIA MATHEWS

DATE : FEBRUARY 20, 1998

SUBJECT : PRESIDENT'S INITIATIVE ON RACE WEEKLY REPORT
FEBRUARY 14 - FEBRUARY 20

ADVISORY BOARD ACTIVITIES

WNET-TV Event. On February 19, Reverend Suzan Johnson Cook was a guest on a WNET-TV program, in New York City, which focused on race issues. Reverend Cook was joined on the show by Jim Sleeper, author of Liberal Racism.

Department of Energy Event. As part of Black History Month, Reverend Cook will speak at the U.S. Department of Energy on "African-Americans and Business--The Path Towards Empowerment," and will highlight the significant achievements and contributions that African-Americans have made in America. Secretary Pena will give remarks and introduce Reverend Cook.

EEAC Annual Conference. On February 19, Bob Thomas participated on a panel at the annual conference of the Equal Employment Advisory Council. Joining Mr. Thomas on this panel were: Dr. Bernard Anderson, the Department of Labor; Richard McCormick, Chairman and CEO of U.S. West; and Congressman George Gekas.

Race in America Video. On February 24, Ms. Oh will participate in a public screening of a video, "Race in America" which was created in response to your Initiative on Race by the Multicultural Collaborative, a Los Angeles community organization. At the public screening at the Los Angeles Theater, Ms. Oh will

answer questions about the Initiative and participate in a morning press conference about the screening.

Pasadena Senior Center. On February 24, Ms. Oh will address an audience of approximately 200 senior citizens about the Initiative.

OFFICE OF THE EXECUTIVE DIRECTOR

WVEC Town Hall Meeting. On February 20, I participated in a town hall meeting sponsored by WVEC-TV, the local ABC affiliate in Norfolk, VA. I also spoke about the Initiative on a WVEC-TV program, "Forum on Race Relations".

Corporate Leaders Forum. Secretary of Transportation Rodney Slater has agreed to moderate a corporate leaders forum in St. Louis on March 4. Advisory Board member Bob Thomas will chair the meeting.

Religious Leaders Forum. Reverend Suzan Johnson Cook will chair a religious leaders forum which will be held in New Orleans on April 15.

FEDERAL AGENCY ACTIVITIES

Small Business Administration

MOU with the Big 3 Automakers. The Vice President and Administrator Alvarez announced the signing of an agreement between the SBA and the Big 3 Automakers on February 19, at an event held in the Roosevelt Room. The agreements will increase the auto companies' subcontracts with minority-owned businesses by \$3 billion over the next three years.

Department of Treasury

Black Patriots Commemorative Coins. On February 25, Secretary Rubin and Treasurer Withrow will present the first Black Revolutionary War Patriots Commemorative Coin to members of the Black Patriots Foundation, school children, and Members of Congress. The coins honor African Americans who served in and supported America's War of Independence.

Department of Veterans Affairs

Dialogue on Race For Youth. In support of the Federal Youth Taskforce, a component of the President's Initiative on Race, VA will host a race dialogue for high school students in the Washington metropolitan area. School officials from Georgetown Preparatory School in North Bethesda, MD; Lake Braddock High School, in Fairfax, VA; and Oxon Hill High School, in Ft. Washington, MD, have expressed an interest in participating. The dialogue will be held in early spring at VA Headquarters.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Thomas L. Freedman (CN=Thomas L. Freedman/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:23-FEB-1998 13:46:19.00

SUBJECT: Minorities, tobacco, and Gore

TO: Jerold R. Mande (CN=Jerold R. Mande/OU=OSTP/O=EOP @ EOP [OSTP])
READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Cynthia A. Rice (CN=Cynthia A. Rice/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Bruce N. Reed (CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Mary L. Smith (CN=Mary L. Smith/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TEXT:

Gore is meeting with some of the minority caucus folks tomorrow and Gips wanted to figure out what he could promise. What do you think of these as things the VP could say:

1. There should be specific language in the legislation targeting funds for research, cessation, and counter advertising to minority communities.
2. There should be legally acceptable legislative language indicating that the funds would utilize minorities in a position to know and support the community, such as historically black medical schools, newspapers, etc.
3. Note the language in Conrad on minorities and say we need to be more specific on protecting minority communities from the fall-out of increased cigarette prices and the possibility of less support for minority institutions that cigarette companies have supported in the past.
4. That we should work with the Caucuses on drafting more specific language on how much resources will be required to offset loses from industry investment in the communtiy and how much money will be required for cessation and other programs.

The caucuses are exploring the idea of a non-profit minority-oriented foundation to distribute research funds focused on minority health concerns. This idea may come up in meetings, but so far, evidently, the Hispanic caucus has not signed on.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Jake Siewert (CN=Jake Siewert/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:23-FEB-1998 15:02:50.00

SUBJECT: Press Inquiries on Times story on tech workers

TO: Bruce N. Reed (CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TO: Barry J. Toiv (CN=Barry J. Toiv/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

CC: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TEXT:

Who is handling inquiries on the Times story today on visa and hi-tech workers? I have no info or guidance, but have gotten a couple of calls.

In particular, could someone please get back to Miranda Ewell w/the San Jose Mercury News today?

She is at 408/920-5028. Thanks.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Marjorie A. Black (CN=Marjorie A. Black/OU=PIR/O=EOP [PIR])

CREATION DATE/TIME:23-FEB-1998 11:03:28.00

SUBJECT: Meeting With ETS

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TO: Claire Gonzales (CN=Claire Gonzales/OU=PIR/O=EOP @ EOP [PIR])

READ:UNKNOWN

TO: Julie A. Fernandes (CN=Julie A. Fernandes/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TO: Scott R. Palmer (CN=Scott R. Palmer/OU=PIR/O=EOP @ EOP [PIR])

READ:UNKNOWN

TO: Lin Liu (CN=Lin Liu/OU=PIR/O=EOP @ EOP [PIR])

READ:UNKNOWN

CC: Michele R. Waldron (CN=Michele R. Waldron/OU=PIR/O=EOP @ EOP [PIR])

READ:UNKNOWN

TEXT:

Nancy Cole, president of Educational Testing Service, Sharon Robinson, COO and senior vice president, and Anthony Carnevale, vice president for public Leadership have requested to meet with Judith Winston. They will be in Washington, DC on March 3 and the meeting will occur @ 3:00 in Judy's office. Judy would like for each of you to attend this meeting if possible.

The purpose of the meeting is to share with us and to discuss Educational Testing Service's involvement in Harvard's Civil Rights Project, led by Chris Edley, and to obtain our guidance and advice about several projects that ETS's Public Leadership is working on that involve diversity, merit and opportunity, and affirmative action.

Please confirm your attendance via e-mail asap. Thanks!! :)