NLWJC - KAGAN

EMAILS RECEIVED

ARMS - BOX 026 - FOLDER -004

[03/29/1998 - 03/30/1998]

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:29-MAR-1998 15:36:52.00

SUBJECT: Draft Q&As

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

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

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DRAFT -- 3/29 3:30pm

Tobacco Q&As
March 30, 1998

Q: What is Erskine Bowles going to say in his speech today?

A: He will say that protecting our children from the threat of tobacco is at the top of the President's agenda, and this administration is fully committed to working with the bipartisan leadership in Congress to achieve this goal. He will praise Senator McCain's leadership in drafting a bipartisan tobacco bill, which is expected to be released today. While we need to review the bill in detail, Mr. Bowles will say that based on what we have heard, we expect to see room for significant improvement in the McCain bill. Perhaps most important, we want to impose stronger penalties on companies that continue to sell cigarettes to our children. And we are disappointed that the McCain bill doesn't try to comprehensively address the question of how best to use tobacco revenues to protect public health and help our children.

Q: So is the Administration supporting or opposing the McCain bill?

A: We see room for significant improvement in the McCain bill, but believe it is a very strong foundation for further action. We believe the bill will make significant inroads on youth smoking by increasing the price of a pack of cigarettes substantially -- by $1.10 within five years -- and restricting both the advertising aimed at young people and their access to tobacco products. And we believe the bill will give the FDA the full authority it needs to regulate tobacco products and will protect farmers and farming communities. We look forward to working with Senator McCain and others in the Commerce Committee and the full Senate to strengthen this bill by imposing stronger penalties on companies that continue to sell cigarettes to our children and to ensure that tobacco revenues protect public health and help our children.

Q: Does this mean that the Administration prefers the Conrad, Fazio, and Chafee-Harkin-Graham bills?

A: The President has indicated his support for the Conrad, Fazio, and Chafee-Harkin-Graham bills. Each of these bills meet the President's call for a bill which: 1) Raises the price of cigarettes by up to $1.50 a pack over the next ten years and imposes tough penalties on companies that continue to sell to kids; 2) Expressly confirms the FDA authority to regulate tobacco products; 3) Gets tobacco companies out of the business of marketing to children; 4) Furthers public health research and goals; and 5) Protects tobacco farmers and their communities. The Conrad and Fazio bills better match the Administration's budget priorities. But the President is heartened by the bipartisan nature of the Chafee-Harkin bill, because he knows that such support is critical to enacting legislation this year.

Q: Are you saying that the McCain bill does not meet the President's five principles?

A: By not including strong company-specific penalties and not adequately funding public health research and goals, Senator McCain's bill has room for significant improvement.

Q: What is your view of the liability protections for the tobacco industry contained in Senator McCain's legislation?

A: As we have said on many occasions, we would prefer comprehensive tobacco legislation without liability limits, but in the context of legislation that meets all of the President's principles and dramatically reduces youth smoking, reasonable limits on liability will not be a dealbreaker. Right now, we're going to focus on the aspects of the McCain legislation that we think fall short of what the President has demanded: particularly, on the penalties in the bill to reduce youth smoking. Until we get those right, we won't consider liability protections.

We do understand that that the McCain bill has a very interesting idea about trying to turn liability protections into a public health tool. As we understand it, the McCain bill would in some respects make liability protections contingent on a company's efforts to reduce youth smoking. That proposal has to be looked at in much greater detail -- we would have to ensure that the threat of losing liability protections is real, and not just a pretense
-- but we believe it is worth serious consideration.

Q: You say the Administration needs stronger penalties on companies that continue to sell to our children. What do you mean by that?

A: We believe it is critically important that legislation provide strong financial incentives for every tobacco company to significantly reduce youth smoking. Last September, the President called for legislation to set targets to cut teen smoking by 30% in 5 years, 50% in 7 years, and 60% in 10 years. We believe the Congress should include financial penalties on companies that fail to meet these targets based on how far they are from reaching them. For example, a company could be required to pay a one cent per pack surcharge for every percentage point by which it misses the targets, meaning a company missing the targets by 10 percentage points would pay a 10 cents per pack surcharge and a company missing by 30 percentage points would pay a 30 cents per pack surcharge.

Q: Does the Administration support the farmers component to the McCain bill?

A: As we have said, we have not yet been able to review the bill in detail, but we are pleased that Senators Ford, Robb, Hollings, and Frist have agreed upon a package which provides broad-based protection for farmers and farming communities. This proposal is clearly a **promising effort to craft a bipartisan consensus which protects farmers and their**

communities, and we will be examining it closely.

Q: You also express concerns about Senator McCain's bill not directing tobacco revenues toward efforts to improve the public health and help children. What's missing from the McCain bill?

A: We do not yet know whether Senator McCain's bill includes any public health spending. The President strongly believes that tobacco revenues should go toward protecting public health and assisting children. His budget provides for funds for anti-smoking programs that will help us meet the goals of reducing youth smoking rates and for a dramatic expansion of health-related research to help us cure smoking-related disease. Finally, in recognition of the states' role in bringing suit against tobacco companies, the President's budget provides for a substantial amount of money to revert to the states. Some of this money can be used for any purpose. Other funds must be used on state-administered programs to assist children (specifically, for child care, Medicaid child outreach, and class size reduction).

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:29-MAR-1998 20:48:13.00

SUBJECT: For Erskine -- Elena needs to review first thing Monday -- EBB asked for i

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

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

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	AGs Settlement	McCain*	Harkin/Chafee	Conrad/Fazio**		Our Position
Payments						
Price per Pack Increase Resulting from Industry Payments	Rises to about $.62 by 2003	$.65 in 1999 $.70 in 2000 $.80 in 2001 $1.00 in 2002 $1.10 in 2003	$1.00 in 1999 $1.50 in 2000 $1.50+ infl in 2001 $1.50+ infl in 2002 $1.50+ infl in 2003	$.50 in 1999 $1.00 in 2000 $1.50 in 2001 $1.50+ infl in 2002 $1.50+ infl in 2003		$.62 in 1999 $.78 in 2000 $.89 in 2001 $1.00 in 2002 $1.10 in 2003
Liability						
Caps Annual Liability	At $5 billion. ($4 billion fund financed by entire industry, with $1 billion company copayment).	At about $6 billion. ($4 billion fund financed by entire industry, with $2 billion company copayment).	At $12 billion. ($8 billion fund financed by entire industry, with $4 billion company copayment).	No		No
Eliminates Punitive Damages for Past Conduct	Yes	Yes	No	No		No
Eliminates Class Action Lawsuits	Yes	Yes, eliminates past class action suits, but allows future class actions lawsuits.	No	No		No
Industry Penalties						
Amount	$80 million for each percentage	$80 million for each percentage	$.02 per pack surcharge for every	**Conrad** $.10 per	**Fazio** None	Per pack surcharges based on how many

* Based on information as of 3/29/98, not on review of legislative language.
** The Fazio bill is the House version of the Conrad bill; however, Rep. Fazio made some changes, including changes to the penalties section.

	AGs Settlement	McCain*	Harkin/Chafee	Conrad/Fazio**		Our Position
	point missed.	point missed between 0 - 5%; $160 million for each percentage point bet. 6-10%; $240 million for each percentage point over 11 %.	percentage point by which the youth smoking target is missed; doubles to $.04 per pack after two consecutive years of failure, and triples to $.06 per pack after four such years.	pack.		percentage points by which youth smoking reduction targets are missed: $.01 for 1-10 pp $.02 for 11-20 pp $.03 for 21+ pp Penalties would double after three consecutive years of failure.
Caps Annual Amount	Yes, at $2 billion	Yes, at $3.5 billion	Yes, at $10 billion	No		No
Makes Tax Deductible	Yes	No	No	No		No
Company Penalties						
Amount	N/A	N/A	$1500 per child surcharge for every percentage point by which youth smoking targets are missed; doubles to $3000 per child after two consecutive years of failure.	**Conrad** If targets missed by 1-10 pp, $.10/ pack; 10-15 pp, $.20/ pack; 15-20 pp, $.30/ pack; 20 pp+, $.40/pack.	**Fazio** $.02 per pack for every percentage point by which youth smoking targets are missed.	Per pack surcharges based on how many percentage points by which youth smoking reduction targets are missed: $.01 for 1-10 pp $.02 for 11-20 pp $.03 for 21+ pp If company fails by at least 30 pp for at least 3 consecutive

* Based on information as of 3/29/98, not on review of legislative language.

** The Fazio bill is the House version of the Conrad bill; however, Rep. Fazio made some changes, including changes to the penalties section.

	AGs Settlement	McCain*	Harkin/Chafee	Conrad/Fazio**		Our Position
						years, $.06 rather than $.03 penalty. ------------------------ Also have proposed alternative of $3000 per child surcharge for every percentage point missed.
Caps Annual Amount	N/A	N/A	No	No		No
Makes Tax Deductible	N/A	N/A	No	No		No

* Based on information as of 3/29/98, not on review of legislative language.

** The Fazio bill is the House version of the Conrad bill; however, Rep. Fazio made some changes, including changes to the penalties section.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Cynthia Dailard (CN=Cynthia Dailard/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:30-MAR-1998 13:46:31.00

SUBJECT: tobacco chart

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

TEXT:
here is the chart you requested from us for Rahm.==================== ATTACHMENT 1
ATT CREATION TIME/DATE: 0 00:00:00.00

TEXT:
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Comparison of Tobacco Proposals
March 30, 1998

	Attorneys General	**McCain**	**President**
Substantial Price Increase	No	Yes	Yes
Strong Industry and Company Penalties	No	No	Yes
Full FDA Authority	No	Yes	Yes
Strong Advertising and Access Provisions	Yes	Yes	Yes
Protections of Tobacco Farmers	No	Yes	Yes
Comprehensive Plan to Use Tobacco Revenue to Protect Public Health and Assist Children	Yes	No*	Yes
Strong Environmental Tobacco Smoke Provision	Yes	No	Yes
Liability Protections for Industry	Yes	Unknown	Only if bill meets President's public health principles.

* Does not attempt to address most spending issues.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:30-MAR-1998 21:58:43.00

SUBJECT: Updated equal pay announcement and Q&A

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

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

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

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

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

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

TEXT:
Here is an updated announcement -- the major change is that the EEOC and DOL would prefer to have one MOU rather than two. In addition, here is a first cut at Q&A -- let me know if there are additional questions. Can we get the CEA to draft an answer using the data they looked on the wage disparities? Let me know what changes, additions, etc. you all have.
Thanks, Mary =================== ATTACHMENT 1 ===================
ATT CREATION TIME/DATE: 0 00:00:00.00

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DRAFT 3-30-98

THE VICE PRESIDENT ANNOUNCES SUPPORT FOR LEGISLATION ON PAY EQUITY AND ADMINISTRATION INITIATIVES TO COMBAT WAGE DISCRIMINATION

April 2, 1998

Today the Vice President will announce the Administration's support for legislation, introduced today by Senator Daschle and Congresswomen DeLauro, **(check)** to improve enforcement of wage discrimination against women and to strengthen the remedy provisions in the Equal Pay Act to allow for compensatory and punitive damages. The Vice President also will announce several Administration initiatives aimed at enhancing enforcement of wage discrimination both in the private sector and the federal government. The Vice President will announce the development of a Memorandum of Understanding between the Equal Employment Opportunity Commission (EEOC) and the Department of Labor to cross-train their staffs to be sensitive to potential violations of the laws they enforce, including the Equal Pay Act, and to help the Department of Labor to collect damages under Title VII of the Civil Rights Act of 1964. The Vice President also will announce a ten-step voluntary self-audit for both private businesses and the federal agencies in order to help them monitor their efforts on equal pay. Finally, the Vice President will announce the "Guide to Recruitment and Retention of Women" in the federal government, a manual designed to assist agency managers hire and retain talented women.

Increasing Enforcement of Wage Discrimination. The Vice President will call on Congress to pass the legislation introduced today which strengthens current laws that prohibit wage discrimination and provides training and outreach to help enforce these laws. The highlights of this legislation include:

- Increased Penalties for the Equal Pay Act. This legislation amends the Equal Pay Act to allow for compensatory and punitive damages. Currently, the EPA only provides for liquidated damages and back pay awards.

- Non-retaliation Provision. This legislation amends the Equal Pay Act (EPA) to prohibit employers from penalizing employees for sharing information about their salaries with coworkers.

- **Class Actions. The bill amends the procedures for filing class actions under the EPA to conform with the general procedural rules for filing federal class actions in other areas of the law.**

- **Training, Research, Education, and Outreach. The bill requires the EEOC to provide training for its employees, subject to the availability of funding, on matters involving discrimination in the payment of wages. The bill also enhances programs already in place at the Department of Labor, requiring DOL to undertake research in the area of sex-based pay disparities; provide information on means of eradicating such disparities; assist State and local information and educational programs; recognize and promote the achievements of employers that have made strides to eliminate pay disparities; and convene a national summit to discuss and**

highlight the issue of sex-based pay disparities.

- **Pay Equity Award. The bill establishes "The National Award for Pay Equity in the Workplace," to be administered by the Department of Labor, to recognize and promote the achievements of employers that have made strides to eliminate pay disparities.**

Providing Data Analysis, Technical Assistance, and Enhanced Enforcement of Wage Discrimination. The Vice President also will announce a number of Administration initiatives that will supplement the legislation introduced today. These initiatives will provide increased analysis of data on the wage gap; assist federal agencies in enforcing wage discrimination law; provide technical assistance by highlighting "best practices" and offering a voluntary self-audit on the Internet; and strengthen the role of the Federal Government in hiring and retaining qualified women. These initiatives are:

- Increased Data Analysis on Pay Equity. The Vice President will announce an annual report on the pay gap by sex produced by the Department of Labor. This easy-to-access report will raise the national prominence of wage disparities and will highlight the issue every year in order to spur Americans to achieve increased gender pay equity.

- Memorandum Of Understanding (MOU) between EEOC and DOL to Cross Train and Collect Damages. The Vice President will urge the Department of Labor and the EEOC to work together to develop a MOU between the EEOC and the Department of Labor to train each other's staff to be sensitive to potential violations of the statutes they enforce, including the Equal Pay Act, and to assist referrals of potential violations to the applicable EEOC or Labor Department office for appropriate action. In addition, this MOU will be developed to permit the Department of Labor's Office of Federal Contractor Compliance Programs (OFCCP) to serve as the EEOC's agent for purposes of collecting damages that are not otherwise collectible by OFCCP, including relief for intentional discrimination under Title VII of the Civil Rights Act of 1964.

- **Federal Contractor Best Practices. The Department of Labor will begin to publicize successful programs of federal contractors by placing them on the Department of Labor's web site.**

- 10-Step Voluntary Self-Audit for Businesses and Employees. The Department of Labor will place on the Internet a 10-step package that would give companies guidelines in order to determine whether they offer equal pay, hiring, and promotional opportunities. A similar checklist for employees will also be placed on the Internet.

- 10-Step Voluntary Self-Audit for Agencies. The Vice President will announce that the federal agencies will take the 10-step self-audit developed by the Department of Labor and use the results from the self-audit to monitor their efforts on equal pay.

- Guide to Recruitment and Retention of Women. The Vice President will announce

OPM's new Guide on Recruitment and Retention of Women in the federal government which contains information to make agency managers aware of career opportunities for women and to provide guidance on recruitment and career development for women.

Draft 3-30-98

QUESTIONS AND ANSWERS ON PAY EQUITY
April 2, 1998

Q: What is Equal Pay Day?

A: It is the day on which American women's wages, added to their previous year's earnings, equal what men make in just one calendar year.

Q: What did the Vice President announce today?

A: The Vice President announced the Administration's support for legislation introduced by Senator Daschle to improve the enforcement of wage discrimination against women and to strengthen the remedy provisions in the Equal Pay Act to allow for compensatory and punitive damages. The Vice President also announced several administration initiatives aimed at enhancing enforcement of wage discrimination both in the private sector and within the federal government, including a Memorandum of Understanding between the Equal Employment Opportunity Commission (EEOC) and the Department of Labor to cross-train their staffs to be sensitive to potential violations of the Equal Pay Act, and to help the Department of Labor to collect damages under Title VII of the Civil Rights Act of 1964; a ten-step voluntary self-audit for both private businesses and the federal agencies in order to help them monitor their efforts on equal pay; and a "Guide to Recruitment and Retention of Women" in the federal government, which is designed to assist agency managers hire and retain qualified women.

Q: Why is this legislation necessary?

A: More than three decades after the passage of the Equal Pay Act and Title VII of the Civil Rights Act, women and people of color continue to suffer the consequences of unfair pay differentials. The average women works a full year, plus three more months, just to earn the same pay that men earn in one calendar year. According to the Department of Labor, the average women who works full-time earns just 74 cents for each dollar that men earn. For women of color, the gap is even wider. On average, black women earn only 63 cents, and Hispanic women earn only 53 cents for each dollar earned by white men. Some wage differences exist due to differing levels of experience, education, and skill. However, studies show that even accounting for differences in education, experience, and occupation, there is still a significant wage differential. Women account for 46 percent of the total labor force. More than half of those graduating with bachelors degrees are women, and women earn nearly half of all masters and professional degrees awarded. While women hold over 45 percent of all executive and managerial jobs, their wages are only approximately 70 percent of the average pay of men in these areas. Source: Department of Labor, Bureau of Labor Statistics.

Q: Don't some other studies come up with different numbers?
CEA: can you add an analysis of the studies you examined

Q: Why isn't the Administration supporting Senator Harkin's bill?

A: The Administration supports the goals of ensuring equal pay for women and minorities, and both bills strive toward the same goals. However, Senator Daschle's bill provides for enhanced penalties under the Equal Pay Act by permitting victims of wage discrimination to seek compensatory and punitive damages. Senator Daschle's and Congresswomen DeLauro's bills seek to strengthen current laws that prohibit wage discrimination, and this legislation is a good first step toward combating the wage gap.

Q: What damages are currently available under the Equal Pay Act?

A: Senator Daschle's bill would amend the EPA to allow for unlimited compensatory and punitive damages. Currently, the EPA only allows for liquidated damages and back-pay awards. Liquidated damages typically are awarded in an amount equal to back pay. And typical recoveries are double back-pay awards. **An individual can file suit for wage discrimination under Title VII as well as the EPA. Title VII allows for compensatory and punitive damages, in addition to back pay, as a result of the Civil Rights Act of 1991. Under Title VII, however, these damages are capped -- to no more than between $50,000 and $300,000, depending on the size of the employer -- not the severity of the offense (e.g., for firms with between 15 and 100 employees, combined damages are capped at $50,000). Victims of racial or ethnic discrimination in employment can also sue for wage discrimination under Section 1981, which allows unlimited damages.**

Q: Won't adding uncapped compensatory and punitive damages to the Equal Pay Act encourage frivolous suits and result in excessive damage awards?

A: Studies do not support this **conclusion. The Daschle bill adds unlimited compensatory and punitive damages to the Equal Pay Act. This provides more than is currently authorized under Title VII, but achieves parity with racial and ethnic discrimination awards under Section 1981. Adding unrestricted damages to equal pay cases would not necessarily lead to a huge proliferation of frivolous actions or excessive awards. An examination of cases under Section 1981 found that between 1980 and 1990 plaintiffs won 121 cases -- eleven per year. There were no compensatory and punitive damages in 52 of the cases; in 42, damages awarded were less than $50,000. Total damages exceeded $200,000 in only two cases during**

the eleven-year period. Note: this study was limited to reported decisions, and did not include cases settled before trial. Source: Emil -- do you have a source for this?.

Another study which analyzed over 1000 reported Title VII and Section 1981 employment discrimination cases decided between January 1991 and May 1994 shows that victims of intentional employment discrimination have not received "excessive" damages awards under Title VII or under Section 1981. The majority of awards have been moderate in size and, in the rare cases where a judge or jury awarded "excessive" damages, the award was often modified by a subsequent court. Out of the over 1000 cases examined, plaintiffs proved intentional discrimination in only 118 cases. Out of the 118 cases, plaintiffs received compensatory or punitive damages in only 28 of these cases. Source: Analysis of Damage Awards under Title VII and Section 1981 (January 1, 1991 - May 1, 1994), Shea & Gardner (July 6, 1994).

Q: Why is the federal government exempt from punitive damages?

Q: Is the Administration's policy on uncapped punitive and compensatory damages consistent with its position in other areas of the law such as tort reform?

Q: What is the Administration doing with respect to data collection?

A: The endorsed legislation contains a Sense of the Senate that the President should take appropriate steps to increase the amount of information available with respect to wage disparities, while maximizing the utility of the data and protecting individuals' privacy and minimizing burdens on reporting entities. In addition, the Vice President announced an annual report on the pay gap by sex to be produced by the Department of Labor. This easy-to-access report will raise the national prominence of wage disparities and will highlight the issue every year in order to spur Americans to achieve increased gender pay equity.

Q: What groups support this legislation?

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Kevin S. Moran (CN=Kevin S. Moran/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:30-MAR-1998 08:28:30.00

SUBJECT: Tobacco Paper

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

TEXT:
Are you producing any paper to be released with Erskine's speech this afternoon? Should I do today's talking points on the Administration's response to the McCain tobacco bill?

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:30-MAR-1998 13:59:41.00

SUBJECT: Update from DOL on California guidance on FLSA doesn't apply to workfare

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

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

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

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

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

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

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

CC: Larry R. Matlack (CN=Larry R. Matlack/OU=OMB/O=EOP @ EOP [OMB])
READ:UNKNOWN

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

CC: Andrea Kane (CN=Andrea Kane/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TEXT:
Seth Harris asked me to update you on California's draft guidance saying workfare jobs aren't subject to FLSA. DOL has just been formally asked for an opinion on the draft by the assemblywoman who chairs a state-wide welfare advisory council, in preparation for a meeting tomorrow. DOL will send a letter today saying the guidance is inconsistent with the law and asking more questions. This may or may not give the assemblywoman and her allies ammo to stop it.

DOL is still not sure if this is the Governor's or the welfare department's initiative.

---------------------- Forwarded by Diana Fortuna/OPD/EOP on 03/30/98 01:52 PM ---------------------------

Diana Fortuna
03/25/98 01:42:19 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: Andrea Kane/OPD/EOP, Larry R. Matlack/OMB/EOP, Robert N. Weiner/WHO/EOP
Subject: Action by California on FLSA and workfare

Seth Harris says DOL hears from reliable sources that California plans to send guidance to welfare directors next week that people in work experience are not covered by FLSA. Here's DOL's plan to deal with it.

1. DOL will call the state now, saying in a neutral way that they hear guidance is being prepared, and offer to help in their interpretation, with a followup letter saying the same thing.

2. Then they expect to get within a few days a formal request from a Democratic state legislator asking for a formal opinion on the guidance. DOL will respond to that by saying the guidance appears to be inconsistent with DOL's guidance, that the state is wrong to make categorical judgments about the status of work experience participants, but that they need to learn more.

3. If this doesn't stop the state from issuing the guidance, advocates will find a plaintiff and bring suit in federal court. (An alternative would be for the advocates to ask DOL's Wage and Hour Division to take enforcement action, but Seth thinks they'll bring suit.) If that happens, DOL would then like to file an amicus brief in the case. That won't happen for a few weeks at the earliest.

Let me know if you have a concern about DOL's plan of action or would like to discuss further.

Message Sent
To:
Elena Kagan/OPD/EOP
Cynthia A. Rice/OPD/EOP
Karen Tramontano/WHO/EOP
Karen E. Skelton/WHO/EOP
Barbara Chow/OMB/EOP
Emil E. Parker/OPD/EOP
Emily Bromberg/WHO/EOP

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Jennifer L. Klein (CN=Jennifer L. Klein/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:30-MAR-1998 11:09:01.00

SUBJECT:

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

TEXT:
We are trying to arrange a child care/health care event for the First Lady on April 8. We would release the Medicaid Outreach Manual for Child Care Workers. Secretary Shalala really wants to be there, but is doing tobacco visits that week for the White House. Melissa Skolfield says that Shalala can be in Washington on the morning of the 8th to do the child care event and then go off to do more tobacco stuff and asked that you mention that to Rich on the calls you are doing with HHS to plan the tobacco week.
Thanks.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:30-MAR-1998 15:31:40.00

SUBJECT: ETS testimony for Wed hearing

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:
CDC's testimony and McCain's tobacco bill take opposing positions on extending ETS protection to the hospitality industry. CDC's testimony tracks the position we agreed upon at our last ETS meeting, which would require the hospitality industry to comply over time. McCain excludes the hospitality industry. Do we have a position on McCain's ETS provision? Is it OK for CDC to take a different position than McCain? Comments on CDC's testimony were due at 3pm today to Bob Pellicci x54871. Thanks.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:30-MAR-1998 13:17:21.00

SUBJECT: Haskins on high performance bonus; question for today

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

CC: Andrea Kane (CN=Andrea Kane/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TEXT:
Haskins is pushing HHS to follow up on their agreement to meet about family formation measures in the high performance bonus. Haskins' proposal to Mary Bourdette is to meet with him, Census, OMB, CBO, CRS, and Robert Rector. HHS is concerned about meeting with Rector without a balanced representation of advocates. They want to propose instead 2 meetings: one with the above list minus Rector, and a second meeting with Rector and other folks at different points along the spectrum. HHS feels it would be unwise to tell Ron that they don't even want to meet with Rector. Mary says HHS will make it clear that the decision on the NPRM rests with HHS, and these meetings are not negotiations.

Let me know today if you have any concerns about this, since Mary needs to call Ron back. I assume it doesn't make sense for us to be there.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:30-MAR-1998 19:40:56.00

SUBJECT: budget graph

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

TEXT:
The biggest unresolved issue is how to allocate tobacco funds. The McCain bill takes care of tobacco farmers, and provides money for smoking cessation, counteradvertising, and some research, but leaves other spending issues for the Senate floor. However, Senator Domenici is insisting that the Senate budget resolution reserve all tobacco funds for Medicare, and not even allow the spending provisions in the McCain bill. On Tuesday, the Senate will take up budget amendments to make tobacco funds available for class size, child care, NIH, farmers, and other purposes. Many Republicans have raised concerns about the Domenici approach, but may not vote against it, because as long as they have 60 votes for a tobacco bill, they can waive the budget rules anyway.

When the time comes to engage in serious negotiations over how to allocate tobacco funds, we expect bipartisan consensus on 75-80% of the spending ($10 billion over 5 years for farmers; $10 billion for cessation, counteradvertising, and other public health programs; $10-15 billion for NIH; $20-25 billion for states). The battle will be over how to divide up the remaining $15 billion or so -- Senate Republicans will seek money for Medicare; House Republicans may push Archer's proposal for health care tax deductions for small business and the self-employed; Democrats will push everything from child care to school construction -- and over how much we can do to ensure that states spend some of their money on child care, health care, and education.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:30-MAR-1998 18:51:29.00

SUBJECT: Kick Butts Day Update

TO: Elena Kagan (CN=Elena Kagan/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:
---------------------- Forwarded by Cynthia A. Rice/OPD/EOP on 03/30/98 06:51 PM ---------------------------

Stephen B. Silverman
03/30/98 06:46:36 PM
Record Type: Record

To: John Podesta/WHO/EOP
cc: See the distribution list at the bottom of this message
Subject:

Thanks for all your support on Kick Butts Day. As you know from the memo I sent over on Friday, Secretary Herman (video for VA high school and six high school press call), Secretary Shalala (Parma , Ohio), Acting HUD Deputy Secretary Saul Ramirez (Tuscon), Secretary Riley (Detroit, MI), Acting Secretary Togo West (Nashville), Deputy EPA Administrator Fred Hansen (Woodbridge, VA), Director Janice LaChance (local), Administrator Dave Barram (Philadelphia?) and SSA Commissioner Ken Apfel (Baltimore) will participate in Kick Butts events around the country. Secretary Albright and Secretary Glickman will refer to Kick Butts Day in remarks Wednesday and Thursday.

As of now, neither a Secretary or Deputy level person will participate from Treasury, Defense, Interior, Commerce, DOT, Energy (Moeller is trying), CEA, OMB, UN, USTR, ONDCP, SBA, CIA, OPM, USIA, DPC.

HUD, Commerce, DOT have some participation at lower levels. SBA and GSA have some good regional activity.

I would be very helpful if you could make several call to cabinet members or Chiefs of Staffs to help move this along. 1) Sec. Rubin or Mike Froman (622-1906), 2) Sec. Cohen or Bob Tyrer (703-695-5261), 3) Secretary Daley or David Lane (482-4246), 4) Sec. Cuomo or Jon Cowan (708-2713), 5) General Mcaffrey or Janet Crist (395-6732).

As you suggested, we met today with WH outreach offices to make sure we're touching all bases to give this national scope. IGA, Congressional, press are each engaged on this.

Barbara Woolley (OPL) and Cynthia Rice (DPC) have been great partners in this endeavor. The VP's office (Toby Donenfeld) has been extremely helpful. The VP will lead this entire effort with an event Thursday at

Hines Jr. High in D.C. As you know, we are slightly hampered by the decision to do pay equity on Thursday. Janice LaChance will have to stay closer to DC and Secretary Herman will not be able to do a live event.

Tomorrow, the WH group will meet at 11am. Our next interagency conf. call will be tomorrow (Tuesday) at 5pm on 2466. We (Cynthia and I) will brief the Chiefs of Staff tomorrow at our breakfast at 8:30 in the Roosevelt Room. That would be a great place to drop-by and say how important this is(and maybe button hole a few chiefs), if you can and are inclined.

Julia Payne (press) will put out a full release with all the agency participation Wednesday or Thursday and will coordinate a series of conference calls (like the one Sec. Herman is doing) with Cabinet members who absolutely, positively, can't do an event.

Thanks for all your support on this. Let me know if you have questions.
Steve

Message Copied
To:
Thurgood Marshall Jr/WHO/EOP
Cynthia A. Rice/OPD/EOP
Barbara D. Woolley/WHO/EOP
Anne E. McGuire/WHO/EOP
Stacie Spector/WHO/EOP
Sara M. Latham/WHO/EOP

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Jason S. Goldberg (CN=Jason S. Goldberg/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:30-MAR-1998 11:53:51.00

SUBJECT: PUBLIC VERSION: Erskine's tobacco speech

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

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

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

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

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

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

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

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

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

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

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

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

TO: Melissa G. Green (CN=Melissa G. Green/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Charles R. Marr (CN=Charles R. Marr/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

Records Management (Records Management @ EOP [UNKNOWN])
READ:UNKNOWN

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

TEXT:
Unable to convert ARMS_EXT:[ATTACH.D21]MAIL46073488H.026 to ASCII,
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ERSKINE B. BOWLES
REMARKS PREPARED FOR DELIVERY TO THE CENTER FOR NATIONAL POLICY
"The Future of Tobacco in U.S. Policy"
March 30, 1998

I am here today, not only as the Chief of Staff of this Administration, but as a businessman, as a North Carolinian, and as a parent, to talk to you about the President's plan to protect our children from tobacco.

Consider these facts:

- Smoking kills 430,000 people every year -- it kills more people than AIDS, alcohol, car accidents, murders, suicides, drugs and fires combined. Smoking is still by far the largest preventable cause of premature death in the United States.
- Nearly 90% of smokers started smoking before they turned 18.
- Nearly half of these teen smokers think they will not be smoking five years after starting -- yet only one in five actually manages to quit.
- Every day, 3,000 young people will become regular smokers, and 1,000 will die sooner as a result.

At the same time, multi-million dollar marketing campaigns have been designed to get our children to light their first cigarettes.

- In the past months, new documents have come to light that conclusively prove that tobacco companies aimed to sell their deadly products to children as young as 12.
- These documents are a shocking reminder that our children are under siege by a deadly and powerful enemy -- and it is up to us to protect our children.

As Chief of Staff, I can tell you that protecting our children from the threat of tobacco is right at the top of the President's agenda -- and this administration is fully committed to working with the bipartisan leadership in Congress to achieve this goal.

- This is not a matter of politics --- it is a matter of priorities. Many Members of Congress from both parties have shown enormous leadership on this most important issue.
- Congressman Waxman first and foremost has been in the forefront of this issue for years -- providing the powerful leadership it took to bring us to the critical point we have reached today. It is a certainty that we would not be here if it were not for his determination.
- Congressman Bliley has recently done the American people a great service by getting thousands of pages of documents from the tobacco companies posted on the Internet so all the world can see how the tobacco companies have gone after our children.
- Congressman Fazio and Senators Conrad, Harkin, and Chafee, have worked long and hard to introduce tobacco legislation that this Administration can support.

- Senator McCain has provided great leadership in the Commerce Committee to draft a bipartisan bill that will move us significantly closer to enacting comprehensive tobacco legislation. Everyone knows the difficulty of putting together legislation that is so large and complex, but Senator McCain has done so in a way that has been as open and inclusive as it has been efficient and productive.
- Senator McCain will most likely release his bill later today, and we will need to review it in detail before making final judgement.
- Based on what we have seen and heard, I will say this today: We expect to see a bill from Senator McCain that will lay a strong foundation for further action, but also has room for improvement.

The areas that need further work are critically important:

- For example, we do not believe the McCain bill will impose strong enough lookback penalties on companies that continue selling tobacco to our children. Reducing youth smoking is our bottom line and we must make it the industries' bottom line.
- We also anticipate seeing some gaps in the bill: the McCain bill does not try to comprehensively address the question of how best to use tobacco revenues to protect the public health and to help our children.
- As for liability, it is not yet clear what Senator McCain will produce. But, our position is clear: unless we are imposing tough penalties on the tobacco companies and doing everything in our power to reduce youth smoking, this Administration will not consider proposals to give the tobacco companies protection from liability. As we have said many times, reasonable limits on liability will not be a deal breaker in a bill that meets all of the president's principles, but first, we have to get that kind of bill.

Senator McCain's bill does, however contain some notable steps forward:

- We believe the McCain bill will make significant inroads on youth smoking by substantially increasing the price of a pack of cigarettes.
- We believe the McCain bill will also give the FDA the full authority it needs to regulate tobacco products, including the authority to restrict both the advertising aimed at young people and their access to tobacco.
- And the McCain Bill is also expected to contain a strong plan to protect tobacco farmers and their communities.
- We look forward to working with Senator McCain and others in the Commerce Committee and the full Senate to significantly strengthen this bill and make it an even more effective instrument to reduce youth smoking.

As you know, President Clinton has proposed a comprehensive plan that he believes -- and experience shows -- is the best way to stop young Americans from smoking before they start. We are pleased that the McCain Bill will likely include many of the elements of the President's plan, and we will work hard to see that the McCain Bill is improved to meet all of the President's goals:

The President's plan would:

- Raise the price of cigarettes by up to $1.10 a pack over 5 years and $1.50 a pack over the next ten years, and impose tough penalties on companies that continue to sell to kids;
- Affirm the FDA's full authority to regulate tobacco products;
- Get companies out of the business of marketing and selling tobacco to minors.
- Promote public health research and public health goals; and
- Protect our tobacco farmers and their communities.

The Treasury Department has found that the President's proposal to stop teenage smoking will save 1 million lives over the next five years.

- Last week, Vice President Gore announced that new estimates show that our proposal would have major effects on youth smoking in every state, with reductions ranging from 33% in Washington State to 51% in Kentucky.
- For every dime added to the price of cigarettes over a 5 year period, up to 270,000 fewer teenagers will begin smoking and more than 90,000 premature deaths will be avoided.
- Price increases alone are projected to reduce teenage smoking over the next 5 years by 29%. Youth access and marketing restrictions in the President's plan are projected to reduce teenage smoking by an additional 11%.
- The combination of the price increase called for in the President's plan plus the tighter restrictions on youth access and marketing, will reduce the number of youths smoking by 3 million between now and 2003 -- and most importantly help us avoid approximately 1 million premature deaths.

The Tobacco companies themselves must also be part of the solution.

- As the President has said, advertising aimed at adults is legal, but tobacco companies must draw the line at our children.
- Our proposal requires tobacco companies to help establish smoking cessation programs for adult smokers, and to launch public education campaigns aimed at children to keep them from smoking in the first place.

The heavy human cost of smoking to our families and communities is tragic -- and as a businessman, I can tell you that the economic cost to our society is extraordinarily high.

- Smoking related illness costs approximately $60 billion every year -- that's more than the federal government spends on education, child care, and medical research combined.
- Smoking during pregnancy results in 2,500 fetal deaths every year, and **costs $4 billion per year -- this amount is close to double what we spend on cancer research each year**.
- Smokers die earlier and have to retire sooner -- and this is estimated to cost our economy as much as $80 billion every year in lost output, lost productivity, and lost wages.

These costs rob our economy and cheat the American people out of their hard-earned tax dollars. But if we pass the President's plan, we will take the first important steps to reducing these costs, increasing productivity, and most importantly, saving lives.

We know that this plan will be good for America -- and as a North Carolinian -- born and raised in tobacco country -- I can tell you that we must also make sure that we treat our tobacco farmers fairly.

- **The President has made protecting tobacco farmers and their communities one of the five key elements for his plan for comprehensive tobacco legislation.**
- **We can achieve the twin goals of both protecting the health of the public and protecting the well-being of farming communities. Recently, a remarkable coalition of farming groups, including burley and flue-cured growers, and public health groups, including the American Heart Association and the American Cancer Society, came together around a shared set of principles. That is a consensus we can build on.**
- **We propose to use some of the revenue from raising the price of cigarettes to make sure that we save our kids without devastating our farm communities. That is a commitment this Administration has made, and we are optimistic that a consensus is forming in Congress to use some of this money to help tobacco farmers.**

President Clinton has submitted to Congress the first balanced budget in 30 years. This budget protects our children from the harms of tobacco -- and our nation from the burdensome costs associated with teen smoking. This budget also uses the very money raised by raising the price of cigarettes to invest in the future of our nation. Our budget uses the tobacco money for:

- Critical investments in health research, including biomedical research, cancer clinical trials, and children's health outreach -- increasing by nearly 50% the funding for the National Institutes of Health.
- We also make historic investments in child care and after-school care -- doubling the number of working families who receive child care, and significantly increasing the number of students receiving after school care; and lastly,
- We make unprecedented investments in education -- reducing class size, hiring 100,000 additional teachers, and building or rehabilitating 5,000 schools;

Finally, and most importantly, as a parent of three kids, I can tell you that when I hear the statistics I mentioned earlier, my blood runs cold.

- When I saw the documents that showed that tobacco companies had deliberately tried to get our children to smoke -- despite the fact that a full third of the 3,000 kids who start smoking every day will die prematurely -- I knew then and there that we must not rest until we have done everything we can to protect our children from tobacco.

We have it within our power right now to save the lives of 1 million kids over the next five years. We must not miss this historic opportunity.

- As President Clinton recently said: "We stand on the verge of one of the greatest public health achievements in history -- an historic triumph in our fight to protect America's children from the deadly threat of tobacco."
- As Chief of Staff of this Administration, as a businessman, as a North Carolinian, as a parent, and as an American -- I ask you to support our efforts, and to work with us in a bipartisan manner to meet this vitally important challenge.

Thank you.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:30-MAR-1998 12:22:35.00

SUBJECT: Draft Announcement on Equal Pay

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

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

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

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

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

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

TEXT:
Here is draft announcement. Please look it over, and let me know what changes you have. Thanks, Mary==================== ATTACHMENT 1 =================
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DRAFT 3-30-98

THE VICE PRESIDENT ANNOUNCES SUPPORT FOR LEGISLATION ON PAY EQUITY AND ADMINISTRATION INITIATIVES TO COMBAT WAGE DISCRIMINATION
April 2, 1998

Today the Vice President will announce the Administration's support for legislation, introduced today by Senator Daschle and Congresswomen DeLauro, (**check**) to improve enforcement of wage discrimination against women and to strengthen the remedy provisions in the Equal Pay Act to allow for compensatory and punitive damages. The Vice President also will announce several Administration initiatives aimed at enhancing enforcement of wage discrimination both in the private sector and the federal government. The Vice President will announce two Memoranda of Understanding between the Equal Employment Opportunity Commission (EEOC) and the Department of Labor to cross-train their staffs to be sensitive to potential violations of the laws they enforce, including the Equal Pay Act, and to help the Department of Labor to collect damages under Title VII of the Civil Rights Act of 1964. The Vice President also will announce a ten-step voluntary self-audit for both private businesses and the federal agencies in order to help them monitor their efforts on equal pay. Finally, the Vice President will announce the "Guide to Recruitment and Retention of Women" in the federal government, a manual designed to assist agency managers hire and retain talented women.

Increasing Enforcement of Wage Discrimination. The Vice President will call on Congress to pass the legislation introduced today which strengthens current laws that prohibit wage discrimination and provides training and outreach to help enforce these laws. The highlights of this legislation include:

- Increased Penalties for the Equal Pay Act. This legislation amends the Equal Pay Act to allow for compensatory and punitive damages. Currently, the EPA only provides for liquidated damages and back pay awards.

- Non-retaliation Provision. This legislation amends the Equal Pay Act (EPA) to prohibit employers from penalizing employees for sharing information about their salaries with coworkers.

- **Class Actions. The bill amends the procedures for filing class actions under the EPA to conform with the general procedural rules for filing federal class actions in other areas of the law.**

- **Training, Research, Education, and Outreach. The bill requires the EEOC to provide training for its employees, subject to the availability of funding, on matters involving discrimination in the payment of wages. The bill also enhances programs already in place at the Department of Labor, requiring DOL to undertake research in the area of sex-based pay disparities; provide information on means of eradicating such disparities; assist State and local information and educational programs; recognize and promote the achievements of employers that have made strides to eliminate pay disparities; and convene a national summit to discuss and**

highlight the issue of sex-based pay disparities.

- Pay Equity Award. **The bill establishes "The National Award for Pay Equity in the Workplace," to be administered by the Department of Labor, to recognize and promote the achievements of employers that have made strides to eliminate pay disparities.**

Providing Data Analysis, Technical Assistance, and Enhanced Enforcement of Wage Discrimination. The Vice President also will announce a number of Administration initiatives that will supplement the legislation introduced today. These initiatives will provide increased analysis of data on the wage gap; assist federal agencies in enforcing wage discrimination law; provide technical assistance by highlighting "best practices" and offering a voluntary self-audit on the Internet; and strengthen the role of the Federal Government in hiring and retaining qualified women. These initiatives are:

- Increased Data Analysis on Pay Equity. The Vice President will announce an annual report on the pay gap by sex produced by the Department of Labor. This easy-to-access report will raise the national prominence of wage disparities and will highlight the issue every year in order to spur Americans to achieve increased gender pay equity.

- A Memorandum Of Understanding (MOU) between EEOC and DOL to Cross Train. The Vice President will announce the development of a MOU between the EEOC and the Department of Labor to train each other's staff to be sensitive to potential violations of the statutes they enforce, including the Equal Pay Act, and to assist referrals of potential violations to the applicable EEOC or Labor Department office for appropriate action.

- A MOU Between EEOC and DOL to Collect Damages. This agreement will permit the Department of Labor's Office of Federal Contractor Compliance Programs (OFCCP) to serve as the EEOC's agent for purposes of collecting damages that are not otherwise collectible by OFCCP, including relief for intentional discrimination.

- **Federal Contractor Best Practices. The Department of Labor will begin to publicize successful programs of federal contractors by placing them on the Department of Labor's web site.**

- 10-Step Voluntary Self-Audit for Businesses and Employees. The Department of Labor will place on the Internet a 10-step package that would give companies guidelines in order to determine whether they offer equal pay, hiring, and promotional opportunities. A similar checklist for employees will also be placed on the Internet.

- 10-Step Voluntary Self-Audit for Agencies. The Vice President will announce that the federal agencies will take the 10-step self-audit developed by the Department of Labor and use the results from the self-audit to monitor their efforts on equal pay.

- Guide to Recruitment and Retention of Women. The Vice President will announce

OPM's new Guide on Recruitment and Retention of Women in the federal government which contains information to make agency managers aware of career opportunities for women and to provide guidance on recruitment and career development for women.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Phillip Caplan (CN=Phillip Caplan/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:30-MAR-1998 09:26:49.00

SUBJECT: .08 letter

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

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

TO: Jeffrey A. Forbes (CN=Jeffrey A. Forbes/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

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

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

TO: Kris M Balderston (CN=Kris M Balderston/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

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

TO: Jessica L. Gibson (CN=Jessica L. Gibson/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Eleanor S. Parker (CN=Eleanor S. Parker/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

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

TEXT:
As I mentioned to a couple of you this morning, I think it would be weird for Shalala to read a letter from the POTUS to Lowey at an event. It should be instead a Statement by the President. I have tweaked this a bit (along with Barry Toiv's good editing).

Please make sure it meets with your (or your bosses') approval. Most importantly, please check the Congressional references -- sponsors of the bill, which members are mentioned, etc.

Please look at this quickly, as we need to get it to HHS so Shalala can look at it.

==================== ATTACHMENT 1 ====================
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DRAFT **DRAFT** **DRAFT** **DRAFT** **DRAFT** **DRAFT**

STATEMENT BY THE PRESIDENT

March 30, 1998

Although my trip to Africa precludes me from joining Congresswoman Nita Lowey, Congressman ___ Kennedy and others gathered in the Roosevelt Room, I want to state once more my strong support for legislation to put the brakes on drunk driving.

Setting a uniform limit for impaired driving at .08 blood alcohol content (BAC) will help us crack down on drunk driving nationwide. At a time when crime all across America is going down, we still lose an American to drunk driving every 30 minutes -- every half hour a family is shattered, a child, a parent, a neighbor, is lost forever.

By establishing a strong but sensible limit on blood alcohol content, we could save as many as 600 lives a year. And a uniform drunk driving standard would still allow adults to drink responsibly and moderately -- since the .08 BAC standard is not reached until a 170-pound man has had more than four drinks in an hour, and three for a typical woman.

This should not be a partisan issue. Indeed, the bipartisan work of Congresswoman Lowey and Congressmen Ben Gilman in the House and Senators Lautenberg and DeWine in the Senate, proves that when leaders from both parties come together, we can set aside political differences to save lives and serve America. It is my fervent hope that the majority of the House will join the large bipartisan majority in the Senate, and send me legislation that will save lives, make our streets safe, our drivers sober, and our laws more sensible

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:30-MAR-1998 19:53:52.00

SUBJECT: H-1B Memo

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

TO: Sally Katzen (CN=Sally Katzen/OU=OPD/O=EOP @ EOP [OPD])
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TO: Thomas A. Kalil (CN=Thomas A. Kalil/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

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

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

TEXT:
Here's the H-1B memo for tomorrow's meeting.

-- Ceci==================== ATTACHMENT 1 ====================
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March 30, 1998

MEMORANDUM FOR DPC/NEC PRINCIPALS

FROM: ELENA KAGAN AND SALLY KATZEN

SUBJECT: BACKGROUND ON H-1B VISA ISSUES

A number of industries -- and especially the information technology (IT) industry -- claim that they are suffering from "skills shortages." Though the IT industry is the most vocal and visible industry to claim a shortage, shortages have also been argued for truckers, welders in shipyards, and other such occupations. A study by Virginia Tech (for the Information Technology Association of America) claims that there are 350,000 job vacancies in the information technology industry nationwide; the *Washington Post* reported there are 19,000 such jobs unfilled in Virginia. Several informed observers have questioned the severity of the short-term "crisis," but there is little doubt that the demand for workers with IT skills is increasing. Indeed, some of our federal agencies are reporting difficulties hiring IT workers (for Y2K and other IT projects).

One way in which companies can alleviate such short-term skills shortages is through the H-1B visa program. The H-1B visa category allows foreign "specialty workers" (those with a BA or equivalent) to work temporarily in the U.S. The visas are issued for a 3-year period, and almost always renewed for an additional three years. More than forty percent of those who enter the U.S. through the H-1B visa program end up in a permanent visa program. There is no way to determine how many overstay their visas, and thus remain to work illegally. The H-1B visa cap of 65,000 per year was reached for the first time last year. INS estimates that the cap will be reached by May or June of this year.

The top ten users of H-1B visas are job contractors who employ foreign workers and who provide personnel to the high-tech industry. Nevertheless, INS estimates that only about one-half of the applications submitted are for computer-related jobs; other occupations include physical and occupational therapists, academic researchers, and other occupations where there is not necessarily evidence of a skills shortage. Currently, there is only a nominal processing fee for each application and there is no requirement that the employer recruit U.S. workers or agree not to lay-off a U.S. worker prior to hiring a foreign worker for the same position.

In thinking about how to address the question of raising the H-1B cap to meet the demands of the IT industry for more skilled workers, the Administration has developed three guiding principles:

- We must train American workers to meet the demands of our rapidly changing economy;
- We must reform the H-1B visa program to protect American workers, by targeting it to industries with genuine skill shortages; and

- We will consider temporarily raising the annual H-1B cap as part of a comprehensive package that includes reform of the H-1B program and a long-term solution to employer needs for skilled workers.

Action Forcing Events

On March 6, Senator Abraham introduced a bill (S. 1723, "The American Competitiveness Act," co-sponsored by Hatch, McCain, DeWine, and Specter) that would permanently increase the annual H-1B cap. His bill also contains a scholarship program. This bill is scheduled for mark-up on Thursday, April 2.

On Friday, March 27, Senator Kennedy (along with Senator Feinstein) introduced a bill that would temporarily increase the H-1B cap to 90,000 (phased back to 65,000 after three years). In addition, the Kennedy proposal includes (1) a loan program designed to address the need to increase high-tech skills of American workers and (2) reforms to the H-1B program that would target it to industries with genuine skill shortages. At the time of Kennedy's announcement, we provided the White House Press Office with the attached Questions & Answers.

Current Legislation

The three major components of the Abraham and Kennedy bills relate to the size and duration of the increase in the H-1B cap; reforms in the H-1B visa program; and education and training.

Facts on the Abraham Bill (S. 1723)

Increase in the Cap

- Permanently increases the annual cap on H-1B visas to about 100,000 in FY 1998 and about 125,000 in FY1999 (taking into account the 10,000 visas under the new H-1C category).
- Creates a new temporary visa category (H-1C) with a cap of 10,000 specifically for health care professionals.

Reforms to H-1B Program

- No reforms to the H-1B program.

Enforcement

- Increases the penalty for willful violations of the H-1B program, but eliminates penalties for less than willful violations.

- Allows DOL to conduct random inspections of willful violators (for 5 years), but does not appropriate additional money to do so.
- Weakens the current "prevailing wage determination," which requires that H-1B visa holders be paid the higher of the prevailing or actual wage to similarly employed workers. The bill stipulates that factors such as years of experience, academic degree, institution attended, grade point average, publications, and personal traits deemed essential to job performance be considered.

Education/Training

- Authorizes $50M be added to the State Student Incentive Grant (SSIG) program to create scholarships for low-income students majoring in mathematics, computer science, and engineering.
- Authorizes $8M for the Secretary of Labor to create an Internet talent bank.

<u>Facts on the Kennedy Bill</u>

Increase in the Cap

- Increases the cap *temporarily* (to 90,000 for three years beginning in FY 1998, and back to 65,000 in FY 2001 and thereafter).
- Off sets the increase in the H-1B program (over 65,000) with decreases in the H-2B visa program (for temporary unskilled, non-agricultural workers). The H-2A program has never reached its cap.
- Caps the number of health care workers in the H-1B visa program at 5,000.

Reforms to H-1B Program

- Requires that prior to obtaining an H-1B visa, employers must attest to having attempted to recruit U.S. workers.
- Requires that prior to obtaining an H-1B visa, employers must attest to not having laid off a U.S. worker within 6 months of having filed for the visa, and to commit to not doing so for another 90 days.
- Reduces the maximum length of stay on an H-1B visa from 6 to 3 years.

Enforcement

- Includes benefits and other non-wage compensation in the determination of the prevailing wage.
- Provides additional enforcement power to the Secretary of Labor.

Education/Training

- Establishes a loan program ($10,000/person) to enable individuals to obtain training necessary for high-tech industries.
- Provides seed grants to assist in creating "Regional Skills Alliances" between employers, labor organizations, state and local government, training institutions, etc. These Alliances are designed to help industry organize the labor market to meet their needs by increasing the skills required for employment in specific industries or occupations and/or assessing and developing strategies for addressing critical skill needs at broad geographic levels.
- Levies a user fee of not more than $250 per application to administer the H-1B visa program. This fee would also be used to fund the loan program and the Regional Skills Alliances, and would help fund enforcement activities associated with the program.

The differences between these two proposals are significant. First, while the Kennedy proposal provides a <u>temporary</u> increase of the H-1B cap to 90,000 in the first year (to be phased out after three years), Abraham proposes a <u>permanent</u> increase to 125,000 (after two years). Second, while the Kennedy proposal includes all of the reforms to the H-1B program previously endorsed by the Administration (no lay-off provision; recruitment requirement; and reduction in maximum length of stay from six to three years), the Abraham bill does not contain any reforms of the H-1B visa program. In fact, the Abraham bill <u>weakens</u> the existing program by eliminating penalties for less than willful violations and by essentially repealing the prevailing wage determination requirement.

Legislative Setting

Kennedy's legislation is intended to offer a credible substitute to the Abraham bill. Kennedy will try to attract all Democrats on the Committee, along with Senators Kyl and Grassley. However, Feinstein, Kyl, and Grassley are reportedly discussing a possible compromise position between Abraham and Kennedy. Apparently, Kyl, Grassley, and Feinstein are opposed to a <u>permanent</u> increase in the H-1B visa cap (as reflected in Abraham's bill), but are also opposed to the H-1B reforms contained in Kennedy's proposal.

There are two schools of thought on the position of the IT industry -- (1) that the companies <u>really</u> want an increase in the cap, and thus would be willing to cut a deal with Kennedy if the Abraham bill stalls; or (2) that the companies want the increase, but not at the cost of H-1B reforms and so will not deal with Kennedy, even if that risks a veto.

The AFL-CIO has indicated that it will not oppose a small, temporary increase in the cap as long as it is accompanied by increased training and education and reform of the H-1B program. At the same time, the AFL-CIO has made clear that it will <u>not</u> accept a legislative alternative that does not include H-1B reforms.

Issues for Consideration

In addressing the H-1B visa issue, the Administration must consider three issues: increasing the number of H-1B visas, training, and reforms to the H-1B visa program.

Increasing the Number of H-1B Visas

The IT industry is pressing hard to increase the number of H-1B visas. In contrast, organized labor will accept an increase in the number of visas only if it is accompanied by reforms to the H-1B visa program and education and training of American workers; even then, labor is insisting that the increase be both small and temporary. We also need to consider whether the additional visas can or should be targeted to the IT industry. Targeting of this kind might be difficult because many IT positions are actually in non-IT industries, such as banking and finance.

Training

Almost everyone agrees that an increase in the number of H-1B visas should be accompanied by a substantial education and training effort. Both the Abraham and Kennedy bills include attempts to encourage more Americans to obtain such training (particularly for jobs in the IT industry). Currently, the Kennedy bill includes a $250 application fee for H-1B visas that would fund a loan program and the creation of Regional Skills Alliances. Questions to consider include: Is it appropriate to impose a fee to be used for training? Is the training component in the Kennedy bill substantial enough to "compensate" (either alone or in conjunction with the H-1B reforms) for the increase in the cap? Most importantly, will the $250 application fee generate additional funds for training or will there be an off-set in existing training funds?

In addition, we might consider whether we should pursue a non-legislative training strategy. The IT industry already does a considerable amount of education and training (for example, several companies have partnered with community colleges, or adopted an elementary or secondary school to upgrade their science and technology equipment). Can, or should, we make our willingness to sign any bill contingent on IT companies investing more in developing long-term solutions to the growing demand for IT workers? Such efforts might include expanding the current efforts of the IT industry, expanding the involvement of the IT industry in "school-to-work" efforts, and/or encouraging underrepresented groups to pursue careers in information technology. And, how can we leverage the training that organized labor is doing to get results in this area?

Finally, we need to consider whether it is appropriate to impose more training obligations on firms not in the IT industry. If not, should the IT industry get an advantage in receiving H-1B visas? If we should impose more training on non-IT firms, how do we accomplish it?

Reforms to the H-1B Visa Program

The crux of the negotiations with the IT industry over the Kennedy bill will be the H-1B reforms. The Administration's position has been that these reforms are critical to our three-part strategy. These reforms would protect U.S. workers while reducing the pressure on the H-1B cap by ensuring that the visas be used only when there is a genuine labor shortage. Many view the reforms as essential if the cap on the number of visas is raised.

The IT industry is very opposed to these reforms. It argues that a no lay-off provision could disrupt normal, non-abusive hiring and firing decisions. And the industry objects to a recruit-and-retain requirement because it will then be subject to the Labor Department's views on what is, or is not, proper recruitment.

The three reforms currently contained in Kennedy's bill were sought by the Administration in 1993. Should we continue our insistence on these reforms? Are there others that we have not considered?

Question & Answer on Immigration: H1B visas
March 26, 1998

Q: **This morning Senators Kennedy and Feinstein held a press conference outlining a proposal to increase the cap on temporary visas for foreign workers (H-1B visas). Does the Administration support their proposal?**

A: We are still reviewing the Kennedy/Feinstein proposal. We have heard a lot recently about the shortage of trained workers in the information technology (IT) industry. We believe that the first response to increasing the availability of IT workers must be increasing the skills of American workers and helping the labor market work better so there is a supply of skilled workers where there is a demand for skilled employees. While it may be necessary in the short-term to increase the number of visas for temporary foreign workers (under the H-1B program), this must be done only in conjunction with additional efforts by the IT industry to increase the skill level of American workers and with needed improvements in the H-1B program. Key components of that strategy are our HOPE scholarships, the Lifetime Learning Tuition Credit, and the expansion of Pell Grants. It is also critical that Congress pass the G.I. Bill for America's Workers this spring.

Any temporary increase in the H-1B visa program should be limited to the minimum amount necessary. Also, expanding the number of visas, even temporarily, must be accompanied by needed improvements to the H-1B program. Since 1993, this Administration has sought reforms of the H-1B visa program, including requiring employers to "recruit and retain" U.S. workers before hiring temporary foreign workers, prohibiting lay-offs of U.S. workers to replace them with foreign temporary workers, and reducing the maximum stay for H-1B workers from 6 to 3 years. These reforms, if enacted, would help target H-1B usage to industries and employers that are exhibiting genuine labor shortages.

Q: **Does the Administration support Senator Abraham's bill, "The American Competitiveness Act," that also increases the number of H-1B visas?**

A: Regrettably the Abraham bill emphasizes providing opportunities for foreign workers rather than providing for and protecting U.S. workers. For example, the bill's increase in the number of H-1B visas is permanent. Second, the bill does not require that employers "recruit and retain" U.S. workers before hiring temporary foreign workers and it does not prohibit employers from laying-off U.S. workers in order to replace them with foreign temporary workers.