

NLWJC - KAGAN

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[8/18/1998 - 8/19/1998]

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Leslie Bernstein to Elena Kagan et al. Subject [Tuesday] (1 page)	08/19/1998	Personal Misfile

COLLECTION:

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

FOLDER TITLE:

[08/18/1998-08/19/1998]

2009-1006-F

vz161

RESTRICTION CODES

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

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

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

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

RR. Document will be reviewed upon request.

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

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

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:18-AUG-1998 09:41:09.00

SUBJECT: FW: 08/17/98 Black Report

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 Dailard/OPD/EOP on 08/18/98
09:40 AM -----

"Eriksen, Michael" <mpe0 @ cdc.gov>
08/18/98 09:33:43 AM

Record Type: Record

To: Cynthia Dailard/OPD/EOP
cc:
Subject: FW: 08/17/98 Black Report

Following is Gary Black's stock market analysis for tobacco. He tends to be pro-tobacco, but his analyses are interesting.....

> -----Original Message-----

> From: Gene Borio [SMTP:gborio@mindspring.com]

> Sent: Monday, August 17, 1998 11:36 PM

> To: jc-enews@smokescreen.org

> Subject: 08/17/98 Black Report

>

> Gary Black (212) 756-4197 Jon Rooney (212) 756-4504

> August 17, 1998

> TOBACCO

>

> FDA Ruling: Emperor Has No Clothes - Industry Should Just Say No.

> Outperforms.

>

>

> HIGHLIGHTS

> 1. Tobacco stocks should continue to rally in the aftermath of last
> week's

> ruling by a 4th Circuit panel that the FDA cannot regulate tobacco as
> a

> drug. We see little chance that the full 4th Circuit will take this
> case

> on appeal, although the U.S. Supreme Court may review it in 1999. We
> see

> no chance of Congress taking up the issue of FDA jurisdiction before
> it

> adjourns for the year October 9.

>

> 2. The ruling increases chances of a new settlement between the
> industry
> and the states, since it gives the AGs heavy cover to stand up to the
> public health crowd, who continue to push for ever tougher marketing
> and
> access restrictions. We expect the industry to retain the use of
> humans in
> its advertising, which, by sustaining its brand equities, could offset
> the
> risks of renegade discounting.
>
> 3. The AGs have to be concerned that the wave of pro-tobacco rulings
> that
> have swept the courts over the past several months may liberate state
> judges, who are elected officials, to go against the political tides
> and
> review the merits of the states' cases, which is likely to lead to
> increased dismissals and weakened claims. This reversal of tobacco
> legal
> sentiment is analogous to 1986-1987.
>
> 4. While many in the anti-tobacco crowd say the 4th Circuit ruling
> will
> prompt Congress to pass narrow legislation that gives the FDA
> jurisdiction
> over tobacco, Congress has neither the appetite nor the time left in
> this
> session to pass any tobacco legislation once it returns from summer
> recess.
> Congress must still pass 13 separate appropriations bills to keep the
> government running.
>
> 5. The 4th Circuit court's decision was very broad, striking down the
> FDA's
> regulations on three fronts:
> 1) Tobacco does not fit any of the classifications of drugs or devices
> in
> the 1938 Food Drug and Cosmetic Act used by the FDA. Because tobacco
> is
> not safe or effective, it would have to be removed from the market -
> which
> is clearly not Congress' intent.
> 2) The court shot down the FDA's argument that the manufacturers have
> shown
> intent to affect the structure of function of the body -- the core
> definition of drug in the 1938 FDCA -- in the absence of health
> representations by the manufacturers;
> 3) Congress has had plenty of legislative opportunities to grant the
> FDA
> authority over tobacco, but has consistently not done so.
>
> 6. On the heels of the FDA defeat, it is no coincidence that the
> Administration is again talking up a federal Medicare recovery action
> against the industry (potential damages \$500 billion) - we presume to
> pressure the industry to negotiate with the Administration on both FDA
> jurisdiction and the ongoing DOJ criminal investigations. We believe
> it
> would be foolish for the industry to sign a new deal with the AGs
> unless
> the states give the industry credits for like payments made to the

> federal
> government (same counsel).
>
> 7. The federal government, unlike the states, cannot claim ignorance
> about
> the dangers of tobacco, having published at least a dozen surgeon
> generals
> reports on smoking since the first one in 1964, and requiring federal
> warning labels on packs since 1966. Any claim to recover Medicare
> expenditures must be filed in federal court, which has shown a
> penchant for
> tossing out these claims.
>
> 8. With the litigation tide clearly turning, many investors with whom
> we
> speak say the industry should end the AG settlement talks - i.e.,
> finish
> this war in court. We disagree with this thinking, since the endgame
> for
> the industry is to separate tobacco from non-tobacco operations,
> permitting
> sum-of-the-parts multiples. In the absence of a new AG settlement,
> spin-offs would not be possible; Republicans would not have the cover
> to
> simply ignore tobacco, and unpaid plaintiff counsels would file
> thousands
> of new claims.
>
> INVESTMENT CONCLUSIONS
> We reiterate outperform ratings on Philip Morris (price target \$60),
> RJR
> (\$40), and UST (\$40). While tobacco stocks are not yet responding to
> what
> is developing into a tidal wave of favorable exogenous developments,
> sentiment is likely to change quickly - as it did in 1986-1987 when a
> series of favorable developments extinguished the second litigation
> wave.
> We look for the following: 1) New attorneys general settlement --
> likely
> before September 14, when the Washington Medicaid trial is set to
> begin; 2)
> the Maryland and Louisiana highest courts should decertify the
> Richardson
> (any day) and Scott (Fall) class actions, respectively;; this should
> persuade investors that the Engle class will also be decertified by
> the
> Florida Supreme Court in early-1999; 3) Congress adjourns October 9,
> after which all companies are likely to declare it all clear to resume
> strategies that maximize shareholder returns (MO share repurchase
> program;
> UST recapitalization; RJR sale of international tobacco business).
> We
> see only about 5% downside if the new AG settlement falls apart, given
> our
> perception that Washington's AG case is particularly weak, and the
> industry
> could negotiate an even stronger AG settlement after a win in
> Washington.
>
> ADDITIONAL DETAILS

>
> 1. Standing up to public health. Friday's ruling by a 4th Circuit
> appellate panel that the FDA could not regulate tobacco as a drug,
> based on
> the court's interpretation of the 1938 Food Drug and Cosmetic Act,
> should
> give the attorneys general negotiating with the industry broad new
> cover to
> stand up to the public health officials clamoring for ever tougher
> marketing restrictions. With Congress having already killed
> legislation
> that would have implemented the sweeping marketing restrictions found
> in
> the June 20 accord, and with the courts now having effectively struck
> down
> the less onerous marketing restrictions found in the FDA regulations,
> the
> new AG settlement may increasingly be viewed as the last chance for
> the
> Administration to secure meaningful access and marketing restrictions
> from
> the tobacco industry. Over the weekend, many in the public health
> community expressed confidence that Congress would now step in and
> pass
> narrow legislation that gives the FDA jurisdiction over tobacco, or
> that
> the U.S. Supreme Court would find that the FDA, under the 1984 Chevron
> ruling that government agencies can assert their
> Congressionally-mandated
> powers broadly, will ultimately be allowed to regulate tobacco. Our
> perception is that most of the Attorneys General, on the other hand,
> have
> come to the realization - as did Senator McCain, albeit too late --
> that
> the public health community has overplayed its hand, and now
> represents the
> single biggest obstacle to tobacco regulation, since it wants tobacco
> banned, which is not practical. We believe the 4th Circuit is highly
> unlikely to hear the FDA case en banc (by all 14 members, which
> collectively are known as one of the most conservative circuits in the
> country). We point out that the panel's decision does not conflict
> with
> other panels in that circuit, or with U.S. Supreme Court precedent.
> Appellate courts are also highly unlikely to sit en banc in cases
> where the
> U.S. Supreme Court is likely to step in, as it is here.
>
> With the demise of the FDA regulations, the attorney generals in the
> 46
> states who have not settled now face the grim reality that the best
> they
> can do in terms of marketing restrictions is the Minnesota settlement
> -
> elimination of billboards and transit signs, complete ban on branded
> merchandise, ban on product placements in films - plus anything that
> the
> industry is willing to concede at this late stage to get a deal
> embraced by
> 40 or more states. Our sources say that the two restrictions that
> the AGs

> are pushing for, and at which the industry is presently balking, are a
> national ban on sponsorships, and the elimination of cartoons and
> people in
> advertising. If the industry gets its other conditions - money at
> \$190
> billion (\$230 billion including the four states that have already
> settled);
> renegade provisions with teeth (payments that are adjusted for
> discount
> volume taken by non-signatories as well as the base volume
> adjustment);
> credits if payments result from local or federal government actions
> against
> the industry - we believe the industry would agree to concede brand
> sponsorships. Since no brand uses cartoons in its ads anymore, the
> industry would likely cede this marketing restriction as well.
> Getting rid
> of people in ads is another story, however, since the brand equities
> of
> Marlboro, Newport, Virginia Slims, Kool, Doral, and other brands
> would, in
> the long-term, suffer more if people were banned in ads than they
> would if
> adequate renegade provisions were not secured. We also believe it
> would
> be prudent to hold onto this and other huge marketing bargaining chip
> in
> case the Administration decides to take a leadership role in passing
> new
> tobacco legislation next year.
>
> Public health officials continue to push the AGs toward demanding no
> less
> than the marketing restrictions found in the FDA regulations, which
> would
> include, in addition to the Minnesota restrictions, no sponsorships,
> no
> in-store signage except black and white ads; only black & white ads in
> magazines where the youth readership is more than 15%; no continuity
> programs (premium merchandise for proofs of purchase), no self-service
> displays, and no vending machines except in adult only locations.
> Some
> public health officials have instructed the AGs to demand provisions
> that
> the manufactures wouldn't sell cigarettes to wholesalers who supply
> retailers who continue to allow self-service; although this too cannot
> work
> in practice, since manufacturers can't always track which wholesalers
> a
> retailer is buying from. These demands likely went out the window
> with
> Friday's ruling.
>
> 2. Administration's threats to file Medicare claim: More smoke than
> fire.
> The Administration again is dropping hints that it is considering a
> claim
> against the industry for recovery of federal Medicare, Medicaid, and
> Veterans' moneys paid on behalf of sick smokers. The rumors over the
> weekend were that damages sought could total \$500 billion. Once

> again, we
> suggest that this is a thinly-disguised threat to get the industry to
> negotiate with the Administration on FDA jurisdiction and the ongoing
> DOJ
> criminal probe, which continues to move at a snail's pace. In return
> for
> no federal economic recovery claim, and a nominal settlement on the
> criminal charges, the industry would agree to drop its lawsuit against
> the
> FDA, which now moves to the appeals stage.
>
> In theory, the United States government can sue to recover
> Medicare
> expenses under 42 USC §2651 - otherwise known as the Federal Medical
> Care
> Recovery Act of 1962. According to 42 USC § 2651, in any case where
> the
> U.S. furnishes medical care "under circumstances creating a tort
> liability
> upon some third person to pay damages, the United States shall have a
> right to recover from said third person the reasonable value of the
> care
> and treatment." Cases interpreting that law have said that the United
> States has an independent right to recover the costs of treating a
> sick
> person if the illness is attributable to a third party's negligence,
> and
> the government would not be subject to defenses that the tortfeasor
> might
> have used against the injured party.
> The statute goes on to explain that the United States' right to
> recover shall be subrogated to any right or claim that the injured or
> diseased person has against the tortfeasor to the extent of the
> reasonable
> value of the care and treatment. Federal cases interpreting 42 USC §
> 2651
> say the United States government has three ways for recovering medical
> and
> hospital care: (1) by subrogation; (2) by intervening or joining in
> any
> action brought by an injured person; and (3) by instituting such
> action
> itself or in conjunction with the injured person. Another case says:
> "In
> construing the Medical Care Recovery Act, the Courts have uniformly
> held
> that the United States is not merely subrogated to the injured party's
> claim, but has an independent cause of action under the Act." In
> that
> case, a woman suffered injuries while riding as a passenger in a car
> driven
> by her husband. Under the law of Arkansas, where the accident
> happened, a
> passenger cannot sue the driver of the car in which she was riding.
> But
> the United States was allowed to sue the husband because the court
> found
> that the United States was not subrogated to the wife's claim.
>
> Other cases explain that when the United States pays a victim's

> medical expenses, the injured person is not entitled to recover the
 > amount
 > of those expenses from the tortfeasor - only the United States has the
 > right to recover that money. The purpose of 42 USC § 2651 was to
 > prevent
 > injured people from double recovery - once from the government and
 > once
 > from the tortfeasor. One federal case focused on this issue,
 > ultimately
 > finding: "42 USC § 2651 is clear - the Federal Medical Care Recovery
 > Act
 > gives the United States an absolute, direct right of action to recover
 > the
 > reasonable value of medical expenses provided by law to anyone injured
 > through the tortious conduct of a third party."

>
 > We believe it will be far more difficult for the federal
 > government
 > than the states to succeed in their claims for recovery of expenses
 > for
 > tobacco injuries. Unlike the states, the federal government has a
 > long
 > paper trail of documents showing awareness to the dangers of tobacco
 > (1964
 > Surgeon General's Report and every one since then; federal warnings
 > labels
 > on packs of cigarettes since 1966). Moreover, any claim filed by the
 > Department of Justice on behalf of the federal government would have
 > to be
 > filed in federal court, which has demonstrated a penchant for tossing
 > these
 > type claims out. Over the past nine months, five separate federal
 > courts,
 > most recently in Oregon (others in PA, CA, FL, and MD) have thrown out
 > union health care recovery actions brought against the tobacco
 > industry.

>
 >
 > -----
 > Palmer v. Sterling Drugs, Inc., 343 F. Supp. 692 (E.D. Pa. 1972).
 > Government Employees Insurance Co. v. Arthur Bates, 414 F. Supp. 658
 > (E.D.
 > Ark. 1975).
 > Katie H. McCotter v. Smithfield Packing Co., Inc., 868 F. Supp. 160
 > (E.D.
 > Va. 1994).
 >

- att1.unk

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

TEXT:

Unable to convert ARMS_EXT:[ATTACH.D96]MAIL49458792I.226 to ASCII,
 The following is a HEX DUMP:

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Clinton Presidential Records Automated Records Management System [EMAIL]

This is not a presidential record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

Hex Dump file is not in a recognizable format, has been incorrectly decoded or is damaged.

File Name: p_h2978547_opd_html_1.tnf

Attachment Number: [ATTACH.D96]MAIL49458792I.226 to ASCII

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Richard Socarides (CN=Richard Socarides/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:19-AUG-1998 15:58:01.00

SUBJECT: POLL: MOST SUPPORT GAY RIGHTS LAWS

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

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

TO: Craig T. Smith (CN=Craig T. Smith/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

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

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

TO: Dario J. Gomez (CN=Dario J. Gomez/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: Charles E. Kieffer (CN=Charles E. Kieffer/OU=OMB/O=EOP @ EOP [OMB])
READ:UNKNOWN

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

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

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

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

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

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

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

READ:UNKNOWN

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

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

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

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

TEXT:

----- Forwarded by Richard Socarides/WHO/EOP on 08/19/98
03:57 PM -----

BAKER_K @ A1

08/19/98 03:48:00 PM

Record Type: Record

To: Richard Socarides

cc:

Subject: POLL: MOST SUPPORT GAY RIGHTS LAWS

Date: 08/19/98 Time: 15:35

Poll: Most support gay rights laws

NEW YORK, Aug. 19 (UPI) _ A Harris poll finds a modest 52 percent majority of American adults favor laws that make it illegal to discriminate against gays, while 41 percent oppose such laws.

The poll today finds 41 percent prefer Democratic policies on gay rights and sexual preference, compared to 23 percent who favor Republican policies.

Pollster Humphrey Taylor says the Christian Coalition and the right wing of the Republican Party may believe that taking a firm stand against homosexuality is good politics, but the poll results show otherwise.

Just more than a third of the 623 adults surveyed say they have close friends or relatives who are gay. However, those who have gay friends or relatives are no more likely to support anti-discrimination laws than those who do not.

The poll finds support for gay rights and anti-discrimination laws stands at 65 percent among liberals, 54 percent among moderates and 42 percent among conservatives.

Such support is only marginally stronger among Democrats than among Republicans, at 52 percent to 50 percent.

Fifty-six percent of the women polled support anti-discrimination laws, compared to 48 percent of men. Sixty-two percent of those from the Midwest, 58 percent from the East, and 43 percent from the South support such laws.

Support for anti-discrimination laws is highly correlated with the education of those polled, rising from 34 percent of those who never graduated from high school to 62 percent of those with a college degree.

Taylor says the results show that if everyone in the country felt strongly about the issue, it would tend to help Democrats and hurt Republicans.

However, the pollster says that for most people, it is not a top-tier issue and probably has little impact except among voters who are gay, or those who really hate homosexuals. _-

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:19-AUG-1998 17:24:56.00

SUBJECT: Race Book--Sept 10 Deadline

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

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

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

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

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

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

CC: Judith A. Winston (CN=Judith A. Winston/OU=PIR/O=EOP @ EOP [PIR])
READ:UNKNOWN

edley (edley @ law.harvard.edu @ inet [UNKNOWN])
READ:UNKNOWN

TEXT:

Folks--we're really committed to trying to have a memo to the president with policy ideas by 9/10 so that we can meet with him in the week following. That means people need to meet and discuss in the next three weeks--I'm counting on you--You all wanted to be sure that the Policy Councils were fully integrated in the development of policy for the Race Book--the time is now--THANKS.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:19-AUG-1998 16:48:45.00

SUBJECT: AP press inquiry on NAS study

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

READ:UNKNOWN

TEXT:

Jim O'Hara said that HHS has already received a press inquiry on the NAS study from AP. He thinks that AP will put out the story tonight or tomorrow morning for embargo until noon tomorrow. Here is a draft Q&A that are the agencies are vetting right now. They are supposed to get back to me within the hour on the Q&A. Are you fine with HHS talking with AP? Let me know, Mary ===== ATTACHMENT 1 =====

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

TEXT:

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```

Draft 8-19-98 2pm

**QUESTIONS AND ANSWERS ON NATIONAL
ACADEMY OF SCIENCES STUDY
August 19, 1998**

Q: What Does the NAS report say?

A: The National Academy of Sciences report, "Ensuring Safe Food From Production to Consumption," makes three basic conclusions: (1) an effective and efficient food safety system must be based in science; (2) the current statutes governing food safety must be revised in order to achieve a food safety system based on science; and (3) Congress must enact legislation to establish a unified and central framework for managing federal food safety programs which should be headed by a single official who has the responsibility and control of resources for all federal food safety activities.

Q: Does the Administration agree with the NAS report?

A: The Administration welcomes the opportunity to seriously review the NAS report and hopes that the report can play an important role in leading to further improvements. The Administration is encouraged that the NAS report recommends many of the initiatives already underway. The President has initiated a Food Safety Initiative to put in place new science-based preventative systems to improve the safety of seafood, meat, and poultry and to establish a new early warning system to help detect and respond to outbreaks of foodborne illness. Specifically, the President has already undertaken efforts which are recommended by the NAS report such as implementing the science-based Hazard Analysis and Critical Control Points (HACCP) system for inspections of meat, poultry, and seafood. In addition, the Administration has introduced legislation that will ensure that the FDA halts imports of fruits, vegetables, and other food products that do not meet U.S. food safety requirements or that came from countries that do not provide the same level of protection as is required for U.S. products. This legislation gives FDA authority that is similar to USDA's existing authority to prevent the importation of unsafe meat and poultry. The NAS report also highlights the role of Congress in ensuring food safety, and the Administration urges Congress to pass its FDA import legislation and legislation that would permit USDA to mandate recalls of meat. Finally, the Administration looks forward to working with Congress to fully fund its Food Safety Initiative.

Q: The NAS report focuses on the coordination of food safety activities. How does the federal government already coordinate its food safety activities?

A: In less than two years, the Clinton Administration has taken significant strides toward building a coordinated food safety system. Most recently, the President announced the creation of the Joint Institute for Food Safety Research that will develop a strategic plan

for conducting food safety research activities and will coordinate efficiently all Federal food safety research, including with the private sector and academia. In addition, the Administration announced the Foodborne Outbreak Response Coordinating Group (FORC-G) which brings together federal, state, and local agencies to develop a comprehensive, coordinated, national foodborne illness response system. The Administration also has provided for increased and targeted surveillance of foodborne illness through PulseNet and FoodNet. PulseNet is a national network of public health laboratories that perform DNA "fingerprinting" on foodborne pathogens and compares these patterns through an electronic database at the Centers for Disease Control and Prevention. FoodNet is a collaborative effort between USDA, FDA, CDC and seven selected sites throughout the United States to track major pathogens that cause sporadic illness, and to explore what associations may exist between cases and the types of food products consumed. Finally, the federal agencies cooperate on risk assessment through the Interagency Risk Assessment Consortium.

Q: Does the Administration agree with the NAS recommendation that there be a single official who has the responsibility and control of resources for all federal food safety activities?

A: The Administration certainly agrees that there should be greater coordination of federal food safety activities, and has made several significant steps toward this coordination. The Administration will set up a process to seriously consider and review the NAS report and to respond to it.

Q: What about the NAS report's recommendation regarding a National Food Safety Plan?

A: The Administration already has efforts underway to develop a comprehensive strategic Federal food safety plan with the cooperation of consumers, producers, industry, food service providers, retailers, health professionals, state and local governments, tribes, academia, and the public. The strategic plan will focus not only on microbial contamination, but the full range of issues and actions necessary to ensure the safety of the food Americans eat and the water they drink. The plan will be used to set priorities, improve coordination and efficiency, identify gaps in the current system, and enhance and strengthen prevention strategies.

Food Safety Budget

Q: What did the President ask for in the FY 1999 Budget request with respect to food safety?

A: The FY 1999 Budget included a \$101 million (or 12 percent) increase over the FY 1998 level for the Administration's inter-agency food safety initiative. Of this total amount,

\$25 million would finance FDA's improved capability to ensure the safety of imported foods. Another \$24 million of the Initiative would go towards: developing a rapid test for the detection of pathogens; improving slaughter and processing systems to avoid contamination of food products; and establishing a baseline of data to better assess the risk of contamination in the US food supply. In addition, \$7.8 million would be used to expand consumer education initiatives, especially for high risk populations (the elderly and children).

Q: What is the status of the Food Safety Initiative in the FY 1999 Appropriation bills?

A: The Senate Agriculture Appropriations bill contained an amendment offered by Senator Harkin which would provide \$68 million for funding of the President's food safety initiative. The amendment received strong bi-partisan support and passed 66-33. Senator Harkin's amendment required USDA's tobacco program administrative costs to be fully-funded by the tobacco industry, and used the savings to offset the cost of expanded food safety programs for both USDA and FDA. The House-passed Agriculture Appropriations bill would provide \$16.8 million of the requested increase: \$7 million for FDA import inspections and \$9.8 million for USDA activities. The Administration will continue to work with the conference committee members to urge them to provide full funding for the food safety initiative.

Q: Is all of the \$101 million that the President asked for necessary for food safety?

A: Without additional funding for the Food Safety Initiative, the Administration will not be able to fully develop appropriate responses, prevention, and control strategies for reducing the level of food-borne illness in the United States.

In addition to the funding requested to strengthen FDA's import inspection and expand USDA's and FDA's research and education activities, funding is requested to continue to improve FDA's food safety infrastructure, as started in the FY 1998 Food Safety Initiative. Also, significant resources are targeted to strengthening both USDA's and FDA's risk assessment capabilities. Risk assessment is important in helping to identify foods and processes that are most likely to lead to food-borne illness. Finally, funding is requested to expand the USDA's and HHS's ability identify and track food-borne illnesses.

Legislative Proposals

Q: What is the Administration's FDA import legislation?

A: This legislation, introduced by Senators Milkulski and Kennedy and Reps. Eshoo and Pallone, that gives the FDA greater authority over imported foods. This legislation will ensure that the FDA halts imports of fruits, vegetables, and other food products that do

not meet U.S. food safety requirements or that came from countries that do not provide the same level of protection as is required for U.S. products. The legislation also enables the FDA to halt imports from a country or facility that refuses to allow FDA inspections. This legislation gives FDA authority that is similar to USDA's existing authority to prevent the importation of unsafe meat and poultry.

Q: What is the Administration's USDA mandatory recall/civil penalties legislation?

A: The Administration urges passage of the Food Safety Enforcement Enhancement Act, sponsored by Senators Harkin, Daschle, Johnson, and Leahy, which gives USDA the ability to assess civil fines and to order mandatory recalls of unsafe meat and poultry products. Currently, the USDA can respond to food safety violations only by bringing criminal actions or withdrawing inspections; all recalls are done on a voluntary basis and no civil penalties are available. This new legislation will give USDA additional enforcement tools to prevent consumers from ingesting and becoming ill from dangerous meat and poultry.

Q: Aren't these legislative proposals essentially dead? Has Congress moved on them at all?

A: These proposals are not dead. The Administration is working with members to try to get these vital pieces of legislation passed and expects the Congressional sponsors of these measures to raise the bills on the House and Senate floors.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:19-AUG-1998 19:49:19.00

SUBJECT: Jim O'hara

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

READ:UNKNOWN

TEXT:

I hear rumors that O'Hara is trying to get USDA on his side so that DPC won't be the third co-chair --so it might make for an interesting morning tomorrow (and all of this needs to be resolved by 11am and O'Hara knows that)

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:19-AUG-1998 14:51:56.00

SUBJECT: Press strategy for NAS study tomorrow

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

READ:UNKNOWN

TEXT:

Do you want the WH to take the lead on press inquiries on the NAS study tomorrow? It might be a good idea, particularly when one of the recommendations is that there should be one person on food safety. In addition, if all the agencies are freely talking to the press -- there might be differences in tone in the stories. Let me know, Mary

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:19-AUG-1998 13:29:08.00

SUBJECT: NAS Briefing

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

The following are the main points from the NAS briefing.

Their conclusions were:

1. That our food safety system must be based on science
2. That the statutes governing the food safety need to be revised because these statutes are not always framed so that the statute is science-based
 - As part of the No. 2, we should develop a comprehensive national food safety plan
 - they emphasized repeatedly that we should coordinate more with states and local governments in doing this planning process (which we are going to do in the executive order)
3. That Congress should establish, by statute, a "unified and central framework for managing federal food safety programs, one that is headed by a single official" who has both responsibility for the planning and the accompanying resources
 - the NAS made clear that No. 3 is not recommending a single food agency
 - in the report the NAS didn't lay out how this "central framework" would look like
 - However, they were very adamant that there be only one individual with responsibility for food safety. They were quick to point out that they were not recommending a "czar." They had defined czar as someone who is appointed by the President and who does not have authority over budget resources. They said that this single person should be authorized by statute so that this person would be less influenced by political pressure and that the person must have, as they put it, the authority, the responsibility, and the resources

The NAS also made clear that they did not point out specifically how budget resources should be allocated, but only pointed out where there are gaps in the current system are.

The next steps for the NAS are to wait to hear back from Congress as to whether Congress wants them to do a second phase of the study. This study grew out of last year's Ag appropriations bill, and if Congress wants followup, they would probably decide that in this year's Ag appropriations conference.

I will get some Q&A to you later in the afternoon. Also -- is this going

to be the radio address --if so, we should get the executive order in the
OMB process today. Thanks, Mary

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Leslie Bernstein to Elena Kagan et al. Subject [Tuesday] (1 page)	08/19/1998	Personal Misfile

COLLECTION:

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

FOLDER TITLE:

[08/18/1998-08/19/1998]

2009-1006-F
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RESTRICTION CODES

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

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- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Richard Socarides (CN=Richard Socarides/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:19-AUG-1998 13:34:28.00

SUBJECT: GMA: SF Gay Rights Controversy

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

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

TO: Craig T. Smith (CN=Craig T. Smith/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

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

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

TO: Dario J. Gomez (CN=Dario J. Gomez/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: Charles E. Kieffer (CN=Charles E. Kieffer/OU=OMB/O=EOP @ EOP [OMB])
READ:UNKNOWN

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

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

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

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

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

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

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

READ:UNKNOWN

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

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

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

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

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

TEXT:

----- Forwarded by Richard Socarides/WHO/EOP on 08/19/98
01:34 PM -----

Doug.Case @ sdsu.edu
08/19/98 02:27:00 PM

Record Type: Record

To: Stuart D. Rosenstein, Richard Socarides
cc:
Subject: GMA: SF Gay Rights Controversy

ABC GOOD MORNING AMERICA SUNDAY (10:00 am ET)
AUGUST 16, 1998

SAN FRANCISCO GAY RIGHTS CONTROVERSY
GUESTS: Rep. FRANK RIGGS, Mayor WILLIE BROWN
HIGHLIGHT:

MAYOR SIGNS BILL EXPANDING GAY RIGHTS

AARON BROWN, Host: Does anyone like to be ordered around? No. Like it or not,

though, a lot of people lately have been telling others what to do and what to

think about homosexuality.

Sen. TRENT LOTT (R): (clip from "America's Voice," June 18) There are all kinds of problems and addictions and...

AARON BROWN: (voice-over) From Senator Trent Lott's controversial comments about homosexuality to an ad campaign by a coalition of Christian groups to rulings by two churches, one condemning homosexual marriages, the other prohibiting the ordination of gays, now comes another chapter in the debate.

With one of the country's largest gay populations, San Francisco has always been ahead of the curve on gay rights. The city not only provides health benefits to its employees' domestic partners, it also requires all companies, even charities doing business with the city, to do the same.

But last month, the U.S. House of Representatives passed a bill that would cut off San Francisco's federal housing funding if the city continues its domestic partners policy. San Francisco's mayor, Willie Brown, says the city will do without the money. And this week, he signed a measure that expands gay rights even more, requiring local businesses to offer gay couples

the same discounts as heterosexual couples.

(on camera) This morning, Mayor Willie Brown joins us from the Bay area, and in Washington we're joined by the other major player in this debate, U.S. Representative Frank Riggs. Good morning to both of you, thanks for coming in this morning.

Congressman, let me start with you. As best I can tell, there was no hollering for something in San Francisco. People in San Francisco seemed to be reasonably pleased with how things were going under these ordinances. Other than for political reasons, why'd you feel you needed to get involved in this?

Rep. FRANK RIGGS (R), California: Because the city of -- and county of San Francisco, which is one unit of local government, is using federal contracts and grants to basically force private employers and nonprofit organizations to offer domestic partner benefits to their employees.

And in the case of Catholic Charities and in the case of Salvation Army, Salvation Army, which has been in San Francisco for over 100 years providing services to the truly needy and desperately poor, those organizations objected to the San Francisco ordinance because of moral and religious reasons.

And I think it's very important that we have a debate in the Congress on using federal taxpayer funding in this manner, and that we support the right of organizations like Salvation Army to adhere to the Judeo-Christian principles they've always followed.

AARON BROWN: And conversely, Mayor Brown, are you at all uncomfortable about forcing companies or nonprofits, so on, to adhere to the city's notion of what is correct, when they may have really strong moral feelings on the other side?

Mayor WILLIE BROWN (D), San Francisco: I think each local jurisdiction, through the democratic process, must make its own determination as to how its people are to live within the framework and the context of the Constitution, both at the federal level and at the state level, in all of the respective state statutes. Local autonomy has been the hallmark of most of the governmental units in this nation.

Mr. Riggs has been a great supporter of local autonomy. San Francisco is appropriately exercising local autonomy.

I must tell you that Catholic Charities, an organization that Mr. Riggs referred to, found it appropriate to give the option to its employees to so designate someone as a beneficiary, and the end result of them, compliance with the domestic partners ordinance. And every other organization could do the same.

AARON BROWN: Congress...

Mayor WILLIE BROWN: I must also tell Mr. Riggs that the local Salvation Army wanted appropriately to comply with all of the rules and regulations

imposed

by San Francisco. The national did not, and therefore the Salvation Army bowed

out. That's their option, just as it should be our local option.

AARON BROWN: Congressman, that whole local option issue is an intriguing one,

I think, particularly for a Republican, because that is a hallmark, it seems

to me, of modern Republican thought, that decisions ought to be made at the local level.

Rep. FRANK RIGGS: Well, no disagreement there, except that we're talking about

using federal funding, federal taxpayer money, in this instance. I don't have

any quarrel if the city and county of San Francisco decides to offer these benefits to their own employees. I would still disagree philosophically with

that decision, but that is a decision that should be made at the local level.

And likewise, if they used state and local funding to force this policy

on the private sector, again I don't think that it would be appropriate for the federal government, for the Congress, to get involved.

But we're talking about using federal taxpayer funding here, number one.

And number two, it's an article of faith with the -- with most Republicans that we want to minimize government interference with the private sector.

And here Mayor Brown and the other San Francisco politicians are forcing

this decision on the private sector. If a private sector organization wants to

make that decision for their own employees, that's one thing. But to be forced

or coerced by a governmental policy, or in this case the San Francisco ordinance, is another thing altogether.

AARON BROWN: Mayor...

Mayor WILLIE BROWN: Every day of the...

AARON BROWN: Go ahead.

Mayor WILLIE BROWN: I'm sorry.

AARON BROWN: Go ahead, sir.

Mayor WILLIE BROWN: Every day of the week, at the local government level, every single solitary issue that affects the local folk, that decision's made

by local government, whether it's a stop sign, whether it's land use policies,

whether it's height (?) policies, you name it, and we do it at the local level, and we do it in the best interests of our people.

AARON BROWN: Is this issue worth...

Mayor WILLIE BROWN: Mr. Riggs...

AARON BROWN: Is this issue worth...

Mayor WILLIE BROWN: Mr. Riggs...

AARON BROWN:... losing all that money over?

Mayor WILLIE BROWN: Mr. Riggs should not under any circumstances be attempting

to dictate what San Francisco should do. We would never consider the possibility in our sanctioning. (?) For an example, putting horrible substance

in people's eyes who may be in Mr. Riggs' office. That's not something we would do.

AARON BROWN: OK.

Mayor WILLIE BROWN: I don't want to dictate to Mr. Riggs, however, that his federal funding ought to be lost because he did that.

AARON BROWN: I need, unfortunately, to dictate to both of you at this point that we're about done here and out of time. It's a fascinating issue, though,

because other cities are about to deal with it as well. Congressman, thanks.

Mayor Brown, thank you for joining us as well.

Rep. FRANK RIGGS: Pleasure.

AARON BROWN: I appreciate it very much.

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

TEXT:

RFC-822-headers:

Received: from conversion.pmdf.eop.gov by PMDF.EOP.GOV (PMDF V5.1-9 #29131) id <01JOSFG5DL4W00054B@PMDF.EOP.GOV>; Wed, 19 Aug 1998 13:29:40 EDT

Received: from Storm.EOP.GOV by PMDF.EOP.GOV (PMDF V5.1-9 #29131) with ESMTTP id <01JOSFG27GC000042P@PMDF.EOP.GOV>; Wed, 19 Aug 1998 13:29:35 -0400 (EDT)

Received: from mail.sdsu.edu ([130.191.25.1]) by STORM.EOP.GOV (PMDF V5.1-12 #29131) with ESMTTP id <01JOSFFWNZLG0001BR@STORM.EOP.GOV>; Wed, 19 Aug 1998 13:29:26 -0400 (EDT)

Received: from [130.191.242.121] ([130.191.242.121]) by mail.sdsu.edu (8.8.7/8.8.7) with ESMTTP id KAA01466; Wed, 19 Aug 1998 10:26:10 -0700 (PDT)

X-Sender: dcase@mail.sdsu.edu

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

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:19-AUG-1998 16:50:27.00

SUBJECT: Weekly and/or Daily

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

TEXT:

EK:

The following is a summary of the Household Survey findings for the weekly. You may, however, want to abbreviate and submit as part of the daily report for Thursday...jc3

Drugs -- Household Survey: On Friday, HHS and ONDCP will release the 1997 National Household Survey on Drug Abuse. Some highlight's from the 1997 survey include:

Overall drug use flat -- The total number of Americans who are current drug users (or those who used illicit drugs during the past 30 days) did not change significantly between 1996 and 1997 (from 13 million to 13.9 million), and remains nearly 50% below its peak in 1979 (25 million).

Youth Drug Use Up -- The number of youth (12 to 17-year olds) who were current drug users increased from 9% in 1996 to 11.4% in 1997 -- reversing last year's drop from 10.9% in 1995. The rate was highest in 1979 (16.3%) and lowest in 1992 (5.3%).

Marijuana a Big Problem -- The prevalence of marijuana use among youth more than doubled from 1992 to 1997 and increased significantly from 7.1% in 1996 to 9.4% in 1997. This is still less than the 14.2% estimate for 1979.

Cocaine Use Stable -- The overall number of cocaine users did not change significantly in 1997 (from 1.75 million to 1.5 million), and remained well below its peak in 1985 (5.7 million).

Increasing Heroin Use -- The number of current heroin users has increased from 68,000 in 1992 to 325,000 1997. Still, heroin users remains a relatively small percentage of the drug-using population (from less than .1% in 1992 to .2% in 1997).

Lots of New, Young Users -- The 1997 Survey also estimates that there were 2.5 million first-time drug users in 1996. This includes the highest rate of first-time marijuana, cocaine and heroin use by youth (12 to 17-year olds) in 30 years, and a near doubling of the rate of new hallucinogen users observed during the 1980s. (NB: Data on new initiates is collected one year behind the survey's data on current use and often signals future increases in drug use.)

Alcohol/Tobacco Use Stable -- The overall number of Americans using alcohol and tobacco did not change significantly from 1996 to 1997. Overall, 111 million Americans aged 12 and over were current users of

alcohol. This includes 32 million binge drinkers (5 or more drinks on one occasion) and 11 million heavy drinkers (5 or more drinks 5 times a month). Eleven million current drinkers were between the ages of 12 and 20 years old, including 4.8 million binge drinkers and 2 million heavy drinkers.

Sixty-four million Americans aged 12 and older -- or about 30% -- reported smoking in the past 30 days in 1997. This includes 4.5 million youth between the ages of 12 and 20 years old -- or about 20%. Although these rates are similar to the 1996 estimates, the number of 12-13 year olds that smoked increased from 7.3% in 1996 to 9.7% in 1997.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Jordan Tamagni (CN=Jordan Tamagni/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:19-AUG-1998 14:27:32.00

SUBJECT: Radio

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

READ:UNKNOWN

TEXT:

Aside from the usual "keeping America's food supply the safest in the world," is there anything in particular you think the radio address should, um, address? I will ask Mary what the actual differences are between the President's Council on Food Safety and the Joint Institute for Food Safety Research we announced last month. But is there a larger message framework, etc.?

Also, any idea whether they're going to tape it live on Saturday? Please let me know if you do.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:19-AUG-1998 18:10:57.00

SUBJECT: Staff Secretary Timing on Executive order and directive

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

READ:UNKNOWN

TEXT:

I've talked to Sean who said they need the final order and directive by 2pm in order to send it around the West Wing in the afternoon and get it to the Vineyard by early evening. The agencies are getting back to OMB by 11am and I hope to get it to you around that time before we send it to Sean. Thanks

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:19-AUG-1998 17:29:51.00

SUBJECT: AP press inquiry on NAS study --AP deadline at 6pm tonight

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

READ:UNKNOWN

TEXT:

The AP deadline is 6 pm tonight.

----- Forwarded by Mary L. Smith/OPD/EOP on 08/19/98

05:31 PM -----

Mary L. Smith

08/19/98 04:48:25 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc:

Subject: AP press inquiry on NAS study

Jim O'Hara said that HHS has already received a press inquiry on the NAS study from AP. He thinks that AP will put out the story tonight or tomorrow morning for embargo until noon tomorrow. Here is a draft Q&A that are the agencies are vetting right now. They are supposed to get back to me within the hour on the Q&A. Are you fine with HHS talking with AP? Let me know, Mary

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

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

TEXT:

Unable to convert ARMS_EXT:[ATTACH.D3]MAIL44853213C.226 to ASCII,

The following is a HEX DUMP:

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Draft 8-19-98 2pm

**QUESTIONS AND ANSWERS ON NATIONAL
ACADEMY OF SCIENCES STUDY
August 19, 1998**

Q: What Does the NAS report say?

A: The National Academy of Sciences report, "Ensuring Safe Food From Production to Consumption," makes three basic conclusions: (1) an effective and efficient food safety system must be based in science; (2) the current statutes governing food safety must be revised in order to achieve a food safety system based on science; and (3) Congress must enact legislation to establish a unified and central framework for managing federal food safety programs which should be headed by a single official who has the responsibility and control of resources for all federal food safety activities.

Q: Does the Administration agree with the NAS report?

A: The Administration welcomes the opportunity to seriously review the NAS report and hopes that the report can play an important role in leading to further improvements. The Administration is encouraged that the NAS report recommends many of the initiatives already underway. The President has initiated a Food Safety Initiative to put in place new science-based preventative systems to improve the safety of seafood, meat, and poultry and to establish a new early warning system to help detect and respond to outbreaks of foodborne illness. Specifically, the President has already undertaken efforts which are recommended by the NAS report such as implementing the science-based Hazard Analysis and Critical Control Points (HACCP) system for inspections of meat, poultry, and seafood. In addition, the Administration has introduced legislation that will ensure that the FDA halts imports of fruits, vegetables, and other food products that do not meet U.S. food safety requirements or that came from countries that do not provide the same level of protection as is required for U.S. products. This legislation gives FDA authority that is similar to USDA's existing authority to prevent the importation of unsafe meat and poultry. The NAS report also highlights the role of Congress in ensuring food safety, and the Administration urges Congress to pass its FDA import legislation and legislation that would permit USDA to mandate recalls of meat. Finally, the Administration looks forward to working with Congress to fully fund its Food Safety Initiative.

Q: The NAS report focuses on the coordination of food safety activities. How does the federal government already coordinate its food safety activities?

A: In less than two years, the Clinton Administration has taken significant strides toward building a coordinated food safety system. Most recently, the President announced the creation of the Joint Institute for Food Safety Research that will develop a strategic plan

for conducting food safety research activities and will coordinate efficiently all Federal food safety research, including with the private sector and academia. In addition, the Administration announced the Foodborne Outbreak Response Coordinating Group (FORC-G) which brings together federal, state, and local agencies to develop a comprehensive, coordinated, national foodborne illness response system. The Administration also has provided for increased and targeted surveillance of foodborne illness through PulseNet and FoodNet. PulseNet is a national network of public health laboratories that perform DNA "fingerprinting" on foodborne pathogens and compares these patterns through an electronic database at the Centers for Disease Control and Prevention. FoodNet is a collaborative effort between USDA, FDA, CDC and seven selected sites throughout the United States to track major pathogens that cause sporadic illness, and to explore what associations may exist between cases and the types of food products consumed. Finally, the federal agencies cooperate on risk assessment through the Interagency Risk Assessment Consortium.

Q: Does the Administration agree with the NAS recommendation that there be a single official who has the responsibility and control of resources for all federal food safety activities?

A: The Administration certainly agrees that there should be greater coordination of federal food safety activities, and has made several significant steps toward this coordination. The Administration will set up a process to seriously consider and review the NAS report and to respond to it.

Q: What about the NAS report's recommendation regarding a National Food Safety Plan?

A: The Administration already has efforts underway to develop a comprehensive strategic Federal food safety plan with the cooperation of consumers, producers, industry, food service providers, retailers, health professionals, state and local governments, tribes, academia, and the public. The strategic plan will focus not only on microbial contamination, but the full range of issues and actions necessary to ensure the safety of the food Americans eat and the water they drink. The plan will be used to set priorities, improve coordination and efficiency, identify gaps in the current system, and enhance and strengthen prevention strategies.

Food Safety Budget

Q: What did the President ask for in the FY 1999 Budget request with respect to food safety?

A: The FY 1999 Budget included a \$101 million (or 12 percent) increase over the FY 1998 level for the Administration's inter-agency food safety initiative. Of this total amount,

\$25 million would finance FDA's improved capability to ensure the safety of imported foods. Another \$24 million of the Initiative would go towards: developing a rapid test for the detection of pathogens; improving slaughter and processing systems to avoid contamination of food products; and establishing a baseline of data to better assess the risk of contamination in the US food supply. In addition, \$7.8 million would be used to expand consumer education initiatives, especially for high risk populations (the elderly and children).

Q: What is the status of the Food Safety Initiative in the FY 1999 Appropriation bills?

A: The Senate Agriculture Appropriations bill contained an amendment offered by Senator Harkin which would provide \$68 million for funding of the President's food safety initiative. The amendment received strong bi-partisan support and passed 66-33. Senator Harkin's amendment required USDA's tobacco program administrative costs to be fully-funded by the tobacco industry, and used the savings to offset the cost of expanded food safety programs for both USDA and FDA. The House-passed Agriculture Appropriations bill would provide \$16.8 million of the requested increase: \$7 million for FDA import inspections and \$9.8 million for USDA activities. The Administration will continue to work with the conference committee members to urge them to provide full funding for the food safety initiative.

Q: Is all of the \$101 million that the President asked for necessary for food safety?

A: Without additional funding for the Food Safety Initiative, the Administration will not be able to fully develop appropriate responses, prevention, and control strategies for reducing the level of food-borne illness in the United States.

In addition to the funding requested to strengthen FDA's import inspection and expand USDA's and FDA's research and education activities, funding is requested to continue to improve FDA's food safety infrastructure, as started in the FY 1998 Food Safety Initiative. Also, significant resources are targeted to strengthening both USDA's and FDA's risk assessment capabilities. Risk assessment is important in helping to identify foods and processes that are most likely to lead to food-borne illness. Finally, funding is requested to expand the USDA's and HHS's ability identify and track food-borne illnesses.

Legislative Proposals

Q: What is the Administration's FDA import legislation?

A: This legislation, introduced by Senators Milkulski and Kennedy and Reps. Eshoo and Pallone, that gives the FDA greater authority over imported foods. This legislation will ensure that the FDA halts imports of fruits, vegetables, and other food products that do

not meet U.S. food safety requirements or that came from countries that do not provide the same level of protection as is required for U.S. products. The legislation also enables the FDA to halt imports from a country or facility that refuses to allow FDA inspections. This legislation gives FDA authority that is similar to USDA's existing authority to prevent the importation of unsafe meat and poultry.

Q: What is the Administration's USDA mandatory recall/civil penalties legislation?

A: The Administration urges passage of the Food Safety Enforcement Enhancement Act, sponsored by Senators Harkin, Daschle, Johnson, and Leahy, which gives USDA the ability to assess civil fines and to order mandatory recalls of unsafe meat and poultry products. Currently, the USDA can respond to food safety violations only by bringing criminal actions or withdrawing inspections; all recalls are done on a voluntary basis and no civil penalties are available. This new legislation will give USDA additional enforcement tools to prevent consumers from ingesting and becoming ill from dangerous meat and poultry.

Q: Aren't these legislative proposals essentially dead? Has Congress moved on them at all?

A: These proposals are not dead. The Administration is working with members to try to get these vital pieces of legislation passed and expects the Congressional sponsors of these measures to raise the bills on the House and Senate floors.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:19-AUG-1998 19:23:23.00

SUBJECT: Q&A to be reviewed for NAS study release at noon on Thursday

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

READ:UNKNOWN

TEXT:

Here is Q&A that have been vetted by OMB, EPA, USDA, and HHS. The NAS report is embargoed until noon on Thursday, August 20 so the WH press office should get them around that time. Thanks, Mary===== ATTACHMEN

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

TEXT:

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**QUESTIONS AND ANSWERS ON NATIONAL
ACADEMY OF SCIENCES STUDY**

August 20, 1998

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Q: Does the Administration agree with the NAS report?

A: The Administration welcomes the opportunity to seriously review the NAS report and hopes that the report can play an important role in leading to further improvements. The Administration is encouraged that the NAS report recommends many of the initiatives already underway such as the following:

- The President has launched a Food Safety Initiative to put in place new science-based preventative systems to improve the safety of food and to establish a new early warning system to help detect and respond to outbreaks of foodborne illness.
- Specifically, the President has already undertaken efforts which are recommended by the NAS report such as implementing the science-based Hazard Analysis and Critical Control Points (HACCP) system for inspections of meat, poultry, and seafood.
- The Administration has introduced legislation that will ensure that the FDA halts imports of fruits, vegetables, and other food products that do not meet U.S. food safety requirements or that came from countries that do not provide the same level of protection as is required for U.S. products. This legislation gives FDA authority that is similar to USDA's existing authority to prevent the importation of unsafe meat and poultry.

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A: **The Senate Agriculture Appropriations bill contained an amendment offered by Senator Harkin which would provide an additional \$66 million for funding of the President's food safety initiative, bringing the Senate bill's total for the initiative to \$69 million. The amendment received strong bi-partisan support and passed 66-33. Senator Harkin's amendment required USDA's tobacco program administrative costs to be partially funded by the tobacco industry, and used the savings as the major offset for the cost of expanded food safety programs for both USDA and FDA. The House-passed Agriculture Appropriations bill would provide \$16.8 million of the requested increase: \$7 million for FDA imported food safety and \$9.8 million for USDA activities. The Administration will continue to work with the conference committee members to urge them to provide full funding for the food safety initiative.**

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Jocelyn Neis (CN=Jocelyn Neis/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:19-AUG-1998 13:51:49.00

SUBJECT: Meeting w/Minyon

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

READ:UNKNOWN

CC: Minyon Moore (CN=Minyon Moore/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TEXT:

Minyon would like to cancel today's meeting at 3:00 and try to catch up with you at a later date. I will contact Laura when she returns to set something up.

Thanks!