

NLWJC - KAGAN

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[09/15/1995-10/18/1995]

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Mail Link Monitor to Elena Kagan. Subject: Confirmation [partial] (1 page)	10/11/1995	P6/b(6), b(7)(C), b(7)(E), b(7)(F)
002. email	Phone No. (Partial) (1 page)	10/13/1995	P6/b(6)
003. email	Mail Link Monitor to Elena Kagan at 09:58:09.64. Subject: Confirmation [partial] (1 page)	10/17/1995	P6/b(6), b(7)(C), b(7)(E), b(7)(F)
004. email	Mail Link Monitor to Elena Kagan at 09:58:38.56. Subject: Confirmation [partial] (1 page)	10/17/1995	P6/b(6), b(7)(C), b(7)(E), b(7)(F)

COLLECTION:

Clinton Presidential Records
 Automated Records Management System (Email)
 WHO ([Kagan])
 OA/Box Number: 500000

FOLDER TITLE:

[09/15/1995 - 10/18/1995]

2009-1006-F

ke710

RESTRICTION CODES

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

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

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

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

RR. Document will be reviewed upon request.

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

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

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

CREATOR: Jeffrey J. Connaughton (CONNAUGHTO_J) (WHO)

CREATION DATE/TIME:15-SEP-1995 15:24:18.23

SUBJECT: Hypo #2

TO: Elena Kagan (KAGAN_E) (WHO)

READ:15-SEP-1995 15:26:46.73

TEXT:

thanks for reviewing now.

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

ATT CREATION TIME/DATE:15-SEP-1995 15:23:00.00

ATT BODYPART TYPE:p

ATT CREATOR: Jeffrey J. Connaughton

TEXT:

WPC_

2BPZCourier 10cpi#|xx6X@8;X@HP LaserJet IIDHPLASIID.PRSx□

@,t0~X@2=□ZM!#|xHP LaserJet IIDHPLASIID.PRSx□

@,t0~X@Courier 10cpiCourier 10cpi Bold2XF`]?xxx,x6X@8;X@>?xxx,x `w;XL□T^QF=uArY

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!September 15, 1995

□?□□MEMORANDUM TO JUDGE MIKVA

FROM` ` JEFF CONNAUGHTON, ELENA KAGAN

□?□SUBJECT□` ` Hypothetical #2: Speech in Public Schools

The second hypothetical concerns a school principal's policy to ban "controversial or offensive buttons, Tshirts or items worn by students." The items cited as "controversial or offensive" constitute political speech.

□?□□SUMMARY OF COURT DOCTRINE□

Students in public schools do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." Tinker v. Des Moines Indep. Community School Dist., 393 U.S. 503 (1969). "They cannot be punished merely for expressing their personal views on the school premises . . . unless school authorities have reason to believe that such expression will substantially interfere with the work of the school or impinge upon the rights of other students." Hazelwood School Dist. v. Kuhlmeier, 484 U.S. 260 (1988), quoting Tinker, 393 U.S. at 509.

The First Amendment rights of public school students "are not automatically coextensive with the rights of adults in other settings." Bethel School Dist. No. 403 v. Fraser, 478 U.S. 675 (1986). Student preparation for adult experiences does not necessarily ensure adult experiences on the school campus. For example, schools need not tolerate student speech that is inconsistent with the school's "basic education mission." Id. at 685. Despite the fact that the suppression of speech has obvious First Amendment implications, courts are not necessarily in the best position to decide whether speech restrictions are appropriate. "The determination of what manner of speech in the classroom or in school as

sembly is inappropriate properly rests with the school board," and not with the federal courts. See *Fraser*, 478 U.S. at 683.

Three Areas of Student Speech

Courts have discerned three distinct areas of student speech from the Supreme Court's school precedents: (1) vulgar, lewd, obscene, and plainly offensive speech, (2) school-sponsored speech, and (3) speech that falls into neither of these categories.

The standard for reviewing the suppression of vulgar, lewd, obscene, and plainly offensive speech is governed by *Fraser*, 478 U.S. at 683-85. *Fraser* involved a speech given by a student at a high school assembly. The speech contained sexual innuendo and metaphor. The Court held that the school district acted entirely within its permissible authority in imposing sanctions upon *Fraser* in response to his offensively lewd and indecent speech. Unlike the sanctions imposed on the students in *Tinker*, the penalties imposed in *Fraser* were unrelated to any political viewpoint. "The First Amendment does not prevent the school officials from determining that to permit a vulgar and lewd speech such as *Fraser's* would undermine the school's basic educational mission. . . . Accordingly, it was perfectly appropriate for the school to disassociate itself to make the point to the pupils that vulgar speech and lewd conduct is wholly inconsistent with the 'fundamental values' of public school education." *Chandler v. McMinville Sch. Dist.*, 978 F.2d 524 (9th Cir. 1992).

The standard for reviewing the suppression of school-sponsored speech is governed by *Hazelwood*, 484 U.S. at 273. *Hazelwood* involved a dispute over the deletion of two pages of an issue of a school newspaper. The principal deleted the pages because they contained an article addressing students' experiences with pregnancy, and another article describing the impact of divorce on students at the school. The newspaper was written and edited by students in a journalism class as part of the school's curriculum. The Court declined to apply *Tinker*, holding instead that "the standard articulated in *Tinker* for determining when a school may punish student expression need not also be the standard for determining when a school may refuse to lend its name and resources to the dissemination of student expression." *Hazelwood* at 272-73. The Court then validated editorial control by school officials over the school-sponsored newspaper "so long as their actions are reasonably related to legitimate pedagogical concerns." *Id.* at 273.

The standard for reviewing all other speech is governed by *Tinker*, 393 U.S. at 513-14. In *Tinker*, junior high school students were suspended for wearing black armbands in protest of the Vietnam War. The Court held that display of the armbands was a "silent, passive expression of opinion, unaccompanied by any disorder or disturbance" and that there was "no evidence whatever of interference, actual or nascent, with the school's work or of collision with the rights of other students to be secure and to be let alone." *Tinker*, 393 U.S. at 508. The Court explained that "where there is no finding and no showing that engaging in the forbidden conduct would materially and substantially interfere with the requirements of appropriate discipline in the operation of the school, the prohibition cannot be sustained." *Id.* at 509.

□?'□□BRIEF ANALYSIS□

The t-shirts and buttons at issue cannot be considered *per se* vulgar, lewd, obscene, or plainly offensive within the meaning of *Fraser*. (As an aside, the Court in *Fraser* distinguished *Cohen v. California*, 403 U.S. 15 (1971). In *Cohen*, the Court held that a man could not be criminally prosecuted for wearing a jacket bearing an obscene statement disapproving the draft. The Court pointed out that students have "the classroom right to wear *Tinker's* armband, but not

Cohen's jacket." Fraser, 478 U.S. at 682.)

Neither would a court view the wearing of t-shirts or buttons by students as speech bearing the imprimatur of the school. The buttons and t-shirts expressed the personal opinion of the students wearing them, and they were displayed in a manner commonly used to convey silently an idea, message, or political opinion to the community.

A court, therefore, would likely turn to the third category of school speech and its standard: whether the buttons and t-shirts were properly suppressed because the school official reasonably forecasted that they would substantially disrupt, or materially interfere with, school activities. Tinker, 393 U.S. at 514.

The "reasonable forecast" test is a factual inquiry.

The hypothetical states that "[s]o far, these forms of student expression have not resulted in any physical confrontations, but have led to some heated verbal exchanges between students." It also states the principal decided to issue the new school policy to "head off any possible problems." In my view, this record "does not demonstrate any facts which might reasonably have led school authorities to forecast substantial disruption of or material interferences with school activities, and no disturbances or disorders on the school premises in fact occurred." Tinker, 393 U.S. at 514. Accordingly, I believe the students could successfully challenge the school's policy on the record before you.

One could argue that the appearance of racially charged buttons or t-shirts in a "diverse, metropolitan" high school formed the basis of the school principal's "reasonable forecast" that escalated racial tensions and future disturbances might soon result and interfere with school activities. While the facts in the hypothetical seem too thin at this stage to support that argument, some judges might be more deferential than others to the school principal regarding such a judgment.

□?`"□□OTHER POINTS□

The hypothetical raises some interesting issues:

, "Content Neutral?"

Putting aside the school setting of the hypothetical, you might consider how the Court would treat the ban under traditional First Amendment doctrine. For instance, would a court consider a ban on "controversial and offensive" speech to be "content based" and therefore deserving of greater scrutiny? One might argue that the policy bans messages on both sides of all controversial issues, and therefore that it is not a viewpoint based restriction. Contrasted with a ban on all button and all t-shirt messages, however, a ban only on "controversial and offensive" buttons and t-shirts certainly is more problematic.

This school's ban operates only on the speech that makes us feel uncomfortable, or that is troublesome or contentious. For that reason, perhaps the ban targets a category of speech that is especially deserving of First Amendment protection. In the school setting, it has been said that Tinker places a "thumb on the scales" in favor of the state's interest in the First Amendment balance. Even so, however, "the schoolroom prepares children for citizenship, and the proper exercise of the First Amendment is a hallmark of citizenship in our country." Chandler, 978 F.2d at 527. Students arguably should not be shielded from this type of speech in the interest of maintaining greater serenity. "Courts have a First Amendment responsibility to insure that robust rhetoric . . . is not suppressed by prudish failures to distinguish the vigorous from the vulgar." Thomas v. Board of Educ., Granville Cent. School Dist., 607 F.2d 1043 (2d Cir. 1979).

%Overbroad?

You might note that even a student who wore an obscene tshirt to school and who was disciplined under this policy might challenge it successfully because it is overbroad. Under Fraser, the school could ban the "lewd, vulgar, obscene, and plainly offensive." But not with an overbroad policy such as that which is in the hypothetical.

h#Heckler's Veto?

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

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

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

CREATION DATE/TIME:15-SEP-1995 15:24:40.93

SUBJECT: URGENT

TO: Elena Kagan (KAGAN_E) (WHO)

READ:15-SEP-1995 15:27:14.05

TEXT:

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

ATT CREATION TIME/DATE:15-SEP-1995 15:08:00.00

ATT BODYPART TYPE:B

ATT CREATOR: Charles S. Konigsberg

ATT SUBJECT: WP FILE FOR PREVIOUS MESSAGE

ATT TO: LAWRENCE J. HAAS (HAAS_L)

ATT CC: Charles S. Konigsberg (KONIGSBERG_C)

ATT CC: Barry B. Anderson (ANDERSON_B)

ATT CC: John A. Koskinen (KOSKINEN_J)

ATT CC: Robert G. Damus (DAMUS_R)

ATT CC: Joseph Minarik (MINARIK_J)

ATT CC: LAWRENCE J. HAAS (HAAS_L)

ATT CC: Jacob J. Lew (LEW_J)

ATT CC: Charles E. Kieffer (KIEFFER_C)

ATT CC: William A. Halter (HALTER_W)

ATT CC: Lisa Kountoupes (KOUNTOUPES_L)

ATT CC: Chantale Wong (WONG_C)

ATT CC: Jill M. Blickstein (BLICKSTEIN_J)

ATT CC: Robert E. Litan (LITAN_R)

ATT CC: T J Glauthier (GLAUTHIER_T)

ATT CC: Gordon Adams (ADAMS_G)

ATT CC: Kenneth S. Apfel (APFEL_K)

ATT CC: Nancy-Ann E. Min (MIN_N)

ATT CC: Deborah F. Kramer (KRAMER_D)

ATT CC: Diane G. Limo (LIMO_D)
 ATT CC: Alice E. Shuffield (SHUFFIELD_A)
 ATT CC: Janet L. Graves (GRAVES_J)
 ATT CC: James I. Blount (BLOUNT_J)
 ATT CC: Janet L. Himler (HIMLER_J)
 ATT CC: James J. Jukes (JUKES_J)

TEXT:

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

===== ATTACHMENT 2 =====

ATT CREATION TIME/DATE:15-SEP-1995 15:08:00.00

ATT BODYPART TYPE:p

ATT CREATOR: Charles S. Konigsberg

TEXT:

PRINTER FONT 12_POINT_COURIER
 PRELIMINARY STAFF DRAFT -- NOT FOR RELEASE -- \d

TESTIMONY OF
 ALICE M. RIVLIN
 DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET
 BEFORE A JOINT HEARING OF THE
 SENATE BUDGET COMMITTEE
 and the
 HOUSE BUDGET COMMITTEE

September 19, 1995

[LARRY: NOTE-

□

-I HAVE RUN THE TESTIMONY BY TREASURY; WE SHOULD
 LEAVE THE DEBT LIMIT LANGUAGE PRETTY MUCH INTACT]

Chairman Domenici and Chairman Kasich, Members of the two committees, I welcome the opportunity today to answer your questions on the implications of a hiatus in appropriations authority and reaching the statutory limit on the public debt.

There's been a lot of talk in recent days about a government shutdown in connection with the beginning of the new fiscal year, as well as the nearing of the debt ceiling. Let me say, at the outset, that the President strongly believes that a government shutdown of any kind would be bad for the country. We need to arrive at policy decisions on budgetary priorities in an orderly way -- not in a crisis atmosphere.

The President has urged Congress to complete action on all 13 appropriations bills by the October 1 start of fiscal 1996. If this cannot be done, I hope we can agree on a continuing resolution that does not contain controversial riders or prejudice the outcome of the debate.

In addition, I hope the Congress will act responsibly and send the President an increase in the debt ceiling. Failure to

do so could disrupt Treasury borrowing operations, cause market uncertainty as to the Government's fiscal operations, and impose significant additional costs on American taxpayers.

Appropriations hiatus vs. Debt Ceiling

Before addressing specific shutdown issues, it's worth taking a moment, to clarify the distinction between a lapse in appropriations authority and reaching the debt ceiling.

Lapse in appropriations authority. If any of the 13

appropriations bills have not been enacted by October 1 -- and a continuing resolution has also not been enacted -- affected departments and agencies will experience a lapse in legal

□ authority to enter into certain obligations. This includes the authority to provide important services and to employ Federal workers. As I will explain in a moment, any lapse in such authority is bad for the country and should be avoided.

Lapse in borrowing authority. By contrast, reaching the statutory limit on the public debt -- often called the debt ceiling -- is a very different scenario. If the debt ceiling is reached, the Treasury will lack the authority to borrow additional funds. The Treasury Department currently estimates the debt ceiling will be reached some time towards the end of October. When monthly tax receipts are not sufficient to cover outlays, the inability to borrow would result in a cash shortfall, leaving the Treasury without adequate cash to pay the government's bills.

The United States has never defaulted on its obligations in the more than 200 year history of the Republic. A default on the debt of the United States is unthinkable. The Administration trusts and expects that the Congress will protect the financial integrity of the United States, by raising the debt ceiling as the Secretary of the Treasury has requested.

The Secretary of the Treasury is happy to answer any particular questions you or other Members of Congress have about the debt ceiling. The one point I want to emphasize today is that the Administration, in the strongest possible terms, respectfully urges the Congress to de

□ -couple the issues of the debt ceiling and balancing the budget. Using the debt ceiling to force a particular outcome in ongoing budget deliberations -- as some have suggested -- is irresponsible. It makes no sense to bring the country to the edge of default and financial chaos, in order to force the budget debate to a particular result.

Lapse in appropriations authority

The issue of immediate concern is the possibility of a lapse in appropriations authority.

Appropriations laws provide departments and agencies with legal authority to enter into obligations to provide services, employ workers, and enter into contracts. Some appropriations are annual, whereas others are multiyear, and others are permanent.

Where appropriations for government programs, projects and activities are made annually, A failure to pass appropriations by

October 1 -- the start of the new fiscal year -- would cause a lapse in legal authority to enter into obligations.

It is a violation of Federal law for any employee to obligate the government in advance of appropriations, except as authorized by law as, for example, in the case of "emergencies involving the safety of human life or the protection of property." (Other exceptions include: authority to enter into obligations which enable the President to perform constitutional duties; authority to employ workers involved in implementing a shutdown; and authority to employ workers to administer programs which have permanent or multi

□
-year appropriations authority).

A lapse in appropriations authority on October 1 could have far

□
-reaching and deleterious consequences. The particular implications would, of course, depend on which appropriations bills are not enacted by October 1. A few examples of the consequences of permitting appropriations authority for various agencies to lapse are:

- ? No food stamps would be issued after October 1;
- ? WIC would stop within days since no new money would be disbursed and the small existing balances would be depleted;
- ? The National Parks would have to close, as there would be no money to pay the Park Service Rangers and employees"; and
- ? Veterans compensation, pension, and survivors benefits checks would not be sent out on November 1.

Furloughing government employees

In addition to the government activities and services which would cease during a lapse in appropriations authority, agencies would lack authority to continue to employ Federal workers, except as authorized by law.

Substantial furloughs could therefore result if a lapse in appropriations authority occurs on October 1. The Administration is concerned about the disruptive effects that a government shutdown would have on federal employees and their families. These workers do the peoples' business every day and are in the forefront of our efforts to reinvent government. They should not be used as pawns as we try to work through the difficult budget decisions that lie before us.

Costs of a government shutdown

In addition to the deleterious impact on the users of Federal services and on Federal employees, a government shutdown of any size or duration would have a price tag. These costs include: the costs of closing and securing Federal buildings and facilities; and the payment of penalties and other charges associated with the unanticipated cessation of contractual liabilities. In addition, the productivity of Federal employees would undoubtedly be diminished even after a shutdown has ended as they have to perform the services that were not done during the shutdown.

A shutdown is unnecessary and should be avoided

The message here, for all of us, is that a lapse in appropriations authority is bad for everyone. It would cause a

lapse in many important and vital services, would needlessly furlough Federal workers, and would needlessly cost the taxpayers money. A government shutdown of any size or duration would benefit no one and should be avoided.

That is why the Administration has been urging the Congress to complete action on all 13 appropriations bills by the October 1 start of fiscal 1996. If this cannot be done I hope we can agree on a continuing resolution --

(1) is "clean," i.e., does not contain controversial riders or extraneous language; and
(2) does not prejudice the outcome of the appropriations debate by attempting to lock new priorities into place or terminate existing programs.

Preparations

Despite our strong hope that a shutdown can be avoided, we must be prepared for all contingencies. Therefore, on August 22, 1995 I directed the heads of all executive departments and agencies to send to OMB updated contingency plans to deal with a funding hiatus.

At this time, I can tell you that all of the agencies have responded to our request that they update their existing shutdown plans. Completed plans have been received from all agencies except the Department of Defense which has provided us their

preliminary conclusions pending completion of their plan on September 25. As you can imagine, the Defense Department must deal with a wide range of activities in developing a final plan. OMB has reviewed the shutdown plans to insure that there is a consistent approach across the government, although the specific decisions are the responsibility of the agency heads. Other than the Department of Defense, we will have completed our analysis of all plans by the end of this week.

Conclusion

The Administration is fully prepared to handle a government shutdown on October 1 if that is made necessary by a lapse in appropriations for some departments and agencies. However, a government shutdown, of any size or duration, will needlessly deprive our citizens of important services, hurt Federal employees, and cost money. I strongly urge the Congress to complete action on all 13 appropriations bills by the October 1 start of fiscal 1996. If this cannot be done I hope we can agree on a continuing resolution that does not contain controversial riders or prejudice the outcome of the debate.

* * *

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

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

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

CREATION DATE/TIME:15-SEP-1995 15:24:55.62

SUBJECT: URGENT

TO: Elena Kagan (KAGAN_E) (WHO)

READ:15-SEP-1995 15:29:32.56

TEXT:

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

ATT CREATION TIME/DATE:15-SEP-1995 15:03:00.00

ATT BODYPART TYPE:H

ATT CREATOR: Charles S. Konigsberg

ATT SUBJECT: URGENT--AMR SHUTDOWN TESTIMONY

ATT TO: LAWRENCE J. HAAS (HAAS_L)

ATT CC: Charles S. Konigsberg (KONIGSBERG_C)

ATT CC: Barry B. Anderson (ANDERSON_B)

ATT CC: John A. Koskinen (KOSKINEN_J)

ATT CC: Robert G. Damus (DAMUS_R)

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ATT CC: LAWRENCE J. HAAS (HAAS_L)

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ATT CC: James I. Blount (BLOUNT_J)
ATT CC: Janet L. Himler (HIMLER_J)
ATT CC: James J. Jukes (JUKES_J)

TEXT:

PRINTER FONT 12_POINT_COURIER

I'M PASSING THIS TESTIMONY ALONG TO LARRY FOR POLISHING; IT NEEDS TO GO TO AMR BY COB TODAY. THIS HAS BEEN SUBSTANTIALLY REVISED TO INCORPORATE AMR AND OTHER COMMENTS. IF ANYONE HAS ADDITIONAL COMMENTS, PLEASE GET THEM TO LARRY ASAP. THANKS.

PRELIMINARY STAFF DRAFT -- NOT FOR RELEASE -- \d
TESTIMONY OF
ALICE M. RIVLIN
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obligations which enable the President to perform constitutional duties; authority to employ workers involved in implementing a shutdown; and authority to employ workers to administer programs which have permanent or multi

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In addition to the deleterious impact on the users of Federal services and on Federal employees, a government shutdown of any size or duration would have a price tag. These costs include: the costs of closing and securing Federal buildings and facilities; and the payment of penalties and other charges associated with the unanticipated cessation of contractual liabilities. In addition, the productivity of Federal employees would undoubtedly be diminished even after a shutdown has ended as they have to perform the services that were not done during the shutdown.

A shutdown is unnecessary and should be avoided

The message here, for all of us, is that a lapse in appropriations authority is bad for everyone. It would cause a lapse in many important and vital services, would needlessly furlough Federal workers, and would needlessly cost the taxpayers money. A government shutdown of any size or duration would benefit no one and should be avoided.

That is why the Administration has been urging the Congress to complete action on all 13 appropriations bills by the October 1 start of fiscal 1996. If this cannot be done I hope we can agree on a continuing resolution --

(1) is "clean," i.e., does not contain controversial riders or extraneous language; and
(2) does not prejudice the outcome of the appropriations debate by attempting to lock new priorities into place or terminate existing programs.

Preparations

Despite our strong hope that a shutdown can be avoided, we must be prepared for all contingencies. Therefore, on August 22, 1995 I directed the heads of all executive departments and agencies to send to OMB updated contingency plans to deal with a funding hiatus.

At this time, I can tell you that all of the agencies have responded to our request that they update their existing shutdown plans. Completed plans have been received from all agencies except the Department of Defense which has provided us their

preliminary conclusions pending completion of their plan on September 25. As you can imagine, the Defense Department must deal with a wide range of activities in developing a final plan. OMB has reviewed the shutdown plans to insure that there is a consistent approach across the government, although the specific decisions are the responsibility of the agency heads. Other than the Department of Defense, we will have completed our analysis of all plans by the end of this week.

Conclusion

The Administration is fully prepared to handle a government shutdown on October 1 if that is made necessary by a lapse in appropriations for some departments and agencies. However, a government shutdown, of any size or duration, will needlessly deprive our citizens of important services, hurt Federal employees, and cost money. I strongly urge the Congress to complete action on all 13 appropriations bills by the October 1 start of fiscal 1996. If this cannot be done I hope we can agree on a continuing resolution that does not contain controversial riders or prejudice the outcome of the debate.

* *

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

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

CREATOR: Jodie R. Torkelson (TORKELSON_J) (WHO)

CREATION DATE/TIME:19-SEP-1995 16:29:55.61

SUBJECT: RE: shutdown

TO: Elena Kagan

(KAGAN_E) (WHO)

READ:19-SEP-1995 16:56:09.48

TEXT:

I had discussed with OMB last week the fact that we were not yet prepared to submit the EOP plans, especially since I knew Alice was testifying today. I worked at OMB prior to coming to the White House and keep in close contact with them on any and all issues concerning the EOP.

I don't believe we will have a problem submitting our plans to the Hill when final. If the Treasury/Postal bill is ready for signature soon, we hopefully will find a shutdown plan unnecessary. T/P met today and I'm expecting a call from the Hill shortly letting me know if a deal was struck.

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

CREATOR: Stephen R. Neuwirth (NEUWIRTH_S) (WHO)

CREATION DATE/TIME:19-SEP-1995 19:57:51.85

SUBJECT: RE: Your religion problem

TO: Elena Kagan (KAGAN_E) (WHO)

READ:20-SEP-1995 09:27:42.41

TEXT:

You are correct, and we are looking at that case. The problem is that Amos involved an exemption that related directly to religious expression -- that is, a religious institution may constitutionally discriminate on the basis of religion when making hiring decisions.

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

CREATOR: James Castello (CASTELLO_J) (WHO)

CREATION DATE/TIME:21-SEP-1995 13:56:12.81

SUBJECT: More Q and A's

TO: Elena Kagan (KAGAN_E) (WHO)

READ:21-SEP-1995 16:02:59.68

TO: Cheryl D. Mills (MILLS_C) (WHO)

READ:21-SEP-1995 17:50:47.46

TEXT:

As you will see from the attached, you've been asked (via Jeff Connaughton) to revise the Q and A's that both of you did on Ruby Ridge and Waco, respectively. Thanks.

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

ATT CREATION TIME/DATE:21-SEP-1995 11:49:00.00

ATT BODYPART TYPE:B

ATT CREATOR: Jeffrey J. Connaughton

ATT SUBJECT: See below for wrong assignment

ATT TO: James Castello (CASTELLO_J)

TEXT:

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

===== ATTACHMENT 2 =====

ATT CREATION TIME/DATE:21-SEP-1995 09:09:00.00

ATT BODYPART TYPE:B

ATT CREATOR: Julie E. Mason

ATT SUBJECT: Sperling Lunch

ATT TO: Bruce N. Reed (REED_B)

ATT TO: Rahm Emanuel (EMANUEL_R)

ATT TO: Christa T. Robinson (ROBINSON_C)

ATT TO: Jeffrey J. Connaughton (CONNAUGHTO_J)

ATT TO: Jane C. Sherburne (SHERBURNE_J)

ATT TO: Kimberly A. Holliday (HOLLIDAY_K)

ATT TO: Karen L. Hancox (HANCOX_K)

ATT TO: LeeAnn Inadomi (INADOMI_L)

ATT TO: LAWRENCE J. HAAS (HAAS_L)

ATT TO: Gene B. Sperling (SPERLING_G)
ATT TO: Jason S. Goldberg (GOLDBERG_JS)
ATT TO: Jennifer M. O'Connor (OCONNOR_J)
ATT TO: Christopher C. Jennings (JENNINGS_C)
ATT TO: Brian J. Johnson (JOHNSON_BJ)
ATT TO: Jeremy D. Benami (BENAMI_J)
ATT TO: Natalie S. Wozniak (WOZNIAK_N)
ATT TO: J. Fred Dohse (DOHSE_J)

TEXT:

Next Monday, September 25, the President will participate in a Sperling Lunch.

This event is named for Godfrey "Budge" Sperling of the Christian Science Monitor. Sperling has held over 2,600 Sperling Breakfasts/Lunches. The luncheon guests consist of approximately 55 prominent Washington journalists, including bureau chiefs and syndicated columnists. The first hour of the lunch will be in a question-and-answer format, and the topics of discussion are not restricted.

Therefore, we need to prepare Qs-and-As as we would for a regular press conference, on only a slightly lesser scale. The Qs-and-As you prepared for today's Westwood One radio interview will be a good start. The difference is that instead of taking questions from a wide range of audience listeners, the President will be taking questions from studied journalists whose questions will be more political.

In preparation for this forum, please e-mail and get a hard copy of the Qs-and-As to me tomorrow (Friday, Sept. 22) by 2:00pm. Please call me questions x62712, and let me know if you need to see a sample of the specific Q-and-A format Staff Secretary now requires. Thanks.

ISSUES:

Affirmative Action:	Inadomi
Budget:	Sperling, Haas
Child Pornography:	Connaughton
Crime:	Reed, Emanuel
Education:	Ben-Ami
Environment:	Brian Johnson
Foreign Policy:	Dohse, David Johnson
HRC:	Caputo
Immigration:	Reed, Emanuel
Medicare/Medicaid:	Sperling, Jennings
Political:	Hancox
Political Reform:	Waldman
Ruby Ridge:	Connaughton, Emanuel
Tobacco:	O'Connor
Waco:	Connaughton, Emanuel
Welfare:	Reed, Emanuel
Whitewater:	Sherburne, Fabiani

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

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

CREATOR: Ingrid M. Schroeder (SCHROEDER_I) (OMB)

CREATION DATE/TIME:21-SEP-1995 16:34:38.13

SUBJECT: RE: lrm 2598

TO: Elena Kagan (KAGAN_E) (WHO)

READ:21-SEP-1995 16:40:05.58

TEXT:

I am asking Justice about the race/gender issue on pp.6-7.
Any other comments?? do you know if Chris Cerf has seen the
testimony?? He signed off on the first round and specifically
asked to see the revised testimony.

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

CREATOR: Ingrid M. Schroeder (SCHROEDER_I) (OMB)

CREATION DATE/TIME:21-SEP-1995 16:06:48.65

SUBJECT: RE: lrm 2598

TO: Elena Kagan (KAGAN_E) (WHO)

READ:21-SEP-1995 16:34:50.31

TEXT:

I can resend it if you want - but the last 3 pages (8-10) do not contain any new language.

Let me know if you still want to see it.

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

CREATOR: Ingrid M. Schroeder (SCHROEDER_I) (OMB)

CREATION DATE/TIME:21-SEP-1995 09:45:26.14

SUBJECT: Draft SAP on HR 1170 - Three Judge Court

TO: Elena Kagan (KAGAN_E) (WHO)
READ:21-SEP-1995 14:24:22.20

TO: David J. Haun (HAUN_D) (OMB)
READ:21-SEP-1995 09:49:20.82

TO: Stephen C. Warnath (WARNATH_S) (OPD)
READ:21-SEP-1995 09:46:02.49

TO: Karin L. Kizer (KIZER_K) (OMB)
READ:21-SEP-1995 10:47:03.54

TO: Lydia Muniz (MUNIZ_L) (OMB)
READ:21-SEP-1995 10:11:12.92

TO: Arthur W. Stigile (STIGILE_A) (OMB)
READ:21-SEP-1995 09:49:27.11

TEXT:

HR 1170, which would require that a three judge court determine the constitutionality of laws passed by State referendum, is scheduled for House floor action next week. We originally circulated a draft SAP in June. Please provide any comments on this draft SAP by Noon Friday - Sept. 22nd. Karin and David - since this is an oppose we should have a PAD (Litan) sign off.
Art - the CBO report says that HR 1170 is not paygo - do we agree?

DRAFT -- NOT FOR RELEASE September , 1995
(House)

H.R. 1170 - Three

-Judge District Court
(Bono (R) California and 46 cosponsors)

The Administration opposes H.R. 1170 because it would unnecessarily burden the Federal judicial system and delay appellate review.

H.R. 1170 would require applications for injunctions, based on the constitutionality of laws passed by State referendum, to be determined by three

-judge district courts and the decisions to be appealable directly to the Supreme Court. A requirement, similar to the three

-judge

-court provision
contained in H.R. 1170, was repealed by Congress in 1976. The requirement was

repealed because (1) limiting statutes and jurisdictional decisions made the requirements obsolete and (2) the three

□

-judge

□

-courts were complicated to administer and were an inefficient use of judicial resources. These reasons are equally valid today, and the repeal should remain in effect.

* * * * *

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

CREATOR: Dinah Bear (BEAR_D) (CEQ)

CREATION DATE/TIME:24-SEP-1995 12:50:03.99

SUBJECT: 318 timber sales/status

TO: Elena Kagan (KAGAN_E) (WHO)

READ:26-SEP-1995 08:32:41.31

TEXT:

I'm sorry I didn't get back to you right away. A lot was happening in real time re timber, as well as preparations for Katie's confirmation hearing, which is this coming Wednesday! At any rate, here's a brief up-date on the 318 sales (salvage was relatively quiet during the past week):

1) The attorney for industry plaintiffs threatened to file a motion for contempt against Jim Lyons, Undersecretary for Agriculture, and Tom Tuchmann, in the Northwest Regional Office, for failure to execute what he alleged was an injunction from Judge Hogan. You will recall that Justice interprets Hogan's decision to NOT be an injunction and to be an unappeable, interlocutory decision. He also threatened to file Rule 11 sanctions against the Deputy Assist. A.G. and trial attorney for allegedly misrepresenting that certain Bureau of Land Management sales had been falsely portrayed as having been released.

2) In regard to the contempt motion, Justice continues to maintain that Judge Hogan's order is not an injunction. Industry plaintiffs did file the motion for contempt on Friday. Our brief is due a week from this coming Monday. Plaintiffs are asking for \$50,000 a day damages for the first week; trebled each week after that; compensatory damages and incarceration for the two federal officials.

3) In regards to the threatened Rule 11 sanctions, there did appear to be a bit of internal confusion about the release of certain sales; that was immediately cleared up and the sales have been released. Plaintiffs' attorney has acknowledged that fact in a letter sent on Friday and has proposed that he not file a Rule 11 sanction upon receipt of a factual statement by the government.

4) Briefs on transfer of the murrelet "known to be nesting" to Judge Rothstein were filed at the end of the week. Briefs on the merits will be filed this week.

5) A decision was made, based upon Justice's legal analysis, to not withhold 318 sales for any reason other than "known to be nesting" endangered and threatened birds (and reasons such as physical impossibility). What this means is that we will be making clear in a brief filed this coming Thursday that we will be releasing 164 mbf of timber in sales that, among other things, are likely to jeopardize several salmon runs. We will get lots of negative press on this from the enviro side and probably civil disobedience on the ground. We tried very hard to find legal grounds to withhold these sales on, but it appears clear that Congress' intent was to release them. (This information is not being made public until the brief is filed on Thursday).

6) A decision was also made, based upon recommendations from the Department of Agriculture and the Administratin's goal of preserving the integrity of the President's Forest Plan, not to

look for alternative timber in sales that are already planned for in the President's Forest Plan - unless and until that idea is blessed by key Members of Congress. The agencies are presently in the process of calculating how much alterantive timber will be needed to replace sales that are being withheld for birds or for any other reason.

7) EOP people involved in the above two decisions were T.J. Glauthier and Katie McGinty; T.J. also intended to brief Martha Foley on Friday afternoon.

I'll be out Monday morning. Hope this is helpful. It's definitely a tough issue!

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

CREATOR: Christopher D. Cerf (CERF_C) (WHO)

CREATION DATE/TIME:26-SEP-1995 18:23:30.28

SUBJECT: RE: militia memo

TO: Elena Kagan (KAGAN_E) (WHO)

READ:26-SEP-1995 18:24:19.22

TEXT:

haven't discussed militia issue with J O'C since we last talked about it. Chris.

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

CREATOR: Dinah Bear (BEAR_D) (CEQ)

CREATION DATE/TIME:26-SEP-1995 20:06:18.37

SUBJECT: RE: 318 timber sales/status

TO: Elena Kagan (KAGAN_E) (WHO)

READ:27-SEP-1995 08:27:34.60

TEXT:

FYI, industry plaintiffs have filed a (first, I'm sure) set of interrogatories which, among other things, ask for the identification of the "highest ranking officials" in the Executive Office the President who are personally and directly responsible for implementing the provisions of the rescission bill relating to the 318 sales.

There will be a general attempt to say the WH improperly or inappropriately directed the agencies in their compliance with the law. This is part of an overall strategy that ties into a corresponding pounding from Congress.

Oral argument for the contempt motion has been set for

Halloween!

Fun crowd!

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

CREATOR: James Castello (CASTELLO_J) (WHO)

CREATION DATE/TIME:27-SEP-1995 11:00:29.64

SUBJECT: F.Y.I.

TO: Elena Kagan (KAGAN_E) (WHO)

READ:27-SEP-1995 11:11:25.85

TEXT:

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

ATT CREATION TIME/DATE:27-SEP-1995 09:08:00.00

ATT BODYPART TYPE:B

ATT CREATOR: Jeremy D. Benami

ATT SUBJECT: Mexico City issue in Foreign Ops

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

ATT TO: Jennifer L. Klein (KLEIN_J)

ATT TO: James Castello (CASTELLO_J)

ATT TO: Tracey E. Thornton (THORNTON_T)

TEXT:

FYI

re issue in Foreign Ops Conference. If any further info, I will let you know.

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

=====
ATTACHMENT 2
=====

ATT CREATION TIME/DATE:27-SEP-1995 09:01:00.00

ATT BODYPART TYPE:B

ATT CREATOR: Jeremy D. Benami

ATT SUBJECT: Choice issue in Foreign Ops bill

ATT TO: Carol H. Rasco (RASCO_C)

TEXT:

The State Dept called late last night about an issue in the Foreign Ops Appropriations bill - relating to the reversal of the Mexico City executive order re funding for intl family planning orgs that provide abortion services with other money. The reversal of the Bush policy was one of the early EOs we signed. The House (Chris Smith) included a provision in the bill overturning the EO. The Senate did not. The Senate actually has statutory language that supports the EO. This difference could be the single issue remaining in the conference. State wanted guidance as to how hard to push back on this - i.e., veto line or no.

I spoke to Leg Affairs late last night and to State. I understand

this came up at 7:30 and I raised it at 8:15. The instruction I derived from Leon was that State should send a very strong signal that we are committed to this policy. George told me after that he thought maybe a meeting with you, Pat, him, Nancy Ann and me might be a good idea - just 15 minutes to go over this. I personally would add people from the State Dept who know the exact language at issue!

I have asked State exactly what the timing of this is. If it will be moot by noon, then there's no need to meet. If this may drag for a day or two, I will let you know.

Thanks.

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

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

CREATOR: Dinah Bear (BEAR_D) (CEQ)

CREATION DATE/TIME:27-SEP-1995 19:05:02.61

SUBJECT: RE: 318 timber sales/status

TO: Elena Kagan (KAGAN_E) (WHO)

READ:28-SEP-1995 08:52:59.77

TEXT:

And i hope to see the drafts! They aren't due, though, until
October 6th.

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

CREATOR: Kathleen M. Whalen (WHALEN_K) (WHO)

CREATION DATE/TIME: 1-OCT-1995 16:33:02.47

SUBJECT: Chicago Council

TO: Elena Kagan (KAGAN_E) (WHO)

READ: 2-OCT-1995 08:29:17.87

TEXT:

Elena --

I have finally reviewed and certified your financial disclosure report. While reviewing, I learned that you are on the Board of Governors of the Chicago Council on Lawyers.

You should know that there is a White House policy that prohibits service as an officer of, or on the Board of Directors (or Governors or Trustees), of any organization (whether for- or not-for-profit). Therefore, you will need to resign your position on the Board.

Please send me confirmation when you have done so.

Thanks,

-- Kathi

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

CREATOR: James Castello (CASTELLO_J) (WHO)

CREATION DATE/TIME: 2-OCT-1995 13:25:15.98

SUBJECT: Please note the following request for updated Q & A's

TO: Elena Kagan (KAGAN_E) (WHO)
READ: 2-OCT-1995 13:55:42.77

TO: Cheryl D. Mills (MILLS_C) (WHO)
READ: 2-OCT-1995 13:50:31.84

TO: Christopher D. Cerf (CERF_C) (WHO)
READ: 2-OCT-1995 13:26:19.23

TEXT:

===== ATTACHMENT 1 =====
ATT CREATION TIME/DATE: 2-OCT-1995 13:20:00.00

ATT BODYPART TYPE:B

ATT CREATOR: Jeffrey J. Connaughton

ATT SUBJECT: Pls forward

ATT TO: James Castello (CASTELLO_J)

TEXT:

===== END ATTACHMENT 1 =====
===== ATTACHMENT 2 =====
ATT CREATION TIME/DATE: 2-OCT-1995 13:05:00.00

ATT BODYPART TYPE:B

ATT CREATOR: Julia R. Green

ATT SUBJECT: Hearst Interview

ATT TO: Bruce N. Reed (REED_B)

ATT TO: Rahm Emanuel (EMANUEL_R)

ATT TO: Christa T. Robinson (ROBINSON_C)

ATT TO: Jeffrey J. Connaughton (CONNAUGHTO_J)

ATT TO: Jane C. Sherburne (SHERBURNE_J)

ATT TO: Mark D. Fabiani (FABIANI_M)

ATT TO: Kimberly A. Holliday (HOLLIDAY_K)

ATT TO: Karen L. Hancox (HANCOX_K)

ATT TO: Gordon Li (LI_G)

ATT TO: LeeAnn Inadomi (INADOMI_L)
ATT TO: LAWRENCE J. HAAS (HAAS_L)
ATT TO: Gene B. Sperling (SPERLING_G)
ATT TO: Jason S. Goldberg (GOLDBERG_JS)
ATT TO: Jennifer M. O'Connor (OCONNOR_J)
ATT TO: Christopher C. Jennings (JENNINGS_C)
ATT TO: Brian J. Johnson (JOHNSON_BJ)
ATT TO: Jeremy D. Benami (BENAMI_J)
ATT TO: Natalie S. Wozniak (WOZNIAK_N)
ATT TO: J. Fred Dohse (DOHSE_J)
ATT CC: Lorraine McHugh (MCHUGH_L)
ATT CC: Julie E. Mason (MASON_J)
ATT CC: Allison Wilkie (WILKIE_A)
ATT CC: Evelyn S. Lieberman (LIEBERMAN_E)
ATT CC: Michael McCurry (MCCURRY_M)

TEXT:

Next Tuesday, 10/10, the President will have a Q/A session with Hearst Newspapers. The President will be taking questions on various subject matters. In preparation for this, could you please update the information you provided for the President's recent Sperling Lunch and give my a hard copy by 5 p.m. on Friday. Hearst publishes newspapers in New York, Illinois, Michigan, California, Washington, and Texas. If you have region specific info. related to your subject are that would be helpful to include. Please call me at x65669 with any questions. Thank you.

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

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

CREATOR: James Castello (CASTELLO_J) (WHO)

CREATION DATE/TIME: 2-OCT-1995 17:15:54.10

SUBJECT: I am supposed to be receiving a copy of the SAP referred to

TO: Elena Kagan (KAGAN_E) (WHO)

READ: 2-OCT-1995 17:20:44.43

TEXT:

below, and will send you a copy as soon as I do.

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

ATT CREATION TIME/DATE: 2-OCT-1995 13:50:00.00

ATT BODYPART TYPE:B

ATT CREATOR: James I. Blount

ATT SUBJECT: Mtg. on Foreign Ops SAP

ATT TO: Gordon Adams (ADAMS_G)

ATT TO: Martha Foley (FOLEY_M)

ATT TO: Jeremy D. Benami (BENAMI_J)

ATT TO: James Castello (CASTELLO_J)

ATT TO: George Stephanopoulos (STEPHANOPO_G)

ATT TO: Susan Brophy (BROPHY_S)

ATT TO: Barbara C. Chow (CHOW_B)

ATT TO: Tracey E. Thornton (THORNTON_T)

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

TEXT:

There has been a meeting scheduled for 10:00am on Tuesday, Oct. 3rd in Room 248 regarding Abortion Language in the Foriegn OPS SAP. Due to the time sensivity on this matter the meeting will have to take place at the above time. If you have any questions call me 395-9153. Thanks.

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

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

CREATOR: James Castello (CASTELLO_J) (WHO)

CREATION DATE/TIME: 2-OCT-1995 19:06:54.80

SUBJECT: F.Y.I.

TO: Elena Kagan (KAGAN_E) (WHO)

READ: 3-OCT-1995 08:40:01.81

TEXT:

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

ATT CREATION TIME/DATE: 2-OCT-1995 18:57:00.00

ATT BODYPART TYPE:B

ATT CREATOR: James I. Blount

ATT SUBJECT: Mtg. Abortion Language Re: Foreign OPS SAP

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

ATT TO: Barbara C. Chow (CHOW_B)

ATT TO: Gordon Adams (ADAMS_G)

ATT TO: Jeremy D. Benami (BENAMI_J)

ATT TO: Martha Foley (FOLEY_M)

ATT TO: George Stephanopoulos (STEPHANOPO_G)

ATT TO: James Castello (CASTELLO_J)

ATT TO: Susan Brophy (BROPHY_S)

ATT TO: Barbara C. Chow (CHOW_B)

ATT TO: Tracey E. Thornton (THORNTON_T)

TEXT:

As of right now the Abortion Language Foreign OPS SAP mtg. at 10:00am has been put on a holding pattern due to conflicts ect.....I am trying to nail down a time right now so bear with me and I will update you later this evening.

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

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

CREATOR: James Castello (CASTELLO_J) (WHO)

CREATION DATE/TIME: 2-OCT-1995 19:27:26.72

SUBJECT: F.Y.I.---Again

TO: Elena Kagan (KAGAN_E) (WHO)

READ: 3-OCT-1995 08:40:16.18

TEXT:

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

ATT CREATION TIME/DATE: 2-OCT-1995 19:11:00.00

ATT BODYPART TYPE:B

ATT CREATOR: James I. Blount

ATT SUBJECT: Foriegn OPS SAP Mtg.

ATT TO: Jeremy D. Benami (BENAMI_J)

ATT TO: Gordon Adams (ADAMS_G)

ATT TO: Martha Foley (FOLEY_M)

ATT TO: George Stephanopoulos (STEPHANOPO_G)

ATT TO: James Castello (CASTELLO_J)

ATT TO: Susan Brophy (BROPHY_S)

ATT TO: Barbara C. Chow (CHOW_B)

ATT TO: Tracey E. Thornton (THORNTON_T)

ATT CC: Stacey L. Rubin (RUBIN_S)

TEXT:

The Mtg. regarding Abortion Language - Foreign OPS SAP is back on for the original time at 10:00am in Rm 248. Call if there are any problems.

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

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

CREATOR: Dinah Bear (BEAR_D) (CEQ)

CREATION DATE/TIME: 8-OCT-1995 18:50:01.58

SUBJECT: timber

TO: Elena Kagan (KAGAN_E) (WHO)

READ:10-OCT-1995 08:50:41.76

TEXT:

Yet another legal issue that has arisen in the course of implementing the timber provisions of the rescissions bill is whether that legislation forces us to release sales that are the subject of prior injunctions. Justice has been notifying relevant courts and parties that §2001(k) may require the release of particular sales.

In response, Pilchuk Audubon Society and other environmental plaintiffs have filed a motion to clarify and enforce previous judgments for six sales in the Umpqua National Forest in Oregon. (Actually, only four of the six sales were enjoined; the Forest Service withdrew the other two sales allegedly because they would also be enjoined for similar reasons).

Plaintiffs ask that the court declare that §2001(k) is unconstitutional, in that it violates the separation of powers, or, alternatively, to declare that that sales at issue need not be resurrected and offered. They ask for expedited oral argument; to my knowledge, briefing and hearings dates have not yet been scheduled.

Withdrawal/Redaction Marker

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Mail Link Monitor to Elena Kagan. Subject: Confirmation [partial] (1 page)	10/11/1995	P6/b(6), b(7)(C), b(7)(E), b(7)(F)

COLLECTION:

Clinton Presidential Records
Automated Records Management System (Email)
WHO ([Kagan])
OA/Box Number: 500000

FOLDER TITLE:

[09/15/1995 - 10/18/1995]

2009-1006-F
ke710

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 (WAVES RECEIPT)

CREATOR: Mail Link Monitor (MAILMGT) (SYS)

CREATION DATE/TIME:11-OCT-1995 10:57:56.92

SUBJECT: CONFIRMATION: APPT. REQUEST FOR KAGAN, ELENA

TO: Elena Kagan (KAGAN_E) (WHO)

READ:11-OCT-1995 10:59:03.09

TEXT:

FROM: WAVES OPERATIONS CENTER - ACO:

Date: 10-11-1995

Time: 10:50:34

P6/(b)(6), (b)(7)(c), (b)(7)(e), (b)(7)(f)

[001]

This message serves as confirmation of an appointment for the visitors listed below.

Appointment With: KAGAN, ELENA
Appointment Date: 10/12/95
Appointment Time: 5:30:00 PM
Appointment Room: 125
Appointment Building: OEOB
Appointment Requested by: KAGAN ELENA
Phone Number of Requestor: 67594

Comments:

WAVES APPOINTMENT NUMBER: U20332

If you have any questions regarding this appointment, please call the WAVES Center at 456-6742 and have the appointment number listed above available to the Access Control Officer answering your call.

TOTAL NUMBER OF NAMES SUBMITTED FOR ENTRY : 1

TOTAL NUMBER OF NAMES OF CLEARED FOR ENTRY: 1

GARRETT, BETH

P6/(b)(6)

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

CREATOR: Kathleen M. Whalen (WHALEN_K) (WHO)

CREATION DATE/TIME:11-OCT-1995 14:17:11.14

SUBJECT: Speaking engagements

TO: Elena Kagan (KAGAN_E) (WHO)

READ:11-OCT-1995 14:22:51.33

TEXT:

This confirms that you may accept invitations to speak at academic conferences where it is clear that you are being invited because of your position with the University of Chicago/your academic persona. As we discussed, however, you may not accept honoraria for such speaking engagements. If the requesting organization offers to pay your travel expenses, meals, lodging, you may accept such payments as a personal gift pursuant to 5CFR 2635.204(e)(2). You should keep track of gifts the total value of which exceed \$250 to be reported on your annual financial disclosure report.

Any questions, you know where to find me.

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

CREATOR: Kathleen M. Whalen (WHALEN_K) (WHO)

CREATION DATE/TIME:11-OCT-1995 14:29:03.05

SUBJECT: RE: Speaking engagements

TO: Elena Kagan (KAGAN_E) (WHO)

READ:11-OCT-1995 14:38:48.74

TEXT:

Hmm, I need to ponder this one a little. I am thinking (out loud) that payment by U of C (unlike other organizers) could be considered outside earned income since it is your (other) employer. However, the reg seems to be on point here. Let me think about it and get back to you soon. Thanks.

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

CREATOR: Ronald E. Jones (JONES_RE) (OMB)

CREATION DATE/TIME:11-OCT-1995 15:31:50.83

SUBJECT: National Gambling commission Bill

TO: Elena Kagan (KAGAN_E) (WHO)

READ:11-OCT-1995 15:40:14.86

CC: Michael T. Schmidt (SCHMIDT_MT) (OPD)

READ:11-OCT-1995 15:57:15.74

TEXT:

The email I described is attached.

Is the recommendation you mentioned support for the creation a commission or support for this bill? DOJ has some concerns about the breadth of powers HR 497 would grant to the proposed commission.

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

ATT CREATION TIME/DATE:10-OCT-1995 11:01:00.00

ATT BODYPART TYPE:B

ATT CREATOR: Michael T. Schmidt

ATT SUBJECT: Comments on the National Gambling Impact Commission

ATT TO: Ronald E. Jones (JONES_RE)

TEXT:

No substantive comments, just a red flag I want to raise as we think about our position on this bill. The Tribes see this bill as a fundamental attack on their gaming establishments, and therefore their sovereignty. From what I have seen written about this proposed commission, it makes no distinction between Las Vegas-style gaming and Tribal Gaming, which funds essential tribal operations like roads, schools, and health clinics. If we come out supporting this commission, which we may have to for various reasons, we need to be prepared for a HUGE backlash from the Tribes. In the wake of our taking so long to invoke the sovereignty argument on the Gaming Tax issue, this will look like another example of the Administration not understanding, or not caring, about Tribal sovereignty. And let me assure you that the furor over our position on the gaming tax issue is nothing compared to what will come if we support this act.

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

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

CREATOR: Marvin Krislov (KRISLOV_M) (WHO)

CREATION DATE/TIME:11-OCT-1995 20:04:32.71

SUBJECT: are you doing legalized gambling stuff? if so, please

TO: Elena Kagan (KAGAN_E) (WHO)

READ:12-OCT-1995 08:37:28.21

TEXT:

call steve warnath at 65576 (with domestic policy council). if not, disregard,
but let me know. thanks.

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

CREATOR: Jennifer Palmieri (PALMIERI_J) (WHO)

CREATION DATE/TIME:12-OCT-1995 09:51:31.13

SUBJECT: Cabazon

TO: Elena Kagan (KAGAN_E) (WHO)

READ:12-OCT-1995 10:19:17.60

TEXT:

Harold did not meet with the Cabazon leader -- nor did any other WH staff.

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

CREATOR: Thomas C. Jensen (JENSEN_T) (CEQ)

CREATION DATE/TIME:13-OCT-1995 10:39:03.64

SUBJECT: Draft statement on non-318 filing today

TO: Elena Kagan (KAGAN_E) (WHO)

READ:13-OCT-1995 10:57:11.88

TEXT:

PRINTER FONT 12_POINT_ROMAN

This is the second draft of a joint USDA

-DOI press statement on the court filing planned for today. I've received and done what I can to incorporate specific comments from Anne Kennedy and George Frampton and a range of general strategic comments from Justice.

Please review as soon as you can and send your comments back to me.. My fax is 456

-6546. Or call me at 395

-7415.

Federal forest managers today asked a federal court to stay its ruling that could significantly expand harvest of old growth timber in Oregon and Washington.

Secretary of the Interior Bruce Babbitt explained that "The federal district court in Eugene, Oregon interpreted a provision of the 1995 Rescission Act very broadly, more broadly than we believe was intended or that the law requires. The court's ruling could mean that every old growth sale that 's been held up or sidelined for any reason over the last six years must be released on its original terms. This really amounts to going back to the archives and resurrecting dozens of environmentally harmful timber sales proposed, but dropped, since fiscal year 1989. We are going to ask the court to stay its ruling or issue an injunction from which we could appeal."

According to Secretary of Agriculture Dan Glickman, "The Clinton Administration is moving aggressively to implement the logging provisions in the Rescission Act. Despite claims otherwise, the Forest Service and the Bureau of Land Mangement are on track to meet or exceed both salvage and green timber sale targets. In compliance with the Rescission Act, BLM and the Forest Service recently released 130 million board feet of primarily old growth green timber sales, commonly known as the '318 sales' that do not jeopardize marbeled murrelets. Under the President's Northwest Forest Plan, the agencies have offered 610 million board feet of timber for sale in 1995 -- exceeding the plan's target. We expect to exceed targets again in 1996."

Babbitt added, "The President's Northwest Forest Plan is working. The last thing that the Pacific Northwest needs is something that would upset the fragile balance between forest use and protection achieved under the President's plan. We are deeply concerned that the court's ruling, if allowed to stand, will trigger environmental problems that would lead us backwards to the legal

gridlock that former Administrations imposed on Northwest forests. Nobody wins in that situation." According to Glickman, "The President has directed his

Administration to implement the logging provisions of the 1995 Rescission Act in an environmentally sound way. We're going to move timber, but we are going to do it right. We will continue to work under existing environmental law to try to find ways to reconfigure or modify the sales in question so that they can be released."

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

CREATOR: Thomas C. Jensen (JENSEN_T) (CEQ)

CREATION DATE/TIME:13-OCT-1995 11:17:14.41

SUBJECT: Justice Instructions RE: Calls

TO: Kris Balderston (BALDERSTON_K) (WHO)

READ:13-OCT-1995 14:26:23.87

TO: Jennifer M. O'Connor (OCONNOR_J) (WHO)

READ:13-OCT-1995 12:05:51.97

TO: Kathleen A. McGinty (MCGINTY_K) (CEQ)

READ:13-OCT-1995 12:12:38.37

TO: Remote Addressee (TLXA1MAIL_ \F:92084684\C:GEORGE FRAMPTONRE

TO: Remote Addressee (TLXA1MAIL_ \F:97205437\C:Anne KennedyREAD:

TO: Remote Addressee (TLXA1MAIL_ \F:97204732\C:Jim Lyons)

READ:NOT READ

TO: Elena Kagan (KAGAN_E) (WHO)

READ:13-OCT-1995 11:33:46.02

TO: Remote Addressee (TLXA1MAIL_ \F:95140557\C:Peter CoppelmanRE

TO: FAX (95140557,Lois Schiffer) (TLXA1MAIL_ \F:95140557\C:Lois SchifferREAD

TO: Daniel Tate (TATE_D) (WHO)

READ:16-OCT-1995 15:04:49.80

TO: T J Glauthier (GLAUTHIER_T) (OMB)

READ:13-OCT-1995 13:32:22.98

TO: Mark A. Weatherly (WEATHERLY_M) (OMB)

READ:13-OCT-1995 11:25:19.24

TO: Bruce D. Beard (BEARD_B) (OMB)

READ:13-OCT-1995 11:43:56.74

TO: Brian J. Johnson (JOHNSON_BJ) (CEQ)

READ:13-OCT-1995 11:18:25.50

CC: Dinah Bear (BEAR_D) (CEQ)

READ:13-OCT-1995 11:19:39.37

TEXT:

The Department of Justice has asked that, for the time being, NO CALLS be made to people today regarding the pleadings expected to be filed today.

The Solicitor General has instructed Justice attorneys to reframe the nature of the pleadings. From our perspective, this is largely a matter of terminology. Justice remains on exactly the same substantive course we discussed yesterday. But, from the perspective of the Solicitor General, the district court, and the Justice attorneys, this is a very important matter. We have been asked to ask you to make no public statements and to do what you

can to make sure others make no public statements regarding these pleadings.

The Department of Justice is providing comments on the second draft of the proposed statement. When received, we will recirculate to all of you. We expect that this draft will be cleared for release later today. We simply do not have that clearance now.

Thank you for your cooperation.

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

CREATOR: Thomas C. Jensen (JENSEN_T) (CEQ)

CREATION DATE/TIME:13-OCT-1995 16:20:05.39

SUBJECT: Hold Up on Timber Statement

TO: Kathleen A. McGinty (MCGINTY_K) (CEQ)
READ:13-OCT-1995 17:17:34.80

TO: T J Glauthier (GLAUTHIER_T) (OMB)
READ:13-OCT-1995 16:33:25.60

TO: Kris Balderston (BALDERSTON_K) (WHO)
READ:13-OCT-1995 16:20:02.47

TO: Jennifer M. O'Connor (OCONNOR_J) (WHO)
READ:13-OCT-1995 17:52:30.40

TO: Elena Kagan (KAGAN_E) (WHO)
READ:13-OCT-1995 16:21:34.24

TO: Dinah Bear (BEAR_D) (CEQ)
READ:13-OCT-1995 16:23:19.77

TO: Shelley N. Fidler (FIDLER_S) (CEQ)
READ:13-OCT-1995 17:25:05.69

TO: Remote Addressee (TLXA1MAIL_\F:92084684\C:GEORGE FRAMPTONRE

TO: Brian J. Johnson (JOHNSON_BJ) (CEQ)
READ:13-OCT-1995 16:31:49.47

TO: Remote Addressee (TLXA1MAIL_\F:97205437\C:Anne KennedyREAD:

TO: Remote Addressee (TLXA1MAIL_\F:94826318\C:Doug Hall)
READ:NOT READ

TO: Martha Foley (FOLEY_M) (WHO)
READ:13-OCT-1995 17:24:39.78

TEXT:

I just received a call from Lois Schiffer communicating a strong request from the Solicitor General that we not, repeat not, issue the timber statement we've been developing -- until the court rules, presumably on Tuesday. He wouldn't object to releasing this statement or something much like it at that time, but feels it will harm the government's position if released now.

Lois is calling White House counsel's office to communicate the request formally.

Katie, TJ -- you folks may wish to raise this with HI, given his views. I'll wait to hear back from you.

Sigh.

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

CREATOR: Thomas C. Jensen (JENSEN_T) (CEQ)

CREATION DATE/TIME:13-OCT-1995 17:35:52.33

SUBJECT: I'

TO: Elena Kagan (KAGAN_E) (WHO)

READ:13-OCT-1995 17:49:55.44

TEXT:

Im in my office. Give me a buzz with your ideas.

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
002. email	Phone No. (Partial) (1 page)	10/13/1995	P6/b(6)

COLLECTION:

Clinton Presidential Records
Automated Records Management System (Email)
WHO ([Kagan])
OA/Box Number: 500000

FOLDER TITLE:

[09/15/1995 - 10/18/1995]

2009-1006-F
ke710

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]
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- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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

CREATOR: Thomas C. Jensen (JENSEN_T) (CEQ)

CREATION DATE/TIME:13-OCT-1995 18:16:32.48

SUBJECT: RE: More

TO: Elena Kagan (KAGAN_E) (WHO)

READ:13-OCT-1995 18:17:29.35

TEXT:

Elena,

I've sent the most recent draft of the release over to Lois and Peter at Justice and told them that they have until Sunday morning to put it into a form that they could stand to see released on Monday. I made it clear that there was a real determination around here to get our side of the story out before the hearing. If you need me, don't hesitate to call me at home over the weekend

P6/(b)(6)

Thanks for your help.

[002]

Tom

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

CREATOR: Todd Stern (STERN_T) (WHO)

CREATION DATE/TIME:16-OCT-1995 14:02:48.72

SUBJECT: gambling letter

TO: Elena Kagan (KAGAN_E) (WHO)

READ:16-OCT-1995 14:14:24.72

TEXT:

George wants to take out first sentence in last paragraph about having our staff contact Simon's -- he wants the letter to be released and thinks this is unnecessary. I agree.

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

CREATOR: James Castello (CASTELLO_J) (WHO)

CREATION DATE/TIME:16-OCT-1995 14:28:51.99

SUBJECT: F.Y.I.

TO: Elena Kagan (KAGAN_E) (WHO)

READ:16-OCT-1995 14:56:57.10

TEXT:

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

ATT CREATION TIME/DATE:16-OCT-1995 14:00:00.00

ATT BODYPART TYPE:B

ATT CREATOR: Nancy-Ann E. Min

ATT SUBJECT: abortion--so-called "partial birth" ban

ATT TO: Martha Foley (FOLEY_M)

ATT TO: James Castello (CASTELLO_J)

TEXT:

We've had separate discussions about this issue and the AMA's apparent decision to get involved on the wrong side. Today, I spoke with Karen Guss, who used to work here with us but now is in NARAL's legal department. She indicated that what happened is this: the AMA legislative committee, which includes several members who used to work for conservative republicans, met recently and decided they wanted to take a position on this bill--apparently at the request of its sponsor. The committee then met with the bill's sponsor and voted last week to support the bill. The AMA itself has not yet taken a position--but Kate M and NARAL are afraid they will do so this week, when the AMA Board has a meeting. (No one knows what day the meeting is). Kate M has spoken with the Board chair, who is sympathetic to the position that the AMA should not support Congressional involvement in medical decisions made by doctors, to say nothing of criminalizing doctors' decisions., She has written a letter making these points to the Board, which Karen is sending to me (and I'll share with you). Also, apparently the California Medical Association is opposing the AMA taking this position--but Karen said that based on NARAL's reading of it, if they took a poll among all the state AMAs, we would lose. Bottom line: the AMA Board is meeting to consider this, and NARAL thinks it is likely they will adopt the AMA Legislative Committee's recommendation.

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

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

CREATOR: Todd Stern (STERN_T) (WHO)

CREATION DATE/TIME:16-OCT-1995 14:47:31.59

SUBJECT: RE: gambling letter

TO: Elena Kagan (KAGAN_E) (WHO)

READ:16-OCT-1995 14:58:45.62

TEXT:

I agree with your edit. If you send me edited versions, I'll have Correspondence prepare these in final (azure paper, etc.). If you have a handy copy of the memo that went up to President with his comment on it, I'll enclose that with the signature copies and send them up to him on Wednesday. thanks

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
003. email	Mail Link Monitor to Elena Kagan at 09:58:09.64. Subject: Confirmation [partial] (1 page)	10/17/1995	P6/b(6), b(7)(C), b(7)(E), b(7)(F)

COLLECTION:

Clinton Presidential Records
Automated Records Management System (Email)
WHO ([Kagan])
OA/Box Number: 500000

FOLDER TITLE:

[09/15/1995 - 10/18/1995]

2009-1006-F
ke710

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]
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- 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]
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- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

RECORD TYPE: PRESIDENTIAL (WAVES RECEIPT)

CREATOR: Mail Link Monitor (MAILMGT) (SYS)

CREATION DATE/TIME:17-OCT-1995 09:58:09.64

SUBJECT: CONFIRMATION: APPT. REQUEST FOR KAGAN, ELENA

TO: Elena Kagan (KAGAN_E) (WHO)

READ:17-OCT-1995 10:01:28.80

TEXT:

FROM: WAVES OPERATIONS CENTER - ACO:

Date: 10-17-1995

Time: 09:42:24

P6/(b)(6), (b)(7)(c), (b)(7)(e), (b)(7)(f)

[003]

This message serves as confirmation of an appointment for the visitors listed below.

Appointment With: KAGAN, ELENA.

Appointment Date: 10/19/95

Appointment Time: 1:00:00 PM

Appointment Room: 125

Appointment Building: OEOB

Appointment Requested by: KAGAN ELENA

Phone Number of Requestor: 67594

Comments:

WAVES APPOINTMENT NUMBER: U22412

If you have any questions regarding this appointment, please call the WAVES Center at 456-6742 and have the appointment number listed above available to the Access Control Officer answering your call.

TOTAL NUMBER OF NAMES SUBMITTED FOR ENTRY : 1

TOTAL NUMBER OF NAMES OF CLEARED FOR ENTRY: 1

HUBBARD, HEIDI

P6/(b)(6)

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
004. email	Mail Link Monitor to Elena Kagan at 09:58:38.56. Subject: Confirmation [partial] (1 page)	10/17/1995	P6/b(6), b(7)(C), b(7)(E), b(7)(F)

COLLECTION:

Clinton Presidential Records
Automated Records Management System (Email)
WHO ([Kagan])
OA/Box Number: 500000

FOLDER TITLE:

[09/15/1995 - 10/18/1995]

2009-1006-F
ke710

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]
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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]
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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 (WAVES RECEIPT)
 CREATOR: Mail Link Monitor (MAILMGT) (SYS)
 CREATION DATE/TIME:17-OCT-1995 09:58:38.56
 SUBJECT: CONFIRMATION: APPT. REQUEST FOR KAGAN, ELENA
 TO: Elena Kagan (KAGAN_E) (WHO)
 READ:17-OCT-1995 10:01:44.15

TEXT:
 FROM: WAVES OPERATIONS CENTER - ACO:
 Date: 10-17-1995
 Time: 09:43:22

P6/(b)(6), (b)(7)(c), (b)(7)(e), (b)(7)(f)

[004]

This message serves as confirmation of an appointment for the visitors listed below.

Appointment With: KAGAN, ELENA
 Appointment Date: 10/24/95
 Appointment Time: 1:00:00 PM
 Appointment Room: 125
 Appointment Building: OEOB
 Appointment Requested by: KAGAN ELENA
 Phone Number of Requestor: 67594

Comments:
 WAVES APPOINTMENT NUMBER: U22408

If you have any questions regarding this appointment, please call the WAVES Center at 456-6742 and have the appointment number listed above available to the Access Control Officer answering your call.

TOTAL NUMBER OF NAMES SUBMITTED FOR ENTRY : 1
 TOTAL NUMBER OF NAMES OF CLEARED FOR ENTRY: 1

RAFFMAN, MARK

P6/(b)(6)

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

CREATOR: Marvin Krislov (KRISLOV_M) (WHO)

CREATION DATE/TIME:17-OCT-1995 14:35:03.95

SUBJECT: support staff from interior

TO: Elena Kagan (KAGAN_E) (WHO)
READ:17-OCT-1995 16:22:09.15

TO: Victoria L. Radd (RADD_V) (WHO)
READ:17-OCT-1995 15:47:20.76

TEXT:

i have given elena's name and number to ed cohen, deputy solicitor of interior. he said that a holly tomlinson from his office will contact elena about the possibility. he advised that there should be an interview and follow up before any hiring decision is made.

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

CREATOR: Stephen R. Neuwirth (NEUWIRTH_S) (WHO)

CREATION DATE/TIME:17-OCT-1995 14:36:32.89

SUBJECT: Are you working on the matter referenced in the attached?

TO: Elena Kagan (KAGAN_E) (WHO)

READ:17-OCT-1995 16:40:58.72

TEXT:

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

ATT CREATION TIME/DATE:17-OCT-1995 11:19:00.00

ATT BODYPART TYPE:B

ATT CREATOR: Elisabeth Blaug

ATT SUBJECT: clearance

ATT TO: James Castello (CASTELLO_J)

ATT TO: Stephen R. Neuwirth (NEUWIRTH_S)

TEXT:

In light of our conversation this morning regarding a clearance process for CEQ contact with the Department of Justice on matters which are in litigation, I am informing you that I am chairing an interagency meeting today to address a National Environmental Policy Act issue, at which DOJ will attend. Three agencies, EPA, Commerce/NOAA, and DOI, have asked DOJ to appeal a Federal Energy Regulatory Commission order to the 9th Circuit regarding FERC's interpretation of "baseline" for a relicensing project under NEPA. The three agencies disagree with FERC's interpretation, and have asked CEQ for its interpretation. DOJ would like CEQ's input as well before making a decision to appeal this issue.

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

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

CREATOR: Dinah Bear (BEAR_D) (CEQ)

CREATION DATE/TIME:17-OCT-1995 19:19:59.67

SUBJECT: Judge Hogan's decision

TO: Elena Kagan (KAGAN_E) (WHO)

READ:18-OCT-1995 08:51:41.57

TO: Ruth D. Saunders (SAUNDERS_R) (OMB)

READ:18-OCT-1995 09:48:25.72

TO: Remote Addressee (tj at home)

READ:NOT READ

TEXT:

Judge Hogan just issued his rulings:

1. NO CONTEMPT - MOTION DENIED!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!
2. ISSUED INJUNCTION - gave government until October 25th to comply. Denied motion for stay, from which we will appeal to 9th Circuit.
3. Ordered the government to submit to the court by Nov. 1 a list of all timber sale contracts offered or awarded prior to fy 1991, which are covered by the court's decision of Sept. 13th.
4. Ordered the government to submit bi-weekly progress reports beginning Oct. 25th, describing the action taken to award and release each of the sales offered or awarded between Oct. 1, 1990 and July 27, 195, that are covered in his Sespt. 13th order. "After these reports, if the parties disagree whether a sale should be released, the court retains jurisdiction over that issue."

amen

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

CREATOR: James Castello (CASTELLO_J) (WHO)

CREATION DATE/TIME:17-OCT-1995 17:38:08.43

SUBJECT: F.Y.I.

TO: Elena Kagan (KAGAN_E) (WHO)

READ:17-OCT-1995 18:48:11.34

TEXT:

I have also sent over to you OLC's memo on this issue, which I just received but have not yet read.

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

ATT CREATION TIME/DATE:17-OCT-1995 17:14:00.00

ATT BODYPART TYPE:B

ATT CREATOR: Ian R. Van Praagh

ATT SUBJECT: Defense Bill and Abortion

ATT TO: Jeremy D. Benami (BENAMI_J)

ATT TO: Martha Foley (FOLEY_M)

ATT TO: Jennifer L. Klein (KLEIN_J)

ATT TO: Deborah L. Fine (FINE_D)

ATT TO: Gordon Adams (ADAMS_G)

ATT TO: Phebe N. Vickers (VICKERS_P)

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

ATT TO: Martha Foley (FOLEY_M)

ATT TO: James Castello (CASTELLO_J)

ATT TO: Tracey E. Thornton (THORNTON_T)

ATT TO: Janet Murguia (MURGUIA_J)

ATT TO: Barbara C. Chow (CHOW_B)

ATT CC: James I. Blount (BLOUNT_J)

ATT CC: Dorothy L. Karayannis (KARAYANNIS_D)

ATT CC: Jennifer L. Nelson (NELSON_JL)

ATT CC: Odetta S. Walker (WALKER_O)

ATT CC: Ian R. Van Praagh (VANPRAAGH_I)

TEXT:

There will be a meeting on the Defense Bill and Abortion on Thursday, October 19 at 2:30 p.m. in OEOB 211.

Please call Ian Van Praagh at 65587 to confirm your participation.
You can also RSVP by e-mail at vanpraagh_I.
Thanks!

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

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

CREATOR: Marna E. Madsen (MADSEN_M) (WHO)

CREATION DATE/TIME:18-OCT-1995 12:41:03.91

SUBJECT: Bowling Party Details

TO: David Fein (FEIN_D) (WHO)

READ:18-OCT-1995 16:18:27.64

TO: Kimberly A. Holliday (HOLLIDAY_K) (WHO)

READ:18-OCT-1995 12:43:09.26

TO: Marvin Krislov (KRISLOV_M) (WHO)

READ:18-OCT-1995 14:10:55.86

TO: Kathleen M. Whalen (WHALEN_K) (WHO)

READ:18-OCT-1995 13:00:58.16

TO: Virginia Canter (CANTER_V) (WHO)

READ:18-OCT-1995 15:38:03.08

TO: Clifford J. Mauton (MAUTON_C) (WHO)

READ:18-OCT-1995 12:44:46.61

TO: Melissa M. Murray (MURRAY_MM) (WHO)

READ:18-OCT-1995 13:52:59.29

TO: Susan D. Allen (ALLEN_SD) (WHO)

READ:18-OCT-1995 12:49:58.51

TO: Robert A. VanKirk (VANKIRK_R) (WHO)

READ:19-OCT-1995 07:29:07.47

TO: Douglas Band (BAND_D) (WHO)

READ:18-OCT-1995 13:45:54.07

TO: Elena Kagan (KAGAN_E) (WHO)

READ:18-OCT-1995 13:18:42.36

TO: Renee A. Warren (WARREN_R) (WHO)

READ:18-OCT-1995 13:55:14.80

TO: Jeffrey J. Connaughton (CONNAUGHTO_J) (WHO)

READ:18-OCT-1995 13:29:31.28

TO: Odetta S. Walker (WALKER_O) (WHO)

READ:18-OCT-1995 14:04:46.10

TO: Joseph Alden (ALDEN_J) (WHO)

READ:19-OCT-1995 08:56:05.43

TEXT:

Just to give you the decision re: refreshments for Friday....
I'm going to order drinks from the Mess, so we don't have to think
about that. But for food, I thought it would be best to just
have us bring snacks to share. Since we have a number of people
coming, we should have plenty of food if people "doubled up" on
what they bring (e.g., two people could bring one bag of chips).

So get ready to bowl! In case you've forgotten, it's at 6:30pm in the OEOB bowling alley (in the basement near the Framing Shop).

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

CREATOR: Jennifer M. O'Connor (OCONNOR_J) (WHO)

CREATION DATE/TIME:18-OCT-1995 15:15:35.77

SUBJECT: RE: amtrak sap language

TO: Elena Kagan (KAGAN_E) (WHO)

READ:18-OCT-1995 16:07:37.01

TEXT:

I disagree in the sense that I don't think we should lay out our bottom line before we negotiate over this. I'd prefer that we were silent on the whole issue in the SAP and then we negotiated down to your solution.
What do you think?

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

CREATOR: Dennis Burke (BURKE_D) (OPD)

CREATION DATE/TIME:18-OCT-1995 20:03:49.87

SUBJECT: RE: crime bill

TO: Elena Kagan (KAGAN_E) (WHO)

READ:19-OCT-1995 08:35:19.39

TEXT:

I think that is true because it is the only section that they completely took out from the authorization section. Thanks for looking at this for us. I will let you know how we do through the legislative route.

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

CREATOR: James Castello (CASTELLO_J) (WHO)

CREATION DATE/TIME:18-OCT-1995 18:21:15.06

SUBJECT: F.Y.I.

TO: Elena Kagan (KAGAN_E) (WHO)

READ:18-OCT-1995 18:33:04.82

TEXT:

===== ATTACHMENT 1 =====
ATT CREATION TIME/DATE:18-OCT-1995 18:14:00.00

ATT BODYPART TYPE:B

ATT CREATOR: Nancy-Ann E. Min

ATT SUBJECT: Late Term abortion issue

ATT TO: Martha Foley (FOLEY_M)

ATT TO: James Castello (CASTELLO_J)

TEXT:

Finally spoke to Karen Guss again. The AMA Board meets today through Friday. The late term/"partial birth" abortion issue is not on the official agenda, but people expect it to come up as part of the AMA Legislative Committee's report. NARAL has received no response to its letter (the one I shared with you). As for ACOG (ob/gyns), they have indicated that they have expressed their unhappiness about AMA taking a position on this "privately" to the AMA Board. ACOG is not taking a position on the bill but if asked they say they have "serious reservations" about the bill because of the criminal penalties it imposes. (But apparently, they are not willing to argue this is a "recognized" or legitimate medical procedure).

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

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

CREATOR: Thomas C. Jensen (JENSEN_T) (CEQ)

CREATION DATE/TIME:18-OCT-1995 18:23:00.79

SUBJECT: Meeting Notice

TO: Alice E. Shuffield (SHUFFIELD_A) (OMB)
READ:18-OCT-1995 18:35:59.83

TO: FAX (9-720-5437, Greg Frazier) (TLXA1MAIL_\F:9-720-5437\C: Greg FraierREA

TO: FAX (9-720-4732, Jim Lyons) (TLXA1MAIL_\F:9-720-4732\C: Jim LyonsREAD:

TO: FAX (9-208-6956, Ann Shields) (TLXA1MAIL_\F:9-208-6956\C: Ann ShieldsREA

TO: FAX (9-208-4684, George Frampton) (TLXA1MAIL_\F:9-208-4684\C: George Frampto

TO: FAX (9-208-3144, Bob Armstrong) (TLXA1MAIL_\F:9-208-3144\C: Bob ArmstrongR

TO: FAX (9-514-0557, Lois Schiffer) (TLXA1MAIL_\F:9-514-0557\C: Lois SchifferR

TO: FAX (9-482-6318, Doug Hall) (TLXA1MAIL_\F:9-482-6318\C: Doug HallREAD:

TO: FAX (9-260-0500, Steve Herman) (TLXA1MAIL_\F:9-260-0500\C: Steve HermanRE

TO: Kathleen A. McGinty (MCGINTY_K) (CEQ)
READ:18-OCT-1995 18:54:30.17

TO: Shelley N. Fidler (FIDLER_S) (CEQ)
READ:18-OCT-1995 18:40:16.65

TO: T J Glauthier (GLAUTHIER_T) (OMB)
READ:19-OCT-1995 08:27:52.77

TO: Ron Cogswell (COGSWELL_R) (OMB)
READ:18-OCT-1995 19:45:40.02

TO: Mark A. Weatherly (WEATHERLY_M) (OMB)
READ:18-OCT-1995 19:47:48.82

TO: Christine L. Nolin (NOLIN_CL) (OMB)
READ:18-OCT-1995 18:25:32.05

TO: Elena Kagan (KAGAN_E) (WHO)
READ:18-OCT-1995 18:24:21.00

TO: Martha Foley (FOLEY_M) (WHO)
READ:18-OCT-1995 18:34:35.25

TO: Kris Balderston (BALDERSTON_K) (WHO)
READ:18-OCT-1995 18:46:22.62

TO: Jennifer M. O'Connor (OCONNOR_J) (WHO)
READ:19-OCT-1995 10:25:10.76

TO: Dinah Bear (BEAR_D) (CEQ)
READ:18-OCT-1995 18:38:22.55

TO: Remote Addressee (TLXA1MAIL_\F:97205437\C:Anne KennedyREAD:
TO: FAX (92084684,Don Barry) (TLXA1MAIL_\F:92084684\C:Don Barry)
READ:NOT READ
TO: FAX (94821041,Bob Ziobro) (TLXA1MAIL_\F:94821041\C:Bob Ziobro)
READ:NOT READ
TO: Remote Addressee (TLXA1MAIL_\F:97204732\C:Mark Gaede)
READ:NOT READ
TO: Remote Addressee (TLXA1MAIL_\F:92085242\C:Nancy Hayes\)
READ:NOT READ
TO: FAX (92191792,Kris Clark) (TLXA1MAIL_\F:92191792\C:Kris Clark)
READ:NOT READ
TO: FAX (96902730,Mike Gippert) (TLXA1MAIL_\F:96902730\C:Mike GippertREAD:
TO: FAX (92085584,John Leshy) (TLXA1MAIL_\F:92085584\C:John Leshy)
READ:NOT READ
TO: FAX (95144240,Jim Kilbourne) (TLXA1MAIL_\F:95144240\C:Jim KilbourneREAD
TO: Remote Addressee (TLXA1MAIL_\F:95140557\C:Peter CoppelmanRE
TO: Thomas C. Jensen (JENSEN_T) (CEQ)
READ:18-OCT-1995 18:25:12.68
TO: Ruth D. Saunders (SAUNDERS_R) (OMB)
READ:18-OCT-1995 18:24:18.58
TO: Remote Addressee (TLXA1MAIL_\F:915033266254\C:Tom TuchmanRE

TEXT:

At the request of the Department of Justice, we have scheduled a meeting tomorrow, Thursday, October 19th at 5:00 p.m. to discuss an issue arising under the logging provisions of the rescissions act. NOTE: THE MEETING WILL BE HELD AT THE MAIN DEPARTMENT OF JUSTICE BUILDING, ROOM 2143.

The issue is one referenced briefly at yesterday's EOP/agency timber meeting, namely, the federal government's response to the Sierra Club Legal Defense Fund's motion to clarify and enforce judgment with respect to section 318 sales that had been previously enjoined. Our response is due in court on Friday. Justice needs to know the government's position. In releasing 318 sales, the government determined that we could not release sales that had been previously enjoined. Now we need to decide whether to support or oppose releasing those sales.

If you require additional information on the meeting or the issue to be discussed, please contact Peter Coppelman at 514-2701.

Thank you for your cooperation.