NLWJC - KAGAN

EMAILS RECEIVED

ARMS - BOX 055 - FOLDER -001

[03/08/1996-03/15/1996]

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Phone No. (Partial) (1 page)	03/08/1996	P6/b(6)
002. email	Ron Klain to Elena Kagan at 08:45:00.00. Subject: ambition (1 page)	03/11/1996	P6/b(6)
003. email	Ron Klain to Elena Kagan at 10:11:00.00. Subject: ambition (1 page)	03/11/1996	P6/b(6)
004. email	Kinney Zalesne to Dawn Chirwa and Elena Kagan. Subject: Hello [partial] (1 page)	03/11/1996	P6/b(6)
005. email	Marvin Krislov to Elena Kagan. Subject: coffee (1 page)	03/14/1996	Personal Misfile
006. email	Marvin Krislov to Elena Kagan. Subject: last week in March (1 page)	03/14/1996	Personal Misfile
007. email	Kathleen Wallman to Elena Kagan. Subject: tomorrow (1 page)	03/15/1996	Personal Misfile

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

FOLDER TITLE:
[3/8/1996 - 3/15/1996]

2009-1006-F
ke717

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: Dinah Bear (BEAR_D) (CEQ)

CREATION DATE/TIME: 8-MAR-1996 14:24:44.85

SUBJECT: martha's requyest; let's talk.

TO: Elena Kagan (KAGAN_E) (WHO)
READ: 8-MAR-1996 14:35:52.37

TEXT:

========== ATTACHMENT 1 ==========
ATT CREATION TIME/DATE: 8-MAR-1996 13:26:00.00

ATT BODYPART TYPE:B

ATT CREATOR: Martha Foley

ATT SUBJECT: RE: omnibus report

ATT TO: Dinah Bear (BEAR_D)

TEXT:
I would envision this as a fairly brief, rather non-lawyerly piece
that simply makes the reader aware of what Hatfield says his views
are and what the report language says, and lays out any other
nefarious stuff in there and what it is as well (even if Hatfield
has not directly addressed in a contradictory manner).
I have final report language and will get it to you shortly.
========== END ATTACHMENT 1 ==========

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

CREATOR: Dinah Bear (BEAR_D) (CEQ)

CREATION DATE/TIME: 8-MAR-1996 14:33:55.53

SUBJECT: martha's foley first e-mail

TO: Elena Kagan (KAGAN_E) (WHO)
READ: 8-MAR-1996 14:36:38.65

TEXT:

========== ATTACHMENT 1 ==========
ATT CREATION TIME/DATE: 8-MAR-1996 09:37:00.00

ATT BODYPART TYPE:B

ATT CREATOR: Martha Foley

ATT SUBJECT: RE: omnibus report

ATT TO: Dinah Bear (BEAR_D)

TEXT:
No, no letter went up. We sent a letter on the whole bill (Labor, HHS, Commerce etc) that did not talk about ANY language (abortion etc) except to say that in the case of the Senate it was somewhat better but still had bad stuff and in the case of the House that it was terrible AND AFTER BEATING UP OMB, I GOT THEM TO ADD THAT THE TONGASS STUFF IN PARTICULAR, WHILE MODIFIED, WAS STILL TERRIBLE.
On the issue of the Murray bill vs. the rest of the riders, I have to say that there is about a 1-2% chance of the original Murray bill (if adopted by the Senate) making it through the House. So I don't think that we will have the luxury of that choice. If we do, I am confident that we will still stand firm for the big things in Interior.
On the Hatfield language, I think maybe we should have a memo from you or Elena giving the layman's version of the disparity between what he said and what the committee said done for LEP/POTUS.
Let's talk about this. The final report is available, so we can get that. I would be curious if Murray's people know what the report says. She is on approps of course.

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

Withdrawal/Redaction Marker
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Phone No. (Partial) (1 page)	03/08/1996	P6/b(6)

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

FOLDER TITLE:
[3/8/1996 - 3/15/1996]

2009-1006-F
ke717

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: Thomas C. Jensen (JENSEN_T) (CEQ)

CREATION DATE/TIME: 8-MAR-1996 15:32:08.41

SUBJECT: Rocky Sale

TO: Dinah Bear (BEAR_D) (CEQ)
READ: 8-MAR-1996 15:42:16.96

TO: Elena Kagan (KAGAN_E) (WHO)
READ: 8-MAR-1996 16:00:16.23

TO: FAX (95140557,Ellen Athas) (TLXA1MAIL_\F:95140557\C:Ellen Athas\\ )
READ:NOT READ

TEXT:
In a fit of irresponsibility, I just answered the phone.
Steve Holmer of the Western Ancient Forest Campaign was on the line, asking whether the Administration would intercede somehow to prevent the Rocky sale from going ahead this weekend. As you probably know, the environmentalits have organized a very large demonstration at the sale this weekend.
I told Steve that Dinah and Elena and Ellen were responsible for stopping old growth sales when they chose to and that I'd let them know. No, seriously, I did tell him I had no idea whether what he was asking was doable, but pledged to pass the question along to you.
He said that a Robert Greenway P6/(b)(6) is the leading enviro out there on this sale. [001]

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

CREATOR: Dinah Bear (BEAR_D) (CEQ)

CREATION DATE/TIME: 8-MAR-1996 15:46:32.79

SUBJECT: Enviro endorsements

TO: Kathleen A. McGinty (MCGINTY_K) (CEQ)
READ: 8-MAR-1996 19:46:12.05

TO: Martha Foley (FOLEY_M) (WHO)
READ: 8-MAR-1996 16:52:03.46

TO: T J Glauthier (GLAUTHIER_T) (OMB)
READ: 8-MAR-1996 21:02:45.48

TO: Barbara C. Chow (CHOW_B) (WHO)
READ:11-MAR-1996 08:48:27.38

TO: Elena Kagan (KAGAN_E) (WHO)
READ: 8-MAR-1996 16:40:22.10

TEXT:
We just got a package of paper from the enviros on Murray.
The following groups have signed off on a letter written to
Senator Murray to "state our support for your recent proposed
legislation to repeal the clear cut rider. We applaud your effort
to restore the rule of law to our public forests."
The letter severly criticizes the Hatfield-Gorton language and
expressed conern about particular provisions of Murray, but
concludes that "We look forward to working w/you to address these
concerns and to enact this important legislation."
Sincerely,
SIERRA CLUB
NATURAL RESOURCES DEFENSE COUNCIL
TROUT UNLIMITED
PACIFIC RIVERS COUNCIL
INLAND EMPIRE PUBLIC LANDS COUNCIL
HEADWATERS
COST RANGE ASSOCIATION
WASHINGTON WILDERNESS COALITION
DEFENDERS OF WILDLIFE
SIERRA CLUB LEGAL DEFENSE FUND
WILDERNESS SOCIETY
PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOC.
THE MOUNTAINEERS
NORTHWEST ECOSYSTEM ALLINACE
KLAMATH FOREST ALLLIANCE
CALIFONRIA WILDERNESS COALITION
TRI-STATE STEELHEADERS
TROUT UNLIMITED

There is also a good press release from Wilderness calling for
passage of Murray's bill (with a thank you to Furst for taking the
leadin the fight to repeal the rider), and a press release
blasting Hatfield-Gorton.
I'll get the paper around to all of you asap by fax or messenger;
I'm headed over to work on the mark-up of the bill w/Chris Nolin.

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

CREATOR: Dinah Bear (BEAR_D) (CEQ)

CREATION DATE/TIME: 8-MAR-1996 19:56:25.84

SUBJECT: hatfield/ appros. report language

TO: Elena Kagan (KAGAN_E) (WHO)
READ: 9-MAR-1996 16:13:41.52

TEXT:

==========ATTACHMENT 1==========
ATT CREATION TIME/DATE: 8-MAR-1996 19:38:00.00

ATT BODYPART TYPE:B

ATT CREATOR: Dinah Bear

ATT SUBJECT: memo re Hatfield lang/ appros. report

ATT TO: Martha Foley (FOLEY_M)

TEXT:
Attached as a wp document is what I think you had in mind . . . .?
Let me know; i'll probably be in both Sat. and Sun. afternoon and
can certainly revise as warranted. I'll also fax it when I leave
tonight, in case your ability to work these machines is on par
w/mine.
Also, both Tony Knowle's office and the Alaska Rainforest
coalition are extremely grateful for the Tongass language in the
letter to Livingston. The rain forest folks said to send you a
collective hug and emphatic thanks.

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

==========ATTACHMENT 2==========
ATT CREATION TIME/DATE: 8-MAR-1996 19:38:00.00

ATT BODYPART TYPE:p

ATT CREATOR: Dinah Bear

TEXT:

PRINTER FONT 12_POINT_ROMAN
Last month, Senator Hatfield stated to Administration officials
that court interpretations had stretched the implementation of
the Rescissions Act timber rider far beyond what he had intended.
Indeed, the Senator stated that the courts had "a different
interpretation than I had understood. The federal district court
has removed the fundamental authority I thought was vested in
Jack Ward Thomas" to avoid harvesting sales that would adversely
affect threatened marbled murrelets or that had other serious
problems.
Contrast that statement with language in the Senate
Appropriations Committee report for the Omnibus appropriations
bill that actually endorses the very court decisions referenced
by Senator Hatfield. The report language specifically endorses

each and every ruling by Judge Hogan, who sits in the federal district court in Oregon and has repeatedly ruled against the federal government on questions of geographical scope, injunctive relief, identity of purchasers and the standard for determining whether marbled murrelets are nesting in a given area. Indeed, the language is so precisely supportive of these court decisions that it will no doubt appear in the timber industry's next relevant brief.

Senator Hatfield went on to say during his meeting with the Chief of Staff and other officials that he wanted to give the Administration the flexibility to go back to his original intent and to allow for substitution of alternative timber. Yet the language that he and Senator Gorton have offered in the omnibus bill accomplishes neither of those goals. First, it simply does not even purport to address the expansive interpretations of the rider rendered by Judge Hogan. Second, the authority their language would provide the Administration for replacement timber or buy

□

-back authority is constrained by unrealistic timeframes and the requirement that the land management agencies have to negotiate with the timber companies over either price or replacement timber. Further, it would force the land management agencies to continue harvesting timber until such an agreement is reached, and would shield replacement timber sales from the application of environmental laws. All of these features are unacceptable to the Administration.

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

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

CREATOR: Dinah Bear (BEAR_D) (CEQ)

CREATION DATE/TIME:11-MAR-1996 08:15:01.47

SUBJECT: RE: hatfield language

TO: Elena Kagan (KAGAN_E) (WHO)
READ:11-MAR-1996 09:31:58.93

CC: Martha Foley (FOLEY_M) (WHO)
READ:11-MAR-1996 09:43:13.06

TEXT:
good point, although I'd be careful with it. The easy rebuttal is that the rider specifies the criteria for replacement timber in a way that ensures satisfaction for the purchaser, while the Hatfield/Gorton language being offered to "fix" the rider waives those specifications upon agreement by the purcahser. In other words, it is unfortunately not the case that under the current rider we have unilateral authority to deviate from the very rigid terms in k(3) and as you know, we're struggling w/the issue of legal authority for mutually agreed replacement timber.

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

CREATOR: Dinah Bear (BEAR_D) (CEQ)

CREATION DATE/TIME:11-MAR-1996 08:32:46.81

SUBJECT: statement re Hatfield language

TO: Elena Kagan (KAGAN_E) (WHO)
READ:11-MAR-1996 09:32:16.10

TEXT:
per Martha's question, have you "signed off"?
[Good morning!].
========== ATTACHMENT 1 ==========
ATT CREATION TIME/DATE:10-MAR-1996 16:30:00.00

ATT BODYPART TYPE:B

ATT CREATOR: Martha Foley

ATT SUBJECT: RE: memo re Hatfield lang/ appros. report

ATT TO: Dinah Bear (BEAR_D)

TEXT:
Has Elena signed off on this? I am printing and will read.
What do you think about a letter from Katie asking about why the report language says the opposite of what Hatfield has been saying about the court? (I suspect he will repeat those statements on the Senate floor during debate, so we will have him on record, but he also said them in our fairly large meeting with him, LEP etc.)

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

Withdrawal/Redaction Marker
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
002. email	Ron Klain to Elena Kagan at 08:45:00.00. Subject: ambition (1 page)	03/11/1996	P6/b(6)

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

FOLDER TITLE:
[3/8/1996 - 3/15/1996]

2009-1006-F
ke717

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: Melinda D. Haskins (HASKINS_M) (OMB)

CREATION DATE/TIME:11-MAR-1996 09:19:58.00

SUBJECT: LRM 3638 --USDA Report on H.R. 1997

TO: Kenneth S. Apfel (APFEL_K) (OMB)
READ:11-MAR-1996 10:54:14.04

TO: Mary I. Cassell (CASSELL_M) (OMB)
READ:11-MAR-1996 16:14:09.38

TO: Barry White (WHITE_B) (OMB)
READ:11-MAR-1996 09:20:42.00

TO: Keith J. Fontenot (FONTENOT_K) (OMB)
READ:11-MAR-1996 14:08:18.53

TO: Thomas P. Stack (STACK_T) (OMB)
READ:11-MAR-1996 09:52:17.69

TO: John S. Radzikowski (RADZIKOWSK_J) (OMB)
READ:11-MAR-1996 09:34:25.63

TO: Mark A. Weatherly (WEATHERLY_M) (OMB)
READ:11-MAR-1996 09:28:33.96

TO: Harry G. Meyers (MEYERS_H) (OMB)
READ:11-MAR-1996 09:44:16.76

TO: Wanda J. Foster (FOSTER_W) (OMB)
READ:11-MAR-1996 11:26:29.36

TO: Kathleen M. Turco (TURCO_K) (OMB)
READ:11-MAR-1996 09:45:08.66

TO: Arthur W. Stigile (STIGILE_A) (OMB)
READ:11-MAR-1996 10:38:58.32

TO: Charles S. Konigsberg (KONIGSBERG_C) (OMB)
READ:11-MAR-1996 11:38:35.43

TO: Robert G. Damus (DAMUS_R) (OMB)
READ:11-MAR-1996 09:52:40.85

TO: Bruce N. Reed (REED_B) (WHO)
READ:11-MAR-1996 09:39:15.70

TO: Elena Kagan (KAGAN_E) (WHO)
READ:11-MAR-1996 09:33:59.54

TO: Timothy R. Fain (FAIN_T) (OMB)
READ:15-MAR-1996 09:31:45.68

TO: Richard B. Bavier (BAVIER_R) (OMB)
READ:11-MAR-1996 09:20:33.79

TO: Alison C. Perkins (PERKINS_A) (OMB)

READ:11-MAR-1996 09:37:35.22

TO: Michael A. Ash (ASH_M) (WHO)
READ:11-MAR-1996 12:32:34.34

TO: Jennifer M. O'Connor (OCONNOR_J) (WHO)
READ:11-MAR-1996 09:20:18.69

TO: Larry R. Matlack (MATLACK_L) (OMB)
READ:11-MAR-1996 09:21:09.21

TO: Stacy L. Dean (DEAN_S) (OMB)
READ:11-MAR-1996 10:53:06.70

TO: Edwin Lau (LAU_E) (OMB)
READ:11-MAR-1996 11:16:57.65

CC: James C. Murr (MURR_J) (OMB)
READ:11-MAR-1996 10:17:23.91

CC: Janet R. Forsgren (FORSGREN_J) (OMB)
READ:11-MAR-1996 09:46:36.56

TEXT:
If you plan to repond to LRM 3638--UDSA's report on H.R. 1997--please forward me your comments by 11 AM today. Thanks.

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

CREATOR: Martha Foley (FOLEY_M) (WHO)

CREATION DATE/TIME:11-MAR-1996 09:44:30.35

SUBJECT: RE: Indian gaming

TO: Elena Kagan (KAGAN_E) (WHO)
READ:11-MAR-1996 09:50:48.25

TEXT:
OK. Thanks.

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

CREATOR: Alison C. Perkins (PERKINS_A) (OMB)

CREATION DATE/TIME:11-MAR-1996 09:52:38.63

SUBJECT: DOJ letter on Farm Bill

TO: Elena Kagan (KAGAN_E) (WHO)
READ:11-MAR-1996 09:53:23.42

TEXT:
I hope you received the fax now. I faxed it again. Thanks for letting me know.

I am also about to fax over a copy of the USDA letter on the Farm Bill which we are in the process of clearing. You don't need to comment on the USDA letter, I send it only to provide you with a context for understanding the Administration's current position on the bill.
Let me know if you need a copy of HR 2854 in order to provide comment on the DOJ letter. The bill is of course quite long, but I could easily e-mail it to you if you don't have it.
Thanks
Alison

Withdrawal/Redaction Marker
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
003. email	Ron Klain to Elena Kagan at 10:11:00.00. Subject: ambition (1 page)	03/11/1996	P6/b(6)

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

FOLDER TITLE:
[3/8/1996 - 3/15/1996]

2009-1006-F
ke717

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: Odetta S. Walker (WALKER_O) (WHO)

CREATION DATE/TIME:11-MAR-1996 11:24:31.45

SUBJECT: E-MAIL APB

TO: James Castello (CASTELLO_J) (WHO)
READ:11-MAR-1996 11:24:53.80

TO: Christopher D. Cerf (CERF_C) (WHO)
READ:11-MAR-1996 11:24:57.11

TO: Dawn Chirwa (CHIRWA_D) (WHO)
READ:11-MAR-1996 17:29:55.01

TO: Peter Erichsen (ERICHSEN_P) (WHO)
READ:14-MAR-1996 16:12:27.40

TO: David Fein (FEIN_D) (WHO)
READ:12-MAR-1996 08:53:04.79

TO: James "David" Fielder (FIELDER_J) (WHO)
READ:11-MAR-1996 20:25:45.49

TO: Elena Kagan (KAGAN_E) (WHO)
READ:11-MAR-1996 11:51:27.59

TO: Ira Kaye (KAYE_I) (WHO)
READ:11-MAR-1996 11:56:46.19

TO: Marvin Krislov (KRISLOV_M) (WHO)
READ:11-MAR-1996 12:07:50.97

TO: Bruce R. Lindsey (LINDSEY_B) (WHO)
READ:26-MAR-1996 17:02:33.72

TO: Cheryl D. Mills (MILLS_C) (WHO)
READ:11-MAR-1996 11:47:48.27

TO: Miriam R. Nemetz (NEMETZ_M) (WHO)
READ:11-MAR-1996 11:30:58.05

TO: Stephen R. Neuwirth (NEUWIRTH_S) (WHO)
READ:11-MAR-1996 11:25:55.68

TO: Jack M. Quinn (QUINN_J) (WHO)
READ:26-MAR-1996 09:42:16.06

TO: Robert W. Schroeder III (SCHROEDER_R) (WHO)
READ:11-MAR-1996 14:41:02.40

TO: Jane C. Sherburne (SHERBURNE_J) (WHO)
READ:11-MAR-1996 14:44:56.62

TO: Kathleen M. Wallman (WALLMAN_KM) (WHO)
READ:11-MAR-1996 11:52:06.74

TO: Rob S. Wexler (WEXLER_R) (WHO)

READ:11-MAR-1996 11:52:27.06

TO: Kathleen M. Whalen (WHALEN_K) (WHO)
READ:11-MAR-1996 11:28:39.85

TO: Wendy S. White (WHITE_WS) (WHO)
READ:11-MAR-1996 14:21:02.30

TO: Jon Yarowsky (YAROWSKY_J) (WHO)
READ:12-MAR-1996 16:20:07.29

CC: Odetta S. Walker (WALKER_O) (WHO)
READ:11-MAR-1996 11:26:03.18

TEXT:

Please contact Kathy Wallman if you are interested in and available to work on an environmental matter involving a possible debt-for-nature swap. It is a small matter, and the respondent would be working with Elena Kagan.

Thank you.

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

CREATOR: Dinah Bear (BEAR_D) (CEQ)

CREATION DATE/TIME:11-MAR-1996 14:04:43.38

SUBJECT: RE: pleading

TO: Elena Kagan (KAGAN_E) (WHO)
READ:11-MAR-1996 14:07:08.55

TEXT:
well, now you have me curious, but i can't take the time to read the industry submission now. I'll try to later tonight, at least out of intellectual curiosity.

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

CREATOR: Dinah Bear (BEAR_D) (CEQ)

CREATION DATE/TIME:11-MAR-1996 14:05:00.57

SUBJECT: RE: conf call

TO: Elena Kagan (KAGAN_E) (WHO)
READ:11-MAR-1996 14:07:36.04

TEXT:
okay. Thanks for making these calls. I realize you're busy too!

Withdrawal/Redaction Marker
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
004. email	Kinney Zalesne to Dawn Chirwa and Elena Kagan. Subject: Hello [partial] (1 page)	03/11/1996	P6/b(6)

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

FOLDER TITLE:
[3/8/1996 - 3/15/1996]

2009-1006-F
ke717

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 (EXTERNAL MAIL)

CREATOR: CN=Kinney Zalesne/O=OVP@OVP@LNGATE@EOPMRX

CREATION DATE/TIME:11-MAR-1996 18:10:00.00

SUBJECT: Hello

TO: CHIRWA_D (CHIRWA_D@A1@CD) (WHO)
READ:11-MAR-1996 18:48:46.41

TO: KAGAN_E (KAGAN_E@A1@CD) (WHO)
READ:11-MAR-1996 19:09:34.16

TEXT:
Message Creation Date was at 11-MAR-1996 18:13:00

P6/(b)(6) [004]

Also, Greg was very pleased with the whole TV violence meeting and our contributions on the legal front. He wanted me to pass that along.

Stay in touch!

-- Kinney

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

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

CREATION DATE/TIME:13-MAR-1996 11:24:05.53

SUBJECT: istook amendment

TO: Kathleen M. Wallman (WALLMAN_KM) (WHO)
READ:13-MAR-1996 11:24:12.02

TO: Elena Kagan (KAGAN_E) (WHO)
READ:13-MAR-1996 11:37:53.48

TEXT:
I have confirmed, in conversations with Barbara Chow and Doris Matsui, that there have been no new developments on the Hill with respect to the Istook amendment on advocacy by non-profit groups. Doris also confirmed with Marilyn Yager that Marilyn was "anticipating" calls from some groups that oppose Istook, but had not received any as of this morning's meeting when the topic came up. Doris and I have been discussing Istook with representatives of the non-profit community. Barbara Chow is planning to let us know if any version of Istook is introduced in the Senate. At the present time, according to Barbara, there is no indication that Istook will make it into the Senate version of the CR.

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

CREATOR: Marilyn Yager (YAGER_M) (WHO)

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

SUBJECT: product liabilit

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

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

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

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

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

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

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

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

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

CREATOR: Jeffrey A. Weinberg (WEINBERG_J) (OMB)

CREATION DATE/TIME:13-MAR-1996 16:02:56.36

SUBJECT: RE: lrm on hr 2086

TO: Elena Kagan (KAGAN_E) (WHO)
READ:13-MAR-1996 16:03:05.62

TEXT:
Thank you.

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

CREATOR: Kathleen M. Wallman (WALLMAN_KM) (WHO)

CREATION DATE/TIME:13-MAR-1996 16:22:47.27

SUBJECT: RE: youth

TO: Elena Kagan (KAGAN_E) (WHO)
READ:13-MAR-1996 16:33:54.51

TEXT:
Sure, but they had no sense of humor.

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

CREATOR: Kathleen M. Wallman (WALLMAN_KM) (WHO)

CREATION DATE/TIME:13-MAR-1996 16:56:08.65

SUBJECT: RE: youth

TO: Elena Kagan (KAGAN_E) (WHO)
READ:13-MAR-1996 17:19:15.11

TEXT:
No, don't do that. You're the only one who thinks I have a sense of humor.

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

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

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

SUBJECT: products

TO: Elena Kagan (KAGAN_E) (WHO)
READ:14-MAR-1996 10:30:21.49

TEXT:

========== ATTACHMENT 1 ==========
ATT CREATION TIME/DATE:14-MAR-1996 09:37:00.00

ATT BODYPART TYPE:B

ATT CREATOR: James J. Jukes

ATT SUBJECT: Products (see end)

ATT TO: Ellen S. Seidman (SEIDMAN_E)

TEXT:

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

========== ATTACHMENT 2 ==========
ATT CREATION TIME/DATE:12-MAR-1996 13:52:00.00

ATT BODYPART TYPE:H

ATT CREATOR: Charles S. Konigsberg

ATT SUBJECT: PRODUCT LIABILITY

ATT TO: Sally Katzen (KATZEN_S)

ATT TO: Robert E. Litan (LITAN_R)

ATT CC: Alice M. Rivlin (RIVLIN_A)

ATT CC: Jacob J. Lew (LEW_J)

ATT CC: Bruce R. Lindsey (LINDSEY_B)

ATT CC: Martha Foley (FOLEY_M)

ATT CC: Charles E. Kieffer (KIEFFER_C)

ATT CC: James J. Jukes (JUKES_J)

ATT CC: Ingrid M. Schroeder (SCHROEDER_I)

ATT CC: James C. Murr (MURR_J)

ATT CC: Barbara C. Chow (CHOW_B)

ATT CC: Charles S. Konigsberg (KONIGSBERG_C)

ATT CC: John Hilley (HILLEY_J)

ATT CC: Stacey L. Rubin (RUBIN_S)

TEXT:
PRINTER FONT 12_POINT_COURIER
Press reports are that agreement has been reached on product liability. We need to make a decision ASAP within the EOP whether to issue a SAP, a presidential statement, a DOJ letter, or to issue no policy statement.
Normally, Administrations do not issue statements on conference reports -- the rationale being to preserve the President's options. However, we have not always followed this approach depending on the particular circumstances.
Following, FYI, is a brief history of our Administration statements on product liability (prepared by Ingrid Schroeder at LRD), as well as the text of statements made last year on the Senate bill:
Product Liability/Civil Litigation/Medical Malpractice:
(I. Schroeder, x53883)
House passed HR 956 on March 10 (265
□
-161). It would cap
punitive damages in all civil cases and would cap non-economic (pain and suffering) damages in suits against health providers and insurers. Basis for opposition: Product liability reform should generally be left to the States; punitive damages shouldn't be arbitrarily capped; and differential treatment of "economic" and "noneconomic" (e.g., "pain and suffering") damages is inappropriate. (March 6th Reno/Mikva letter.)
Senate passed HR 956 on May 10 (61
□
-37). It would cap
punitive damage awards by juries in product liability cases at $250,000 or twice compensatory damages (economic and non
□
-economic damages), whichever is greater. Judges could override those limits in "egregious" cases. Punitive damage awards in product liability cases could not exceed $250,000 for small businesses. Basis for opposition: A May 10th White House statement said the Senate
□
-passed liability bill "in its present form does not go far enough toward balancing the interests of consumers with those of manufacturers and sellers." The statement also stated the Administration's concerns regarding the limits on punitive damages adopted by the Senate and reiterated the Administration's opposition to provisions which would abolish joint and several liability. (A provision limiting punitive damage awards in all civil lawsuits, which was the subject of a May 4th Presidential veto threat, was later limited to product liability cases only.)
Text of May 4, 1995 Statement of the President:
The Senate is engaged in the laudable goal of seeking to reform our legal system. Yesterday they went much too far by

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

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

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

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

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

□
-30
□
-30
□
-30
May 10, 1995 Statement by the WH Press Secretary:

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

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

President Clinton supports balanced legal reform and will work with a House
□
-Senate conference to address these and other concerns.

□
-30
□

-30

□

-30-

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

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

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

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

CREATION DATE/TIME:14-MAR-1996 09:55:09.08

SUBJECT: 1pm ITEM VETO MTG. IN 248

TO: Charles S. Konigsberg (KONIGSBERG_C) (OMB)
READ:14-MAR-1996 12:52:16.89

TO: Robert G. Damus (DAMUS_R) (OMB)
READ:14-MAR-1996 09:58:19.62

TO: Charles E. Kieffer (KIEFFER_C) (OMB)
READ:14-MAR-1996 10:39:13.13

TO: Joseph Minarik (MINARIK_J) (OMB)
READ:14-MAR-1996 10:04:49.33

TO: Barry B. Anderson (ANDERSON_B) (OMB)
READ:14-MAR-1996 10:00:54.83

TO: James J. Jukes (JUKES_J) (OMB)
READ:14-MAR-1996 10:04:08.67

TO: Harry E. Moran (MORAN_H) (OMB)
READ:14-MAR-1996 09:55:35.26

TO: Betty I. Bradshaw (BRADSHAW_B) (OMB)
READ:14-MAR-1996 11:07:32.61

TO: Elena Kagan (KAGAN_E) (WHO)
READ:14-MAR-1996 10:30:45.19

TO: Paul J. Weinstein, Jr (WEINSTEIN_P) (OPD)
READ:14-MAR-1996 09:55:40.79

TO: Arthur W. Stigile (STIGILE_A) (OMB)
READ:14-MAR-1996 10:15:39.27

TEXT:

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

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

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

SUBJECT: prodcuts problems

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

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

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

TEXT:
These are in page order, not order of importance:
1. Findings and purposes (particularly the findings): These were in the House bill and dropped in the Senate because they were so inflammatory, but they are obviously there to deal with Lopez (yes, I've learned a case name). I would like to say that while there may be problems with the civil justice system, these assertions are unsupported by any record and in fact contrary to [DOJ] research. If we can say something good about civil juries and the constitution I'm for that too.
2. There are federalism issues in a number of places, where the bill tries to define, e.g., an evidentiary standard, that is clearly a matter of state law. See definition of "clear and convincing evidence,""punitive damages." (The definition of clear and convincing was in the Senate bill, but the punitive damages def was not.]
3. On page 14, line 18, the term "or threat of remediation" was deleted from the Senate bill. I couldn't parse that phrase, but undoubtedly EPA will think the deletion is important. We might want to check with them.
4. Section 103(b)(1) - pages 16 and 17 - This is John Yarowsky's favorite demagogue provision. It says that if a foreign manufacturer isn't available for suit, you can bring suit against the seller, thereby putting foreign manufacturers in a better position than domestic manufacturers. We need to be careful how we phrase any objection, but there is fun to be had here.
5. I don't quite understand how the affirmative defenses -- drugs, misuse or alteration, etc. might work in a class action. I think this problem has always been there, but can we make something of it?
6. Statute of limitations/statute of repose. We might think two years is too short, but I think it fair to say the statute of limitations is better than it has been. On the statute of repose, however, in addition to dropping to 15 years, there is a specific non-uniformity provision, which says any SHORTER (but not longer) state statute governs. You (we) might want to compare pages 15 and 18 of the conference report to show how inconsistent this is.
7. Punitives:

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

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

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

complain even though the factors were in the Senate bill.

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

State remittitur is still allowed, but state additur is forbidden

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

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

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

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

See you at 11:30.

ellen

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

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

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

SUBJECT: One more thing on products

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

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

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

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

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

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

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

SUBJECT: ITEM VETO DRAFT

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

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

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

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

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

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

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

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

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

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

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

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

Withdrawal/Redaction Marker
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
005. email	Marvin Krislov to Elena Kagan. Subject: coffee (1 page)	03/14/1996	Personal Misfile

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

FOLDER TITLE:
[3/8/1996 - 3/15/1996]

2009-1006-F
ke717

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: Andrea Richter (RICHTER_A) (WHO)

CREATION DATE/TIME:14-MAR-1996 16:27:02.53

SUBJECT: Hello

TO: Elena Kagan (KAGAN_E) (WHO)
READ:14-MAR-1996 16:30:07.87

TEXT:
Dear Ms Kagan
David Loevner recently made me aware of the fact that there are two former Sachs Scholars working in the same building...
I'm sure that you must be very busy - but if you do have time for coffee or lunch at some point, I would be very interested in hearing about your time at Worcester, as well as your work for the Administration. I myself am working as a Staff Economist at the Council of Economic Advisers until the end of this year, when I return to England to finish my D.Phil.
Yours
Andrea Richter P'91
5x3114

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

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

CREATION DATE/TIME:14-MAR-1996 18:32:17.25

SUBJECT: URGENT

TO: Charles S. Konigsberg (KONIGSBERG_C) (OMB)
READ:14-MAR-1996 18:34:38.80

TO: Robert G. Damus (DAMUS_R) (OMB)
READ:15-MAR-1996 08:28:01.77

TO: Charles E. Kieffer (KIEFFER_C) (OMB)
READ:14-MAR-1996 20:36:11.72

TO: Joseph Minarik (MINARIK_J) (OMB)
READ:14-MAR-1996 19:45:29.31

TO: Barry B. Anderson (ANDERSON_B) (OMB)
READ:15-MAR-1996 08:35:36.76

TO: James J. Jukes (JUKES_J) (OMB)
READ:14-MAR-1996 18:44:17.90

TO: Harry E. Moran (MORAN_H) (OMB)
READ:15-MAR-1996 08:33:20.21

TO: Betty I. Bradshaw (BRADSHAW_B) (OMB)
READ:14-MAR-1996 18:32:54.70

TO: Elena Kagan (KAGAN_E) (WHO)
READ:14-MAR-1996 18:38:56.96

TO: Paul J. Weinstein, Jr (WEINSTEIN_P) (OPD)
READ:14-MAR-1996 18:43:31.61

TO: Arthur W. Stigile (STIGILE_A) (OMB)
READ:15-MAR-1996 09:07:49.71

TO: Steven D. Aitken (AITKEN_S) (OMB)
READ:15-MAR-1996 09:24:33.17

TEXT:
PRINTER FONT 10_POINT_COURIER
TOP ODD
DRAFT-
□
-DRAFT-
□
-DRAFT-
□
-DRAFT-
□
-DRAFT-
□
-DRAFT-
□
-DRAFT-

□
-DRAFT-
□
-DRAFT-
□
-DRAFT
PRINTER FONT 12_POINT_COURIER
THE ITEM VETO NEGOTIATIONS MAY BE COMING TO A CLOSE VERY QUICKLY. PLEASE LET ME KNOW BY COB TODAY IF YOU HAVE ANY CONCERNS ABOUT THE FOLLOWING ADMINISTRATION COMMENTS. THANKS.

PENDING LINE
□
-ITEM VETO ISSUES

1. Scope of item veto authority; "in whole or in part": The question of whether to apply the authority "in whole or in part" to discretionary spending is apparently still an open issue. It is essential to the effectiveness of the item veto, that the authority be available to cancel discretionary items "in whole or in part". Authority to cancel only entire appropriation amounts, would seriously limit the President's ability to eliminate wasteful spending.

With regard to direct spending and tax benefits, while most instances of new direct spending and tax benefits would be susceptible only to cancellation "in whole," there are some instances where authority to cancel "in part" would make sense. We would therefore recommend that the authority be available to cancel direct spending or targeted tax benefits "in whole or in part".

2. Extensive reporting requirements: Following is a list of the extensive findings and determinations which would be required to accompany cancellations. Because of the extent of these requirements, in order for the item veto authority to operate realistically, we recommend that the following requirements be applied "to the maximum extent practicable."
- Dollar amount of BA, or identify the direct spending or tax benefit.
- Determination whether the cancellation will reduce the budget deficit.
- Determination that the cancellation will not impair essential Government functions.
- Determination that the cancellation will not harm the national interest.
- Reasons for the cancellation.
- To the maximum extent practicable, the estimated fiscal, economic, and budgetary effect.
- All facts circumstances and considerations relating to or bearing upon the cancellation.
- To the maximum extent practicable, the estimated effect of the cancellation upon the objects, purposes and programs for which the canceled authority was provided.
- The adjustments that will be made to the discretionary spending caps or the PAYGO scorecard and an evaluation of the effects on sequestration.
- The specific project or governmental function cancelled.
- The specific State and congressional district affected and the total impact of cancellations during the current session

on the State and congressional district.]

TOP EVEN
DRAFT-
□
-DRAFT-
□
-DRAFT-
□
-DRAFT-
□
-DRAFT-
□
-DRAFT-
□
-DRAFT-
□
-DRAFT-
□
-DRAFT-
□
-DRAFT
□
3. Timing of Transmittal -- This is the issue of how much time the President would have following the signing of a bill to identify items to be canceled. The House
□
-passed bill had given
the President a 10
□
-day window for transmittal of cancellations;
however, the latest drafts indicate consideration of either no days -- i.e. it would require that we transmit cancellations on the same day as enactment -- or 5 days.

No days -- i.e. requiring transmittal of cancellations on the same day a bill is signed -- would seriously impair the President's ability to use the authority, especially given the extensive reporting requirements to accompany cancellations. Five days is more feasible than none. However. the House
□
-passed
language -- i.e. 10 days -- would be much better. Also, the latest draft, excludes Sundays from the 5 days; it would be helpful to also exclude Saturdays, so the transmittal deadline will fall on a weekday.

There had been some concern about permitting targeted tax benefits and new direct spending to go into effect on the date of enactment -- only to be cancelled 5 days later. However, this is not a problem; in cases, where the time lag would be a concern, the President would have the authority to transmit the cancellation immediately upon signing the bill (since the proposed language is "within five calendar days").

4. Lockbox -- The lockbox language, set forth as new section 1024, would require the President to: reduce the statutory discretionary spending caps -- for the current year and the applicable outyears -- by the amount of discretionary cancellations; and to eliminate from the PAYGO scorecard any positive balance that would otherwise have accrued from applying the item veto to new direct spending or tax benefits.

Discretionary spending caps have been carefully negotiated between Presidents and Congresses. Any decision to change the total levels of discretionary spending should be made in a deliberate manner -- by both the Congress and the President. Therefore, if a lockbox is to be included, it should provide that the caps are automatically reduced only if the Congress has included a provision in the pertinent appropriations bill stating that "the Congress has determined it is appropriate for the President to reduce the discretionary spending caps to reflect any cancellations of budget authority included in the Act which may be made pursuant to the Line Item Veto Act of 1996."

In addition, the Congress and the President should not tie their hands for future budgets by requiring the automatic reduction of spending caps in the outyears.

□

5. Definition of Cancellation: The latest Senate draft defines cancellation -- with respect to targeted tax benefits and new direct spending -- as preventing the direct spending or tax provision "from taking legal force or effect." This raises potential constitutional concerns. The definition is more likely to survive constitutional scrutiny if the definition is changed to preventing the direct spending or tax provision "from having current legal force or effect."

6. Definition of Targeted Tax Benefits: The latest draft limits the scope of the President's authority to cancel special interest tax provisions, by defining targeted tax benefit as a benefit going to 100 or fewer beneficiaries. In addition to narrowing the scope of the cancellation authority, this provision is subject to abuse and open to substantial litigation because it fails to define over what period of time the 100 or fewer beneficiaries should be counted. For example, a potential beneficiary of a canceled tax provision might go to court to argue that the provision would have benefited over a 100 beneficiaries if the next 15 years are considered. To fix this problem, language should be inserted into the definition as follows: "to 100 or fewer beneficiaries during the first fiscal year in which the deduction, credit, exclusion or preference is in effect".

In addition, the question of who determines whether a provision is a targeted tax benefit appears to remain an open question. In order to be consistent with the spending side of the budget, the President should have the authority to determine what qualifies as a targeted tax benefit.

Additional technical changes to the tax language (changes in bold):

"For purposes of subparagraph (A)--

(i) all entities which are related within the meaning of sections 267(a) or 707(b) of the Internal Revenue Code of 1986, shall be treated as 1 entity a single beneficiary;

(ii) all qualified plans of an employer shall be treated as 1 plan a single beneficiary;

(iii) all holders of tax

□

-exempt bonds which are part of the same issue shall be counted as 1 a single beneficiary, and

(iv) shareholders of a corporation, partners in a partnership, and beneficiaries of a trust or estate, shall not be treated as beneficiaries of the corporation, partnership, trust, or estate is treated as a beneficiary.

Also, in the provision stating "in the case of entities, the size or type of the entities involved...," the word "type" should

be replaced with "classification."
□
7. Nonseverability: Recent drafts have included a
non
□
-severability provision, the effect of which would be that if the courts strike down the tax benefit and direct spending provisions (the most vulnerable parts of this bill), the ability to cancel discretionary spending would also fall. This provision is counterproductive to the goal of this legislation; if the direct spending and tax benefit sections of this mechanism fail to withstand constitutional challenge, the authority over discretionary spending should be permitted to continue.

8. Effective dates/sunset: In the latest drafts, this Act would become effective upon enactment of a balanced budget (by 2002), and would sunset in FY 2002. Authority to eliminate wasteful spending and special interest tax provisions should be provided immediately -- without delay. In addition, as was the case in the House
□
-passed bill, the cancellation authority should be made applicable to unobligated balances from already enacted (FY 1996) appropriations.

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

CREATOR: Virginia M. Terzano (TERZANO_V) (WHO)

CREATION DATE/TIME:14-MAR-1996 18:35:23.45

SUBJECT: product liability points

TO: Elena Kagan (KAGAN_E) (WHO)
READ:14-MAR-1996 19:00:39.99

TEXT:
PRINTER FONT 12_POINT_COURIER
Product Liability
Wednesday, March 13, 1996

Background
A House and Senate conference today reached agreement on a package of product liability reforms. It would set a 15
□
-year
time limit on when a manufacturer can be held liable for its products, and caps the awarding of punitive damages.
[Per advice from OMB and Leg Affairs, Bruce Lindsey is the best person to talk to regarding the Administration's position on this bill.]
The Admnistration has not made a decision on whether to support the bill or not. The agreement reached today still includes a cap on punitive damages which the White House opposes.
Points
o We are still in the process of reviewing the bill and have not yet made a determination on whether it meets the President's goals of real, balanced reform.
o The Administration supports the enactment of limited but meaningful product liability reform.
o SAP: Any legislation must fairly balance the interests of consumers with those of manufacturers and sellers and should respect the important role of the states in our federal system.

drafted by: G Terzano
cleared by: Sally Katzen x54852, Peter Jacoby/Leg Affrs x67151

Withdrawal/Redaction Marker
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
006. email	Marvin Krislov to Elena Kagan. Subject: last week in March (1 page)	03/14/1996	Personal Misfile

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

FOLDER TITLE:
[3/8/1996 - 3/15/1996]

2009-1006-F
ke717

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: Charles S. Konigsberg (KONIGSBERG_C) (OMB)

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

SUBJECT: ITEM VETO AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TO: Gordon Adams (ADAMS_G) (OMB)

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

TO: Nancy-Ann E. Min (MIN_N) (OMB)
READ:15-MAR-1996 08:31:10.85

TO: Robert G. Damus (DAMUS_R) (OMB)
READ:15-MAR-1996 08:31:57.86

TO: LAWRENCE J. HAAS (HAAS_L) (OMB)
READ:15-MAR-1996 08:34:34.82

TO: Jill M. Blickstein (BLICKSTEIN_J) (OMB)
READ:15-MAR-1996 08:26:58.63

TO: Chantale Wong (WONG_C) (OMB)
READ:15-MAR-1996 10:56:17.37

TO: William A. Halter (HALTER_W) (OMB)
READ:15-MAR-1996 10:39:24.92

TO: James C. Murr (MURR_J) (OMB)
READ:15-MAR-1996 08:14:52.11

TO: James J. Jukes (JUKES_J)
READ:15-MAR-1996 08:44:05.11

TO: Janet R. Forsgren (FORSGREN_J) (OMB)
READ:15-MAR-1996 09:32:57.29

TO: Ronald K. Peterson (PETERSON_RK) (OMB)
READ:15-MAR-1996 08:07:28.83

TEXT:
PRINTER FONT 12_POINT_COURIER
\d
TO: ALICE RIVLIN
FROM: CHUCK KONIGSBERG
RE: ITEM VETO AGREEMENT; LIKELY TO BE ADDED TO DEBT CEILING
cc: 2d Floor, Bradshaw, Moran, Murr, Foley, Angell, Chow, Kagin (WH/Counsel), Weinstein (DPC)
Republican item
□
-veto conferees and leadership staff have arrived at an agreement on item veto legislation (although final drafting will occur on Friday). Democratic conferees have not been consulted during the negotiations, but Republicans believe they have sufficient agreement to report. The Republican strategy is to add item veto to the debt ceiling bill the last week of March. (We're also hearing that social security earnings limit legislation will be added to the debt ceiling.) Following are the outlines of the agreement (based on conversations with staff, though we have not seen final language yet):

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

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

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

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

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

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

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

□
-writing committees
the authority to specify in their tax bills what is a tax benefit subject to the cancellation authority.

6. Severability: The non
□
-severability provision we had objected
to has been dropped. (That provision would have provided that if the courts strike down the tax benefit and direct spending provisions -- the most vulnerable parts of this bill -- the ability to cancel discretionary spending would also fall.)

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

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

CREATOR: Dinah Bear (BEAR_D) (CEQ)

CREATION DATE/TIME:15-MAR-1996 08:39:24.60

SUBJECT: Rocky timber sale

TO: Elena Kagan (KAGAN_E) (WHO)
READ:15-MAR-1996 10:05:13.56

TEXT:
per voice mail.
==========ATTACHMENT 1==========
ATT CREATION TIME/DATE:14-MAR-1996 19:44:00.00

ATT BODYPART TYPE:B

ATT CREATOR: Dinah Bear

ATT SUBJECT: yet one more wonderful timber sale decision

ATT TO: Kathleen A. McGinty (MCGINTY_K)

TEXT:
As you well know, the timber rider requires the release of all of the old growth sales unless t or e birds are "known to be nesting" in the sale unit.
Today, a local enviro group sent a letter regarding the Rocky Brook timber sale on the Olympic National Forest, along with three affidavits from members who state that they believe they heard "the call of a Northern spotted owl" in the sale unit between Feb. 15 - March 9th. On the basis of those affidavits, they ask that the Forest Service hold up the purchasers' harvest of the sale until there is an independent survey for spotted owls.
If they don't get an affirmative answer today, they said they would file for a TRO tommorrow. Justice is getting some press calls.
This is the sale in Norm Dicks' district that was the subject of a protest last week. It has been harvested for the past several weeks, and there are about 2-3 weeks left to go. None of the affdavits are from biologists. The Forest Service district wildlife biologist did an evaluation of the unit on January of 1989 and stated that "All proposed units are considered suitable spotted owl habitat", but there is no agency evidence of nesting in the unit.
Surveys for spotted owls take about 2 months, and apparently it's a bit early in the season to even start that clock running.
The Justice lawyers do not believe there are legal grounds to order the purchasers to stop harvesting. Their suggested approach would be to have the Forest Service conduct its own examination during the evening for a few nights to see if they believe there is any new evidence warranting a survey, but not requesting the harvester to cease operations. The Forest Service doesn't even want to do that much; they want to blast the credentials of the enviros who signed the affadavits and not send anyone out.
Of course, Justice needs an answer NOW. Elena is running this by Jennifer. We've told DOJ we'd try to get them an answer by around 10ish tommorow morning.

I think Justice's approach makes sense in terms of the timber rider requirements and common sense. While I'd like to give the owls the benefit of the doubt, I have to admit these particular affidavits are not impressive. On the other hand, I think not sending anyone out to do any checking is irresponsible. And, given the events of the day and the publicity surrounding this sale, I didn't want to preclude the chance that you might have a different view of how to handle this.

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

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

CREATOR: Dinah Bear (BEAR_D) (CEQ)

CREATION DATE/TIME:15-MAR-1996 08:39:41.82

SUBJECT: Rocky timber sale

TO: Elena Kagan (KAGAN_E) (WHO)
READ:15-MAR-1996 10:05:22.32

TEXT:

========== ATTACHMENT 1 ==========
ATT CREATION TIME/DATE:15-MAR-1996 07:36:00.00

ATT BODYPART TYPE:B

ATT CREATOR: Kathleen A. McGinty

ATT SUBJECT: RE: yet one more wonderful timber sale decision

ATT TO: Dinah Bear (BEAR_D)

TEXT:
i'm with you
========== END ATTACHMENT 1 ==========

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

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

CREATION DATE/TIME:15-MAR-1996 09:10:42.42

SUBJECT: RE: timber

TO: Elena Kagan (KAGAN_E) (WHO)
READ:15-MAR-1996 10:05:32.04

TEXT:
I unfortunately cant' make it at 4 because of prior engagement.

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

CREATOR: Dinah Bear (BEAR_D) (CEQ)

CREATION DATE/TIME:15-MAR-1996 10:17:15.76

SUBJECT: one more time

TO: Elena Kagan (KAGAN_E) (WHO)
READ:15-MAR-1996 10:18:12.35

TEXT:

========== ATTACHMENT 1 ==========
ATT CREATION TIME/DATE:15-MAR-1996 08:39:00.00

ATT BODYPART TYPE:B

ATT CREATOR: Dinah Bear

ATT SUBJECT: Rocky timber sale

ATT TO: Elena Kagan (KAGAN_E)

TEXT:
per voice mail.
========== END ATTACHMENT 1 ==========

========== ATTACHMENT 2 ==========
ATT CREATION TIME/DATE:14-MAR-1996 19:44:00.00

ATT BODYPART TYPE:B

ATT CREATOR: Dinah Bear

ATT SUBJECT: yet one more wonderful timber sale decision

ATT TO: Kathleen A. McGinty (MCGINTY_K)

TEXT:
As you well know, the timber rider requires the release of all of the old growth sales unless t or e birds are "known to be nesting" in the sale unit.
Today, a local enviro group sent a letter regarding the Rocky Brook timber sale on the Olympic National Forest, along with three affidavits from members who state that they believe they heard "the call of a Northern spotted owl" in the sale unit between Feb. 15 - March 9th. On the basis of those affidavits, they ask that the Forest Service hold up the purchasers' harvest of the sale until there is an independent survey for spotted owls.
If they don't get an affirmative answer today, they said they would file for a TRO tommorrow. Justice is getting some press calls.
This is the sale in Norm Dicks' district that was the subject of a protest last week. It has been harvested for the past several weeks, and there are about 2-3 weeks left to go. None of the affdavits are from biologists. The Forest Service district wildlife biologist did an evaluation of the unit on January of 1989 and stated that "All proposed units are considered suitable spotted owl habitat", but there is no agency evidence of nesting

in the unit.
Surveys for spotted owls take about 2 months, and apparently it's a bit early in the season to even start that clock running.
The Justice lawyers do not believe there are legal grounds to order the purchasers to stop harvesting. Their suggested approach would be to have the Forest Service conduct its own examination during the evening for a few nights to see if they believe there is any new evidence warranting a survey, but not requesting the harvester to cease operations. The Forest Service doesn't even want to do that much; they want to blast the credentials of the enviros who signed the affadavits and not send anyone out.
Of course, Justice needs an answer NOW. Elena is running this by Jennifer. We've told DOJ we'd try to get them an answer by around 10ish tommorow morning.

I think Justice's approach makes sense in terms of the timber rider requirements and common sense. While I'd like to give the owls the benefit of the doubt, I have to admit these particular affidavits are not impressive. On the other hand, I think not sending anyone out to do any checking is irresponsible. And, given the events of the day and the publicity surrounding this sale, I didn't want to preclude the chance that you might have a different view of how to handle this.
========== END ATTACHMENT 2 ==========

RECORD TYPE: PRESIDENTIAL (PAGER)

CREATOR: Mail Link Monitor (MAILMGT) (SYS)

CREATION DATE/TIME:15-MAR-1996 10:59:01.39

SUBJECT: PAGER CONFIRMATION - O'CONNOR,JENNIFER M.

TO: Elena Kagan (KAGAN_E) (WHO)
READ:15-MAR-1996 11:00:19.16

TEXT:

PAGE FOR O'CONNOR,JENNIFER M., WAS TRANSMITTED 15-MAR-1996 10:55:23.20
TEXT TRANSMITTED WAS:
CALL ME IN THE NEXT HOUR OR SO. ELENA 67594

Withdrawal/Redaction Marker
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
007. email	Kathleen Wallman to Elena Kagan. Subject: tomorrow (1 page)	03/15/1996	Personal Misfile

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

FOLDER TITLE:
[3/8/1996 - 3/15/1996]

2009-1006-F
ke717

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]