NLWJC - KAGAN

EMAILS RECEIVED

ARMS - BOX 055 - FOLDER -003

[03/27/1996-04/04/1996]

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Kumiki Gibson to Whalen, et al; RE: Saturday Night (1 page)	03/28/1996	Personal Misfile
002. email	Phone No. (Partial) (1 page)	03/28/1996	P6/b(6)
003. email	Kathleen Whalen to Elena Kagan, et al. Subject: Dinner and Stomp (1 page)	03/29/1996	Personal Misfile
004. email	Ron Klain to Elena Kagan. Subject: there is no other (1 page)	04/01/1996	P6/b(6)

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

FOLDER TITLE:
[3/27/1996 - 4/4/1996]

2009-1006-F
ke719

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:27-MAR-1996 11:34:36.25

SUBJECT: EOP USE ONLY: ITEM VETO TALKERS

TO: Barbara C. Chow (CHOW_B) (WHO)
READ:28-MAR-1996 09:00:00.48

TO: John Hilley (HILLEY_J) (WHO)
READ:NOT READ

TO: John C. Angell (ANGELL_J) (WHO)
READ:27-MAR-1996 12:16:00.33

TO: Martha Foley (FOLEY_M) (WHO)
READ:27-MAR-1996 21:48:53.90

TO: Charles S. Konigsberg (KONIGSBERG_C) (OMB)
READ:27-MAR-1996 11:58:26.84

TO: Robert G. Damus (DAMUS_R) (OMB)
READ:27-MAR-1996 11:57:32.51

TO: Charles E. Kieffer (KIEFFER_C) (OMB)
READ:27-MAR-1996 12:13:31.99

TO: Joseph Minarik (MINARIK_J) (OMB)
READ:27-MAR-1996 11:34:56.85

TO: Barry B. Anderson (ANDERSON_B) (OMB)
READ:27-MAR-1996 11:44:33.12

TO: James J. Jukes (JUKES_J) (OMB)
READ:27-MAR-1996 11:43:09.79

TO: Harry E. Moran (MORAN_H) (OMB)
READ:27-MAR-1996 11:41:16.87

TO: Betty I. Bradshaw (BRADSHAW_B) (OMB)
READ:27-MAR-1996 11:47:34.74

TO: Elena Kagan (KAGAN_E) (WHO)
READ:27-MAR-1996 11:35:22.95

TO: Paul J. Weinstein, Jr (WEINSTEIN_P) (OPD)
READ:27-MAR-1996 11:38:10.05

TO: Arthur W. Stigile (STIGILE_A) (OMB)
READ:27-MAR-1996 12:18:58.49

TO: LAWRENCE J. HAAS (HAAS_L) (OMB)
READ:27-MAR-1996 13:50:54.53

TO: Jacob J. Lew (LEW_J) (OMB)
READ: 1-APR-1996 13:26:07.94

TO: Chantale Wong (WONG_C) (OMB)

READ:27-MAR-1996 11:52:36.47

TO: Jill M. Blickstein (BLICKSTEIN_J) (OMB)
READ:27-MAR-1996 13:04:40.72

TO: Janet L. Himler (HIMLER_J) (OMB)
READ:27-MAR-1996 18:08:17.16

CC: Stacey L. Rubin (RUBIN_S) (WHO)
READ:27-MAR-1996 11:38:49.87

TEXT:
Attached are some talkers on the Byrd motion to recommit item veto (which seeks to substitute an "expedited rescission" proposal). This is for EOP use only; these talking points have NOT been released to the Hill.
========== ATTACHMENT 1 ==========
ATT CREATION TIME/DATE:27-MAR-1996 11:28:00.00

ATT BODYPART TYPE:p

ATT CREATOR: Charles S. Konigsberg

TEXT:
PRINTER FONT 12_POINT_COURIER

3/27/96

Talking points on Byrd motion to recommit item veto conference report (expedited rescission)

o Senator Byrd's "expedited rescission" proposal -- described in the attachment -- is favorable in a number of its details, but the conference agreement is much stronger with regard to the basic mechanism.
o The Byrd motion would permit the President to propose rescissions of spending and repeal of tax benefits, which the Congress would be required to vote upon within 10 session days under expedited procedures. The proposed rescissions (or repeal of tax benefits) would remain effective beyond the congressional review period
only if a majority of both houses of Congress voted to enact the rescission (or repeal) proposals.
o By contrast, the conference report on S. 4 would delegate to the President authority to cancel certain spending and tax provisions; the cancellations would remain effective unless the Congress enacted disapproval legislation (effectively requiring 2/3 of each house to overturn a cancellation).
o The Administration has consistently called for strong item veto authority and therefore prefers the conference report mechanism.
o However, the Byrd proposal includes several details which are favorable: the definition of "targeted tax benefits" is much broader than the narrow definition in the conference report; the proposal would assign the authority to identify "targeted tax benefits" to the President, rather than the Congress; the application of the authority to discretionary spending would cover all or part of appropriated items; the President would have 20 days to review spending and tax bills; and the Byrd proposal

would become effective upon enactment.
o Nevertheless, because of the stronger mechanism -- the

authority to cancel, subject only to congressional disapproval -- the conference agreement is a much stronger authority, and more consistent with the President's longstanding request for the strongest possible item veto authority.
□

COMPARISON OF LINE ITEM VETO CONFERENCE AGREEMENT WITH BYRD MOTION TO RECOMMIT

Significant Provisions	S. 4 (Conf. Agreement)
1. Presidential Authority	Cancellations of spending and taxes are immediately effective, but Congress may seek to	Authority to PROPOSE rescission of BA and repeal of ta expedited congressio consideration (spending

enact disapproval law (in effect, it would take 2/3 to overturn a cancellation) and tax provisions shall not be made availabl or take effect, unti expiration of congressional cons

2. If Congress does not act Cancellation remains in effect Rescission/repeal does not take effect and BA or taxes released

3. What is authority applied to? Discretionary projects identified in statute, or report language; items of new direct spending; limited tax benefits (100 or fewer) All or part of any BA, amounts of direct spending, and targeted tax ben

4. Definition of tax benefit 100 or fewer, but protects beneficiaries where treated the same, plus additional exclusions; Congress would have option to identify tax benefits Any provision which has practical effect of providing benefit in t different treatment taxpayer or limited of taxpayers, but exclu differences based on

demographic cond

income, # of depe

status (wou

corporate welf

industry

□

-specific bene

□

Significant sc is si on) S. 4 (Conf. Agreemen

Provisions

5. Time for President to send up special message Within 5 calendar days after enactment (separate message for each approps. or tax bill) Within 20 calendar d after enactment (separate message an draft bill for each approps and tax bill or, as t

6. Cancelled amounts applied to deficit? Cancellations trigger automatic cap reductions; cancelled direct spending and taxes not credited to PAYGO scorecard If rescission/repeal enacted into law, automatic reductions, and repealed direct spending and taxes not credited to PAYGO scorecard

7. Start/Expiration Earlier of 1/1/97 or enactment of balanced budget; expiration in 1/1/2005 Upon enactment. Expires 9/30/2002.

8. Congressional Procedures Expedited procedures for overturning cancellations w/in 30 session days Rescission and repeal bills considered under expedited pr bills must be intro automatic discharge committee w/in 7 ses days; vote SHALL occ w/in 10 sess. days of int amendments n but motions to strik in order if supported b spec

9. Reporting Requirements Requires identification of affected cong. districts No similar requirement

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

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

CREATOR: John O. Sutton (SUTTON_J) (WHO)

CREATION DATE/TIME:27-MAR-1996 11:38:15.87

SUBJECT: Product liability meeting

TO: Elena Kagan (KAGAN_E) (WHO)
READ:27-MAR-1996 11:40:10.08

TEXT:
Harold agreed to meet with 4 people who represent Owens-Illinois and 3 people who are with Owens Corning companies on product liability on friday at 11 am in the roosevelt room. Can you attend the meeting with him? I am going to invite Bruce as well.

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

CREATOR: Mary Dixon (DIXON_M) (WHO)

CREATION DATE/TIME:27-MAR-1996 12:43:11.29

SUBJECT: please review for a video taping tomorrow:Deadline today

TO: Deborah L. Fine (FINE_D) (OPD)
READ:27-MAR-1996 13:50:34.88

TO: Donald A. Baer (BAER_D) Autoforward to: Kristin Leight
READ:NOT READ

TO: George Stephanopoulos (STEPHANOPO_G) Autoforward to: Laura Capp
READ:27-MAR-1996 12:43:49.11

TO: Elena Kagan (KAGAN_E) (WHO)
READ:27-MAR-1996 13:05:24.30

TEXT:
Please review the attached script for a Presidential video taping.
The taping is tentatively scheduled for tomorrow.
Please call Betsy Myers or Judy Gold in the Women's Office for your comments.
If you have major edits or comments please feel free to respond to this e-mail directly.
Thanks
========== ATTACHMENT 1 ==========
ATT CREATION TIME/DATE:27-MAR-1996 12:38:00.00

ATT BODYPART TYPE:p

ATT CREATOR: Mary Dixon

TEXT:

PRINTER FONT 12_POINT_ROMAN
Suggested Script:
It is my pleasure to extend warm greetings to the members of the National Abortion Federation, as you gather in San Francisco for your 20th Annual Meeting. I'd like to congratulate your outgoing President, Lynne Randall, on a very successful term. I'd also like to congratulate your Executive Director, Vicki Saporta, and your incoming President, Joan Coombs, on the new energy and initiative they bring to your organization.
As the physicians, nurses, counselors and other health care professionals who work to provide abortion services, you dedicate your lives every day to making choice real for American women and their families. Without your medical expertise, your skill, your compassion, and your commitment, the right to choose would be just a hollow promise. Today, you celebrate 20 years of commitment, as NAF once again brings abortion providers together to pursue the highest standards in medical care.
I'm very proud that, in 1994, we were able to come together and pass the Freedom of Access to Clinic Entrances Act. This law was desperately needed to curb the rising tide of anti
□
-abortion
violence, and thanks to NAF's vigilance, years of detailed information about the extent of this violence helped to convince

even many anti
□
-abortion legislators to support the law. I know
that a number of you present today worked hard to help pass the
bill and even came to Washington to testify. The FACE law has
worked. Although threats and violence against abortion providers
do continue, I am pleased to know that NAF's 1995 report on
anti
□
-abortion violence and disruption shows declines in several
types of violence, including death threats. I am also very proud
that the FBI and the Justice Department were able to prevent more
deadly violence by arresting a man in Wisconsin who had amassed
an arsenal of weapons, planning the murder of abortion providers.
Thanks to the FACE law, we have been able to save lives and
protect the rights of women.
I want you to know that, despite news reports to the contrary,
the U.S. Justice Department remains committed to the
investigation and prosecution of acts of anti
□
-abortion violence.
We know that this investigation, and the heightened presence of
law enforcement in the field, has helped to prevent acts of
violence and we hope that it will also bring more criminals to
justice. Investigations like these are usually slow and
cumbersome, and I know that when you are under siege, it can feel
like nothing is being done. Please be assured that it is a top
priority of my administration to put an end to acts of
anti
□
-abortion violence.

As you know, I have studied the H.R. 1833 issue and prayed for
the families who must face this awful choice. I have heard and
read the words of families that the National Abortion Federation
has brought forward, families who have gone through the
devastating experience, and I was deeply moved by their
heartbreaking testimony. Families who discover late in wanted
pregnancies that tragedy has struck, robbing them of their hopes
and dreams for a healthy baby, are confronted with one of the
most agonizing ordeals imaginable. Hillary and I will continue
to include them in our prayers.
I'd like to thank NAF for inviting me to send this message to you
today. I know that your jobs are not easy. It is a terrible thing
to face condemnation, harassment, violence, and even the threat
of death because you act on your principles. I want you to know
that as your President, I honor your courage and believe we have
a duty to find common ground. I pledge to you that I will
continue to use my office to make sure that legal abortions,
those abortions that the Supreme Court ruled in Roe v. Wade, are
protected. I wish you a successful and productive conference.
========== END ATTACHMENT 1 ==========

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

CREATOR: Tracey E. Thornton (THORNTON_T) (WHO)

CREATION DATE/TIME:27-MAR-1996 12:57:45.27

SUBJECT: RE: hatch bill

TO: Elena Kagan (KAGAN_E) (WHO)
READ:27-MAR-1996 14:34:59.61

TEXT:
Don't know the answer to these questions. The Dems have hold on it on the floor. It's not likely to come up before the senate recesses unless someone attempts to do it as an amendment on the floor--this too though is improbable. I think since we have a "challenge" from Dole to oppose it, we must be at the ready for any possible scenerio.

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

CREATOR: Nancy-Ann E. Min (MIN_N) (OMB)

CREATION DATE/TIME:27-MAR-1996 14:34:38.31

SUBJECT: delay--looks like we need to add a definition of entity

TO: Elena Kagan (KAGAN_E) (WHO)
READ:27-MAR-1996 14:58:26.52

TEXT:
does the one from the freestanding delay work for you?
========== ATTACHMENT 1 ==========
ATT CREATION TIME/DATE:27-MAR-1996 10:10:00.00

ATT BODYPART TYPE:B

ATT CREATOR: Douglas L. Steiger

ATT SUBJECT: Definition of "entity"

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

ATT CC: Barry T. Clendenin (CLENDENIN_B)

ATT CC: Richard J. Turman (TURMAN_R)

ATT CC: Mark E. Miller (MILLER_ME)

ATT CC: Thomas M. Reilly (REILLY_T)

ATT CC: Nani A. Coloretti (COLORETTI_N)

ATT CC: William G. White (WHITE_W)

TEXT:
When the "DeLay/Coats" type language on abortion-related accreditation standards has been introduced as a free-standing bill (a couple of bills that didn't move) a brief definitions section has been included. In these sections "health care entity" has been defined as including "an individual physician, a postgraduate physician training program, and a participant in a program of training in the health professions". This same definition is included in the Senate-passed CR. It's only the DeLay amendment language in the House-passed CR which has dropped the definition.
While the term "entity" may have been used here and there in statute, it doesn't appear -- after our quick review -- to have a broader standing in Medicare, Medicaid, or public health law. This is supported by the fact that other versions of the language (such as the free-standing bills) felt the need to define it, rather than citing a definition elsewhere in law.
========== END ATTACHMENT 1 ==========

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

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

CREATION DATE/TIME:27-MAR-1996 15:56:07.73

SUBJECT: LIV--Need comments by Thurs.Noon

TO: Martha Foley (FOLEY_M) (WHO)
READ:27-MAR-1996 21:27:23.62

TO: John C. Angell (ANGELL_J) (WHO)
READ:27-MAR-1996 16:01:52.14

TO: Barbara C. Chow (CHOW_B) (WHO)
READ:28-MAR-1996 09:08:34.55

TO: Paul J. Weinstein, Jr (WEINSTEIN_P) (OPD)
READ:27-MAR-1996 17:00:57.25

TO: Elena Kagan (KAGAN_E) (WHO)
READ:27-MAR-1996 18:00:23.33

TO: Gene B. Sperling (SPERLING_G) Autoforward to: Daniel Taber
READ:27-MAR-1996 16:12:58.87

CC: James J. Jukes (JUKES_J) (OMB)
READ:27-MAR-1996 16:01:05.21

CC: James C. Murr (MURR_J) (OMB)
READ:27-MAR-1996 16:19:24.65

CC: Charles E. Kieffer (KIEFFER_C) (OMB)
READ:27-MAR-1996 22:41:16.55

TEXT:
PRINTER FONT 12_POINT_COURIER
3/27/96
From: Chuck Konigsberg
Following is a draft response to Sen. Byrd for a 3/21 item veto letter to POTUS. [WH/LA asked OMB to prepare a response from POTUS] Byrd's letter to POTUS states that he is "unalterably opposed to giving any President" enhanced rescission authority; he also states that the delegation would do "great harm to the constitutional balance." Much of the letter pertains to Byrd's concern that the 1997 effective date is "blatantly partisan". Let me know by Thursday Noon if you have any revisions to the attached draft. Otherwise, I will pass along to WH/LA. Thanks.
[Paul-
□
-is the sentence referring to his time as Governor consistent w/ previous campaign statements?]

DRAFT-
□
-NOT FOR RELEASE
Dear Senator Byrd:
I appreciated receiving your letter of March 21, 1996 expressing concerns about the conference agreement on the line

□
-item veto.

I am mindful of your strong, and deeply held convictions on this issue. However, as you know, the line
□
-item veto is
something I have consistently supported over the years. I had the authority as a Governor and found it to be a useful tool for controlling the budget. I am pleased that House and Senate conferees on S. 4 have reported a conference agreement which delegates authority to cancel certain discretionary and direct spending, as well as limited tax benefits.

I must respectfully disagree with your concerns about the effect of this legislation on the constitutional balance of powers. While the conference agreement delegates to the President a useful measure of cancellation authority, that delegation has been carefully limited by the very specific definitions of spending and tax benefits. Moreover, the Congress has retained the authority to consider disapproval legislation under expedited and highly privileged procedures.

Regarding the effective date of the new authority, I would, of course, have preferred that the new authority be effective upon enactment. Nevertheless, I am pleased that the House and Senate have overcome their differences and produced a conference agreement which delegates effective cancellation authority.

Thank you again for expressing your concerns to me about this important legislation.

Sincerely,

BC

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

CREATOR: Dinah Bear (BEAR_D) (CEQ)

CREATION DATE/TIME:27-MAR-1996 21:28:54.27

SUBJECT: letter to hatfield

TO: Kathleen A. McGinty (MCGINTY_K) (CEQ)
READ:28-MAR-1996 08:44:14.70

TO: Ron Klain (KLAIN_R) Autoforward to: Remote Addresse
READ:NOT READ

TO: T J Glauthier (GLAUTHIER_T) (OMB)
READ:28-MAR-1996 08:16:31.29

TO: Martha Foley (FOLEY_M) (WHO)
READ:27-MAR-1996 21:30:26.72

TO: Barbara C. Chow (CHOW_B) (WHO)
READ:28-MAR-1996 09:10:35.45

TO: Jennifer M. O'Connor (OCONNOR_J) (WHO)
READ:28-MAR-1996 13:43:14.90

TO: Elena Kagan (KAGAN_E) (WHO)
READ:28-MAR-1996 07:24:22.28

TEXT:
I am faxing to all of you this evening another draft of the proposed letter to Hatfield. I've got calls into some of you to clarify some points. However, Barbara recommends moving it asap, given that conference resumes at 10:30 am and that Hatfield is already making the point that he hasn't heard back from us.
Two other points:
1. She recommends that we attach the Murray language on replacement and buy-back. Any concerns?
2. The signatory - Barbara recommends L.P.
I'll be here tonight as long as any progress can be made to move this along.

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

CREATOR: Dinah Bear (BEAR_D) (CEQ)

CREATION DATE/TIME:27-MAR-1996 21:55:24.90

SUBJECT: trees - why do we need them?

TO: Elena Kagan (KAGAN_E) (WHO)
READ:28-MAR-1996 07:25:17.01

TEXT:
seriously, i'm sorry i didn't get back to you today. it was awful.
Among other things, USDA is now saying (both Anne and Jim L.) that they can never offer replacement timber if they have to follow environmental law. Huh? I thought this had been brought up numerous times, and in fact, we just filed a brief stating that env. law does apply to replacement timber.
Things are getting a bit tense on the USDA/CEQ front. To put it mildly. . . . .

The 4 o'clock conference call is to focus on the Klammath tribes case. The Forest Service is concerned that we'll overstate their current interpretation of how treaty rights affect forest management. Justice is concerned that treaty rights do apply.
DOI is struggling with their trust responsibilities. Lois wants to transfer to Hogan (that should take care of all of the rest of the issues!).
I, on the other hand, am defecting to Mongolia. Have fun with this crowd!!!!
(seriously, if you can be on the conference call, call Jeff Garver at DOJ at 305-0481.)

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

CREATOR: Dinah Bear (BEAR_D) (CEQ)

CREATION DATE/TIME:28-MAR-1996 08:00:39.83

SUBJECT: RE: trees - why do we need them?

TO: Elena Kagan (KAGAN_E) (WHO)
READ:28-MAR-1996 08:58:57.09

TEXT:
yes, you're right, the letter to you didn't go through. it's on its way now. call me if you don't have it in 5 minutes.
no, no one has suggested (to my knowledge) marking up Hatfield language. What Barbara is suggesting is that we send up the Murray language for replacement and buy-back as an attachment.

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

CREATOR: Dinah Bear (BEAR_D) (CEQ)

CREATION DATE/TIME:28-MAR-1996 08:02:50.55

SUBJECT: Jean's murrelet brief

TO: Elena Kagan (KAGAN_E) (WHO)
READ:28-MAR-1996 08:59:22.47

TEXT:
have you looked at the brief yet? I looked at it early this am and have no problems with it, although I know that Nancy will be unhappy about the argument that we can't move replacement timber now. Jean couldn't get an answer out of the Forest Service yesterday and i suspect God couldn't either, had she tried.

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

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

CREATION DATE/TIME:28-MAR-1996 11:58:42.01

SUBJECT: REVISED ITEM VETO LETTER TO BYRD

TO: Charles S. Konigsberg (KONIGSBERG_C) (OMB)
READ:28-MAR-1996 12:30:12.09

TO: Alice M. Rivlin (RIVLIN_A) (OMB)
READ:28-MAR-1996 17:00:00.46

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

TO: Charles E. Kieffer (KIEFFER_C) (OMB)
READ:29-MAR-1996 16:19:39.82

TO: Joseph Minarik (MINARIK_J) (OMB)
READ:28-MAR-1996 15:38:15.90

TO: Robert G. Damus (DAMUS_R) (OMB)
READ:28-MAR-1996 12:00:00.29

TO: LAWRENCE J. HAAS (HAAS_L) (OMB)
READ: 1-APR-1996 15:48:22.39

TO: Lisa Kountoupes (KOUNTOUPES_L) (OMB)
READ:28-MAR-1996 14:06:01.31

TO: Martha Foley (FOLEY_M) (WHO)
READ:29-MAR-1996 16:58:36.04

TO: John C. Angell (ANGELL_J) (WHO)
READ:28-MAR-1996 12:06:47.00

TO: Barbara C. Chow (CHOW_B) (WHO)
READ:29-MAR-1996 08:50:12.66

TO: Paul J. Weinstein, Jr (WEINSTEIN_P) (OPD)
READ:28-MAR-1996 12:26:19.59

TO: Elena Kagan (KAGAN_E) (WHO)
READ:28-MAR-1996 13:51:07.10

TO: Gene B. Sperling (SPERLING_G) Autoforward to: Daniel Taber
READ:NOT READ

TO: James J. Jukes (JUKES_J) (OMB)
READ:28-MAR-1996 11:59:29.81

TO: James C. Murr (MURR_J) (OMB)
READ:28-MAR-1996 12:14:46.65

TEXT:
PRINTER FONT 12_POINT_COURIER
3/28/96
From: Chuck Konigsberg

Following is a REVUSED draft response to Sen. Byrd for a 3/21 item veto letter to POTUS. Byrd's letter to POTUS states that he is "unalterably opposed to giving any President" enhanced rescission authority; he also states that the delegation would do "great harm to the constitutional balance." Much of the letter pertains to Byrd's concern that the 1997 effective date is "blatantly partisan". The revision, in bold, is a point suggested by DOJ. (I've also updated the letter to reflect Senate and likely House action.) Let me know by COB Thursday if you have any revisions to the attached draft. Otherwise, I will pass along to WH/LA at end of the day. Thanks.

DRAFT-
□
-NOT FOR RELEASE
Dear Senator Byrd:

I appreciated receiving your letter of March 21, 1996 expressing concerns about the conference agreement on the line
□
-item veto.

I am mindful of your strong, and deeply held convictions on this issue. However, as you know, the line
□
-item veto is
something I have consistently supported over the years. I had the authority as a Governor and found it to be a useful tool for controlling the budget. I am pleased that the House and Senate have approved the conference report on S. 4 which delegates authority to cancel certain discretionary and direct spending, as well as limited tax benefits. [fyi-
□
-the House will be voting
early Thursday afternoon]

I must respectfully disagree with your concerns about the effect of this legislation on the constitutional balance of powers. While the conference agreement delegates to the President a useful measure of cancellation authority, that delegation has been carefully limited by the very specific definitions of spending and tax benefits, as well as expedited procedures for consideration of disapproval legislation. Moreover, the carefully defined cancellation authority is a practical and principled means of serving the constitutional balance of powers, by redressing the modern practice of presenting the President with omnibus legislation.

Regarding the effective date of the new authority, I would, of course, have preferred that the new authority be effective upon enactment. Nevertheless, I am pleased that the House and Senate have overcome their differences and produced a conference agreement which delegates effective cancellation authority.

Thank you again for expressing your concerns to me about this important legislation.

Sincerely,
BC

Withdrawal/Redaction Marker
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Kumiki Gibson to Whalen, et al; RE: Saturday Night (1 page)	03/28/1996	Personal Misfile

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

FOLDER TITLE:
[3/27/1996 - 4/4/1996]

2009-1006-F
ke719

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]

Withdrawal/Redaction Marker
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
002. email	Phone No. (Partial) (1 page)	03/28/1996	P6/b(6)

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

FOLDER TITLE:
[3/27/1996 - 4/4/1996]

2009-1006-F
ke719

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: Marilyn Yager (YAGER_M) (WHO)

CREATION DATE/TIME:28-MAR-1996 13:26:31.64

SUBJECT: fyi

TO: John P. Hart (HART_J) (WHO)
READ:28-MAR-1996 13:26:45.94

TO: Peter Jacoby (JACOBY_P) (WHO)
READ:28-MAR-1996 17:18:08.08

TO: Elena Kagan (KAGAN_E) (WHO)
READ:28-MAR-1996 13:53:15.36

TEXT:

========== ATTACHMENT 1 ==========
ATT CREATION TIME/DATE:28-MAR-1996 13:22:00.00

ATT BODYPART TYPE:B

ATT CREATOR: Marilyn Yager

ATT SUBJECT: chief justices

ATT TO: Bruce R. Lindsey (LINDSEY_B)

ATT TO: Jennifer D. Dudley (DUDLEY_J)

TEXT:
Justice Felman (chief Justice of Arizona) not only wants to be helpful on the product liaiblity issue, but wants to talk about a resolution the Conference of Chief Justices are going to pass (or have just passed) opposing the Product liaibilty Conference Report. Justice Feldman will be in Washington until tomorrow morning (202/429-2400, room 1045) and then can be reached in Arizona at P6/(b)(6) [002]
========== END ATTACHMENT 1 ==========

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

CREATOR: James S. Rubin (RUBIN_J) (WHO)

CREATION DATE/TIME:28-MAR-1996 14:37:21.52

SUBJECT: charities bill

TO: Elena Kagan (KAGAN_E) (WHO)
READ:28-MAR-1996 14:49:41.71

TEXT:
Apparently there's still some possibility that the Senate will take up the bill before recess. I'll keep you posted.
Jamie Rubin

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

CREATOR: Deborah L. Fine (FINE_D) (OPD)

CREATION DATE/TIME:28-MAR-1996 13:53:41.69

SUBJECT: RE: CHANGE IN MEETING

TO: Elena Kagan (KAGAN_E) (WHO)
READ:28-MAR-1996 13:58:56.81

CC: Jeremy D. Benami (BENAMI_J) (WHO)
READ:28-MAR-1996 16:46:27.29

CC: Jennifer L. Klein (KLEIN_J) (OPD)
READ:28-MAR-1996 14:24:15.28

CC: Dorothy L. Karayannis (KARAYANNIS_D) (OPD)
READ:28-MAR-1996 15:33:43.16

TEXT:
Okay..... let's talk Tuesday. Can anyone do it late in the day on Tuesday?

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

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

CREATION DATE/TIME:28-MAR-1996 13:55:41.94

SUBJECT: for you

TO: Elena Kagan (KAGAN_E) (WHO)
READ:28-MAR-1996 14:06:23.47

TEXT:

========== ATTACHMENT 1 ==========
ATT CREATION TIME/DATE:27-MAR-1996 17:38:00.00

ATT BODYPART TYPE:B

ATT CREATOR: Michael T. Schmidt

ATT SUBJECT: Indian Gaming issue FYI

ATT TO: Stephen R. Neuwirth (NEUWIRTH_S)

TEXT:

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

========== ATTACHMENT 2 ==========
ATT CREATION TIME/DATE:27-MAR-1996 17:26:00.00

ATT BODYPART TYPE:B

ATT CREATOR: Michael T. Schmidt

ATT SUBJECT: Heads up on Indian Gaming Issue

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

ATT TO: Marcia L. Hale (HALE_M)

ATT TO: Ray Martinez (MARTINEZ_R)

TEXT:
Just wanted to give you a heads up on an Indian Gaming Issue that we will probably be getting calls on soon. This morning, the Supreme Court handed down a decision in a huge Indian Gaming Case -- Seminole Tribe vs. Florida -- which deals a severe blow to Tribes who are unable to negotiate a gaming compact with a Governor. The Court ruled 5-4 that Congress cannot expose states to federal lawsuits when negotiations break down between a Tribe and a Governor over placing gaming operations on reservations. Some background: The Indian Gaming Regulatory Act (IGRA) of 1988 requires Tribes to negotiate with Governors over the types of casino-type gaming that they can operate on Tribal land (Tribes have the power to run bingo operations without any state approval). If a compact cannot be reached, IGRA gives the Tribes the right to sue the state for not negotiating in "good faith." States have long claimed immunity from such suits under the 11th Amendment. In today's ruling, the Supreme Court agreed with the

State's claim.
This ruling is extraordinary in that it one of the few to ever limit Congress' virtually exclusive power to make laws affecting American Indians (although it really doesn't limit Congress' power over the Tribes themselves, just their ability to expose states to a judicial remedy). Its practical affect is yet to be seen -- at the very least it will take away a powerful tool that Tribes had to force a reluctant Governor to sit down and negotiate a compact. This ruling won't so much impact Tribes that already have gaming, but it will impact Tribes seeking gaming, especially in states with Governors who have historically been reluctant to negotiate.

In the short term, I would guess that we will be getting calls from Indian Country asking the POTUS to take some action on this issue. There is really nothing we can do, but Indian Country has long argued that the Secretary of Interior has the power to approve Tribally-run off-reservation gaming without a Governor's sign-off, and they will probably do so once again. The states obviously disagree, and we have consistently agreed with the states on this issue, but we will likely hear about this issue from Tribes. This will also increase pressure on Congress to pass some version of the long-dormant IGRA Amendments.
Justice and Interior are working to analyze this decision. It literally came out this morning, so they are just today getting copies of the 200+ page decision. They will hopefully get us a better analysis of this decision sometime next week, but in the meantime I wanted to pass this on to you FYI.
========== END ATTACHMENT 2 ==========

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

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

CREATION DATE/TIME:28-MAR-1996 15:09:34.96

SUBJECT: welfare

TO: Elena Kagan (KAGAN_E) (WHO)
READ:28-MAR-1996 15:09:45.84

TEXT:
We should talk about the welfare project soon. Thanks.

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

CREATOR: Kris Balderston (BALDERSTON_K) (WHO)

CREATION DATE/TIME:28-MAR-1996 16:18:51.60

SUBJECT: Timber update

TO: Elena Kagan (KAGAN_E) (WHO)
READ:28-MAR-1996 16:37:41.24

TEXT:
Did you do the timber update for Leon? Can Jenn O'C and Kitty and I get a copy?

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

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

CREATION DATE/TIME:28-MAR-1996 18:01:11.87

SUBJECT: RE: meeting

TO: Elena Kagan (KAGAN_E) (WHO)
READ:28-MAR-1996 18:02:40.08

TEXT:
Thanks.

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

CREATOR: Dinah Bear (BEAR_D) (CEQ)

CREATION DATE/TIME:29-MAR-1996 08:52:40.47

SUBJECT: RE: hatfield letter

TO: Elena Kagan (KAGAN_E) (WHO)
READ:29-MAR-1996 09:46:21.91

TEXT:
Thanks. No thanks to our fax machines!
In terms of the Hatfield letter, the last thing I heard was from Barbara Chow via Katie around 8:30ish. To Barbara's apparent surprise, the Rs were "studying" the letter and hadn't rejected it yet. Except they were cranky about one thing - that the Murray language that I was told to attach to the letter carried a fax line from - gasp - Patty Murray's office. I am not making this up. I wish I were.
Yes, I heard about the meeting on the House side. Didn't go well, I gather. I'm not confident I've heard eveyrthing, but there was a good deal of screaming about contract cancellation (with Members stating that they thought it would be fine if some of us exec. branch types went to jail (so much for my overly academic thoughts about the distinctions between the two branches of govern.!). As you may imagine, Peter C. was less than enthused about this notion. They were also adamant that those Trees Had To Stop Falling, Period. They pushed us hard to enter into negotiations on the premise that alternative timber "substantially comply" with the Forest Plan standards and guidelines. Indeed, USDA has now directed the Forest Service to come up with a package deal by next Wed. that wouldn't necessarily meet standards and guidelines and full compliance w/env. law but that would be better than 1st and Last.
I gather the finer legal points were not analyzed or debated.

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

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

CREATION DATE/TIME:29-MAR-1996 09:14:17.03

SUBJECT: Here's the draft enrolled bill memo on HR 956

TO: Elena Kagan (KAGAN_E) (WHO)
READ:29-MAR-1996 09:48:51.34

TO: Ellen S. Seidman (SEIDMAN_E) (OPD)
READ:29-MAR-1996 13:25:15.96

TEXT:

PRINTER FONT 12_POINT_ROMAN
DRAFT - For Executive Office of the President Use Only

MEMORANDUM FOR THE PRESIDENT
SUBJECT: Enrolled Bill H.R. 956 - Common Sense Product Liability Legal Reform Act of 1996
Sponsors - Reps. Hyde (R) IL and Hoke (R) OH

Last Day for Action

Purpose

Establishes Federal standards governing product liability lawsuits and preempts certain State laws governing such lawsuits.

Agency Recommendations

Office of Management and Budget	Disapproval (Veto message attached)
Department of Commerce	
Department of Health and Human Services	
Department of the Treasury	
Small Business Administration	
Department of Labor	No comment (Informally)
Department of Justice	No response

Discussion

Your March 16th letter to the congressional leadership stated that you would veto H.R. 956. The provisions of H.R. 956 to which your letter objected are described below; other provisions are described in the Attachment.

The conference report on H.R. 956 was agreed to in the Senate by a vote of 59
□
-40 and in the House by _____.
Joint
□
-and

□
-Several Liability. H.R. 956 would abolish
?joint
□
-and
□
-several? liability for non
□
-economic damages (e.g.,
pain

and suffering) in product liability cases. Each defendant would only be liable for its percentage of liability as determined at trial. In cases where a defendant goes out of business or is unable to pay its part of a judgment, the other defendants would not be responsible.

Your letter stated that this provision means that ?an innocent victim would suffer when one wrongdoer goes bankrupt and cannot pay his portion of the judgment.?

Cap on Punitive Damages. Punitive damages would generally be limited to the greater of: (1) $250,000; or (2) two times the award for compensatory damages (economic loss and non-economic loss). However, in an action against an individual whose net worth does not exceed $500,000 or a business with fewer than 25 full time employees, punitive damages would be limited to the lesser of these two amounts. A court could award additional punitive damages if it determines that the award is insufficient to ?punish . . . egregious conduct? or to ?deter such conduct in the future?.

Your letter stated that the cap on punitive damages would increase an irresponsible company?s incentive to knowingly manufacture and sell defective products.

Preemption of State Law. H.R. 956 preempts State laws that are inconsistent with the bill?s standards for product liability lawsuits. Your letter characterized the manner in which H.R. 956 preempts State law as a ?one
□
-way street of
federalism, in which Congress defers to state law when doing so helps manufacturers and sellers, but not when doing so aids consumers.? H.R. 956 would allow a State to have:

? A shorter -- but not a longer -- time limit for filing product liability actions than the bill?s limit of 15 years after delivery of the product.

? Lower -- but not higher -- ceilings for punitive damages than those established by the bill (described in the Attachment).

Proponents? Arguments in Favor of H.R. 956

Proponents of H.R. 956 argue that the enrolled bill would improve the competitiveness of American businesses by:

? Preventing firms with a small share of responsibility for a claim from having to pay a large share of the damages.

? Precluding excessive awards of damages.

? Removing burdens associated with the need to comply with 50 different State laws governing product liability.

Conclusion and Recommendations

We join _____ in recommending that you veto

H.R. 956.

Attached for your consideration is a veto message that was prepared by the Office of the White House Counsel. It has been reviewed and approved by _____.

Alice M. Rivlin
Director

Enclosures
□
Attachment

Other Provisions of H.R. 956

Statute of Repose. A product liability action involving a durable good could not be filed more than 15 years after the delivery of the product to the first purchaser or lessee. However, State law could shorten the period. The Senate
□
-passed
version of H.R. 956 provided a 20
□
-year period.

Statute of Limitations. A product liability action could not be filed more than 2 years after the claimant discovered or should have discovered: (1) the harm that is the subject of the action; and (2) the cause of the harm.

A provision in the Senate
□
-passed version that stopped the
statute of limitations from running in the event of a stay or injunction against an action was dropped. (Such a provision protects claimants when a potential defendant files for liquidation or reorganization, because the bankruptcy court will usually issue a stay pending completion of its proceedings.)

Legal Standard for Punitive Damages. A higher legal standard for punitive damages in product liability cases than the current ?preponderance of the evidence? standard [used by [some] [many] [most] States] would be established. A plaintiff would have to establish by ?clear and convincing? evidence that the defendant?s conduct demonstrated a ?conscious flagrant indifference to the rights and safety? of those who might be harmed.

Liability of Retailers. Retailers, including those who rent or lease products, generally would be liable only for damages caused by their own actions -- not for selling or renting a defective product.

Misuse of Alteration of the Product. Damages would have to be reduced by the percentage of responsibility of the claimant?s harm attributable to misuse or alteration of the product.

Use of Product When Intoxicated. H.R. 956 would relieve a defendant from liability if: (1) the claimant was intoxicated or under the influence of alcohol or a drug that was not prescribed for the claimant or was not being used as prescribed when the accident or other event occurred; and (2) the claimant, as a result, was was more than 50 percent

responsible.

Alternative Dispute Resolution Procedures. A claimant or a defendant in a product liability action could, within a
RESET 2
specified time limit, offer to proceed under certain voluntary, nonbinding alternative dispute resolution procedures.

Workers? Compensation Subrogation. An insurer would be given the right to recover from a manufacturer or product seller the workers? compensation benefits paid to a claimant that are subject to a product liability action.

Biomaterials Suppliers. Suppliers of component parts or raw materials for use in the manufacture of a medical device that is implanted in the body would generally be excluded from liability for harm to a claimant caused by an implant. The Administration supported these provisions of H.R. 956.

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

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

CREATION DATE/TIME:29-MAR-1996 10:04:28.86

SUBJECT: RE: our favorite subject

TO: Elena Kagan (KAGAN_E) (WHO)
READ:29-MAR-1996 10:15:43.77

TEXT:
understood, even without your saying so.

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

CREATOR: John O. Sutton (SUTTON_J) (WHO)

CREATION DATE/TIME:29-MAR-1996 10:22:36.47

SUBJECT: RE: meeting today

TO: Elena Kagan (KAGAN_E) (WHO)
READ:29-MAR-1996 10:23:05.96

TEXT:
The meeting will be in room 100 but you and Bruce should just come to harolds office at 11 am and you guys can talk for a couple of minutes and then head over to room 100. Is that ok?

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

CREATOR: Todd Stern (STERN_T) (WHO)

CREATION DATE/TIME:29-MAR-1996 10:46:23.26

SUBJECT: RE: abortion statement

TO: Elena Kagan (KAGAN_E) (WHO)
READ:29-MAR-1996 12:17:49.77

TEXT:
Thanks. By the way, I thought you did an excellent job on this. It'll be interesting to see if the POTUS fiddles with it, when the time comes.

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

CREATOR: Leanne Johnson (JOHNSON_L) (WHO)

CREATION DATE/TIME:29-MAR-1996 11:27:53.22

SUBJECT: Campaign Lobbying refomr letter

TO: Elena Kagan (KAGAN_E) (WHO)
READ:29-MAR-1996 12:18:14.90

TEXT:
Could you let me know whether the campaign lobbying reform form letter is o.k or if there is anyone else it needs to be cleared through? Thanks for your help.

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

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

CREATION DATE/TIME:29-MAR-1996 11:33:04.38

SUBJECT: HR 956 Product Liability

TO: Elena Kagan (KAGAN_E) (WHO)
READ:29-MAR-1996 12:18:48.28

CC: Ellen S. Seidman (SEIDMAN_E) (OPD)
READ:29-MAR-1996 13:28:53.51

CC: James C. Murr (MURR_J) (OMB)
READ:29-MAR-1996 13:35:54.48

CC: James J. Jukes (JUKES_J) (OMB)
READ:29-MAR-1996 11:33:19.29

TEXT:
This morning, I e-mailed to you and Ellen our draft enrolled bill memo on HR 956. Please let me have any comments by Monday morning.
We have been asked to have our enrolled bill memo to the White House by cob Monday.
Please let me have a copy of the draft veto message this afternoon so that we can have it ready to go with the enrolled bill memo on Monday. Thank you.

Withdrawal/Redaction Marker
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
003. email	Kathleen Whalen to Elena Kagan, et al. Subject: Dinner and Stomp (1 page)	03/29/1996	Personal Misfile

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

FOLDER TITLE:
[3/27/1996 - 4/4/1996]

2009-1006-F
ke719

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: Michael T. Schmidt (SCHMIDT_MT) (OPD)

CREATION DATE/TIME:29-MAR-1996 13:37:43.09

SUBJECT: Seminole and Indian Gamiong

TO: Elena Kagan (KAGAN_E) (WHO)
READ:29-MAR-1996 13:44:52.59

TEXT:
I have been told that you are working on the Supreme Court's recent Seminole ruling and our response to that ruling. I wanted to pass on some information to you that I hope will be helpful. This morning, I was over at John Duffy's Office (DOI -- Counselor to Babbit and Indian Gaming Guru) and took part in a very informal discussion of this issue with John, Jim Simon (DOJ), and some other agency folks. (I apologize for not letting you know about this meeting, but before today I didn't realize you were working on the issue!) Nothing much came from this meeting, just some brainstorming over possible options that the Admin can chose from in dealing with the Indian Gaming side of the Seminole Decision. It is my understanding that the Departments of Justice and Interior will be meeting more formally on Monday to discuss this issue and agency (and Administration) reaction to the issue. Both DOJ and DOI expressed great interest in having someone from WH Counsel attend. Included in this meeting may be some discussion about a possible press release -- I am not sure about this, but I asked John Duffy over at Interior to make sure he ran any public statement from DOI by the WH before releasing. You may be interested in attending this meeting -- if so, call Bob Anderson (Solicitor's Office DOI) at 208-7404, or Craig Alexander (DOJ Office of Tribal Justice) at 514-9080 for time and place. I think that a number of DOJ shops will be at the meeting, not just OTJ.
I will be out of town from this afternoon until Tuesday night. Due to my lack of a skypager, I have left a contact number with WH Operator if you need to reach me before I get back. Also, Pat Romani (Carol Rasco's assistant) has these numbers as well.
Hope this helps!

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

CREATOR: Jennifer Palmieri (PALMIERI_J) (WHO)

CREATION DATE/TIME:30-MAR-1996 12:26:54.12

SUBJECT: Timber meeting

TO: Martha Foley (FOLEY_M) (WHO)
READ:30-MAR-1996 12:59:39.47

TO: Kathleen A. McGinty (MCGINTY_K) (CEQ)
READ: 1-APR-1996 09:35:11.50

TO: Robert C. Vandermark (VANDERMARK_R) (CEQ)
READ: 1-APR-1996 09:26:20.65

TO: Ron Klain (KLAIN_R) Autoforward to: Remote Addresse
READ:NOT READ

TO: Debbie B. Bengtson (BENGTS_D) Autoforward to: Remote Address
READ:NOT READ

TO: John O. Sutton (SUTTON_J) (WHO)
READ: 1-APR-1996 08:37:05.49

TO: Elena Kagan (KAGAN_E) (WHO)
READ:30-MAR-1996 16:52:30.05

TEXT:
Leon would like to do a timber meeting on Monday at 4:30 pm in his office.
The meeting is tentative for now, pending confirmations from Ag and DOJ.
We will let you know when this is confirmed.

Withdrawal/Redaction Marker
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
004. email	Ron Klain to Elena Kagan. Subject: there is no other (1 page)	04/01/1996	P6/b(6)

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

FOLDER TITLE:
[3/27/1996 - 4/4/1996]

2009-1006-F
ke719

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: Todd Stern (STERN_T) (WHO)

CREATION DATE/TIME: 1-APR-1996 10:00:18.01

SUBJECT: veto gal

TO: Elena Kagan (KAGAN_E) (WHO)
READ: 1-APR-1996 10:39:42.57

TEXT:
I understand you've got the contract on the product liability veto. Can you let me know when you've got a draft suitable for circulating. I'd like to get it around as soon as you're ready. Thanks.

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

CREATOR: Melissa Y. Cook (COOK_MY) (OMB)

CREATION DATE/TIME: 1-APR-1996 10:50:33.90

SUBJECT: LRM #3853, VA Report on RH 2401

TO: Rosalyn J. Rettman (RETTMAN_R) (OMB)
READ: 8-APR-1996 13:17:06.08

TO: Allison H. Eydt (EYDT_A) (OMB)
READ: 1-APR-1996 11:29:33.48

TO: Gary L. Bennethum (BENNETHUM_G) (OMB)
READ: 3-APR-1996 17:10:50.61

TO: Molly Brostrom (BROSTROM_M) (WHO)
READ: 1-APR-1996 11:52:17.60

TO: Elena Kagan (KAGAN_E) (WHO)
READ: 1-APR-1996 10:50:49.05

TO: Stephen R. Neuwirth (NEUWIRTH_S) (WHO)
READ: 1-APR-1996 12:54:35.02

TO: Alphonse Maldon (MALDON_A) (WHO)
READ: 9-APR-1996 09:37:14.93

TO: Tracey E. Thornton (THORNTON_T) Autoforward to: Elisa M. Mil
READ: 3-APR-1996 13:02:25.07

TO: Lisa Kountoupes (KOUNTOUPES_L) (OMB)
READ: 4-APR-1996 16:14:45.83

TO: Alice E. Shuffield (SHUFFIELD_A) (OMB)
READ: 2-APR-1996 11:15:43.77

TO: Eric L. Macris (MACRIS_E) (OMB)
READ: 2-APR-1996 09:41:47.01

TEXT:
Could you please let me know by COB TODAY (4/1) if you have any comments on VA's report on HR 2401, "Payments to Children of Radiation-Exposed Veterans" (LRM #3853)? If I do not hear from you by then, I will assume that you do not have any comments on this report and will clear it.
Thanks.

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

CREATOR: Cheryl L Sweitzer (SWEITZER_C) (WHO)

CREATION DATE/TIME: 1-APR-1996 11:46:36.00

SUBJECT: HELP!!

TO: Donna Alberts (ALBERTS_D) (WHO)
READ:NOT READ

TO: Jana L. Blair (BLAIR_J) (WHO)
READ:NOT READ

TO: Pamela Brewington (BREWINGTON_P) (WHO)
READ:NOT READ

TO: Virginia Canter (CANTER_V) (WHO)
READ:NOT READ

TO: James Castello (CASTELLO_J) (WHO)
READ:NOT READ

TO: Christopher D. Cerf (CERF_C) (WHO)
READ: 1-APR-1996 13:42:31.78

TO: Dawn Chirwa (CHIRWA_D) (WHO)
READ: 2-APR-1996 09:51:12.56

TO: Jonathan Denbo (DENBO_J) (WHO)
READ: 1-APR-1996 11:47:05.36

TO: Jennifer D. Dudley (DUDLEY_J) (WHO)
READ: 1-APR-1996 12:58:00.93

TO: Mark D. Fabiani (FABIANI_M) (WHO)
READ: 1-APR-1996 12:43:27.08

TO: David Fein (FEIN_D) (WHO)
READ: 2-APR-1996 09:23:51.30

TO: Kimberly A. Holliday (HOLLIDAY_K) (WHO)
READ: 1-APR-1996 13:23:44.56

TO: Edward F. Hughes (HUGHES_E) (WHO)
READ: 1-APR-1996 14:52:33.59

TO: Rochester M. Johnson (JOHNSON_RM) (WHO)
READ: 1-APR-1996 12:36:24.76

TO: Elena Kagan (KAGAN_E) (WHO)
READ: 1-APR-1996 12:28:34.60

TO: Marvin Krislov (KRISLOV_M) (WHO)
READ: 1-APR-1996 15:09:31.67

TO: Bruce R. Lindsey (LINDSEY_B) (WHO)
READ: 1-APR-1996 13:49:13.33

TO: D. Craig Livingstone (LIVINGSTON_D) (WHO)

READ: 1-APR-1996 12:13:46.58

TO: Clifford J. Mauton (MAUTON_C) (WHO)
READ: 1-APR-1996 12:12:26.49

TO: Cheryl D. Mills (MILLS_C) (WHO)
READ: 1-APR-1996 12:59:14.54

TO: Melissa M. Murray (MURRAY_MM) (WHO)
READ: 1-APR-1996 11:46:58.09

TO: Miriam R. Nemetz (NEMETZ_M) (WHO)
READ: 1-APR-1996 12:45:17.45

TO: Stephen R. Neuwirth (NEUWIRTH_S) (WHO)
READ: 1-APR-1996 12:52:33.19

TO: Victoria L. Radd (RADD_V) (WHO)
READ: 1-APR-1996 12:04:10.62

TO: Stacy E. Reynolds (REYNOLDS_S) (WHO)
READ: 1-APR-1996 12:58:26.95

TO: Robert W. Schroeder III (SCHROEDER_R) (WHO)
READ: 1-APR-1996 11:47:14.56

TO: Jane C. Sherburne (SHERBURNE_J) (WHO)
READ: 1-APR-1996 14:49:25.16

TO: Robert A. VanKirk (VANKIRK_R) (WHO)
READ:NOT READ

TO: Odetta S. Walker (WALKER_O) (WHO)
READ: 2-APR-1996 09:31:32.56

TO: Renee A. Warren (WARREN_R) (WHO)
READ: 1-APR-1996 11:47:03.62

TO: Kathleen M. Whalen (WHALEN_K) (WHO)
READ: 1-APR-1996 11:46:58.87

TO: Natalie Williams (WILLIAMS_N) (WHO)
READ:NOT READ

TO: Jon Yarowsky (YAROWSKY_J) (WHO)
READ: 1-APR-1996 15:46:01.78

TEXT:
Kathy Wallman is looking for attorneys who would be interested and available to help on sorting out, with OLC, constitutional and federalism issues that may arise from a proposal to establish a mechanism to evaluate insurance loss costs due to a catastrophic earthquake or other natural disaster.
Please call her ASAP
Thanks

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

CREATOR: Melissa Y. Cook (COOK_MY) (OMB)

CREATION DATE/TIME: 1-APR-1996 16:09:58.73

SUBJECT: RE: lrm 3694

TO: Elena Kagan (KAGAN_E) (WHO)
READ: 1-APR-1996 16:25:43.00

TEXT:
yes, Justice's comments are included in the package. Justice only commented on the Speaker letter for the draft bill.

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

CREATOR: Elisabeth Blaug (BLAUG_E) (CEQ)

CREATION DATE/TIME: 1-APR-1996 18:57:10.16

SUBJECT: headwaters

TO: Elena Kagan (KAGAN_E) (WHO)
READ: 2-ÀPR-1996 08:30:59.48

TO: Dawn Chirwa (CHIRWA_D) (WHO)
READ: 2-APR-1996 09:53:08.04

CC: Kathleen A. McGinty (MCGINTY_K) (CEQ)
READ: 1-APR-1996 19:40:05.04

TEXT:
Earlier today I faxed you a draft 'Principles Governing Discussions" of Headwater, and accompanying draft letter to John Garamendi from Pacific Lumber/Maxxam/Hurwitz, in which the latter agree that any statements made during the course of Headwaters discussions will be inadmissible in any future judicial proceedings. I am reviewing it, and would appreciate your thoughts on the documents as well. Thanks!

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

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

CREATION DATE/TIME: 2-APR-1996 15:06:30.99

SUBJECT: You had previously asked about this; I assume you know...

TO: Elena Kagan (KAGAN_E) (WHO)
READ: 2-APR-1996 15:35:20.33

TEXT:
Date: 04/02/96 Time: 08:40
AFDA Begins Review of Abortion Drug RU-486

WASHINGTON (AP) A nonprofit research group has finished testing the French abortion drug RU-486 on 2,100 American women and asked the Food and Drug Administration to allow it for sale.

The FDA confirmed Monday that it had received the Population Council's application for RU-486 last month.

Although the FDA won't say how long it will take to decide the drug's fate, FDA Commissioner David Kessler told Congress last year the review would take about six months. But it could be a little longer the agency typically spends a year on drugs that don't address life-threatening diseases.

The FDA is expected to approve the drug, based partly on records of its use on 150,000 women in Europe, where it had about a 97 percent success rate.

U.S. testing also would have to show the drug worked. The Population Council would not release those results Monday, because it is awaiting publication of the data in a medical journal.

Anti-abortion groups urged the FDA to reject RU-486.

``The FDA should not be approving a drug whose sole intention is to kill,'' said Gracie Hsu of the Family Research Council.

Almost all of the nation's 1.3 million abortions are surgical, although doctors last year began publicizing the fact that a drug already on the market to treat cancer methotrexate also can be used to induce abortion.

But RU-486, known chemically as mifepristone, would be the first drug specifically approved by the FDA for nonsurgical abortion.

Pressure from abortion opponents prompted French manufacturer Roussel Uclaf to refuse for years to bring RU-486 to this country. Last year, the Clinton administration brokered a deal giving the Population Council the U.S. patent rights to the drug, so it could seek FDA approval.

RU-486 blocks development of progesterone, a natural steroid hormone that is essential for maintaining pregnancy. A doctor administers the pill and two days later gives the woman a prostaglandin, a hormone that causes contractions to expel the embryo.

The process can be painful. Like surgical abortions, there can be side effects, including heavy bleeding and nausea, and it can be used only through the seventh week of pregnancy.

Because of the risks, federal health officials have said RU-486 won't be available over the counter and should be administered only by specially trained doctors.

The methotrexate that some doctors already use for nonsurgical abortions also requires a return trip for a prostaglandin, but it takes about a week instead of two days.

Preparing for the FDA's possible approval of RU-486, the Population Council has given exclusive legal rights to a new

company in Washington, Advances in Health Technology, to coordinate the drug's manufacture and distribution.

The council refused to name the actual manufacturer because of security concerns, and federal regulations allow the FDA to keep the identity secret.

APNP-04-02-96 0844EST

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

CREATOR: Elisabeth Blaug (BLAUG_E) (CEQ)

CREATION DATE/TIME: 2-APR-1996 18:30:10.50

SUBJECT: headwaters

TO: Elena Kagan (KAGAN_E) (WHO)
READ: 2-APR-1996 18:56:16.14

TO: Dawn Chirwa (CHIRWA_D) (WHO)
READ: 2-APR-1996 20:26:18.12

TEXT:
The DOJ point person is Bill Kollins, Chief of the Land Acquisition. Apparently he's developed many similar agreements. Lois talked to Dave Watts from Interior about this, and my sense was that she was comfortable with DOJ signing on behalf of the U.S.
I conveyed your comments to Dave, but told him you wanted to talk to DOJ before we all sign off. Bill Kollin's number is 305-0316. Again, thanks for your quick turnaround.

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

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

CREATION DATE/TIME: 3-APR-1996 10:59:39.47

SUBJECT: Veto message on Product Liability

TO: Elena Kagan (KAGAN_E) (WHO)
READ: 3-APR-1996 11:05:52.77

CC: James C. Murr (MURR_J) (OMB)
READ: 4-APR-1996 08:33:03.77

TEXT:
I had a message from Pam Smith (Justice Legislative Affairs). She thinks that John Schmidt spoke directly to Jack Quinn with comments on your draft veto message. She is trying to confirm.

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

CREATOR: Christine L. Nolin (NOLIN_CL) (OMB)

CREATION DATE/TIME: 3-APR-1996 15:23:09.76

SUBJECT: Forest Service Guidance on Replacement timber for 1st & Last

TO: Martha Foley (FOLEY_M) (WHO)
READ: 3-APR-1996 15:26:03.54

TO: Elena Kagan (KAGAN_E) (WHO)
READ: 4-APR-1996 11:48:10.72

CC: T J Glauthier (GLAUTHIER_T) (OMB)
READ: 3-APR-1996 15:33:00.54

CC: Ron Cogswell (COGSWELL_R) (OMB)
READ: 3-APR-1996 15:31:16.50

CC: Mark A. Weatherly (WEATHERLY_M) (OMB)
READ: 3-APR-1996 15:26:20.37

CC: Ruth D. Saunders (SAUNDERS_R) (OMB)
READ:14-APR-1996 22:14:43.12

TEXT:
USDA will be revising its draft guidance to the field as a result of a meeting held this afternoon with TJ Glauthier, CEQ, DOJ, DOI and NMFS. TJ has asked that I circulate the revised version to you. You should be getting it about 4:30 and we need a quick turn around in order to try to get it out today.
Because of outstanding legal concerns raised by DOJ, the guidance will be limited at this time to the 5 released sales that are the subject of current controversy. This includes the First and Last sales.
In order to guide policy making on replacement timber for other environmentally damaging sales, DOJ has been charged with providing answers to the following legal questions:

1) Do we have the authority to unilaterally cancel 318 contracts under their original contract provisions? (analysis underway since last week).

2) a. Can we provid, for k(1) sales, replacement timber that doesn't comply with environmental laws and Forest Plan standards and guidelines?

b. Can we provide, for k(3) sales, replacement timber that doesn't comply with environmental laws and Forest Plan standards and guidelines? (the general consensus is that the answers to these questions may be different).

3) Do we have the authority to offer Forest Plan timber as replacement timber under k(3)?

4) Do we have the authority to buy out a 318 contract in a voluntary agreement with a purchaser?

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

CREATOR: Melissa Y. Cook (COOK_MY) (OMB)

CREATION DATE/TIME: 3-APR-1996 16:03:02.95

SUBJECT: OPM Draft Bill on OSC Amendement -- CORRECTION

TO: Raymond P. Kogut (KOGUT_R) (OMB)
READ: 3-APR-1996 16:59:09.45

TO: Steven D. Aitken (AITKEN_S) (OMB)
READ: 3-APR-1996 16:04:46.38

TO: Joseph F. Lackey, Jr. (LACKEY_J) (OMB)
READ: 8-APR-1996 15:13:34.15

TO: Elena Kagan (KAGAN_E) (WHO)
READ: 4-APR-1996 11:48:40.90

TO: Jeremy D. Benami (BENAMI_J) (WHO)
READ: 3-APR-1996 16:51:53.86

TO: Jennifer M. O'Connor (OCONNOR_J) (WHO)
READ: 3-APR-1996 16:36:19.84

CC: Janet R. Forsgren (FORSGREN_J) (OMB)
READ: 4-APR-1996 09:08:43.61

TEXT:
On Apr. 1st, I circulated a route slip regarding an OPM draft bill, "Office of Special Counsel Amendment." Attached to this route slip were the OPM draft bill and the comments that we have received to date on that document.
Please note that the DOJ comments as contained in that package were INCORRECTLY marked -- i.e., I inadvertently put the insert in the wrong sentence of speaker letter. The insert should be placed 2 lines down in that same paragraph. The CORRECT DOJ comment is the following:
-- On the 1st page of the Speaker letter, 2nd paragraph, last sentence, strike out "proposing to take the action ordered," and insert lieu thereof "initiating proceedings against the employee,".
This is DOJ's only comment on the draft bill. Please let me know by COB Thursday, April 4th (when comments on due on the full package) if you have any problems with the above comment. If I do not hear from you by then, I will assume that you approve of the above DOJ comment.
Thanks.

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

CREATOR: Christine L. Nolin (NOLIN_CL) (OMB)

CREATION DATE/TIME: 3-APR-1996 17:02:48.62

SUBJECT: USDA Guidance Will Not be Available Until Tomorrow

TO: T J Glauthier (GLAUTHIER_T) (OMB)
READ: 5-APR-1996 15:14:13.95

TO: Martha Foley (FOLEY_M) (WHO)
READ: 3-APR-1996 17:02:54.39

TO: Elena Kagan (KAGAN_E) (WHO)
READ: 4-APR-1996 11:49:08.09

CC: Ron Cogswell (COGSWELL_R) (OMB)
READ: 3-APR-1996 18:05:58.44

CC: Dinah Bear (BEAR_D) (CEQ)
READ: 3-APR-1996 17:03:55.32

TEXT:
Anne Kennedy (USDA) reports that USDA has acceded to a request by Lois Schiffer (DOJ) to hold off on sending out the USDA/FS guidance on First and Last and the other 318 sales until tomorrow. Lois wants the opportunity to discuss the issue with her staff attorneys before signing off on any guidance.

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

CREATOR: Kris Balderston (BALDERSTON_K) (WHO)

CREATION DATE/TIME: 3-APR-1996 19:22:16.88

SUBJECT: Timber

TO: Elena Kagan (KAGAN_E) (WHO)
READ: 4-APR-1996 11:50:50.33

TEXT:
Is there some new development in the world of timber? Glickman letter?

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

CREATOR: Dinah Bear (BEAR_D) (CEQ)

CREATION DATE/TIME: 4-APR-1996 10:30:41.51

SUBJECT: murrelet sales stay order from Judge Hogan

TO: Kathleen A. McGinty (MCGINTY_K) (CEQ)
READ: 5-APR-1996 14:32:48.30

TO: Martha Foley (FOLEY_M) (WHO)
READ: 4-APR-1996 10:30:59.48

TO: T J Glauthier (GLAUTHIER_T) (OMB)
READ: 5-APR-1996 15:16:53.61

TO: Jennifer M. O'Connor (OCONNOR_J) (WHO)
READ: 4-APR-1996 10:43:46.67

TO: Elena Kagan (KAGAN_E) (WHO)
READ: 4-APR-1996 11:51:52.81

TO: Christine L. Nolin (NOLIN_CL) (OMB)
READ: 4-APR-1996 10:32:31.73

TO: Ruth D. Saunders (SAUNDERS_R) (OMB)
READ:14-APR-1996 22:23:47.10

TO: Thomas C. Jensen (JENSEN_T) (CEQ)
READ: 4-APR-1996 10:35:49.85

CC: Brian J. Johnson (JOHNSON_BJ) (CEQ)
READ: 4-APR-1996 10:30:53.07

TEXT:
Yesterday, Judge Hogan issued his order on our request for an extension of the stay from his earlier injunction to release all timber sale units on national forests and BLM units in Oregon and Washington for which the government's "known to be nesting" determinations for marbled murrelets did not meet the criteria set out in his decision in his January decision. You will recall that Judge Hogan granted a 60 day stay upon issuance of his injunction, and that those 60 days ran out on March 25th. Argument on the case before the 9th Circuit Court of Appeals is scheduled for May 7th. We asked that the stay of his injunction be extended until such time as the 9th Circuit Court of Appeals issues it decision, and, in the event that the court did not extend the stay, that Judge Hogan grant a 5 day stay so that we may seek a stay with the Court of Appeals.
We also suggested that if Judge Hogan refused to grant our first request, he reconsider his determination regarding 22 particular sale units for which the court's "known to be nesting" standards were almost, but not quite met.
During the 60 day stay period, Judge Hogan had asked industry plaintiffs to submit a list of those sale units which the government had determined would not meet the "Hogan protocol" for "known to be nesting" AND that the industry claimed had to be harvested immediately in order to meet the Rescission Act's Sept. 30 deadline.

Of 100 sale units that the government had conceded would not meet Hogan's protocol for "known to be nesting", industry plaintiffs listed 75 sale units on which they contend they must commence harvesting immediately to meet the Sept. 30th deadline.
In yesterday's decision, Judge Hogan acknowledged both his concern that the judicial process will "trump the intent of Congress" as well as his recongition that "irreparable harm . . . may result from the harvesting of actual and potential marbled murrelet habitat." He also conceded that the 9th Circuit might modify the standards he set out in his order, although expressing skepticism that they will overturn it completely.
Based on his balancing of these equities, he ordered as follows:
o as to the 25 sale units that the industry is not claiming immediate need to harvest, the stay is extended another 60 days;
o with regards to the 22 "close to meeting Hogan's standard" sales, he has extended the stay for 14 days (presumably to allow the agencies the opportunity to resurvey. Unfortunately, murrelets are just now beginning to return to these units and it may be very difficult to meet his standards. The full population isn't expected until May.)
o as to the 52 remaining sale units for which plaintiffs claim an immediate need to commence harvest, the stay is extended for 5 days (to let us get to the 9th Circuit.)
o no stay is necessary for the 48 sale units that Hogan has determined include "known to be nesting" murrelets, as the industry has not challenged that determination.
DOJ will begin preparing the appeal.

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

CREATOR: Christine L. Nolin (NOLIN_CL) (OMB)

CREATION DATE/TIME: 4-APR-1996 13:02:38.26

SUBJECT: Guidance for Forest Service

TO: Martha Foley (FOLEY_M) (WHO)
READ: 4-APR-1996 14:13:49.22

TO: Elena Kagan (KAGAN_E) (WHO)
READ: 4-APR-1996 13:40:29.14

TEXT:
I just faxed you a copy of the proposed guidance. Your comments/changes would be appreciated as soon as possible. Thanks.