

NLWJC - KAGAN

EMAILS RECEIVED

ARMS - BOX 055 - FOLDER -005

[04/19/1996-05/01/1996]

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

CREATOR: Anna M. Briatico (BRIATICO_A) (OMB)

CREATION DATE/TIME:19-APR-1996 09:45:29.83

SUBJECT: Reminder - Comments on LRM 40002 Due

TO: Robert G. Damus (DAMUS_R) (OMB)

READ:19-APR-1996 11:15:49.71

TO: Victoria B. Wassmer (WASSMER_V) (OMB)

READ:19-APR-1996 11:42:10.37

TO: Elena Kagan (KAGAN_E) (WHO)

READ:19-APR-1996 10:14:00.62

TO: Stephen C. Warnath (WARNATH_S) (OPD)

READ:19-APR-1996 10:16:13.80

CC: Janet R. Forsgren (FORSGREN_J) (OMB)

READ:19-APR-1996 10:01:32.46

TEXT:

Reminder -- Please forward any comments on LRM 4002 (Civil Rights Commission Amendments Act of 1996) to me by no later than noon TODAY. If I do not hear from you by then, I will assume that you have no comments.

Thanks

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

CREATOR: Anna M. Briatico (BRIATICO_A) (OMB)

CREATION DATE/TIME:19-APR-1996 10:07:49.85

SUBJECT: RE: Reminder - Comments on LRM 40002 Due

TO: Elena Kagan (KAGAN_E) (WHO)

READ:19-APR-1996 10:14:05.69

TEXT:

Elena --

I just faxed it over again. Thanks.

Anna

RECORD TYPE: PRESIDENTIAL (EXTERNAL MAIL)

CREATOR: CN=Ron Klain/O=OVP@OVP@LNGATE@EOPMRX

CREATION DATE/TIME:19-APR-1996 10:21:00.00

SUBJECT: Re: seth waxman

TO: KAGAN_E (KAGAN_E@A1@CD) (WHO)

READ:19-APR-1996 10:25:37.13

TEXT:

Message Creation Date was at 19-APR-1996 10:26:00

Sun brunch is not going to work. If you go away next weekend, you will be the only lawyer here not working on the deposition/.

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

CREATOR: Elisabeth Blaug (BLAUG_E) (CEQ)

CREATION DATE/TIME:22-APR-1996 10:27:24.75

SUBJECT: headwaters

TO: Elena Kagan (KAGAN_E) (WHO)

READ:22-APR-1996 10:43:55.95

TEXT:

I'm trying to get a copy of the property list to which Katie referred in her previous e-mail. I'd also like to include Alan McReynolds (from DOI) in our discussion, as he compiled that list and knows the properties like the back of his hand. What's your schedule like tomorrow? Thanks!

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

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

CREATION DATE/TIME:22-APR-1996 10:48:11.87

SUBJECT: RE: welfare

TO: Elena Kagan (KAGAN_E) (WHO)

READ:22-APR-1996 11:05:30.06

TEXT:

Great -- is there a timetable? I think it would be a good idea to have a concrete schedule for which they are responsible.

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

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

CREATION DATE/TIME:22-APR-1996 11:05:22.03

SUBJECT: RE: ethics advice

TO: Elena Kagan (KAGAN_E) (WHO)

READ:22-APR-1996 11:11:46.10

TEXT:

I don't know whether this is the answer you want, but there is no problem in doing this. You should make sure that you do not disclose any non-public information. And if the student wants to thank you in some way in the publication, she should not list your title.

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

CREATOR: Elisabeth Blaug (BLAUG_E) (CEQ)

CREATION DATE/TIME:22-APR-1996 11:37:51.49

SUBJECT: headwaters

TO: Elena Kagan (KAGAN_E) (WHO)

READ:22-APR-1996 11:48:38.62

TO: Dawn Chirwa (CHIRWA_D) (WHO)

READ:22-APR-1996 11:40:10.51

TEXT:

Are you free at 9:00 to meet with Alan McReynolds and me to talk about this headwaters list?

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

CREATOR: Elisabeth Blaug (BLAUG_E) (CEQ)

CREATION DATE/TIME:22-APR-1996 11:54:31.07

SUBJECT: RE: headwaters

TO: Elena Kagan (KAGAN_E) (WHO)

READ:22-APR-1996 11:55:23.82

CC: Dawn Chirwa (CHIRWA_D) (WHO)

READ:22-APR-1996 14:13:59.58

TEXT:

Great--we'll stop by your office at 9.

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

CREATOR: Marilyn Yager (YAGER_M) (WHO)

CREATION DATE/TIME: 22-APR-1996 14:16:32.40

SUBJECT: RE: products

TO: Elena Kagan

(KAGAN_E) (WHO)

READ: 22-APR-1996 18:36:17.23

TEXT:

yes, will bring down to you.

RECORD TYPE: PRESIDENTIAL (PAGER)

CREATOR: Mail Link Monitor (MAILMGT) (SYS)

CREATION DATE/TIME:22-APR-1996 19:31:16.66

SUBJECT: PAGER CONFIRMATION - MURGUIA,JANET

TO: Elena Kagan (KAGAN_E) (WHO)

READ:22-APR-1996 19:31:23.93

TEXT:

PAGE FOR MURGUIA,JANET, WAS TRANSMITTED 22-APR-1996 19:29:25.76

TEXT TRANSMITTED WAS:

SORRY. I'M FREE. ELENA 67594

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

CREATOR: James J. Jukes (JUKES_J) (OMB)

CREATION DATE/TIME:22-APR-1996 21:53:58.19

SUBJECT: Draft Signing Statement for Antiterrorism Bill

TO: Christopher D. Cerf (CERF_C) (WHO)
READ:23-APR-1996 10:31:02.29

TO: Elena Kagan (KAGAN_E) (WHO)
READ:23-APR-1996 08:32:13.35

TO: Bruce N. Reed (REED_B) (WHO)
READ:23-APR-1996 10:54:31.02

TO: Dennis Burke (BURKE_D) (OPD)
READ:22-APR-1996 22:03:27.07

TO: Allan J. Kreczko (KRECZKO_A) (NSC)
READ: 6-MAY-1996 14:34:43.53

TO: Steven N. Simon (SIMON_S) (NSC)
READ:23-APR-1996 11:39:19.32

TO: Robert Malley (MALLEY_R) (NSC)
READ:NOT READ

CC: Todd Stern (STERN_T) (WHO)
READ:23-APR-1996 08:36:36.04

CC: Ronald E. Jones (JONES_RE) (OMB)
READ:23-APR-1996 16:10:47.00

TEXT:

You should have in your fax machines (except for Steve, whose machine was busy) a draft Presidential signing statement for the antiterrorism bill. It has a firm 10:00 Tuesday morning deadline for comments.

The statement is based on a draft supplied earlier this evening by Justice, combined with input from State.

On page 3, there is a placeholder for habeas corpus. The Justice draft was silent on this, apparently on the theory that anything to be said on this issue would be prepared by White House staff. Todd Stern has asked me to get him a fully vetted redraft as early Tuesday as possible. I appreciate your efforts to meet the tight deadline. Thank you.

(Todd, I faxed one to you, too.)

RECORD TYPE: PRESIDENTIAL (PAGER)

CREATOR: Mail Link Monitor (MAILMGT) (SYS)

CREATION DATE/TIME:23-APR-1996 08:36:23.08

SUBJECT: PAGER CONFIRMATION - SHUFFIELD,ALICE

TO: Elena Kagan (KAGAN_E) (WHO)

READ:23-APR-1996 08:47:55.17

TEXT:

PAGE FOR SHUFFIELD,ALICE, WAS TRANSMITTED 23-APR-1996 08:32:48.06

TEXT TRANSMITTED WAS:

PLEASE CALL. ELENA 67594

RECORD TYPE: PRESIDENTIAL (PAGER)

CREATOR: Mail Link Monitor (MAILMGT) (SYS)

CREATION DATE/TIME:23-APR-1996 08:51:32.76

SUBJECT: PAGER CONFIRMATION - FITZPATRICK,MICHAEL

TO: Elena Kagan (KAGAN_E) (WHO)

READ:23-APR-1996 10:03:21.21

TEXT:

PAGE FOR FITZPATRICK,MICHAEL, WAS TRANSMITTED 23-APR-1996 08:48:30.30

TEXT TRANSMITTED WAS:

PLEASE CALL ELENA 67594

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

CREATOR: Seth E. Masket (MASKET_S) (WHO)

CREATION DATE/TIME:23-APR-1996 11:54:25.95

SUBJECT: Thanks for looking at this

TO: Elena Kagan (KAGAN_E) (WHO)

READ:23-APR-1996 14:50:34.61

TEXT:

Specifically, I'd appreciate it if you'd look over paragraphs 2 & 3, (the ones beginning with "The Act also..." and "As I have stated...") This text has already been approved by Greg Simon, Tom Kalil in NEC, and David Lytel in OSTP. Thanks for your help.
-Seth

Dear _____:

Thank you for your message regarding the Telecommunications Act of 1996.

Vice President Gore and I worked hard with Congress on this legislation, and I was proud to sign it into law this past February. The Act is the result of thoughtful, bipartisan deliberation, and I am confident that it will bolster consumer choice while helping to create a more open marketplace for competition and innovation. Additionally, this act will help us connect schools and libraries to the Information Superhighway, preparing American education for the challenges of the next century.

The Act also takes several steps to protect children from inappropriate programming and content. The V-chip will help parents exercise greater control over what their children watch on television. The Act takes a different approach toward Internet communications, and because this approach raises serious constitutional issues, the Act contains a process for expedited judicial review, which is already underway.

As I have stated, I strongly object to the provision in the Act concerning the transmittal of abortion-related speech and information. Although current law prohibits transmittal of this information by certain means, the Department of Justice has advised me of its longstanding policy that this and related provisions in current law are unconstitutional and will not be enforced because they violate the First Amendment. The Department will continue to decline to enforce that provision of current law as it is amended by this legislation.

As the first major revision of our telecommunications laws in more than 60 years, the Telecommunications Act of 1996 will provide a sound basis for America's continued preeminence in communication and information technology. It will provide all Americans with better telecommunications services at lower prices -- preserving the diversity of voices and viewpoints in the mass media that are so important to the health of our democracy.

I appreciate your taking the time to write.

Sincerely,
Bill Clinton

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

CREATOR: Seth E. Masket (MASKET_S) (WHO)

CREATION DATE/TIME:23-APR-1996 14:55:07.21

SUBJECT: RE: Thanks for looking at this

TO: Elena Kagan

(KAGAN_E) (WHO)

READ:23-APR-1996 14:55:24.71

TEXT:

Much appreciated!

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

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

CREATION DATE/TIME:24-APR-1996 10:51:02.98

SUBJECT: RE: assignments

TO: Elena Kagan (KAGAN_E) (WHO)

READ:24-APR-1996 11:06:20.75

TEXT:

you got it. usted lo tiene. vous l'avez.

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

CREATOR: Paul J. Weinstein, Jr (WEINSTEIN_P) (OPD)

CREATION DATE/TIME:24-APR-1996 12:00:52.66

SUBJECT: RE: camp fin mtg

TO: Elena Kagan

(KAGAN_E) (WHO)

READ:24-APR-1996 13:24:36.90

TEXT:

she is invited.

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

CREATOR: Nick B. Kirkhorn (KIRKHORN_N) (WHO)

CREATION DATE/TIME:24-APR-1996 12:59:28.72

SUBJECT: Native American Arts Bill

TO: Elena Kagan (KAGAN_E) (WHO)

READ:24-APR-1996 13:29:47.08

TEXT:

This is a response to an e-mail you sent to Janet Murguia.
HR 3049, a bill to provide for the Continuity of the Board of Trustees of the
Institute of American Indian and Alaska Native Culture and Arts Development, was
passed by voice in the House on 4/23.
Please feel free to contact Janet or me if you have any questions.

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

CREATOR: Michael A. Fitzpatrick (FITZPATRIC_M) (OMB)

CREATION DATE/TIME:24-APR-1996 16:07:22.98

SUBJECT: RE: levin bill

TO: Elena Kagan

(KAGAN_E) (WHO)

READ:24-APR-1996 16:10:57.04

TEXT:

Yes and yes.

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

CREATOR: Stephen C. Warnath (WARNATH_S) (OPD)

CREATION DATE/TIME:24-APR-1996 16:33:25.98

SUBJECT: RE: english-only

TO: Elena Kagan (KAGAN_E) (WHO)

READ:24-APR-1996 16:52:49.46

TEXT:

I would be happy to let you know about meetings, etc.

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

CREATOR: Stephen C. Warnath (WARNATH_S) (OPD)

CREATION DATE/TIME:24-APR-1996 16:34:17.46

SUBJECT: RE: englishonly

TO: Elena Kagan (KAGAN_E) (WHO)

READ:24-APR-1996 16:52:53.79

TEXT:

Absolutely.

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

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

CREATION DATE/TIME:24-APR-1996 18:14:23.93

SUBJECT: RE: free tv

TO: Elena Kagan (KAGAN_E) (WHO)

READ:25-APR-1996 08:58:00.19

TEXT:

It hasn't been decided yet. No one knows.

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

CREATOR: Shelley N. Fidler (FIDLER_S) (CEQ)

CREATION DATE/TIME:25-APR-1996 15:01:26.17

SUBJECT: Thought you should see this too

TO: Elena Kagan (KAGAN_E) (WHO)

READ:25-APR-1996 15:18:12.91

TEXT:

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

ATT CREATION TIME/DATE:25-APR-1996 14:23:00.00

ATT BODYPART TYPE:B

ATT CREATOR: Shelley N. Fidler

ATT SUBJECT: ANWR

ATT TO: Kathleen A. McGinty (MCGINTY_K)

ATT TO: Thomas C. Jensen (JENSEN_T)

ATT TO: Dinah Bear (BEAR_D)

ATT TO: Wesley P. Warren (WARREN_W)

ATT CC: Ray Martinez (MARTINEZ_R)

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

TEXT:

FYI

The Supreme Court's Master filed a recommendation in a court case dating from 1959 involving the disposition of disputed coastal and submerged lands off ALASKA.

You've got it. It might have implications for ANWR. In Alaska, they may say it opens the issue.

We should be cautious.

1. Haven't seen the Special guys report (but he must be a Republican).
2. Admsintration can take exception to the findings.
3. If Supremes decide according to his recommendations it would, most likely, happen next spring.
4. We would have to agree with the state on exactly which lands were included in the decision to enter a final decree.

IF the Supremes go with this, the State of ALaska could have what amounts to a small inhoding in refuge. Whether the state could lease and develop would be highly dependent on numerous factors. Heads up. More later.

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

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

CREATOR: Jennifer Palmieri (PALMIERI_J) (WHO)

CREATION DATE/TIME:25-APR-1996 15:59:43.67

SUBJECT: Partial Birth

TO: Victoria L. Radd (RADD_V) (WHO)

READ:25-APR-1996 17:31:29.10

TO: Laura Capps (CAPPS_L) (WHO)

READ:25-APR-1996 16:15:55.82

TO: Kerry Moran (MORAN_K) (WHO)

READ:NOT READ

TO: Todd Stern (STERN_T) (WHO)

READ:25-APR-1996 15:59:48.71

TO: Carolyn E. Cleveland (CLEVELAND_C) (WHO)

READ:25-APR-1996 16:08:12.86

TO: Betsy Myers (MYERS_B) (WHO)

READ:25-APR-1996 17:47:03.01

TO: Elena Kagan (KAGAN_E) (WHO)

READ:25-APR-1996 16:00:43.55

TO: Cheryl L Sweitzer (SWEITZER_C) (WHO)

READ:25-APR-1996 16:00:26.26

TEXT:

There will be a partial birth meeting in Panetta's office at 10:00 am Friday.

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

CREATOR: Martha Foley (FOLEY_M) (WHO)

CREATION DATE/TIME:25-APR-1996 19:33:58.99

SUBJECT: Signing statement on approps

TO: Dinah Bear (BEAR_D) (CEQ)
READ:25-APR-1996 19:49:52.84

TO: Elena Kagan (KAGAN_E) (WHO)
READ:25-APR-1996 19:49:04.98

TO: Robert G. Damus (DAMUS_R) (OMB)
READ:25-APR-1996 19:34:22.61

CC: Todd Stern (STERN_T) (WHO)
READ:25-APR-1996 20:06:01.71

CC: T J Glauthier (GLAUTHIER_T) (OMB)
READ:26-APR-1996 08:18:29.66

TEXT:

If there is anything we want to establish for legislative history in the signing statement, especially re waivers or any other areas where there is a policy question, we have the opportunity to do it although the window will close before noon tomorrow. Maybe Dellinger should be consulted on the waiver aspect?
(Bill not expected to be taken up until 10pm tonight; POTUS to sign first thing in the am. Signing statement need not be done at the same time, but should go out fairly promptly thereafter.)

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 READ RECEIPT)

CREATOR: POSTMASTER (SYS)

CREATION DATE/TIME:25-APR-1996 19:48:00.00

SUBJECT: Auto reply from FOLEY_M

TO: Elena Kagan (KAGAN_E) (WHO)

READ:25-APR-1996 19:49:24.97

TEXT:

I am away from my desk for long periods of time in CR-related activities today. If you are relying on e-mail to communicate time-sensitive information to me, especially information related to the CR, you may be unsuccessful. Page me if necessary.

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

CREATOR: Robert G. Damus (DAMUS_R) (OMB)

CREATION DATE/TIME:25-APR-1996 19:52:21.83

SUBJECT: Riders

TO: Dinah Bear (BEAR_D) (CEQ)
READ:25-APR-1996 20:51:48.65

TO: Elena Kagan (KAGAN_E) (WHO)
READ:26-APR-1996 09:34:29.93

TEXT:

I'm faxing to both of you proposed final documents on the waivers. The memo to the President is about to be signed and we will be forwarding them to Todd Stern shortly. As I understand it from Todd, they do not plan to sign the bill and the waivers until tomorrow am.

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

CREATOR: Martha Foley (FOLEY_M) (WHO)

CREATION DATE/TIME:25-APR-1996 20:51:37.68

SUBJECT: Legislative history being made as we speak

TO: Dinah Bear (BEAR_D) (CEQ)

READ:25-APR-1996 21:33:10.79

TO: Elena Kagan (KAGAN_E) (WHO)

READ:26-APR-1996 09:35:49.33

TO: Robert G. Damus (DAMUS_R) (OMB)

READ:25-APR-1996 20:52:12.95

TO: Ron Klain (KLAIN_R) Autoforward to: Remote Adresse

READ:NOT READ

CC: T J Glauthier (GLAUTHIER_T) (OMB)

READ:26-APR-1996 08:19:05.04

CC: Shelley N. Fidler (FIDLER_S) (CEQ)

READ:26-APR-1996 08:48:31.14

CC: Todd Stern (STERN_T) (WHO)

READ:26-APR-1996 08:44:40.97

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

READ:26-APR-1996 08:10:05.81

TEXT:

Kay Baily Hutchison and Hatfield just engaged in a colloquy to attempt to establish legislative history on the ESA waiver, in which they asserted that the President is required to consider jobs and economic factors in exercising his waiver. Hatfield (I think) also stated that those factors were equally applicable to the other waivers.

He also inserted a number of other written colloquies into the Record that may or may not deal with the waiver authority. I leave this up to the lawyers, but the Congressional Record of today may be replete with attempted legislative histories. Not certain we can read the Record before we do the signing statement/waivers, but it might be possible. There may be good arguments against attempting to get into rebuttals (one might be that we would draw attention to non-issues -- where we feel there is no ambiguity in the new law -- and we might be better off just strongly asserting what we believe is our clear authority). Please keep me posted of your collective thinking on this.

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

CREATOR: Martha Foley (FOLEY_M) (WHO)

CREATION DATE/TIME:26-APR-1996 13:02:58.51

SUBJECT: RE: Legislative history being made as we speak

TO: Elena Kagan (KAGAN_E) (WHO)

READ:26-APR-1996 13:30:07.76

TEXT:

Perfect!!!

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

CREATOR: Elizabeth E. Drye (DRYE_E) (OPD)

CREATION DATE/TIME:26-APR-1996 13:15:02.94

SUBJECT: FDA talking points for Kay Holcumb on 3 House bills

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

READ:26-APR-1996 15:50:26.01

TO: Gregory C. Simon (SIMON_G) Autoforward to: Remote Adresse

READ:NOT READ

TO: Ira C. Magaziner (MAGAZINER_I) (WHO)

READ: 2-MAY-1996 09:09:51.23

TO: Elena Kagan (KAGAN_E) (WHO)

READ:26-APR-1996 13:30:31.57

TO: Barry T. Clendenin (CLENDENIN_B) (OMB)

READ:26-APR-1996 13:19:06.32

TO: Richard J. Turman (TURMAN_R) (OMB)

READ:26-APR-1996 13:15:47.43

TO: Janet R. Forsgren (FORSGREN_J) (OMB)

READ:29-APR-1996 13:36:31.37

TO: Sally Katzen (KATZEN_S) (OMB)

READ:26-APR-1996 15:37:58.70

TO: Daniel Tate (TATE_D) (WHO)

READ:26-APR-1996 16:45:59.76

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

READ:29-APR-1996 11:56:46.03

TEXT:

Regarding three FDA reform documents Bob has circulated for review.

1. PROBLEMS WITH HOUSE BILLS. FDA has redrafted the paper highlighting the many problems with the three House FDA reform bills (HR 3199, 3200, 3201). There was some confusion yesterday about the purpose of the document. FDA prepared the draft for Kay Holcomb to share with House Dem. staff before the Commerce Cmt's May 1 hearing. HHS/FDA want to print the document on plain paper and give to Kay.

The new draft is more affirmative about reform generally and less explosive. It is still -- appropriately, in my view -- very critical of the House bills. Bob will get it to you. I suggest we clear today for the use they propose.

2. IMPACT OF S. 1477 (Kassebaum bill). -- Senate Democrats have also asked for an assesment of outstanding problems. As you know, we're working with FDA this week to get closure on an Administration position on the Senate bill -- we hope to reach closure today or Monday. FDA will redraft this document once we reach closure so WE DON'T NEED TO CLEAR THIS VERSION -- FDA/HHS WILL HOLD.

3. SECTION-BY-SECTION ON THE THREE HOUSE BILLS -- House staff have asked for this type of analysis and FDA would like to get them something. FDA/HHS would like our edits and clearance.

4. TESTIMONY -- FYI Commissioner Kessler is testifying May 1 so we will have to clear his testimony early next week.

Hope this minimizes any confusion. Call me if you have questions.

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

CREATOR: Elisabeth Blaug (BLAUG_E) (CEQ)

CREATION DATE/TIME:26-APR-1996 14:27:37.12

SUBJECT: headwaters

TO: Elena Kagan (KAGAN_E) (WHO)
READ:26-APR-1996 14:45:16.27

TO: Dawn Chirwa (CHIRWA_D) (WHO)
READ:26-APR-1996 14:29:27.33

CC: Kathleen A. McGinty (MCGINTY_K) (CEQ)
READ:26-APR-1996 16:03:52.25

TEXT:

Now that the litigation letter has been signed, sealed and delivered, John Martin, from Hurwitz's firm Patton Boggs, wants to meet with us on Wednesday at 10:00 to start talking about available properties (recall that they already have that dated GSA list which provides little information). Allen McReynolds met with GSA on Monday (Tony Costa, Chief of Staff to the Commissioner) to convey the message that we want to work with a senior level appointee on this to get an updated list of properties, and go through that list carefully, and ASAP. In addition, FDIC is putting together a more extensive list of available properties, and would like to meet with us prior to the Wednesday meeting to provide us with the new list, give us any info they can provide on a preliminary settlement figure they and OTS think would be sufficient in the event Hurwitz requests settlement discussions with FDIC/OTS, and follow up on other issues.

I would like to have the Wednesday meeting in the CEQ conference room. I haven't connected with Jack Smith, but I will suggest Tuesday at 10:00, same place. Hope one or both of you can attend both meetings. Let me know if timing is a problem. Thanks!

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

CREATOR: Michael A. Fitzpatrick (FITZPATRIC_M) (OMB)

CREATION DATE/TIME:26-APR-1996 15:33:43.80

SUBJECT: RE: LEVIN BILL

TO: Elena Kagan (KAGAN_E) (WHO)

READ:26-APR-1996 15:34:37.95

TEXT:

On its way.

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

CREATOR: Elisabeth Blaug (BLAUG_E) (CEQ)

CREATION DATE/TIME:26-APR-1996 15:48:08.47

SUBJECT: RE: headwaters

TO: Elena Kagan (KAGAN_E) (WHO)

READ:26-APR-1996 17:33:06.34

CC: Dawn Chirwa (CHIRWA_D) (WHO)

READ:26-APR-1996 15:55:21.53

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

READ:26-APR-1996 16:12:46.10

TEXT:

Well, Tom's bigger than me so he can have it. I'm checking the White House Conference Center. I still haven't talked to Jack Smith at FDIC re Tuesday's meeting, so I'll have to get back to you on that.

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

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

CREATION DATE/TIME:29-APR-1996 09:30:25.45

SUBJECT: OMB Immigration Letter - Public Benefits

TO: Charles S. Konigsberg (KONIGSBERG_C) (OMB)
READ:29-APR-1996 15:00:53.63

TO: Alice E. Shuffield (SHUFFIELD_A) (OMB)
READ:29-APR-1996 10:56:21.49

TO: Tracey E. Thornton (THORNTON_T) (WHO)
READ:29-APR-1996 11:36:17.69

TO: Elena Kagan (KAGAN_E) (WHO)
READ:29-APR-1996 09:48:06.23

TO: Stephen R. Neuwirth (NEUWIRTH_S) (WHO)
READ:29-APR-1996 09:55:20.23

CC: Stacy L. Dean (DEAN_S) (OMB)
READ:29-APR-1996 09:35:01.45

TEXT:

The Senate is scheduled to resume consideration of S. 1664 - illegal immigration - today, Monday, 4/30/96. OMB (Apfel) has prepared a letter to the Senate leadership commenting on potential amendments to the public benefits sections of the bill. The letter was circulated under LRM#4228 - if you need another copy just let me know.

We need to clear this letter this morning and can not do so without your sign-off. Therefore please provide comments or your sign-off ASAP.

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

CREATOR: Phillip M. Caplan (CAPLAN_P) (WHO)

CREATION DATE/TIME:29-APR-1996 09:50:50.11

SUBJECT: Thanks

TO: Elena Kagan (KAGAN_E) (WHO)

READ:29-APR-1996 12:01:39.42

TEXT:

Thank you for your help on Alaskan oil (and coming in before the O's game).
Everything went well. Thanks.

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

CREATOR: Michael A. Fitzpatrick (FITZPATRIC_M) (OMB)

CREATION DATE/TIME:29-APR-1996 13:42:12.02

SUBJECT: RE: levin bill

TO: Elena Kagan (KAGAN_E) (WHO)

READ:29-APR-1996 13:42:56.68

TEXT:

Let me check w/ Sally -- I'll call you shortly.

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

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

CREATION DATE/TIME: 29-APR-1996 14:58:29.76

SUBJECT: Memo from Kathy Wallman

TO: Christopher D. Cerf (CERF_C) (WHO)
READ: NOT READ

TO: Dawn Chirwa (CHIRWA_D) (WHO)
READ: 29-APR-1996 15:44:17.26

TO: Peter Erichsen (ERICHSEN_P) (WHO)
READ: 29-APR-1996 20:05:14.75

TO: David Fein (FEIN_D) (WHO)
READ: 29-APR-1996 15:19:49.15

TO: James "David" Fielder (FIELDER_J) (WHO)
READ: 29-APR-1996 18:10:47.60

TO: Elena Kagan (KAGAN_E) (WHO)
READ: 29-APR-1996 16:28:07.98

TO: Ira Kaye (KAYE_I) (WHO)
READ: NOT READ

TO: Bruce R. Lindsey (LINDSEY_B) (WHO)
READ: 1-MAY-1996 17:57:55.14

TO: Cheryl D. Mills (MILLS_C) (WHO)
READ: 29-APR-1996 16:06:45.48

TO: Miriam R. Nemetz (NEMETZ_M) (WHO)
READ: 29-APR-1996 16:40:12.06

TO: Stephen R. Neuwirth (NEUWIRTH_S) (WHO)
READ: 29-APR-1996 14:58:37.26

TO: Sally Paxton (PAXTON_S) (WHO)
READ: 29-APR-1996 18:14:58.65

TO: Jack M. Quinn (QUINN_J) (WHO)
READ: 29-APR-1996 16:48:05.93

TO: Robert W. Schroeder III (SCHROEDER_R) (WHO)
READ: 29-APR-1996 14:58:47.18

TO: Jane C. Sherburne (SHERBURNE_J) (WHO)
READ: 30-APR-1996 09:31:09.96

TO: Kathleen M. Wallman (WALLMAN_KM) (WHO)
READ: NOT READ

TO: Rob S. Wexler (WEXLER_R) (WHO)
READ: 29-APR-1996 16:15:56.71

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

READ:29-APR-1996 15:05:06.86

TO: Wendy S. White

(WHITE_WS) (WHO)

READ:30-APR-1996 09:10:09.84

TO: Jon Yarowsky

(YAROWSKY_J) (WHO)

READ:29-APR-1996 15:25:37.70

CC: Erin Kelly

(KELLY_E) (WHO)

READ:29-APR-1996 15:50:53.96

TEXT:

APB:

Is anyone interested and available to work on Multiethnic
Placement Act, which has to do with interracial adoptions?

Please respond asap.

Thank you.

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

CREATOR: Anna M. Briatico (BRIATICO_A) (OMB)

CREATION DATE/TIME:29-APR-1996 18:20:47.32

SUBJECT: Reminder Comments Due on LRM 4212

TO: Keith J. Fontenot (FONTENOT_K) (OMB)
READ:29-APR-1996 18:21:14.71

TO: Stacy L. Dean (DEAN_S) (OMB)
READ:29-APR-1996 18:33:47.82

TO: Robert G. Damus (DAMUS_R) (OMB)
READ:29-APR-1996 18:56:37.05

TO: Joseph F. Lackey, Jr. (LACKEY_J) (OMB)
READ:30-APR-1996 12:58:28.88

TO: Laura A. Oliven (OLIVEN_L) (OMB)
READ:30-APR-1996 08:34:58.88

TO: Wendy A. Taylor (TAYLOR_W) (OMB)
READ:29-APR-1996 18:22:50.43

TO: Jeffrey A. Farkas (FARKAS_J) (OMB)
READ:29-APR-1996 18:21:00.58

TO: Lester D. Cash (CASH_L) (OMB)
READ:30-APR-1996 13:05:08.47

TO: Lisa Kountoupes (KOUNTOUPES_L) (OMB)
READ:29-APR-1996 19:14:34.70

TO: Joseph Minarik (MINARIK_J) (OMB)
READ:29-APR-1996 18:37:44.21

TO: Jonathan D. Breul (BREUL_J) (OMB)
READ:30-APR-1996 08:47:22.03

TO: Donna M. Rivelli (RIVELLI_D) (OMB)
READ:30-APR-1996 08:48:15.34

TO: Ellen S. Seidman (SEIDMAN_E) (OPD)
READ:29-APR-1996 18:57:29.82

TO: Mark J. Mazur (MAZUR_M) (WHO)
READ:29-APR-1996 19:32:02.56

TO: Bruce N. Reed (REED_B) (WHO)
READ:30-APR-1996 10:20:59.56

TO: Molly Brostrom (BROSTROM_M) (WHO)
READ:30-APR-1996 08:43:46.33

TO: Thomas J. Kane (KANE_T) (WHO)
READ:NOT READ

TO: Elena Kagan (KAGAN_E) (WHO)

READ:29-APR-1996 18:21:18.00

TO: Richard H. Kodl
READ:30-APR-1996 08:58:02.64

(KODL_R) (OMB)

TO: E. Irene James
READ:30-APR-1996 09:13:17.67

(JAMES_E) (OMB)

CC: Francis S. Redburn
READ:30-APR-1996 08:31:07.25

(REDBURN_F) (OMB)

CC: Janet R. Forsgren
READ:29-APR-1996 18:41:59.12

(FORSGREN_J) (OMB)

TEXT:

Reminder - please forward your comments on LRM 4212- HUD Drafting Services for H.R. 2406 (United States Housing Act of 1995 introduced by Rep. Lazio) to me by no later than 10:30 a.m. Tuesday morning. Thanks.

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

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

CREATION DATE/TIME:29-APR-1996 18:33:23.35

SUBJECT: campaign finance

TO: Paul J. Weinstein, Jr (WEINSTEIN_P) (OPD)
READ:30-APR-1996 09:53:28.28

TO: Michael Waldman (WALDMAN_M) (OPD)
READ:29-APR-1996 18:33:27.85

TO: Victoria L. Radd (RADD_V) (WHO)
READ:29-APR-1996 18:34:24.24

TO: William Curry (CURRY_W) (WHO)
READ:30-APR-1996 10:24:20.11

TO: Elena Kagan (KAGAN_E) (WHO)
READ:29-APR-1996 18:33:40.31

TO: Kathleen M. Wallman (WALLMAN_KM) (WHO)
READ:29-APR-1996 19:48:33.96

TEXT:

Peter Jacoby and I prepared the attached one-pager as a summary of the current state of play in terms of legislative proposals. We hope you find it useful.

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

ATT CREATION TIME/DATE:29-APR-1996 18:32:00.00

ATT BODYPART TYPE:p

ATT CREATOR: James S. Rubin

TEXT:

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

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

CREATOR: Martha Foley (FOLEY_M) (WHO)

CREATION DATE/TIME:30-APR-1996 10:29:21.40

SUBJECT: Signing statement

TO: Robert G. Damus (DAMUS_R) (OMB)
READ:30-APR-1996 10:35:00.42

TO: Dinah Bear (BEAR_D) (CEQ)
READ:30-APR-1996 10:34:53.16

TO: Elena Kagan (KAGAN_E) (WHO)
READ:30-APR-1996 11:38:02.16

CC: Charles E. Kieffer (KIEFFER_C) (OMB)
READ:30-APR-1996 11:05:19.25

CC: Jacob J. Lew (LEW_J) (OMB)
READ:30-APR-1996 10:35:15.07

CC: Todd Stern (STERN_T) (WHO)
READ:30-APR-1996 10:37:07.95

TEXT:

We need to consult among ourselves and with the Dellinger and Schiffer shops at DOJ re what we might/should say in a signing statement on the technical corrections bill for the omnibus approps law, re the Tongass issue. The current plan by the appropriators is to have the bill clear the House and Senate today, although there is still a Democratic hold on the bill in the Senate. Let me know what the thinking is. Calling me or leaving voice mail at 61988 would be fine.

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

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

CREATION DATE/TIME:30-APR-1996 11:34:01.94

SUBJECT: APB from Kathy Wallman

TO: Dawn Chirwa (CHIRWA_D) (WHO)
READ:30-APR-1996 11:37:30.86

TO: Peter Erichsen (ERICHSEN_P) (WHO)
READ:30-APR-1996 17:11:12.52

TO: David Fein (FEIN_D) (WHO)
READ:30-APR-1996 12:53:30.80

TO: James "David" Fielder (FIELDER_J) (WHO)
READ: 1-MAY-1996 16:42:38.65

TO: Elena Kagan (KAGAN_E) (WHO)
READ:30-APR-1996 11:39:50.80

TO: Bruce R. Lindsey (LINDSEY_B) (WHO)
READ: 1-MAY-1996 17:58:11.17

TO: Cheryl D. Mills (MILLS_C) (WHO)
READ:30-APR-1996 14:52:11.44

TO: Miriam R. Nemetz (NEMETZ_M) (WHO)
READ:30-APR-1996 14:39:21.18

TO: Stephen R. Neuwirth (NEUWIRTH_S) (WHO)
READ:30-APR-1996 11:34:27.58

TO: Sally Paxton (PAXTON_S) (WHO)
READ:30-APR-1996 13:04:40.35

TO: Jack M. Quinn (QUINN_J) (WHO)
READ:30-APR-1996 16:23:09.53

TO: Robert W. Schroeder III (SCHROEDER_R) (WHO)
READ:30-APR-1996 11:37:37.56

TO: Jane C. Sherburne (SHERBURNE_J) (WHO)
READ:30-APR-1996 13:41:40.32

TO: Kathleen M. Wallman (WALLMAN_KM) (WHO)
READ:30-APR-1996 12:05:47.05

TO: Rob S. Wexler (WEXLER_R) (WHO)
READ:30-APR-1996 12:32:28.20

TO: Kathleen M. Whalen (WHALEN_K) (WHO)
READ:30-APR-1996 11:34:21.98

TO: Wendy S. White (WHITE_WS) (WHO)
READ: 1-MAY-1996 11:25:24.82

TO: Jon Yarowsky (YAROWSKY_J) (WHO)

READ:30-APR-1996 11:47:54.93

CC: Erin Kelly

(KELLY_E) (WHO)

READ:30-APR-1996 11:34:38.66

TEXT:

APB:

Anyone interested and willing to work with Jack on drug
control strategy?

Thank you.

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

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

CREATION DATE/TIME:30-APR-1996 12:16:38.00

SUBJECT: LRM 4243

TO: Elena Kagan (KAGAN_E) (WHO)

READ:30-APR-1996 12:18:28.96

TEXT:

Re: LRM 4243 (Magnuson fishery act) I have some concerns re: section 108 which contains some ethics provisions (maintains Fishery Management Councils' exclusion from the ethics statutes -- for no good reason). Please do not clear for our office until I have had a chance to discuss with Commerce and OGE. Thanks.

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

CREATOR: Todd Stern (STERN_T) (WHO)

CREATION DATE/TIME:30-APR-1996 14:06:58.25

SUBJECT: RE: products veto message

TO: Elena Kagan (KAGAN_E) (WHO)

READ:30-APR-1996 16:16:12.29

TEXT:

Bill arrived early this afternoon and I think we're headed to a signing event next week, though the precise day hasn't been set yet, as far as I know. todd

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

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

CREATION DATE/TIME:30-APR-1996 14:51:12.61

SUBJECT: RE: lrm

TO: Elena Kagan (KAGAN_E) (WHO)

READ:30-APR-1996 16:16:24.88

TEXT:

Sure. When is it due? Where is it?

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

CREATOR: Todd Stern (STERN_T) (WHO)

CREATION DATE/TIME:30-APR-1996 15:57:22.80

SUBJECT: adoption

TO: Elena Kagan (KAGAN_E) (WHO)

READ:30-APR-1996 16:17:25.82

TEXT:

There's an adoption issue headed Counsel's way (among others -- I'm in on this too a bit, as well as Bruce Reed, Jen and some others). Chris Cerf used to handle the issue -- maybe you could get into it if you're interested. I can fill you in on the background, though I'm not sure of the details right now. Legislative (Janet Murghia) is pulling a meeting together for later this week and I told her she should have someone from Counsel's office and mentioned you -- but she'll just talk to Jack or Kathy and let them assign someone, I'm sure. tds

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

CREATOR: Dinah Bear (BEAR_D) (CEQ)

CREATION DATE/TIME:30-APR-1996 17:14:12.19

SUBJECT: RE: president's statement

TO: Elena Kagan (KAGAN_E) (WHO)
READ:30-APR-1996 17:17:49.16

CC: McGavock D. Reed (REED_M) (OMB)
READ:30-APR-1996 17:23:08.14

CC: Martha Foley (FOLEY_M) (WHO)
READ:30-APR-1996 17:30:38.31

TEXT:

I conur with Elena's comments, and Mac, apologies for not getting back to you sooner.

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

CREATOR: Martha Foley (FOLEY_M) (WHO)

CREATION DATE/TIME:30-APR-1996 17:31:41.16

SUBJECT: RE: president's statement

TO: Elena Kagan (KAGAN_E) (WHO)

READ:30-APR-1996 18:08:04.63

CC: McGavock D. Reed (REED_M) (OMB)

READ:30-APR-1996 17:48:13.33

CC: Dinah Bear (BEAR_D) (CEQ)

READ:30-APR-1996 18:01:57.63

TEXT:

Have not seen either the draft or the revised draft (assuming Elena's comments are accepted). Again, there is no need to have a reference in this unless we feel we are advantaged by doing so. Can someone copy me on either the original or revised draft? Thanks.

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

CREATOR: Todd Stern (STERN_T) (WHO)

CREATION DATE/TIME:30-APR-1996 18:21:05.87

SUBJECT: product liabilty

TO: Elena Kagan (KAGAN_E) (WHO)

READ:30-APR-1996 18:21:57.66

TEXT:

I am taking it upon myself to invite you to this meeting. I'm sure it's to plan for the event, but you should come if you can.

todd

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

ATT CREATION TIME/DATE:30-APR-1996 17:17:00.00

ATT BODYPART TYPE:B

ATT CREATOR: Cheryl S. Rodman

ATT SUBJECT: Product Liability Meeting tomorrow morning

ATT TO: Marilyn Yager (YAGER_M)

ATT TO: Todd Stern (STERN_T)

TEXT:

There will be a product liability meeting tomorrow at 9:30 a.m. in Don's office.

The participants are:

Don

Stephanie

Bruce Lindsey

Susan Brophy

Patrick Steel

Sarah Farnsworth

Steve Silverman

Todd Stern

Mariln Yager

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

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

CREATOR: Jeremy D. Benami (BENAMI_J) (WHO)

CREATION DATE/TIME: 1-MAY-1996 11:32:21.39

SUBJECT: Product Liability Veto

TO: Marilyn Yager (YAGER_M) (WHO)
READ: 1-MAY-1996 13:26:35.34

TO: Victoria L. Radd (RADD_V) (WHO)
READ: 1-MAY-1996 11:32:49.14

TO: Elena Kagan (KAGAN_E) (WHO)
READ: 1-MAY-1996 13:45:42.08

TO: Jennifer L. Klein (KLEIN_J) (OPD)
READ: 1-MAY-1996 14:31:29.50

CC: Deborah L. Fine (FINE_D) (OPD)
READ: 1-MAY-1996 11:32:30.43

CC: Carol H. Rasco (RASCO_C) (WHO)
READ: 1-MAY-1996 11:40:25.05

TEXT:

Wanted to pass along a message from Phyllis Greenberger re the Product Liability veto.

Phyllis is Executive Director of the Society for the Advancement of Women's Health Research and is also a member of the President's AIDS Advisory Council. She is a friend of the administration's and of the First Lady.

She wanted to stress that it would not be a good idea for the President to highlight the breast implant issue as part of the veto ceremony - i.e., not have one of the people with the President tell that particular story.

I don't know whether this is good or bad advice since I am not involved in the issue, but I did want to pass it along to you folks who I assume are putting the event together.

Marilyn: I suggested that Phyllis call you directly to discuss.

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

CREATOR: Todd Stern (STERN_T) (WHO)

CREATION DATE/TIME: 1-MAY-1996 14:38:34.61

SUBJECT: products liability

TO: Elena Kagan (KAGAN_E) (WHO)

READ: 1-MAY-1996 14:45:54.10

TEXT:

Could you please send me your latest on products? Thanks.

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

CREATOR: Todd Stern (STERN_T) (WHO)

CREATION DATE/TIME: 1-MAY-1996 14:45:46.61

SUBJECT: RE: products liability

TO: Elena Kagan (KAGAN_E) (WHO)

READ: 1-MAY-1996 14:45:58.72

TEXT:

No problem. I wasn't trying to harass you -- just thought you had a draft. Take your time.

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

CREATOR: Ann M. Cattalini (CATTALINI_A) (WHO)

CREATION DATE/TIME: 1-MAY-1996 15:10:12.83

SUBJECT: Thanks

TO: Elena Kagan (KAGAN_E) (WHO)

READ: 1-MAY-1996 17:32:41.42

TEXT:

Thank you for faxing me the SAP and talking points on Products.
Peter has been on the Hill all day and so I am trying to start the
briefing paper in his absence.

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

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

CREATION DATE/TIME: 1-MAY-1996 15:12:51.22

SUBJECT: Local Flex. LRM

TO: Elena Kagan (KAGAN_E) (WHO)

READ: 1-MAY-1996 17:33:44.79

TEXT:

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

ATT CREATION TIME/DATE:30-APR-1996 13:34:00.00

ATT CREATOR: Ingrid M. Schroeder

ATT SUBJECT: LRM #:4264 Proposed Statement of Administration Policy RE:

- ATT TO: Remote Addressee (usdaobpaleg@obpa.usda.gov@INET)
- ATT TO: Remote Addressee (COMMERCE LRM@1=US@2=ATTMAIL@3=GOV+COM
- ATT TO: Remote Addressee (DODLRS@1=US@2=ATTMAIL@3=GOV+DMS+TRANS
- ATT TO: Remote Addressee (OGC LEGISLATION@1=US@2=ATTMAIL@3=DOED
- ATT TO: Remote Addressee (ENERGY-GC71-LEGIS@1=US@2=ATTMAIL@3=US
- ATT TO: Remote Addressee (CHRIS HOFF@1=US@2=ATTMAIL@3=GOV+EPA@M
- ATT TO: Remote Addressee (SYLVIA ANDERSON@1=US@2=TELEMAIL@3=@5=
- ATT TO: Remote Addressee (CRANE MILLER@1=US@2=ATTMAIL@3=GOV+FEM
- ATT TO: Remote Addressee (LRM@1=US@2=ATTMAIL@3=GOV+DHHSOS@5=OSB
- ATT TO: Remote Addressee (HUD-LRM@1=US@2=TELEMAIL@3=GOV+HUD@5=H
- ATT TO: Remote Addressee (OCL@1=US@2=ATTMAIL@3=GOV+IOS@5=IOS@MR
- ATT TO: Remote Addressee (DEBORAH CLIFTON@1=US@2=TELEMAIL@3=@5=
- ATT TO: Remote Addressee (DOLSOL LLC@5=DOL@2=TELEMAIL@1=US@MRX@
- ATT TO: Sonyia Matthews (MATTHEWS_S)
- ATT TO: Remote Addressee (TLXA1MAIL_\F:92023264085\C:Gail Sevin
- ATT TO: Remote Addressee (CLA@1=US@2=TELEMAIL@3=GOV+SBA@5=CLA@*
- ATT TO: Remote Addressee (1=US@2=ATTMAIL@3=GOV+SSA@5=SSA@6=LRM@
- ATT TO: Remote Addressee (Ned Williams@*ID\nedwilliams@2=ATTMAI
- ATT TO: Remote Addressee (DOT LRM@1=US@2=ATTMAIL@3=GOV+DOT@4=QM
- ATT TO: Remote Addressee (LLR TREASURY@1=US@2=TELEMAIL@3=GOV+TR

ATT TO: Remote Addressee (PATTY HAGLE@1=US@2=TELEMAIL@3=@5=IDCU)
ATT CC: Paul J. Weinstein, Jr. (WEINSTEIN_P)
ATT CC: Kumiki S. Gibson (GIBSON_K)
ATT CC: FAX (96320390,Godwin, Kamensky) (TLXA1MAIL_ \F:96320390\C:Godwin, Kamen)
ATT CC: Jonathan D. Breul (BREUL_J)
ATT CC: Joseph S. Wholey (WHOLEY_J)
ATT CC: Barry White (WHITE_B)
ATT CC: Keith J. Fontenot (FONTENOT_K)
ATT CC: Lester D. Cash (CASH_L)
ATT CC: Lisa B. Fairhall (FAIRHALL_L)
ATT CC: Larry R. Matlack (MATLACK_L)
ATT CC: Mark E. Miller (MILLER_ME)
ATT CC: Barry T. Clendenin (CLENDENIN_B)
ATT CC: Francis S. Redburn (REDBURN_F)
ATT CC: Joseph Firschein (FIRSCHEIN_J)
ATT CC: Barbara F. Kahlow (KAHLOW_B)
ATT CC: David J. Haun (HAUN_D)
ATT CC: Donna M. Rivelli (RIVELLI_D)
ATT CC: David E. Tornquist (TORNQUIST_D)
ATT CC: Kenneth L. Schwartz (SCHWARTZ_K)
ATT CC: Harry G. Meyers (MEYERS_H)
ATT CC: Edward Brigham (BRIGHAM_E)
ATT CC: Alan B. Rhinesmith (RHINESMITH_A)
ATT CC: Mark A. Weatherly (WEATHERLY_M)
ATT CC: Bruce D. Beard (BEARD_B)
ATT CC: Robert S. Fairweather (FAIRWEATHE_R)
ATT CC: Raymond P. Kogut (KOGUT_R)
ATT CC: Jefferson B. Hill (HILL_J)
ATT CC: Michael A. Fitzpatrick (FITZPATRIC_M)
ATT CC: Rosalyn J. Rettman (RETTMAN_R)

- ATT CC: Steven D. Aitken (AITKEN_S)
- ATT CC: Pamula L. Simms (SIMMS_P)
- ATT CC: Kenneth S. Kelly (KELLY_K)
- ATT CC: Betty I. Bradshaw (BRADSHAW_B)
- ATT CC: Richard B. Bavier (BAVIER_R)
- ATT CC: Harry E. Moran (MORAN_H)
- ATT CC: Randolph M. Lyon (LYON_R)
- ATT CC: Sheryll D. Cashin (CASHIN_S)
- ATT CC: Paul R. Dimond (DIMOND_P)
- ATT CC: Tracey E. Thornton (THORNTON_T)
- ATT CC: Peter Jacoby (JACOBY_P)
- ATT CC: Lee Ann Brackett (BRACKE_L)
- ATT CC: Mark J. Mazur (MAZUR_M)
- ATT CC: Diana M. Fortuna (FORTUNA_D)
- ATT CC: Bernard H. Martin (MARTIN_B)
- ATT CC: G. Edward DeSeve (DESEVE_G)
- ATT CC: Scott Quehl (QUEHL_S)
- ATT CC: John A. Koskinen (KOSKINEN_J)
- ATT CC: Dennis Duguette - PCIE
- ATT CC: James C. Murr (MURR_J)
- ATT CC: Nancy J. Duykers (DUYKERS_N)
- ATT CC: James J. Jukes (JUKES_J)
- ATT CC: Paul W. Baker (BAKER_P)

TEXT:

EXECUTIVE OFFICE OF THE PRESIDENT	LRM #:4264
OFFICE OF MANAGEMENT AND BUDGET	
Washington, D.C. 20503	FILE #:769
04/30/96	
LEGISLATIVE REFERRAL MEMORANDUM	

TO: Legislative Liaison Officer - See Distribution below:
 FROM: James JUKES (for)
 Assistant Director for Legislative Reference
 OMB CONTACT: Ingrid SCHROEDER 395-3883
 Legislative Assistant's line (for simple responses): 395-3454

SUBJECT: Proposed Statement of Administration Policy RE:
HR2086, Local Empowerment and Flexibility Act of
1995

DEADLINE: Noon Thursday, May 02, 1996

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President.

Please advise us if this item will affect direct spending or receipts for purposes of the the Pay-As-You-Go provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: This LRM was also transmitted via email. H.R. 2086 is scheduled for House floor action during the week of May 6th.

Attached is H.R. 2086 as ordered reported from the House Government Reform and Oversight Committee. The bill language is not attached to the emailed version of this LRM.

7-AGRICULTURE - Marvin Shapiro - 2027201516
25-COMMERCE - Michael A. Levitt - 2024823151
29-DEFENSE - Samuel T. Brick, Jr. - 7036971305
30-EDUCATION - Jack Kristy - 2024018313
32-ENERGY - Bob Rabben - 2025866718
33-Environmental Protection Agency - Chris Hoff - 2022605414
31-Equal Employment Opportunity Comm. - Claire Gonzales - 2026634900
39-Federal Emergency Management Agency - John P. Carey - 2026464105
52-HHS - Sondra S. Wallace - 2026907760
54-HUD - Edward J. Murphy, Jr. - 2027081793
59-INTERIOR - Jane Lyder - 2022086706
61-JUSTICE - Andrew Fois - 2025142141
62-LABOR - Robert A. Shapiro - 2022198201
76-National Economic Council - Sonyia Matthews - 2024562174
97-Pension Benefit Guaranty Corporation - Gail Sevin - 2023264080
107-Small Business Administration - Mary Kristine Swedin - 2022056700
110-Social Security Administration - Judy Chesser - 2024827148
114-STATE - Julia C. Norton - 2026474463
117-TRANSPORTATION - Tom Herlihy - 2023664687
118-TREASURY - Richard S. Carro - 2026221146
129-VETERANS AFFAIRS - Robert Coy - 2022736666

PRINTER FONT 12_POINT_COURIER

DRAFT -- NOT FOR RELEASE

30, 1996

(Ho

H.R. 2086 - Local Empowerment and Flexibility Act of 1996
(Shays (R) CT and 7 cosponsors)

The Administration has repeatedly endorsed ?local flexibility? legislation, subject to key changes that were provided to the Committee on Government Reform and Oversight. The Committee has rejected the Administration?s proposed changes. Instead, it has shifted the focus of H.R. 2086 from flexibility in coordinating funding and program operations to an attempt to unravel existing regulatory protections and procedures. As reported, the bill would make many fundamental statutes, including important health, safety, labor, educational, environmental, and civil rights protections, subject to waivers.

Therefore, if H.R. 2086 were presented to the President in the

form reported by the Committee, the Secretary of Health and Human Services, the Administrator of the Environmental Protection Agency, and the Director of the Office of Management and Budget would recommend that the bill be vetoed. The Administration's objections to H.R. 2086 are explained further in the Attachment. The Administration firmly believes in providing greater flexibility to State and local governments for the purpose of encouraging innovation and efficiency. The Oregon Option, the Memorandum of Understanding with the State of Connecticut, 59 welfare waivers, 12 Medicaid waivers, over 100 "Ed-Flex" education waivers, and the Empowerment Zone and Enterprise Community programs underscore the Administration's active, strong commitment to local empowerment and flexibility. The President's FY 1997 Budget also supported the Local Empowerment and Flexibility Act, with the key changes that were rejected by the Committee.

* * * * *

□

PRINTER FONT 12_POINT_ROMAN

Attachment

Administration Objections to H.R. 2086

The Administration has major concerns with several provisions in the bill, including:

1. Exclusions -- H.R. 2086 makes many fundamental statutes subject to waiver and allows standard-less alternative measures to supplant important statutory protections. These would include, among others, laws that preserve the environment, protect workers and their pensions, ensure the health and safety of Americans, provide for Federal financial accountability, safeguard certain civil and constitutional rights, and enforce the constitutional rights of disabled students under the Equal Protection Clause of the 14th Amendment and ensure the nondiscriminatory treatment of those students. The Administration continues to believe that because of their significance, these statutes should not be subject to waiver. In addition, the Administration continues to support waivers for only those programs that provide Federal financial assistance, as was stated in the purposes section of the original legislation that was first considered by the last Congress and reintroduced in the Senate by Senator Hatfield as S.88. The list of exclusions, which the Administration provided to the House Government Reform and Oversight Committee, must be included in the final legislation. The Administration strongly opposes H.R. 2086 because it would allow for the waiver of these vital statutes and the protections they provide.

The complex procedure contained in H.R. 2086 for the replacement of regulations with alternative measures will undercut the bill's fundamental purpose of facilitating program operations. The amount of review required to waive regulations not directly related to program operations would add considerable time to the approval process of local flexibility plans. For example, _____ [OIRA please fill in an appropriate example].

2. Community Empowerment Board (CEB) -- The bill makes the CEB a "superagency." It vests authority in the CEB to approve or revoke waivers and approve or terminate plans, rather than the "affected Federal agencies" as proposed by the Administration. The bill also provides that the CEB -- not

the affected Federal agencies -- enter into a Memorandum of Understanding (MOU) with the applicant. These changes create problems in the administration of Federal programs, because the agencies and not the CEB have the legal

responsibility and authority for administering grants, can ensure program requirements are met, and have the necessary program expertise and knowledge. In addition, the bill gives the CEB, not the agencies, the lead in setting a wide range of policies. The Administration opposes creating a new bureaucracy to approve the waiver requests. In addition, the Administration strongly supports placing control over the waiver process with the respective agencies, with the CEB playing a coordinating role.

3. Fungibility of Funds/Audit and Accountability Issues -- H.R. 2086 appears to allow broad fungibility of Federal grant funds and provides insufficient financial management and performance accountability. The Administration only supports waivers if the plan will more effectively achieve the general goals of each Federal financial assistance program. H.R. 2086 would permit approval of local plans that commingle funds from several Federal agencies that, by statute, support activities different from those to be carried out under the Local Flexibility Plan. Moreover, the extent of the fungibility of Federal funds implied by the bill raises significant legal and financial accountability issues for Federal agencies responsible for managing these grant programs. The bill should not permit waiver of financial management and audit requirements that enable agencies to account for Federal funds to authorizing and appropriating committees of the Congress. Thus, the bill should prohibit waiver of the Single Audit Act of 1984 and not prevent the application of routine grants management accountability safeguards and cost principles.

4. Waiver of Local Matching Requirements -- Because H.R. 2086 is silent whether Federal requirements for local matching grants may be waived for Local Flexibility plans, it thus would permit such waivers. The Administration's proposal would specifically prohibit such waivers and the Administration strongly recommends the addition of such a prohibition. From a policy perspective, a local share requirement not only provides more resources, but also invests the community seeking Federal grant funds with greater commitment to and stake in the project or activity. The Administration also believes that the availability of such a waiver authority is likely to dramatically distort the flow of applications the CEB receives. Many State and local governments are strapped for resources and would be hard pressed to resist pressures to seek waivers from the CEB every year of all local matching requirements.

5. Application for funds and normal State role. The bill would substitute the flexibility plan for a normal application for

funding and negate any other application requirement -- including, it appears, any requirements that an applicant be a State, a school district, etc. In many programs, the Federal Government has a relationship only with a State. Under H.R. 2086, local governments might seek to bypass the State and obtain funds directly from the Federal Government. In addition, this provision would substantially increase the

complexity of flexibility proposals, and bog down the review process. Plans would have to include information needed to determine the allocation of funds. For competitive grants, there would have to be sufficient detail to compare the flexibility plan to other proposals. Thus, while the Administration strongly believes in, and is working toward a streamlined and one-stop application process where feasible, formal application for and allocation of funds must be kept separate from the flexibility process. Further, it is not appropriate to by-pass the role of State governments and other partners who must remain involved in intergovernmental service delivery.

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

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

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

CREATION DATE/TIME: 1-MAY-1996 16:12:49.65

SUBJECT: Local Flexibility - Committee Markup

TO: Jonathan D. Breul (BREUL_J) (OMB)
READ: 1-MAY-1996 18:23:34.58

TO: Paul J. Weinstein, Jr (WEINSTEIN_P) (OPD)
READ: 1-MAY-1996 17:36:25.01

TO: Elena Kagan (KAGAN_E) (WHO)
READ: 1-MAY-1996 17:34:09.32

TO: Steven D. Aitken (AITKEN_S) (OMB)
READ: 1-MAY-1996 16:26:54.21

TO: Gregory M. Jones (jonesgre@justice.usdoj.gov@INET@EOPMRX)
READ: NOT READ

CC: James J. Jukes (JUKES_J) (OMB)
READ: 1-MAY-1996 16:18:01.49

TEXT:

On page 36 line 12, of the House Government Reform and Oversight Committee markup of H.R. 2086 there is a provision which requires the President to certify the CEB's approval or disapproval of a flexibility plan before the plan can take effect or before a plan is terminated.

The bill states that the President "shall make a certification" or "issue a finding that the certification may not be made" within 15 days after the CEB makes a decision on the plan.

Does this provision rise to the level of mentioning it specifically in the SAP?

Justice - please check this provision with OLC

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

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

CREATION DATE/TIME: 1-MAY-1996 16:28:36.99

SUBJECT: APB from Kathy Wallman

TO: Dawn Chirwa (CHIRWA_D) (WHO)

READ: 1-MAY-1996 17:20:23.20

TO: Peter Erichsen (ERICHSEN_P) (WHO)

READ: 2-MAY-1996 12:08:11.52

TO: David Fein (FEIN_D) (WHO)

READ: 1-MAY-1996 16:30:12.23

TO: James "David" Fielder (FIELDER_J) (WHO)

READ: 1-MAY-1996 16:42:50.37

TO: Elena Kagan (KAGAN_E) (WHO)

READ: 1-MAY-1996 17:34:39.34

TO: Bruce R. Lindsey (LINDSEY_B) (WHO)

READ: 1-MAY-1996 17:58:59.65

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

READ: 1-MAY-1996 16:30:22.53

TO: Miriam R. Nemetz (NEMETZ_M) (WHO)

READ: 1-MAY-1996 16:46:35.66

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

READ: 1-MAY-1996 16:34:00.67

TO: Sally Paxton (PAXTON_S) (WHO)

READ: 2-MAY-1996 09:09:08.27

TO: Jack M. Quinn (QUINN_J) (WHO)

READ: 13-MAY-1996 18:54:30.63

TO: Robert W. Schroeder III (SCHROEDER_R) (WHO)

READ: 1-MAY-1996 16:30:39.91

TO: Jane C. Sherburne (SHERBURNE_J) (WHO)

READ: 2-MAY-1996 11:08:57.08

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

READ: 1-MAY-1996 18:46:57.92

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

READ: 1-MAY-1996 17:14:51.89

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

READ: 1-MAY-1996 16:29:06.53

TO: Wendy S. White (WHITE_WS) (WHO)

READ: 2-MAY-1996 08:47:20.27

TO: Jon Yarowsky (YAROWSKY_J) (WHO)

READ: 1-MAY-1996 16:38:15.90

CC: Kenneth S. Kelly

(KELLY_K) (OMB)

READ:NOT READ

TEXT:

Anyone interested and available to work on issues relating
to gasoline price increases?

Thank you.

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

CREATOR: Ann M. Cattalini (CATTALINI_A) (WHO)

CREATION DATE/TIME: 1-MAY-1996 18:03:54.65

SUBJECT: Products Briefing paper

TO: Elena Kagan (KAGAN_E) (WHO)
READ: 1-MAY-1996 18:31:03.27

TO: Jennifer D. Dudley (DUDLEY_J) (WHO)
READ: 1-MAY-1996 18:08:19.12

TO: Marilyn Yager (YAGER_M) (WHO)
READ: 1-MAY-1996 18:04:40.29

TO: Timothy J. Keating (KEATING_T) (WHO)
READ: 1-MAY-1996 18:34:33.42

TO: Stacey L. Rubin (RUBIN_S) (WHO)
READ: 1-MAY-1996 18:04:26.04

TO: Elisa M. Millsap (MILLSAP_E) (WHO)
READ: 1-MAY-1996 18:26:13.77

TEXT:

May 1, 1996

VETO CEREMONY FOR THE PRODUCTS LIABILITY AND
LEGAL REFORM ACT OF 1995

DATE: Thursday, May 2, 1996
LOCATION: Oval Office
TIME: 2:10pm to 2:25pm
FROM: John Hilley
Peter Jacoby

I. PURPOSE

This veto ceremony will provide an opportunity for you to reiterate your opposition to H.R. 956, the Common Sense Product Liability Legal Reform Act of 1995.

II. BACKGROUND

On March 13, 1996, a House-Senate conference committee completed its work on H.R. 956, the "Common Sense Product Liability Legal Reform Act of 1996." On March 21 the Senate passed the conference committee bill by a vote of 59-40. On March 29th the House approved the conference report by a vote of 259-158. On April 30th, Majority Leader Dole and Speaker Gingrich convened a press conference to finalize Congressional action on the bill and send it to the President's desk.

The conference report limits punitive damages in product liability cases to two times compensatory damages or \$250,000, whichever is greater, with lower limits for small businesses. The measure also allows a plaintiff to bring a lawsuit up to two years after discovering both the cause and the injury itself. The bill limits the time to file a suit

to 15 years after the delivery of a product, but the limit would only apply to certain products. Finally, the conference report would also abolish joint and several liability for non-economic damages.

You have supported products liability reform at the federal level but only if that reform: 1) respects the important role of the states in our federal system and; 2) fairly balances the interests of consumers with those of manufacturers and sellers. You have promised to veto H.R. 956 because it fails to adequately meet these two tests.

As a general matter, tort law, including product liability law, is the responsibility and prerogative of the States, rather than of Congress. This is an area in which States have served as laboratories, testing and developing new ideas and making needed reforms. Proponents of new and sweeping Federal restrictions on State authority should bear the burden of persuasion. The Conference Report fails to show why the Federal Government should wrest this responsibility from the States. Certainly, this bill's findings -- which fail to recognize, for example, that the current increase in litigation is attributable to commercial suits between corporations rather than consumer-initiated product liability actions against the manufacturers and sellers -- do not justify such broad scale Federal intrusion.

Moreover, the Conference Report unfairly tilts the legal playing field to the disadvantage of consumers. Many provisions of H.R. 956, such as those dealing with punitive damages and the statute of repose, displace State law only when that law is more favorable to the consumer; when State law is more favorable to manufacturers and sellers, it remains in operation. This "one-way pre-emption" approach unfairly disadvantages consumers.

Additionally, several specific provisions of H.R. 956 would impede the ability of injured persons to gain fair and adequate recovery:

An artificial ceiling on the amount of punitive damages that may be awarded in a product liability action.

Statutory caps ignore the fundamental purpose of punitive awards: to punish and deter.

The abolition of joint-and-several liability for noneconomic damages, most notably, pain and suffering. This provision would severely and unfairly discriminate against those innocent victims whose injuries involve mostly noneconomic damages, rather than the sort of damages that can be measured by lost income.

Finally, H.R. 956 is the product of a bruising legislative battle which has seen the intensity of political rhetoric rise to new levels on both sides of the issue. Generally, with certain notable exceptions, Democrats on both sides of the Capitol have worked hard to defeat this legislation in the face of powerful business interests.

III. PARTICIPANTS

List of participants to be provided by Marilyn Yager, Office of Public Liaison.

IV. PRESS PLAN

Open press.

V. SEQUENCE OF EVENTS

You will meet briefly with the families of those affected by product liability litigation.

Following this meeting, you will proceed to the Oval Office and make a formal veto statement, flanked by these victims.

Following the statement, you will sign the letter of transmittal to the Congress formally vetoing this legislation.

VI. REMARKS

To be provided by Speechwriting.

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

CREATOR: Todd Stern (STERN_T) (WHO)

CREATION DATE/TIME: 1-MAY-1996 19:02:39.88

SUBJECT: products -- OMB comments

TO: Elena Kagan (KAGAN_E) (WHO)

READ: 1-MAY-1996 20:33:38.01

TEXT:

I haven't read your draft yet, but thought I'd let you see the reaction of OMB. tds

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

ATT CREATION TIME/DATE: 1-MAY-1996 18:13:00.00

ATT BODYPART TYPE:B

ATT CREATOR: James C. Murr

ATT SUBJECT: Veto Message on Product Liability Bill

ATT TO: Todd Stern (STERN_T)

TEXT:

I thought I would comment directly to you on the subject veto message, which your office circulated earlier for comment.

In light of this bill's background and the Administration's position on the bill, I have made no attempt to edit the message, but would like to make the following points.

If you haven't already done so, I urge that the Justice Department be given the opportunity to review the message before it is released. It would take someone knowledgeable from Justice to determine the factual accuracy of many of the statements contained in the message.

For a veto message, at least from my perspective, the tone is too harsh for a formal governmental communication to the Congress by the President. This communication will be part of the President's official papers. This tone would be more appropriate for a press release or other document related to the veto. This message as written is not Presidential. It reads like a lawyer's brief that is trying to score points.

In the second paragraph on page 3, the references to private groups (e.g., MADD and Handgun Control) are not appropriate for a veto message.

The message is too long.

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

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)
CREATOR: Ann M. Cattalini (CATTALINI_A) (WHO)
CREATION DATE/TIME: 1-MAY-1996 20:26:21.54
SUBJECT: BRIEFING MEMO
TO: Elena Kagan (KAGAN_E) (WHO)
READ: 1-MAY-1996 20:34:20.07
TO: Jennifer D. Dudley (DUDLEY_J) (WHO)
READ: 1-MAY-1996 20:26:33.49
CC: Peter Jacoby (JACOBY_P) (WHO)
READ: 3-MAY-1996 14:34:58.22
TEXT:

May 1, 1996

VETO CEREMONY FOR THE PRODUCTS LIABILITY AND
LEGAL REFORM ACT OF 1995

DATE: Thursday, May 2, 1996
LOCATION: Oval Office
TIME: 2:10pm to 2:25pm
FROM: John Hilley
Peter Jacoby

I. PURPOSE

This veto ceremony will provide an opportunity for you to reiterate your opposition to H.R. 956, the Common Sense Product Liability Legal Reform Act of 1995.

II. BACKGROUND

On March 13th, 1996, a House-Senate conference committee completed its work on H.R. 956, the "Common Sense Product Liability Legal Reform Act of 1996." On March 21st the Senate passed the conference committee bill by a vote of 59-40. On March 29th the House approved the conference report by a vote of 259-158. On April 30th, Majority Leader Dole and Speaker Gingrich convened a press conference to finalize Congressional action on the bill and send it to the President's desk.

The conference report would abolish joint and several liability for non-economic damages in product liability cases. The measure also limits punitive damages in product liability cases to two times compensatory damages or \$250,000, whichever is greater, with lower limits for small businesses. Although it allows judges to exceed these caps, the Statement of Managers makes clear that this is only to be done in the most unusual cases. Finally, the bill limits the time to file a suit to 15 years after the delivery of a product.

You have supported products liability reform at the federal level but only if that reform: 1) respects the important role of the states in our federal system, and 2) fairly balances the interests of consumers with those of manufacturers and sellers. You have promised to veto H.R.

956 because it fails to meet these two tests.

H.R. 956 represents an unwarranted intrusion on state authority, in the interest of shielding manufacturers and sellers of harmful products. While some federal action in this area is appropriate because no single State can alleviate nationwide problems in our tort system, the States should have, as they always have had, primary responsibility for tort law. The States traditionally have handled this responsibility well, serving as laboratories for new ideas and making needed reforms. This bill will interfere with that process in products cases; moreover, it does so in a way that peculiarly disadvantages consumers. As a rule, this bill displaces state law only when that law is more favorable to consumers; it allows state law to remain in effect when that law is more helpful to manufacturers and sellers.

Apart from the general structure of the bill, specific provisions of H.R. 956 unfairly disadvantage consumers and their families.

The measure eliminates joint liability for noneconomic damages such as pain and suffering which will prevent many persons from receiving full compensation for injury. When one wrongdoer goes bankrupt (as companies that manufacture or sell harmful products often do) or is otherwise unable to pay its portion of the judgment, the other wrongdoers, and not the innocent victim, should have to should that part of the judgment. Additionally, because it applies to noneconomic, but not to economic damages, it most deeply cuts into the damage awards of people without large amounts of lost income.

The measure places arbitrary ceilings on the amount of punitive damages that may be awarded in a product liability suit which will endanger the safety of the consuming public. The purpose of punitive damages is to punish and deter egregious conduct, such as the deliberate manufacture and sale of defective products. Capping punitive damages increases the incentive to engage in such misconduct.

These defects alone would justify a veto. However, during the conference, conferees took several steps back from the version passed in the Senate and toward the one approved by the House. The most notable changes include:

The Conference Report expands the scope of the bill, inappropriately applying the limits on punitive and noneconomic damages to negligent entrustment actions -- lawsuits, for example, against a gun dealer who knowingly sells a gun to a convicted felon, who then uses it to shoot someone, or against a bar owner who knowingly serves a drink to an obviously inebriated customer, who then drives drunk and causes death or injury.

Additionally, the Conference Report reduces the statute of repose from twenty years to a maximum of fifteen years (and less if states so provide), and applies the statute to a much wider range of goods, including handguns. This change, which prevents a person from bringing suit against a manufacturer of an older product even if the product has just recently caused injury, also will preclude many meritorious lawsuits.

Finally, H.R. 956 is the product of a bruising legislative battle which has seen the intensity of political rhetoric rise to new levels on both sides of the issue. Generally, with certain notable exceptions, Democrats on both sides of the Capitol have worked hard to defeat this legislation in the face of powerful business interests.

III. PARTICIPANTS

List of participants to be provided by Marilyn Yager, Office of Public Liaison.

IV. PRESS PLAN

Open press.

V. SEQUENCE OF EVENTS

You will meet briefly with the families of those affected by product liability litigation.

Following this meeting, you will proceed to the Oval Office and make a formal veto statement, flanked by these victims.

Following the statement, you will sign the letter of transmittal to the Congress formally vetoing this legislation.

VI. REMARKS

To be provided by Speechwriting.