

**NLWJC - KAGAN**

**EMAILS RECEIVED**

**ARMS - BOX 075 - FOLDER -003**

**[04/08/1998 - 04/09/1998]**

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Cynthia A. Rice ( CN=Cynthia A. Rice/OU=OPD/O=EOP [ OPD ] )

CREATION DATE/TIME: 8-APR-1998 17:05:48.00

SUBJECT: Kentucky Smoking Data for Speech--if you still want it

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

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

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

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

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

CC: Cynthia Dailard ( CN=Cynthia Dailard/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

CC: Lowell A. Weiss ( CN=Lowell A. Weiss/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TEXT:

Percent of U.S. high school students smoking cigarettes, 1997: 36.4%  
Percent of KY high school students smoking cigarettes, 1997: 47%

Percent of U.S. high school students using smokeless, 1997: 9.3%  
Percent of KY high school students using smokeless, 1997: 15.6%

Thomas L. Freedman  
04/07/98 06:20:07 PM  
Record Type: Record

To: Lowell A. Weiss/WHO/EOP  
cc: Mary L. Smith/OPD/EOP, Cynthia A. Rice/OPD/EOP  
Subject: Speech

Here are some other elements that may be of us in the speech.

1. If we pass the President's principles, 58,000 kids in KY. would be stopped fom smoking over the next 5 years, between now and 2003, and we would prevent 19,000 premature deaths in KY over the next 5 years. The numbers are based on raising privces \$1.10, and advertising and marketing restrictions.

2. The rate of teen smoking in KY. We will try and get you tomorrow.

3. We can laud Senator Ford for his hard work on putting this legislation together. I have some rhetoric on this. I'm at 65587.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Lowell A. Weiss ( CN=Lowell A. Weiss/OU=WHO/O=EOP [ WHO ] )

CREATION DATE/TIME: 8-APR-1998 17:07:31.00

SUBJECT: 5pm tobacco draft

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

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

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

TO: Cathy R. Mays ( CN=Cathy R. Mays/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

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

TEXT:

Draft 4/8/98 5pm

PRESIDENT WILLIAM J. CLINTON

REMARKS ON TOBACCO AT CARROLL COUNTY HIGH SCHOOL

CARROLLTON, KY

April 9, 1998

Acknowledgments: Sec. Glickman; Gov. Paul Patton; Sen. Ford [His work on the tobacco bill that is now moving through the Senate has been remarkable. He has fought day in and day out to make sure tobacco farmers and their communities will not get hurt. In the Senate, he has served this great state longer than any other leader. And like your Cats, his alma mater, he is leaving as number one.]

It's great to be in Wildcat country. I watched the Comeback Cats beat the Utes while I was flying from Botswana to Senegal. The Utes had eliminated the Razorbacks, so I was pulling for the blue and white all the way.

And it's great to be in Panther country [Carroll County High's mascot]. Last time I was here was in 1992, when I was rolling through these beautiful hills with Al Gore on our first bus tour. You made me feel right at home back then and you're doing just the same today.

I'm also pleased to see how you've recovered from the Flood of '97. It was just over a year ago that the rains were pouring down and Eagle Creek and the Kentucky River were spilling out all over this county like Noah's flood. But neighbors and friends reached out to help those in need. Old fashioned values pulled you through. You made America very proud.

The reason I came here to Carrollton today is to talk to you about a subject that could not be more important to the future of all of you students, to the future of this state, and to the future of this nation. I came here to talk about the future of tobacco. I know there's been a lot of talk about what the tobacco legislation in Congress will involve and where we are in the process. Today, in addition to listening to the concerns of people in this community, I wanted to explain the process in

detail to parents and children alike. But before we go even one step further I want to make two vital points very clear.

First, the tobacco legislation is alive and well. It will be easier to cut teen smoking if the tobacco companies work with us rather than against us, but we are committed to doing what's right for America's children either way.

Second, the legislation we seek is not about politics, or money, or seeking revenge against the tobacco industry. This legislation moving forward in Congress will not put the tobacco companies out of business. It will simply put them out of the business of selling cigarettes to kids. Personally, I do not believe it's wise for adults to smoke. But that is their own business. Smoking by young people is a different matter entirely -- and that is where we must draw the line.

Third, we will not abandon tobacco farmers. They haven't done anything wrong. They've been growing a legal crop. It is not they who have been marketing tobacco products to children. They're good, hard-working, tax-paying citizens -- most of them laboring from sun-up to sun-down on small family farms. We will stand with Kentucky's communities to pass legislation that makes sense for everyone. If it doesn't protect farmers and their communities, I won't sign it. Remember: we wouldn't let this community down when the flood waters were rising out of control. The national government was here in Kentucky, helping you clean up, working to make everyone whole. We will do it again with this tobacco legislation. Farmers didn't create the problem of youth smoking. But I promise you this: if you work with us, farmers and their communities will be included in the solution.

And now I'd like to explain why I believe it is so important that we work together to pass comprehensive tobacco legislation. Just last week, the Centers for Disease Control released a disturbing report. It found that more than 40% of teenagers now smoke or chew tobacco. Mr. Marcum [the principal] tells me it's probably even higher here. I'm not here to scold those of you who do smoke. But I will tell you this: I'm not going to rest until we bring the number of teen smokers way down. Today, 3,000 young people will start smoking. A thousand of them will have their lives shortened as a result. We are simply wasting precious lives.

It's clear what's going on. One major factor is peer pressure. Today, I challenge you students to help each other resist the pressure -- to stand together and to take responsibility for your futures. If you look at the National Champion Wildcats, it's clear each one of those players had a dream -- he wanted to win it all. The Wildcats stood together as a team. They resisted outside pressures. And they recognized that the body is as sacred a gift as the spirit and the mind. You think the National Champion Wildcats could run the court the way they do if they smoked? Not a chance. But whether you play basketball or not, the message is the same: smoking robs dreams.

The other major factor in the rise of teen smoking is the lure of sophisticated, multi-million-dollar marketing campaigns. Now, the law says that tobacco companies can't advertise tobacco products on television or radio, but you can't escape the ads anywhere else -- in magazines, sports centers, billboards. Toy race cars are still emblazoned with tobacco brand names, even though we know adults don't buy many toy race cars.

In the early 1990s, Joe Camel alone had an advertising budget of \$75 million. And that's a pretty good investment from the tobacco companies' point of view. How many of you have younger brothers and sisters? Well, if national statistics hold true, I bet more of them can recognize Joe Camel than Mickey Mouse.

I believe we've all got a remarkable opportunity to close the books on 30 years of calculated marketing to kids. And that is why I am working with Sen. Ford and his Senate colleagues to pass a bill that will make reducing youth smoking everyone's bottom line.

Last week, in an historic and resounding 19-to-1 vote, a key Senate committee gave its stamp of approval to comprehensive legislation sponsored by Sen. John McCain, a Republican, and Sen. Fritz Hollings, a Democrat, that would cut youth smoking by half over the next decade here in Kentucky and all over the country. And thanks in great measure to Sen. Ford's leadership, the bill will not let tobacco farmers down.

Last September, when I reviewed the settlement agreement reached by the Attorneys General, I was very disappointed to see that there was no mention of farmers and what might happen to them if the settlement became law. So when I laid out my five principles of what absolutely had to be in any comprehensive tobacco legislation, I said we had to protect farmers and their communities. I'm happy to say that the farmer provision Sen. Ford has proposed meets this commitment. The bill he helped prepare recognizes that tobacco has a very high return per acre and, therefore, you can't just tell tobacco farmers to go and plant soybeans on their land. It recognizes that you can't uproot tobacco without uprooting the family farm. This morning, I met a woman named Mattie Mack. She's 61 years old and has raised 38 foster children while growing tobacco -- not one of whom smokes. We can't abandon her or the children she has raised. We must reduce youth smoking, but we're not going to do it by devastating our farming communities.

We still have work to do on the legislation in the Senate. Above all, we need to put in place tough penalties that will ensure that the tobacco industry has a clear financial interest in stopping youth smoking. But Sen. McCain and his committee have helped move this nation in the right direction.

Unfortunately, it appears that some tobacco industry executives are trying to block the way. Yesterday, tobacco industry executives gave speeches to protest the legislation moving through Congress. This was no surprise. It's in their interest to object to the bill now to prevent it from getting even tougher.

But I believe this is not the time to issue threats. This is the time for the industry to put the past behind them and help all of us, including thousands of family farmers, plan for the future. Most important, this is the time to stop children from picking up a habit that kills. If we move forward with the legislation in the Senate, in Kentucky alone it will stop nearly 60,000 kids from starting to use tobacco over the next five years, and save almost 20,000 lives. We simply cannot afford to let this opportunity go up in smoke.

This is a remarkable time to be alive. This is a golden moment to be a student in Kentucky. We've opened the door to college for every student in this auditorium, thanks to new grants and HOPE Scholarships that your guidance counselors can help you learn all about. The chemical and steel industries are booming here in Carroll County; they're

practically guaranteeing jobs to students here who are getting involved in your remarkable work-study program and gaining essential math, science, and technical skills.

This is also a golden moment for our country. We have the best economy in a generation. The crime rate has been falling for five years in a row, for the first time in a quarter century. We have the lowest welfare rolls in 27 years. More families own homes than ever before.

But this is not a time to sit back and relax. As you know all too well, you don't wait until the flood rains are pouring down before you fix the roof. In other words, we can't wait for another generation of children to get sick before we get serious about bringing the rate of youth smoking down. But let me be clear: the way to fix our roof is not by making a hole in our neighbor's. We will fix the problem of youth smoking without making life tougher than it already is for our hard-working family farmers. If we work together, we will solve this problem together. Thank you and God bless you.

# # #

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 8-APR-1998 17:33:19.00

SUBJECT: Re: 5pm tobacco draft

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

READ:UNKNOWN

TO: Lowell A. Weiss ( CN=Lowell A. Weiss/OU=WHO/O=EOP @ EOP [ WHO ] )

READ:UNKNOWN

TO: Laura Emmett ( CN=Laura Emmett/OU=WHO/O=EOP @ EOP [ WHO ] )

READ:UNKNOWN

TEXT:

Good job moving up the comments on today. I think the first point needs to be more resolute: Let me be clear -- I am going to do everything in my power to put politics aside and pass comprehensive tobacco legislation this year. There is powerful bipartisan momentum to get this done, and we will not let anything stand in the way of doing right by America's children (or America's tobacco farmers)...

I'll send you more later. Thanks.

Laura Emmett

04/08/98 05:21:31 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP

cc:

Subject: 5pm tobacco draft

FYI-

----- Forwarded by Laura Emmett/WHO/EOP on 04/08/98 05:21 PM -----

Lowell A. Weiss

04/08/98 05:07:22 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: 5pm tobacco draft

Draft 4/8/98 5pm

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REMARKS ON TOBACCO AT CARROLL COUNTY HIGH SCHOOL

CARROLLTON, KY

April 9, 1998

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# # #

Message Sent

To: \_\_\_\_\_

Cynthia A. Rice/OPD/EOP

Thomas L. Freedman/OPD/EOP

Cathy R. Mays/OPD/EOP  
Elena Kagan/OPD/EOP  
Laura Emmett/WHO/EOP

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Jon P. Jennings ( CN=Jon P. Jennings/OU=WHO/O=EOP [ WHO ] )

CREATION DATE/TIME: 8-APR-1998 17:51:06.00

SUBJECT: Info on Tobacco

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

CC: Thurgood Marshall Jr ( CN=Thurgood Marshall Jr/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TEXT:

Thurgood suggested I forward you the following. I received it in my request for hot issues for the President's trip to Kentucky.

Smoking Debate: Perhaps the biggest current issue for Kentuckians is the struggle between tobacco interests and anti-smoking advocates. Progress on a national tobacco settlement has been closely followed in the media, with a lot of attention going to the predicament of tobacco farmers and tobacco-dependent communities. Tobacco is Kentucky's biggest cash crop by far. In addition, tobacco manufactures have traditionally provided some of the state's highest wages, 65% higher than the average for all Kentucky manufacturing industries. Obviously, a trend toward reduced smoking could have a major impact on economic conditions, especially in rural areas of the state. There is no agreement on the best course, even among farmers themselves. Some growers want an up-front buy out so they can leave the tobacco business altogether. Others want to keep the tobacco price support program, maintaining an option to be bought out later. Kentucky Senator Wendell Ford and Representative Scotty Baesler, both Democrats, have proposed bills to help Kentucky farmers and to provide assistance to tobacco communities.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 8-APR-1998 17:57:04.00

SUBJECT: Draft Q/A for POTUS

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

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

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

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

CC: Laura Emmett ( CN=Laura Emmett/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TEXT:

In case you want to include a Q and A for the President we took the internal press q and a, and tinkered with it. We put a very draft RJR Q & A at the top, and we should should have something for him to say when he is coming and going and they shout at him.===== ATTACHMENT 1 =====  
ATT CREATION TIME/DATE: 0 00:00:00.00

TEXT:

Unable to convert ARMS\_EXT:[ATTACH.D4]MAIL465817790.026 to ASCII,  
The following is a HEX DUMP:

FF57504319060000010A020100000002050000005E5B000000020000A667B459B35B5CED3DB0F0  
632545B1116AAC29863E4714FD7349FBFF94E8D3A515F6E9F20405338E589841DC702F2D71B4A8

**(4/8 DRAFT)**  
**TOBACCO QUESTIONS AND ANSWERS FOR THE PRESIDENT'S  
KENTUCKY TRIP OF APRIL 9, 1998**

**Q: How does R.J. Reynolds' announcement that it is pulling out of the settlement affect the chance of getting comprehensive legislation passed this year?**

**A: I would have liked R.J. Reynolds to continue to negotiate with us over the legislation currently be drafted in Congress. I don't know whether their announcement means that they are going to go back to their old ways of marketing to children. I think that we must all work together to get legislation passed this year. However, I will continue my efforts of working with Congress to make sure that this legislation gets passed this year. Their announcement will not stop my efforts, and I fully believe that we will see comprehensive bipartisan legislation this year.**

**Q: What is your position on protecting tobacco farmers and their communities as part of comprehensive tobacco legislation?**

**A: Tobacco farmers and their communities were not considered as part of the settlement agreement reached by the Attorneys' General. In my statement last September, I said that protecting farmers and their communities was one of the key five principles that must be included in any comprehensive tobacco legislation that I would be willing to sign. I believe that the legislation authored by Senator Ford (D-KY) as part of the McCain bill, a \$2.1 billion a year package that continues a government production control system, meets the goal of protecting farmers and their communities.**

**Q: Aren't the goals of reducing youth smoking and protecting tobacco farmers contradictory?**

**A: No. I don't want the tobacco companies to go out of business, only out of the business of selling to children. The tobacco farmers have played by the rules, and should be protected in any legislation that passes. I believe that we can reduce youth smoking and protect rural communities if we all work together to urge Congress to pass bipartisan comprehensive tobacco legislation this year.**

**Q: Senator Lugar recently suggested in an op-ed that the tobacco program should be phased out.**

**A: I believe that any legislation has to be evaluated in terms of how well it meets the the five principles I laid out last September --including reducing youth smoking and protecting farmers and their communities. Advocates of a free market for tobacco growers will**

need to demonstrate that it is consistent with these principles. Many health groups have argued that simply ending the tobacco program may actually increase the amount of tobacco that is grown, decrease the cost of tobacco, and provide a windfall for cigarette companies. In addition, representatives of family farms have suggested that ending the tobacco program would have extremely negative economic effects on them and their communities. I traveled to Kentucky, in part, to discuss the various legislative options with those directly effected by tobacco legislation and hear their opinions first-hand

### **BACKGROUND QUESTIONS RE: TOBACCO FARMERS**

**Q:** How does the tobacco program work?

**A:** Since the 1930s, in order to grow tobacco, a farmer must have a quota. The quota allows the farmer to grow a certain amount of tobacco for that year. Thus, the amount of tobacco grown in the United States is controlled by law. In addition, the price of tobacco is set statutorily. If a private company chooses not to purchase tobacco at or above the statutory minimum price, the regional cooperative of tobacco farmers will purchase the tobacco and store it, putting the tobacco back on the market when the price is more favorable.

*Q: What are the provisions for farmers are included in the McCain legislation?*

A: Senators Ford, Frist, and Hollings, the three members of the Senate Commerce Committee from tobacco-growing states, joined together to include a broad farmer provision in the McCain tobacco legislation. While maintaining a production control system for all tobacco farmers, the measure sets up somewhat different systems for burley and flue-cured tobacco. For burley tobacco (grown mostly in Kentucky), the package includes an optional buy-out for quota holders at \$8 per pound, and retains the quota system for those who do not take the buyout, but provides payments to both remaining quota holders, lessees, and tenants to the extent that base quota declines. For flue-cured tobacco, the plan provides for a mandatory buyout of existing quota holders, and replaces the quota system with a permit system that gives the new permits at no cost to active producers, regardless of whether they previously owned a quota. This transferring of quotas from inactive quota holders to actual producers is intended to make it possible for active farmers to sell tobacco without incurring the cost of buying or renting quota.

The provision authored by Senator Ford and included in McCain's legislation also provides approximately \$500 million for assistance to tobacco-producing communities. The package costs \$2.1 billion per year for the first ten years and \$500 million for years 11-25 for a total of \$28.5 billion. For the most part, tobacco farm leaders have been pleased with the proposal included in the McCain legislation.

**Q: How important is tobacco to Kentucky producers and the overall economy?**

**A:** Including sales from fire-cured and dark air-cured tobacco, Kentucky tobacco producers received over \$800 million from the 1997 crop. Tobacco sales represent over 40 percent of crop sales receipts and over 20 percent of all agricultural sales in Kentucky.

In 1997, over 600 million pounds of burley tobacco was produced in the United States -- 70 percent in Kentucky.

**Q: Which farmers will be affected by the legislation?**

**A:** The tobacco settlement will have a wide-reaching impact on all segments of the tobacco industry, but a disproportionate effect on small and minority tobacco quota owners and producers. Of the 338,000 individual quotas, about 66 percent are considered small farm operations. Five percent of all quotas are owned by minorities, the majority of which are small producers.

**Q: Why is tobacco so important to small farmers?**

**A:** Tobacco is a high value crop that generates gross receipts of \$4,000 to \$5,000 per acre. Profits from 1 acre of tobacco are equivalent to between 15 and 20 acres of corn or soybeans. On small farms in Kentucky, with an average of 22 acres of harvested cropland in 1992, tobacco is vital to the economic survival of farmers. (source: 1992 Ag Census)

**Q: How much tobacco is grown in the United States?**

**A:** In 1997, tobacco production totaled 1.7 billion pounds with a value of over \$3 billion, the highest production and crop receipts since 1992. Sales of tobacco products reached a record \$50 billion in 1997.

### **GENERAL BACKGROUND ON TOBACCO LEGISLATION**

**Q: Has you endorsed the McCain bill?**

**A: I believe that this bill represents a dramatic step forward. It would raise the price of cigarettes, give the FDA full authority to regulate tobacco products, ban advertising aimed at children, and protect tobacco farmers.**

**But I also said we still have work to do on this legislation. Above all, we need to put in place tough penalties that will cost the tobacco industry if it continues to sell cigarettes to young people. We're not trying to put the tobacco companies out of business; we want to put them out of the business of selling cigarettes to kids. This week's progress in the Senate shows we have real momentum in both parties to do**

**just that.**

**Q: You've said we need stronger penalties on companies that continue to sell to our children. What do you mean by that?**

**A: The McCain bill's penalty provisions are deficient for two reasons. First, the bill has a cap of \$3.5 billion per year on industry-wide penalties, no matter how much the industry misses youth targets by. Second, the McCain bill contains no penalties on individual companies for failing to meet youth smoking targets. Reducing youth smoking is our bottom line, and we must make it each and every company's bottom line.**

**Q: Does you have concerns about provisions of the McCain bill besides the penalties?**

**A: I have serious concerns about this bill's provision which would allow individual States to "opt out" of the national smoke-free environment policy. This provision creates a patchwork system in which states could decide to adopt weaker laws or decide against taking any action at all, leaving people with little or no protection from the hazards of environmental tobacco smoke. In addition, there is no need to exempt the tobacco industry from antitrust rules in order to reduce youth smoking. I strongly oppose any exemptions that would allow price fixing agreements. Third, I believe it is critical that tobacco legislation fund efforts to promote public health and assist children.**

**Q: What do you want the tobacco funds to be spent on?**

**A: I strongly believe that tobacco revenues should go toward protecting public health and assisting children. My Fiscal Year 1999 budget provides for funds for anti-smoking programs that will help us meet the goals of reducing youth smoking rates and for a dramatic expansion of health-related research to help us cure smoking-related disease. Finally, in recognition of the states' role in bringing suit against tobacco companies, my budget provides for a substantial amount of money to revert to the states. Some of this money can be used for any purpose. Other funds must be used on state-administered programs to assist children (specifically, for child care, Medicaid child outreach, and class size reduction).**

**Q: What is your view of the liability protections for the tobacco industry contained in Senator McCain's legislation?**

**A: As we have said on many occasions, I would prefer comprehensive tobacco legislation without liability limits, but in the context of legislation that meets all of my principles and dramatically reduces youth smoking, reasonable limits on liability will not be a dealbreaker. Right now, I'm going to focus on the aspects of the McCain legislation that I think fall short of what the I have demanded: particularly, on the penalties in the bill to reduce youth smoking. Until we get**

those right, we won't address liability protections.

**Q:** The tobacco industry has said that it will not agree to national tobacco legislation that increases the price of a pack of cigarettes by \$1.10 over five years, as proposed by your budget and the McCain bill. Does that doom your proposal?

**A:** No. We have always expected the tobacco companies to fight hard for their economic interests, but needless to say we will not always agree, nor we think will the US Congress. This price increase called for in my Fiscal Year 1999 budget is necessary to meet my youth smoking targets, and I will continue to demand it. What the companies do is up to them, but we will not back off such necessary measures to reduce youth smoking.

**Q:** What are the five principles that you have said tobacco legislation must meet?

**A:** I have said that I will only support tobacco legislation that:

- Raises the price of cigarettes by up to \$1.10 a pack over 5 years and \$1.50 a pack over the next ten years, and imposes tough penalties on companies that continue to sell to kids;
- Affirms the FDA's full authority to regulate tobacco products;
- Gets companies out of the business of marketing and selling tobacco to minors;
- Promotes public health research and public health goals; and
- Protects our tobacco farmers and their communities.

**Q:** How does the McCain bill compare to the Attorneys General proposed settlement and the President's proposal?

**A:** See chart below.

**Comparison of Tobacco Proposals  
April 7, 1998**

	<b>Attorneys General</b>	<b>McCain</b>	<b>President</b>
<b>Substantial Price Increase</b>	No	Yes	Yes
<b>Strong Industry and Company Penalties</b>	No	No	Yes
<b>Full FDA Authority</b>	No	Yes	Yes

<b>Strong Advertising and Access Provisions</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
<b>Protections of Tobacco Farmers</b>	<b>No</b>	<b>Yes</b>	<b>Yes</b>
<b>Comprehensive Plan to Use Tobacco Revenue to Protect Public Health and Assist Children</b>	<b>Yes</b>	<b>No*</b>	<b>Yes</b>
<b>Strong Environmental Tobacco Smoke Provision</b>	<b>Yes</b>	<b>No</b>	<b>Yes</b>
<b>Liability Protections for Industry:</b>			
<b>1. Liability Cap</b>	<b>Yes</b>	<b>Yes</b>	<b>Only if bill meets President's public health principles.</b>
<b>2. Bar on Class Actions</b>	<b>Yes</b>	<b>No</b>	<b>Only if bill meets President's public health principles.</b>
<b>3. Bar on Punitive Damages</b>	<b>Yes</b>	<b>No</b>	<b>Only if bill meets President's public health principles.</b>

\* Does not attempt to address most spending issues.

**Q: Is teen smoking going up or down?**

**A:** On April 2, the Centers for Disease Control in Atlanta released a new study ("Tobacco Use Among High School Students --United States, 1997") which found that cigarette smoking rates among high school students rose by nearly a third between 1991 and 1997, from 27.5 percent to 36.4 percent, with the sharpest increase among African American students. Cigarette smoking was highest among white students (40 percent), rising by 28 percent from 1991 (31 percent). While the level of cigarette smoking among African-American students was lower than for white students, the rate increased by 80 percent between 1991 and 1997 (from 12.6 percent to 22.7 percent). Overall, the study found that nearly half of male students and more than a third of female students used cigarettes, cigars, or smokeless tobacco during the previous month. This 1997 data was derived from a survey of over 16,000 students in grades 9-12.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Cathy R. Mays ( CN=Cathy R. Mays/OU=OPD/O=EOP [ OPD ] )

CREATION DATE/TIME: 8-APR-1998 18:14:25.00

SUBJECT: Weekly Health Care Strategy Meeting

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

TO: Donald H. Gips ( CN=Donald H. Gips/O=OVP @ OVP [ UNKNOWN ] )  
READ:UNKNOWN

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

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

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

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

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

TO: Barbara D. Woolley ( CN=Barbara D. Woolley/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

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

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

TO: Christopher C. Jennings ( CN=Christopher C. Jennings/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Rahm I. Emanuel ( CN=Rahm I. Emanuel/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

CC: Jill M. Pizzuto ( CN=Jill M. Pizzuto/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

CC: Laura K. Capps ( CN=Laura K. Capps/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

CC: Toby Donenfeld ( CN=Toby Donenfeld/O=OVP @ OVP [ UNKNOWN ] )  
READ:UNKNOWN

CC: Miriam H. Vogel ( CN=Miriam H. Vogel/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

CC: Michelle Crisci ( CN=Michelle Crisci/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

CC: Donna L. Geisbert ( CN=Donna L. Geisbert/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

CC: Satish Narayanan ( CN=Satish Narayanan/O=OVP @ OVP [ UNKNOWN ] )  
READ:UNKNOWN

CC: Angelique Pirozzi ( CN=Angelique Pirozzi/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

CC: Laura Emmett ( CN=Laura Emmett/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

CC: Suzanne Dale ( CN=Suzanne Dale/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

CC: Peter A. Weissman ( CN=Peter A. Weissman/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TEXT:

We will be having our weekly Health Care Strategy Meeting tomorrow,  
Thursday, April 9, at 4:00 p.m. in Bruce Reed's office.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Jason S. Goldberg ( CN=Jason S. Goldberg/OU=WHO/O=EOP [ WHO ] )

CREATION DATE/TIME: 8-APR-1998 18:40:34.00

SUBJECT: FOLLOW-UP: Small Tobacco Mtg. Thursday

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

TO: Carole A. Parmelee ( CN=Carole A. Parmelee/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Janet L. Graves ( CN=Janet L. Graves/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

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

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

TO: Eleanor S. Parker ( CN=Eleanor S. Parker/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Dawn L. Smalls ( CN=Dawn L. Smalls/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Jessica L. Gibson ( CN=Jessica L. Gibson/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

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

TO: Scott R. Hynes ( CN=Scott R. Hynes/O=OVP @ OVP [ UNKNOWN ] )  
READ:UNKNOWN

TO: Cathy R. Mays ( CN=Cathy R. Mays/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

Records Management ( Records Management @ EOP [ UNKNOWN ] )  
READ:UNKNOWN

TEXT:

At 6:00 p.m. in Erskine's office.

Only the small group that met today.

Jason

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Laura Emmett ( CN=Laura Emmett/OU=WHO/O=EOP [ WHO ] )

CREATION DATE/TIME: 8-APR-1998 18:45:14.00

SUBJECT:

TO: ELENA (Pager) #KAGAN ( ELENA (Pager) #KAGAN [ UNKNOWN ] )

READ:UNKNOWN

TEXT:

Press Office wants AT LEAST the one-pager ASAP -Laura

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Kay Casstevens ( CN=Kay Casstevens/O=OVP [ UNKNOWN ] )

CREATION DATE/TIME: 8-APR-1998 18:48:41.00

SUBJECT: pre-brief for VP/Kennedy-Conrad meeting

TO: Lawrence J. Stein ( CN=Lawrence J. Stein/OU=WHO/O=EOP [ WHO ] )  
READ:UNKNOWN

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

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

CC: Anthony R. Bernal ( CN=Anthony R. Bernal/OU=WHO/O=EOP [ WHO ] )  
READ:UNKNOWN

CC: Toby Donenfeld ( CN=Toby Donenfeld/O=OVP [ UNKNOWN ] )  
READ:UNKNOWN

Kay Casstevens ( CN=Kay Casstevens/O=OVP [ UNKNOWN ] )  
READ:UNKNOWN

TEXT:

At Sen. Kennedy's request, the Vice President will be meeting with Senators Kennedy and Conrad on this Friday, April 10 at 4:45 pm, on the tobacco legislation. Can you all attend a pre-brief with the VP at 4:30? Please let me know. thanks, Kay

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Cecilia E. Rouse ( CN=Cecilia E. Rouse/OU=OPD/O=EOP [ OPD ] )

CREATION DATE/TIME: 8-APR-1998 19:23:02.00

SUBJECT: Agenda for Deputies meeting

TO: Shannon Mason ( CN=Shannon Mason/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

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

READ:UNKNOWN

TO: Laura Emmett ( CN=Laura Emmett/OU=WHO/O=EOP @ EOP [ WHO ] )

READ:UNKNOWN

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

READ:UNKNOWN

TO: Sally Katzen ( CN=Sally Katzen/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TEXT:

Attached is the agenda for tomorrow's deputies meeting. You'll notice that the document has two "agendas." The first is to be sent to participants. The second is for Sally and Elena.

-- Ceci and Julie===== ATTACHMENT 1 =====  
ATT CREATION TIME/DATE: 0 00:00:00.00

TEXT:

Unable to convert ARMS\_EXT:[ATTACH.D62]MAIL47756779U.026 to ASCII,  
The following is a HEX DUMP:

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5B115BA1E40F720BB544BCF55794395BDF9A965ED54F314AAAB0A7F2101176B7E07D98875D513D

**Agenda for DPC/NEC Meeting on H-1B Visas  
April 9, 1998**

The purpose of this meeting is to identify the key components of legislative proposals and decide our priorities.

- I. **H-1B reforms**
- II. **Enhanced enforcement**
- III. **Application fee**
- IV. **Training**
- V. **Other concerns**
- VI. **Overall priorities**

**Annotated Agenda for DPC/NEC Meeting on H-1B Visas  
April 9, 1998**

The purpose of this meeting is to identify the key components of legislative proposals and decide our priorities.

**I. H-1B reforms previously endorsed by the Administration**

- a. “Recruit and retain”  
What, precisely, would we be requiring an employer to do?
- b. No lay-off provision  
How do we respond to the argument from industry that hiring/firing is too decentralized to allow for fair use of a no lay-off provision?
- c. Reduced maximum stay from six to three years  
Given that we are proposing a temporary increase in the cap, do we want to continue to advocate for limiting the maximum stay to three years?
- d. Other issues related to these reforms
  - (i) Occupational classification  
How would we recommend defining who is laid-off or who must be recruited? Based on “occupation” or skill attainment?
  - (ii) Job contractors  
Do we want to include a provision that ensures that both end-employers and contractors make the requisite attestations?
  - (iii) Prevailing wage  
Abraham uses the current definition of “wage” but allows employers to use outdated wage data. Kennedy defines “wage” to include benefits and other compensation, which Labor says they do not have reliable data on. What do we recommend?

**II. Enhanced enforcement**

The DOL has proposed that they be given greater authority to ensure that employers comply with the standards of hiring H-1B workers.

Which are the most important?

- A. Independent authority to investigate
- B. subpoena authority
- C. ability to conduct audits
- D. increase penalties (from \$5000 to \$10,000)

**III. Application fee**

Should there be an application fee? How much?

IV. **Training**

- a. Regional skills alliances
- b. NSF's Advanced Technological Education program.
- c. Scholarships or Loans?

V. **Other concerns**

- a. Concerns of the Academic community  
Many in the academic community are concerned about the "recruit and retain" and "no lay-off" provisions because of the temporary nature of many research grants.
- b. Increased enforcement authority by the Office of Special Counsel  
OSC wants the legislation to provide for a cause of action to a U.S. worker who is replaced by an H-1B worker OR who is denied employment in favor of an H-1B worker.

VI. **Overall priorities**

How do we rank reforms vs. training vs. enforcement?

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 8-APR-1998 19:55:54.00

SUBJECT: one-pager for Kentucky trip

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

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

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

CC: Laura Emmett ( CN=Laura Emmett/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TEXT:

Here it is --with Elena's edits.===== ATTACHMENT 1 =====  
ATT CREATION TIME/DATE: 0 00:00:00.00

TEXT:

Unable to convert ARMS\_EXT:[ATTACH.D2]MAIL444677796.026 to ASCII,  
The following is a HEX DUMP:

FF575043E5070000010A02010000000205000000B417000000020000E8C110F78ED7CAB7E03529

**THE PRESIDENT MEETS WITH KENTUCKY  
TOBACCO FARMERS AND CALLS FOR PASSAGE  
OF COMPREHENSIVE TOBACCO LEGISLATION**

**April 9, 1998**

Today, the President traveled to Carrollton, Kentucky to meet with tobacco farmers and to address students at Carroll County High School. The President's trip highlights his commitment to reducing youth smoking and protecting farmers, which are key elements of the bipartisan comprehensive tobacco legislation the President has called on Congress to pass this year.

**Roundtable with Tobacco Farmers and Members of the Farming Community**

The President held a roundtable discussion in the Kentuckiana Tobacco Warehouse with tobacco farmers and members of the community, including a student and tobacco warehouse owner. The panel also included Rod Kuegel, the President of the Burley Tobacco Growers Cooperative -- an organization that represents 150,000 tobacco farm families in five states -- and Bill Sprague, the President of the Kentucky Farm Bureau -- the largest farming organization in the state. This roundtable provided an opportunity for the President to listen to the concerns of farmers and the community regarding comprehensive tobacco legislation.

**Addressing Students at Carroll County High School**

The President also addressed approximately 2200 students and adults at the Carroll County High School where he emphasized his commitment to reducing youth smoking. The President was joined by Senator Ford, Governor Patton, and Agriculture Secretary Glickman. The President noted that every day 3,000 children will become regular smokers, and 1,000 will die prematurely as a result, and he urged Congress to pass his plan for comprehensive tobacco legislation which will save one million lives over the next five years.

**President's Key Principles**

On September 17th, President Clinton announced the five key principles that must be included in any comprehensive tobacco legislation. They are:

1. **Tough penalties and price increases** to reduce youth smoking. Price increases of up to \$1.50 if necessary over the next ten years.
2. **Full authority for the FDA to regulate tobacco products**, including authority of the manufacture, sale, and advertising of tobacco products.
3. **The tobacco industry must change the way it does business**, including stopping advertising to children.
4. **There needs to be progress towards other public health goals** including cutting second-hand smoke and increasing funding for health research and cessation programs.

5. **There should be protection for tobacco farmers and their communities** so they do not suffer economically because of this legislation.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 8-APR-1998 21:10:29.00

SUBJECT: Q&A's for press office and president

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

READ:UNKNOWN

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

READ:UNKNOWN

CC: Laura Emmett ( CN=Laura Emmett/OU=WHO/O=EOP @ EOP [ WHO ] )

READ:UNKNOWN

TEXT:

Here are versions of Q&A for the press office and the President, with the previously reviewed Q&A inserted re: the R.J. Reynold's announcement. =====

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

TEXT:

Unable to convert ARMS\_EXT:[ATTACH.D11]MAIL45968779Q.026 to ASCII,  
The following is a HEX DUMP:

FF575043A1070000010A020100000000205000000D0610000000200009294DBC990586164713C39  
7B4ACF99AC8B6B0CDC8C1F0602FE962E4806C25975E9F5CBC4CE6274ECA1A78A16D5A6B080C4C5

**(4/8 DRAFT)**

**TOBACCO QUESTIONS AND ANSWERS FOR THE PRESIDENT'S  
KENTUCKY TRIP OF APRIL 9, 1998**

**Q: What's your reaction to RJR Nabisco CEO Steven Goldstone's remarks today at the National Press Club?**

**A: It is no surprise that the tobacco industry would protest the legislation moving through the Congress --it is in their interest to object to the bill now to prevent it from getting even tougher. In the end, the companies will have a strong incentive to participate, and we're convinced that they'll recognize this.**

**So we don't think the companies will walk away --and we hope they do not do so. We would prefer that the companies join, rather than fight, our efforts to reduce smoking.**

**But make no mistake: I will continue to work to reduce youth smoking no matter what the companies do. I have worked on this effort for two years; members of Congress from both parties are now joining me; and we will get strong legislation on youth smoking whether or not the companies join us.**

**Q: Will this deal drive RJR and/or other tobacco companies into bankruptcy?**

**A: No. We're not trying to put the tobacco companies out of business; we want to put them out of the business of selling cigarettes to kids. We've done some careful financial analysis of the McCain bill, and we do not believe that it will drive companies into bankruptcy. There's just no reason to think that this legislation would increase the companies' exposure to a financial loss of the kind that would send them into bankruptcy. Stopping companies from selling cigarettes to kids will not put them out of business.**

**Q: But don't you need industry cooperation to enact tobacco legislation?**

**A: We would like the tobacco industry to willingly join us in this effort to reduce youth smoking. And we still believe that the tobacco industry will have every incentive to agree to legislation in the end, so that they can end this chapter in their history. But if they refuse to join us, we will still make progress. We will continue our efforts to pass comprehensive legislation to dramatically reduce youth smoking.**

**Q: What is your position on protecting tobacco farmers and their communities**

as part of comprehensive tobacco legislation?

**A:** Tobacco farmers and their communities were not considered as part of the settlement agreement reached by the Attorneys' General. In my statement last September, I said that protecting farmers and their communities was one of the key five principles that must be included in any comprehensive tobacco legislation that I would be willing to sign. I believe that the legislation authored by Senator Ford (D-KY) as part of the McCain bill, a \$2.1 billion a year package that continues a government production control system, meets the goal of protecting farmers and their communities.

**Q:** Aren't the goals of reducing youth smoking and protecting tobacco farmers contradictory?

**A:** No. I don't want the tobacco companies to go out of business, only out of the business of selling to children. The tobacco farmers have played by the rules, and should be protected in any legislation that passes. I believe that we can reduce youth smoking and protect rural communities if we all work together to urge Congress to pass bipartisan comprehensive tobacco legislation this year.

**Q:** Senator Lugar recently suggested in an op-ed that the tobacco program should be phased out. Do you agree?

**A:** I believe that any legislation has to be evaluated in terms of how well it meets the the five principles I laid out last September --including reducing youth smoking and protecting farmers and their communities. Advocates of a free market for tobacco growers will need to demonstrate that it is consistent with these principles. Many health groups have argued that simply ending the tobacco program may actually increase the amount of tobacco that is grown, decrease the cost of tobacco, and provide a windfall for cigarette companies. In addition, representatives of family farms have suggested that ending the tobacco program would have extremely negative economic effects on them and their communities. I traveled to Kentucky, in part, to discuss the various legislative options with those directly effected by tobacco legislation and hear their opinions first-hand

#### **BACKGROUND QUESTIONS RE: TOBACCO FARMERS**

**Q:** How does the tobacco program work?

**A:** Since the 1930s, in order to grow tobacco, a farmer must have a quota. The quota allows the farmer to grow a certain amount of tobacco for that year. Thus, the amount of tobacco grown in the United States is controlled by law.

**In addition, the price of tobacco is set statutorily. If a private company chooses not to purchase tobacco at or above the statutory minimum price, the regional cooperative of tobacco farmers will purchase the tobacco and store it, putting the tobacco back on the market when the price is more favorable.**

**Q:** *What are the provisions for farmers are included in the McCain legislation?*

**A:** Senators Ford, Frist, and Hollings, the three members of the Senate Commerce Committee from tobacco-growing states, joined together to include a broad farmer provision in the McCain tobacco legislation. While maintaining a production control system for all tobacco farmers, the measure sets up somewhat different systems for burley and flue-cured tobacco. For burley tobacco (grown mostly in Kentucky), the package includes an optional buy-out for quota holders at \$8 per pound, and retains the quota system for those who do not take the buyout, but provides payments to both remaining quota holders, lessees, and tenants to the extent that base quota declines. For flue-cured tobacco, the plan provides for a mandatory buyout of existing quota holders, and replaces the quota system with a permit system that gives the new permits at no cost to active producers, regardless of whether they previously owned a quota. This transferring of quotas from inactive quota holders to actual producers is intended to make it possible for active farmers to sell tobacco without incurring the cost of buying or renting quota.

The provision authored by Senator Ford and included in McCain's legislation also provides approximately \$500 million for assistance to tobacco-producing communities. The package costs \$2.1 billion per year for the first ten years and \$500 million for years 11-25 for a total of \$28.5 billion. For the most part, tobacco farm leaders have been pleased with the proposal included in the McCain legislation.

**Q:** **How important is tobacco to Kentucky producers and the overall economy?**

**A:** Including sales from fire-cured and dark air-cured tobacco, Kentucky tobacco producers received over \$800 million from the 1997 crop. Tobacco sales represent over 40 percent of crop sales receipts and over 20 percent of all agricultural sales in Kentucky.

In 1997, over 600 million pounds of burley tobacco was produced in the United States -- 70 percent in Kentucky.

**Q:** **Which farmers will be affected by the legislation?**

**A:** The tobacco settlement will have a wide-reaching impact on all segments of the

tobacco industry, but a disproportionate effect on small and minority tobacco quota owners and producers. Of the 338,000 individual quotas, about 66 percent are considered small farm operations. Five percent of all quotas are owned by minorities, the majority of which are small producers.

**Q: Why is tobacco so important to small farmers?**

**A:** Tobacco is a high value crop that generates gross receipts of \$4,000 to \$5,000 per acre. Profits from 1 acre of tobacco are equivalent to between 15 and 20 acres of corn or soybeans. On small farms in Kentucky, with an average of 22 acres of harvested cropland in 1992, tobacco is vital to the economic survival of farmers. (source: 1992 Ag Census)

**Q: How much tobacco is grown in the United States?**

**A:** In 1997, tobacco production totaled 1.7 billion pounds with a value of over \$3 billion, the highest production and crop receipts since 1992. Sales of tobacco products reached a record \$50 billion in 1997.

#### **GENERAL BACKGROUND ON TOBACCO LEGISLATION**

**Q: Has you endorsed the McCain bill?**

**A: I believe that this bill represents a dramatic step forward. It would raise the price of cigarettes, give the FDA full authority to regulate tobacco products, ban advertising aimed at children, and protect tobacco farmers.**

**But I also said we still have work to do on this legislation. Above all, we need to put in place tough penalties that will cost the tobacco industry if it continues to sell cigarettes to young people. We're not trying to put the tobacco companies out of business; we want to put them out of the business of selling cigarettes to kids. This week's progress in the Senate shows we have real momentum in both parties to do just that.**

**Q: You've said we need stronger penalties on companies that continue to sell to our children. What do you mean by that?**

**A: The McCain bill's penalty provisions are deficient for two reasons. First, the bill has a cap of \$3.5 billion per year on industry-wide penalties, no matter how much the industry misses youth targets by. Second, the McCain bill contains no penalties on individual companies for failing to meet youth smoking targets. Reducing youth smoking is our bottom line, and we must make it each and every company's bottom line.**

**Q: Does you have concerns about provisions of the McCain bill besides the**

penalties?

**A:** I have serious concerns about this bill's provision which would allow individual States to "opt out" of the national smoke-free environment policy.

This provision creates a patchwork system in which states could decide to adopt weaker laws or decide against taking any action at all, leaving people with little or no protection from the hazards of environmental tobacco smoke. In addition, there is no need to exempt the tobacco industry from antitrust rules in order to reduce youth smoking. I strongly oppose any exemptions that would allow price fixing agreements. Third, I believe it is critical that tobacco legislation fund efforts to promote public health and assist children.

**Q:** What do you want the tobacco funds to be spent on?

**A:** I strongly believe that tobacco revenues should go toward protecting public health and assisting children. My Fiscal Year 1999 budget provides for funds for anti-smoking programs that will help us meet the goals of reducing youth smoking rates and for a dramatic expansion of health-related research to help us cure smoking-related disease. Finally, in recognition of the states' role in bringing suit against tobacco companies, my budget provides for a substantial amount of money to revert to the states. Some of this money can be used for any purpose. Other funds must be used on state-administered programs to assist children (specifically, for child care, Medicaid child outreach, and class size reduction).

**Q:** What is your view of the liability protections for the tobacco industry contained in Senator McCain's legislation?

**A:** As we have said on many occasions, I would prefer comprehensive tobacco legislation without liability limits, but in the context of legislation that meets all of my principles and dramatically reduces youth smoking, reasonable limits on liability will not be a dealbreaker. Right now, I'm going to focus on the aspects of the McCain legislation that I think fall short of what I have demanded: particularly, on the penalties in the bill to reduce youth smoking. Until we get those right, we won't address liability protections.

**Q:** The tobacco industry has said that it will not agree to national tobacco legislation that increases the price of a pack of cigarettes by \$1.10 over five years, as proposed by your budget and the McCain bill. Does that doom your proposal?

**A:** No. We have always expected the tobacco companies to fight hard for their economic interests, but needless to say we will not always agree, nor we think will the US Congress. This price increase called for in my Fiscal Year 1999

budget is necessary to meet my youth smoking targets, and I will continue to demand it. What the companies do is up to them, but we will not back off such necessary measures to reduce youth smoking.

**Q:** What are the five principles that you have said tobacco legislation must meet?

**A:** I have said that I will only support tobacco legislation that:

- Raises the price of cigarettes by up to \$1.10 a pack over 5 years and \$1.50 a pack over the next ten years, and imposes tough penalties on companies that continue to sell to kids;
- Affirms the FDA's full authority to regulate tobacco products;
- Gets companies out of the business of marketing and selling tobacco to minors;
- Promotes public health research and public health goals; and
- Protects our tobacco farmers and their communities.

**Q:** How does the McCain bill compare to the Attorneys General proposed settlement and the President's proposal?

**A:** See chart below.

**Comparison of Tobacco Proposals  
April 7, 1998**

	<b>Attorneys General</b>	<b>McCain</b>	<b>President</b>
<b>Substantial Price Increase</b>	No	Yes	Yes
<b>Strong Industry and Company Penalties</b>	No	No	Yes
<b>Full FDA Authority</b>	No	Yes	Yes
<b>Strong Advertising and Access Provisions</b>	Yes	Yes	Yes
<b>Protections of Tobacco Farmers</b>	No	Yes	Yes
<b>Comprehensive Plan to Use Tobacco Revenue to Protect Public Health and Assist</b>	Yes	No*	Yes

<b>Children</b>			
<b>Strong Environmental Tobacco Smoke Provision</b>	<b>Yes</b>	<b>No</b>	<b>Yes</b>
<b>Liability Protections for Industry:</b>			
<b>1. Liability Cap</b>	<b>Yes</b>	<b>Yes</b>	<b>Only if bill meets President's public health principles.</b>
<b>2. Bar on Class Actions</b>	<b>Yes</b>	<b>No</b>	<b>Only if bill meets President's public health principles.</b>
<b>3. Bar on Punitive Damages</b>	<b>Yes</b>	<b>No</b>	<b>Only if bill meets President's public health principles.</b>

\* Does not attempt to address most spending issues.

**Q: Is teen smoking going up or down?**

A: On April 2, the Centers for Disease Control in Atlanta released a new study ("Tobacco Use Among High School Students --United States, 1997") which found that cigarette smoking rates among high school students rose by nearly a third between 1991 and 1997, from 27.5 percent to 36.4 percent, with the sharpest increase among African American students. Cigarette smoking was highest among white students (40 percent), rising by 28 percent from 1991 (31 percent). While the level of cigarette smoking among African-American students was lower than for white students, the rate increased by 80 percent between 1991 and 1997 (from 12.6 percent to 22.7 percent). Overall, the study found that nearly half of male students and more than a third of female students used cigarettes, cigars, or smokeless tobacco during the previous month. This 1997 data was derived from a survey of over 16,000 students in grades 9-12.

**(4/8 DRAFT)**  
**TOBACCO Q&A**  
**PRESIDENT'S KENTUCKY TRIP**  
**April 9, 1998**

**I. ADMINISTRATION POSITIONS ON TOBACCO FARMER ISSUES**

**Q. Why is the President going to Kentucky?**

A. The President is going to Kentucky, the heart of burley tobacco country, to discuss the need for comprehensive tobacco legislation that reduces youth smoking but provides for the future of family farming and rural communities. In his statement last September, the President said that protecting farmers and their communities was one of the key five principles that must be included in any comprehensive tobacco legislation he would be willing to sign. The President is going to Kentucky to discuss the impact of tobacco legislation directly with farmers and effected communities, and urge passage of legislation that meets the needs of reducing teen smoking and protects farmers and their communities. The President will say that legislation authored by Senator Ford and introduced as part of the McCain bill meets the goal of protecting farmers and their communities.

**Q. What is the President's position on programs for tobacco farmers?**

A: The President made protecting farmers and their communities one of the five key principles that must be included in any comprehensive tobacco legislation. Senator Ford's bill, which provides for compensation for losses to quota owners and producers, and makes provision for losses to rural communities where tobacco is grown, meets the President's goal of protecting farmers. The President is encouraged that both the interests of flue-cured and burley farmers are included in the proposal, and hopes that all farmers will continue working together to ensure that legislation is passed this year.

**Q. Aren't the goals of reducing youth smoking and protecting tobacco farmers contradictory?**

A: No. The President does not want the tobacco companies to go out of business, only out of the business of selling to children. The tobacco farmers have played by the rules, and should be protected in any legislation that passes. The President believes that we can reduce youth smoking and protect rural communities if we all work together to urge Congress to pass bipartisan comprehensive tobacco legislation this year.

**Q. Senator Lugar recently suggested in an op-ed that the tobacco program should be phased out. Does the Administration agree?**

A. The Administration feels that any legislation has to be evaluated in terms of how well it meets the President's five principles -- including reducing youth smoking and protecting farmers and their communities. Advocates of a free market for tobacco growers will need to demonstrate that it is consistent with these principles. Many health groups have argued that simply ending the tobacco program may actually increase the amount of tobacco that is grown, decrease the cost of tobacco, and provide a windfall for cigarette companies. In addition, representatives of family farms have suggested that ending the tobacco program would have extremely negative economic effects on them and their communities. The President went to Kentucky, in part, to discuss the various legislative options with those directly effected by tobacco legislation and hear their opinions first-hand

## **II. BACKGROUND QUESTIONS RE: TOBACCO FARMERS**

**Q. How important is tobacco to Kentucky producers and the overall economy?**

A. Including sales from fire-cured and dark air-cured tobacco, Kentucky tobacco producers received over \$800 million from the 1997 crop. Tobacco sales represent over 40 percent of crop sales receipts and over 20 percent of all agricultural sales in Kentucky.

In 1997, over 600 million pounds of burley tobacco was produced in the United States - 70 percent in Kentucky.

**Q. Who will be affected by a settlement?**

A. The tobacco settlement will have a wide-reaching impact on all segments of the tobacco industry, but a disproportionate effect on small and minority tobacco quota owners and producers. Of the 338,000 individual quotas, about 66 percent are considered small farm operations. Five percent of all quotas are owned by minorities, the majority of which are small producers.

**Q. Why is tobacco so important to small farmers?**

A. Tobacco is a high value crop that generates gross receipts of \$4,000 to \$5,000 per acre. Profits from 1 acre of tobacco are equivalent to between 15 and 20 acres of corn or soybeans. On small farms in Kentucky, with an average of 22 acres of harvested cropland in 1992, tobacco is vital to the economic survival of farmers. (source: 1992 Ag Census)

**Q. How much tobacco is grown in the United States?**

A. In 1997, tobacco production totaled 1.7 billion pounds with a value of over \$3 billion, the highest production and crop receipts since 1992. Sales of tobacco products reached a record \$50 billion in 1997.

**Q. How does the tobacco program work?**

A. Since the 1930s, in order to grow tobacco, a farmer must have a quota. The quota allows the farmer to grow a certain amount of tobacco for that year. Thus, the amount of tobacco grown in the United States is controlled by law. In addition, the price of tobacco is set statutorily. If a private company chooses not to purchase tobacco at or above the statutory minimum price, the regional cooperative of tobacco farmers will purchase the tobacco and store it, putting the tobacco back on the market when the price is more favorable.

**Q. What are the provisions of the Ford bill which is included in the McCain legislation?**

**A: Senators Ford, Frist, and Hollings, the three members of the Senate Commerce Committee from tobacco-growing states, joined together to include a farmer provision in the McCain tobacco legislation. While maintaining a production control system for all tobacco farmers, this package sets up somewhat different systems for burley and flue-cured tobacco. For burley tobacco (grown mostly in Kentucky), the package includes an optional buy-out for quota holders at \$8 per pound, and retains the quota system for those who do not take the buyout, but provides payments to both remaining quota holders, lessees, and tenants to the extent that base quota declines. For flue-cured tobacco, the plan provides for a mandatory buyout of existing quota holders, and replaces the quota system with a permit system that gives the new permits at no cost to active producers, regardless of whether they previously held a quota. This transferring of quotas from inactive quota holders to actual producers is intended to make it possible for active farmers to sell tobacco without incurring the cost of buying or renting quota.**

**The provision authored by Senator Ford and included in McCain's legislation also provides approximately \$500 million for assistance to tobacco-producing communities. The package costs \$2.1 billion per year for the first ten years and \$500 million for years 11-25 for a total of \$28.5 billion. For the most part, tobacco farm leaders have been pleased with the proposal included in the McCain legislation.**

## **II. GENERAL BACKGROUND ON TOBACCO LEGISLATION**

**Q: What's your reaction to RJR Nabisco CEO Steven Goldstone's remarks today at the National Press Club?**

**A: It is no surprise that the tobacco industry would protest the legislation moving through the Congress --it is in their interest to object to the bill now to prevent it from getting even tougher. In the end, the companies will have a strong incentive to participate, and we're convinced that they'll recognize this.**

**So we don't think the companies will walk away --and we hope they do not do so. We would prefer that the companies join, rather than fight, our efforts to reduce smoking.**

**But make no mistake: The President will continue to work to reduce youth smoking no matter what the companies do. He has worked on this effort for two years; members of Congress from both parties are now joining him; and we will get strong legislation on youth smoking whether or not the companies join us.**

**Q: Will this deal drive RJR and/or other tobacco companies into bankruptcy?**

**A: No. We're not trying to put the tobacco companies out of business; we want to put them out of the business of selling cigarettes to kids. We've done some careful financial analysis of the McCain bill, and we do not believe that it will drive companies into bankruptcy. There's just no reason to think that this legislation would increase the companies' exposure to a financial loss of the kind that would send them into bankruptcy. Stopping companies from selling cigarettes to kids will not put them out of business.**

**Q: But don't you need industry cooperation to enact tobacco legislation?**

**A: We would like the tobacco industry to willingly join us in this effort to reduce youth smoking. And we still believe that the tobacco industry will have every incentive to agree to legislation in the end, so that they can end this chapter in their history. But if they refuse to join us, we will still make progress. We will continue our efforts to pass comprehensive legislation to dramatically reduce youth smoking.**

**Q: Has the President endorsed the McCain bill?**

**A: The President believes that this bill represents a dramatic step forward. It would raise the price of cigarettes, give the FDA full authority to regulate tobacco products, ban advertising aimed at children, and protect tobacco farmers.**

But he also said we still have work to do on this legislation. Above all, we need to put in place tough penalties that will cost the tobacco industry if it continues to sell cigarettes to young people. We're not trying to put the tobacco companies out of business; we want to put them out of the business of selling cigarettes to kids. This week's progress in the Senate shows we have real momentum in both parties to do just that.

**Q: The President says we need stronger penalties on companies that continue to sell to our children. What does he mean by that?**

**A:** The McCain bill's penalty provisions are deficient for two reasons. First, the bill has a cap of \$3.5 billion per year on industry-wide penalties, no matter how much the industry misses youth targets by. Second, the McCain bill contains no penalties on individual companies for failing to meet youth smoking targets. Reducing youth smoking is our bottom line, and we must make it each and every company's bottom line.

**Q: Does the Administration have concerns about provisions of the McCain bill besides the penalties?**

**A:** We have serious concerns about this bill's provision which would allow individual States to "opt out" of the national smoke-free environment policy. This provision creates a patchwork system in which states could decide to adopt weaker laws or decide against taking any action at all, leaving people with little or no protection from the hazards of environmental tobacco smoke. In addition, there is no need to exempt the tobacco industry from antitrust rules in order to reduce youth smoking. We strongly oppose any exemptions that would allow price fixing agreements. Third, we believe it is critical that tobacco legislation fund efforts to promote public health and assist children.

**Q: What does the President want the tobacco funds to be spent on?**

**A:** The President strongly believes that tobacco revenues should go toward protecting public health and assisting children. His budget provides for funds for anti-smoking programs that will help us meet the goals of reducing youth smoking rates and for a dramatic expansion of health-related research to help us cure smoking-related disease. Finally, in recognition of the states' role in bringing suit against tobacco companies, the President's budget provides for a substantial amount of money to revert to the states. Some of this money can be used for any purpose. Other funds must be used on state-administered programs to assist children (specifically, for child care, Medicaid child outreach, and class size reduction).

**Q: What is your view of the liability protections for the tobacco industry contained in Senator McCain's legislation?**

**A:** As we have said on many occasions, we would prefer comprehensive tobacco legislation without liability limits, but in the context of legislation that meets all of the President's principles and dramatically reduces youth smoking, reasonable limits on liability will not be a dealbreaker. Right now, we're going to focus on the aspects of the McCain legislation that we think fall short of what the President has demanded: particularly, on the penalties in the bill to reduce youth smoking. Until we get those right, we won't address liability protections.

**Q:** **The tobacco industry has said that it will not agree to national tobacco legislation that increases the price of a pack of cigarettes by \$1.10 over five years, as proposed by the President's budget and the McCain bill. Does that doom the President's proposal?**

**A:** No. We have always expected the tobacco companies to fight hard for their economic interests, but needless to say we will not always agree, nor we think will the US Congress. This price increase called for in the President's budget is necessary to meet his youth smoking targets, and he will continue to demand it. What the companies do is up to them, but we will not back off such necessary measures to reduce youth smoking.

**Q:** **What are the five principles that the President has said tobacco legislation must meet?**

**A:** President Clinton has said he will only support tobacco legislation that:

- Raises the price of cigarettes by up to \$1.10 a pack over 5 years and \$1.50 a pack over the next ten years, and imposes tough penalties on companies that continue to sell to kids;
- Affirms the FDA's full authority to regulate tobacco products;
- Gets companies out of the business of marketing and selling tobacco to minors;
- Promotes public health research and public health goals; and
- Protects our tobacco farmers and their communities.

**Q:** **How does the McCain bill compare to the Attorneys General proposed settlement and the President's proposal?**

**A:** See chart below.

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April 7, 1998

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**Q: Is teen smoking going up or down?**

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**("Tobacco Use Among High School Students -- United States, 1997") which found that cigarette smoking rates among high school students rose by nearly a third between 1991 and 1997, from 27.5 percent to 36.4 percent, with the sharpest increase among African American students. Cigarette smoking was highest among white students (40 percent), rising by 28 percent from 1991 (31 percent). While the level of cigarette smoking among African-American students was lower than for white students, the rate increased by 80 percent between 1991 and 1997 (from 12.6 percent to 22.7 percent). Overall, the study found that nearly half of male students and more than a third of female students used cigarettes, cigars, or smokeless tobacco during the previous month. This 1997 data was derived from a survey of over 16,000 students in grades 9-12.**

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Demond T. Martin ( CN=Demond T. Martin/OU=WHO/O=EOP [ WHO ] )

CREATION DATE/TIME: 9-APR-1998 09:22:36.00

SUBJECT: Higher Education Mtg.

TO: Scott R. Palmer ( CN=Scott R. Palmer/OU=PIR/O=EOP @ EOP [ PIR ] )  
READ:UNKNOWN

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

TO: Tanya E. Martin ( CN=Tanya E. Martin/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

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

TO: Susan M. Liss ( CN=Susan M. Liss/O=OVP @ OVP [ UNKNOWN ] )  
READ:UNKNOWN

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

TO: Robert M. Shireman ( CN=Robert M. Shireman/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

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

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

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

CC: Laura Emmett ( CN=Laura Emmett/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

CC: Ora Theard ( CN=Ora Theard/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

CC: Miriam H. Vogel ( CN=Miriam H. Vogel/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TEXT:

Sylvia Mathews will hold a Higher Education meeting in the Ward Rm. at 10:30am on Friday April 10.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Laura Emmett ( CN=Laura Emmett/OU=WHO/O=EOP [ WHO ] )

CREATION DATE/TIME: 9-APR-1998 10:04:22.00

SUBJECT:

TO: ELENA (Pager) #KAGAN ( ELENA (Pager) #KAGAN [ UNKNOWN ] )  
READ:UNKNOWN

TEXT:

Leg. Stategy is now at 11:30 in Erskine's office, not 10:00

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Cynthia A. Rice ( CN=Cynthia A. Rice/OU=OPD/O=EOP [ OPD ] )

CREATION DATE/TIME: 9-APR-1998 10:29:27.00

SUBJECT: Here is the draft memo--I'll bring Elena a hard copy

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

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

TEXT:

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

TEXT:

Unable to convert ARMS\_EXT:[ATTACH.D43]MAIL474714894.026 to ASCII,  
The following is a HEX DUMP:

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081048CE021EB083A7CB4325CEC2D09056145685F4B1E32533EBAC4026987491B4D35DC5BFB487  
52DFE75572C4B4891BC2735C8796A302BDE0786DBA035D0CE4A803981F3885DC0D795CC1FE48E9  
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9A40A8CADEE954E8E976A763A657AABD7303FFF4EEAF8F203FD0919815CA49767C7A08AD695446

April 9, 1998

MEMORANDUM FOR

FROM:

SUBJECT:

As you know, we have praised the McCain bill as a significant step forward, noting that it raises the price of cigarettes by \$1.10, assures FDA full authority to regulate tobacco, and protects farmers and farming communities. We also believe we need several key changes to the McCain bill to ensure it will meet our goals of reducing youth smoking and protecting the public health.

*Youth Lookback Penalties*

We believe that providing individual companies with a financial incentive to reduce youth smoking will help ensure we meet our goal of reducing youth smoking by 60 percent within 10 years. Currently, the McCain bill levies an industry-wide surcharge when the targets are missed, a cost which companies will pass onto consumers. We would recommend a company specific surcharge developed by our experts at Treasury and HHS, which would impose a \$1000 fee for every child by which a company misses the targets (i.e., if a company missed the target by 10,000 children, they would pay a fee of \$10,000,000). A \$1000 per child surcharge is twice average company yearly profits per smoker.

Currently, the McCain bill caps industry-wide penalties at \$3.5 billion. This means that the surcharge would increase the price by \$.30 per pack at most, no matter how much the industry misses the youth smoking targets by. Because the price increase resulting from industry wide penalties will provide additional deterrence to youth tobacco use, we believe we should lift the cap from \$3.5 to \$4 to \$5 billion.

We also recommend revising the McCain penalty language to ensure that both company and industry surcharges are levied based on objective outcomes. The current language requiring the federal government to show that companies engaged in bad behavior in addition to missing the

targets may subject these provisions to endless litigation.

### *Price per Pack and Spending*

#### Price per Pack

As you know, many in the public health community argue that \$1.50 per pack price increase is needed to significantly reduce youth smoking. We do not believe, however, that we should push for an additional increase in the annual industry payments in the McCain bill, because we believe that Congressional scorekeepers will estimate that the yearly payments in the bill will increase the price of cigarettes by nearly \$1.50 per pack rather than the \$1.10 we estimated. The price per pack estimate would increase if the scorekeepers assume that 1) states will use the opportunity to increase state excise taxes, further reducing the number of packs smoked and 2) the bill will significantly increase the black market for cigarettes, resulting in fewer than expected packs sold through the legitimate retail market. By reducing the number of expected packs sold, both of these changes would increase the per pack price estimate because the annual industry payment set in legislation would be spread among fewer packs, raising the price of each more.

#### Spending

**We expect bipartisan consensus on 75-80 percent of the spending (\$10 billion over 5 years for farmers; \$10 billion for cessation, counteradvertising, and other public health programs; \$10-15 billion for NIH; and \$20-25 billion for states). The battle will be over how to divide up the remaining \$15 billion or so. Senate Republicans will seek money for Medicare; House Republicans may push Rep. Archer's proposal for health care tax deductions for small business and the self-employed; and Democrats will push for everything from child care to school construction.**

As you know, in our budget, we earmark 57 percent of the state funding for child care, class size, and Medicaid outreach initiatives. As we go forward, we should argue at a minimum that a significant portion of the state funds should be used for state programs such as child care and education that are defined in a menu-like list in the legislation. For example, in the Harkin-Chafee bill, half of the state funds must be spent on one of 20 listed programs, which include child care, K-12 education, Medicaid, the Child Health Insurance Program, and Head Start.

#### *Antitrust Exemption*

The McCain bill contains antitrust exemptions for the tobacco industry which are not necessary to achieve the goals of the legislation and may have serious anticompetitive effects. The antitrust exemption is not necessary to ensure that distributors and retailers don't sell tobacco products to minors nor to allow companies to enter into agreements with the federal or state governments.

We believe we should oppose all antitrust exemptions, except for narrowly-drawn ones if necessary to restrict advertising and marketing to children.

### *International Tobacco Control Efforts*

As part of the public health spending noted above, we believe it is important to include significant funding (\$200 million a year) for international tobacco control efforts. We believe these funds should be spent on both governmental and non-governmental efforts to promote public health and smoking prevention efforts abroad. Such funds could be used to provide technical assistance to public health departments in other countries and finance diplomatic, media-related and grass-roots efforts to discourage youth smoking abroad.

The McCain bill has several international provisions which we believe should be amended to ensure that they do not interfere with our diplomatic and trade priorities. For example, we support the bill's effort to prohibit U.S. government support for promotion of tobacco overseas, but need to ensure that the language does not interfere with USTR's ability to negotiate tariff reductions or interfere with treatment of other products. In addition, the McCain bill contains a provision which the State Department and HHS consider problematic and unenforceable, which would require U.S. companies to abide by the new advertising and marketing restrictions when doing business in other countries. Instead, we recommend that we work on a multilateral basis through the World Health Organization to encourage other countries to adopt laws like ours.

### *Environmental Tobacco Smoke*

We have serious concerns about the McCain bill's provisions which would allow individual states to "opt out" of the environmental tobacco smoke provisions that ensure public facilities are smoke free. This provision creates a patchwork system in which states could decide to adopt weaker laws or decide against taking any action at all, leaving many children with little or no protection from the hazards of second hand smoke.

### *Preemption*

We believe the bill's preemption provisions may go too far in preventing state and local governments from enacting tougher anti-smoking laws if they so choose and may unfairly end local lawsuits with the tobacco industry without including local governments as beneficiaries of industry payments. [checking].

### *Constitutional Issues*

We are prepared to recommend changes to the advertising, marketing, and other free speech-related provisions to ensure they are narrowly tailored to meet the government's compelling interest in protecting children. Provisions regulating non-commercial speech, such as forbidding companies from lobbying Congress, are particularly problematic and should be removed.

## *Conclusion*

In summary, we would recommend seeking these improvements:

### Youth Lookback Penalties

- \$1000 for every child by which companies miss the youth smoking reduction targets
- Increase the industry-wide surcharge cap from \$3.5 to \$4-5 billion

### Price and Spending

- No change in annual payment amounts
- Consensus spending on public health efforts
- Menu including child care and education for significant portion of state spending

### Antitrust Exemption

- Eliminate the antitrust exemption

### International Tobacco Control

- Support funding for governmental and non-governmental organizations
- Prohibit U.S. support for promotion of tobacco overseas without limiting USTR authority to negotiate treaties
- Work multilaterally through the World Health Organization to prevent companies from marketing to children overseas, but do not impose difficult-to-enforce unilateral rules

### Environmental Tobacco Smoke

- Eliminate "opt-out" provision that allow states to adopt weaker laws

### Preemption

- Allow state and local governments to impose stricter anti-tobacco laws
- Permit local lawsuits to proceed

### Constitutional Issues

- Recommend changes to minimize Constitutional difficulties

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Diana Fortuna ( CN=Diana Fortuna/OU=OPD/O=EOP [ OPD ] )

CREATION DATE/TIME: 9-APR-1998 11:05:35.00

SUBJECT: FICA/workfare

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

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

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

CC: Laura Emmett ( CN=Laura Emmett/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TEXT:

Charlie Salem of Gov. Chiles' office says Chiles is itching to start banging the drum again on the FICA/workfare notice issue with his fellow Governors. He has been holding back after we quietly consulted just him and Carper on the specifics of the notice right before the Feb. NGA meeting. But there is an NGA executive committee meeting in DC on April 24 (where they will focus mostly on tobacco), and Charlie says it may find its way onto the agenda by then. So perhaps that gives us a deadline in pushing Podesta.

(By the way, Treasury says their desire to do the notice is not affected by Rubin's chat with Sweeney. Rubin wants to be briefed on the issue, but Scholz is certain that that briefing will just be informational and won't alter their position.)

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Laura Emmett ( CN=Laura Emmett/OU=WHO/O=EOP [ WHO ] )

CREATION DATE/TIME: 9-APR-1998 11:26:07.00

SUBJECT:

TO: ELENA (Pager) #KAGAN ( ELENA (Pager) #KAGAN [ UNKNOWN ] )  
READ:UNKNOWN

TEXT:

FYI- Jason says the Leg. Strategy Mtg. will start PROMPTLY at 11:30

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Diana Fortuna ( CN=Diana Fortuna/OU=OPD/O=EOP [ OPD ] )

CREATION DATE/TIME: 9-APR-1998 11:27:00.00

SUBJECT: Update on prisoners and benefits

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

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

CC: Laura Emmett ( CN=Laura Emmett/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

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

CC: Leanne A. Shimabukuro ( CN=Leanne A. Shimabukuro/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

CC: Cynthia A. Rice ( CN=Cynthia A. Rice/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TEXT:

We met yesterday with Rahm, Gene, Barbara Chow, and SSA on a possible radio address on stopping fraud in benefit payments to prisoners. We agreed that there is some potential in announcing that other agencies (USDA, maybe VA and others) will take advantage of SSA's big new database of prisoners to spot prisoners who are getting benefits. We will work with OMB to survey agencies for programs where this might work. SSA notes Shaw is doing an oversight hearing on SSI fraud this month and that there will be a lot of heat from Congress in coming weeks on fraud, so this would let us take the offensive a bit.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Cynthia A. Rice ( CN=Cynthia A. Rice/OU=OPD/O=EOP [ OPD ] )

CREATION DATE/TIME: 9-APR-1998 11:32:55.00

SUBJECT: Conrad Priorities on McCain

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

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

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

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

TEXT:

----- Forwarded by Cynthia A. Rice/OPD/EOP on 04/09/98  
11:32 AM -----

Richard J. Turman  
04/09/98 10:36:31 AM  
Record Type: Record

To: See the distribution list at the bottom of this message  
cc:  
Subject: Senate Dem e-mail on Tobacco

We received a copy of the attached e-mail, that was sent to Senate Dem staff by Sen. Conrad's staff. It includes a current sense of their plans, and a summary they prepared of concerns about Sen. McCain's bill. It would be best if Sen. Conrad's staff did not know we received it -- thanks.

Subject: Preparation for Tobacco Floor Action  
Author: Tom Mahr  
Date: 4/8/98 5:59 PM

As most of you probably know, Senator Lott has indicated that he intends to take up tobacco legislation on the floor in late May. We are starting to gear up for Senate floor action and wanted to make sure we touched base with other offices that might want to be involved.

Our analysis is that, while it is good that a tobacco bill will be taken up on the floor, the McCain bill falls very short of meeting the public health goals that I think all of our bosses share. Attached is a preliminary critique that explains why the McCain bill is not a good, strong tobacco bill that will succeed in protection kids from tobacco.

We have talked with public health groups to identify priority areas where the bill needs to be significantly strengthened, and we are

starting to reach out to Republican offices to try to set up bipartisan working groups to help us develop amendments that would win a majority on the floor and make the bill acceptable in these areas. Here are the areas that we intend to concentrate on:

- 1) \$1.50 price increase within no more than three years
- 2) strong, company-specific look-back penalties
- 3) full, dedicated funding for tobacco control programs
- 4) no special liability protections for the tobacco industry
- 5) Strong second-hand smoke provisions
- 6) No pre-emption of stronger State or local tobacco control measures
- 7) No anti-trust protection for the tobacco industry
- 8) Full disclosure of all relevant tobacco industry documents.

We think it makes sense to make sure that people who have an interest in these issues work together rather than working at cross-purposes or developing competing approaches, none of which then can generate a majority on the floor. If your Senator is interested in working on any of the above issues, could you please let me know. Then we'll make sure that everyone with an interest is included in any working group that develops on the issue.

Also, if you have contacts with Republican offices and know of Republican Senators who may be interested in taking an active role on any of these issues, that would be very helpful information as we move forward. Please let me know.

Message Sent

To:

- 
- Joshua Gotbaum/OMB/EOP
  - Melany Nakagiri/OMB/EOP
  - Wm G. White/OMB/EOP
  - Marc Garufi/OMB/EOP
  - Jim R. Esquea/OMB/EOP
  - Barry T. Clendenin/OMB/EOP
  - Frank J. Seidl III/OMB/EOP
  - Mark E. Miller/OMB/EOP
  - Jill M. Blickstein/OMB/EOP
  - Jill M. Pizzuto/OMB/EOP
  - Cynthia A. Rice/OPD/EOP

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

TEXT:

WPC|  
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□<DL!T\$&)\+-□0d24XT□2DXX#2D2DM#2D2DPreliminaryAnalysisoftheCommerceCommitteeBill  
 1 □□#XX2D##XXXX' #XXXXTheCommerceCommitteebill, although it improves upon the deficit  
 June 20th proposal, falls p short on key public health requirements while giving the tobacco  
 industry unprecedented legal liability protection. It does not include a sufficient price  
 increase or look-back penalties. The FDA title, while passable, leaves FDA regulation un-  
 necessarily open to legal challenge. The retailer compliance provisions are weak. The docu-  
 ment provisions are cumbersome. An unnecessary anti-trust exemption creates an opportunity  
 for the industry to dramatically increase its profits. And States and localities remain limi-  
 ted in their ability to enact tough tobacco control laws. □ Price Increase is Inadequate @  
 □ Public health experts and economists agree that a healthy price increase is the single most ef-  
 fective 0□□ way to significantly reduce youth smoking rates. They have concluded that it  
 takes a price increase of at least \$1.50 per pack to get within range of the youth smoking reduc-  
 tion targets set out in the legislation. The McCain bill provides a price increase of only \$1.10  
 per pack in the fifth year and thereafter. This means that, each year, more than 150,000 youth  
 will start smoking who would not have started if the price had been increased the full \$1.50 per  
 pack. More than 50,000 of these children who start smoking each year because of the inadequate  
 price increase will eventually die prematurely of tobacco-related disease--or about the same  
 number of Americans as died during the entire Vietnam War. Although the tobacco industry and  
 others have asserted that a \$1.10 real price increase at the manufacturer level will somehow  
 turn into a \$1.50 real price increase at retail, the Treasury Department, Federal Trade Commis-  
 sion and the vast majority of economists and industry analysts agree that there will be no sig-  
 nificant mark-up. In fact, some analysts predict that manufacturers would respond to a price  
 increase of \$1.10 by squeezing retailers and distributor margins. Similarly, although the tobacco  
 industry tries to raise the specter of a black market, Treasury and BATF say there is no mo-  
 re significant likelihood of a black market with a \$1.50 price increase than with a \$1.10 price  
 increase. □ Look-back Provisions are Weak and Ineffective \$! □ Effective look-back penalt-  
 ies can change the current incentives that drive tobacco manufacturers to "market to chil-  
 dren. Currently, manufacturers know that children are the only available source of replac-  
 ements for smokers to take the place of the 2 million American smokers who quit or die each year.  
 If someone does not start smoking as a child, he or she is extremely unlikely to start smoking as an ad-  
 ult. Moreover, tobacco manufacturers know that smokers are very loyal to the first regular brand  
 smoked. Taken together, these facts mean that tobacco manufacturers would not be serving their  
 shareholders' interests if they did not market to children because they would be giving up their  
 future market. Strong look-back penalties turn this incentive structure upside-down. They create

an affirmative market incentive for tobacco manufacturers to put to good use the knowledge they  
 have accumulated about how to get children to start smoking and instead get children  
 not to use tobacco products.

Unfortunately, the McCain look-backs will not do this. First, they do not impose the penalty  
 on a company-specific basis. Imposing them industry-wide creates a perverse disincentive for  
 companies to reduce youth smoking of their brands because they will still be penalized if the  
 rest of the industry builds future market share by continuing to sell to children. Second, the  
 penalties are too small. They amount to only 1/3 of 1 cent per pack for the first five percentage  
 points by which the targets are missed, 2/3 cent for the next five percentage points, and 1 cent  
 for the next 10 percentage points. They are capped at \$3.6 billion, or 15 cents per pack. This  
 small penalty can easily be absorbed by the companies or passed along to consumers, and is not suf-  
 ficient to change companies' behavior. Finally, the methodology used in calculating the look-  
 -backs is skewed to under-report youth smoking rates. □ FDA Authority Opens FDA to Unnecessar-  
 y Legal Challenges

□ The Chairman's mark attempt to transfer authority over tobacco products from the drug/device  
 Chapter of FDA law into a new Chapter. This could prove to be a full employment act for tobacco  
 industry lawyers. It will create new openings for the tobacco industry to challenge the FDA  
 rule because it was promulgated under the drug/device authority. And it will create additional  
 opportunities to challenge any regulations necessary to implement the new Chapter, because it  
 will not have the benefit of decades of agency practice, case law, interpretations, or any other  
 history to which the Courts generally give great deference. The

ere is no reason to run this risk; tobacco products should be regulated as drugs and devices. □ Tobacco Control Programs 0 □ The mark includes authorization for a variety of tobacco control programs. Although Senator p McCain repeatedly said that he intended to fund these programs from tobacco revenues and not leave them subject to annual appropriations, that is not reflected in the current draft. Fully funding these programs is critical to the success of tobacco legislation. □ Youth Access Restrictions Not Tough Enough □ Research shows that unless the retailer compliance rate reaches at least 90%, children will continue to have easy access to tobacco products. It's just too easy for children to go to other retailers that are known to have a high compliance rate of 95% is necessary to produce significant reductions in youth access to tobacco products. The McCain mark only provides for 75% compliance in year 5, 85% compliance in year 7, and 90% compliance in year 10. These compliance targets are not tough enough to serve as an effective complement to the other provisions in the bill. In fact, they increase the likelihood that the youth smoking reduction targets will not be reached and put an increased burden on manufacturers. These targets, and the penalties for missing the targets, should be strengthened to ensure that retailers and the States do their part in reducing youth tobacco use. □ Environmental Tobacco Smoke Protections are Weak +p&) □ Recent studies confirm that ETS causes significant and lasting health damage. Yet the McCain bill ,`\* fails to set a minimum Federal floor to protect against ETS exposure. It allows States to opt-out of the minimum standards. In addition, it exempts all non-fast food restaurants from the provisions -@), and provides no special protections for facilities--such as schools or day care centers--where children are most likely to be exposed to ETS. Finally, the non-pre-emption language fails to override inconsistent provisions of OSHA law, and would therefore prohibit many States from enacting tougher ETS laws. □ Anti-Trust Exemption Could Vastly Increase Industry Profits □ Although the provision is described as a limited anti-trust exemption, its provisions would appear P to allow companies to collude and fix prices to comply with the Act. In fact, when coupled with the pass-through requirement and penalties for failing to pass through the price increases, the McCain mark appears to create an incentive for companies to conspire to increase prices above the amount necessary to achieve the price increases set out in the mark. As the Federal Trade Commission analysis of the proposed settlement concluded last year, this would allow the companies to earn monopoly profits far in excess of those they currently earn. The FTC testified that the anti-trust exemption is unnecessary and dangerous. It should be dropped. □ State and Local Pre-emption Fail to Allow States to Act □ Although the McCain mark purports not to pre-empt stronger regulation at the State or local level, this non-preemption is in fact quite limited. It fails to override existing preemptive language in Federal statutes, such as the Federal Cigarette Labeling Act. □ Document Disclosure is Cumbersome p □ The tobacco industry has hidden behind misuse of the attorney-client privilege for years. The Court in Minnesota has ruled that the industry has abused this privilege to shield thousands of documents, and has ordered them released to the State of Minnesota in its trial. Particularly given that the McCain bill gives the industry partial legal immunity, the public has a right to know what the industry has known and done about the health effects of tobacco products, the addictiveness of nicotine, and marketing aimed at children. The McCain bill, though, sets up a cumbersome process whereby documents for which the industry claims attorney-client privilege--including those that have been ordered produced in Minnesota--could continue to be shielded for years. The bill also gives extraordinary deference to industry claims of trade secret protection, giving the industry yet another defense against the production of documents that could reveal critical public health information. □ International and Anti-Smuggling □ #! The McCain mark provided strong international provisions to protect children overseas from the danger of tobacco products. It also includes an anti-smuggling provision that will help prevent the development of a black market for tobacco products in this country. These provisions are opposed by Senators Ford and Hollings. At the end of the Committee mark-up, an agreement was reached that Senators Hollings, Ford and Wyden would try to reach an agreement on this language. It is not clear what will happen if no agreement is reached, but they may be dropped from the bill. □ Liability Limits Give Industry Unprecedented Protection +p&) □ The full Senate voted overwhelmingly (79-19) on the budget resolution for an amendment ,`\*

expressing the sense of the Senate that tobacco legislation should not provide immunity to the tobacco industry, yet the McCain bill provides unprecedented legal protection to the tobacco industry.

The tobacco industry, of all industries, does not deserve this special, privileged protection. It has misled the American public and the Congress about the health effects of tobacco use, the addictiveness of nicotine and its manipulation of nicotine to make it more addictive, and its effort to market its products to children. It is supremely ironic that the proposal limit victims' rights for recovery--and ask them to pay for the privilege through higher prices on tobacco products. □Caps

□Liability caps will inevitably delay or deny justice to victims of the tobacco industry. By limiting

the recovery for those who die from tobacco-related diseases to an average of just \$16,250 per death, a \$6.5 billion cap severely discounts the value of human life. Moreover, it plays into the industry's strategy of protracted legal battles that become too expensive for plaintiffs to pursue. In addition, the \$6.5 billion cap amounts to pennies on the dollar compared to the potential liability of the tobacco industry. The Treasury Department recently estimated that tobacco costs our society \$130 billion each year. The potential liability exposure of the tobacco industry for damages based on past actions of the companies could easily exceed \$2 trillion dollars, excluding punitive damage claims. At \$6.5 billion per year, it would take 300 years for the tobacco industry to pay these damages in full. These caps will provide a huge financial windfall to the tobacco companies. Wall Street analysts report that tobacco stock prices include a litigation discount that reduces their value. Providing certainty by imposing caps will reduce this discount, providing a windfall to company executives and shareholders. That is, rather than putting the industry's extensive asset to work for its victims, it increases the industry's assets by protecting them from the victims. Finally, administering the caps fairly and rationally would be extremely difficult. Who would decide which judgment or settlement awards get priority and which ones are delayed? □Other Issues ! □In addition to the problems created by the caps, the McCain proposal contains several other troubling " features. First, it bars all addiction and dependence claims. Although the intent of this provision is not clear (particularly when viewed in conjunction with the general causation assumption that stipulates that nicotine is addictive), it would appear to block any argument to evidence based on addiction. This has very important implications. It rules out the only possible argument that can be used to counter the industry's assumption of risk argument. (The industry argues that because smokers should have known of the danger but continued to use the product, they assumed the responsibility for anything that happened and the industry cannot be held liable; the only counter to this argument is that the smoker was not able to exercise any choice because he or she was addicted. It is not clear how the general causation assumption would affect the assumption of risk argument. Certainly, the industry would appear to be able to use the assumption of risk argument as long as it can rebut specific claims of addiction. If an individual cannot make a claim of addiction, it would be hard to counter the industry's claim that addiction was not present in a specific, individual case.) -@), This would appear to give the industry virtually an invincible defense against all individual cases or class actions. Second, the McCain proposal bars the use of any evidence relating to the development of reduced risk products after the date of enactment. If the industry could have produced a reduced risk product but chose not to, this is a very material fact in proving that the industry was reckless or negligent in designing a defective product. Even though this applies only to future development efforts, the very fact that the industry could easily develop a reduced risk product would be relevant to a jury's decision on a company's past behavior--particularly if the discovery were to uncover references to previous research on similar efforts that were abandoned as infeasible or unpromising. Barring this evidence adds yet another layer to the industry's armor. Third, the McCain proposal appears to limit punitive damages for future conduct by the industry, giving it a safe harbor if it complies with the terms of the McCain bill. This safe harbor would appear to apply even in cases of misconduct that was not anticipated by the McCain bill. Fourth, the Commerce Committee bill appears to allow domestic tobacco companies to sever their affiliation with domestic non-tobacco corporate parents and siblings and international tobacco operations. This would allow the tobacco industry to shield tens of billions of dollars in assets from victims. Finally, although some assert that caps are necessary, none of the arguments put forward in support of this assertion with stand careful scrutiny. First, some argue that the companies will go bankrupt if we do not cap their liability, and then victims will be left with nothing. This is just not true. The industry has such substantial assets, that bankruptcy is an extremely unlikely prospect. Even if an individual company were to go bankrupt, however, this does not mean that victims get nothing. Under bankruptcy, the company's assets would be organized for the benefit of victims; under a cap, as noted above, the company's assets are enriched at the ex-

pense of victims. Second, some argue that there will be a rush to the Courthouse if we do not impose caps. In fact, caps may discourage lawsuits, because the limit on recovery would make the expense of litigating against the tobacco industry a poor investment. Third, some argue that we need to give the industry this liability protection in order to obtain its cooperation on advertising restrictions. However, the industry has made clear that it will oppose the Commerce Committee bill and will not cooperate, so we may be buying nothing with these caps. Most likely, the industry is bluffing; we believe that the industry would sign consent decrees for the far more limited purpose and protection of resolving just governmental claims. In any case, even if the industry signs consent decrees, there is no guarantee that these consent decrees will be Constitutional or enforceable. If not, the Congress will have given the industry an extraordinary benefit and gained nothing in return. This is not a gamble the Congress should take. Mitigating Factors 0\*( The McCain proposal includes a general causation presumption that nicotine is addictive and that +p&) certain diseases are caused by tobacco. This is an important move in the direction of providing balance to the proposal. However, it does not offset the effect of the cap on liability or other special legal protections provided to the industry. #XXXX#===== END ATTACHMENT 1 =====

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Cynthia A. Rice ( CN=Cynthia A. Rice/OU=OPD/O=EOP [ OPD ] )

CREATION DATE/TIME: 9-APR-1998 12:28:38.00

SUBJECT: here's the update on preemption for the memo Elena is editing

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

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

CC: Cynthia Dailard ( CN=Cynthia Dailard/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TEXT:

The McCain bill ends local lawsuits with the tobacco industry without including local governments as beneficiaries of industry payments. In addition, the bill does not repeal current law which prohibits state and local governments from enacting tougher advertising restrictions. However the bill allows state and locals to enact tougher access restrictions.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Laura Emmett ( CN=Laura Emmett/OU=WHO/O=EOP [ WHO ] )

CREATION DATE/TIME: 9-APR-1998 12:32:55.00

SUBJECT:

TO: ELENA (Pager) #KAGAN ( ELENA (Pager) #KAGAN [ UNKNOWN ] )  
READ:UNKNOWN

TEXT:

Sally wants you to review H1B background memo ASAP & Thurm called 690-6133

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Jason S. Goldberg ( CN=Jason S. Goldberg/OU=WHO/O=EOP [ WHO ] )

CREATION DATE/TIME: 9-APR-1998 12:33:48.00

SUBJECT: MONDAY: Legislative Strategy Group

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

READ:UNKNOWN

TO: Terri J. Tingen ( CN=Terri J. Tingen/OU=WHO/O=EOP @ EOP [ WHO ] )

READ:UNKNOWN

TO: Janet L. Graves ( CN=Janet L. Graves/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TO: Todd P. Romero ( CN=Todd P. Romero/OU=WHO/O=EOP @ EOP [ WHO ] )

READ:UNKNOWN

TO: Jessica L. Gibson ( CN=Jessica L. Gibson/OU=WHO/O=EOP @ EOP [ WHO ] )

READ:UNKNOWN

TO: Melissa G. Green ( CN=Melissa G. Green/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TO: Michelle Crisci ( CN=Michelle Crisci/OU=WHO/O=EOP @ EOP [ WHO ] )

READ:UNKNOWN

TO: Demond T. Martin ( CN=Demond T. Martin/OU=WHO/O=EOP @ EOP [ WHO ] )

READ:UNKNOWN

TO: Laura Emmett ( CN=Laura Emmett/OU=WHO/O=EOP @ EOP [ WHO ] )

READ:UNKNOWN

TO: RUDMAN\_M ( RUDMAN\_M @ A1 @ CD @ VAXGTWY [ UNKNOWN ] ) (NSC)

READ:UNKNOWN

TO: Sandra L. Via ( CN=Sandra L. Via/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TO: Cathy R. Mays ( CN=Cathy R. Mays/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TO: Scott R. Hynes ( CN=Scott R. Hynes/O=OVP @ OVP [ UNKNOWN ] )

READ:UNKNOWN

TO: Eleanor S. Parker ( CN=Eleanor S. Parker/OU=WHO/O=EOP @ EOP [ WHO ] )

READ:UNKNOWN

TO: Peter A. Weissman ( CN=Peter A. Weissman/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TO: Carole A. Parmelee ( CN=Carole A. Parmelee/OU=WHO/O=EOP @ EOP [ WHO ] )

READ:UNKNOWN

TO: Dawn L. Smalls ( CN=Dawn L. Smalls/OU=WHO/O=EOP @ EOP [ WHO ] )

READ:UNKNOWN

Records Management ( Records Management @ EOP [ UNKNOWN ] )

READ:UNKNOWN

TEXT:

The small Legislative Strategy group will meet Monday in Erskine's office at 4:00 a.m. in Erskine's office.

Once again, only the following individuals:

Legislative Strategy

Erskine Bowles  
John Podesta  
Sylvia Mathews

Rahm Emanuel  
Doug Sosnik  
Paul Begala

Larry Stein

Ron Klain

Gene Sperlin  
Bruce Reed  
Sandy Berger (Mara Rudman)

Bob Rubin  
Frank Raines  
Jack Lew

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Laura Emmett ( CN=Laura Emmett/OU=WHO/O=EOP [ WHO ] )

CREATION DATE/TIME: 9-APR-1998 10:03:07.00

SUBJECT:

TO: ELENA (Pager) #KAGAN ( ELENA (Pager) #KAGAN [ UNKNOWN ] )  
READ:UNKNOWN

TEXT:

Thurm is holding on 65584

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Leanne A. Shimabukuro ( CN=Leanne A. Shimabukuro/OU=OPD/O=EOP [ OPD ] )

CREATION DATE/TIME: 9-APR-1998 21:16:19.00

SUBJECT: draft Q&A on the school crime study

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

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

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

CC: Laura Emmett ( CN=Laura Emmett/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TEXT:

As noted by Jose', this is meant to be a little more general, and doesn't get into too much detail on the findings of the report.

Thanks,  
Leanne

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

TEXT:

Unable to convert ARMS\_EXT:[ATTACH.D14]MAIL423277890.026 to ASCII,  
The following is a HEX DUMP:

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DC4F4413599AE4E52A3B1D1045C5A1E0346A5002FF910A640FFCFB556A74A7BF61F9539A2B5221

**School Crime  
Questions and Answers  
April 13, 1998**

**School Crime Report**

**Q. The report released by the Justice and Education Departments this weekend contains some troubling findings about crime in schools: a doubling of gangs, increased availability of drugs, and the presence of guns. How does the Administration propose to address these serious problems?**

A. First of all, it should be noted that the report found little or no change in the overall level of school crime. The overall level of crime in schools in 1995 was similar to that in 1989 (14.6% versus 14.5%). Violent crimes increased slightly, and property crimes decreased slightly.

The report does confirm that some of our schools continue to have serious problems involving gangs, guns, and drugs. That is why President Clinton and his Administration have fought to keep our schools safe and reduce youth crime and violence. [To this end, the Education Department will be making \$5 million available from the Safe and Drug-Free School program to develop innovative strategies to reduce drug use, and violence, and prevent weapons from entering our schools.]

But clearly, the problems raised by this report, and the broader problems of gangs and juvenile crime require a comprehensive strategy and significant, targeted resources. That is why the President has repeatedly called on Congress to enact key components of his Anti-Gang and Youth Violence Strategy, including:

- \$255 million for juvenile crime legislation to help cities hire more prosecutors and probation officers, establish special court programs and generally implement comprehensive youth violence strategies like Boston's;
- \$200 million to provide a five-fold increase in funding for after school programs to help keep kids in school -- and supervised by responsible adults that can teach them right from wrong -- between 3 and 8 p.m. when most violent youth crimes are committed;
- \$195 million for a national youth anti-drug media campaign that teaches kids about the dangers of drugs;
- \$50 million to expand the Safe and Drug-Free Schools Program by hiring drug and violence prevention experts to help schools reduce violence and drug use; and
- \$28 million to hire 162 new ATF agents and expand the President's Youth

Crime Gun Interdiction Initiative to help identify and crack down on illegal gun traffickers.

**Q: The increases in gangs and drug availability occurred under this Administration's watch. What has the Administration done to date to promote school safety and help reduce violence in and near our schools? Has the Administration paid enough attention to this issue?**

A: Absolutely. While we have proposed comprehensive juvenile crime and youth violence legislation to the Congress, school safety has been a priority since the start of this Administration. Some of the important steps we have taken include:

**Improving Safe and Drug Free Schools** -- In 1994, we expanded the Drug-Free Schools Program to include security and violence prevention as key parts of the program. Now, the new Safe and Drug-Free Schools Program provides support for violence and drug prevention programs to 97 of the nation's school districts, and helps keep violence, drugs and alcohol away from students and out of schools.

*Enforcing Zero Tolerance for Guns and Other Weapons in Schools* -- President Clinton signed into law the Gun-Free Schools Act and issued a directive requiring all schools that receive federal funds to enforce "zero tolerance" for guns. If a student brings a gun to school, that student will be expelled for a year. Now, every state in the nation has now passed a tough "zero tolerance" policies, and an estimated 6,000 students have been expelled for bringing guns to schools.

*Encouraging Schools and Localities to Promote Discipline* -- Studies show that schools with serious discipline problems are more likely to have serious crime problems. That is why this Administration has encouraged innovative policies that promote discipline and respect in our schools. We have distributed guidelines and studies on successful efforts by communities to require school uniforms, enforce curfews, and crack down on truancy.

*Keeping Handguns Out of the Hands of Our Children* -- As part of the 1994 Crime Act, the President signed into law the Youth Handgun Safety Act that makes it a federal offense to transfer a handgun to a juvenile, or for a juvenile under the age of 18 to possess a handgun or handgun ammunition in most circumstances. And to make sure adults complied, last year we required all federal gun dealers to post signs and issue written notices about the provisions of this law.

### **Jonesboro**

**Q. How do the findings of this study relate to what recently happened in Jonesboro?**

A. The study does not directly relate to the Jonesboro incident -- particularly since that type

of incident is extremely rare. The study does provide some useful information on the level of overall crime, street gangs, guns, and drug availability in nonmetropolitan area schools, such as Jonesboro. The report indicates that in the two years studied (1989 and 1995), students living in nonmetropolitan areas reported a slight decrease in the availability of drugs (65.7% versus 64.5%, respectively), a small increase in violent crime (2.9% versus 3.5%), and a pretty significant increase in the presence of street gangs (7.8% versus 19.9%).

Few students reported guns in schools. In 1995, no students in nonmetropolitan areas surveyed reported taking a gun to school; 4.8% of students reported seeing a student with a gun at school; and 11.1% reported knowing a student who brought a gun to school. It should be noted that all of these levels are lower than the levels reported by students living in suburbs and central cities.

### Vouchers

**Q:** *If these findings show that crime in public schools is significantly higher than in private schools -- and increasing-- why shouldn't vouchers given to the children in these unsafe schools to allow them to go to the private school of their choice?*

**A:** **We must continue to invest and strengthen our nation's public schools. This means reducing class size, raising academic standards, modernizing our schools, expanding after-school programs, and connecting schools to the Internet so that all of our children can get the education they need and deserve. Vouchers would drain resources from our nation's public schools --schools that are attended by 90% of our children --to subsidize private schools.**

**The right way to help children in failing or unsafe schools isn't to drain those schools of resources --it is to take drastic actions to fix and turn around the entire school for the benefit of all of the children in the school. We owe it to our children to preserve this nation's time-honored commitment to public education and our commitment to provide a good education to *all* of our children.**