

NLWJC - KAGAN

EMAILS RECEIVED

TRP - BOX 101 - FOLDER -002

[02/11/1998-05/15/1998]

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Waves Confirmation to Elena Kagan (1 page)	03/12/1998	P6/b(6), b(7)(C), b(7)(E), b(7)(F)
002. email	Ron Klain to Elena Kagan re: Two Things 12:48:09 [partial] (1 page)	03/27/1998	P6/b(6)
003. email	Ron Klain to Elena Kagan re: Two Things 16:03:59 [partial] (1 page)	03/27/1998	P6/b(6)
004. email	Toby Donenfeld to Donald Gips, Elena Kagan, Ron Klain re: VP Koop Phone Call [partial] (2 pages)	03/30/1998	P6/b(6)
005. email	Toby Donenfeld to Bruce Reed et al. re: Tobacco [partial] (1 page)	04/20/1998	P6/b(6)
006. email	Patricia Kaeding to Elena Kagan re: fax (1 page)	05/22/1998	Personal Misfile

COLLECTION:

Clinton Presidential Records
 Tape Restoration Project [Email]
 OPD ([Kagan])
 OA/Box Number: 250000

FOLDER TITLE:

[02/11/1998 - 05/15/1998]

2009-1006-F
 ds285

RESTRICTION CODES

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

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

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

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

RR. Document will be reviewed upon request.

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

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

**Q & A ON TOBACCO FOR THE VICE PRESIDENT
HEALTHY KIDS ACT PRESS CONFERENCE
FEBRUARY 11, 1998**

THE CONRAD BILL

Q. Is the Administration endorsing Senator Conrad's tobacco legislation? If the Administration is not endorsing the bill, why are you here?

A. The Administration congratulates Senator Conrad for drafting a strong bill that meets the President's five principles to reduce youth smoking and protect the public health. Senator Conrad has taken an important step toward enacting comprehensive tobacco legislation by introducing a bill that the President could sign. The President would sign this bill, or any bill that does as much to meet the President's goals and principles. We hope and expect other Democrats and Republicans to sign onto this legislation or other legislation that meets our core principles. Ultimately, any successful bill must have broad, bipartisan support. The President and I are committed to working with members of both parties to shape the best ideas and proposals into a truly bipartisan bill.

I am here to support this important step forward and to encourage other members to support comprehensive tobacco legislation and pass it this year.

Q. There have been conflicting reports in the papers that you are endorsing Senator Conrad's legislation or that you are shunning the Democrats and not endorsing the legislation because it is not bipartisan. Which is it? And are you trying to distance yourself from the Democrats?

A. As we have said, we support Senator Conrad and the other Democrats' efforts to introduce comprehensive tobacco legislation designed to reduce youth smoking that meets the President's five principles. The President would sign this bill, or any bill that does as much to meet the President's goals and principles. We hope and expect other Democrats and Republicans to sign onto this legislation or other legislation that meets our core principles. Ultimately, any successful bill must have broad, bipartisan support. The President and I are committed to working with members of both parties to shape the best ideas and proposals into a truly bipartisan bill.

Q. Are you concerned that no Republicans and only a handful of Democrats have signed on to Senator Conrad's legislation?

A. The Administration is very pleased that these Democratic leaders have come forward with a comprehensive bill designed to reduce youth smoking that meets the President's five principles. It is our hope that Senator Conrad's actions will push others in both parties to sign onto his legislation or to come forward with their own comprehensive tobacco legislation. I believe that it is very important to keep momentum going and to pass comprehensive tobacco legislation this year.

Q. What are the major differences between the President's budget and Senator Conrad's bill?

A. There are a few differences in Senator Conrad's bill and the President's budget on the allocation of tobacco money, but largely Senator Conrad's bill invests in the areas that the Administration believes is important: smoking prevention, smoking cessation, health research and other programs designed to benefit children. Further, Senator Conrad's bill meets the President's challenge to encompass his five principles and attack the problem of youth smoking in a comprehensive and long term manner.

TOBACCO AND THE BUDGET

Q. In September, the President said the focus of tobacco legislation should not be about money. In the budget the President submitted, more than 60 percent of the proposed increase in discretionary spending is paid for by tobacco legislation. Why have you and the President changed course?

The President's course has not changed -- Congress should send the President legislation that will dramatically reduce youth smoking. Experts all agree the single most important step we can take to reduce youth smoking is to raise the price of a pack of cigarettes significantly. That is why last September, and again in the State of the Union speech, the President called for Congress to pass legislation that raises cigarette prices by up to \$1.50 per pack over the next ten years as necessary to reduce youth smoking. Our budget simply scores that part of President's plan, and allocates the revenues to programs that promote public health and assist children.

Q. How can you assume revenues from tobacco legislation when it's not certain whether this legislation will pass?

It is a normal part of the budget process to account for any revenues that will be raised from proposed legislation. And we believe strongly that Congress will pass comprehensive tobacco legislation this year. If everyone who says they are committed to protecting children from tobacco rolls up their sleeves and gets to work, we will pass a significant piece of legislation.

Q. Why is it that some of the programs funded with tobacco revenues have no relation to tobacco?

A. Most of the spending is directly related to tobacco, such as health-related research and smoking cessation programs. The rest goes to programs that will assist our children. We wanted to ensure that states get a substantial share of the resources, because of the state's contribution in negotiating the original proposed settlement. It is money that goes to children's programs -- to improve child care and reduce class size -- in recognition that

these are shared federal and state goals.

Q. In your budget, how much money do you expect to raise from tobacco legislation next year? What about over five years? How did you come to this figure?

A. This budget is designed to reduce youth smoking by 30% in five years and 50% in seven years which is the President's goal. We calculate that the necessary increase in the price per pack will result in about \$10 billion in revenue next year and \$65 billion over five years.

Q. How much does your plan increase the cost of cigarettes?

A. In order to reach the President's goal of reducing youth smoking by 30% in five years and 50% in seven years, this budget projects about a \$1.10 increase in the price of cigarettes over five years.

LIABILITY

Q. Has your position on including liability protections for the tobacco industry in a comprehensive tobacco bill changed? Will you support a bill that has liability protections in it? Has your opinion changed in light of the tobacco industry documents that have been released recently?

The President will evaluate tobacco legislation as a whole to determine whether it protects the public health. As we have said before, we do not want to include liability protections in comprehensive tobacco legislation, however, if that legislation includes the President's five principles designed to reduce youth smoking, liability limits would not necessarily be a deal-breaker for us. What's important is achieving comprehensive legislation that includes a large per-pack price increase, penalties for marketing to children and broad restrictions on children's access to tobacco.

It should be noted that no one is talking about immunity from criminal prosecution: if tobacco industry officials committed perjury, lied to Congress or committed other crimes, they will be prosecuted. The limits on liability contained in the AG's proposed settlement applied only to civil suits.

LAWYERS FEES

Q. Lawyers in both Texas and Florida have asked for obscene amounts of money for their role in bringing about the state settlements with the tobacco industry. Will the President support a provision in national legislation to limit fees for lawyers?

A. The President is primarily concerned with ensuring that tobacco legislation reduces youth

smoking and protects the public health -- not with collecting and distributing money from a settlement. The lawyers who brought these suits have expended lots of time and effort and deserve to be well recompensed for their work. But everyone agrees that fees should not be wildly out of proportion to the work that was done.

STATE SHARE

Q. There are various reports about how much money from tobacco legislation will go to the states, and whether the federal government has any right to this money. What do you think the states are entitled to?

The President's first goal is to pass national tobacco legislation to reduce teen smoking. The specific allocation of monies is a secondary issue, which I will work to resolve with the states and Congress. Both the states and the Administration have worked hard to create the conditions for national legislation. I am confident we will be able to reach, and to incorporate into legislation, a mutually agreeable approach to the allocation issues that fully recognizes the states' contribution.

A "LIGHT" BILL

Q. Some Republicans have been talking about enacting tobacco legislation piecemeal, with legislation on youth smoking this year. Would the Administration go along with such a plan?

A. We believe that Congress must enact comprehensive tobacco legislation this year. We will not be able to reduce youth smoking -- let alone meet our other public health objectives -- without a comprehensive measure. To reduce youth smoking over the long term, we must not only establish a system of penalties for failing to meet youth smoking targets, but also increase the price of cigarettes, guarantee the FDA jurisdiction over tobacco, establish a licensing system, and regulate access and advertising. Those measures are also necessary to improve the health of adults. We should not abandon the effort to enact comprehensive legislation.

TALKING POINTS ON THE CONRAD BILL

2/11/98

- **The President wants to sign a comprehensive tobacco bill that meets his five principles --and most important, that includes a significant price increase to reduce youth smoking.**
- **The Conrad bill meets each of the President's five principles. The President is proud to support it and would gladly sign it.**
- **By introducing this very strong bill, Sen. Conrad has taken an important step toward the enactment of comprehensive tobacco legislation. His bill adds to the momentum for comprehensive legislation, and serves as a challenge to all other Members to work toward this goal.**
- **Of course, the President will also support other bills that meet his principles, whether introduced by Democrats or Republicans. His Administration will work with as many Members as possible on the issues involved in comprehensive legislation.**
- **The President, however, will not support piecemeal tobacco legislation. In particular, he will not support a bill without the significant price increase necessary to reduce youth smoking.**

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A. The Conrad bill is a very strong bill; we support it; and we think it deserves broad congressional support. We'll get behind any bill that meets the President's five principles. We want to work with as many Members as we can, from both sides of the aisle, to adopt comprehensive tobacco legislation.

I am here to support this important step forward and to encourage other members to support comprehensive tobacco legislation and pass it this year.

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RECORD TYPE: PRESIDENTIAL (TRP NOTES MAIL)

CREATOR: Toby Donenfeld (CN=Toby Donenfeld/O=OVP [OVP])

CREATION DATE/TIME:23-FEB-1998 17:51:27.00

SUBJECT: Tobacco Event Conference Call

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: Dan J. Taylor (CN=Dan J. Taylor/O=OVP @ OVP [OVP])
READ:UNKNOWN

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

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

TO: Eli G. Attie (CN=Eli G. Attie/O=OVP @ OVP [OVP])
READ:UNKNOWN

TO: Jerold R. Mande (CN=Jerold R. Mande/OU=OSTP/O=EOP @ EOP [OSTP])
READ:UNKNOWN

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

TO: Kimberly H Tilley (CN=Kimberly H Tilley/O=OVP @ OVP [OVP])
READ:UNKNOWN

TO: Lawrence J. Haas (CN=Lawrence J. Haas/OU=OMB/O=EOP @ EOP [OMB])
READ:UNKNOWN

TO: Lisa A. Berg (CN=Lisa A. Berg/O=OVP @ OVP [OVP])
READ:UNKNOWN

TO: Nathan B. Naylor (CN=Nathan B. Naylor/O=OVP @ OVP [OVP])
READ:UNKNOWN

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

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

TO: Wendy Hartman (CN=Wendy Hartman/O=OVP @ OVP [OVP])
READ:UNKNOWN

TO: mdonahue (mdonahue @ os.dhhs.gov@INET [UNKNOWN])
READ:UNKNOWN

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

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

READ:UNKNOWN

TEXT:

The VP is tentatively scheduled to announce the FDA compliance billboard and radio campaign on Wednesday morning. The President may participate if he is still here in D.C.

at that time. We hope Secretary Shalala will be able to join us for the announcement. (HHS is checking her schedule).

We are scheduling a conference call to discuss the event/announcement for tomorrow (Tuesday) morning at 9:30 a.m. Folks from HHS will be on the call.

Please call 456-6777 or 456-6799 code #9867. Thank you.

RECORD TYPE: PRESIDENTIAL (TRP NOTES MAIL)

CREATOR: Reed Gary (Reed Gary <reed-gary@dol.gov> [UNKNOWN])

CREATION DATE/TIME:24-FEB-1998 18:50:18.00

SUBJECT: Q&A on Press Reports of H-1B Policy Discussion

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

READ:UNKNOWN

TEXT:

You mentioned that you had done a Q&A on how to respond to press inquiries regarding the NY Times (and today's Wall St. Journal) article on the H-1B policy deliberations. I assume that we should be saying much of the same thing to Congressional inquiries. Could you send me a copy of your Q&A so that I could put it in Ray Uhalde's briefing book?

I will send to you and others several other Q&A's that we are preparing for Ray later this afternoon for your review and input.

Thanks

RECORD TYPE: PRESIDENTIAL (TRP NOTES MAIL)

CREATOR: Toby Donenfeld (CN=Toby Donenfeld/O=OVP [OVP])

CREATION DATE/TIME:11-MAR-1998 16:35:45.00

SUBJECT: Draft VP letter to Harkin attached...

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

TO: Jerold R. Mande (CN=Jerold R. Mande/OU=OSTP/O=EOP @ EOP [OSTP])
READ:UNKNOWN

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

TO: Monica M. Dixon (CN=Monica M. Dixon/O=OVP [OVP])
READ:UNKNOWN

TO: Patricia M. Ewing (CN=Patricia M. Ewing/O=OVP [OVP])
READ:UNKNOWN

TO: Ron Klain (CN=Ron Klain/O=OVP [OVP])
READ:UNKNOWN

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

TEXT:
Please send me edits you have as soon as possible. Thanks very much.

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

TEXT:
Unable to convert ARMS_EXT:[ATTACH.D55]ARMSZZ000IFTP.000 to ASCII,
The following is a HEX DUMP:

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273A627F0DA72FB5B171ADA57DE7E76923898A785476D8B5E4C7E0A5D984A0079718DC1363B10D
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- DRAFT -

Automated Records Management System
Hex-Dump Conversion

March 12, 1998

Senator Tom Harkin
Senator John Chafee
Senator Bob Graham
U.S. Senate
Washington, D.C. 20501

Dear Senators Harkin, Chafee and Graham:

Congratulations on your introduction of the first bipartisan comprehensive bill to drastically reduce youth smoking which encompasses the President's five principles. I regret that I cannot be there with you today as we take another crucial step forward in the fight to protect young people from the addiction and disease of tobacco and the next big step toward writing tough anti-tobacco measures into law.

We all know that ultimately any successful bill must have broad bipartisan support. I have been pleased to see that support for tough anti-tobacco measures crosses all lines of party and politics. Now, we must seize this historic opportunity, and build on this growing coalition.

The President and I look forward to working with you and other in the Congress to enact tough anti-tobacco legislation this year. We would like to work with you to ensure that any legislation sent to the President encompasses the five principles he has outlined: **(1) a price increase of up to \$1.50 per pack and tough penalties if youth smoking reduction targets are not met; (2) reaffirmation of the FDA's authority to regulate tobacco products; (3) changes to the way the industry does business so it will no longer market its products to children; (4) progress toward other public health goals; and (5) protection of tobacco farmers and their communities.** Further, we look forward to working with you to ensure that the revenues raised through any tobacco legislation will be invested in programs to benefit our children which the President has outlined.

The President and I want this Congress to be remembered as the Congress that finally protects our children from nicotine addiction and disease - and gives American the healthy kids and families we deserve.

Sincerely,

Al Gore

Automated Records Management System
Hex-Dump Conversion

Withdrawal/Redaction Marker

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001. email	Waves Confirmation to Elena Kagan (1 page)	03/12/1998	P6/b(6), b(7)(C), b(7)(E), b(7)(F)

COLLECTION:

Clinton Presidential Records
Tape Restoration Project [Email]
OPD ([Kagan])
OA/Box Number: 250000

FOLDER TITLE:

[02/11/1998 - 05/15/1998]

2009-1006-F
ds285

RESTRICTION CODES

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

- P1 National Security Classified Information [(a)(1) of the PRA]
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- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a(5) of the PRA]
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C. Closed in accordance with restrictions contained in donor's deed of gift.

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

RR. Document will be reviewed upon request.

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RECORD TYPE: PRESIDENTIAL (TRP NOTES MAIL)

CREATOR: Susan M. Liss (CN=Susan M. Liss/O=OVP [OVP])

CREATION DATE/TIME:19-MAR-1998 11:47:12.00

SUBJECT: Pay Equity

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

TEXT:

I am the contact person in OVP for this issue. Please let me know when you
are convening again so that the VP's perspective can be included. thanks.

RECORD TYPE: PRESIDENTIAL (TRP NOTES MAIL)

CREATOR: Toby Donenfeld (CN=Toby Donenfeld/O=OVP [OVP])

CREATION DATE/TIME:20-MAR-1998 16:21:30.00

SUBJECT: Tobacco and the AGs

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: Dan J. Taylor (CN=Dan J. Taylor/O=OVP @ OVP [OVP])
READ:UNKNOWN

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

TO: Fred Duval (CN=Fred DuVal/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

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

TO: Lawrence J. Haas (CN=Lawrence J. Haas/O=OVP @ OVP [OVP])
READ:UNKNOWN

TEXT:

The VP is scheduled to be on the conference call w/ AGs on Monday from 2:35 - 2:45. He will deliver brief remarks and will not take questions. After he drops off the call, we will open the call to questions from the AGs or reporters for Administration staff.

The following staff members have been invited, and we hope will participate following the VP's conference call w/ the AGs.

Elena Kagan, Deputy Assistant to the President for Domestic Policy
and/or

Cynthia Rice, Special Assistant to the President for Domestic
Policy

Jim O'Hara, Deputy Assistant Secretary for Health (confirmed)

Mike Eriksen -- Director, OFC on Smoking and Health, CDC

(confirmed)

Jonathan Gruber, Deputy Assistant Secretary for Economic Policy

(confirmed pending possible Summers testimony)

Fred Duval will get the conference call and code numbers. Thanks.

DRAFT
3/22/98 4pm

Talking Points for Conference Call with State Attorneys General
March 23, 1998

- **Thank you for joining me today to discuss an issue important to all of us -- reducing youth smoking. I appreciate your continued leadership and commitment on this issue.**
- **As you know, we are meeting regularly with members of Congress in both parties in order to ensure passage of comprehensive, bipartisan legislation this year.**
- **Today, I am unveiling new state-by-state numbers which show that states will have an average 42 percent reduction in youth smoking and premature deaths if the President's principles for legislation are enacted into law. The data also show that three million teens will be kept from smoking over the next five years --and that one million lives will be saved as a result.**
- Individual states will see reductions in youth smoking ranging from a few thousand in the smaller states up to about 248,000 in California and 205,000 in Texas. Approximately 56,000 young people will be saved from premature death in Florida, 57,000 in Ohio, 37,000 in Michigan and 24,000 in Missouri.
- **I am very encouraged by these new data and I hope these new facts will help build the momentum necessary to pass bipartisan comprehensive federal legislation this year. I strongly encourage each of you to announce these new statistics in your state, to help raise awareness that we need to put an end to teen smoking. By using these statistics, you can convey that comprehensive federal legislation is necessary to significantly reduce the number one cause of preventable death in this country and an addiction that is trapping our young people.**
- **We must act quickly. We all know that every day, 3,000 kids become regular smokers and 1,000 of them will die prematurely from smoking-related diseases. Congress must act quickly so that we can save millions of young people from this deadly addiction.**
- Thank you again for all of your hard work and commitment to reducing youth smoking. Keep up the good work.

RECORD TYPE: PRESIDENTIAL (TRP NOTES MAIL)

CREATOR: Toby Donenfeld (CN=Toby Donenfeld/O=OVP [OVP])

CREATION DATE/TIME:23-MAR-1998 11:37:56.00

SUBJECT: AG call-in #

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: Dan J. Taylor (CN=Dan J. Taylor/O=OVP @ OVP [OVP])
READ:UNKNOWN

TEXT:

If you are joining the VP's conf. call w/ AGs please use the # below. As

Signal only gave us 25 lines total for both AGs and staff if you could

call in on one line we'd appreciate it. Thanks.

----- Forwarded by Toby Donenfeld/OVP on 03/23/98 11:40
AM -----

Dan J. Taylor

03/23/98 10:17 AM

To: Emory L. Mayfield/WHO/EOP @ EOP

cc: Toby Donenfeld/OVP

Subject: AG call-in #

To call in, AGs should use 202/757-2104 #2377. Staff should not call in to this number, as there are a limited number of lines available for the call.

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
002. email	Ron Klain to Elena Kagan re: Two Things 12:48:09 [partial] (1 page)	03/27/1998	P6/b(6)

COLLECTION:

Clinton Presidential Records
Tape Restoration Project [Email]
OPD ([Kagan])
OA/Box Number: 250000

FOLDER TITLE:

[02/11/1998 - 05/15/1998]

2009-1006-F
ds285

RESTRICTION CODES

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

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

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

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

RR. Document will be reviewed upon request.

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

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

RECORD TYPE: PRESIDENTIAL (TRP NOTES MAIL)

CREATOR: Ron Klain (CN=Ron Klain/O=OVP [OVP])

CREATION DATE/TIME:27-MAR-1998 12:48:09.00

SUBJECT: Two Things

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

TEXT:

1. Please tell me we are not signing off on \$1.10.

P6/(b)(6)

[002]

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
003. email	Ron Klain to Elena Kagan re: Two Things 16:03:59 [partial] (1 page)	03/27/1998	P6/b(6)

COLLECTION:

Clinton Presidential Records
Tape Restoration Project [Email]
OPD ([Kagan])
OA/Box Number: 250000

FOLDER TITLE:

[02/11/1998 - 05/15/1998]

2009-1006-F
ds285

RESTRICTION CODES

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

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
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C. Closed in accordance with restrictions contained in donor's deed of gift.

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RR. Document will be reviewed upon request.

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

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- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
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- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

RECORD TYPE: PRESIDENTIAL (TRP NOTES MAIL)

CREATOR: Ron Klain (CN=Ron Klain/O=OVP [OVP])

CREATION DATE/TIME:27-MAR-1998 16:03:59.00

SUBJECT: Re: Two Things

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

READ:UNKNOWN

TEXT:

1. I hear you. But our \$1.10 was \$1.10 real, \$1.25 nominal, right? And
it certainly added up to alot more than \$505 billion, didn't it?

P6/(b)(6)

[003]

RECORD TYPE: PRESIDENTIAL (TRP NOTES MAIL)

CREATOR: Vicky_Stroud (Vicky_Stroud@ed.gov (Vicky Stroud) [UNKNOWN])

CREATION DATE/TIME:27-MAR-1998 21:15:37.00

SUBJECT: Re: Unz meeting

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

TO: Janet Murguia (CN=Janet Murguia/OU=WHO/O=EOP [WHO])
READ:UNKNOWN

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

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

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

TO: Mickey Ibarra (CN=Mickey Ibarra/OU=WHO/O=EOP [WHO])
READ:UNKNOWN

TO: Delia_Pompa (Delia_Pompa@ed.gov (Delia Pompa) [UNKNOWN])
READ:UNKNOWN

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

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

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

CC: Rebecca Hunter (CN=Rebecca Hunter/OU=WHO/O=EOP [WHO])
READ:UNKNOWN

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

TEXT:
Mike,

Mike will come but will probably be 1/2 hour late getting there.

Vicky

Reply Separator

Subject: Unz meeting

Author: Michael_Cohen@opd.eop.gov at Internet

Date: 3/27/98 3:51 PM

In order to revise and then complete the memo to POTUS on Unz, we need to meet and discuss the recommendations we want to make. Those of us who have been in the Congressional meetings have new insights and have moved our thinking along. I know that the Education Department is also developing some additional ideas--but I'm not sure that we are all still moving along the same track.

I've scheduled the meeting for Monday, March 30 at 1:00pm in OEOB 211. Let me know if you can make it.

but I don't know that we are all moving in the same direction like us to meet on Monday March 30, at 1:00 in OEOB211 to discuss the next version of the Unz memo to POTUS. We need to n

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
004. email	Toby Donenfeld to Donald Gips, Elena Kagan, Ron Klain re: VP Koop Phone Call [partial] (2 pages)	03/30/1998	P6/b(6)

COLLECTION:

Clinton Presidential Records
Tape Restoration Project [Email]
OPD ([Kagan])
OA/Box Number: 250000

FOLDER TITLE:

[02/11/1998 - 05/15/1998]

2009-1006-F
ds285

RESTRICTION CODES

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

- P1 National Security Classified Information [(a)(1) of the PRA]
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C. Closed in accordance with restrictions contained in donor's deed of gift.

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RR. Document will be reviewed upon request.

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

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- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

RECORD TYPE: PRESIDENTIAL (TRP NOTES MAIL)

CREATOR: Toby Donenfeld (CN=Toby Donenfeld/O=OVP [OVP])

CREATION DATE/TIME:30-MAR-1998 14:50:54.00

SUBJECT: VP Koop Phone Call Memo

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

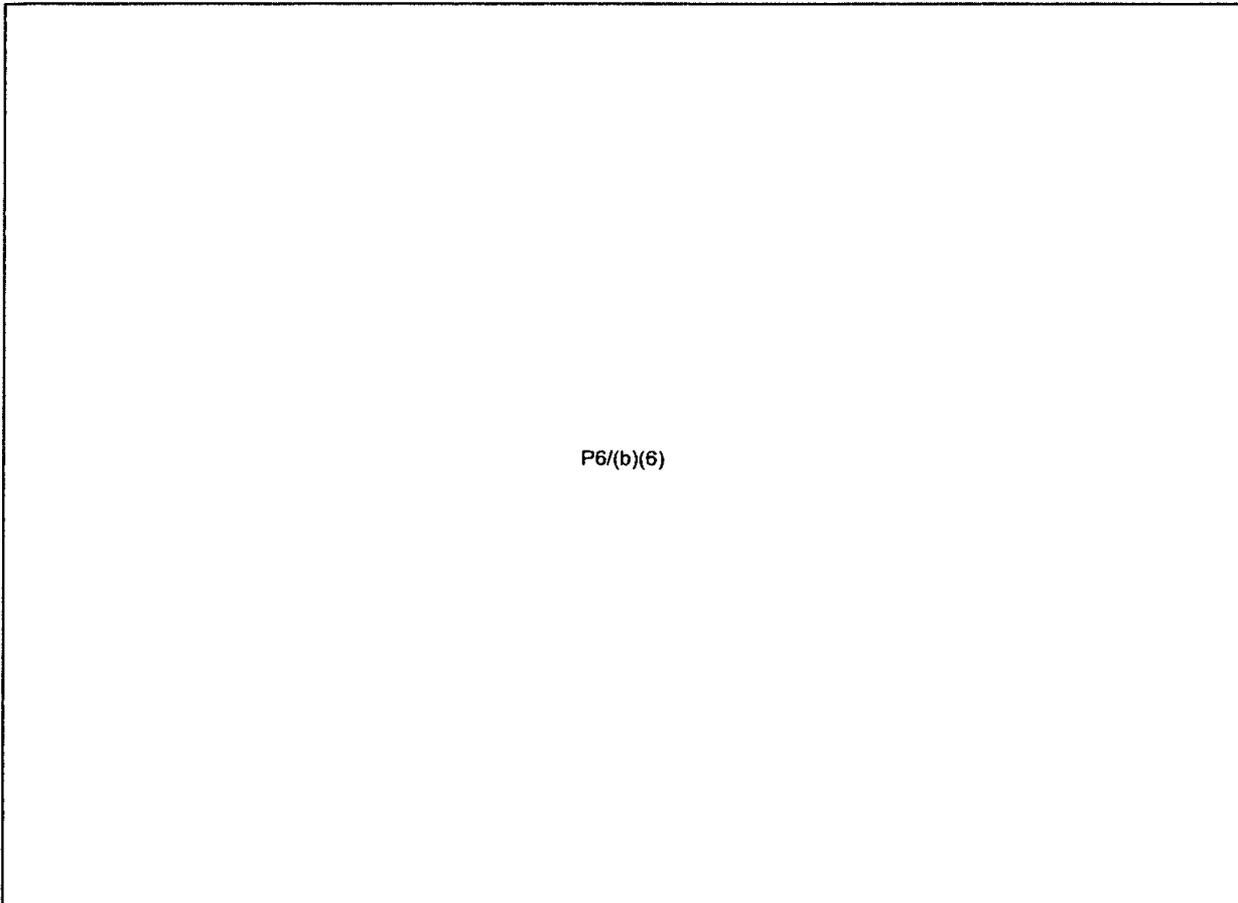
TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Ron Klain (CN=Ron Klain/O=OVP @ OVP [OVP])
READ:UNKNOWN

TEXT:
Please make any necessary edits and I'll send it out! Thank you.

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

TEXT:
Unable to convert ARMS_EXT:[ATTACH.D24]ARMSZZ000HVYA.000 to ASCII,
The following is a HEX DUMP:



[004]

[Auto DATE FEATURE]
~~March 4, 2010~~

Automated Records Management System
Hex-Dump Conversion

RECOMMENDED PHONE CALL

TO: Dr. C. Everett Koop

RECOMMENDED
BY: Ron Klain

Prepared by: Toby Donenfeld

PURPOSE: You are returning Dr. Koop's phone call. We are not certain as to why he called you but expect that it would be to discuss the McCain tobacco bill.

BACKGROUND:

Highlights of the McCain Bill

\$1.10 price increase by 2003.

Youth Smoking Reduction Targets:	<u>cigarettes</u>	<u>smokeless</u>
3 years	15	12.5
5 years 30	25	
7 years 50	35	
10 years	60	45

Industry Penalties: \$80 million for each percentage point missed between 0 - 5 , \$160 million for each percentage point between 6-10 and \$240 million for each percentage point over 11 . Annual amount of industry penalties is capped at \$3.5 billion.

No company specific penalties.

No tax deductability of penalty payments.

Full FDA authority.

Marketing and advertising restrictions.

No position on liability yet.

Administration Position Thus Far:

Today, Erskine delivered a speech to The Center for National Policy said this of the McCain bill: that it will "lay a strong foundation for further action, but also has room for improvement."

Particularly, the Administration does not believe the McCain bill will impose strong enough lookback penalties on companies and does not agree with the way the tobacco revenues are spent. On the positive side, the McCain bill does include a substantial price increase on a pack of cigarettes, gives the FDA full authority to regulate tobacco products and is expected to contain a strong plan to protect tobacco farmers and their communities.

Kessler/Koop

David Kessler has been quoted as saying this about the McCain bill: "On the issue that matters most, reducing the number of kids who smoke ... the bill does not measure up."
Dr. Koop has not said anything publicly on the McCain bill.

Safe Kids Reception

You are hosting a reception at the Naval Observatory on Tuesday, April 7 for the Safe Kids Coalition, which Dr. Koop chairs. You agreed to host this reception for him when you were together in Seattle, WA for a tobacco forum. The plans for the event are moving along fine.

CONTACT PERSON AND

TELEPHONE NUMBERS: In the office until 3:00 p.m.
At home tonight:

301-493-6603

P6/(b)(6)

[004]

DATE OF SUBMISSION: March 4, 2010

ATTACHMENTS:

Your talking points.
Side-by-side analysis of the McCain bill.
Q&A on the McCain bill.
Summary of the McCain bill.

Talking Points

- I am returning your call. As you may know, I have been on vacation for the past week, so I am not current on all of the details of the tobacco legislative debate. I am interested in learning what your opinion is on the McCain bill.
- The Administration believes that the McCain bill is a good foundation for further action, but we see room for significant improvement. We are pleased that the bill includes a substantial price increase on a pack of cigarettes and that it give full authority to the FDA to regulate tobacco. We are very interested in strengthening the lookback penalties provisions.
- I know that Dr. Kessler has come out with some pretty strong language against the McCain bill. It is my hope that we can all work together in the next few days to push McCain for the changes we need to drastically reduce youth smoking.

March 30, 1998

Automated Records Management System
Hex-Dump Conversion

MEMORANDUM FOR THE VICE PRESIDENT

FROM: TOBY DONENFELD

SUBJECT: ADDENDUM TO THE KOOP PHONE CALL MEMO

Since we sent you the phone call memo for your call to Dr. Koop, Senator McCain held a press conference to announce the liability portion of his tobacco bill. His bill includes a \$6.5 billion annual cap on liability payments and no ban on class action lawsuits. We are unclear at this time whether or not the bill includes the elimination of punitive damages for past conduct, although it appears that it will not include such an elimination.

As we understand it, Dr. Kessler and Dr. Koop have been lobbying aggressively to not eliminate class action lawsuits or punitive damages.

No Administration position on the liability provisions in the McCain bill has been made public. Erskine's speech occurred several hours before McCain released the details on liability. In general, the White House position has been that we are working to make sure that the bill encompasses the President's five principles, and until it does that, we are not going to discuss the issue of liability.

As you can see if the side-by-side faxed to you earlier, the settlement called for a \$5 billion annual cap and the Harkin/Chafee bill called for a \$12 billion annual cap.

Early reaction on CNN from Senators Conrad and Dorgan were very negative toward the McCain bill for granting the tobacco industry "special protections."

RECORD TYPE: PRESIDENTIAL (TRP NOTES MAIL)

CREATOR: Ron Klain (CN=Ron Klain/O=OVP [OVP])

CREATION DATE/TIME:30-MAR-1998 18:28:26.00

SUBJECT: Tobacco Bill

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

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

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

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

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

TEXT:

Gephardt put out a statement blasting the McCain bill, FYI. He called it "strike one" in Congress' attempt to protect kids from tobacco. I guess it's not hard to figure out where he is headed, huh?

RECORD TYPE: PRESIDENTIAL (TRP NOTES MAIL)

CREATOR: Ron Klain (CN=Ron Klain/O=OVP [OVP])

CREATION DATE/TIME:31-MAR-1998 11:19:50.00

SUBJECT: Koop

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

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

TEXT:

You should know that Koop called the VP last night, very upset about the McCain bill, and what he saw as our overly positive reaction to it. He is very off the wall. FYI.

RECORD TYPE: PRESIDENTIAL (TRP NOTES MAIL)

CREATOR: Toby Donenfeld (CN=Toby Donenfeld/O=OVP [OVP])

CREATION DATE/TIME: 1-APR-1998 18:46:29.00

SUBJECT: A few things

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

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

READ:UNKNOWN

CC: Donald H. Gips (CN=Donald H. Gips/O=OVP [OVP])

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

Regarding the Kick Butts Day event tomorrow:

1) Remarks. Andrei Cherny is working on the VP's remarks and is putting in a place-holder on the McCain part. Who do we need to have look at the remarks and advise on that portion and can we get one point of contact for outside of OVP changes? Thank you. FYI: The VP is leaving the WH for another event at approximately 10am and then going straight to the KBD event. Ideally, we'd send his final remarks before he leaves.

2) Briefing. Ron Klain asked that either Bruce or Elena be in his hold at the school to brief him in person or by speaker-phone on the latest up-to-date information on what's happening on the hill on the tobacco legislation. The event is at Hine Jr. High School, 335 8th Street, S.E. near Eastern Market. The VP arrives at 12:15. Please let me know who will be joining us. Thanks.

3) Channel One. The VP is announcing four small anti-youth smoking commitments from organizations: NEA/AFT, Channel One, the Girl

Scouts and Girls Inc. There was some initial concern w/ an announcement on Channel One given the controversy of advertising in schools. I checked w/ Mike Cohen who directed me to Terry Peterson at Education who told me that it was ok to announce as long as it was part of several other announcements. Obviously, this was before the head of Channel One appeared on the Today Show this morning to be accused in a new report of costing the taxpayers millions of dollars. We're kind of far down the line on having the VP at least mention this tomorrow, but I would like your opinion on this. Thanks.

RECORD TYPE: PRESIDENTIAL (TRP NOTES MAIL)

CREATOR: Toby Donenfeld (CN=Toby Donenfeld/O=OVP [OVP])

CREATION DATE/TIME: 2-APR-1998 10:14:20.00

SUBJECT: VP's Kick Butts Day Briefing

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

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

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

TEXT:

Ron still wants one of you to attend the briefing before the VP's KBD event today.

The event is at Hine Jr. High School, 335 8th Street, S.E. near Eastern Market. The VP arrives at 12:15 p.m. We've got a staff van departing at 11:20 if you want to come then or you can meet us there. Please let me know who can come. Thanks.

RECORD TYPE: PRESIDENTIAL (TRP NOTES MAIL)

CREATOR: Toby Donenfeld (CN=Toby Donenfeld/O=OVP [OVP])

CREATION DATE/TIME: 2-APR-1998 14:02:12.00

SUBJECT: Thank you

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

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

TEXT:

Thank you all so much for your help on the VP's Kick Butts Day event, I think it went very well. And Elena, thanks for coming up to the school to brief.

RECORD TYPE: PRESIDENTIAL (TRP NOTES MAIL)

CREATOR: Susan M. Liss (CN=Susan M. Liss/O=OVP [OVP])

CREATION DATE/TIME: 3-APR-1998 17:53:22.00

SUBJECT: thanks

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

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

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

TO: Lynn G. Cutler (CN=Lynn G. Cutler/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

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

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

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

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

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

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

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

CC: Jodi R. Sakol (CN=Jodi R. Sakol/O=OVP @ OVP [OVP])
READ:UNKNOWN

CC: Lawrence J. Haas (CN=Lawrence J. Haas/O=OVP @ OVP [OVP])
READ:UNKNOWN

CC: Lucia F. Gilliland (CN=Lucia F. Gilliland/O=OVP @ OVP [OVP])
READ:UNKNOWN

CC: Patricia M. Ewing (CN=Patricia M. Ewing/O=OVP @ OVP [OVP])
READ:UNKNOWN

TEXT:

Many, many thanks from all of us in OVP-land to all of you who worked so hard on the two women's events yesterday. In particular, the Equal Pay announcement took so much work on the part of so many people all over the

White House, and we are so very appreciative of everything you all did to pull it off. Audrey, you and your shop really kept at it, and it really paid off yesterday! Thanks as well to all of the many communications' gurus who helped us with our day full of messages! Can't wait for a repeat!

RECORD TYPE: PRESIDENTIAL (TRP NOTES MAIL)

CREATOR: Toby Donenfeld (CN=Toby Donenfeld/O=OVP [OVP])

CREATION DATE/TIME:20-APR-1998 17:30:17.00

SUBJECT: Tobacco - Industry Response to POTUS statement

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

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

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

TEXT:
In case you didn't see this...

----- Forwarded by Toby Donenfeld/OVP on 04/20/98 05:25
PM -----

Jodi R. Sakol

04/20/98 05:26 PM

To: Toby Donenfeld/OVP

cc:

Subject: Tobacco

WASHINGTON, April 20 /PRNewswire/ -- The following statement should be attributed to Scott Williams, tobacco industry spokesperson, in response to the President's comments today regarding tobacco legislation:

"There is a growing understanding across the country that Washington's real agenda is to fund a huge tax-and-spend program while saying it wants to pass comprehensive legislation. The industry has been open and

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
005. email	Toby Donenfeld to Bruce Reed et al. re: Tobacco [partial] (1 page)	04/20/1998	P6/b(6)

COLLECTION:

Clinton Presidential Records
Tape Restoration Project [Email]
OPD ([Kagan])
OA/Box Number: 250000

FOLDER TITLE:

[02/11/1998 - 05/15/1998]

2009-1006-F
ds285

RESTRICTION CODES

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

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

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

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

RR. Document will be reviewed upon request.

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

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

honest about what it can and will do to transform the way tobacco products are manufactured, marketed, and sold in this country. Instead of seeking a comprehensive solution that will work, Washington has decided that politics is more profitable for government. The industry does not expect to win a popularity contest, but the country does not like big brother government run amok. The tobacco plan the Administration supports will raise over half a trillion dollars in new taxes to fund a host of programs and special interests unrelated to smoking and public health. It will create 17 new federal bureaucracies, and force the price of a pack of cigarettes over \$5 in five years, which will in turn create a huge black market that will have unregulated access to kids."

SOURCE Scott Williams

-0-

04/20/98

/CONTACT: Scott Williams, [P6/(b)(6)] or Steve Duchesne,

[005]

[P6/(b)(6)]/

RECORD TYPE: PRESIDENTIAL (TRP NOTES MAIL)

CREATOR: sgegenhe (sgegenhe@os.dhhs.gov [UNKNOWN])

CREATION DATE/TIME:21-APR-1998 20:32:49.00

SUBJECT: Calls to Editorial Writers on Needle Exchange

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

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

TEXT:

Melissa Skolfield asked me to let you know that Secretary Shalala spoke with New York Times and USA Today editorial writers this afternoon on needle exchange. In addition, Melissa spoke with Walter Shapiro, who writes a political column for USA Today. She says he may call you.

RECORD TYPE: PRESIDENTIAL (TRP NOTES MAIL)

CREATOR: Toby Donenfeld (CN=Toby Donenfeld/O=OVP [OVP])

CREATION DATE/TIME:22-APR-1998 14:03:17.00

SUBJECT: Meeting w/ Kennedy and Conrad

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

TO: Ron Klain (CN=Ron Klain/O=OVP @ OVP [OVP])

READ:UNKNOWN

CC: David R Thomas (CN=David R Thomas/O=OVP @ OVP [OVP])

READ:UNKNOWN

CC: Kay Casstevens (CN=Kay Casstevens/O=OVP @ OVP [OVP])

READ:UNKNOWN

TEXT:

Regarding the VP's paper briefing for his meeting w/ Senators Kennedy and Conrad, I was wondering if anyone had any thoughts on what information to include in the briefing. I have a two-pager that Kennedy sent to the VP on his concerns w/ the McCain bill. I can include that and any information you have on Conrad's concerns. I'm happy to call over to Conrad's office, but I don't want to interfere w/ your communications with the Hill.

I assume much of the information will be told to the VP in person in the briefing prior to the meeting tomorrow. Let me know. Thanks.

RECORD TYPE: PRESIDENTIAL (TRP NOTES MAIL)

CREATOR: Ron Klain (CN=Ron Klain/O=OVP [OVP])

CREATION DATE/TIME:30-APR-1998 18:09:37.00

SUBJECT: Wonderwonk

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

READ:UNKNOWN

TEXT:

Very nice piece. My advice is to get out before it gets worse. It only goes down hill from the fawning TNR profile.

RECORD TYPE: PRESIDENTIAL (TRP NOTES MAIL)

CREATOR: Bjlepard (Bjlepard <Bjlepard@aol.com> [UNKNOWN])

CREATION DATE/TIME:10-MAY-1998 19:48:22.00

SUBJECT: Re:

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

READ:UNKNOWN

TEXT:

I. What We Need to Get

A. Lookback Penalties

The most important (and most difficult) concession we need to secure in these

discussions is to strengthen the lookback penalties by increasing the cap and

adding a company-by-company component. Along with liability, this is the number-one concern for Conrad, Waxman, and many public health advocates.

But

Hollings and the industry will vehemently resist any increase in penalties as

a backdoor way to drive up the price of a bill they think costs too much already. McCain might have given us these changes in committee, but

Hollings

said no.

In its current form, the McCain bill includes industrywide penalties of up to \$3.6 billion, the precise equivalent of a 20% miss. Instead of a company-specific penalty, the McCain bill includes a provision that could theoretically deny liability protection to a company that missed the targets

by more than 20% -- but in its current form the provision is meaningless.

In an earlier memo, we described three options on how to meet our concerns:

1) raise the cap to \$4-5 billion, and add a company-specific penalty of \$500 per youth smoker; 2) raise the cap to \$4-5 billion, and add a company-specific penalty of \$20 million per percentage point (the virtual equivalent of \$500 per youth smoker); or 3) raise the cap to \$5 billion, with companies paying the first \$4 billion on the basis of adult market share and the last \$1 billion on the basis of youth market share. These are the options you described to McCain in your office. We offered to explain these options in more detail to John Raidt, but he has yet to take us up on it.

We now think we have an even better idea that stacks these approaches in a way that might sound more attractive to the public health community but also fits more neatly into the current McCain bill. Here's how it would work: The first 20% would be paid industrywide, as in McCain. Once that level was reached, any company that missed by more than 20% would be assessed an uncapped company-specific penalty of \$500 for each youth smoker beyond the 20% miss. Under this scheme, there is no cap on penalties - just an industrywide tier for the first 20% and a company-specific tier beyond 20%. But because the company-specific component is reasonable, and doesn't kick in until 20%,

there's no need for a cap because it won't put anybody out of business. Treasury estimates that even if youth smoking didn't decline at all, and companies had to pay for a 60% miss in year 10, Philip Morris would pay a company-specific penalty of less than \$500 million.

Waxman will never be satisfied with these amounts, and whatever we get will suffer by comparison to the Meehan-Hansen bill, with over \$1.00 a pack in company-specific penalties. But being able to say we have penalties that are uncapped with a company-specific component will go a long way with the rest of the public health crowd. Moreover, it only requires one change in the McCain bill: replacing the current unworkable company-specific provision linking a 20% miss to liability protection with our company-specific idea. We might be able to convince Hollings that such a trade isn't so bad from the industry's standpoint. (The public health community doesn't seem to care about the current provision, but industry analysts were somewhat alarmed by it.)

Recommended starting position: In order to end up with the plan we outlined, we may have to stake out an opening bargaining position that is somewhat stronger: for example, raising the industry cap to \$5 billion, and adding an uncapped company-specific penalty of \$500 for every youth smoker (not just the

ones above a 20% miss). (We could start at \$750, although that is more than we discussed with McCain.) Another idea we could raise to frighten Hollings (and eventually relent on) is the prospect of seeking to strengthen the link between a 20% miss and loss of liability protection.

II. What We Can Give

A. Volume Adjustment

The most valuable concession we can make in these discussions is to allow the annual payments to be adjusted for volume in the first five years (the current volume adjustment doesn't begin until after year 6). This change would give the industry the certainty of knowing that the annual payments won't increase cigarette prices by more than \$1.10 a pack, even if volume plunges. It could also reduce available revenue in the 5-year budget window by \$5-10 billion. But it is a concession we almost certainly have to make in order to keep Joint Tax from scoring the McCain bill as an increase of \$2 a pack. (Joint Tax is currently assuming higher retail markups and other factors that will keep

the
price around \$1.50 even with a volume adjustment.)

In the first five years, the McCain bill provides for fixed payments by tobacco manufacturers of \$93 billion (plus a \$10 billion voluntary upfront payment). We estimate that these payment levels will reduce consumption by 23% and result in an effective real price increase of \$1.10 per pack by 2003. Beginning in 2005, the McCain bill would adjust these payments as consumption rises or falls, thereby keeping the per pack cost constant.

The industry and Wall Street were quick to criticize this approach as a death spiral, because the companies would still have to pay \$93 billion over 5 years even though they expect consumption to drop nearly twice as fast as we projected. Our \$1.10 is based on consumption at 17.7 billion packs in 2003. If consumption fell to 13 million packs, as many analysts predict, that would rise to \$1.50. The industry also argues that at those prices, black market sales would significantly reduce legal consumption, driving the price of the settlement per pack higher still.

The major drawback of a volume adjustment is that instead of locking in \$65 billion over 5 years, we'll end up with somewhat less. Joint Tax is

likely to

assume a larger drop in consumption than Treasury, so with fewer packs sold,

\$1.10 a pack will bring in less money. (We've asked OMB and Treasury to prepare a memo on where they think Joint Tax will come out.)

We propose a volume adjustment that begins in year 2, and would be based on the difference in the prior year between actual volume and the estimated level. The June 20th settlement was volume adjusted from the outset, which made the 25-year sticker price (\$368.5 billion) sound bigger than it really was (\$303 billion after volume adjustments, by our estimate). We have the opposite goal - to come as close to \$516 billion as we can.

RECORD TYPE: PRESIDENTIAL (TRP NOTES MAIL)

CREATOR: Bjlepard (Bjlepard <Bjlepard@aol.com> [UNKNOWN])

CREATION DATE/TIME:10-MAY-1998 19:51:48.00

SUBJECT: Re:

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

READ:UNKNOWN

TEXT:

We are meeting with McCain and Hollings' staff on Monday morning to discuss a number of design issues that might be resolved before we reach the principals' level. These include 1) how much to charge smokeless manufacturers; 2) how to structure the \$6.5 billion liability fund; 3) licensing and anti-smuggling provisions; 4) document disclosure; 5) inflation adjustments and other technical issues; 6) whether to reduce the 17 so-called new federal bureaucracies; 7) asbestos; and 8) a new title that would contain any consent decree with the industry.

RECORD TYPE: PRESIDENTIAL (TRP NOTES MAIL)

CREATOR: Toby Donenfeld (CN=Toby Donenfeld/O=OVP [OVP])

CREATION DATE/TIME:13-MAY-1998 14:39:38.00

SUBJECT: Dr. Koop - FYI

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

TO: Ron Klain (CN=Ron Klain/O=OVP @ OVP [OVP])

READ:UNKNOWN

TEXT:

The only feedback I got back from the VP on the Koop call is that Koop is very worried about the Finance Committee bill.

RECORD TYPE: PRESIDENTIAL (TRP NOTES MAIL)

CREATOR: Ron Klain (CN=Ron Klain/O=OVP [OVP])

CREATION DATE/TIME:15-MAY-1998 17:38:42.00

SUBJECT: 100,000 Teachers

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

TEXT:

Why would we take this off the list of authorized spending? This makes no sense to me.

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
006. email	Patricia Kaeding to Elena Kagan re: fax (1 page)	05/22/1998	Personal Misfile

COLLECTION:

Clinton Presidential Records
Tape Restoration Project [Email]
OPD ([Kagan])
OA/Box Number: 250000

FOLDER TITLE:

[02/11/1998 - 05/15/1998]

2009-1006-F
ds285

RESTRICTION CODES

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

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

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

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

RR. Document will be reviewed upon request.

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

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