

NLWJC - KAGAN

EMAILS CREATED

ARMS - BOX 004 - FOLDER 003

[8/15/1997 - 9/10/1997]

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Elena Kagan to Maria Echaveste; RE: Dinner (1 page)	09/09/1997	Personal Misfile

COLLECTION:

Clinton Presidential Records
Automated Records Management System (Email)
OPD ([From Elena Kagan])
OA/Box Number: 250000

FOLDER TITLE:

[08/15/1997 - 09/10/1997]

2009-1006-F
db1591

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 (NOTES MAIL)

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

CREATION DATE/TIME:15-AUG-1997 16:18:23.00

SUBJECT: weekly

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

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

TEXT:

Unable to convert ARMS_EXT:[MESSAGE.D7]MAIL48179562S.216

The following is a HEX dump of the file:

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:18-AUG-1997 17:30:00.00

SUBJECT: tobacco settlement process

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

READ:UNKNOWN

TEXT:

----- Forwarded by Elena Kagan/OPD/EOP on 08/18/97 05:29 PM -----

Jeanne Lambrew
08/18/97 05:08:04 PM
Record Type: Record

To: Elena Kagan/OPD/EOP
cc:
Subject: tobacco settlement process

Now that I have re-emerged from both the budget and a vacation, I think I am ready to spend some serious time on the budget group of the tobacco settlement. I realize, however, that I don't know some of the basic processes. Is each of the 4 working groups producing a report? Are these reports being drafted over here or at HHS? OMB and Treasury also seem to have their own teams working on this -- are Raines, Shalala and Rubin each coming up with their own recommendations? I don't want to be duplicating a process already in motion, but I also don't want us to be caught flatfooted.

I also apologize if all of this has been explained to Chris -- he and I have not connected on this and he is on vacation.

Thanks, Jeanne

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:19-AUG-1997 18:39:22.00

SUBJECT: Re: Literacy and Back to School

TO: Kris M Balderston (CN=Kris M Balderston/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

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

CC: Ann F. Lewis (CN=Ann F. Lewis/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TEXT:

We are in a fight for our lives on the testing initiative, with Congress likely to vote in early September to prohibit the use of federal funds for the test. We cannot waste Sept 8 on a sweetness-and-light literacy event. We're all going to have to work together to make this problem disappear. Let's talk about how best to do so. Thanks.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:19-AUG-1997 13:25:35.00

SUBJECT: Re: Literacy and Back to School

TO: Ann F. Lewis (CN=Ann F. Lewis/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TEXT:

great. thanks, ann.

RECORD TYPE: PRESIDENTIAL (NOTES READ RECEIPT)

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

CREATION DATE/TIME:21-AUG-1997 11:00:30.00

SUBJECT: RECEIVED: Comments on LRM MNB28 Due

TO: Melissa N. Benton (CN=Melissa N. Benton/OU=OMB/O=EOP [OMB])
READ:UNKNOWN

TEXT:
RETURN RECEIPT

Your Document:
Comments on LRM MNB28 Due
was successfully received by:
CN=Elena Kagan/OU=OPD/O=EOP
at:
08/21/97 10:59:37 AM

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:22-AUG-1997 18:22:55.00

SUBJECT: Re: Spirits Council Letter -- follow-up

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

TEXT:

I think that's right. Sorry for not responding earlier.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:22-AUG-1997 13:55:58.00

SUBJECT: Re: Unsolicited Compliment and other

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

TEXT:

deinite left hand/right hand problems. Oh well. Given that they didn't
inform us...

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:23-AUG-1997 14:53:05.00

SUBJECT: food stamp talking points

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

READ:UNKNOWN

TEXT:

They look good. sorry i didn't let you know before.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:23-AUG-1997 15:48:58.00

SUBJECT: Re: children's health

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

TEXT:
chris will be back monday; please show this to him.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:24-AUG-1997 12:16:34.00

SUBJECT: secret service unionization

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

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

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

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

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

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

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

TEXT:

The last time we spoke about this issue, we planned for Erskine to host a meeting with Gil Gallegos. The problem now is that Gallegos is furious with us and won't do this meeting. He just won reelection by a very small margin after a campaign in which he took a lot of grief for his relationship with us. I recommend getting a decision on this issue now, without a meeting. We can have a decision memo for Erskine or anyone else this week. Agreed?

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:24-AUG-1997 12:56:21.00

SUBJECT: Re: Letter from Sect Herman to Sen. Harkin

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

READ:UNKNOWN

TEXT:

what did bruce say about this?

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:24-AUG-1997 11:25:38.00

SUBJECT: electronic transfers

TO: WEINSTEIN_P (WEINSTEIN_P @ A1 @ CD @ LNGTWY [UNKNOWN]) (OPD)
READ:UNKNOWN

TEXT:
where are we on this?

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:24-AUG-1997 11:10:05.00

SUBJECT: NCarolina case

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

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

TEXT:
Have the ed people gotten the test, etc? Where are we on this?

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:24-AUG-1997 12:54:20.00

SUBJECT: Re: Gil Gallegos

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

TEXT:

Is this on? did we ever submit a scheduling request? Much as I want this decision, I'm a bit leery of doing it this way. Call me.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:24-AUG-1997 16:50:13.00

SUBJECT: ed strategy

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

READ:UNKNOWN

TEXT:

Your to do list on standards looks great. I think we should bring mickey (or office rep) and maria (or office rep) into the strategy meetings.

Also, are tanya and andy enough on the black caucus?; shouldn't you go too? Let's set up a meeting Monday. Many thanks.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:24-AUG-1997 16:22:38.00

SUBJECT: Re: candidates

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

TEXT:
get a resume and bring him by. thanks.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:24-AUG-1997 12:30:27.00

SUBJECT: Re: Re[3]: Welfare to Work (Work-Study)

TO: Mike_Smith (Mike_Smith @ ed.gov @ INET @ LNGTWY [UNKNOWN])

READ:UNKNOWN

TEXT:

You're right. I hope you think the new draft of the letter is better.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:25-AUG-1997 12:42:36.00

SUBJECT: Re: FYI

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

TEXT:
that's fine. thanks.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:25-AUG-1997 11:52:39.00

SUBJECT: Re: Alaska signing up for tests

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

READ:UNKNOWN

TEXT:

Fine.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:25-AUG-1997 11:53:07.00

SUBJECT: Re: Letter from Sect Herman to Sen. Harkin

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

READ:UNKNOWN

TEXT:

ok; thanks.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:25-AUG-1997 15:03:00.00

SUBJECT: Re: Weekly Education Strategy Meeting

TO: Kris M Balderston (CN=Kris M Balderston/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TEXT:

no; it's on; sorry you didn't get the other message.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:25-AUG-1997 15:08:20.00

SUBJECT: food safety

TO: Phillip Caplan (CN=Phillip Caplan/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TEXT:

Food Safety -- As noted in the DPC weekly, USDA is currently working on food safety legislation that would give the Secretary of Agriculture the authority to recall contaminated food and to assess civil penalties for noncompliance with safety standards. USDA should have the legislation ready by next Tuesday. Secretary Glickman (and perhaps the Vice President) will announce the new legislation next week. They will also call for full funding of our food safety initiative in the Agriculture appropriations bill; the current version of that bill is now about \$4 million short of our request.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:25-AUG-1997 12:41:43.00

SUBJECT: Re: Indian Country Law Enforcement Directive

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

TEXT:
thank you. good work.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:25-AUG-1997 13:16:25.00

SUBJECT: Re: Means-tested is finally happening tomorrow FYI

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

READ:UNKNOWN

TEXT:

No, I think we should do it; send it to me.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:25-AUG-1997 12:44:27.00

SUBJECT: helpful suggestion

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

READ:UNKNOWN

TEXT:

Unable to convert ARMS_EXT:[MESSAGE.D98]MAIL48056463S.216

The following is a HEX dump of the file:

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:25-AUG-1997 13:15:37.00

SUBJECT: Re: Standards

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

TEXT:
you bet.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:26-AUG-1997 17:04:22.00

SUBJECT: Re: VA Letter for Review -Reply

TO: George.Phillips (George.Phillips @ justice.usdoj.gov @ INET @ LNGTWY [UNKNOWN])
READ:UNKNOWN

TEXT:

modern technology doesn't always work. something went wrong in the transmission of the document and all i got was gobbledygook. Could you fax it to 4562878? thanks.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:26-AUG-1997 14:35:10.00

SUBJECT: Re: VA Letter for Review

TO: George.Phillips (George.Phillips @ justice.usdoj.gov @ INET @ LNGTWY [UNKNOWN])
READ:UNKNOWN

TEXT:
Absolutely. Sorry I forgot to call you.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:26-AUG-1997 15:37:53.00

SUBJECT: Re: Weekend

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

READ:UNKNOWN

TEXT:

Say what? first thing i've heard about it. which paper?

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:26-AUG-1997 12:53:36.00

SUBJECT: Re:

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

READ:UNKNOWN

TEXT:

Yes, I think that's fine.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:26-AUG-1997 12:55:06.00

SUBJECT: Re: Pillars and consumers

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

TEXT:

I will personally murder you if you suggest this to anyone.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:26-AUG-1997 17:03:11.00

SUBJECT: Re: NOTES ON DAILY REPORTS -This week

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

TEXT:
not dpc. sorry.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:26-AUG-1997 15:28:08.00

SUBJECT: Re: Weekend

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

READ:UNKNOWN

TEXT:

In fact, yes. I'd love to.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:27-AUG-1997 16:25:38.00

SUBJECT: Re: Hear Elizabeth Drye dispense free medical advice.

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

TEXT:
yes. does she know?

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:27-AUG-1997 16:31:11.00

SUBJECT: Immigration Questions

TO: Diana Fortuna (CN=Diana Fortuna/OU=OPD/O=EOP [OPD])
READ:UNKNOWN

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

TEXT:
could you take care of this? thanks.
----- Forwarded by Elena Kagan/OPD/EOP on 08/27/97 04:33
PM -----

Estela Mendoza
08/27/97 03:48:12 PM
Record Type: Record

To: Elena Kagan/OPD/EOP
cc:
Subject: Immigration Questions

I received a call from a newspaper in Los Angeles who is looking for our position on Food Stamps and Welfare. As you know, a large number of immigrants will lose food stamp eligibility come Sept. 1. Are we supporting any congressional bills that would restore funds? Do you have any guidance I can use to answer questions? (Someone mentioned possible guidance to be faxed to Barry Toiv earlier this week)

In the next week, I expect many more calls will come in asking about the topic. What is our line? Are we still evaluating spending bills? ..who can I talk to?

....I'm the new Specialty Press contact.

August 26, 1997

MEMORANDUM FOR ERSKINE BOWLES
SYLVIA MATHEWS
JOHN PODESTA

FROM: Bruce Reed
Elena Kagan

SUBJECT: Long-Term Strategic Planning

In thinking about priorities for the remainder of the President's term, we think it is useful to ask five kinds of questions:

1. What are the most serious problems facing the nation today -- the issues of most genuine importance to the country's future?
2. What does the President most deeply care about? What issues speak to him and arouse his passion? What are his most intense and personal commitments?
3. In what areas can the President actually accomplish something? Where can he show real and measurable achievements? Where can he most make a difference?
4. What will he get credit for, now and in the future? What successes will people notice and care about? What successes will they attribute to the President?
5. What commitments has the President already made and what priorities has he already set?

These questions often point in different directions. An extremely serious issue may not be one the President can do anything about; an issue on which he can make real progress may not be one that moves him; an issue he cares about deeply may not be one on which others give him deserved credit; etc. In setting priorities for the remainder of his term, the President should try to determine the few issues where everything comes together: urgency, passion, the potential for accomplishment, the likelihood of recognition, and consistency with prior commitments.

Among domestic priorities (any President must and should make "American Leadership Abroad" a top priority), we think these questions point to a focus on (1) education, particularly standards and school reform initiatives; (2) health care, including entitlement reform, coverage expansion, consumer protection, and biomedical research; (3) children and family, particularly child care programs; and (4) welfare reform. We should continue to push our agenda on crimes and drugs -- especially with respect to community policing -- but should recognize that we

probably will be playing defense in this area for the next two years. We should take the President's commitment to racial reconciliation seriously -- but largely by focusing not on race itself, but on the problems of education, health care, crime, etc. felt by people in poor rural areas and inner cities.

1. *Education:* The President already has said that education -- particularly national standards -- is his first priority, and he has credibility in this area. The state of the nation's public schools demands action, and the President speaks with knowledge and feeling about these issues. The only question is whether he can make significant progress on this front, given the traditional preeminence of state and local governments over K-12 schooling. We think he can, so long as he chooses his targets with some care. He must continue to fight for voluntary national testing, recognizing that progress in this area will be measured in the long term. And he should combine this campaign with its natural complement -- a program of school reform, designed to foster a new "ethic" of education involving high expectations, accountability, and public school choice. We recommend, in particular, a program to select a number of inner cities (the places of greatest educational need) as "Educational Opportunity Zones," in which schools would receive special assistance in exchange for adopting policies of no social promotion, public school choice, reconstitution of failing schools, removal of bad teachers, etc. In addition to standards and school reform efforts, the President should continue to emphasize education technology and should propose increased mentoring and support services for poor middle- and high-school students to encourage minority enrollment in higher education.

2. *Health Care:* We are very well-positioned to make continued progress in health care, building on the gains we made in the budget. A sustained focus in this area -- where federal action is the norm and where bipartisan action is often feasible -- will leave a record of strong accomplishment. Entitlement reform is the surest route to credibility and perhaps the greatest need, but it is also the area where tangible accomplishment will be most difficult. We should work hard there, but should not ignore the rest of our health care agenda: further coverage expansions (for the 55-65 age cohort or workers in-between jobs), consumer protection reforms (to ensure quality, prevent discrimination, and protect privacy), and increased biomedical research (taking advantage of Republican support and perhaps using money from a tobacco settlement). By the close of the President's term, he can have amassed a substantial record in this area, which will make people view in an entirely different light our lack of success in passing the Health Security Act.

3. *Children and Families:* For a number of reasons -- including the passage of welfare reform, recent discoveries about early childhood development, and increased understanding of the difficulties of balancing work and family -- the issue of child care is ready to burst onto the national scene, and the President and First Lady should be in the vanguard. There is a great need for leadership (although, as in education, some resistance to *federal* leadership) to ensure that child care of decent quality is available and affordable for working Americans. Given their commitment and credibility in this area, the President and First Lady have an opportunity to push through significant reforms, perhaps including changes in the dependent care tax credit, increased

child care subsidies, and quality enhancements. An especially important feature of this package of reforms (even a promise of universal access, if we can manage it) should be after-school (but generally in-school) programs that give school-age children enriching and activity-filled afternoons.

4. *Welfare Reform:* Whatever else the President does during his term in office, he will be judged in significant measure by the success or failure of welfare reform. Welfare reform has the potential to be the greatest social policy achievement of our generation -- or to be a terribly harmful social experiment. For this reason, welfare reform must remain near the top of the President's agenda, even though actual control of the welfare system is now largely in the hands of state and local governments. The President should be actively engaged in promoting private sector hiring of welfare recipients and implementing our new \$3 billion welfare-to-work program. He should push Congress to invest more in welfare reform efforts (for example, by passing our initiative in NEXTEA for welfare-related transportation services); he should push states to make good use of TANF monies. In short, for the remainder of his term, he should maintain continuous and relentless involvement in this area.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:27-AUG-1997 16:27:55.00

SUBJECT: Re: Indian Country law enforcement directive

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

TEXT:
fine with me, but we should check the draft.

August 26, 1997

MEMORANDUM FOR ERSKINE BOWLES
SYLVIA MATHEWS
JOHN PODESTA

FROM: Bruce Reed
Elena Kagan

SUBJECT: Long-Term Strategic Planning

In thinking about priorities for the remainder of the President's term, we think it is useful to ask five kinds of questions:

1. What are the most serious problems facing the nation today -- the issues of most genuine importance to the country's future?
2. What does the President most deeply care about? What issues speak to him and arouse his passion? What are his most intense and personal commitments?
3. In what areas can the President actually accomplish something? Where can he show real and measurable achievements? Where can he most make a difference?
4. What will he get credit for, now and in the future? What successes will people notice and care about? What successes will they attribute to the President?
5. What commitments has the President already made and what priorities has he already set?

These questions often point in different directions. An extremely serious issue may not be one the President can do anything about; an issue on which he can make real progress may not be one that moves him; an issue he cares about deeply may not be one on which others give him deserved credit; etc. In setting priorities for the remainder of his term, the President should try to determine the few issues where everything comes together: urgency, passion, the potential for accomplishment, the likelihood of recognition, and consistency with prior commitments.

Among domestic priorities (any President must and should make "American Leadership Abroad" a top priority), we think these questions point to a focus on (1) education, particularly standards and school reform initiatives; (2) health care, including entitlement reform, coverage expansion, consumer protection, and biomedical research; (3) children and family, particularly child care programs; and (4) welfare reform. We should continue to push our agenda on crimes and drugs -- especially with respect to community policing -- but should recognize that we

probably will be playing defense in this area for the next two years. We should take the President's commitment to racial reconciliation seriously -- but largely by focusing not on race itself, but on the problems of education, health care, crime, etc. felt by people in poor rural areas and inner cities.

1. *Education:* The President already has said that education -- particularly national standards -- is his first priority, and he has credibility in this area. The state of the nation's public schools demands action, and the President speaks with knowledge and feeling about these issues. The only question is whether he can make significant progress on this front, given the traditional preeminence of state and local governments over K-12 schooling. We think he can, so long as he chooses his targets with some care. He must continue to fight for voluntary national testing, recognizing that progress in this area will be measured in the long term. And he should combine this campaign with its natural complement -- a program of school reform, designed to foster a new "ethic" of education involving high expectations, accountability, and public school choice. We recommend, in particular, a program to select a number of inner cities (the places of greatest educational need) as "Educational Opportunity Zones," in which schools would receive special assistance in exchange for adopting policies of no social promotion, public school choice, reconstitution of failing schools, removal of bad teachers, etc. In addition to standards and school reform efforts, the President should continue to emphasize education technology and should propose increased mentoring and support services for poor middle- and high-school students to encourage minority enrollment in higher education.

2. *Health Care:* We are very well-positioned to make continued progress in health care, building on the gains we made in the budget. A sustained focus in this area -- where federal action is the norm and where bipartisan action is often feasible -- will leave a record of strong accomplishment. Entitlement reform is the surest route to credibility and perhaps the greatest need, but it is also the area where tangible accomplishment will be most difficult. We should work hard there, but should not ignore the rest of our health care agenda: further coverage expansions (for the 55-65 age cohort or workers in-between jobs), consumer protection reforms (to ensure quality, prevent discrimination, and protect privacy), and increased biomedical research (taking advantage of Republican support and perhaps using money from a tobacco settlement). By the close of the President's term, he can have amassed a substantial record in this area, which will make people view in an entirely different light our lack of success in passing the Health Security Act.

3. *Children and Families:* For a number of reasons -- including the passage of welfare reform, recent discoveries about early childhood development, and increased understanding of the difficulties of balancing work and family -- the issue of child care is ready to burst onto the national scene, and the President and First Lady should be in the vanguard. There is a great need for leadership (although, as in education, some resistance to *federal* leadership) to ensure that child care of decent quality is available and affordable for working Americans. Given their commitment and credibility in this area, the President and First Lady have an opportunity to push through significant reforms, perhaps including changes in the dependent care tax credit, increased

child care subsidies, and quality enhancements. An especially important feature of this package of reforms (even a promise of universal access, if we can manage it) should be after-school (but generally in-school) programs that give school-age children enriching and activity-filled afternoons.

4. *Welfare Reform*: Whatever else the President does during his term in office, he will be judged in significant measure by the success or failure of welfare reform. Welfare reform has the potential to be the greatest social policy achievement of our generation -- or to be a terribly harmful social experiment. For this reason, welfare reform must remain near the top of the President's agenda, even though actual control of the welfare system is now largely in the hands of state and local governments. The President should be actively engaged in promoting private sector hiring of welfare recipients and implementing our new \$3 billion welfare-to-work program. He should push Congress to invest more in welfare reform efforts (for example, by passing our initiative in NEXTEA for welfare-related transportation services); he should push states to make good use of TANF monies. In short, for the remainder of his term, he should maintain continuous and relentless involvement in this area.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:28-AUG-1997 15:41:33.00

SUBJECT: Re: Education standards memo

TO: Clifford J. Gabriel (CN=Clifford J. Gabriel/OU=OSTP/O=EOP @ EOP [OSTP])
READ:UNKNOWN

TEXT:

It's about Mr. Goodling's amendment to prevent us from using any funds to develop national reading and math tests. I don't have a copy of the latest version; you can get it from staff secretary or mike cohen.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:28-AUG-1997 15:22:29.00

SUBJECT: Re: NOTES ON DAILY REPORTS -This week

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

TEXT:

That was from DPC, not Agriculture. Thanks.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:28-AUG-1997 20:33:11.00

SUBJECT: Re: Education standards memo

TO: Clifford J. Gabriel (CN=Clifford J. Gabriel/OU=OSTP/O=EOP @ EOP [OSTP])
READ:UNKNOWN

TEXT:

The staff secretary was in charge of circulation, as always.

Food Safety Announcement: Secretary Glickman will hold a press conference tomorrow to announce new proposed legislation on food safety. The draft bill would provide USDA with enhanced enforcement powers to protect public health. Specifically, the bill would authorize the Secretary of Agriculture to (1) order the recall of adulterated or misbranded meat or poultry that poses a reasonable probability of harming the public health; (2) impose civil penalties (as an alternative to currently available criminal penalties) when a company has violated food safety laws or regulations; and (3) refuse to do inspections when a company has willfully or repeatedly violated food safety laws or regulations, thereby forcing the company to close down. The Secretary also will call on Congress to provide full funding for the food safety initiative in the Administration's budget, which would establish enhanced food inspection systems. Current appropriations bills underfund this initiative by about \$4 million.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:28-AUG-1997 20:32:39.00

SUBJECT: Re: Elaine Jones

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

TEXT:

Unable to convert ARMS_EXT:[MESSAGE.D89]MAIL43194793S.216

The following is a HEX dump of the file:

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:28-AUG-1997 18:54:29.00

SUBJECT: Re: VP Harkin ltr & Food Safety

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

TEXT:
Just do it.

Yes -- sally managed to do this all today, so we can go ahead on friday
with both. i was very impressed.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:29-AUG-1997 13:10:13.00

SUBJECT: Re: Elaine Jone/Educ. test

TO: Minyon Moore (CN=Minyon Moore/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TEXT:

other than that, they're a great idea.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:29-AUG-1997 13:03:30.00

SUBJECT: Elaine Jone/Educ. test

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

READ:UNKNOWN

TEXT:

----- Forwarded by Elena Kagan/OPD/EOP on 08/29/97 01:06
PM -----

Minyon Moore

08/29/97 12:12:58 PM

Record Type: Record

To: Maria Echaveste/WHO/EOP, Sylvia M. Mathews/WHO/EOP, Elena Kagan/OPD/EOP

cc:

Subject: Elaine Jone/Educ. test

I reviewed my notes from the meeting with the Black Leadership Forum and the follow-up notes that were sent to me by Yvonne Scruggs. Here is the statement and question Elaine raised re: test:

"The U.S. Department of Education is launching a testing initiative for 4th and 8th graders which is felt to be so dangerously inequitable that half of the states have refused to administer this test, and individual cities are being solicited to pilot the tests instead. How can we stop the implementation of this test which is unvalidated, language-biased, unstandardized, non verifiable and unregulated re: the use of its' results?"

I would imagine whoever speaks to Elaine, we should be prepared to address the above question and statement. Hope this helps!

RECORD TYPE: PRESIDENTIAL (NOTES READ RECEIPT)

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

CREATION DATE/TIME:29-AUG-1997 13:02:53.00

SUBJECT: RECEIVED: Final Call for Comments on LRM #SGE4: Justice Report on HR1703

TO: Stephen G. Elmore (CN=Stephen G. Elmore/OU=OMB/O=EOP [OMB])
READ:UNKNOWN

TEXT:
RETURN RECEIPT

Your Document:
Final Call for Comments on LRM #SGE4: Justice Report on HR1703
was successfully received by:
CN=Elena Kagan/OU=OPD/O=EOP
at:
08/29/97 01:05:51 PM

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:31-AUG-1997 10:33:17.00

SUBJECT: fda woman

TO: WEINSTEIN_P (WEINSTEIN_P @ A1 @ CD @ LNGTWY [UNKNOWN]) (OPD)
READ:UNKNOWN

TEXT:

I never got a chance to speak with her, though she tried calling a couple of times. If you speak with her this week, pass on my apologies and say I'll be back next week. Many thanks.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:31-AUG-1997 22:02:07.00

SUBJECT: Sexual Orientation Non-Discrimination Executive Order

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

READ:UNKNOWN

TEXT:

Mary: did bruce really say for maria to do this? why?

----- Forwarded by Elena Kagan/OPD/EOP on 08/31/97 10:05 PM -----

Richard Socarides 08/31/97 03:37:50 PM

Record Type: Record

To: Elena Kagan/OPD/EOP, Mary L. Smith/OPD/EOP

cc:

Subject: Sexual Orientation Non-Discrimination Executive Order

Where are we?

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 31-AUG-1997 10:31:24.00

SUBJECT: reminder

TO: John Podesta (CN=John Podesta/OU=WHO/O=EOP @ EOP [WHO])

READ: UNKNOWN

TEXT:

I'm going to be away next week, so you're on your honor to:

1. call seth waxman; and
2. check in with erskine on how he wants to handle the secret service unionization issue.

Have a good week.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:31-AUG-1997 22:03:30.00

SUBJECT: tobacco

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

TEXT:

I should have asked you this last week but:

could you prepare a rollout plan for our tobacco announcement -- e.g., who we need to warn, how we should handle the announcement, etc. Thanks.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:31-AUG-1997 10:32:14.00

SUBJECT: child poverty

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

READ:UNKNOWN

TEXT:

You should give Bruce the note you gave me and make sure he knows what we're up to on this issue. Thanks.

Access and Licensing

This Administration is committed to taking effective action to prevent youth access to tobacco. The FDA rule contains numerous provisions to limit youth access, including establishing 18 as the federal minimum age of sale, requiring retailers to check photo identification of anyone under 27, and eliminating free samples and the sale of single cigarettes. These provisions will help parents to keep their children safe from tobacco products.

The Administration supports legislation that will advance this effort still further. This legislation, in addition to incorporating access restrictions from the FDA rule, shall ban all cigarette vending machines and require tobacco products to be placed out of reach of consumers in any facility that children may enter.

In addition and even more important, the Administration supports legislation to establish an effective licensing scheme to enforce these access restrictions. This scheme shall prohibit any unlicensed person from selling tobacco products to consumers; institute a strict scheme of criminal and civil penalties, including license suspension or revocation, for violations of licensing laws; and impose licensing fees to cover the costs of administering the licensing system.

The Administration will work with Congress on the appropriate distribution of responsibility between the federal and state governments for administering this scheme and imposing penalties. In addition, the Administration will work with Congress on the appropriate level of penalties for violating licensing laws, including by selling tobacco products to minors. These penalties cannot impinge on any existing powers of the FDA to impose civil penalties and must be sufficiently stringent to deter violations; in particular, the threshold for permanently revoking licenses should not be set so high as to lost its power to deter retailers from selling tobacco to minors.

Internal notes:

The above statement embraces the settlement's provisions on youth access restrictions. These provisions, which codify and then go beyond the FDA rule, significantly advance the effort to limit youth access to tobacco products.

Even more important to that effort is the provision for establishing a retail licensing system. FDA and Treasury agree that such a system is necessary for adequate enforcement of youth access provisions. Assuming adequate funding, legislation creating a licensing system would count as one of the principal virtues of the settlement agreement.

The proposed settlement is vague as to who -- state authorities, federal authorities, or some combination of the two -- should administer the licensing scheme. We are not yet in a position to make a concrete recommendation on this question. FDA's current inclination is to

give responsibility for running the scheme to the states, but to retain the power to revoke licenses. We are not sure whether such an approach would work (or even how it could be done); the above statement therefore says only that we will work with Congress on this issue.

The statement also indicates that the penalty structure attached to the licensing scheme needs further thought and strengthening, but does not now commit ourselves to a particular set of penalties. The statement includes language about preserving FDA authority as a safeguard, in light of the settlement's failure to make this point explicit. More meaningfully, the statement suggests that the penalty scheme set out in the settlement is too lenient. The settlement provides for permanent license revocation only after a licensee's tenth offense within two years. Because licensing officials are unlikely to conduct ten compliance checks on a single retailer in a two-year time frame, this provision is essentially meaningless. The above statement indicates that we want mandatory revocation to be a real weapon, without getting into a level of detail unsuitable at this stage of the process.

Marketing, Advertising, and Labeling

The Administration understands that separate and apart from any legislation, the tobacco industry will voluntarily agree in consent decrees and contracts to restrict its advertising and marketing of tobacco products. These voluntary limitations will include but go beyond restrictions imposed by the FDA in its August 1996 rule.

Notwithstanding these agreements, the Administration will press for legislative language that confirms the FDA's authority to regulate the advertising and marketing of tobacco products, as asserted in its August 1996 rule. The Administration will carefully review any legislative language relating or referring to the industry's consent decrees or contracts to ensure that such language does not limit or in any way interfere with the FDA's use of this authority. The Administration also will carefully review such language to ensure consistency with constitutional requirements.

The Administration supports legislation to require "Canadian-style" warning labels -- *i.e.*, strengthened warnings (such as "cigarettes cause cancer" and "smoking can kill you") that appear on 25% of the front or display panel of tobacco products, printed in alternating black-on-white or white-on-black type. The Administration also supports legislation to require warnings of similar prominence on advertisements for tobacco products.

Internal notes:

The advertising and marketing restrictions in the settlement are very strong. They include all the restrictions in the FDA rule -- most notably, requirements of black-on-white advertising and bans on tobacco brand names in non-tobacco merchandise. The district court struck down these restrictions as inconsistent with the FDA's statutory authority. The Court of Appeals clearly will not reverse this decision, and the Supreme Court probably will leave it alone as well. The settlement also includes restrictions on advertising and marketing going far beyond the FDA rule, such as restrictions on point-of-sale advertising and bans on outdoor advertising, Internet advertising, the use of human images and cartoon characters, and payments for tobacco product placement in movies and other media. Congress could not enact such restrictions consistent with the Constitution.

The above statement is written to emphasize that the restrictions on advertising are part of consent decrees and other contracts -- not part of our proposed legislation. To the extent the restrictions are a part of the legislation -- or seen as a condition of the legislation -- serious constitutional issues will arise. To the extent the restrictions are a part only of the settlement agreements, they probably will be permissible as voluntary relinquishments of rights.

The statement insists on statutory confirmation of FDA authority over the advertising and marketing of tobacco products. This grant of authority is valuable even though the settlement agreements go further than the FDA could, because the FDA will have no authority to enforce the

contracts between the industry and the states. With a specific grant of authority, the FDA itself could enforce the restrictions contained in its 1996 rule, as well as any other constitutionally permissible restrictions it might wish to impose in the future.

The statement contemplates that the legislation may refer to the consent decrees. Such a reference could make sense to bolster enforcement of the agreements, to include them within a broader severance scheme (e.g., what happens if a court invalidates part of an agreement?), or for certain other reasons. The statement, however, makes clear that the Administration will carefully scrutinize any reference of this kind to ensure that it does not interfere with FDA authority -- and more important, to ensure that it does not bring the advertising restrictions so far within the legislative scheme as to increase their vulnerability to constitutional challenge.

The part of the statement relating to labels on packages and advertisements is consistent with the provisions of the settlement agreement. These provisions would strengthen significantly the existing warning labels, both in the starkness of the message and in its size and placement on tobacco products.

Document Disclosure

For decades, the tobacco industry has failed to disclose essential facts in its possession about the dangers and addictiveness of tobacco products. Indeed, the tobacco companies have used the attorney-client and/or work-product privileges to cloak scientific research and findings -- and to shield evidence of the companies' criminal or fraudulent behavior. It is therefore necessary to establish an effective and speedy mechanism to pierce fraudulent or otherwise improper claims of privilege and to force the disclosure of information that will advance public health interests.

The Administration supports legislation to create a national tobacco document depository and require tobacco companies to turn over immediately all documents (including assertedly privileged documents and detailed privilege logs) relating to the health effects of tobacco products, the use of nicotine in those products, and the sale or marketing of those products to children. Companies may not claim privilege in this process for any descriptions or analyses of scientific research conducted or paid for by the company. **[Correct phrasing?]** A three-person Board, appointed consistent with the Constitution, shall review documents claimed to be privileged -- including through an expedited process allowing any person, without a prima facie showing, to challenge a privilege claim -- shall disclose any document found not to be privileged (with that determination binding on the company), and may impose appropriate monetary sanctions.

Under the legislation, this administrative process will not be the only means to contest a claim of privilege. Any person can challenge a claim of privilege in a legal action against a tobacco company, even if the Board of the depository has upheld or failed to rule on the claim. In addition, the administrative process will not govern the disclosure of documents to the FDA. Companies must disclose to the FDA all documents containing information about the health effects or addictive qualities of tobacco products, regardless of any claim of privilege. **[Correct phrasing?]**

Internal notes:

The proposal outlined above strengthens the document disclosure provisions of the settlement in several ways. First, the proposal makes the administrative disclosure process non-exclusive, so that a litigant can challenge a privilege claim in a lawsuit, even if the Board of the depository has not completed its review or has ruled in favor of the company. (By contrast, a Board finding that a document is not privileged binds the company in all other proceedings.) Second, the proposal provides the FDA with access to all health-related documents, notwithstanding any claims of privilege. Third, the proposal somewhat broadens the category of materials for which companies cannot claim a privilege in the administrative process. In addition, the proposal as outlined here gives us some wiggle-room on details -- relating, for example, to the composition of the Board (which the Justice Department believes is unconstitutional as written) and the procedures that the Board will follow.

The proposal, however, does not broadly abrogate the attorney-client or work-product privileges, as Rep. Waxman's proposed legislation would do. The Justice Department has expressed serious concerns about any broad abrogation of the privilege, arguing that such an approach would undermine the privilege generally and would enable a tobacco company official charged with criminal conduct to assert a violation of his Sixth Amendment right to effective assistance of counsel. But some public health groups may demand the abrogation of the companies' attorney-client privilege in a settlement -- or, even more broadly, insist (as Sen. Leahy, Rep. Waxman, and Attorney General Skip Humphrey have done) that the tobacco companies disclose all privileged documents before any consideration of a settlement takes place.

Environmental Tobacco Smoke

The best available scientific evidence indicates that environmental tobacco smoke (ETS) causes disease and death. The Environmental Protection Agency (EPA) classifies ETS as a Class A carcinogen [check] and estimates that it is responsible for about 3,000 lung cancer deaths each year in non-smoking adults. The EPA also has found that ETS threatens the health of hundreds of thousands of children with asthma and other respiratory illnesses. The Surgeon General, in a study concluding that ETS causes serious disease among non-smokers, determined that simple separation of smokers and nonsmokers within the same airspace may reduce, but does not eliminate harmful exposure to ETS.

For these reasons, the Administration supports legislation to restrict smoking in workplaces and other public facilities. This legislation, like the President's recent Executive Order on tobacco smoke in federal facilities, shall ban smoking in public places or at work except in enclosed areas exhausted directly to the outside. The legislation may include appropriate but limited exceptions to this ban, as in H.R. 3434, for prisons and the hospitality industry (but not including fast food restaurants). The legislation shall not preempt or otherwise affect any federal, state, or local law, regulation, or rule that imposes stricter limitations on ETS. The legislation shall ensure that the Occupational Safety and Health Administration possesses all necessary (including all currently existing) authority to regulate and enforce the law in this area.

Internal notes:

The above statement is essentially consistent with the proposed settlement's provision on ETS. This provision is one of the most valuable aspects of the settlement, given the risk of ETS to non-smokers, the success of ETS measures in inducing smokers to quit (or at least cut down), and the political difficulty of making headway on this issue without the tacit consent of the tobacco companies.

The only major question in this area is whether to exempt the hospitality industry (and if so, what parts of the industry) from the ban on indoor smoking. The proposed settlement exempts restaurants (but not fast food restaurants), bars, private clubs, hotel guest rooms, casinos, bingo parlors, and tobacco merchants. H.R. 3434, which the Administration has supported, exempts restaurants (including fast food restaurants) and bars. The proposed rule on ETS that OSHA issued in 1994 does not include any exemption for the hospitality industry. (In a number of other ways, however, the settlement is more protective of the public health than the OSHA rule, which in any event would face serious legal challenges if finally issued.) DOL recommends accepting the exception in the settlement; HHS recommends eliminating the exception. The above statement retains an exception, leaves some wiggle room with respect to its precise scope, but hints that it would cover only bars and non-fast food restaurants.

On another point, the above statement will enable us to inspect legislative language carefully to ensure that it does not (1) preempt any more health-protective laws, whether federal,

state, or local, or (2) deprive OSHA of any necessary regulatory or enforcement authority. Current language in the settlement creates some ambiguities with respect to these issues.

FDA Regulation

The first priority of the Administration, in considering any tobacco legislation, shall be to confirm and protect the jurisdiction of the FDA to regulate tobacco products. This authority can be no less strong -- though because of the nature of the product, it may be somewhat different -- than that which the FDA exercises over other drugs and devices. Further, the authority cannot be circumscribed by any special procedural rules or requirements. The FDA must be able to regulate tobacco products, including by ordering the reduction or elimination of nicotine or other constituents, through its normal procedures in the furtherance of public health interests.

The Administration therefore supports legislation specifically empowering the FDA to require the modification of tobacco products based on a finding that this change would reduce the risk of the product to the public and is technologically feasible. **[Pick one of the following two sentences:]** [The FDA shall consider all relevant factors in making this determination, including the number of addicted tobacco users, the availability of alternative products, and the risk of a significant contraband market in tobacco products resulting from the proposed action.] [The FDA need make no further findings in support of this decision, but consistent with its duty to protect the public health, the FDA may not go forward if a party affirmatively demonstrates that the action would create a significant contraband market in tobacco products.] The FDA may order a modification of a tobacco product (including the reduction or elimination of nicotine) at any time, although a decision to eliminate nicotine shall not take effect for two years to allow time for congressional review. In determining whether to require modification of a tobacco product, the FDA shall use its normal procedures.

Internal Notes:

Even as written, the settlement's provision on FDA jurisdiction had significant virtues. First, the provision specifically conferred jurisdiction to regulate tobacco products on the FDA, thereby removing the legal uncertainty now attending the FDA rule. (The Fourth Circuit almost certainly will rule against the FDA; the Supreme Court is a toss-up.) Second, the provision established a "risk reduction" standard to guide the regulation of tobacco products in place of the "safety and efficacy" standard applicable to other drugs and devices. Because the former makes sense when applied to inherently dangerous products whereas the latter does not, the change in standard would facilitate the FDA's regulation of tobacco products.

This provision of the settlement, however, also contained several glaring weaknesses. First, the FDA was required to prove a negative in order to reduce or eliminate nicotine -- i.e., that the action would not create a significant demand for contraband products. Second, the FDA could not eliminate nicotine for a period of 12 years. Third, the FDA could not take any action to modify tobacco products without surmounting a number of procedural hurdles -- e.g., formal rulemakings -- not usually applicable to administrative action.

The above statement eliminates the 12-year prohibition and the special procedural hurdles

contained in the proposed settlement. The statement offers two alternatives on the contraband issue. The first and preferable alternative is to convert the contraband question from a make-or-break finding into a mere “consideration.” The second alternative is to flip the burden of proof on the contraband issue, so that the tobacco industry will have to prove that the proposed action will create a contraband market (instead of the FDA having to prove that it will not). This alternative removes the burden of proving a negative from the FDA, but still makes the FDA’s action wholly dependent on the question of whether it will create a contraband market.

Liability and Other Legal Issues

In the event that Congress passes legislation meeting all of the Administration's demands for punishing and regulating tobacco companies -- including a payment of more than \$20 billion [?] in punitive damages payable to the public -- the Administration will accept provisions barring class actions and punitive damages for past misconduct and imposing yearly limits of \$5 billion on certain civil damages. The legislation itself will both exact penalties for past behavior and regulate future behavior, while a significant pool of money (especially given the historic failure of smokers to collect any damages) will be available to compensate injured plaintiffs.

The Administration will oppose -- and will not accept legislation including -- any limits on punitive damages for future misconduct. These damages shall not count toward or be subject to yearly limits; tobacco companies shall pay the full amount of such damages over and above all other payment obligations. The continued potential for unrestricted punitive damages will support the regulatory aspects of the legislation in deterring willful misconduct and otherwise changing corporate behavior.

Also in the context of broader legislation, the Administration will support a provision that gives tobacco companies an exemption from the antitrust laws, so long as that exemption is no broader than necessary to accomplish its purpose -- reducing youth consumption of tobacco products. The Administration will review the language of the exemption carefully to ensure that it does not protect such activities as price-fixing, mergers to monopoly, predatory pricing, and agreements not to produce reduced-risk products.

The Administration respects recent efforts by states and localities to regulate tobacco products, and it will oppose any changes in preemption law that would frustrate these efforts. In the absence of a strong justification, legislation therefore shall not affect the FDA's existing authority to allow states and localities to impose requirements on tobacco products; nor shall legislation preempt state-law tort suits or state and local requirements that are more stringent than their federal counterparts.

Internal notes:

The liability provisions are, of course, what the tobacco companies get out of the proposed settlement. As written, they eliminate the possibility of a cataclysmic hit by limiting total liability to \$5 billion each year; and they diminish the likelihood of any successful lawsuits by prohibiting class action and other joinder devices. The above statement takes a bit of the sting out of these provisions by making clear that any punitive damages for future misconduct will not be subject to the damages cap. (The statement is also silent about whether we would accept the prohibition not only of class actions, but also of other joinder devices; the Justice Department has some doubts about whether we should.) But there is little doubt about the value of the provisions -- arising from the certainty they offer -- to the tobacco companies.

On the other hand, it is not at all clear that these provisions harm public health interests. Instituting a comprehensive regulatory scheme, while keeping in place the possibility of capped compensatory damages and uncapped punitive damages, should influence future corporate behavior at least as well as the litigation system usually manages to do. Moreover, making the companies pay a punitive damage award for past misconduct to the public (for use in health research, etc.) makes far more sense from a public health perspective than allowing such funds to go as windfalls to individual plaintiffs. Of course, these provisions do decrease the likelihood of bankrupting the tobacco companies. But as long as Americans are addicted to tobacco products, it is very unclear that this result would serve the public health; indeed, the exact opposite argument is at least equally plausible.

The FTC and antitrust division of the Justice Department are both concerned about the breadth of the antitrust exemption contained in the proposed settlement agreement. They have not come to closure on appropriate language, but agree that an exemption should allow collusion to reduce youth smoking while prohibiting collusion for other purposes. The statement above serves as a placeholder, indicating that the Administration will take a serious interest in the drafting of this provision.

The preemption provisions of the proposed settlement are among its most baffling aspects -- muddled, internally contradictory, and seemingly senseless. The statement above essentially favors a status quo approach (which the FDA favors): in circumstances where existing law requires states to petition the FDA to regulate tobacco, states would remain under that obligation; in circumstances where existing law allows states to regulate tobacco on their own, states could impose any regulations more stringent than the new federal standards. It is very difficult to know how much (if at all) this scheme deviates from what the drafters of the settlement intended.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 9-SEP-1997 19:45:21.00

SUBJECT: Re: Kids SSI editorial in the NY Times tomorrow

TO: Diana Fortuna (CN=Diana Fortuna/OU=OPD/O=EOP [OPD])
READ:UNKNOWN

TEXT:

write a supplemental note to the president. thanks.

FDA Authority

The first priority of the Administration in considering tobacco legislation should be to confirm and protect the jurisdiction of the FDA to regulate tobacco products -- including through the reduction or elimination of nicotine or other constituents. This goal will necessitate substantial changes in the proposed settlement agreement.

Even as written, the settlement's provision on FDA jurisdiction had certain virtues. First, the provision specifically conferred jurisdiction to regulate tobacco products on the FDA, thereby removing the legal uncertainty now attending the FDA rule. (The Fourth Circuit panel almost certainly will rule against the FDA, and the Supreme Court may well uphold this decision.) Second, the provision established a "risk reduction" standard to guide the regulation of tobacco products in place of the "safety and efficacy" standard applicable to other drugs and devices. Because the former makes sense when applied to inherently dangerous products whereas the latter does not, the change in standard would facilitate the FDA's regulation of tobacco products.

This provision of the settlement, however, also contained several glaring weaknesses. First, as you noted in your first comments on the settlement, the FDA would have to prove a negative in order to reduce or eliminate nicotine -- i.e., that the action would not create a significant demand for contraband products. Second, the FDA could not eliminate nicotine for a period of 12 years. Third, the FDA could not take any action to modify tobacco products without surmounting a number of procedural hurdles -- e.g., formal rulemakings -- not usually applicable to administrative action.

The public health community will demand -- and we believe the industry will grudgingly accept -- a legislative proposal that corrects these weaknesses. This proposal would eliminate the 12-year waiting period and the special procedural hurdles in the current settlement. It also, and perhaps most important, would remove the necessity of the FDA's making a contraband finding. At one point, the industry proposed flipping the burden of proof on the contraband issue, so that the FDA could not take action if a party affirmatively demonstrated that doing so would create a significant contraband market. But even this approach puts too much weight on the contraband issue, which should be only one factor in the FDA's regulatory decisionmaking. The better approach is to authorize the FDA to order changes to tobacco products based on a simple finding that this change would reduce the risk of the product to the public and is technologically feasible, after consideration of the full range of consequences of the change, including the possible creation of a contraband market.

Documents

For decades, the tobacco industry has failed to disclose essential facts in its possession about the dangers and addictiveness of tobacco products. In particular, the industry has used both the attorney-client and the work product privileges to cloak scientific research and findings -- and to shield evidence of criminal or fraudulent behavior. The Attorneys General attempted to address this issue through creation of a special court to resolve all privilege claims made by the

industry. Although the proposed system has certain virtues, it also suffers from serious defects. The industry is willing to make certain minor changes in the proposed scheme, but will not accept changes recommended by the Justice Department and FDA. Even these changes will not satisfy the harshest critics of the settlement, such as Skip Humphrey.

The settlement calls for a national document depository and a three-judge panel (appointed by the Judicial Conference of the United States) to provide expedited rulings on whether documents should remain privileged. The Attorneys General fought hard for this provision for two essential reasons. First, anyone -- not just a litigant, but any member of the public (including the New York Times or David Kessler) -- could ask the panel to review allegedly privileged documents. In this sense, the settlement establishes a Freedom of Information Act for tobacco documents. Second, the requester would not have to make the normal showing required in litigation for *in camera* review of a document: a *prima facie* case that the document is not privileged -- because, for example, it advanced a scheme of crime or fraud.

The Justice Department, however, believes that this scheme, adopted without change, would pose serious dangers. DOJ points out that no one knows whether or how this panel will work -- whether the judges (or special masters appointed by them) will be competent; whether they will be so swamped with document requests as to create an enormous backlog; whether they will favor one side over the other. DOJ also notes that this panel will have sole authority to rule on claims of privilege. While under the current system many courts may adjudicate a claim of privilege (with a finding of privilege in one court often not precluding the opposite finding in another), the special three-judge panel's decisions would be binding in all courts in all litigation in the United States. On top of these Justice Department concerns, the FDA would like access to all documents -- even those rightfully privileged -- to determine whether they contain scientific or other health-related information (for example, reflecting the industry's extensive research on nicotine addiction) relevant to the regulation of tobacco products.

To meet these agency concerns, we could strengthen the document provisions in two key ways. First, we could make the administrative disclosure process non-exclusive, so that a litigant could challenge a privilege claim in litigation even if the special panel had not completed review of the document in question or had ruled in favor of the company. (By contrast, a finding by the special panel that a document is not privileged would bind the company in all other proceedings.) Second, we could provide the FDA with access to all health-related documents, notwithstanding any claims of privilege.

The industry claims that it will not accept either of these changes. The industry's most recent proposal is to add a provision to the settlement requiring each company to identify and disclose all health-related information contained in privileged documents, without turning over the documents themselves. Under this proposal, the special panel could find that a company had failed to disclose such information and levy substantial penalties. The industry has also expressed a willingness to consider a different scheme for selecting the people to sit on the special panel.

On the other side, some in Congress and the public health community will find even the changes recommended by the agencies to be inadequate. These changes do not broadly abrogate the industry's attorney-client or work-product privileges. The Justice Department has expressed serious concerns about any such breach of the privilege, arguing that this approach would undermine the privilege generally and would enable a tobacco company official charged with criminal conduct to assert a violation of his Sixth Amendment right to effective assistance of counsel. But some will demand the complete abrogation of the companies' attorney-client privilege as a term of the settlement -- or, even more broadly, insist (as Sen. Leahy, Rep. Waxman, and Attorney General Skip Humphrey already have done) that the tobacco companies disclose all privileged documents before any consideration of a settlement takes place.

Environmental Tobacco Smoke

The best available scientific evidence indicates that environmental tobacco smoke (ETS) causes disease and death in non-smokers. The Environmental Protection Agency (EPA) classifies ETS as a Class A carcinogen and estimates that it is responsible for about 3,000 lung cancer deaths each year in non-smoking adults. The EPA also has found that ETS threatens the health of hundreds of thousands of children with asthma and other respiratory illnesses. Serious ETS restrictions, which ban smoking in public places or at work except in enclosed areas exhausted directly to the outside, reduce exposure to ETS and the harm it causes. At the same time, such restrictions lead many smokers to quit smoking entirely and many more to cut down. Indeed, among the many smoking cessation tools -- including substantial price increases -- ETS restrictions may well be the most effective.

All agree that the settlement's provision on ETS is extremely valuable, and needs few changes. The proposed legislation would broadly prohibit smoking in public places, without preempting even stricter state or local laws. The only question is whether to accept without change the settlement's exception for restaurants (but not fast food restaurants), bars, private clubs, hotel guest rooms, casinos, bingo parlors, and tobacco merchants. H.R. 3434, which the Administration supported, exempts restaurants (including fast food restaurants) and bars. The proposed rule on ETS that OSHA issued in 1994 does not include any exemption for the hospitality industry. (In a number of other ways, however, the settlement is more protective of public health than the OSHA rule, which in any event would face serious legal challenges if finally issued.) HHS would prefer to cut back on the exception in the settlement, noting that many of the exempted work places pose the greatest threat to non-smokers. The Department of Labor (OSHA) would keep the exemption essentially as is on the ground that trying to include restaurants, casinos, etc. would make the whole provision politically unsellable.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 9-SEP-1997 17:45:23.00

SUBJECT: Re: New lookback scenerios

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

READ:UNKNOWN

TEXT:

could you print all this out? thanks.

----- Forwarded by Elena Kagan/OPD/EOP on 09/09/97 05:44
PM -----

Jerold R. Mande

09/09/97 12:55:15 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP

cc:

Subject: Re: New lookback scenerios

Here are the latest penalties scenerios that you requested.

----- Forwarded by Jerold R. Mande/OSTP/EOP on 09/09/97
12:53 PM -----

Patrick G. Locke

09/09/97 12:48:11 PM

Record Type: Record

To: Jerold R. Mande/OSTP/EOP

cc: joseph j. minarik/omb/eop, Hugh T. Connelly/OMB/EOP, Susanne D.
Lind/OMB/EOP

Subject: Re: New lookback scenerios

Here are the new scenarios you asked for. All the scenarios assume that the BBA excise tax credit is repealed. For each of the three teen surcharge variants, I have run one version where teen consumption responds only to the deal's price increases, and a second version where the deal's nonprice provisions cause a 30% reduction in teen smoking on top of the price effect.

Note that with tier 1 of the surcharge specified as nondeductible, there is now an increase in corporate income taxes in all the scenarios. The assumption is that in addition to passing through the surcharge, the companies tack on a further price increase that allows them to pay taxes on the surcharge payments and preserve the same profits as they would otherwise have booked.

I have not done any modeling of the "brand by brand" concept for the surcharge. Without more data on differential marketing to teens across firms, I have no way to model this right now.

Because the excise tax increases in tier 2 of the youth surcharge are

buried in the spreadsheet files, I'm showing them in the table below. With a 30% nonprice effect, tier 2 of the surcharge doesn't kick in until year 10. Otherwise, you get fairly hefty excise taxes starting in year 5.

Year 5 Year 7 Year 10

Noncumulative excise tax above 5/10/15

Price effects only 21 31 35
30% nonprice effect 0 0 5

Cumulative excise tax above 5/10/15

Price effects only 21 52 83
30% nonprice effect 0 0 5

Noncumulative excise tax above 10/10/10

Price effects only 16 32 40
30% nonprice effect 0 0 10

Here are the files for the noncumulative excise tax above 5/10/15 percentage points. The first file (tobac13.wk4) is price effects only; the second file (tobac13n.wk4) has the 30% nonprice effect.

Here are the files for the cumulative excise tax above 5/10/15 percentage points.

Here are the files for the noncumulative excise tax above 10/10/10 percentage points.

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

TEXT:
Unable to convert ARMS_EXT:[ATTACH.D1]MAIL43910715P.216 to ASCII,
The following is a HEX DUMP:

00001A00021004000000000000C80005FEC5002000010A00000000000000001F0008000000013000
0033001F0008000001013004001D001F00080000020130040022001F0008000003013004002200
1F00080000040130040022001F00080000050130040022001F00080000060130040030001F0008
0000070130040023001F00080000080130040023001F00080000090130040023001F000800000A
0130040023001F000800000B0130040023001F000800000C013004001D001F000800000D013004
001D001F000800000E013000001D001F0008000100013000004C001F0008000101013004003A00
1F0008000102013004003A001F0008000103013004003A001F0008000104013004003A001F0008
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01300300B8001F000800021401300300B8001F000800021501300300B8001F0008000216013003

	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
Scenario label	Two Tier Surcharge With Noncumulative Excise Tax Above 5/10/15 Point Shortfall										
Alternative scenarios:											
Repeal the BBA97 credit	yes										
Eliminate the base volume adjustment	no										
Eliminate the PHTF volume adjustment	no										
Convert volume adjustment to excise tax	no										
Inflation factor to use	CPI										
CPI (min 3%)	3.0% CPI										
Health care costs	4.1% HEALTH										
GDP growth	4.9% GDP										
Teen surcharge scenarios:											
Teen targets met	no										
Two-tier surcharge	yes										
Eliminate cap on teen surcharge	yes										
Surcharge cap amount		2									
Penalty per percentage point		0									
Penalty tax deductible	no										
Two tier penalty		0									
Tier 2 tax deductible	no										
Excise tax trigger	yes										
Excise tax cumulative	no										
Computations for recover excise tax losses:											
Base case net pmts x/excise tax losses (arct)	8	5	4	5	6	8	7	8	8	8	9
Net pmts with excise tax losses	8	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!
Add'l amount to recover	0	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!
Total recovery amount	0	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!
Total recovery amount (archived)	0	1	1	1	1	1	1	1	1	1	1
Base case payments:											
PHTF		3	3	4	4	5	3	3	3	0	0
Base annual payments		<u>6</u>	<u>7</u>	<u>8</u>	<u>10</u>	<u>10</u>	<u>13</u>	<u>13</u>	<u>13</u>	<u>15</u>	<u>15</u>
Total payments		9	10	12	14	15	15	15	15	15	15
Additions to base payments		0	0	0	0	0	0	0	0	0	0
Payment increase to meet teen smoking targ	1.000	1.000	1.000	1.000	3.550	2.650	4.700	4.350	4.600	6.000	5.400
Nonprice decline to meet targets in base sce	(0)	(0)	(0)	(0)	(0)	(0)	(0)	(0)	(0)	(1)	(1)

Detail for Calculations of Teen Surcharge
(Dollar amounts in billions)

04/20/09
03:58 PM

	1995	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Teen population:													
13.....	4	4	4	4	4	4	4	4	4	4	4	4	4
14.....	4	4	4	4	4	4	4	4	4	4	4	4	4
15.....	4	4	4	4	4	4	4	4	4	4	4	4	4
16.....	4	4	4	4	4	4	4	4	4	4	4	4	4
17.....	4	4	4	4	4	4	4	4	4	4	4	4	4
Total.....	19	19	20	20	20	20	21	21	21	21	21	21	21
Teen smoking rate.....	#N/A	17.38%	14.50%	12.95%	11.67%	10.13%	9.08%	9.12%	9.13%	8.87%	9.15%	8.69%	9.06%
Demographic weight.....	1.0000	1.0064	1.0071	1.0056	1.0048	1.0045	1.0014	1.0016	1.0039	1.0085	1.0118	1.0124	1.0118
Teen use base percentage:													
13.....		8.5%											
14.....		14.7%											
15.....		14.7%											
16.....		19.2%											
17.....		19.2%											
Total.....		15.2%											
Target pct point reduction (+) from base.....	#N/A	#N/A	#N/A	#N/A	#N/A	30.0%	30.0%	50.0%	50.0%	50.0%	60.0%	60.0%	60.0%
Actual pct point reduction (+) from base.....	#N/A	-14.4%	4.6%	14.8%	23.2%	33.3%	40.2%	40.0%	39.9%	41.6%	39.8%	42.8%	40.4%
Pct point shortfall (+).....	#N/A	#N/A	#N/A	#N/A	#N/A	-3.3%	-10.2%	10.0%	10.1%	8.4%	20.2%	17.2%	19.6%
Tier 1 \$ per percentage point.....	#N/A	0	0	0	0	0	0	0	0	0	0	0	0
Tier 1 \$ per teen (thousands).....	#N/A	3	3	3	3	3	3	4	4	4	4	4	4
Tier 1 cap.....				1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Tier 1 limit.....						5.0%	5.0%	10.0%	10.0%	10.0%	15.0%	15.0%	15.0%
Limit scenario A.....						5.0%	5.0%	10.0%	10.0%	10.0%	15.0%	15.0%	15.0%
Limit scenario B.....						10.0%	10.0%	10.0%	10.0%	10.0%	10.0%	10.0%	10.0%
Tier 1 surcharge liability (paid in following year):													
Liability before double count & cap.....						(0)	(1)	1	1	1	3	2	3
Liability after double count, pre-cap.....						(0)	(1)	0	1	0	2	0	1
Liability after cap.....						0	0	0	1	0	2	0	1
Tier 1 surcharge payment.....							0	0	0	1	0	1	0
Tier 2 \$ per percentage point.....		0	0	0	0	0	0	0	0	0	0	0	0
Tier 2 \$ per teen (thousands).....		0	0	0	0	0	0	0	0	0	0	0	0
Tier 2 cap.....				0	0	0	0	0	0	0	0	0	0
Tier 2 surcharge liability (paid in following year):													
Liability before double count & cap.....						0	0	0	0	0	0	0	0
Liability after double count, pre-cap.....						0	0	0	0	0	0	0	0
Liability after cap.....						0	0	0	0	0	0	0	0
Tier 2 surcharge payment.....							0	0	0	0	0	0	0
Add'l excise tax this year.....							0.00		0.00			0.05	
Teen excise tax trigger.....							0.00	0.00	0.00	0.00	0.00	0.05	0.05

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Estimated teen smokers using base level pattern:												
13.....	0	0	0	0	0	0	0	0	0	0	0	0
14.....	1	1	0	0	0	0	0	0	0	0	0	0
15.....	1	1	0	0	0	0	0	0	0	0	0	0
16.....	1	1	1	1	1	0	0	0	0	1	0	0
17.....	1	1	1	1	1	0	0	0	0	1	0	1
Total..... #N/A	3	3	3	2	2	2	2	2	2	2	2	2
Add check for age breakout.....	0	0	0	0	0	0	0	0	0	0	0	0
Current excess teen smokers:												
13.....					(0)	(0)	0	0	0	0	0	0
14.....					(0)	(0)	0	0	0	0	0	0
15.....					(0)	(0)	0	0	0	0	0	0
16.....					(0)	(0)	0	0	0	0	0	0
17.....					(0)	(0)	0	0	0	0	0	0
Total.....					(0)	(0)	0	0	0	1	1	1
Teens already paid for:												
13.....					0	0	0	0	0	0	0	0
14.....					0	0	0	0	0	0	0	0
15.....					0	0	0	0	0	0	0	0
16.....					0	0	0	(0)	0	0	0	0
17.....					0	0	0	(0)	0	0	0	0
Total.....					0	0	0	0	0	0	0	0
Unpaid teens from previous years:												
13.....					0	0	0	0	0	0	0	0
14.....					0	(0)	(0)	0	0	0	0	0
15.....					0	(0)	(0)	0	0	0	0	0
16.....					0	(0)	(0)	0	0	0	0	0
17.....					0	(0)	(0)	0	0	0	0	0
Total.....					0	(0)	(0)	0	0	0	0	0
Teen liability this year before cap:												
13.....					(0)	(0)	0	0	0	0	0	0
14.....					(0)	(0)	0	0	0	0	0	0
15.....					(0)	(0)	(0)	0	(0)	0	(0)	0
16.....					(0)	(0)	(0)	0	0	0	0	0
17.....					(0)	(0)	(0)	0	0	0	(0)	0
Total.....					(0)	(0)	0	0	0	0	0	0
Teens actually paid for this year:												
13.....					0	0	0	0	0	0	0	0
14.....					0	0	0	0	0	0	0	0
15.....					0	0	(0)	0	(0)	0	(0)	0
16.....					0	0	(0)	0	0	0	0	0
17.....					0	0	(0)	0	0	0	(0)	0
Total.....					0	0	0	0	0	0	0	0
Cumulative unpaid teens due to cap:												
13.....					(0)	(0)	0	0	0	0	0	0
14.....					(0)	(0)	0	0	0	0	0	0
15.....					(0)	(0)	0	0	0	0	0	0
16.....					(0)	(0)	0	0	0	0	0	0
17.....					(0)	(0)	0	0	0	0	0	0
Total.....					(0)	(0)	0	0	0	0	0	0

Teen surcharge (old method w/modified cap):

Teen use % under deal.....	18.295%	16.332%	15.613%	15.239%	14.537%	14.387%	14.439%	14.466%	14.231%	14.526%	14.084%
Teen use base percentage	15.200%										
Percentage decline (plus = decline)	-20.4%	-7.4%	-2.7%	-0.3%	4.4%	5.3%	5.0%	4.8%	6.4%	4.4%	7.3%
Target decline.....					30.0%	30.0%	50.0%	50.0%	50.0%	60.0%	60.0%
Target Gap (percentage points).....					26	25	45	45	44	56	53
\$80M per pct point adj. for infl, teen pop & .93 smokeless	0.095	0.099	0.102	0.106	0.111	0.117	0.123	0.128	0.133	0.137	0.141
Penalty (assessed in following year/based on FDA determination).....						3	1	3	2	2	4
Inflation adjusted cap on annual penalty.....			1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Portion not charged due to cap.....						0	0	0	0	0	0

SUMMARY OF BUDGETARY EFFECTS OF PROPOSED SETTLEMENT
TWO TIER SURCHARGE WITH CUMULATIVE EXCISE TAX ABOVE 5/10/15 POINT SHORTFALL

04/20/09

03:58 PM

(In billions of dollars)

	<u>1,998</u>	<u>1,999</u>	<u>2,000</u>	<u>2,001</u>	<u>2,002</u>	<u>2,003</u>	<u>2,004</u>	<u>2,005</u>	<u>2,006</u>	<u>2,007</u>	<u>2,008</u>	<u>98-03</u>	<u>98-08</u>	<u>98-23</u>
RECEIPTS														
Base Payment (inc. trust and up-front payment)...	10	9	10	12	14	15	15	15	15	15	15	69	144	369
Payments to Recoup Excise Tax Credit and/or Losses	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Adult Sales Volume Adjustment.....	0	(1)	(1)	(2)	(2)	(3)	(3)	(4)	(4)	(4)	(4)	(9)	(28)	(93)
Credit for Personal Compensation Claims.....	0	(2)	(2)	(2)	(3)	(3)	(3)	(3)	(3)	(4)	(4)	(11)	(28)	(81)
Inflation Adjustment.....	0	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!
Credit for BBA Excise Taxes.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Look-Back Surcharge for Youth Consumption.....	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>1</u>	<u>0</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>1</u>	<u>1</u>	<u>3</u>	<u>13</u>
Net Industry Settlement Payments.....	10	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!
Tax Offsets														
Indirect Business Tax Offset.....	(3)	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!
Corporate Income Tax on Look-Back Surcharge....	0	0	0	0	0	0	0	0	0	0	0	0	1	7
Youth Excise Tax Trigger.....	0	0	0	0	0	3	3	7	7	7	11	3	38	201
Reduction in Existing Federal Excise Taxes.....	<u>0</u>	<u>(0)</u>	(1)	(1)	(1)	(1)	(1)	(1)	(1)	<u>(1)</u>	<u>(2)</u>	<u>(4)</u>	<u>(10)</u>	<u>(31)</u>
Total Federal Tax Offsets.....	<u>(3)</u>	<u>#REF!</u>	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!
Net Additional Receipts to US Government....	8	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!
POTENTIAL USES/CHANGES														
State Attorneys General Proposals, Total.....	0	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!
Offset Reduction in State Excise Taxes.....	0	1	1	1	1	1	1	2	2	2	2	5	14	52
Use of Youth Look-Back Surcharge (90% grants).....	0	0	0	0	0	1	0	1	0	0	1	1	3	13
Potential Increase in Federal Medicaid Match.....	<u>1</u>	<u>#REF!</u>	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!
Total Potential Uses.....	1	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!
Memoranda:														
Ad Valorem Equivalent of Net Payments.....	17%	18%	22%	26%	36%	34%	45%	43%	43%	53%				
Change in Total Cigarette Consumption.....	-7%	-8%	-10%	-12%	-16%	-15%	-20%	-19%	-19%	-22%				
Percentage Point Shortfall from Youth Target.....					26%	20%	41%	34%	36%	46%				

Detail for Calculations of Tobacco Consumptic
(in billions of dollars)

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Constant dollar gross payments:													
Up front payment.....	10												
Public Health Trust Fund.....	0	3	3	4	4	5	3	3	3	0	0	0	0
PHTF volume adjustment.....	0	(0)	(0)	(0)	(1)	(1)	(0)	(0)	(1)	0	0	0	0
Base payment.....	0	6	7	8	10	10	13	13	13	15	15	15	15
Base payment volume adjustment.....	0	(1)	(1)	(1)	(2)	(2)	(2)	(2)	(3)	(3)	(3)	(3)	(3)
Additional payment to recover BBA cred	0	0	0	0	0	0	0	0	0	0	0	0	0
Add'l payment volume adjustment.....	0	0	0	0	0	0	0	0	0	0	0	0	0
Additional payment to recover tax losse	0	0	0	0	0	0	0	0	0	0	0	0	0
Add'l payment volume adjustment.....	0	0	0	0	0	0	0	0	0	0	0	0	0
Civil suit credit.....	0	(2)	(2)	(2)	(3)	(3)	(3)	(3)	(3)	(4)	(4)	(4)	(4)
Total initial gross payments.....	10	6	6	8	9	10	9	9	9	8	8	8	8
Inflation protected amounts:													
Up front payment.....	10												
Public Health Trust Fund.....	0	#REF!											
PHTF volume adjustment.....	0	#REF!											
Base payment.....	0	#REF!											
Base payment volume adjustment.....	0	#REF!											
Additional payment to recover BBA cred	0	#REF!											
Add'l payment volume adjustment.....	0	#REF!											
Additional payment to recover tax losse	0	#REF!											
Add'l payment volume adjustment.....	0	#REF!											
Civil suit credit.....	0	#REF!											
Total inflated payments.....	10	#REF!											
Inflation adjustment to gross amounts:													
Up front payment.....	0	0	0	0	0	0	0	0	0	0	0	0	0
Public Health Trust Fund.....	0	#REF!											
PHTF volume adjustment.....	0	#REF!											
Base payment.....	0	#REF!											
Base payment volume adjustment.....	0	#REF!											
Additional payment to recover BBA cred	0	#REF!											
Add'l payment volume adjustment.....	0	#REF!											
Additional payment to recover tax losse	0	#REF!											
Add'l payment volume adjustment.....	0	#REF!											
Civil suit credit.....	0	#REF!											
Total inflation adjustments.....	0	#REF!											
Other payments and penalties:													
Credit for BBA97 excise tax increase.....	0	0	(2)	(2)	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)
Additional payments to offset BBA97 credi	0	0	2	2	3	3	3	3	3	3	3	3	3
Payments to offset excise tax losses.....	0	0	0	0	0	0	0	0	0	0	0	0	0
Teen smoking surcharge -- tier 1.....	0	0	0	0	0	0	0	0	1	0	1	0	1
Teen smoking surcharge -- tier 2.....	0	0	0	0	0	0	0	0	0	0	0	0	0
Total net payments and penalties.....	10	#REF!											
Federal revenues:													
Industry payments.....	10	#REF!											
IBT Offset (25%).....	(3)	#REF!											
Surcharge impact on corp. income taxes..	0	0	0	0	0	0	0	0	1	0	1	0	0
Teen excise tax (-25% paygo offset).....	0	0	0	0	0	0	0	0	0	0	1	1	1
Effect on curr. law tobacco excise taxes (-	(0)	(0)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
Impact of higher CPI.....	-	-	-	-	-	-	-	-	-	-	-	-	-

Total, revenues (budget effect).....	7	#REF!											
Total, revenues (PAYGO effect).....	8	#REF!											
MEMO: impact on curr. law State excise tax	(0)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(2)	(2)	(2)

Federal outlays:

Spending at 100% of Adjusted Income from Industry:

Public Health Trust Fund--Tobacco-related medical	#REF!												
Title VII--Paragraph B--HHS Programs/grants to Sta	0	#REF!											
Title VII--Paragraph A(2)--FDA enforcement/grants 1	0	#REF!											
Title VII--Paragraph A(3)--ASSIST grants to States..	0	#REF!											
Title VII--Paragraph A(4)--Federal R&D discourage 1	0	#REF!											
Title VII--Paragraph A(5)--Payments to sponsored e	0	#REF!	0										
Title VII--Paragraph C--Public Educ. Campaign (to r	1	#REF!											
Title VII--Paragraph D--Tobacco Use Cessation(HH:	1	#REF!											
Spending of look-back surcharge.....	0	0	0	0	0	0	0	0	1	0	1	0	1
Subtotal of above.....	#REF!												
All other (assumed grants to States).....	10	#REF!											
Total, spending equals payments.....	10	#REF!											
Impact of higher CPI (COLAs/EITC).....	*	*	*	*	*	*	*	*	*	*	*	*	*
Total outlays.....	10	#REF!											
Error check.....	0	#REF!											

Federal deficit effects with receipts as IBT:

Total budget effects:

Revenues (deficit impact).....	(7)	#REF!											
Direct outlays.....	10	#REF!											
Total programmatic effect.....	3	#REF!											
Debt service.....	0	0	0	0	1	1	1	1	1	2	2	2	2
Total budget deficit (+) effect.....	3	#REF!											
Payments limited to budget neutrality.....	7	#REF!											

PAYGO impact:

Revenues.....	(8)	#REF!											
Direct outlays.....	10	#REF!											
Total PAYGO deficit (+) effect.....	3	#REF!											
Payments limited to paygo neutrality.....	8	#REF!											

Other potential Federal spending effects:

Composite Federal match rate used.....	1												
Pot. increase in Fed matching grants(love	1	#REF!											
Pot. increase in Fed matching grants(upp	1	#REF!											
Longer-term impacts on medical care expenditures (-)													
Longer-term impacts on retirement program expenditures (+)													
Subtotal other potential spending.....	2	#REF!											

Impact of higher CPI (no longer counted)

Revenue impact of higher CPI.....	0	(0)	(0)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
Outlay Impact (COLAs/EITC).....	0	0	1	2	3	3	3	3	3	3	3	4	4
Total deficit impact.....	0	1	2	3	3	4	4	4	5	5	5	5	5

Inflation factors:

Annual payments and spending.....	1	#REF!											
98 constant \$ (state excise & pack price)..	1	1	1	1	1	1	1	1	1	1	1	1	1
Teen surcharge.....	1	1	1	1	1	1	1	1	1	1	1	1	2

Potential deficit(-) effects on States:

Reduction in State excise taxes--inflated cur	(0)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(2)	(2)	(2)
Potential Increased income from Fed. match	1	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!
Longer-term impacts on medical care expenditures (-)													
Longer-term impacts on retirement program expenditures (+)													
Total, potential deficit(-) effects on States	1	#REF!											

BBA97 credit:

Credit based on deal consumption (scaled)	0	0	(2)	(2)	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)
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Volume adjustment:

Ratio of adult consumption to base year (1999)	99.1%	91.3%	88.1%	86.1%	82.9%	81.8%	81.4%	81.0%	79.6%	80.2%	78.1%	79.0%	78.3%
Excise tax equiv. of pmts at baseline volume (frozen at 2003):													
Public health trust fund	0	0	0	0	0	0	0	0	0	0	0	0	0
Base payments	0	0	0	0	0	0	1	1	1	1	1	1	1

Reduction in curr law tobacco excise tax:

Federal .24/pack; .34 '00/'01; .39 '02 & after/s	(0)	(0)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(2)	(1)	(1)
State .34/pack Con\$ 98=100(measured from	(0)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(2)	(2)	(2)
Federal excise tax drop after 25% offset	(0)	(0)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)

New Treasury Elasticity Approach:

Con\$(98=100) Price Per Pack -- Current law	1.950	1.943	2.030	2.021	2.057	2.046	2.037	2.027	2.018	2.009	2.000	1.992	1.984
Calculated excise tax equiv. of payments--inj	0.000	0.325	0.363	0.439	0.535	0.573	0.573	0.573	0.573	0.573	0.573	0.573	0.573
BBA excise tax increase for credit --Con\$199	0.000	0.000	0.094	0.092	0.133	0.129	0.126	0.122	0.118	0.115	0.112	0.108	0.105
Excise tax equivalent w/credit	0.000	0.325	0.269	0.348	0.401	0.444	0.447	0.451	0.455	0.458	0.461	0.461	0.461
Excise tax equivalent of payments--range	0.000	0.326	0.364	0.442	0.539	0.578	0.578	0.582	0.637	0.589	0.684	0.617	0.642
Calculated excise tax equiv. of payments (igi)	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
Payments x/teen surcharge	0.000	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!
Teen surcharge -- tier 1	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.003	0.039	0.007	0.052	0.009	0.025
Teen surcharge -- tier 2	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
Total payments	0.000	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!
Difference, out vs. in	0.000	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!
Con\$(98=100) Price Per Pack -- Deal	1.95	2.27	2.39	2.46	2.60	2.62	2.61	2.61	2.66	2.60	2.68	2.61	2.63
Percent increase vs. current law (ad valorem):									0.637	0.589	0.684	0.617	0.642
Payments x/teen surcharge	0.0%	16.8%	17.9%	21.9%	26.2%	28.2%	28.4%	28.6%	29.7%	28.9%	31.6%	30.5%	31.1%
Teen surcharge	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.1%	1.9%	0.4%	2.6%	0.4%	1.3%
Total ad valorem tax	0.0%	16.8%	17.9%	21.9%	26.2%	28.2%	28.4%	28.7%	31.6%	29.3%	34.2%	31.0%	32.4%
TIME (T) and (n)	2	3	4	5	6	7	8	9	10	11	12	13	14

CONSUMPTION (billions of packs):

Current law (post-BBA97):													
Total consumption	24.143	24.039	23.400	23.312	22.977	22.895	22.812	22.727	22.641	22.554	22.465	22.376	22.286
Teen consumption	0.647	0.655	0.638	0.646	0.648	0.663	0.677	0.689	0.698	0.701	0.699	0.695	0.692
Adult consumption	23	23	23	23	22	22	22	22	22	22	22	22	22
Deal:													
Total consumption	24.110	22.172	21.351	20.845	20.037	19.740	19.664	19.566	19.230	19.381	18.864	19.098	18.905
Teen consumption	1	1	0	0	0	0	0	0	0	0	0	0	0
Adult consumption	23	22	21	20	20	19	19	19	19	19	19	19	19
Decline from current law:													
Total consumption	(0)	(2)	(2)	(2)	(3)	(3)	(3)	(3)	(3)	(3)	(4)	(3)	(3)
Teen consumption	(0)	(0)	(0)	(0)	(0)	(0)	(0)	(0)	(0)	(0)	(0)	(0)	(0)
Adult consumption	0	(2)	(2)	(2)	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)
Decline from current law, percent:													
Total consumption	0%	-8%	-9%	-11%	-13%	-14%	-14%	-14%	-15%	-14%	-16%	-15%	-15%
Teen consumption	-5%	-21%	-27%	-35%	-42%	-49%	-49%	-49%	-50%	-49%	-52%	-50%	-50%
Adult consumption	0%	-7%	-8%	-10%	-12%	-13%	-13%	-13%	-14%	-13%	-15%	-14%	-14%

ADULTS:

Automated Records Management System
Hex-Dump Conversion

# of Adult smokers (millions) Current law	49.994	49.743	48.853	48.618	48.083	47.856	47.630	47.404	47.179	46.954	46.730	46.506	46.283
# of Adult smokers (millions)--deal	49.994	47.586	46.471	45.739	44.611	44.139	43.912	43.657	43.084	43.156	42.334	42.522	42.136
TEENS:													
Teen use percentage points -- Current law	18.295	18.341	17.778	17.837	17.614	17.677	17.739	17.799	17.858	17.915	17.971	18.025	18.078
Teen use percentage points -- deal	18.295	16.332	15.613	15.239	14.537	14.387	14.439	14.466	14.231	14.526	14.084	14.468	14.380
# of teen smokers (mill.) -- Current law	4	4	3	4	4	4	4	4	4	4	4	4	4
# of teen smokers (mill.) -- Deal price only	4	3	3	3	3	3	3	3	3	3	3	3	3
Teen decline due to nonprice effects	(0)	(0)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
# of teen smokers (mill.) -- Deal w/nonprice	3	3	3	2	2	2	2	2	2	2	2	2	2
Percent decline in # of teen smokers -- Deal	5.0%	21.0%	27.2%	34.6%	42.5%	48.6%	48.6%	48.7%	50.3%	48.9%	51.6%	49.7%	50.5%
Cum. # of teen smokers(mill), Curr. law, year	7	11	14	18	21	25	29	32	36	40	44	48	51
Cum. # of teen smokers(mill), Deal, year 199	7	10	12	15	17	18	20	22	24	26	28	30	32
Teen population.....	19	20	20	20	20	21	21	21	21	21	21	21	21
	0.000	0.325	0.268	0.347	0.401	0.545	0.509	0.553	0.526	0.509	0.564		

	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>2004-2008</u>	<u>1998-2003</u>	<u>1998-2008</u>	<u>1998-2023</u>
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	10	10	10
	0	0	0	0	0	0	0	0	0	0	0	0	0	8	18	25	25
	15	15	15	15	15	15	15	15	15	15	15	15	15	(1)	(3)	(4)	(4)
	(3)	(3)	(3)	(3)	(3)	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(13)	(6)	(19)	(73)
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(18)	(12)	(29)	(86)
	8	8	8	8	8	8	8	8	8	8	8	7	7	42	48	91	206
														0	10	10	10
	#REF!	#REF!	#REF!	#REF!													
	#REF!	#REF!	#REF!	#REF!													
	#REF!	#REF!	#REF!	#REF!													
	#REF!	#REF!	#REF!	#REF!													
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	#REF!	#REF!	#REF!	#REF!													
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	#REF!	#REF!	#REF!	#REF!													
	#REF!	#REF!	#REF!	#REF!													
	#REF!	#REF!	#REF!	#REF!													
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	#REF!	#REF!	#REF!	#REF!													
	#REF!	#REF!	#REF!	#REF!													
	#REF!	#REF!	#REF!	#REF!													
	#REF!	#REF!	#REF!	#REF!													
	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(16)	(11)	(27)	(71)
	3	3	3	3	3	3	3	3	3	3	3	3	3	16	11	27	71
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	0	1	1	1	1	1	1	1	1	1	1	1	1	3	0	3	13
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	#REF!	#REF!	#REF!	#REF!													
	#REF!	#REF!	#REF!	#REF!													
	#REF!	#REF!	#REF!	#REF!													
	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	1	7
	1	1	1	1	1	1	1	1	1	1	1	1	1	1	0	1	12
	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(5)	(4)	(9)	(24)
	0	0	0	0

Automated Records Management System
Hex-Dump Conversion

46.060	45.838	45.617	45.396	45.176	44.956	44.738	44.520	44.302	44.086	43.870	43.655	43.441
41.996	41.734	41.528	41.297	41.076	40.852	40.624	40.401	40.176	39.952	39.728	39.500	39.276
18.129	18.179	18.228	18.275	18.321	18.366	18.410	18.453	18.494	18.534	18.573	18.612	18.649
14.495	14.508	14.565	14.600	14.644	14.682	14.718	14.755	14.790	14.825	14.859	14.889	14.920
4	4	4	4	4	4	4	4	4	4	4	4	4
3	3	3	3	3	3	3	3	3	3	3	3	3
(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
2	2	2	2	2	2	2	2	2	2	2	2	2
50.0%	50.2%	50.1%	50.1%	50.1%	50.1%	50.1%	50.0%	50.0%	50.0%	50.0%	50.0%	50.0%
55	59	63	67	70	74	78	82	86	90	94	98	102
34	36	38	39	41	43	45	47	49	51	53	55	57
21	21	21	21	21	21	21	21	21	21	21	22	22

**SUMMARY OF BUDGETARY EFFECTS OF PROPOSED SETTLEMENT
TWO TIER SURCHARGE W/NONCUMULATIVE EXCISE TAX ABOVE 10 POINT SHORTFALL**

04/20/09

03:59 PM

(In billions of dollars)

	<u>1,998</u>	<u>1,999</u>	<u>2,000</u>	<u>2,001</u>	<u>2,002</u>	<u>2,003</u>	<u>2,004</u>	<u>2,005</u>	<u>2,006</u>	<u>2,007</u>	<u>2,008</u>	<u>98-03</u>	<u>98-08</u>	<u>98-23</u>
RECEIPTS														
Base Payment (inc. trust and up-front payment)...	10	9	10	12	14	15	15	15	15	15	15	69	144	369
Payments to Recoup Excise Tax Credit and/or Losse	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Adult Sales Volume Adjustment.....	0	(1)	(1)	(2)	(2)	(3)	(3)	(3)	(3)	(3)	(4)	(9)	(26)	(84)
Credit for Personal Compensation Claims.....	0	(2)	(2)	(2)	(3)	(3)	(3)	(3)	(3)	(4)	(4)	(11)	(29)	(84)
Inflation Adjustment.....	0	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!
Credit for BBA Excise Taxes.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Look-Back Surcharge for Youth Consumption.....	0	0	0	0	0	1	0	1	0	0	1	1	3	10
Net Industry Settlement Payments.....	10	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!
Tax Offsets														
Indirect Business Tax Offset.....	(3)	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!
Corporate Income Tax on Look-Back Surcharge....	0	0	0	0	0	1	0	0	0	0	0	1	2	5
Youth Excise Tax Trigger.....	0	0	0	0	0	2	2	5	5	5	6	2	24	105
Reduction in Existing Federal Excise Taxes.....	0	(0)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(4)	(9)	(26)
Total Federal Tax Offsets.....	(3)	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!
Net Additional Receipts to US Government....	8	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!
POTENTIAL USES/CHANGES														
State Attorneys General Proposals, Total.....	0	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!
Offset Reduction in State Excise Taxes.....	0	1	1	1	1	1	1	2	2	2	2	5	13	44
Use of Youth Look-Back Surcharge (90% grants).....	0	0	0	0	0	1	0	1	0	0	1	1	3	10
Potential Increase in Federal Medicaid Match.....	1	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!
Total Potential Uses.....	1	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!
Memoranda:														
Ad Valorem Equivalent of Net Payments.....	17%	18%	22%	26%	36%	33%	40%	38%	38%	40%				
Change in Total Cigarette Consumption.....	-7%	-8%	-10%	-12%	-16%	-15%	-17%	-17%	-17%	-18%				
Percentage Point Shortfall from Youth Target.....					26%	19%	42%	38%	40%	50%				

SUMMARY OF BUDGETARY EFFECTS OF PROPOSED SETTLEMENT
TWO TIER SURCHARGE W/NONCUM. EXCISE TAX ABOVE 10 POINTS AND 30% TEEN NONPRICE EFFECT

04/20/09

03:59 PM

(In billions of dollars)

	<u>1,998</u>	<u>1,999</u>	<u>2,000</u>	<u>2,001</u>	<u>2,002</u>	<u>2,003</u>	<u>2,004</u>	<u>2,005</u>	<u>2,006</u>	<u>2,007</u>	<u>2,008</u>	<u>98-03</u>	<u>98-08</u>	<u>98-23</u>
RECEIPTS														
Base Payment (inc. trust and up-front payment)...	10	9	10	12	14	15	15	15	15	15	15	69	144	369
Payments to Recoup Excise Tax Credit and/or Losse	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Adult Sales Volume Adjustment.....	0	(1)	(1)	(2)	(2)	(3)	(3)	(3)	(3)	(3)	(3)	(9)	(24)	(77)
Credit for Personal Compensation Claims.....	0	(2)	(2)	(2)	(3)	(3)	(3)	(3)	(3)	(4)	(4)	(12)	(29)	(86)
Inflation Adjustment.....	0	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!
Credit for BBA Excise Taxes.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Look-Back Surcharge for Youth Consumption.....	0	0	0	0	0	0	0	0	1	0	1	0	2	9
Net Industry Settlement Payments.....	10	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!
Tax Offsets														
Indirect Business Tax Offset.....	(3)	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!
Corporate Income Tax on Look-Back Surcharge....	0	0	0	0	0	0	0	0	1	0	1	0	1	5
Youth Excise Tax Trigger.....	0	0	0	0	0	0	0	0	0	0	1	0	1	23
Reduction in Existing Federal Excise Taxes.....	(0)	(0)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(4)	(9)	(24)
Total Federal Tax Offsets.....	(3)	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!
Net Additional Receipts to US Government....	7	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!
POTENTIAL USES/CHANGES														
State Attorneys General Proposals, Total.....	0	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!
Offset Reduction in State Excise Taxes.....	0	1	1	1	1	1	1	1	1	1	2	5	12	41
Use of Youth Look-Back Surcharge (90% grants).....	0	0	0	0	0	0	0	0	1	0	1	0	2	9
Potential Increase in Federal Medicaid Match.....	1	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!
Total Potential Uses.....	1	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!
Memoranda:														
Ad Valorem Equivalent of Net Payments.....		17%	18%	22%	26%	28%	28%	29%	32%	29%	34%			
Change in Total Cigarette Consumption.....		-8%	-9%	-11%	-13%	-14%	-14%	-14%	-15%	-14%	-16%			
Percentage Point Shortfall from Youth Target.....						-3%	-10%	10%	10%	8%	20%			

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Elena Kagan to Maria Echaveste; RE: Dinner (1 page)	09/09/1997	Personal Misfile

COLLECTION:

Clinton Presidential Records
Automated Records Management System (Email)
OPD ([From Elena Kagan])
OA/Box Number: 250000

FOLDER TITLE:

[08/15/1997 - 09/10/1997]

2009-1006-F
db1591

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 (NOTES MAIL)

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

CREATION DATE/TIME: 9-SEP-1997 08:53:27.00

SUBJECT: Re: Child poverty reg

TO: Diana Fortuna (CN=Diana Fortuna/OU=OPD/O=EOP [OPD])
READ:UNKNOWN

TEXT:
great! thanks much.

Access and Licensing

The access and licensing provisions of the settlement significantly enhance the ability of the government to prevent youth access to tobacco products. The current FDA rule establishes 18 as the federal minimum age of sale, requires retailers to check photo identification of anyone under 27, and eliminates free samples and the sale of single cigarettes. The proposed settlement incorporates these access restrictions while also banning all cigarette vending machines and requiring tobacco products to be placed out of reach of consumers in any facility that children may enter. Even more important, the settlement would establish a retail licensing scheme to enforce these access restrictions. FDA and Treasury agree that such a system is necessary for adequate enforcement of youth access provisions. Assuming adequate funding, legislation creating a licensing system could count as one of the principal virtues of the settlement agreement.

As written, however, the licensing provision of the settlement contains some important ambiguities. Most critically, the settlement is vague as to who -- state authorities, federal authorities, or some combination of the two -- will administer the licensing scheme. We are not yet in a position to make a final recommendation on this question. FDA's current inclination is to give responsibility for running the scheme to the states, but to retain the power to revoke licenses. We are not yet sure whether such an approach would work (or even how it could be done); rather than recommending a specific scheme, we should commit only to working with Congress and the Attorneys General on this question.

The licensing provision also now contains an inadequate penalty structure. Most troublesome, the settlement provides for permanent license revocation only after a licensee's tenth offense within two years. Because licensing officials are unlikely to conduct ten compliance checks on a single retailer in a two-year time frame, this provision is essentially meaningless. We should insist on strengthening the penalty scheme -- including by making mandatory revocation a real weapon -- without getting into a level of detail unsuitable at this stage of the process.

These provisions are not particularly high-profile. They have not attracted much attention, and nothing we say about them will alter the politics of the deal in either direction. But the provisions, if strengthened and clarified along the lines suggested, could prove one of the great virtues of accepting a settlement.

Marketing, Advertising, and Labeling

The advertising and marketing restrictions in the settlement are very strong. They include all the restrictions in the FDA rule -- most notably, requirements of black-on-white advertising and bans on tobacco brand names in non-tobacco merchandise. The district court struck down these restrictions as inconsistent with the FDA's statutory authority. The Court of Appeals clearly will not reverse this decision, and the Supreme Court probably will leave it alone as well.

The settlement also includes restrictions on advertising and marketing going far beyond the FDA rule, such as restrictions on point-of-sale advertising and bans on outdoor advertising, Internet advertising, the use of human images and cartoon characters, and payments for tobacco product placement in movies and other media. Congress could not enact such restrictions consistent with the Constitution.

The Department of Justice believes that these restrictions on advertising should not be part of any legislation, but only of the consent decrees or other contracts entered into by the industry and Attorneys General. To the extent the restrictions are a part of the legislation -- or seen as a condition of the legislation -- serious constitutional issues will arise. To the extent the restrictions are a part only of the settlement agreements, they probably will be permissible as voluntary relinquishments of rights.

Assuming we follow the Justice Department's recommendation, serious questions relating to enforcement of the advertising restrictions arise. We know that each Attorney General will be able to enforce the restrictions in his or her state. But what of states in which there is no consent decree? Or what of states with inattentive Attorneys General? The proposed settlement agreement makes reference to a "national protocol" -- a contract of some kind designed to enhance enforcement of the advertising restrictions (and other provisions) in the consent decrees. But no two of the parties (let alone mere readers of the agreement) have precisely the same idea of who will sign the protocol or how it will work in practice. We must keep a close eye on this scheme -- and on any legislative references to it -- to ensure that it provides an effective mechanism for enforcing the advertising restrictions while not increasing the vulnerability of the restrictions to constitutional challenge (by making their enforcement something other than a simple matter of contract law).

We also should insist on statutory confirmation of FDA authority over the advertising and marketing of tobacco products. This grant of authority is valuable even though the settlement agreements will go further than the FDA could, precisely because the FDA will have no authority to enforce the contracts between the industry and the states. With a specific grant of authority, the FDA itself could enforce the restrictions contained in its 1996 rule, as well as any other constitutionally permissible restrictions it might wish to impose in the future. Such a provision should be acceptable to all parties.

In addition to including restrictions on advertising, the settlement contains provisions to require "Canadian-style" warning labels -- *i.e.*, strengthened warnings (such as "cigarettes cause cancer" and "smoking can kill you") that appear on 25% of the front or display panel of tobacco products, printed in alternating black-on-white or white-on-black type. These provisions would strengthen significantly the existing warning labels, both in the starkness of the message and in its size and placement on tobacco products. We do not recommend any changes to them.

Liability and Other Legal Issues

The price of everything in the settlement agreement is, of course, protection from civil liability. The settlement limits total liability to \$5 billion each year (with any unspent portion of a base \$4 billion fund reverting to the government), prohibits class action and other joinder devices, and eliminates punitive damage claims (but requires a payment of more than \$20 billion in punitive damages directly payable to the public). There is little doubt about the value of these provisions to the tobacco companies. **[Do we have estimates from Treasury about what the value is, based on stock prices, etc?]**

On the other hand, it is not at all clear that these provisions harm public health interests. Instituting a comprehensive regulatory scheme, while keeping in place the possibility of \$5 billion in annual compensatory damages (\$5 billion more than the industry has ever paid before), should influence future corporate behavior at least as well as the litigation system usually manages to do. Moreover, making the companies pay a punitive damage award for past misconduct to the public (for use in health research, etc.) makes far more sense from a public health perspective than allowing such funds to go as windfalls to individual plaintiffs. Of course, these provisions do decrease the likelihood of bankrupting the tobacco companies. But as long as Americans are addicted to tobacco products, it is very unclear that this result would serve the public health; indeed, the exact opposite argument is at least equally plausible.

We should further advance public health interests by insisting on the removal of any limits on punitive damages for future misconduct. We would make clear that plaintiffs can seek such awards, and that these awards shall not count toward or be subject to yearly limits. The continued potential for unrestricted punitive damages will support the regulatory aspects of the legislation in deterring willful misconduct and otherwise changing corporate behavior. At the same time, this change will enable the legal system to punish the industry, over and above compensatory damages, for any future misbehavior. The industry can hardly argue against this change to the settlement agreement.

We might also consider whether to draw the line at prohibition of class actions, while allowing plaintiffs to use other joinder devices. The Justice Department would be more comfortable with this limited prohibition, on the ground that **[awaiting statement from Justice]**. The industry claims it will not accept such a modification (though given the cap on damages, it is hard to see why this change would matter so much to the industry). More important, **[awaiting statement from Bruce re why this isn't such a good idea]**.

The FTC and Antitrust Division of the Justice Department are both concerned about the breadth of the antitrust exemption contained in the proposed settlement agreement, noting that it might protect such activities as price-fixing, mergers to monopoly, predatory pricing, and agreements not to produce reduced-risk products. The FTC and Antitrust Division have not come to closure on exact language to include in legislation, but agree that the exemption should allow collusion only for the purpose of reducing youth smoking (by uniformly passing on the costs of the settlement and penalties and agreeing on advertising restrictions). **[Bruce -- is this right?]** We should insist on a narrowing of the antitrust exemption, but not yet propose specific language. The industry almost certainly will accept this change.

Finally, the preemption provisions of the proposed settlement are among its most baffling aspects -- muddled, internally contradictory, and seemingly senseless. We should try to clarify them so that they preserve current FDA authority, while enabling states in appropriate circumstances to go beyond the provisions of the settlement agreement. More specifically, where existing law requires states to petition the FDA to regulate tobacco, states would remain under that obligation and the FDA would retain its current authority; where existing law allows states to regulate tobacco on their own, states could impose any regulations more stringent than the new federal standards. It is very difficult to know how much (if at all) this scheme deviates from what the drafters of the settlement intended. In any case, it is hard to imagine that the issue would drive any party from the table.