

NLWJC - KAGAN

EMAILS CREATED

ARMS - BOX 005 - FOLDER 005

[3/29/1998 - 4/27/1998]

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Elena Kagan to Julie Fernandes. Subject: Personal. (1 page)	04/03/1998	P6/b(6)
002. email	Elena Kagan to Mickey Ibarra. Subject: Re: Laura. (1 page)	04/21/1998	P6/b(6)

COLLECTION:

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

FOLDER TITLE:

[03/29/1998 - 04/27/1998]

2009-1006-F

wr53

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]

Version 1 -- Pre-McCain Announcement

Finally, Senator McCain has provided great leadership in the Commerce Committee to draft a bipartisan bill that we believe will significantly advance the process of enacting comprehensive tobacco legislation. Everyone knows the difficulty of putting together legislation that is so large and complex, but Senator McCain has done so in a way that has been as open and inclusive as it has been efficient and productive.

Senator McCain will release his bill later today, and we will need to review it in detail. But based on what we have heard, I will say this today: We expect to see room for significant improvement in the McCain bill. Perhaps most important, we want to impose stronger penalties on companies that continue to sell to our children. And we expect to see some gaps in the legislation: the McCain bill doesn't try to comprehensively address the question of how best to use tobacco revenues to protect public health and help our children.

But we also expect to see a very strong foundation for further action. We believe the bill will make significant inroads on youth smoking by increasing the price of a pack of cigarettes substantially and restricting both the advertising aimed at young people and their access to tobacco products. And we believe the bill will give the FDA the full authority it needs to regulate tobacco products. We look forward to working with Senator McCain and others in the Commerce Committee and the full Senate to strengthen this bill and make it an even more effective instrument to reduce youth smoking.

Version 2 -- Post-McCain Announcement

Finally, Senator McCain has provided great leadership in the Commerce Committee to draft a bipartisan bill that we believe will significantly advance the process of enacting comprehensive tobacco legislation. Everyone knows the difficulty of putting together legislation that is so large and complex, but Senator McCain has done so in a way that has been as open and inclusive as it has been efficient and productive.

Senator McCain has just released his bill, and we have not yet had a chance to review it in detail. But based on what we have seen so far, I will say this today: We believe that there is room for significant improvement in the McCain bill. Perhaps most important, we want to impose stronger penalties on companies that continue to sell to our children. And we believe there are gaps in the legislation, as Senator McCain would readily acknowledge: the McCain bill doesn't comprehensively address the question of how best to use tobacco revenues to protect public health and help our children.

But we also believe that this bill provides a very strong foundation for further action. It will make significant inroads on youth smoking by increasing the price of a pack of cigarettes substantially and restricting both the advertising aimed at young people and their access to tobacco products. And it will give the FDA the full authority it needs to regulate tobacco

products. We look forward to working with Senator McCain and others in the Commerce Committee and the full Senate to strengthen this bill and make it an even more effective instrument to reduce youth smoking.

Question and Answer on Liability

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

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

I do want to say, though, that the McCain Bill has a very interesting idea about trying to turn liability protections into a public health tool. As I understand it, the McCain bill would in some respects make liability protections contingent on a company's efforts to reduce youth smoking. That proposal has to be looked at in much greater detail -- we would have to ensure that the threat of losing liability protections is real, and not just a pretense -- but we believe it is worth serious consideration.

Version 1 -- Pre-McCain Announcement

Finally, Senator McCain has provided great leadership in the Commerce Committee to draft a bipartisan bill that we believe will significantly advance the process of enacting comprehensive tobacco legislation. Everyone knows the difficulty of putting together legislation that is so large and complex, but Senator McCain has done so in a way that has been as open and inclusive as it has been efficient and productive.

Senator McCain will release his bill later today, and we will need to review it in detail. But based on what we have heard, I will say this today: We expect to see room for significant improvement in the McCain bill. Perhaps most important, we want to impose stronger penalties on companies that continue to sell to our children. And we expect to see some gaps in the legislation: the McCain bill doesn't try to comprehensively address the question of how best to use tobacco revenues to protect public health and help our children.

But we also expect to see a very strong foundation for further action. We believe the bill will make significant inroads on youth smoking by increasing the price of a pack of cigarettes substantially and restricting both the advertising aimed at young people and their access to tobacco products. And we believe the bill will give the FDA the full authority it needs to regulate tobacco products. We look forward to working with Senator McCain and others in the Commerce Committee and the full Senate to strengthen this bill and make it an even more effective instrument to reduce youth smoking.

Version 2 -- Post-McCain Announcement

Finally, Senator McCain has provided great leadership in the Commerce Committee to draft a bipartisan bill that we believe will significantly advance the process of enacting comprehensive tobacco legislation. Everyone knows the difficulty of putting together legislation that is so large and complex, but Senator McCain has done so in a way that has been as open and inclusive as it has been efficient and productive.

Senator McCain has just released his bill, and we have not yet had a chance to review it in detail. But based on what we have seen so far, I will say this today: We believe that there is room for significant improvement in the McCain bill. Perhaps most important, we want to impose stronger penalties on companies that continue to sell to our children. And we believe there are gaps in the legislation, as Senator McCain would readily acknowledge: the McCain bill doesn't comprehensively address the question of how best to use tobacco revenues to protect public health and help our children.

But we also believe that this bill provides a very strong foundation for further action. It will make significant inroads on youth smoking by increasing the price of a pack of cigarettes substantially and restricting both the advertising aimed at young people and their access to tobacco products. And it will give the FDA the full authority it needs to regulate tobacco

products. We look forward to working with Senator McCain and others in the Commerce Committee and the full Senate to strengthen this bill and make it an even more effective instrument to reduce youth smoking.

Question and Answer on Liability

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

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

I do want to say, though, that the McCain Bill has a very interesting idea about trying to turn liability protections into a public health tool. As I understand it, the McCain bill would in some respects make liability protections contingent on a company's efforts to reduce youth smoking. That proposal has to be looked at in much greater detail -- we would have to ensure that the threat of losing liability protections is real, and not just a pretense -- but we believe it is worth serious consideration.

Version 1

Finally, Senator McCain has provided great leadership in the Commerce Committee to draft a bipartisan bill that we believe will significantly advance the process of enacting comprehensive tobacco legislation. Everyone knows the difficulty of putting together legislation that is so large and complex, but Senator McCain has done so in a way that has been as open and inclusive as it has been efficient and productive.

Senator McCain will release his bill later today, and we will need to review it in detail. But based on what we have heard, I will say this today: We expect to see room for significant improvement in the McCain bill. Perhaps most important, we want to impose stronger penalties on companies that continue to sell to our children. And we expect to see some gaps in the legislation: the McCain bill doesn't try to comprehensively address the question of how best to use tobacco revenues to protect public health and help our children.

But we also expect to see a very strong foundation for further action. We believe the bill will make significant inroads on youth smoking by increasing the price of a pack of cigarettes substantially and restricting both the advertising aimed at young people and their access to tobacco products. And we believe the bill will give the FDA the full authority it needs to regulate tobacco products. We look forward to working with Senator McCain and others in the Commerce Committee and the full Senate to strengthen this bill and make it an even more effective instrument to reduce youth smoking.

Version 2

Finally, Senator McCain has provided great leadership in the Commerce Committee to draft a bipartisan bill that we believe will significantly advance the process of enacting comprehensive tobacco legislation. Everyone knows the difficulty of putting together legislation that is so large and complex, but Senator McCain has done so in a way that has been as open and inclusive as it has been efficient and productive.

Senator McCain has just released his bill, and we have not yet had a chance to review it in detail. But based on what we have seen so far, I will say this today: We believe that there is room for significant improvement in the McCain bill. Perhaps most important, we want to impose stronger penalties on companies that continue to sell to our children. And we believe there are gaps in the legislation, as Senator McCain would readily acknowledge: the McCain bill doesn't comprehensively address the question of how best to use tobacco revenues to protect public health and help our children.

But we also believe that this bill provides a very strong foundation for further action. It will make significant inroads on youth smoking by increasing the price of a pack of cigarettes substantially and restricting both the advertising aimed at young people and their access to tobacco products. And it will give the FDA the full authority it needs to regulate tobacco

products. We look forward to working with Senator McCain and others in the Commerce Committee and the full Senate to strengthen this bill and make it an even more effective instrument to reduce youth smoking.

Question and Answer on Liability

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

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

I do want to say, though, that the McCain Bill has a very interesting idea about trying to turn liability protections into a public health tool. As I understand it, the McCain bill would in some respects make liability protections contingent on a company's efforts to reduce youth smoking. That proposal has to be looked at in much greater detail -- we would have to ensure that the threat of losing liability protections is real, and not just a pretense -- but we believe it is worth serious consideration.

Version 1

Finally, Senator McCain has provided great leadership in the Commerce Committee to draft a bipartisan bill that we believe will significantly advance the process of enacting comprehensive tobacco legislation. Everyone knows the difficulty of putting together legislation that is so large and complex, but Senator McCain has done so in a way that has been as open and inclusive as it has been efficient and productive.

Senator McCain will release his bill later today, and we will need to review it in detail. But based on what we have heard, I will say this today: We expect to see room for significant improvement in the McCain bill. Perhaps most important, we want to impose stronger penalties on companies that continue to sell to our children. And we expect to see some gaps in the legislation: the McCain bill doesn't try to comprehensively address the question of how best to use tobacco revenues to protect public health and help our children.

But we also expect to see a strong foundation for further action. Our current understanding is that the bill will make significant inroads on youth smoking by increasing the price of a pack of cigarettes substantially and restricting both the advertising aimed at young people and their access to tobacco products. And we expect the bill to give the FDA the full authority it needs to regulate tobacco products. We look forward to working with Senator McCain and others in the Commerce Committee and the full Senate to strengthen this bill and make it an even more effective instrument to reduce youth smoking.

Version 2

Finally, Senator McCain has provided great leadership in the Commerce Committee to draft a bipartisan bill that we believe will significantly advance the process of enacting comprehensive tobacco legislation. Everyone knows the difficulty of putting together legislation that is so large and complex, but Senator McCain has done so in a way that has been as open and inclusive as it has been efficient and productive.

Senator McCain has just released his bill, and we have not yet had a chance to review it in detail. But based on what we have seen so far, I will say this today: We believe that there is room for significant improvement in the McCain bill. Perhaps most important, we want to impose stronger penalties on companies that continue to sell to our children. And we believe there are gaps in the legislation, as Senator McCain would readily acknowledge: the McCain bill doesn't comprehensively address the question of how best to use tobacco revenues to protect public health and help our children.

But we also believe that this bill provides a strong foundation for further action. It will make significant inroads on youth smoking by increasing the price of a pack of cigarettes substantially and restricting both the advertising aimed at young people and their access to tobacco products. And it will give the FDA the full authority it needs to regulate tobacco

products. We look forward to working with Senator McCain and others in the Commerce Committee and the full Senate to strengthen this bill and make it an even more effective instrument to reduce youth smoking.

Question and Answer on Liability

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

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

I do want to say, though, that the McCain Bill has a very interesting idea about trying to turn liability protections into a public health tool. As I understand it, the McCain bill would in some respects make liability protections contingent on a company's efforts to reduce youth smoking. That proposal has to be looked at in much greater detail -- we would have to ensure that the threat of losing liability protections is real, and not just a pretense -- but we believe it is worth serious consideration.

March 30, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Elena Kagan

SUBJECT: Tobacco Update

Senator McCain announced a comprehensive tobacco bill today for mark-up on Wednesday in the Senate Commerce Committee. The bill is not perfect, and we will continue to seek improvements. But it represents real progress (see the attached chart comparing the McCain bill with the June 20th settlement and your positions), and it should enhance the prospects for enacting comprehensive tobacco legislation in this session of Congress.

The Commerce Committee is likely to pass the bill this week with bipartisan support. Among Republicans, Senators Stevens, Gorton, Hutchison, Snowe, and Frist are likely to vote yes; Senators Burns and Ashcroft are likely to vote no; Senators Abraham and Brownback are undecided; and Senator Lott probably will recuse himself. Among Democrats, Senators Hollings, Wyden, Breaux, and Kerry are likely to vote yes; Senators Rockefeller and Dorgan will vote no; and Senators Bryan, Inouye, and Ford are undecided. The mainstream public health groups (Heart Association, Cancer Society, etc.) called the bill an encouraging step forward, but Drs. Koop and Kessler probably will criticize the bill because it contains some liability limits and increases the price of cigarettes less than they would like. The industry responded to McCain's announcement by saying that it would not agree to the legislation, but many observers believe that the industry has taken this position only to prevent the price from increasing still further.

Erskine gave the Administration's response to the bill in your absence. At a previously scheduled speech at the Center for National Policy (given before McCain made the liability provisions of the bill more acceptable to the public health community), Erskine said that the bill laid a good foundation for future efforts, but had room for improvement. In addition to praising Sen. McCain's leadership and process, Erskine lauded the legislation for raising the price of tobacco products substantially, giving the FDA full authority to regulate tobacco products, and including a strong plan to protect tobacco farmers. Erskine criticized the bill for having inadequate lookback penalties, and noted that it did not contain a comprehensive plan for using tobacco revenues to protect the public health and assist children. Erskine said he would not address the liability issues because the rest of the legislation did not yet meet your principles.

The bill emerged from a weeks-long process in which McCain consulted with the Attorneys General, Wall Street analysts, public health leaders, and the Administration. As noted above, at the last moment, McCain changed the liability provisions of the bill -- removing the bar

on class actions and probably on punitive damages -- to get the support of at least some members of the public health community. The final bill, which we summarize more fully below, addresses many of your concerns and offers an opportunity for bipartisan accomplishment.

1. Funding and Per-Pack Price Increase. The McCain bill essentially uses your budget numbers, raising approximately \$70 billion over five years (including a \$10 billion up-front payment) and generating a \$1.10 increase in the price of a pack of cigarettes by 2003. The bill prevents the real price of tobacco products from increasing after the fifth year by including a volume adjustment on annual payments. Some in the public health world, as well as a number of liberal Democrats, will criticize the price rise as insufficient, arguing that an almost immediate \$1.50 increase is required to reduce youth smoking dramatically. Your own plan, however, contains the same price increase, and we have estimated that it will help reduce youth smoking by over 40 percent in five years.

2. FDA Regulation. The bill provides full authority to the FDA to regulate tobacco products. To respond to concerns from pharmaceutical companies about the effect of regulating tobacco under normal "drug and device" authority, we agreed to set up a separate chapter in the Food Drug and Cosmetic Act for tobacco products. We managed to do so, however, without ceding any of the authority the FDA has claimed over tobacco. This victory was hard-fought -- Senators Hatch and Jeffords argued strenuously for language defining the FDA's authority more narrowly -- and will be subject to challenge on the floor. Senators McCain and Frist, however, have committed to fighting off weakening amendments, so we are in the best position possible (given a Republican Congress hostile to the FDA) to emerge from the Senate with full FDA authority.

3. Farmers. The bill contains a plan to protect tobacco farmers and their communities, which has the support of Senators Hollings, Ford, and Robb. We do not yet know the full details of this piece of the legislation, but it is designed to address the concerns of both burley and flue-cured tobacco farmers. Needless to say, it will contain funds fully sufficient for these purposes, and accordingly meets your demand to protect tobacco farmers.

4. Lookback Penalties. The bill provides for non-deductible industry-wide lookback penalties capped at \$3.5 billion per year. The industry will have to pay \$80 million for each percentage point by which it misses youth smoking targets between 0 and 5 percent, \$160 million for each percentage point between six and ten percent, and \$240 million for each percentage point over 11 percent. The industry will hit the \$3.5 billion cap at about a 20 percent miss, so any larger miss will be "free." There are no monetary penalties on individual companies for failing to meet youth smoking targets. The bill does contain a provision for taking away the liability protections of any company that misses the youth smoking targets by more than 20 percent, but this provision has a very large loophole and probably will have little effect as currently drafted.

As Erskine noted in his speech, the penalty provisions are the weakest part of the McCain

bill. We have raised serious concerns about both the \$3.5 billion cap and the absence of any company-specific penalties. We also will try to tighten the provision that makes liability protections contingent on success in reducing youth smoking. We assume that such amendments should not come in committee, but during debate on the floor.

5. Liability Provisions. As late as Sunday, Senator McCain intended to include liability provisions very close to those in the proposed June 20 settlement. These provisions included a \$6 billion cap on annual liability payments (with any judgments beyond the cap rolled over to the next year), as well as prohibitions on class actions and punitive damages. By Monday morning, however, the public health community (including the mainstream groups) had made clear to McCain that they would denounce the bill if it contained these provisions. McCain accordingly modified the legislation to permit class actions. We think the legislation now allows punitive damages as well, but we have not received the new language and are not entirely certain. Drs. Koop and Kessler and some liberal Democrats will oppose the bill because of the remaining liability limits.

A simple cap on damages -- without any limitations on class actions or punitive damage claims -- is the least objectionable form of liability protection for the industry. We will try, however, to raise the cap beyond the level set in the McCain legislation; you should note, for the sake of comparison, that the Harkin-Chafee bill's cap stands at \$12 billion.

6. Budget Issues. The biggest issue left unresolved by the McCain bill is how to allocate tobacco funds. Although the bill takes care of tobacco farmers, and also provides money for smoking cessation, counteradvertising, and some research, it leaves other spending issues for the Senate floor. Senator Domenici's budget resolution would reserve all tobacco funds for Medicare, not even allowing the spending on farming and public health contained in the McCain bill. The Senate will take up amendments to this resolution tomorrow to make tobacco funds available for class size, child care, NIH, farmers, and other purposes. Many Republicans have raised concerns about the Domenici approach, but they may decide to vote for it, on the theory that as long as they have 60 votes for a tobacco bill, they can waive the budget rules anyway.

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

* * * * *

The emergence of the McCain bill is a very positive development. It will attract

bipartisan support, and it is close to meeting your principles. We should continue, however, to press for real improvements -- particularly in the bill's penalty and liability provisions. Tomorrow, Erskine, Larry, and we will have meetings with Senators McCain, Hollings, and Daschle about how to move forward to enact the strongest possible tobacco legislation.

RECORD TYPE: PRESIDENTIAL (NOTES READ RECEIPT)

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

CREATION DATE/TIME:31-MAR-1998 15:30:04.00

SUBJECT: RECEIVED: Reminder--comments on HUD report on Fair Housing Amendments Act are DUE

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

READ:UNKNOWN

TEXT:

RETURN RECEIPT

Your Document:

Reminder--comments on HUD report on Fair Housing Amendments Act are DUE at 3:00 p.m. TODAY was successfully received by:

CN=Elena Kagan/OU=OPD/O=EOP

at:

03/31/98 03:26:59 PM

RECORD TYPE: PRESIDENTIAL (NOTES READ RECEIPT)

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

CREATION DATE/TIME:31-MAR-1998 15:30:05.00

SUBJECT: RECEIVED: HUD letter on H.R. 3206

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

TEXT:
RETURN RECEIPT

Your Document:
HUD letter on H.R. 3206
was successfully received by:
CN=Elena Kagan/OU=OPD/O=EOP
at:
03/31/98 03:26:04 PM

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:31-MAR-1998 19:54:11.00

SUBJECT:

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

READ:UNKNOWN

TEXT:

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 1-APR-1998 17:51:02.00

SUBJECT: Bibb Hubbard's Farewell Party

TO: Paul J. Weinstein Jr. (CN=Paul J. Weinstein Jr./OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TEXT:

Hmmmm. from Laura

----- Forwarded by Elena Kagan/OPD/EOP on 04/01/98 05:51
PM -----

Lisa J. Levin
04/01/98 04:25:10 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: Bibb Hubbard's Farewell Party

Please join
the Office of Cabinet Affairs
as we bid farewell to
Bibb Hubbard
as she departs for the Big Apple
Friday, April 3
5 p.m.
OEOB 160

Please call 456-2572 with clearance information

Message Sent

To: _____
William A. Halter/OMB/EOP
Bruce N. Reed/OPD/EOP
Elena Kagan/OPD/EOP
Sarah A. Bianchi/OPD/EOP
Paul J. Weinstein Jr./OPD/EOP
Diana Fortuna/OPD/EOP
Nicole R. Rabner/WHO/EOP
Christa Robinson/OPD/EOP
Jose Cerda III/OPD/EOP
Leanne A. Shimabukuro/OPD/EOP
Gene B. Sperling/OPD/EOP
Russell W. Horwitz/OPD/EOP
LEWIS_AH @ A1 @ CD @ VAXGTWY
Jonathan A. Kaplan/OPD/EOP
Jake Siewert/OPD/EOP
Jonathan Orszag/OPD/EOP
Peter R. Orszag/OPD/EOP

Message Copied

To: _____
Thurgood Marshall Jr/WHO/EOP

Elisabeth Steele/WHO/EOP
Stephen B. Silverman/WHO/EOP
Anne E. McGuire/WHO/EOP
Kris M Balderston/WHO/EOP
David S. Beaubaire/WHO/EOP
Jon P. Jennings/WHO/EOP

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Elena Kagan to Julie Fernandes. Subject: Personal. (1 page)	04/03/1998	P6/b(6)

COLLECTION:

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

FOLDER TITLE:

[03/29/1998 - 04/27/1998]

2009-1006-F

wr53

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]

April 3, 1998

MEMORANDUM FOR THE CHIEF OF STAFF

FROM: Bruce Reed

SUBJECT: Monday's Meeting with Birch Bayh

Former Senator Birch Bayh has wanted to meet with you for some time to discuss tobacco. In his initial letter, he said that he believes that "men and women of good faith in both political parties are prepared to make the compromises necessary to secure an accord. This will require the willingness to 'take a risk' politically to accomplish such a major break-through. Trust and reliance are fundamental ingredients in this regard. It is toward how best to ensure these elements that I believe a conversation between the two of us might prove helpful."

You should know that according to news reports, Senator Bayh's firm, Bayh, Connaughton & Stewart, has worked since last November as a lobbyist for Richard Scruggs, the plaintiffs' attorney from Mississippi who worked with Mike Moore and other Attorneys General to launch the state suits against the tobacco industry. (Scruggs is also Senator Lott's brother in law.) The attorneys general and Scruggs worked closely with Senator McCain and his staff as they put together their legislation. For the most part, they tried to persuade Sen. McCain to stick closely to the terms of the June 20th settlement. Several times during our Commerce Committee negotiations, they raised concerns that the industry would walk away from legislation raising prices by \$1.10 per pack and imposing strong lookback penalties.

If Bayh raises these concerns, you may want to make the following points:

- We believe the McCain bill represents dramatic progress. It meets the President's principles on several key issues, including a significant per-pack price increase. And it shows that we have real momentum in both parties to pass comprehensive tobacco legislation this year.
- But we also believe there's still room for improvement -- most notably, in the provisions on lookback penalties. We think the cap on these penalties is too low, and we favor incorporating some company-specific penalties into the lookback scheme.
- As the President said in his radio address on Saturday, we're not trying to put the tobacco companies out of business, and we do not believe our proposals will do so. We've had our Treasury Department experts look carefully at this issue, and they are strongly of the view that the companies can tolerate this burden.
- In fact, as the President said on Friday, we think the companies will still have a strong

incentive to accept this sort of scheme voluntarily -- to put an end to this disgraceful chapter in their history and become partners in the effort to prevent youth smoking. We're inclined to think that industry opposition to the McCain legislation is largely designed to keep Congress from imposing still further price increases and penalties.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 6-APR-1998 12:08:09.00

SUBJECT: Re: School construction on Wednesday...

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

READ:UNKNOWN

TEXT:

Eli: I've asked Mike Cohen and Bob Shireman to call you. They know more about the details.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 6-APR-1998 12:39:01.00

SUBJECT: needle exchange

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

READ:UNKNOWN

TEXT:

Erskine will be at the meeting and wants either John or Sylvia and either you or me to come. I assume that means you, unless you tell me otherwise. The VP might also be there, although I can't imagine why he would want to.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 6-APR-1998 18:48:26.00

SUBJECT: Re: Unz memo

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

READ:UNKNOWN

TEXT:

ok. i'll look at it tonight. many thanks.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 6-APR-1998 12:07:24.00

SUBJECT: School construction on Wednesday...

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

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

TEXT:
could you guys check in with Eli? Thanks.
----- Forwarded by Elena Kagan/OPD/EOP on 04/06/98 12:06
PM -----

Eli G. Attie @ OVP
04/06/98 09:33:35 AM
Record Type: Record

To: Elena Kagan/OPD/EOP
cc:
Subject: School construction on Wednesday...

Elena -- we should touch base on this when you get a second. The VP is doing a conference call (with regional press) on school construction on Wednesday, and we want to make sure we're amplifying what the POTUS does in Chicago; I'll check in with you at some point later today...

Thanks...

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 6-APR-1998 18:46:59.00

SUBJECT: Re: School construction on Wednesday...

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

READ:UNKNOWN

TEXT:

okey dokey

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 6-APR-1998 18:57:07.00

SUBJECT: Re: Unz memo

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

READ:UNKNOWN

TEXT:

I think we could do this kind of thing. let me read the memo and let's talk.

April 9, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed

SUBJECT: Needle Exchange

This memo presents you with several options on needle exchange, based on our prior discussions with you. It also provides further information on the positions of constituency groups and policy experts.

As you know elite opinion runs strongly in favor of needle exchange. Most scientists and public health experts who have studied the question also agree with HHS's conclusion that needle exchange decreases HIV transmission while not increasing drug use. (It is impossible to prove whether needle exchange programs actually reduce drug use, because it would be unethical to run a controlled experiment that compares addicts who have access to clean needles with addicts who do not.) Dr. Koop has a more complicated view. As Surgeon General, he visited a number of programs in Europe and concluded that (1) needle programs are not uniformly effective, but there is no evidence that they attract non-addicts to drugs; and (2) needle programs will not be very effective here, because most addicts are so far outside the mainstream that they will not show up reliably to exchange needles.

The AIDS community and the anti-drug community are miles apart. We might be able to muster half-hearted support from the Human Rights Campaign for the compromise options listed below, but most groups will be very disappointed if we do not accept Secretary Shalala's recommendation. (Of course, if we do accept this recommendation and Congress reverses the action, we will have to veto the bill in order to retain the groups' support.) Conversely, anti-drug advocates are likely to oppose needle exchange as strongly as they do drug legalization.

The options are:

1. Let Shalala certify and release funds. After certifying that needle exchange decreases HIV transmission and does not increase drug use, HHS could release the funds in any of three ways: (a) by publishing an interim final regulation, which would allow federal funds to flow to a community as soon as that community meets the qualifying criteria specified in the regulation; (b) by publishing a notice of proposed rulemaking, which would require a public comment period and would not take effect for two or three months; and c) by publishing program guidance, which would be accompanied by a similar comment period. The lagtime in options (b) and c) would give Congress time to overturn the decision to fund needle exchange programs prior to the distribution of any monies.

You had asked whether HHS could require, as a condition of funding, that communities confine their needle exchange programs to individuals actually participating in drug treatment. As a legal matter, HHS could take this action. HHS argues, however, that doing so would be bad public health policy, because it would discourage the most at-risk addicts from taking part in needle exchange programs. The AIDS groups are likely to share this view.

In addition, Elizabeth Birch from HRC has suggested that you could allow HHS to certify and then say nothing, one way or the other, about releasing federal funds. This approach, however, is difficult to understand. Nothing can be done quietly with respect to this issue. Either the Administration will release federal funds, in which case the approach is the same as Shalala's recommendation -- or the Administration will not release funds, in which case it begins to look much like option (3) below.

2. Let Shalala certify, but limit federal funds to a few demonstration cities. After certifying that needle exchange decreases HIV transmission and does not increase drug use, HHS would pick a number of communities (say, 5 or 10) for needle exchange "demonstrations." You would ask Shalala (perhaps with General McCaffrey) to study and report whether these demonstration programs work before releasing funding to any other communities. Members of Congress will find it harder to attack this approach than Option (1), because it does not constitute an endorsement of needle programs -- just a commitment to testing them. But HHS argues that (a) we do not need "demonstrations," because we already know that needle exchange works, and (b) all federally funded needle exchange programs are in some sense demonstrations, because all communities will have to submit evaluations of their programs to the Secretary. In addition, the AIDS community may give us scant credit for this limited release of funds, although Richard Socarides believes that the community would prefer this compromise approach to the one detailed below.

3. Let Shalala certify, but withhold federal funds. After HHS certifies that needle exchange decreases HIV transmission and does not increase drug use, you would announce the withholding of federal funds until Shalala and McCaffrey have had time to build a national consensus on the issue or to study the best ways of reconciling public health and drug control policies. Of all the options described in this memo, this approach is the least likely to provoke a Congressional response, because you have not actually released any funds for needle exchange programs. For the exact same reason, however, the AIDS community will like this approach the least. And as you heard at your meeting with her, Shalala also strongly opposes this option.

April 9, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed

SUBJECT: Needle Exchange

This memo presents you with several options on needle exchange, based on our prior discussions with you. It also provides further information on the positions of constituency groups and policy experts.

As you know elite opinion runs strongly in favor of needle exchange. Most scientists and public health experts who have studied the question also agree with HHS's conclusion that needle exchange decreases HIV transmission while not increasing drug use. (It is impossible to prove whether needle exchange programs actually reduce drug use, because it would be unethical to run a controlled experiment that compares addicts who have access to clean needles with addicts who do not.) Dr. Koop has a more complicated view. As Surgeon General, he visited a number of programs in Europe and concluded that (1) needle programs are not uniformly effective, but there is no evidence that they attract non-addicts to drugs; and (2) needle programs will not be very effective here, because most addicts are so far outside the mainstream that they will not show up reliably to exchange needles.

The AIDS community and the anti-drug community are miles apart. We might be able to muster half-hearted support from the Human Rights Campaign for the compromise options listed below, but most groups will be very disappointed if we do not accept Secretary Shalala's recommendation. (Of course, if we do accept this recommendation and Congress reverses the action, we will have to veto the bill in order to retain the groups' support.) Conversely, anti-drug advocates are likely to oppose needle exchange as strongly as they do drug legalization.

The options are:

1. Let Shalala certify and release funds. After certifying that needle exchange decreases HIV transmission and does not increase drug use, HHS could release the funds in any of three ways: (a) by publishing an interim final regulation, which would allow federal funds to flow to a community as soon as that community meets the qualifying criteria specified in the regulation; (b) by publishing a notice of proposed rulemaking, which would require a public comment period and would not take effect for two or three months; and c) by publishing program guidance, which would be accompanied by a similar comment period. The lagtime in options (b) and c) would give Congress time to overturn the decision to fund needle exchange programs prior to the distribution of any monies.

You had asked whether HHS could require, as a condition of funding, that communities confine their needle exchange programs to individuals actually participating in drug treatment. As a legal matter, HHS could take this action. HHS argues, however, that doing so would be bad public health policy, because it would discourage the most at-risk addicts from taking part in needle exchange programs. The AIDS groups are likely to share this view.

In addition, Elizabeth Birch from HRC has suggested that you could allow HHS to certify and then say nothing, one way or the other, about releasing federal funds. This approach, however, is difficult to understand. Nothing can be done quietly with respect to this issue. Either the Administration will release federal funds, in which case the approach is the same as Shalala's recommendation -- or the Administration will not release funds, in which case it begins to look much like option (3) below.

2. Let Shalala certify, but limit federal funds to a few demonstration cities. After certifying that needle exchange decreases HIV transmission and does not increase drug use, HHS would pick a number of communities (say, 5 or 10) for needle exchange "demonstrations." You would ask Shalala (perhaps with General McCaffrey) to study and report whether these demonstration programs work before releasing funding to any other communities. Members of Congress will find it harder to attack this approach than Option (1), because it does not constitute an endorsement of needle programs -- just a commitment to testing them. But HHS argues that (a) we do not need "demonstrations," because we already know that needle exchange works, and (b) all federally funded needle exchange programs are in some sense demonstrations, because all communities will have to submit evaluations of their programs to the Secretary. In addition, the AIDS community may give us scant credit for this limited release of funds, although Richard Socarides believes that the community would prefer this compromise approach to the one detailed below.

3. Let Shalala certify, but withhold federal funds. After HHS certifies that needle exchange decreases HIV transmission and does not increase drug use, you would announce the withholding of federal funds until Shalala and McCaffrey have had time to build a national consensus on the issue or to study the best ways of reconciling public health and drug control policies. Of all the options described in this memo, this approach is the least likely to provoke a Congressional response, because you have not actually released any funds for needle exchange programs. For the exact same reason, however, the AIDS community will like this approach the least. And as you heard at your meeting with her, Shalala also strongly opposes this option.

Liability Provisions

We should adhere to the basic structure of the liability provisions in the McCain legislation. If we need to make these provisions a bit tougher, we can try to raise the cap from the current \$6.5 billion to the \$8 billion contained in Harkin-Chafee. We also will try to determine the effect of changing the ratio of industry payments versus individual company payments. (McCain has \$5.2 billion contributed by the industry, with a \$1.3 billion copayment by the companies; Senator Harkin's bill has a \$4 billion/\$4 billion split.) Finally, we probably will want to tighten the provisions related to denying the liability cap to certain companies. The current provision allows companies that miss the youth lookback target by more than 20 percentage points to take advantage of the cap as long as they have not violated the Act or taken action to undermine the achievement of youth smoking reductions.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:10-APR-1998 10:18:27.00

SUBJECT: Re: April 23

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

TEXT:
still on hold.

April 9, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Elena Kagan

SUBJECT: McCain Legislation

With the overwhelming vote in favor of the McCain legislation in the Senate Commerce Committee and the subsequent announcement of the tobacco industry that it will fight this legislation, we have entered into a new phase of our effort to procure a comprehensive tobacco bill to reduce youth smoking. The Commerce Committee vote last week brought new momentum to this legislative effort. The industry's response should only add to that momentum, by making it even harder for Members of Congress to block legislation, lest they look as if they are doing the industry's bidding.

The broad consensus among your advisors is that we should seek a comprehensive bill to which both the industry and the public health community ultimately can agree. (We all agree that what the industry -- and also the public health community -- says now is probably not what they will say in the future.) Without industry consent, some provisions in comprehensive legislation (*i.e.*, the most far-reaching advertising restrictions) would be impossible, while other provisions (*e.g.*, narrower advertising restrictions and lookback penalties) would be in litigation for years. In any event, most of your advisors doubt that Congress would pass a bill that the industry ultimately could not accept, so efforts to push the price of the bill that high would be counterproductive. At the same time, we must make sufficient modifications to the McCain bill to enable the public health community to claim some further victory.

Your advisors also agree that the best way to get this kind of bill is to engage in negotiations with Senators Lott, Daschle, McCain, and Hollings that are designed to produce an agreed-upon bill to go to the Senate floor. The greatest danger we face is a chaotic situation on the Senate floor, in which some amendments roll back what we already have achieved (*e.g.*, on FDA jurisdiction), while other amendments make the bill essentially unpassable (*e.g.*, by stripping all liability protections while increasing the overall price of the deal). To avoid this danger, we should enter into a substantive agreement, which is mindful both of the industry's needs and of the public health community's demands. Assuming Senator Hollings is in the room, we should have a decent sense of the industry's bottom line, and of course we have more-than-adequate lines of communication to the public health community.

We list below several aspects of the McCain legislation in which we should seek changes during these negotiations. Note that FDA jurisdiction does not appear on this list; we were able to reach an agreement on this issue with Senators McCain and Frist, prior to the Commerce Committee vote, that satisfies all our regulatory needs and objectives.

Youth Lookback Penalties

We already have said that Congress must strengthen the lookback penalties in the McCain legislation, by incorporating some company-specific penalties and raising the cap on the industry surcharge. The incorporation of some company-specific penalties is a core demand of the public health community, and is strongly supported by HHS and Treasury. Such penalties, however, may be unacceptable to the industry, and especially to Phillip Morris because of its disproportionately large share of the youth market. Bruce Lindsey has noted that even if we need to make demands in this area, we should not let the issue of company-specific penalties become grounds for vetoing the bill. We agree, but think it is important to try to find a way to address this issue.

A number of approaches are available, and we should not now tie ourselves down to any of them. A company-specific penalty developed by Treasury and HHS would impose a \$500 fee for every child by which a company misses the targets (*i.e.*, if a company misses the target by 10,000 children, it would pay a fee of \$5,000,000). This per-child surcharge represents the present value of the profits a company would gain from addicting a teenager over his lifetime. Treasury estimates that the total cost of this penalty -- *i.e.*, across all companies -- could reach as much as \$500 million. Another approach, probably more acceptable to the industry, would be to allow suits between companies for redistribution of the industry-wide penalty. Such indemnification suits would create a potential for transforming the industry surcharge into a company-specific penalty scheme, without increasing the overall cost of the penalty provisions. We will continue to try to develop creative solutions in this area so that we can enter negotiations with a range of proposals.

Raising the cap on industry-wide penalties is obviously an easier matter. We would suggest proposing a change from the current \$3.5 billion to \$4 to \$5 billion.

Price per Pack and Spending

Price per Pack

We should not demand any increase in the McCain bill's funding levels in the first five years, because McCain essentially adopted our own budget numbers (while adding a \$10 billion up-front payment). We recommend waiting until CBO scores the McCain bill before deciding whether to seek any increase in funding levels in later years. (McCain has asked CBO to score

his bill by the time Congress returns.) Congressional scorekeepers may well estimate that the yearly payments in the bill will increase the price of cigarettes not by the \$1.10 we estimated, but by the \$1.50 that the public health community has most often demanded. The higher figure may result from assumptions by the CBO that (1) states will use the opportunity to increase state excise taxes, further reducing the number of packs sold and (2) the bill will significantly increase the black market for cigarettes, resulting in fewer than expected packs sold through the legitimate retail market. By reducing the number of expected packs sold, both of these changes would increase the per-pack price estimate, because the annual industry payment set in legislation would be spread among fewer packs. Once we know the actual per-pack price increase calculated by Congressional scorekeepers, we will be in a better position to determine whether we should push for a small increase in funding levels after the fifth year.

Spending

We hope for bipartisan consensus on much of the spending: we think Members could agree on approximately \$10 billion over 5 years for farmers; \$10 billion for prevention, cessation, counteradvertising, FDA enforcement, and other public health programs; \$10-15 billion for research (the Republicans may want to limit these funds to NIH); and \$20-25 billion for states. This distribution leaves about \$15 billion on the table, which Republicans will want to spend on Medicare or tax cuts and Democrats will want to spend on programs like child care and school construction.

One issue will concern the use of the state money. Our budget earmarked 57 percent of the state funding for child care, class size, and Medicaid outreach initiatives. As we go forward, we should argue at a minimum for a menu of state programs, such as child care and education, on which states would have to use a significant portion of their funds. For example, in the Harkin-Chafee bill, half of the state funds must be spent on one of 20 listed programs, which include child care, K-12 education, Medicaid, the Child Health Insurance Program, and Head Start.

Another issue, more important in the outyears, concerns the amount of money allocated to paying legal judgments. The June 20th settlement put only a few billion dollars into the tort fund in the first five years, on the theory that lawsuits against the industry would take some time to come to judgment. Congress may well use the same assumption, given competing spending priorities. But once this initial grace period is concluded, Congress must figure out how to fund legal judgments. The June 20th settlement placed a \$5 billion annual cap on judgments, with \$4 billion coming from the industry's base payments to the government and \$1 billion (a kind of copayment) from the defendant companies' coffers. The McCain bill establishes a \$6.5 billion cap; McCain contemplated that \$5.2 would come from the industry's base payments, with \$1.3 as a copayment, but his bill does not actually address this issue. Some in the public health world may begin to call for the entire amount to be paid by the companies, outside of their payments

to the government. This change, however, would add an enormous amount to the total cost of the deal and could doom prospects for legislation. Room for a tort fund thus will have to be found in the outyears by squeezing some of the spending (perhaps to the states?) listed above.

Antitrust Exemption

The McCain bill contains antitrust exemptions for the tobacco industry that are not necessary to achieve the goals of the legislation and may have serious anticompetitive effects. As written, the bill exempts any and all agreements designed to "reduce the use of tobacco products by underage individuals." This exemption could cover (among other things) price-fixing agreements of all sorts. The Department of Justice believes strongly, and we agree, that we should oppose all antitrust exemptions, except possibly for a narrowly-drawn exemption designed to allow companies to agree to restrict their advertising and marketing to children.

International Tobacco Control Efforts

As part of the public health spending noted above, we believe we should include significant funding (\$200 million a year) for international tobacco control efforts. These funds should be spent on both governmental and non-governmental efforts to promote public health and smoking prevention efforts abroad.

The McCain bill has several additional international provisions that we would like to change so that they do not interfere with our diplomatic and trade priorities. For example, although we support the bill's effort to prohibit U.S. government support for promotion of tobacco overseas, we need to ensure that the language does not interfere with USTR's ability to negotiate tariff reductions or interfere with treatment of other products. In addition, the McCain bill contains a provision that the State Department and HHS consider problematic and unenforceable, which would require U.S. companies to abide by the new labeling and advertising requirements when doing business in other countries. Our positions on these issues coincide (coincidentally, of course) with the industry's, which views the McCain provisions as a real threat to its international operations.

Environmental Tobacco Smoke

The McCain bill would exempt the hospitality industry (restaurants, bars, casinos, etc.) from its environmental tobacco smoke provisions, which ban smoking, except in enclosed and specially ventilated areas, in public facilities. In addition, the bill would allow individual states to "opt out" of all of the provisions, even if the state had no ETS protections of its own. Although HHS strongly opposes the hospitality exception (workers in the hospitality industry face grave risks from second-hand smoke), we doubt it is politically feasible to remove it. We should,

however, try hard to eliminate the state opt-out provision, which could leave many of the nation's citizens without any protection from ETS. Alternatively, we might consider pushing the Harkin-Chafee approach to this issue, which rather than imposing a ban would provide funds to States that progressively reduce exposure to ETS.

Liability Provisions

We believe the Administration should adhere to the basic structure of the liability provisions in the McCain legislation. If we need to make these provisions a bit tougher, we can try to raise the cap from the current \$6.5 billion to the \$8 billion contained in Harkin-Chafee. Note, however, that doing so only compounds the budgetary issues surrounding the tort fund noted earlier in this memo: to the extent that money for tort judgments come from the industry's payments to the government, that money squeezes out funds for public health and other priorities; conversely, to the extent that money for tort judgments comes over and above the industry's payments to the government, the expected cost of the deal to the industry increases.

Finally, we may want to change the provisions in the McCain legislation that deny the liability cap to certain companies. The current provision, which has received almost no attention, lifts the cap for companies that miss the youth lookback target by more than 20 percentage points if they also have violated the Act or taken action to "undermine the achievement of youth smoking reductions." Because of the vagueness of this standard, the provision may have little or no effect. We should either tighten it (by linking the cap only to objective measures) or discard it entirely. Especially if we try to make the liability provisions tougher in other areas, agreeing to eliminate the provision may prove useful.

Constitutional Issues

The Department of Justice is prepared to recommend changes to the advertising, marketing, and other speech-related provisions of the legislation in the event that the industry does not sign protocols agreeing to these restrictions. The Department also would like us to press for the elimination of all provisions regulating non-commercial speech, such as one that forbids companies from lobbying Congress, regardless whether the companies offer agreement.

Conclusion

In summary, we would recommend seeking these improvements:

Youth Lookback Penalties

- Incorporate some company-specific component in the penalty scheme
- Increase the industry-wide surcharge cap from \$3.5 billion to between \$4 and \$5 billion

Price and Spending

- No change in annual payment amounts in first five years; wait until CBO scores before deciding whether to seek later changes
- Ensure spending on research, public health, farmers, and (in the outyears) tort judgments); press for spending on child care and education, or at least a menu including these programs.

Antitrust Exemption

- Eliminate the antitrust exemption

International Tobacco Control

- Support funding for governmental and non-governmental organizations
- Narrow provision prohibiting U.S. support for promotion of tobacco overseas to ensure it does not interfere with USTR authority to negotiate treaties
- Remove requirement that companies must abide by new labeling and marketing requirements when operating overseas.

Environmental Tobacco Smoke

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

Liability

- Retain basic structure of liability priorities
- Consider modifying level of cap and relation of cap to youth reduction targets.

Constitutional Issues

- Recommend changes to minimize Constitutional difficulties

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:14-APR-1998 17:18:13.00

SUBJECT: Tobacco Meetings for Next Week

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

TEXT:

----- Forwarded by Elena Kagan/OPD/EOP on 04/14/98 04:46
 PM -----

Jason S. Goldberg
 04/14/98 11:32:35 AM
 Record Type: Record

To: Lawrence J. Stein/WHO/EOP, Bruce N. Reed/OPD/EOP, Ron Klain/OVP @ OVP
 cc: See the distribution list at the bottom of this message
 Subject: Tobacco Meetings for Next Week

Per today's tobacco meeting in Erskine's office, it is my understanding that we are to proceed according to the following schedule for tobacco meetings next week:

Monday

Daschle: EBB / Bruce / Larry

Tuesday

McCain: EBB / Bruce / Larry

Wednesday

Conrad: EBB / Bruce / Larry

Kennedy: EBB / Bruce / Larry

Gephardt: EBB / Larry (previously scheduled
 by Larry)

Wednesday / Thursday / or Friday

Koop & Kesler EBB / Bruce / VPOTUS drop-by

ENACT group EBB / BRUCE / VPOTUS drop-by

TBD:

** VPOTUS meeting with Kennedy / Conrad

** Individual meetings with Durbin, Lautenberg, Breaux, others.

LARRY: Please correct me where I have erred.

JESSICA: Please make sure to coordinate schedules with both Carole and I since Carole will be out next week.

Thanks everyone.

Jason

Message Copied

To: _____
Carole A. Parmelee/WHO/EOP
Jessica L. Gibson/WHO/EOP
Cathy R. Mays/OPD/EOP
Scott R. Hynes/OVP @ OVP
Todd P. Romero/WHO/EOP
Dawn L. Smalls/WHO/EOP
Elena Kagan/OPD/EOP

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:15-APR-1998 17:47:43.00

SUBJECT: Privacy meeting

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

TEXT:

----- Forwarded by Elena Kagan/OPD/EOP on 04/15/98 05:47
PM -----

Thomas A. Kalil
04/15/98 05:21:07 PM
Record Type: Record

To: Elena Kagan/OPD/EOP, Thomas L. Freedman/OPD/EOP
cc:
Subject: Privacy meeting

Elena and Tom:

Sally would like to have the next NEC/DPC privacy meeting
next Wednesday at 1 p.m. to discuss:

1. Legislative options (we didn't really get to this)
2. Agency reaction to "privacy entity"
3. Analysis of "self-regulatory" approach
4. What we can do to get our own house in order
(federal privacy principles)

Is this O.K. with you?

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:15-APR-1998 17:48:10.00

SUBJECT: Re: VP message event for this Friday?

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

READ:UNKNOWN

TEXT:

EK is out all week, sorry

laura

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:15-APR-1998 14:52:08.00

SUBJECT: Re: LRM #IMS293 - EDUCATION Report on HR2646 Education Savings Act for Public an

TO: Ingrid M. Schroeder (CN=Ingrid M. Schroeder/OU=OMB/O=EOP @ EOP [OMB])

READ:UNKNOWN

TEXT:

fyi- Elena is gone all week

-Laura

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:16-APR-1998 17:28:30.00

SUBJECT: Re: Statement of Administration Policy on HR2327 Drive for Teen Employment Act

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

READ:UNKNOWN

TEXT:

fyi- Elena is out till Monday

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:16-APR-1998 17:26:33.00

SUBJECT: H1-B

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

TEXT:

----- Forwarded by Elena Kagan/OPD/EOP on 04/16/98 05:26
PM -----

Shannon Mason
04/16/98 02:04:07 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: Sally Katzen/OPD/EOP
Subject: H1-B

There will be a meeting with House staff regarding H1-B legislation 4/24
at 2:00pm. I will forward more information as it becomes available.
Please call if you have any questions, 6-2800.
Thank you. -Shannon

Message Sent

To: _____
Elena Kagan/OPD/EOP
Peter G. Jacoby/WHO/EOP
Janet Murguia/WHO/EOP
Cecilia E. Rouse/OPD/EOP
Ricardo M. Gonzales/OVP @ OVP

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:16-APR-1998 17:27:41.00

SUBJECT: For Sign-off

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

TEXT:

----- Forwarded by Elena Kagan/OPD/EOP on 04/16/98 05:27 PM -----

Paul J. Weinstein Jr. 04/16/98 04:24:09 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP
cc:
Subject: For Sign-off

This is the revised memo on auto choice. It includes a new political section. Please review for sign-off.

----- Forwarded by Paul J. Weinstein Jr./OPD/EOP on 04/16/98 04:23 PM -----

Jonathan Orszag
04/16/98 04:17:00 PM
Record Type: Record

To: Melissa G. Green/OPD/EOP, Paul J. Weinstein Jr./OPD/EOP
cc:
Subject: For Sign-off

Sally has signed off on this..... Now, we need Gene. Paul W. is going to get Bruce's ok.

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

TEXT:

Unable to convert ARMS_EXT:[ATTACH.D36]MAIL448656504.126 to ASCII,
The following is a HEX DUMP:

FF57504367090000010A02010000000205000000DD36000000020000FB594122072D1454D50C84
2369E37B76BD450C0D0753C26C2481D169EA6ABA9646A2F1ECE0C782C0AD2A3DC7E13C857E866B
72C21BD2469F95FA042A75D54ED14EFDCC97A2DCD90EE5F676B692B4F26202BB35965E9F40B47E
244310394A5580A9FD9593A2A1348B2358FC3258421EA4FABEA77B70583333B774A232894AD92F
668940EDF059464B061134C698F5EFF8919B5084B4A1B6D32CE49FB1C76AAD74C1C198728D25BB
D2A8E11F84DF8AFA49010C75E4A0BEDD69279D8FC6F2C8CB75C1282F8BF7E01296CE437475E995
D257F5FF50C7AEE26201C5909CD3F4B7E8A813A29142B787EAC06E5743E17C460D520317D513AB
D14221381AD06C89A3F65CD8FD7FEA57D24975359B3BDC53FE3F7AF2EA579459DC849B600F941F

April 16, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED
GENE SPERLING

SUBJECT: Auto Choice

Overview:

This memorandum addresses the "Auto Choice" legislation introduced last April by a bipartisan coalition of Members of Congress. Over the last several months, an NEC-DPC inter-agency working group has spent considerable time analyzing the Auto Choice proposal and reviewing other auto-insurance reform options. It is the strong view of the working group that the benefits of the Auto Choice proposal do not justify the costs.

Although proponents of Auto Choice claim that it will reduce insurance premiums by approximately \$250 per year for the average driver, the working group found little evidence that this proposal or any other no-fault insurance plan will lead to lower rates. In the three states that currently mandate insurance companies to offer drivers choice between no-fault and pre-existing insurance plans (New Jersey, Kentucky, and Pennsylvania), there was no evidence that insurance rates fell when choice was implemented. In addition, our analysis suggests that under Auto Choice, bad drivers will benefit more than good drivers.

Background:

"No-fault" insurance plans allow policyholders to recover financial losses from their own insurance companies, regardless of who is at fault, while restricting the policyholder's right to sue.

Under current state no-fault laws, drivers may sue the "at fault" driver for damages beyond what their own insurance company pays (i.e., economic damages above the policy limit and non-economic damages such as pain and suffering) only if their case meets certain conditions. These conditions, known as a "threshold," relate to the severity of injury. They may be expressed in verbal terms (a descriptive or verbal threshold) or in dollar amounts of medical bills (a monetary threshold). Some laws also include the days of disability incurred as a result of the accident. The academic evidence shows that verbal thresholds can lower insurance premiums, but that monetary thresholds can actually lead to higher premiums because people have an incentive to exaggerate their medical bills so that they can sue for additional damages.

Proposals:

The working group has considered two options. The first is the Auto Choice legislation introduced by Senators McConnell and Moynihan and Representative Arney. Under this proposal, drivers in states that accept the new federal legislation have a choice between the existing system in their state and a no-fault plan called 'personal protection insurance' (PPI). A driver who chooses the PPI option gets first-party coverage for economic damages (mostly medical and lost wages), without regard to fault. The driver can sue or be sued for economic damages above policy limits, but cannot sue or be sued for non-economic damages ('pain and suffering') except in cases involving drug or alcohol abuse. A driver who opts to stay in the state's current tort system must purchase tort maintenance coverage (TMC) to cover accidents with PPI drivers.

Because of some of the problems associated with the Auto Choice proposal, CEA developed an alternative proposal, which achieves the same ends -- lower premiums -- but at less cost. This proposal would require insurance companies to offer premiums on a per-mile basis for those drivers who opted for no-fault coverage. Per-mile premiums would be charged based on an estimate of miles, with a rebate or surcharge issued every year after an odometer reading. Odometers could be read at regular inspections or by firms under contract with insurance companies. Insurance companies would compete in their per-mile premium, subject to current regulations; premiums would vary with region, driving record, type of car, and safety features, much as premiums vary now.

Analysis:

There are a number of problems with these proposals. Perhaps most important, neither of the proposals guarantees that insurance companies will pass on savings to consumers. There is little evidence that over the long-term consumers saved money in states that have implemented no-fault systems compared to the period when no-fault was not mandated. In addition, it is not clear why the Federal government should enter into a field that traditionally has been the responsibility of state governments and in which state innovation is thriving. Such involvement might also appear to conflict with our long-standing skepticism of other federal tort reform efforts.

The McConnell-Arney Auto Choice legislation has additional adverse consequences. The PPI plan initially will attract more bad drivers than good ones, because they will no longer have to be covered for non-economic damages. As bad drivers enter the PPI system, the premiums of safe drivers maintaining their current coverage will increase because of the need to cover losses incurred as a result of other drivers' fault. Then, as the premiums of drivers in the non-PPI system rise, more and more people will switch to PPI, thus further raising premiums for those left in the system -- the very safest drivers. The end result is the progressive penalization of safe driving -- and perhaps, in the end, the virtual collapse of the non-PPI option.

In addition, CEA is concerned that even if Auto Choice legislation were to succeed in

driving down rates, it would have an unintended consequence: by increasing the number of miles driven, the legislation would lead to more accidents, highway deaths, congestion, and environmental degradation. To address this problem, CEA developed the per-mile premium option. We believe, however, that we could not sustain support for their proposal. While the average premium for drivers would decrease under CEA's proposal, opponents would counter that we are "taxing" each mile that middle-income families drive. They would also argue that monitoring miles driven is an example of "big government" intrusion into people's lives. CEA agrees that the current political environment does not allow us to propose per-mile premiums. They would like us, however, to work to facilitate the voluntary adoption of per-mile premiums by states, insurance companies, and individuals.

The Politics of Auto Choice:

As you know, with the highest rates in the country, auto insurance was a key issue in the New Jersey gubernatorial election last year. McGreevey took the position that he would reduce auto insurance rates by 10 percent across the board. It is not clear, though, whether McGreevey would have had the constitutional power to cut rates by fiat and McGreevey did not offer any other alternatives to help reduce insurance premiums. Governor Whitman, on the other hand, proposed a plan similar to the McConnell-Arney Auto Choice plan. Therefore, our proposed position of opposing Auto Choice would be entirely consistent with McGreevey's opposition of the Whitman plan.

Surprisingly, auto insurance is not a strong political issue on the national level. Polling shows that two-thirds of the people think that auto insurance regulation is a local issue that should not be mandated by the Federal government; only 26 percent believe that the potential benefits of lower insurance rates are worth the Federal government's involvement. While Auto Choice is an appealing concept to voters (two out of three support it when told of its advantages), the negative arguments such as a rise in costs for a regular plan and increased pollution cut support to under 50 percent. The polling also shows that Auto Choice is not a partisan issue: support for it is not statistically different between Democrats, Republicans, and Independents.

Although Auto Choice has wide bipartisan support -- from Senator McConnell to Senator Moynihan and from Grover Norquist to Mike Dukakis -- consumer groups, auto safety groups, environmentalists, and attorneys representing automobile accident victims will oppose this legislation.

Recommendation:

There is unanimous agreement among the NEC-DPC interagency working group -- including the Office of White House Counsel, the Office of the Vice President, Office of Legislative Affairs, CEA, OMB, Transportation, and Treasury -- that you should oppose the McConnell-Army Auto Choice bill.

Assuming you agree, the remaining issue is when to announce your position. If we announce our opposition now, we may encourage supporters to bring the legislation up so as to define their disagreement with us. By contrast, if we remain quiet, the legislation may die on its own. There is also unanimous agreement that it would be best to hold off any statement on the bill for now. If Auto Choice comes to the floor, you could oppose it in a speech or we could issue a Statement of Administration Policy.

Decision:

_____ Oppose Auto Choice, But Do Not Announce Position Unless And Until Bill Comes To Floor (RECOMMENDED)

_____ Oppose Auto Choice, But Announce Position Now

_____ Discuss Further

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:16-APR-1998 17:27:01.00

SUBJECT: Re: LRM #IMS 297 - Statement of Administration Policy on HR1252 Judicial Reform

TO: Ingrid M. Schroeder (CN=Ingrid M. Schroeder/OU=OMB/O=EOP @ EOP [OMB])

READ:UNKNOWN

TEXT:

fyi- EK is out till monday. -laura

April 17, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Elena Kagan

RE: DPC Weekly Report

Crime -- School Safety: The Department of Education is preparing to release a report on the impact of the Gun-Free Schools Act (GFSA) during the 1996-97 school year. As you know, the GFSA generally requires all states receiving funds under the Elementary and Secondary Education Act to expel students who bring a firearm to school for a period of at least one year. The report found that 7,326 students were expelled during the 1996-97 school year for bringing a firearm to school, an increase of about 10%. Colorado reported the highest number (1,873) and rate (2.573 per 1,000 students) of expulsions. Other high-expulsion states include: by overall number, Ohio (937), California (723), Texas (532), Missouri (318) and Illinois (250); and by rate, Ohio (.449 per 1,000), Missouri (.310 per 1,000) and New Mexico (.195 per 1,000). DC, Hawaii, Guam, Puerto Rico and Wyoming reported no expulsions. The lowest rates were reported by North Dakota (.008 per 1,000), Minnesota (.019 per 1,000), Mississippi (.020 per 1,000) and New Jersey (.028).

Of the 3,246 expulsions where the type of firearms was identified, 58% involved handguns, 7% involved rifles and the remaining 35% involved some other type of firearms (bombs, grenades, starter pistols, rockets). The report also found that High Schools students were the most likely to carry a firearm: Of the 5,352 expulsions where the student's school level was reported, 57% were in high school, 35% were in junior high and 8% were in elementary school.

Crime -- Missing Children: On Thursday, the Justice Department launched a missing and exploited children web site. The site tells kids where to go if they are lost or need help, and provides tips on how they can avoid being exploited on the Internet. The site provides information to parents on how to best protect their children, and steps they can take if their child is missing. In addition, the site includes information on available law enforcement training for investigating child kidnaping and abduction cases, and links to missing children web sites in other countries.

Drunk Driving -- .08 BAC Report: Next week, the Transportation Department will transmit a report prepared in response to your March 3 directive to promote the adoption of .08 BAC as the legal limit for impaired driving. The Transportation report recommends that the

National Park Service, Defense Department, and U.S. Coast Guard begin rulemakings to lower the legal limit to .08 BAC on military installations, national parks, and waterways. It also reports that Defense will transmit legislation to Congress to amend the Uniform Code of Military Justice to provide for the punishments for violating a .08 limit on military bases.

Tobacco --Senate Strategy: In order to take advantage of the momentum created by the vote in the Commerce Committee two weeks ago, Erskine, Larry and I plan to meet with key Senators when they return to town next week. We will meet first with Senator Daschle and then, separately, with Senator McCain, to discuss how to negotiate improvements to the McCain bill, hopefully before it goes to the floor, and to devise an amendment strategy. We will also meet individually with Senators Breaux, Conrad, Durbin, Lautenberg, and Kennedy, to address their concerns and enlist their help in advancing the key improvements we seek in the bill. We will stress to all our commitment to enacting comprehensive tobacco legislation this year, and will try to impress upon them that we should be reasonable in our demands, lest the entire legislative effort should fall apart. We also plan to meet with key public health leaders --we met with Dr. Koop on Thursday, and plan to meet soon with Dr. Kessler, and with members of the coalition of public health groups working hardest to enact legislation (American Cancer Society, American Heart Association, and Campaign for Tobacco-Free Kids).

Education -- Mayor Daley's Proposed Tax Breaks for After School Programs: During your recent trip to Chicago Mayor Daley raised with you his idea of tax-credits for after school programs. Presently, after school programs in the Chicago public schools (which are an essential part of the city's efforts to end social promotions) are financed solely with public funds. There are no fees charged to parents, and no tax breaks of any kind. Last year the Mayor asked his staff to explore whether some form of tax credits to help parents cover the cost of after-school programs could be developed as a reasonable middle-ground position in the debate over vouchers and tax savings for private school tuition. However, his staff have been unable to develop a workable proposal since Chicago parents are not charged fees for participating in the programs. While the Mayor remains interested in this idea, there are no plans for proceeding with it locally.

We believe the Mayor's idea to incorporate tax savings for after school programs into the Coverdell proposal raises several concerns: first, it could undermine your \$200 million appropriations request for after-school programs; second, it would undercut our strategy for defeating Coverdell, which has been to urge Democrats to resist adding amendments that would make the bill more attractive in light of an expected veto; finally, since Senators Lott and Daschle have already agreed to a specific set of floor amendments, it would be difficult to gain Democratic support for reopening those negotiations on behalf of Mayor Daley's proposal.

Education -- National Board for Professional Teaching Standards: We have been working closely with the National Board for Professional Teaching Standards and our allies in Congress to ensure that Representative Goodling's provision to end federal funding for the Board is stripped from the Higher Education Act before Congress completes action on that bill. The bill reported by the Senate Labor and Human Resources Committee contains no such provision, and we believe there is little chance that a similar provision will be added on the Senate floor. The House is likely to take up the Higher Education Act in late April or early May; where it is expected to pass by a wide margin. The National Board has urged that you hold off on a veto threat until the bill goes to conference. We lack the votes to defeat Goodling on the floor, and the Board does not want to precipitate a recorded vote against it in the House. However, we believe that you should use the April 24 National Teacher of the Year Event to express your deep concern over this provision and pledge to work with Congress to remove it before the bill crosses your desk.

Community Empowerment -- Fair Lending: The Federal Reserve Bank has issued an advanced notice of proposed rulemaking that asks for comment on whether Regulation B (which carries out the provisions of the ECOA) should be amended to permit lenders voluntarily to collect information about the race and gender of applicants for non-mortgage credit. The prohibition on collection of this data inhibits monitoring by regulators, self-testing by the financial services industry, and enforcement by the Department of Justice and the Federal Trade Commission, with respect to discrimination in the non-mortgage lending markets. Amending this prohibition is one of the top priorities for community groups. We are working closely with Treasury, Justice, and the NEC on drafting a letter by May 29 in support of a rulemaking.

Health Care -- Kennedy Employer Mandate Legislation: Next Wednesday, Senator Kennedy is scheduled to introduce a health care employer mandate bill. This bill, which has the strong support of the labor community, would require that all firms with 50 or more employees provide coverage that is equivalent to the Federal Employees Health Benefit Blue Cross/Blue Shield standard plan. Employers would be required to contribute approximately 75 percent of the cost of coverage with the remainder coming from the employee. While this legislation will not go anywhere in this Congress, Senator Kennedy would like to force a Senate vote on this bill sometime this year. Although any employer mandate would significantly expand coverage, this legislation would not affect the over 20 million uninsured Americans who have workers in firms with less than fifty employees and could have the adverse effect of encouraging firms to split or subcontract out in order to avoid the mandate. Moreover, the absence of subsidies may make it difficult for some employees to afford the premiums, even though employers would have to contribute 75 percent. Senator Kennedy's office had initially requested that the First Lady or some representative from the Administration consider attending this event, but now is now willing instead to accept a generally positive statement from the White House. We recommend such a statement commend Senator Kennedy for his longstanding commitment to coverage expansion without giving an all-out endorsement. Implicit in our comments will

be the suggestion that we primarily focus on the issues this year that have a chance of being enacted by a Republican Congress.

Welfare Reform --New York Results: Last month you asked whether we had any explanation for the recent report that only 29 percent of the cases who left the rolls in New York State in March of 1997 were working in the next quarter, compared to rates of 50 to 60 percent in other states. (other leave due to marriage, their youngest child turning 18, an increase in child support, receipt of SSI, increase in earnings by another family member, or sanctions).

Our review uncovered several problems with these data, which were gathered from the state's wage reporting system. First, the data were incomplete --not all employers had reported for this quarter at the time the data were compiled. Looking at data from March of 1996 -- which found 39 percent showed earnings in at least one of the three quarters after leaving welfare -- produces figures that are somewhat closer to the experience in other states. In general, there appear to be lags in reporting new employees and employer reporting may also be worse in New York because the state's wage reporting system is not directly linked to the unemployment insurance system the way it is in most places.

This system also undercounts employment, though we do not know by how much. It ignores some self-employment, "off the books" wages, and work in other states. The statewide figure also masks variation within the state: for cases closed in March 1996, 31 percent had wages reported in a subsequent quarter in New York City, compared to 47 percent in the rest of the state. Apparently NYC historically has a high level of "administrative churning", i.e. cases closed due to various errors then reopened, which we wouldn't expect to have earnings in a later quarter.

Immigration -- H1B visas: Representative Lamar Smith, Chair of the House Judiciary Subcommittee on Immigration, has made an offer to Representative Mel Watt (ranking member) to develop a bipartisan bill to temporarily raise the cap on H1B visas for highly skilled temporary foreign workers that, unlike the Abraham-Hatch bill in the Senate, includes reforms to the H1B program that target their use to employers that are experiencing genuine skill shortages. We are having discussions with members of Congress to develop reform language that is consistent with the Administration's objectives. Representative Smith is holding a hearing on this issue on Tuesday, April 21st.

Child Care -- Rose Garden Event: We are planning Rose Garden event on Thursday, April 23 with you and the First Lady to place pressure on Congress to take action on your child care. That day, Secretary Rubin's Working Group on Child Care will issue a final report on private sector investment in child care and best practices. In addition, the Department of Labor will issue its report on child care, focusing on corporate models gleaned from the Women's Bureau's Honor Roll.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:21-APR-1998 12:03:09.00

SUBJECT: Re: Laura

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

TEXT:
thanks again

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:21-APR-1998 12:03:09.00

SUBJECT: Re: Laura

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

READ:UNKNOWN

TEXT:

thanks again

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
002. email	Elena Kagan to Mickey Ibarra. Subject: Re: Laura. (1 page)	04/21/1998	P6/b(6)

COLLECTION:

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

FOLDER TITLE:

[03/29/1998 - 04/27/1998]

2009-1006-F

wr53

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:21-APR-1998 12:03:32.00

SUBJECT: Re: Weekly Reports

TO: Paul J. Weinstein Jr. (CN=Paul J. Weinstein Jr./OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TEXT:

yessss!!!!!!

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:21-APR-1998 18:13:29.00

SUBJECT: H1-B mtg.

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

READ:UNKNOWN

TEXT:

----- Forwarded by Elena Kagan/OPD/EOP on 04/21/98 06:13
PM -----

Shannon Mason

04/21/98 03:07:25 PM

Record Type: Record

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

cc: Sally Katzen/OPD/EOP, Laura Emmett/WHO/EOP

Subject: H1-B mtg.

There will be an H1-B Visa Legislation meeting with House staff this
Friday 4/24 at 2:00pm Room 472 OEOB.

Please call Shannon at 6-2800 to confirm.

Thanks.

Message Sent

To:

Elena Kagan/OPD/EOP

Peter G. Jacoby/WHO/EOP

Janet Murguia/WHO/EOP

Julie A. Fernandes/OPD/EOP

Cecilia E. Rouse/OPD/EOP

Ricardo M. Gonzales/OVP @ OVP

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:23-APR-1998 18:18:38.00

SUBJECT:

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

TEXT:

----- Forwarded by Elena Kagan/OPD/EOP on 04/23/98 06:19 PM -----

Christa Robinson
04/23/98 06:12:41 PM
Record Type: Record

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

Please explain that they do not want us to re-write their memo (and they don't have to put Bruce's name on it if we don't like the way it's written.) They have turned it in, but if she has some important edits we can just resubmit the memo, no problem. If there are lots of edits we should just take Bruce's name off (I think.)

----- Forwarded by Christa Robinson/OPD/EOP on 04/23/98 06:14 PM -----

Daniel Wexler
04/23/98 06:10:21 PM
Record Type: Record

To: Christa Robinson/OPD/EOP
cc: Doris O. Matsui/WHO/EOP
Subject:

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

TEXT:

Unable to convert ARMS_EXT:[ATTACH.D2]MAIL42380821V.126 to ASCII,
The following is a HEX DUMP:

FF57504392280000010A0201000000020500000047C200000002000089D70454FBA6E16ED4DFF5
0A3B7EE387C278D3C567294B0B38C8FFB3E9673A4839F91A07449946451DC625AD7ADAA12C1D8A
084958394B56392C11498E411D1B07C0AB7FF4DC35870E0028B11530C573F57905A57D0103B625

April 23, 1998

NATIONAL TEACHER OF THE YEAR AWARD CEREMONY

DATE: April 24, 1998
LOCATION: Rose Garden
TIME: 3:00 pm
FROM: Maria Echaveste
Bruce Reed
Danny Wexler

I. PURPOSE

To honor the 1998 National Teacher of the Year, Philip Bigler and the State Teachers of the Year from around the country; and to use this opportunity to highlight some of your education initiatives.

II. BACKGROUND

This event provides you with an opportunity to honor the national and state teachers of the year, to underscore your commitment to a broad agenda to improve public education, and renew your veto threat over the Senate measure passed Thursday. You can use the Senate action this week, and House action earlier this month, to make a clear delineation between your vision and Congress' vision for education.

This week, the Senate voted down efforts to modernize more than 5,000 public schools and reject a Sense of the Senate resolution supporting efforts to reduce class size to a national average of 18 in the early grades by hiring 100,000 additional teachers. Instead, the Senate measure would block national tests, eliminate the "safe and drug free schools" program and other education programs by turning them into a block grant, and provide an average of \$7 in tax savings to families with children in public schools. You also can comment on the House bill to eliminate funding for the National Board for Professional Teaching Standards and block your efforts to help 100,000 master teachers seek board-certification by the year 2006.

This is an important education event for the White House. Three years ago, for the first time, we invited State Teachers of the Year from each state. Their participation created extensive local press coverage which helped to send a strong message throughout the country about your commitment to education. Each year, after attending the White House ceremony and learning more about the Administration's education agenda, these

teachers become some of our strongest supporters within their states and local communities

Now in its 47th year, the National Teacher of the Year Program seeks to recognize and honor the contributions of the American classroom teacher. Sponsored by the Council of Chief State School Officers in partnership with Scholastic, Inc., this program is the oldest and most prestigious awards program to focus public attention on excellence in teaching.

Each year, every state selects a Teacher of the Year who then enters the national competition. An independent selection committee, representing fourteen major education organizations, selects finalists and then the National Teacher of the Year. This year's other finalists were from New Mexico, Iowa, and Kansas. This is also the 47th year that the President has introduced the National Teacher of the Year to the nation.

This year's National Teacher of the Year is Philip Bigler. Philip entered the teaching profession in 1975 as a history teacher at his Alma Mater, Oakton High School in Fairfax County, Virginia. In 1982, disillusioned with his career, he left the classroom to become historian at Arlington National Cemetery. He returned to the classroom in 1985 and since 1991 he has taught Humanities at Thomas Jefferson High School for Science and Technology in Alexandria, Virginia. His innovative and rigorous activities led to his choice as this year's National Teacher of the Year. In his classroom, interactive historical simulations are the basis of his courses. In World History, his students become members of a Greek *polis* and debate the great issues of the day. While studying Islamic history and culture they make a sacred pilgrimage to Mecca. In American History and Government, students argue the intricacies of Constitutional law before a mock Supreme Court, conduct the court-martial trial of Lt. William Calley and wage a computer campaign for the 1960 presidency. He takes pride in that his students learn that human civilization rests upon the foundations of the past. He will be accompanied by his parents and brother and sister-in-law.

Fifty-four State Teachers of the Year including DOD schools, Guam, Puerto Rico and the District of Columbia will be represented at today's ceremony.

III. PARTICIPANTS

Education Secretary, Richard Riley

Senator Chuck Robb, (D-VA)

Senator Trent Lott (R-MS)

Senator Tom Harkin (D-IA)

Representative John Porter (R-IL)

Representative James Moran (D-VA)

Representative Thomas Davis (R-VA)

Representative Thomas Petri (R-WA)

Philip Bigler, 1998 Teacher of the Year

Linda Bigler, Spouse

Gordon Ambach, Executive Director, Council of Chief State School Officers

Christopher Gardner, President & CEO, Gardner, Rich & Company

54 State Teachers of the Year (List Attached)

Full list to be provided by Social Secretary

IV. PRESS PLAN

Open Press

V. SEQUENCE

- o You and Secretary Riley will meet the 54 State Teachers of the Year in the Oval Office.
- o At the end of the receiving line you will meet the National Teacher of the Year, Philip Bigler and his family.
- o The Bigler family will be escorted to seats in the Rose Garden.
- o WHCA will announce you, Senator Robb, Secretary Riley and Philip Bigler into the Rose Garden.
- o Secretary Riley will make brief remarks and introduce Senator Robb.
- o Senator Robb will make brief remarks and introduce you.
- o You make brief remarks.
- o At the end of your remarks you introduce Philip Bigler and present him with a crystal apple.
- o Philip Bigler will make brief remarks.
- o You greet the participants and depart.

VI. REMARKS

To be provided by speechwriting.

*State Teachers of the Year
1998*

<u>State</u>	<u>Teacher</u>
Alabama	Pamela Henson Foley High School Foley, Alabama Marine/Environmental Science 9-12
Alaska	Peggy Woods Tri-Valley Middle School Healy, Alaska Math/Social Studies/ 6-7
Arizona	Peggy Woods Amphitheater High School Tucson, Arizona Science 9-12
Arkansas	Charles Rossetti Springdale High School Springdale, Arkansas Drafting 9-12
California	Ginger Brown Chandler Tripp School San Jose, California Special Education/Pre-K
Connecticut	Marianne Cavanaugh Gideon Welles School Glastonbury, Connecticut Mathematics 7-12
Delaware	Harry Kutch William Penn High School Automated Records Management System Hex-Dump Conversion

Department of Defense	New Castle, Delaware Mathematics 9-12 Brenda Posey Ramstein Germany Home Economics 10-12
District of Columbia	Brenda Jenkins C. Melvin Sharpe Health School Washington, D.C. Special Education K-3
Florida	Grace Williams North Shore Elementary School Jacksonville, Florida Grade 4
Georgia	Jamie Lipscomb Evans Middle School Newnan, Georgia Fine Arts 6-8
Guam	Roberta Abaday John F. Kennedy High School Tamuning, Guam English/Language Arts 10-12
Hawaii	Ellen Schroeder Olomana Kailua, Hawaii Special Education 7-12
Idaho	Glenda Eubanks Nampa High School Nampa, Idaho English 12
Illinois	Steven Isoye Highland Park High School Highland Park, Illinois Physical Science 9-12
Indiana	Kimberly Giesting Connersville High School Connersville, Indiana Science 9-12

Iowa	Ruth Ann Gaines East High School Des Moines, Iowa Drama 9-12
Kansas	Darla Mallein Emporia Middle School Emporia, Kansas American History 8
Louisiana	Gustavia Evans Thomas Jefferson Junior H.S. Monroe, Louisiana Science 7-8
Maine	Joanne Alex Stillwater Montessori School Old Town, Maine Pre-Kindergarten
Maryland	Robert Foor-Hogue South Carroll High School Sikesville, Maryland Science 10-12
Massachusetts	Mary Ginley Center School Longmeadow, Massachusetts Elementary--Grade 2
Michigan	Katherine Grzesiak Eastlawn Elementary School Midland, Michigan Elementary--Grade 5
Minnesota	Neil Whitikko Hermantown High School Hermantown, Minnesota English/German 9-12
Mississippi	Martha Hutson Sumner Hill Junior High School Clinton, Mississippi Social Studies 9
Missouri	Carol Sue Reimann Automated Records Management System Hex-Dump Conversion

	Charles Clippard Elem. School Cape Girardeau, Missouri Elementary--Grade 1
Montana	Patty Myers Lewis & Clark Elementary School Great Falls, Montana Elementary--Grade 2
Nebraska	Patricia Randolph Scottsbluff High School Scottsbluff, Nebraska Spanish 10-12
Nevada	Bonnie Parnell Carson Middle School Carson City, Nevada Kindergarten - Grade 8
New Hampshire	Vicki Donovan Belmont Elementary School Belmont, New Hampshire Elementary Grade 4
New Jersey	Beth Neiderman Mary Shoemaker School Woodstown, New Jersey Elementary--Grade 1
New Mexico	Carolyn Foster R.M. James Elementary School Portales, New Mexico Elementary--Grade 3
New York	Selina Ahoklui Erasmus Hall High School Brooklyn, New York Business 9-12
North Carolina	Julian Coggins Mount Pleasant High School Mount Pleasant, North Carolina Biology 10-12
North Dakota	Vicki Boutiette Westside Elementary School West Fargo, North Dakota

Northern Mariana Islands	Remedial Reading 1-5 Sanh Chiet Lim Oleai Elementary School Saipan Elementary--Grade 3
Ohio	William Richey Xenia High School Xenia, Ohio Chemistry, 11-12
Oklahoma	Kay Long Broken Arrow Senior High School Broken Arrow, OK English/Math 11-12
Oregon	Nicki Hudson West Linn High School Mathematics 9-12
Pennsylvania	Susan Van Zile Eagle View Middle School Mechanicsburg, Pennsylvania English/Reading 6
Puerto Rico	Yolanda Fraticelli Rio Piedras, Puerto Rico Language Arts/Mathematics
Rhode Island	Maureen Spaight Edward Martin Junior High School East Providence, RI Social Studies 9
South Carolina	Christine Fisher Southside Middle School Florence, South Carolina Instrumental Music 7-8
South Dakota	Denise Bryan Bell Fourche Elementary School Bell Fourche, South Dakota Elementary--Grade 1
Tennessee	Linda Gilbert Black Fox Elementary School

	Murfreesboro, Tennessee Music, K-6
Texas	Joe Farley Fulmore Middle School Austin, Texas Language Arts 7
Utah	Sharon Holmstrom Snowcrest Junior High School Eden, Utah
Vermont	Judith Allard Burlington High School Burlington, Vermont Biology/Science 9-12
Washington	Yvonne Ullas Naches Valley Primary School Yakima, Washington Language Arts, 1
West Virginia	Susan Barrett Cherry River Elementary School Richwood, West Virginia Math 5-6
Wisconsin	Carol Banaszynski Deerfield Community Schools Deerfield, Wisconsin Biology 9-12
Wyoming	Mary Krisko Worland Middle School Worland, Wyoming Science, 6

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:23-APR-1998 18:22:17.00

SUBJECT: Feedback from the Caucuses on Needle Exchange

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

READ:UNKNOWN

TEXT:

----- Forwarded by Elena Kagan/OPD/EOP on 04/23/98 06:22
PM -----

JANET MURGUIA

04/22/98 11:15:54 PM

Record Type: Record

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

cc: Charles M. Brain/WHO/EOP, Broderick Johnson/WHO/EOP, Peter G. Jacoby/WHO/EOP

Subject: Feedback from the Caucuses on Needle Exchange

White House Legislative Affairs and HHS Legislative Affairs will do a conf. call tomorrow to discuss both the needle-exchange outreach efforts and the tobacco minority health statistics roll out plan. Mindy my assistant is setting this up for early afternoon. If you are interested in joining let me or Mindy know. Thanks.

----- Forwarded by Janet Murguia/WHO/EOP on 04/22/98
10:01 PM -----

Minyon Moore

04/22/98 07:50:37 PM

Record Type: Record

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

cc:

Subject: Feedback from the Caucuses on Needle Exchange

There appears to be a press conference in the works for Friday by the CBC on this issue.

I will provide more details as they come in. As anyone other than myself been in touch with them to help articulate our position?

----- Forwarded by Minyon Moore/WHO/EOP on 04/22/98 07:51
PM -----

Maria Echaveste

04/21/98 06:16:28 PM

Record Type: Record

To: Elena Kagan/OPD/EOP, Richard Socarides/WHO/EOP

cc: Janet Murguia/WHO/EOP, Minyon Moore/WHO/EOP, Sylvia M. Mathews/WHO/EOP, Sandra Thurman/OPD/EOP

Subject: Feedback from the Caucuses on Needle Exchange

I spoke with Becerra on this issue--he said he spoke with Shalala

yesterday and indicated to her that he was glad that the science had been affirmed but where was the money? He did say that while he hadn't really heard from members, he didn't anticipate a Caucus statement or press conference saying that some of the members were conservative and not in favor of the needle exchange program. He did suggest that matching localities with private sources of funding would be a good thing. Below is Minyon's note re her conversation with Waters.

----- Forwarded by Maria Echaveste/WHO/EOP on 04/21/98
06:13 PM -----

Minyon Moore
04/21/98 05:41:37 PM
Record Type: Record

To: Maria Echaveste/WHO/EOP
cc: Janet Murguia/WHO/EOP, Richard Socarides/WHO/EOP, Sylvia M. Mathews/WHO/EOP, Robert B. Johnson/WHO/EOP
Subject: Needle Exchange Q&A's- note correction!

As a follow-up to your call, I spoke with Maxine. They haven't taken an official position on the Administrations announcement, but anticipate meeting late tonight or tomorrow to discuss their response. She indicated that she has rec'd pressure from many members re: federal funding and the impact on minority communities. She further stated she wanted to have a longer discussion with Charles Rangel. She indicated that more than likely they will issue a press statement or do a press conference once consensus has been met. Asked if I wanted a heads up (response why course).

Maria she and Becerra will be talking.
----- Forwarded by Minyon Moore/WHO/EOP on 04/21/98 05:23
PM -----

Maria Echaveste
04/21/98 04:00:31 PM
Record Type: Record

To: Minyon Moore/WHO/EOP
cc:
Subject: Needle Exchange Q&A's- note correction!

fyi
----- Forwarded by Maria Echaveste/WHO/EOP on 04/21/98
04:05 PM -----

Laura Emmett
04/21/98 01:22:02 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: Sarah A. Bianchi/OPD/EOP
Subject: Needle Exchange Q&A's- note correction!

Note the correction is the answer to the first question:

Because the science is now there to make these findings. We already knew that needle exchange programs can help reduce the rate of HIV transmissions, and yesterday, the Secretary made clear that the scientists, including

all the respected leadership within the National Institutes of Health, have concluded that these programs do not increase drug use.

Message Sent

To: _____

Barry J. Toiv/WHO/EOP
Joseph P. Lockhart/WHO/EOP
Amy W. Tobe/WHO/EOP
Darby E. Stott/WHO/EOP
Lori L. Anderson/WHO/EOP
Joshua Silverman/WHO/EOP
Nanda Chitre/WHO/EOP
Elizabeth R. Newman/WHO/EOP
Maria Echaveste/WHO/EOP
Mickey Ibarra/WHO/EOP
Richard Socarides/WHO/EOP
Sara M. Latham/WHO/EOP
Marjorie Tarmey/WHO/EOP
June G. Turner/WHO/EOP
Andrew J. Mayock/WHO/EOP
Dawn L. Smalls/WHO/EOP
Michelle Crisci/WHO/EOP

Message Sent

To: _____

Elena Kagan/OPD/EOP
Sandra Thurman/OPD/EOP
Richard Socarides/WHO/EOP
Robert B. Johnson/WHO/EOP
Andrew J. Mayock/WHO/EOP
Janet Murguia/WHO/EOP
Sylvia M. Mathews/WHO/EOP

Message Sent

To: _____

Needle Exchange Q&As
April 21, 1998

Q: Why did the Administration choose to issue the findings that needle exchange programs reduce HIV transmission and does not increase drug use yesterday?

A: Because the science is now there to make these findings. We already knew that needle exchange programs can help reduce the rate of HIV transmissions, and yesterday, the Secretary made clear that the scientists, including all the respected leadership within the National Institutes of Health, have concluded that these programs do not increase drug use. Communities around the country, who are making their own decisions on this issue, should know that appropriately designed needle exchange programs reduce HIV transmission and do not encourage illegal drug use.

Q: If the science concludes that needle exchange programs reduce the transmission of HIV and do not increase drug use, why aren't you releasing federal funds for needle exchange programs?

A: We have always said that communities should make their own decisions on this issue, based on their own circumstances and using the best available scientific information. Releasing federal funding for needle exchange would have inappropriately shifted the focus away from communities -- where these decisions should be made -- to the national level. That could have severely undermined or threatened local programs that are currently in place, and hindered additional communities from deciding to put these programs into place. At the same time, such federal action could send an inappropriate message about the acceptability of drug use -- a message that is not sent when an individual community decides, on the basis of its unique circumstances, that a particular, carefully designed needle exchange program advances public health interests. For these reasons, the Administration concluded that it should simply give the scientific guidance that is necessary for communities to make their own decisions, rather than federalize the needle exchange issue.

Background:

Congress gave the Secretary of Health and Human Services the responsibility to make two determinations: whether the scientific research findings conclude that needle exchange programs reduce HIV transmission and whether they increase drug use. In 1997, the Secretary made a determination that needle exchange

programs do reduce the transmission of HIV. Yesterday, the Secretary held a meeting with her senior scientific advisors, including Nobel Laureate and head of the National Institutes of Health, Dr. Harold Varmus. These scientists agreed that the science-based standards have been met with regard to drug use as well.

Q: Isn't it hypocritical to say that needle exchange saves lives, but that the federal government will not pay for needle exchange programs?

A: No. In making her announcement yesterday, the Secretary informed local communities that under certain conditions, needle exchange programs can reduce HIV transmission and not encourage drug use. The decision as to whether to adopt such programs is up to these communities, based on their own unique circumstances. The Administration did not want to imperil local decision making by bringing needle exchange up to the national level. Neither did the Administration want to take the risk that federalizing needle exchange would send a mixed message about drug use.

Q: Won't this send a message to young people that drugs -- especially injectable drugs like heroin -- are ok?

A: Absolutely not. Injectable drug use is illegal, unhealthy and wrong. It is clearly a major health problem as well as a significant law enforcement concern. That is why this Administration has consistently sent a unified message to all Americans, particularly young people: Drugs put your future at risk; they can kill you; and they can infect you with HIV. And that is part of the reason why the Administration will not release federal funding for needle exchange. National action could send a mixed message on drug use that individual local actions, based on and responding to particular circumstances, will not.

Of course, this Administration has an extremely strong record on fighting drugs. We have increased the availability of drug treatment. We have worked in partnership with communities to fight drugs in and around schools. We have worked with state and local governments to put 100,000 more police officers on the streets, and we have doubled the number of border guards. We will continue to fight drug use in this country and to offer drug treatment to those who are addicted so that they stop using drugs.

Q: Wasn't the decision not to federally fund needle exchange programs based on political considerations?

A: The decision was based on a belief that communities should decide for themselves whether to adopt needle exchange programs, based on their own local

circumstances and the best scientific evidence possible. We did fear that federalizing needle exchange would imperil such local decision making, by igniting a congressional battle on the subject. To that extent, the Administration's decision took into account political realities. But first and foremost, the decision resulted from a commitment to real, locally-based decision making on this subject.

Q: Isn't the Administration decision essentially an attempt to reach a compromise that both Secretary Shalala and General McCaffrey can sign on to?

A: No. Of course both the General and the Secretary support the Administration's decision. But that decision was a result of (1) scientific evidence about needle exchange and (2) a belief that needle exchange should be a local, community-based decision.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:24-APR-1998 16:15:00.00

SUBJECT: Re: Alert: BR or EK you need to call Larry Summers

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

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

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

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

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

TEXT:

I actually think Ed Knight would be fine. I think we should agree to that.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:24-APR-1998 16:49:47.00

SUBJECT: McAffrey op-ed

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

TEXT:

fyi

----- Forwarded by Elena Kagan/OPD/EOP on 04/24/98 04:49
PM -----

Sandra Thurman 04/24/98 04:36:24 PM

Record Type: Record

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

cc:

Subject: McAffrey op-ed

As Todd mentioned earlier, Mr. McAffrey has been seeking to place op-eds in leading papers apparently arguing that needle exchange programs take advantage of African Americans and Latinos. We understand the Wall Street Journal is going to print it on Monday. We don't know if it's going in under his signature or someone else's.

This is just not right. The statement released by Maxine Waters, and the letter to the President from the CBC, criticize McAffrey's role in this. An op-ed is only going to inflame the racial divisiveness. Help!!!

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:27-APR-1998 11:58:25.00

SUBJECT: Re: Needle Exchange Prohibition Legislation

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

CC: Daniel N. Mendelson (CN=Daniel N. Mendelson/OU=OMB/O=EOP @ EOP [OMB])
READ:UNKNOWN

CC: robert j. pellicci (robert j. pellicci @ eop @ lngtwy [OMB])
READ:UNKNOWN

TEXT:
yes.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:27-APR-1998 19:28:52.00

SUBJECT: Re: Weekly Reports

TO: Paul J. Weinstein Jr. (CN=Paul J. Weinstein Jr./OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

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

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

TEXT:
That's fine. Laura -- please do this each week.

PRESIDENT WILLIAM J. CLINTON
REMARKS FOR SURGEON GENERAL'S REPORT
THE WHITE HOUSE
APRIL 27, 1998

Anyone who has ever been a parent knows the absolute joy -- and the awesome responsibility -- that comes with raising a child. We will do everything we can to keep our children safe from harm -- from strapping on their seat belts in the car, to bundling them up against the winter cold, to teaching them to say no to drugs.

We accept that we cannot always predict all the challenges that may come our children's way. But the dangers and consequences of tobacco are plain to all. The temptation to try tobacco is one of the greatest threats our children face.

That is why today's disturbing news -- that more and more minority teens are falling to the temptation of cigarettes -- must galvanize our efforts to protect all our children from tobacco. We all know that today's statistics are part of a larger trend: Every day, 3,000 young people light up their first cigarettes and become smokers for life. One thousand of them will die as a result.

The cold hard facts are adding up. The call to action is getting louder. And time is running out. Congress has just four weeks to pass a comprehensive bipartisan tobacco bill that can help save the lives of millions of our children -- that will cut teen smoking by raising the price of cigarettes, imposing strong penalties on tobacco companies who continue advertising to children, and giving the FDA full authority to regulate children's access to tobacco products.

Senator McCain's bill is a strong step in this direction. Make no mistake about it: The legislation explicitly changes the rules of the game so that the tobacco industry can no longer do what it has done for years -- profit at the expense of our children's health.

It is time to end the delay. It seems as if we're in a situation where we know what the illness is -- too many children lured to smoking by unscrupulous, multi-million dollar advertising campaigns that have targeted our youth for decades. We know that the cure is -- tough, comprehensive bipartisan legislation to end these practices and cut teen smoking. And yet we're hesitating. No parent who knows how to cure a sick child would stand by and do nothing. For our children's sake, we must not walk away from this session of Congress without a comprehensive tobacco bill.

I don't want to turn this tobacco settlement into a political issue for the fall. I want an achievement for this spring -- a bipartisan tobacco law that will open a new chapter in America's efforts to protect the health of our children. Let us all work together to build a brighter future for our children.

RECORD TYPE: PRESIDENTIAL (NOTES READ RECEIPT)

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

CREATION DATE/TIME:27-APR-1998 19:36:07.00

SUBJECT: RECEIVED: LRM MNB 150--Labor (BLS) testimony on Revision of the Consumer Price In

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

READ:UNKNOWN

TEXT:

RETURN RECEIPT

Your Document:

LRM MNB 150--Labor (BLS) testimony on Revision of the Consumer Price Index
was successfully received by:

CN=Elena Kagan/OU=OPD/O=EOP

at:

04/27/98 07:30:00 PM

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:27-APR-1998 12:01:46.00

SUBJECT: early childhood study

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

TEXT:

thoughts??

----- Forwarded by Elena Kagan/OPD/EOP on 04/27/98 12:02
PM -----

Paul E. Begala

04/27/98 09:37:40 AM

Record Type: Record

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

cc:

Subject: early childhood study

Saturday's New York Times has an article by Tamar Lewin entitled "Early Aid is Shown to Benefit At-Risk Children". The story cites a RAND study that showed several positive results from nine early intervention programs studied, including higher long-term school achievement, less need for special ed, lower delinquency rates, fewer emergency room visits and less dependency on welfare.

There must be a way we can use this, or refer to this, or do an event around this. How can we use this to promote POTUS' agenda?

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:27-APR-1998 10:46:13.00

SUBJECT: Re: revised

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

TEXT:

----- Forwarded by Elena Kagan/OPD/EOP on 04/27/98 10:46
AM -----

Cynthia A. Rice
04/26/98 11:35:20 PM
Record Type: Record

To: June Shih/WHO/EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: revised

(here fyi are the q&as -- has data on page 1 you may want)
(also these q&as started with good talking points that may be helpful)

A few general comments --

As you know, we want this to be about kids, kids, kids, not about the Surgeon General's report -- but I you should use a couple of the statistics from the report to make your point, i.e. -- Youth smoking is increasing at an alarming rate. Today one third more high school students smoke than did six years ago. And as this new Surgeon General's report shows, smoking has increased among all racial and ethnic groups, growing by a startling 80 percent among African American youth. Today, nearly one-half of young Native Americans, two-fifths of Caucasians, one third of Hispanics, and one-fifth of Asian and African American high schoolers smoke. Every day, 3000 children become regular smokers... and 1000 of them will die as a result.

I'm not sure about the sick child analogy. I've faxed this draft to Bruce to see what he thinks, but I'm not sure I'll hear back tonight. I think the "we'll do everything we can to keep our children from harm" theme is good...it's the illness theme in the second to last paragraph that gives me pause. I think it's because what legislation would do is prevent illness not cure it. How about We have now within our grasp a way to protect millions of children, to keep them from taking up a deadly habit that -- as Dr. Satcher and Dr. Frist can tell you -- causes cancer and heart attacks and lung disease. We can stop young Americans from smoking before they start and save one million lives over the next five years. For our children's sake, we cannot let this opportunity slip away.

More suggestions are below in bold. Please page me if you have questions.

PRESIDENT WILLIAM J. CLINTON
REMARKS FOR SURGEON GENERAL'S REPORT

THE WHITE HOUSE
APRIL 26, 1998
[should be 4/27]

Anyone who has ever been a parent knows the absolute joy -- and the awesome responsibility -- that comes with raising a child. We will do everything we can to keep our children safe from harm -- from strapping on their seat belts in the car, to bundling them up against the winter cold, to teaching them to say no to drugs. [don't raise drugs -- Republicans are trying to use that to change the subject -- use something else -- like walking them to school each day?]

We accept that we cannot always predict all the challenges that may come our children's way. But the dangers and consequences of tobacco are plain to all. The temptation to try tobacco is one of the greatest threats our children face. [How about making this less about prediction and temptation (which implies too much free will, I think) and instead saying something like "But we all know how hard it is to protect children from danger. We have known the dangers of tobacco for a long time -- ever since the Surgeon General's landmark 1964 report -- but still our children are falling prey."]

That is why today's disturbing news -- that more and more minority teens are falling to the temptation of cigarettes -- must galvanize our efforts to protect all our children from tobacco. We all know that today's statistics are part of a larger trend: Every day, 3,000 young people light up their first cigarettes and become smokers for life. One thousand of them will die as a result. [Youth smoking is increasing at an alarming rate. Today one third more high school students smoke than did six years ago. And as this new Surgeon General's report shows, smoking has increased among all racial and ethnic groups, growing by a startling 80 percent among African American youth. Today, nearly one-half of young Native Americans, two-fifths of Caucasians, one third of Hispanics, and one-fifth of Asian and African American high schoolers smoke. Every day, 3000 children become regular smokers... and 1000 of them will die as a result.]

The cold hard facts are adding up. The call to action is getting louder. And time is running out. Congress has just four weeks to pass a comprehensive bipartisan tobacco bill that can help save the lives of millions of our children -- that will cut teen smoking by raising the price of cigarettes, imposing strong penalties on tobacco companies who continue advertising to children, and giving the FDA full authority to regulate children's access to tobacco products. [Four weeks isn't really right -- there are four weeks until the Memorial Day recess -- I would say "just weeks"] [Use this "by raising the price of cigarettes, putting into place tough restrictions on advertising and access, imposing penalties on the industry if it continues to sell cigarettes to children, and ensuring that the FDA has authority to regulate tobacco products -- all while protecting farmers and farming communities."]

Senator McCain's bill is a strong step in this direction. Make no mistake about it: The legislation explicitly changes the rules of the game so that the tobacco industry can no longer do what it has done for years -- profit at the expense of our children's health.

It is time to end the delay. It seems as if we're in a situation where we know what the illness is -- too many children lured to smoking by unscrupulous, multi-million dollar advertising campaigns that have targeted our youth for decades. We know that the cure is -- tough, comprehensive bipartisan legislation to end these practices and cut teen smoking. And yet we're hesitating. No parent who knows how to cure a sick child would

stand by and do nothing. For our children's sake, we must not walk away from this session of Congress without a comprehensive tobacco bill. [How about: We have now within our grasp a way to protect millions of children, to keep them from taking up a deadly habit that -- as Dr. Satcher and Dr. Frist can tell you -- causes cancer and heart attacks and lung disease. We can stop young Americans from smoking before they start and save one million lives over the next five years. For our children's sake, we cannot let this opportunity slip away.]

I don't want to turn this tobacco settlement into a political issue for the fall. I want an achievement for this spring -- a bipartisan tobacco law that will open a new chapter in America's efforts to protect the health of our children. Let us all work together to build a brighter future for our children. [maybe "happier, healthier future??"]

June Shih
04/26/98 09:52:11 PM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP
cc:
Subject: revised

Message Copied

To: _____
Sarah A. Bianchi/OPD/EOP
Bruce N. Reed/OPD/EOP
Elena Kagan/OPD/EOP
Toby Donenfild/OVP @ OVP
Cynthia Dailard/OPD/EOP
===== ATTACHMENT 1 =====
ATT CREATION TIME/DATE: 0 00:00:00.00

TEXT:

Unable to convert ARMS_EXT: [ATTACH.D89]MAIL40250461S.126 to ASCII,
The following is a HEX DUMP:

FF575043461A0000010A000100000000FBFF050032000A1A00000C005A0000004200000003000A
0000009C000000300064190000A6000000FFFF00000000000000000004C6F63616C205072696E7465
7200057494E53504F4F4C000000000058
024E00F41A5C121A090000001020500000000010001000000000000000000000000000000580250
D00606000100060006D0AB0058024E00F41A5C121A09000000102050000000001000100580250
2800C8196810480D000011090000005A000B010000103600540069006D006500730020004E0065
007700200052006F006D0061006E00200052006500670075006C00610072000000000000000000
00
005802F4014100F41A5C121A090000
001020500000010001000100F401502800C8196810480D000011090000005A000B010000103600
540069006D006500730020004E0065007700200052006F006D0061006E00200052006500670075
006C0061007200
00
00F40158024E00F41A5C121A090000001020500000200010001005802502800C8196810480D00
0011090000005A000B010000103600540069006D006500730020004E0065007700200052006F00

Q&As
Surgeon General Report on Minority Tobacco Use
 April 27, 1998

Q. What does the Surgeon General's Report say?

A. The Surgeon General's Report being released today is the first comprehensive report on the use and health effects of tobacco among minority groups. The report finds that from 1991 to 1997, smoking increased by 80 percent for African-American youths and by 34 percent for Hispanic youth. The report finds that cigarette smoking is a major cause of disease and death among minority populations, which will only get worse if these trends are not reversed. The report also documents that efforts to reduce and prevent smoking among minority and ethnic populations are undermined by the tobacco industry's heavily targeted advertising and promotion of tobacco products within these communities.

In short, the report demonstrates, once again, why Congress needs to pass comprehensive tobacco legislation to reduce youth smoking this year.

Additional Background

Youth Smoking: Smoking Among High School Students (9-12th graders)

	Percent Smoking, 1991	Percent Smoking, 1997	Percent Increase
African American	12.6%	22.7%	80%
Hispanic	25.3%	34.0%	34%
White	30.9%	39.7%	28%
All Students	27.5%	36.4%	32%

Youth Smoking: Smoking Among High School Seniors (12th graders)

	Percent Smoking, 1990	Percent Smoking, 1995	Percent Increase
Asian American/ Pacific Islander	17.5%	20.5%	17%
American Indians/ Alaska Natives	37.8%	47.7%	26%

Adult Smoking

	African American	Hispanic	Asian American/ Pacific Islander	American Indian/Alaska Native	White
Percent	26.5%	18.9%	15.3%	39.2%	25.9%

Q:What does the report say about the tobacco industry targeting of minority communities?

A:The Surgeon General's report shows the need for comprehensive tobacco legislation to reduce youth smoking that includes limits on advertising. The report found that the tobacco industry has targeted advertising and promotion campaigns intensively in minority and ethnic communities. For example, a 1990 study of San Francisco found that 62 percent of billboards in predominantly African American neighborhoods advertised cigarettes, compared with 36 percent of billboards citywide. A 1993 study of San Diego found the highest proportion of billboards featuring tobacco companies was in Asian American neighborhoods, followed by African-American then Hispanic neighborhoods.

The report chronicles how tobacco companies have promoted their products by sponsoring numerous ethnic activities and events, such as Chinese New Year festivities, Cinco de Mayo festivities, as well as activities related to Asian/Pacific Heritage month and African-American history month. A study of magazines found that there were 12 percent more cigarette advertisements in magazines targeted to African Americans (*Jet*, *Ebony* and *Essence*) then in magazines targeted to the general population (*Time*, *Newsweek*, *People*, and *Mademoiselle*).

Q.Does the President have a specific proposal to address the particular problem of tobacco use within minority communities?

A.Passing comprehensive tobacco legislation designed to reduce youth smoking will help all Americans -- regardless of their background or ethnicity. The Surgeon General's report illustrates that this is an extremely important issue in minority and ethnic communities. It also demonstrates that we need to better understand the use and effects of tobacco among minority and ethnic groups. For example, we want to look carefully at why smoking rates increased by 80 percent for African-American youth and by 34 percent among Hispanics from 1991 to 1997 so that we can develop the prevention and cessation programs that will work best in those communities. We will continue to work closely with minority health experts to determine how best to address these issues.

Q:Why are the smoking rates of African Americans lower than whites?

A:The Surgeon General report documents a number of studies that show that differences in social attitudes and lifestyle factors between white and African-American youth help account for their different smoking rates. However, further research is needed to better account for these different smoking rates as well as to understand the recent increases in smoking among African-American youth.

Additional Background

Studies cited in the Surgeon General's report show that over time African-American high school seniors have become increasingly more likely than white seniors to acknowledge the health risks of tobacco, to claim that smoking is a "dirty habit", and to claim that they prefer to date non-smokers. African-Americans are also likely to start smoking later than whites.

One study in Tennessee showed that white high school age girls are four times more likely than their African-American counterparts and white boys twice as likely as African-American boys to believe that "smoking can help you control your weight and appetite." This same study revealed that 60 percent of white girls and nearly 20 percent of white boys cited weight control as a reason for smoking, whereas none of the African-American students cited weight as a reason for smoking. Another study showed that African-American teenage girls are less likely than white girls to think that smoking enhances their image.

A previous Surgeon General's report found that when parents express concerns about smoking it appears to reduce the likelihood that their children will smoke. Various studies across the country have documented that African-Americans are more likely to have received anti-smoking messages from their parents.

Q: Aren't the minority health organizations and the Congressional Minority Caucuses drafting legislation to address the problem of tobacco use among minorities, including by earmarking funds to this issue? What is your reaction to these proposals?

A: Comprehensive legislation that meets the principles that the President has outlined would address many aspects of this problem: the best way to reduce youth smoking among minority populations is to design effective, comprehensive legislation that will reduce youth smoking in all our communities. But the Surgeon General's report underscores the need to understand the use and effects of tobacco among minority communities, and to devise the prevention and cessation programs that will work best in those communities. We look forward to reviewing closely any proposals that address our shared concerns.

Q: Aren't the fees imposed by the Administration's plan and the McCain bill regressive and therefore hit minority communities hardest?

A: The tobacco industry has spent billions of dollars marketing to low-income and minorities, and made billions of dollars at their expense. Big Tobacco doesn't care about poor people -- it just wants to keep hooking future smokers. As a result, low-income people have suffered a disproportionate level of tobacco-related harm. The Administration is committed to making sure cessation programs are available to help all smokers quit -- and just as important, that we change the way the tobacco industry does business so it no longer preys on poor kids in the first place.

Q: Are you concerned about the information reported in last week's New York Times that young African Americans are smoking more to enhance the high from marijuana?

A: This Administration has long recognized that cigarettes, alcohol, and illegal drugs all pose a serious threat to our youth. Studies have shown that kids who make it to their 21st birthday without having smoked a cigarette, taken a drink or turned to drugs are almost certain to avoid chemical dependency throughout their lives. That is why our goal must be to keep teenagers from having that first drink, trying a cigarette, or experimenting with illegal drugs before they are old enough to know better and to realize the consequences of their decisions.

We are greatly concerned by data showing that smoking among African American youth has increased by 80 percent over the last six years. New information relating this trend to marijuana use is very disturbing, and provides still further reason to take strong action against illegal drugs. Of course, as The New York Times points out, the increase in tobacco use is even more heavily associated with advertising and other media messages that have a great impact on young people. That's why minority youth tend to smoke Kool and Newport, brands advertised with minority images, while white youth smoke Marlboro and Camel, whose ads feature white characters.

These facts underscore why we need comprehensive legislation to reduce youth smoking by raising the price of cigarettes, putting into place tough restrictions on advertising and access, imposing penalties on the industry if it continues to sell cigarettes to children, and ensuring that the FDA has authority to regulate tobacco products.

Q.What do you think of the House Republican proposal to link drugs and tobacco in a single bill?

A.Nobody disagrees about the need to be tough on drug use, but that is no excuse to be less than tough on youth smoking. We need to pass strong, comprehensive tobacco legislation this year that dramatically reduces youth smoking by raising the pack of cigarettes, imposing tough penalties on companies that continue to sell to kids, granting the FDA authority over tobacco products, and restricting advertising and marketing to children. The McCain bill, which passed the Senate Commerce Committee by a 19-1 vote three weeks ago, is a strong step in that direction. If Republicans want to add good anti-drug provisions to a comprehensive tobacco bill of this kind, we have no objections. But the bill must address the problem of youth smoking comprehensively; anti-drug provisions can't serve as an excuse for watered-down tobacco legislation.

Q: What exactly is the President's strategy on drugs?

A This past February President Clinton released the 1998 National Drug Control Strategy, a comprehensive ten-year plan to reduce drug use and availability by 50% -- to a historic new low. The strategy is backed by a \$17 billion anti-drug budget in FY 1999 -- the largest ever presented to Congress, with a \$1.1 billion increase over last year's budget.

While the strategy incorporates specific goals and objectives in the areas of drug

treatment and prevention, domestic law enforcement, interdiction, and international programs, its number one goal is to educate and enable our youth to reject illegal drugs. That is why the largest budget increases (15% over last year's funding levels) are targeted for this purpose. In contrast, Speaker Gingrich and the House Republicans tried to cut the Safe and Drug-Free Schools program -- the program that funds anti-drug efforts in 97% of the nation's school districts -- by a full 50% just a few years ago.

Key initiatives in the drug strategy include:

Protecting Kids:

- \$195 Million National Youth Anti-Drug Media Campaign to make sure that when kids turn on the television or surf the "net," they learn about the dangers of drugs.
- \$50 Million for School Drug Prevention Coordinators to improve and expand the Safe and Drug-Free Schools program by hiring more than 1,000 new prevention professionals to work with thousands of schools in preventing drug use.

Strengthening Our Borders:

- \$163 Million for Border Patrol to hire 1,000 new Border Patrol officers and for "force multiplying" technology.
- \$54 Million for Advanced Technology for the Customs Service to deploy advanced technologies, such as X-ray systems and remote video surveillance.
- \$75.4 Million to Support Interdiction Efforts in the Andean region and Caribbean, and to train Mexican counterdrug forces.

Strengthening Law Enforcement:

- \$38 Million to Crack Down on Methamphetamine and Heroin by hiring 100 new DEA agents, expanding the Administration's anti-methamphetamine initiative, and targeting heroin traffickers.

Breaking the Cycle of Drugs and Crime:

- \$85 Million to Promote Coerced Abstinence to help state and local governments implement drug testing, treatment, and graduated sanctions for drug offenders.

Closing the Treatment Gap:

- \$200 Million Increase for Substance Abuse Block Grants to help states close the treatment gap.

Q.What is wrong with passing a “skinny” tobacco bill? Why do you need a comprehensive bill?

A. Every day, 3000 children and adolescents begin smoking, and 1,000 will die prematurely as a result. Experts agree that in order to dramatically reduce youth smoking we need to take a comprehensive approach that will attack the problem from a variety of angles.

- **Price:** All experts agree that the single most important step we can take to reduce youth smoking is to raise the price of a pack of cigarettes significantly. That is why the President has proposed raising the price of cigarettes by \$1.10 over five years -- an increase that both the Treasury Department and the Congressional Budget Office agree should cut youth smoking by about a third.
- **Advertising:** Studies show that industry advertising significantly contributes to youth smoking rates. The Treasury Department has estimated that the advertising and marketing restrictions in the McCain bill should cut youth smoking by about 15 percent. This is a conservative estimate: a study recently published in the Journal of the American Medical Association found that a full 34% of teen smoking is attributable to promotional activities.
- **FDA Jurisdiction:** Reaffirming the FDA authority over tobacco products is necessary to help stop young people from smoking before they start. Currently, nearly 90 percent of people begin smoking before age 18, despite the laws that make it illegal to sell cigarettes to minors. FDA Authority will ensure that young people do not have access to these products.
- **Penalties:** Strong lookback penalties will act as an insurance policy to ensure that the tobacco industry takes meaningful steps to reduce youth smoking. If the bill's provisions on price, advertising, and FDA jurisdiction do not bring youth smoking down as much as expected, penalties will kick in to ensure that the industry has every incentive to take further action to reduce youth smoking.

All of these measures support and reinforce each other; all are necessary to ensure that legislation dramatically reduces youth smoking.

Q: Isn't the President's plan a big government, big tax proposal?

A: No. What the President's approach does is to attack the problem of youth smoking comprehensively, as all experts say we need to do, by combining strong provisions on price, penalties, advertising and access, and FDA jurisdiction. Although we have some differences with Senator McCain, he also recognizes the need to move forward on all these fronts to reduce youth smoking. That's not about big government. It's about sensible, bipartisan steps to dramatically reduce youth smoking.

Q. But won't the McCain bill create 17 new federal bureaucracies?

A.No -- this isn't about big government. That's just another Big Lie from Big Tobacco. What the bill does is to ensure that the federal government has the authority to regulate tobacco products in order to reduce youth smoking, as well as the ability to target tobacco revenues to strong public health and research efforts. The so-called "bureaucracies" that the industry is now complaining about are nothing more than what's necessary to protect the public health in this way -- to ensure that cigarettes are not sold to minors, to promote effective education, and to encourage smoking cessation. The proof that this is an industry con job is clear: almost all these provisions were in the June 1997 proposed settlement put forward by 41 state attorneys general, which the industry agreed to. The industry is criticizing these provisions now only because the political tide has turned against it, and certain other aspects of the legislation have gotten stronger.

Q: Hasn't the Administration proposed a big government scheme that would extend the reach of the federal government to every mom-and-pop grocery store?

A: No. The Administration has offered proposals designed to reduce smuggling that would require wholesalers, distributors, and retailers to identify themselves as such. That's no more than what any business has to do now to sell liquor -- and no more than what most states already require sellers of tobacco to do. The important thing is to work with Congress to devise a scheme that will facilitate the effort to prevent smuggling, while not burdening retailers. The Administration will work with Congress, and the retailers themselves, on this issue.

Q:Aren't you just trying to bankrupt the companies?

A: We don't want to put the tobacco companies out of business. We just want to put them out of the business of selling cigarettes to kids. A central feature of comprehensive tobacco legislation is to ensure that most of the payments made by the tobacco companies are passed on to price, in order to reduce youth smoking. As a result, there will be at most a modest impact on the profitability of the tobacco companies. This is also an industry with significant cash flow and net assets that will allow it to easily absorb this modest profit decline. The operating earnings of RJR, Philip Morris, and Loews last year were *\$18 billion*. Even RJR, the most highly leveraged firm in this industry, had a \$1.5 billion operating profit for its domestic tobacco business, and has over \$4 billion in net assets from its Nabisco stock holdings. The only real risk of bankruptcy comes from losing a rash of lawsuits in court.

Talking Points and Q & A on Tobacco Legislation
April 20, 1998

Today, President Clinton issued a strong statement calling for Congress to pass comprehensive, bipartisan tobacco legislation to reduce teen smoking.

CLEAR FACTS, HIGH STAKES. 3,000 children begin to smoke every day; 1,000 of them will die early as a result. President Clinton is committed to passing comprehensive bipartisan legislation to stop young Americans from smoking before they start, by raising the price of cigarettes, putting into place tough restrictions on advertising and access, imposing penalties on the industry if it continues to sell cigarettes to children, and ensuring that the FDA has authority to regulate tobacco products. That effort can save one million lives over the next five years.

A STRONG FOUNDATION FOR FUTURE TOBACCO REFORM. Senator McCain and Senator Hollings' tobacco legislation bill, which passed the Commerce Committee by a 19-1 vote three weeks ago, is a strong step in the right direction on the road to passing comprehensive tobacco legislation. **It shows real momentum in both parties to pass effective, comprehensive tobacco legislation this year.**

STANDING STRONG FOR COMPREHENSIVE REFORM, NOT HALF MEASURES. In the days to come, the tobacco industry will try to persuade Congress to pass weaker legislation, which will not reduce teen smoking. We must continue to work with Senator McCain and others to ensure the kind of legislation that will succeed in dramatically reducing teen smoking. **This is no time to accept half-measures that will only play into the industry's hands.**

Questions and Answers

Q: What did the President think of Speaker Gingrich's statement this weekend criticizing the McCain bill? Do you think the Speaker has adopted the industry's line?

A: The President was very disappointed in the Speaker's statement. The Speaker indicated that he wants to pursue half-measures, rather than a comprehensive approach that will do everything it takes to reduce youth smoking. We need a bill that's strong on price, that's strong on penalties, that's strong on advertising and access restrictions, and that's strong on FDA jurisdiction. Senator McCain's bill is a very strong step in that direction, and we hope Speaker Gingrich will rethink his position and decide to support such a comprehensive approach.

Q: Isn't the President's plan -- and the McCain bill -- a big government, big tax proposal?

A: No. What the President's approach does is to attack the problem of youth smoking comprehensively, as all experts say we need to do, by combining strong provisions on

price, penalties, advertising and access, and FDA jurisdiction. Although we have some differences with Senator McCain, he also recognizes the need to move forward on all these fronts to reduce youth smoking. That's not about big government. It's about sensible, bipartisan steps to dramatically reduce youth smoking.

Q: But won't the McCain bill create 17 new federal bureaucracies?

A: No -- this isn't about big government. That's just another Big Lie from Big Tobacco. What the bill does is to ensure that the federal government has the authority to regulate tobacco products in order to reduce youth smoking, as well as the ability to target tobacco revenues to strong public health and research efforts. The so-called "bureaucracies" that the industry is now complaining about are nothing more than what's necessary to protect the public health in this way -- to ensure that cigarettes are not sold to minors, to promote effective education, and to encourage smoking cessation. The proof that this is an industry con job is clear: almost all these provisions were in the June 1997 proposed settlement put forward by 41 state attorneys general, which the industry agreed to. The industry is criticizing these provisions now only because the political tide has turned against it, and certain other aspects of the legislation have gotten stronger.

Q: Aren't the fees imposed by the Administration's plan and the McCain bill regressive?

A: The tobacco industry has spent billions of dollars marketing to low-income and minorities, and made billions of dollars at their expense. Big Tobacco doesn't care about poor people -- it just wants to keep hooking future smokers. The Administration is committed to making sure cessation programs are available to help smokers quit -- and just as important, that we change the way the tobacco industry does business so it no longer preys on poor kids in the first place.

Q: Isn't the licensing scheme that the Administration proposed a big government scheme that would extend the reach of the federal government to every mom-and-pop grocery store or 7-11?

A: No. The Administration has offered proposals designed to reduce smuggling that would require wholesalers, distributors, and retailers to identify themselves as such. That's no more than what any business has to do now to sell liquor -- and no more than what most states already require sellers of tobacco to do. The important thing is to work with Congress to devise a scheme that will facilitate the effort to prevent smuggling, while not burdening retailers. The Administration will work with Congress, and the retailers themselves, on this issue.

Q: Aren't you just trying to bankrupt the companies? Lots of Wall Street analysts say you will.

A: We don't want to put the tobacco companies out of business. We just want to put them out of the business of selling cigarettes to kids. A central feature of comprehensive

tobacco legislation is to ensure that most of the payments made by the tobacco companies are passed on to price, in order to reduce youth smoking. As a result, there will be at most a modest impact on the profitability of the tobacco companies. This is also an industry with significant cash flow and net assets that will allow it to easily absorb this modest profit decline. The operating earnings of RJR, Philip Morris, and Loews last year were *\$18 billion*. Even RJR, the most highly leveraged firm in this industry, had a \$1.5 billion operating profit for its domestic tobacco business, and has over \$4 billion in net assets from its Nabisco stock holdings. The only real risk of bankruptcy comes from losing a rash of lawsuits in court.

PRESIDENT WILLIAM J. CLINTON
REMARKS FOR SURGEON GENERAL'S REPORT
THE WHITE HOUSE
APRIL 26, 1998

Anyone who has ever been a parent knows the absolute joy -- and the awesome responsibility -- that comes with raising a child. We will do everything we can to keep our children safe from harm -- from strapping on their seat belts in the car, to bundling them up against the winter cold, to teaching them to say no to drugs.

We accept that we cannot always predict all the challenges that may come our children's way. But the dangers and consequences of tobacco are plain to all. The temptation to try tobacco is one of the greatest threats our children face.

That is why today's disturbing news -- that more and more minority teens are falling to the temptation of cigarettes -- must galvanize our efforts to protect all our children from tobacco. We all know that today's statistics are part of a larger trend: Every day, 3,000 young people light up their first cigarettes and become smokers for life. One thousand of them will die as a result.

The cold hard facts are adding up. The call to action is getting louder. And time is running out. Congress has just four weeks to pass a comprehensive bipartisan tobacco bill that can help save the lives of millions of our children -- that will cut teen smoking by raising the price of cigarettes, imposing strong penalties on tobacco companies who continue advertising to children, and giving the FDA full authority to regulate children's access to tobacco products.

Senator McCain's bill is a strong step in this direction. Make no mistake about it: The legislation explicitly changes the rules of the game so that the tobacco industry can no longer do what it has done for years -- profit at the expense of our children's health.

It is time to end the delay. It seems as if we're in a situation where we know what the illness is -- too many children lured to smoking by unscrupulous, multi-million dollar advertising campaigns that have targeted our youth for decades. We know that the cure is -- tough, comprehensive bipartisan legislation to end these practices and cut teen smoking. And yet we're hesitating. No parent who knows how to cure a sick child would stand by and do nothing. For our children's sake, we must not walk away from this session of Congress without a comprehensive tobacco bill.

I don't want to turn this tobacco settlement into a political issue for the fall. I want an achievement for this spring -- a bipartisan tobacco law that will open a new chapter in America's efforts to protect the health of our children. Let us all work together to build a brighter future for our children.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:27-APR-1998 19:31:15.00

SUBJECT: Re: Needle exchange talking points

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

TEXT:

Yes, you should. This is only a problem if we just don't have any time (as we didn't today). Do you have any suggested changes?

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Elena Kagan@EOP@LNGTWY@LNGTWY (Elena Kagan@EOP@LNGTWY@LNGTWY [OPD])

CREATION DATE/TIME:27-APR-1998 13:26:52.00

SUBJECT: Re: Needle Exchange Prohibition Legislation

TO: Christopher C. Jennings@EOP@LNGTWY@LNGTWY (Christopher C. Jennings@EOP@LNGTWY@LNGTWY
READ:UNKNOWN

CC: Daniel N. Mendelson@EOP@LNGTWY@LNGTWY (Daniel N. Mendelson@EOP@LNGTWY@LNGTWY [OMB]
READ:UNKNOWN

CC: robert j. pellicci@EOP (robert j. pellicci@EOP [OMB])
READ:UNKNOWN

TEXT:
Message Creation Date was at 27-APR-1998 11:56:00

yes.

RECORD TYPE: PRESIDENTIAL (NOTES READ RECEIPT)

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

CREATION DATE/TIME:27-APR-1998 19:36:08.00

SUBJECT: RECEIVED: LRM MNB 151--Labor testimony on OSHA Reform legislation

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

READ:UNKNOWN

TEXT:

RETURN RECEIPT

Your Document:

LRM MNB 151--Labor testimony on OSHA Reform legislation

was successfully received by:

CN=Elena Kagan/OU=OPD/O=EOP

at:

04/27/98 07:29:44 PM