

NLWJC - KAGAN

EMAILS CREATED

ARMS - BOX 010 - FOLDER 007

[4/24/1996 - 5/13/1996]

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Elena Kagan to Erin Kelly. Subject: [birthday] (1 page)	04/27/1996	Personal Misfile
002. email	Elena Kagan to Todd Stern. Subject: fyi (1 page)	04/30/1996	Personal Misfile
003. email	Elena Kagan to Ellen Seidman. Subject: No-fault (1 page)	05/08/1996	P6/b(6)
004. email	Elena Kagan to Ron Klain. Subject: question (1 page)	05/09/1996	Personal Misfile
005. email	Elena Kagan to Ron Klain. Subject: legal times (1 page)	05/13/1996	Personal Misfile

COLLECTION:

Clinton Presidential Records
 Automated Records Management System (Email)
 WHO ([From Elena Kagan])
 OA/Box Number: 500000

FOLDER TITLE:

[4/24/1996 - 5/13/1996]

2009-1006-F

ke778

RESTRICTION CODES

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

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

- 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]

- 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]

- 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.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:24-APR-1996 11:32:08.81

SUBJECT: letter

TO: Deborah L. Fine (FINE_D) (OPD)

READ:24-APR-1996 12:06:42.06

TEXT:

The letter is OK.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:24-APR-1996 14:32:13.72

SUBJECT: levin bill

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

READ:24-APR-1996 16:05:08.21

TEXT:

I hear our veto threats don't mean much.

On another matter entirely, could you send me a copy of the latest version of the Levin bill? Many thanks.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 24-APR-1996 13:30:34.90

SUBJECT: RE: fyi - OMB needs Eng. only sign off asap

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

READ: 24-APR-1996 13:30:54.77

TEXT:

On 1487, my sign-off is for neuwirth.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:24-APR-1996 16:02:35.52

SUBJECT: englishonly

TO: Stephen C. Warnath

(WARNATH_S) (OPD)

READ:24-APR-1996 16:02:57.08

TEXT:

Also, could you send me the set of Administration material referred to in Carol's 4/19 memo? Thanks.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:24-APR-1996 11:52:48.10

SUBJECT: native american arts bill

TO: Janet Murguia

(MURGUIA_J) Autoforward to: Annette E. Johnson

READ:24-APR-1996 11:53:25.47

TEXT:

What happened to it?

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:24-APR-1996 13:38:41.57

SUBJECT: RE: fyi - OMB needs Eng. only sign off asap

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

READ:24-APR-1996 15:06:36.93

TEXT:

something to think about.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:24-APR-1996 10:49:07.84

SUBJECT: assignments

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

READ:24-APR-1996 10:49:55.79

TEXT:

now's the time i tell you i want to do english-only, right?

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 25-APR-1996 19:48:58.71

SUBJECT: RE: Signing statement on approps

TO: Martha Foley (FOLEY_M) (WHO)
READ: 25-APR-1996 19:50:00.42

CC: Dinah Bear (BEAR_D) (CEQ)
READ: 25-APR-1996 19:50:47.65

CC: Robert G. Damus (DAMUS_R) (OMB)
READ: 25-APR-1996 19:49:34.23

CC: Todd Stern (STERN_T) (WHO)
READ: 25-APR-1996 20:05:52.38

CC: T J Glauthier (GLAUTHIER_T) (OMB)
READ: 26-APR-1996 08:18:57.18

TEXT:
I'll check with Dellinger.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:25-APR-1996 15:18:51.82

SUBJECT: MEETING

TO: Adam R. Kreisel

(KREISEL_A) (WHO)

READ:25-APR-1996 15:24:23.95

TEXT:

Sorry to bug you, but do we have a time for that abortion meeting yet?

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

CREATOR: KAGAN_E (WHO)

CREATION DATE/TIME: 25-APR-1996 19:49:00.00

SUBJECT: Receipt Notification

TO: FOLEY_M (WHO)

READ: 25-APR-1996 19:50:29.08

TEXT:

This is a Read Receipt Notification for:

Message Title: Signing statement on approps

Addressee: KAGAN_E

Date Sent: 25-Apr-1996 07:33pm

Date Read: 25-Apr-1996 07:49pm

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:26-APR-1996 12:07:56.79

SUBJECT: RE: Legislative history being made as we speak

TO: Martha Foley.

(FOLEY_M) (WHO)

READ:26-APR-1996 13:02:39.40

TEXT:

Walter feels strongly we should not attempt to respond to the Hatfield colloquies. He also thinks the signing statement should treat the provisions granting suspension authority as completely routine as a legal matter; in line with this approach, he does not want to add any special language.

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

CREATOR: KAGAN_E (WHO)

CREATION DATE/TIME: 26-APR-1996 13:29:00.00

SUBJECT: Receipt Notification

TO: WEINSTEIN_P (OPD)

READ: 26-APR-1996 13:57:38.77

TEXT:

This is a Read Receipt Notification for:

Message Title: CAMPAIGN FINANCE REFORM MEETING -- NEW TIME AND DATE

Addressee: KAGAN_E

Date Sent: 26-Apr-1996 12:51pm

Date Read: 26-Apr-1996 01:29pm

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:26-APR-1996 15:14:27.38

SUBJECT: RE: headwaters

TO: Dawn Chirwa (CHIRWA_D) (WHO)
READ:26-APR-1996 15:55:14.91

CC: Elisabeth Blaug (BLAUG_E) (CEQ)
READ:26-APR-1996 15:40:31.91

CC: Kathleen A. McGinty (MCGINTY_K) (CEQ)
READ:26-APR-1996 16:08:48.92

TEXT:

You know Tom's doing a takings meeting on Wednesday at 10:30 in the CEQ conf. room. Also, I can't make Tuesday. But don't reschedule for me since Dawn can go.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 26-APR-1996 15:30:53.75

SUBJECT: LEVIN BILL

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

READ: 26-APR-1996 15:33:10.25

TEXT:

Just a reminder... a copy please?

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 27-APR-1996 11:03:26.19

SUBJECT: oil

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

READ: 27-APR-1996 11:17:21.36

TEXT:

by the by, I don't think it matters whether you call this a memorandum or a directive. do whatever the clerk says is normally done for such things.

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Elena Kagan to Erin Kelly. Subject: [birthday] (1 page)	04/27/1996	Personal Misfile

COLLECTION:

Clinton Presidential Records
Automated Records Management System (Email)
WHO ([From Elena Kagan])
OA/Box Number: 500000

FOLDER TITLE:

[4/24/1996 - 5/13/1996]

2009-1006-F

ke778

RESTRICTION CODES

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- P1 National Security Classified Information [(a)(1) of the PRA]
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Freedom of Information Act - [5 U.S.C. 552(b)]

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- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:29-APR-1996 12:25:44.96

SUBJECT: levin bill

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

READ:29-APR-1996 13:41:36.43

TEXT:

For some reason, I didn't realize the levin bill had not yet been introduced. Can I give it to someone outside the White House -- to be more specific, to Cass Sunstein? (I mentioned the bill to him when I was in Chicago last week, and he expressed interest in seeing it.)

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 29-APR-1996 09:51:58.95

SUBJECT: RE: Thanks

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

READ: 29-APR-1996 09:55:10.05

TEXT:

No problem. Whenever it's convenient, send me final documents. Thanks.

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

CREATOR: KAGAN_E (WHO)

CREATION DATE/TIME:29-APR-1996 18:21:00.00

SUBJECT: Receipt Notification

TO: BRIATICO_A (OMB)

READ:29-APR-1996 18:23:24.72

TEXT:

This is a Read Receipt Notification for:

Message Title: Reminder Comments Due on LRM 4212
Addressee: KAGAN_E
Date Sent: 29-Apr-1996 06:20pm
Date Read: 29-Apr-1996 06:21pm

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:29-APR-1996 12:06:32.41

SUBJECT: lrm

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

READ:29-APR-1996 13:06:45.20

TEXT:

I just got an LRM regarding a bill sponsored by susan molinari on (among other things) trans-racial adoption. OMB says the bill may be considered by the House on May 8. I recall Chris Cerf once telling me that he had done some work on this issue about a year ago. Did you reassign this issue to someone else when you split up Chris's portfolio? If not, do you want to reassign the issue now? Responses to the LRM are due on Friday.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:29-APR-1996 09:48:03.74

SUBJECT: letter

TO: Stephen R. Neuwirth (NEUWIRTH_S) (WHO)
READ:29-APR-1996 09:54:45.38

TEXT:

i'm presuming you'll handle this. Thanks.

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

ATT CREATION TIME/DATE:29-APR-1996 09:24:00.00

ATT BODYPART TYPE:B

ATT CREATOR: Ingrid M. Schroeder

ATT SUBJECT: OMB Immigration Letter - Public Benefits

ATT TO: Charles S. Konigsberg (KONIGSBERG_C)

ATT TO: Alice E. Shuffield (SHUFFIELD_A)

ATT TO: Tracey E. Thornton (THORNTON_T)

ATT TO: Elena Kagan (KAGAN_E)

ATT TO: Stephen R. Neuwirth (NEUWIRTH_S)

ATT CC: Stacy L. Dean (DEAN_S)

TEXT:

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

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

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

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:29-APR-1996 18:21:07.27

SUBJECT: timber

TO: Jennifer M. O'Connor (OCONNOR_J) (WHO)
READ:29-APR-1996 18:37:11.89

TO: Dinah Bear (BEAR_D) (CEQ)
READ:29-APR-1996 18:56:28.08

TEXT:

1. As I've told both of you, Jack has asked me to do an edit on the curent DOJ brief. I'd be grateful for your input. No point is too big or too small. If you want to mark up a draft and give it to me, that's great. If you want to make just a few general comments, that's great too. I'd like your comments sometime tomorrow, so I can get this under way as quickly as possible.
2. And as I've told Dinah, we need to decide one of these days whether we wish to seek cert on the areas vs. sales issue. Jack is very much of the mind to defer to you guys: if you want to seek cert (even recognizing we won't get it), he'll argue the case to the SG. Let me know.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 29-APR-1996 16:28:03.62

SUBJECT: RE: Memo from Kathy Wallman

TO: Odetta S. Walker

(WALKER_O) (WHO)

READ: 29-APR-1996 16:36:21.18

TEXT:

sure.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:30-APR-1996 16:56:49.44

SUBJECT: president's statement

TO: McGavock D. Reed (REED_M) (OMB)
READ:30-APR-1996 17:21:08.72

TO: Dinah Bear (BEAR_D) (CEQ)
READ:30-APR-1996 17:03:13.43

TO: Martha Foley (FOLEY_M) (WHO)
READ:30-APR-1996 17:30:06.36

TEXT:

After reviewing the draft statement and talking to OLC (Randy Moss because Dellinger wasn't in), I suggest changing the second paragraph to read as follows:

"The Resolution repeals two paragraphs relating to the Tongass National Forest, which were mistakenly not deleted when the operative language was moved to another section."

The paragraph as it now stands seems to me a tad too defensive: in particular, the reference to the legislative history makes it sound as if we're making an argument, rather than just stating a fact. I also don't much like the reference to the suspension provision, which has no real reason to be there. OLC agrees.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:30-APR-1996 11:42:28.48

SUBJECT: RE: Signing statement

TO: Dinah Bear (BEAR_D) (CEQ)
READ:30-APR-1996 11:58:14.94

CC: Martha Foley (FOLEY_M) (WHO)
READ:30-APR-1996 11:42:43.23

CC: Robert G. Damus (DAMUS_R) (OMB)
READ:30-APR-1996 11:42:43.74

CC: Charles E. Kieffer (KIEFFER_C) (OMB)
READ:30-APR-1996 12:40:44.42

CC: Jacob J. Lew (LEW_J) (OMB)
READ:30-APR-1996 12:14:52.96

CC: Todd Stern (STERN_T) (WHO)
READ:30-APR-1996 13:58:56.55

TEXT:

My instinct is the exact same, though we should see what Walter and Peter say.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:30-APR-1996 19:38:02.44

SUBJECT: RE: fyi

TO: Todd Stern (STERN_T) (WHO)

READ:30-APR-1996 19:38:04.87

TEXT:

great. where is asia nora?

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:30-APR-1996 12:18:46.62

SUBJECT: RE: LRM 4243

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

READ:30-APR-1996 12:54:54.27

TEXT:

I won't do a thing. Consider this one to be all yours.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:30-APR-1996 12:23:12.15

SUBJECT: lrm

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

READ:30-APR-1996 14:49:58.62

TEXT:

steve: i'm assuming you'll take care of the lrm on the dornan amendment.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:30-APR-1996 13:10:50.69

SUBJECT: products veto message

TO: Todd Stern (STERN_T) (WHO)

READ:30-APR-1996 14:05:59.61

TEXT:

please don't send out the products veto message without letting me know. there are a couple of changes i need to make to it.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:30-APR-1996 11:39:47.35

SUBJECT: RE: APB from Kathy Wallman

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

READ:30-APR-1996 12:01:43.16

TEXT:

You know me: I volunteer for just about everything.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:30-APR-1996 18:22:31.16

SUBJECT: RE: product liability

TO: Todd Stern (STERN_T) (WHO)

READ:30-APR-1996 18:46:27.65

TEXT:

Many thanks. But Bruce beat you to it.

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
002. email	Elena Kagan to Todd Stern. Subject: fyi (1 page)	04/30/1996	Personal Misfile

COLLECTION:

Clinton Presidential Records
Automated Records Management System (Email)
WHO ([From Elena Kagan])
OA/Box Number: 500000

FOLDER TITLE:

[4/24/1996 - 5/13/1996]

2009-1006-F
ke778

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

CREATOR: KAGAN_E (WHO)

CREATION DATE/TIME: 1-MAY-1996 18:43:00.00

SUBJECT: Receipt Notification

TO: KAISERDARK_P (OMB)

READ: 2-MAY-1996 09:48:50.72

TEXT:

This is a Read Receipt Notification for:

Message Title: meeting invitation
Addressee: KAGAN_E
Date Sent: 01-May-1996 06:17pm
Date Read: 01-May-1996 06:43pm

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 1-MAY-1996 19:26:07.80

SUBJECT: RE: products -- OMB comments

TO: Todd Stern (STERN_T) (WHO)

READ: 1-MAY-1996 19:29:38.43

TEXT:

Would you forward that to both Bruce and Jack with a note saying that I asked you to?

You need not give it to Justice. They've already seen it. We know they hate it.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 1-MAY-1996 17:34:36.88

SUBJECT: RE: APB from Kathy Wallman

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

READ: 1-MAY-1996 17:51:59.05

TEXT:

sure (as almost always)

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 1-MAY-1996 19:23:20.49

SUBJECT: new veto statement

TO: Peter Jacoby (JACOBY_P) (WHO)
READ: 1-MAY-1996 19:30:29.88

TO: Ann M. Cattalini (CATTALINI_A) (WHO)
READ: 1-MAY-1996 19:24:17.65

TEXT:

Attached is the latest draft of the veto statement. As I said on the phone, Bruce and I think that to the extent possible, the language should come from that. I am faxing you a hard copy of the statement indicating the most important parts. I have also edited the paragraph of the memo describing the bill to highlight the most important provisions. (By the by, and as my edits reflect, do not say that the statute of repose applies only to certain products; that is the position of the people who support the bill; we think the Conference Report manages to apply applies to lots and lots of products.)

===== ATTACHMENT 1 =====
ATT CREATION TIME/DATE: 1-MAY-1996 19:18:00.00

ATT BODYPART TYPE:p

ATT CREATOR: Elena Kagan

TEXT:

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

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 1-MAY-1996 17:32:38.63

SUBJECT: RE: Thanks

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

READ: 1-MAY-1996 17:33:03.33

TEXT:

Great. Please let me see a draft. Thanks.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 1-MAY-1996 14:39:22.62

SUBJECT: RE: products liability

TO: Todd Stern (STERN_T) (WHO)

READ: 1-MAY-1996 14:44:32.43

TEXT:

i've been picking victims. i'm working on it now. i'll send you a new draft in about half an hour. ok?

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 2-MAY-1996 19:02:27.07

SUBJECT: RE: NEED RESPONSE BY COB THURSDAY

TO: Charles S. Konigsberg (KONIGSBERG_C) (OMB)

READ: 2-MAY-1996 19:08:00.81

TEXT:

looks fine to me (and i'm answering for jack).

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 2-MAY-1996 18:39:21.25

SUBJECT: RE: APB from Kathy Wallman re: Battered Women Initiative

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

READ: 2-MAY-1996 18:45:36.51

TEXT:
anything anytime

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 2-MAY-1996 08:20:29.96

SUBJECT: new version products

TO: Todd Stern (STERN_T) (WHO)

READ: 2-MAY-1996 08:21:16.05

TEXT:

here it is

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

ATT CREATION TIME/DATE: 2-MAY-1996 08:19:00.00

ATT BODYPART TYPE:p

ATT CREATOR: Elena Kagan

TEXT:

PRINTER FONT 12_POINT_COURIER

To the House of Representatives:

I am returning without my approval H.R. 956, the so

□

-called

Common Sense Product Liability Legal Reform Act of 1996.

I support real "common sense product liability reform." To deserve that label, however, legislation must adequately protect the interests of consumers, in addition to the interests of manufacturers and sellers. Further, legislation must respect the important role of the States in our Federal system. Congress could have passed legislation, appropriately limited in scope and balanced in application, meeting these tests. Had Congress done so, I would have signed the bill gladly. Congress, however, chose not to do so, deciding instead to retain provisions in the bill that I made clear I could not accept.

H.R. 956 inappropriately intrudes on state authority, and does so in a way that tilts the legal playing field against consumers. While some federal action in this area is proper because no one State can alleviate nationwide problems in the tort system, the States should have, as they always have had, primary responsibility for tort law. The States traditionally have handled this job well, serving as laboratories for new ideas and making needed reforms. This bill unduly interferes with that process in products cases; moreover, it does so in a way that peculiarly disadvantages consumers. As a rule, this bill displaces state law only when that law is more favorable to consumers; it defers to state law when that law is more helpful to manufacturers and sellers. I cannot accept, absent compelling reasons, such a one

□

-way street of federalism.

Apart from the general structure of the bill, specific provisions of H.R. 956 unfairly disadvantage consumers and their families. Consumers should be able to count on the safety of the products they purchase. And if these products are defective and cause harm, consumers should be able to get adequate compensation for their losses. Certain provisions in this bill work against these goals, preventing some injured persons from recovering the full measure of their damages and increasing the possibility that defective goods will come onto the market as a result of

intentional misconduct.

In particular, I object to the following provisions of the bill, which subject consumers to too great a risk of harm:

First, as I previously have stated, I oppose wholly eliminating joint liability for noneconomic damages such as pain and suffering, because such a change would prevent many persons from receiving full compensation for injury. When one wrongdoer cannot pay its portion of the judgment, the other wrongdoers, and

not the innocent victim, should have to shoulder that part of the award. Traditional law accomplishes this result. In contrast, this bill would leave the victim to bear these damages on his or her own. Given how often companies that manufacture defective products go bankrupt, this provision has potentially large consequences.

This provision is all the more troubling because it unfairly discriminates against the most vulnerable members of our society -- the elderly, the poor, children, and nonworking women -- whose injuries often involve mostly noneconomic losses. There is no reason for this kind of discrimination. Noneconomic damages are as real and as important to victims as economic damages. We should not create a tort system in which people with the greatest need of protection stand the least chance of receiving it.

Second, as I also have stated, I oppose arbitrary ceilings on punitive damages, because they endanger the safety of the public. Capping punitive damages undermines their very purpose, which is to punish and thereby deter egregious misconduct. The provision of the bill allowing judges to exceed the cap if certain factors are present helps to mitigate, but does not cure this problem, given the clear intent of Congress, as expressed in the Statement of Managers, that judges should use this authority only in the most unusual cases.

In addition, I am concerned that the Conference Report fails to fix an oversight in Title II of the bill, which limits actions against suppliers of materials used in devices implanted in the body. In general, Title II is a laudable attempt to ensure the supply of materials needed to make life

-saving medical devices, such as artificial heart valves. But as I believe even many supporters of the bill agree, a supplier of materials who knew or should have known that the materials, as implanted, would cause injury should not receive any protection from suit. Title II's protections must be clearly limited to non

-negligent suppliers.

My opposition to these Senate

-passed provisions were known prior to the Conference on the bill. But instead of addressing these issues, the Conference Committee took several steps backward, in the direction of the bill approved by the House.

First, the Conference Report seems to expand the scope of the bill, inappropriately applying the limits on punitive and noneconomic damages to negligent entrustment actions -- lawsuits, for example, against a gun dealer who knowingly sells a gun to a convicted felon or a bar owner who knowingly serves a drink to an obviously inebriated customer. I believe that such suits should go forward unhindered. Some in Congress have argued that the change made in Conference is technical in nature, so that the

bill still exempts these actions. But I do not read the change in this way -- and in any event, I do not believe that a victim

of a drunk driver should have to argue in court about this matter. Congress should not have made this last

□

-minute change, creating this unfortunate ambiguity, in the scope of the bill.

In addition, the Conference Report makes certain changes that though sounding technical, may cut off a victim's ability to sue a negligent manufacturer. The Report deletes a provision that would have stopped the statute of limitations from running when a bankruptcy court issues the automatic stay that prevents suits from being filed during bankruptcy proceedings. The effect of this seemingly legalistic change will be that some persons harmed by companies that have entered bankruptcy proceedings (as makers of defective products often do) will lose any meaningful opportunity to bring valid claims.

Similarly, the Conference Report reduces the statute of repose to fifteen years (and less if states so provide), and applies the statute to a wider range of goods, including handguns. This change, which bars a suit against a maker of an older product even if that product has just caused injury, also will preclude some valid suits.

In recent weeks,, I have heard from many victims of defective products, whose efforts to recover compensation this bill would have frustrated. I have heard from a woman who would not have received full compensatory damages under this bill for the death of a child because one wrongdoer could not pay his portion of the judgment. I have heard from women whose suits against makers of defective contraceptive devices -- and the punitive damages awarded in those suits -- forced the products off the market, in a way that this bill's cap on punitives would make much harder. I have heard from persons injured by products more than fifteen years old, who under this bill could not bring suit at all.

Injured people cannot be left to suffer in this fashion; furthermore, the few companies that cause these injuries cannot be left, through lack of a deterrent, to engage in misconduct. I therefore must return the bill that has been presented to me. The bill would undermine the ability of courts to provide relief to victims of harmful products and thereby endanger the health and safety of the entire American public. There is nothing "common sense" about such "reforms" to product liability law.

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

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

CREATOR: KAGAN_E (WHO)

CREATION DATE/TIME: 2-MAY-1996 18:38:00.00

SUBJECT: Receipt Notification

TO: KONIGSBERG_C (OMB)

READ: 2-MAY-1996 18:42:45.43

TEXT:

This is a Read Receipt Notification for:

Message Title: · NEED RESPONSE BY COB THURSDAY

Addressee: KAGAN_E

Date Sent: 02-May-1996 03:03pm

Date Read: 02-May-1996 06:38pm

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 3-MAY-1996 15:56:47.58

SUBJECT: RE: product liability

TO: Jeff P. Dailey (DAILEY_J) (WHO)

READ: 3-MAY-1996 15:57:19.14

TEXT:

I would delete the phrase "in the interest of protecting manufacturers and sellers of harmful products." (We took the same phrase out of the veto message. Other than that it looks fine, though I suspect the President will actually want more detail.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 3-MAY-1996 12:07:24.63

SUBJECT: RE: endangered species act

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

READ: 3-MAY-1996 12:19:59.55

TEXT:

no; this doesn't ring a bell. i've been letting things pile up on my desk the last couple of days, but if i come across anything, i'll let you know.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 3-MAY-1996 15:00:37.47

SUBJECT: RE: reminder -- reg reform

TO: David Fein (FEIN_D) (WHO)

READ: 3-MAY-1996 15:05:08.32

TEXT:

eeks, forgot. right.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 3-MAY-1996 12:43:34.16

SUBJECT: products

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

READ: 3-MAY-1996 14:37:14.47

TEXT:

do you have copies of (1) the product liability veto message and (2) the product liability statement the President gave yesterday?
many, many thanks.

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

CREATOR: KAGAN_E (WHO)

CREATION DATE/TIME: 3-MAY-1996 15:01:00.00

SUBJECT: Receipt Notification

TO: JONES_RE (OMB)

READ: 3-MAY-1996 16:27:29.26

TEXT:

This is a Read Receipt Notification for:

Message Title: DOJ Position on HR 2974 -- increased penalties for --
Addressee: KAGAN_E
Date Sent: 03-May-1996 02:56pm
Date Read: 03-May-1996 03:01pm

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 3-MAY-1996 15:31:48.79

SUBJECT: RE: Revised SAP (per DOJ) on HR 2974

TO: Ronald E. Jones (JONES_RE) (OMB)

READ: 3-MAY-1996 15:32:09.78

TEXT:

ok

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 3-MAY-1996 15:31:09.43

SUBJECT: interns

TO: Kathleen M. Wallman (WALLMAN_KM) (WHO)
READ: 3-MAY-1996 16:52:29.83

TO: Dawn Chirwa (CHIRWA_D) (WHO)
READ: 3-MAY-1996 15:33:40.71

TO: Peter Erichsen (ERICHSEN_P) (WHO)
READ: 3-MAY-1996 18:08:19.72

TO: David Fein (FEIN_D) (WHO)
READ: 3-MAY-1996 16:45:59.37

TO: Cheryl D. Mills (MILLS_C) (WHO)
READ: 3-MAY-1996 16:47:52.00

TO: Miriam R. Nemetz (NEMETZ_M) (WHO)
READ: 3-MAY-1996 15:50:10.55

TO: Stephen R. Neuwirth (NEUWIRTH_S) (WHO)
READ: 3-MAY-1996 15:40:00.63

TO: Sally Paxton (PAXTON_S) (WHO)
READ: 3-MAY-1996 15:49:03.79

TO: Robert W. Schroeder III (SCHROEDER_R) (WHO)
READ: 3-MAY-1996 15:40:27.14

TO: Jane C. Sherburne (SHERBURNE_J) (WHO)
READ: 3-MAY-1996 15:49:31.08

TO: Wendy S. White (WHITE_WS) (WHO)
READ: 3-MAY-1996 20:24:07.31

TO: Jon Yarowsky (YAROWSKY_J) (WHO)
READ: 3-MAY-1996 17:25:05.66

CC: Kathleen M. Whalen (WHALEN_K) (WHO)
READ: 3-MAY-1996 16:05:56.77

TEXT:

We will have five interns in our office from May 13 to June 30 and another five from July 1 to August 15. Kathy (Whalen) and I will soon be sending around their resumes.

We hope that as many of you as possible will agree to take at least one intern for at least one two-week shift, either alone or with another attorney. If you'd like an intern for longer, we'll probably be glad to accommodate. Please let me or Kathy know by next Wednesday what we can count on you to do. And start saving projects now so we can keep them all busy.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 3-MAY-1996 12:29:36.06

SUBJECT: lrms

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

READ: 3-MAY-1996 13:55:32.30

TEXT:

the lrm's on these crime bills have come in to me. have you or dawn checked the bills out yet?

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 3-MAY-1996 15:01:14.39

SUBJECT: RE: DOJ Position on HR 2974 -- incereased penalties for --

TO: Ronald E. Jones (JONES_RE) (OMB)

READ: 3-MAY-1996 15:01:44.04

TEXT:

no

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 3-MAY-1996 09:43:32.94

SUBJECT: RE: Response from Kathy re: Battered Women

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

READ: 3-MAY-1996 10:03:13.69

TEXT:

but of course. let's talk later today?

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 3-MAY-1996 15:36:07.89

SUBJECT: congressional review

TO: David Fein (FEIN_D) (WHO)

READ: 3-MAY-1996 16:47:06.81

TEXT:

I'm having trouble finding the answer to your question. Mike Fitzpatrick at OIRA will probably know the answer off the top of his head. If that doesn't work, come back to me.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 3-MAY-1996 09:44:44.88

SUBJECT: by the way

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

READ: 3-MAY-1996 12:20:32.97

TEXT:

whatever happened to that faca issue? do you want me to send the stuff you sent me back to you?

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 3-MAY-1996 10:00:10.62

SUBJECT: RE: Response from Kathy re: Battered Women

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

READ: 3-MAY-1996 10:02:14.54

TEXT:

oops, sorry. kathy please.

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

CREATOR: KAGAN_E (WHO)

CREATION DATE/TIME: 3-MAY-1996 15:56:00.00

SUBJECT: Receipt Notification

TO: DAILEY_J (WHO)

READ: 3-MAY-1996 16:38:05.73

TEXT:

This is a Read Receipt Notification for:

Message Title: product liability
Addressee: KAGAN_E
Date Sent: 03-May-1996 03:35pm
Date Read: 03-May-1996 03:56pm

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

CREATOR: KAGAN_E (WHO)

CREATION DATE/TIME: 3-MAY-1996 15:34:00.00

SUBJECT: Receipt Notification

TO: JONES_RE (OMB)

READ: 3-MAY-1996 17:15:19.70

TEXT:

This is a Read Receipt Notification for:

Message Title: Revised SAP (per DOJ) on HR 2974

Addressee: KAGAN_E

Date Sent: 03-May-1996 03:27pm

Date Read: 03-May-1996 03:34pm

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 3-MAY-1996 18:03:30.71

SUBJECT: abortion speech

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

READ: 3-MAY-1996 18:19:09.83

TEXT:

I forgot to tell you that I approved the language Justice sent over.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 3-MAY-1996 18:01:07.05

SUBJECT: RE: congressional review

TO: David Fein (FEIN_D) (WHO)

READ: 3-MAY-1996 18:01:30.55

TEXT:

Not IRA (is that what I said?). OIRA. In OMB. 51247. He's Sally Katzen's special assistant.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 6-MAY-1996 12:10:31.78

SUBJECT: lerach letter

TO: Jeff P. Dailey

(DAILEY_J) (WHO)

READ: 6-MAY-1996 13:27:00.92

TEXT:

I'd send some version of the basic products letter to lerach, though you should try to modify the first couple of sentences to make it seem an apt response to his letter. On this one (i.e. to a supporter), you can take out the detail if you want to.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 6-MAY-1996 08:51:09.62

SUBJECT: RE: Pennsylvania avenue closure congressional queries

TO: Christopher F. Walker (WALKER_C) (WHO)

READ: 6-MAY-1996 11:16:08.28

TEXT:

I imagine correspondence has a standard written response. I don't think there's anything from the counsel's office in particular.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 6-MAY-1996 14:32:49.21

SUBJECT: hr 3049

TO: Janet Murguia

(MURGUIA_J) Autoforward to: Annette E. Johnson

READ: 6-MAY-1996 14:37:33.36

TEXT:

Do you remember the bill on the Alaska Native Culture Institute (HR 3049) that the Justice Department thinks is unconstitutional, but that passed the House by voice vote?

Could you find out for me what is happening -- or is likely to happen -- to the bill in the Senate (and when)? Many thanks.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 6-MAY-1996 11:12:38.39

SUBJECT: alternative timber memo

TO: Kathleen A. McGinty (MCGINTY_K) (CEQ)
READ: 6-MAY-1996 11:23:34.54

TO: Martha Foley (FOLEY_M) (WHO)
READ: 6-MAY-1996 12:06:47.38

TO: Jennifer M. O'Connor (OCONNOR_J) (WHO)
READ: 6-MAY-1996 14:07:58.20

TO: Dinah Bear (BEAR_D) (CEQ)
READ: 6-MAY-1996 13:18:31.04

TO: T J Glauthier (GLAUTHIER_T) (OMB)
READ: 6-MAY-1996 16:44:26.96

TEXT:

A few more thoughts:

1. On the need to prioritize: I agree with TJ that there should be more guidance for the field. It's true that if we win on k3, we're legally obligated to provide replacement timber for the whole 225 mbf. But we might lose on k3 -- and if we do, we will need to know which of these sales are the worst, which the next worst, and so on. TJ's right that the memo doesn't prioritize in this way, nor does it suggest how the field folks should prioritize for themselves.
2. The memo suggests that we have no problem with any of the sales we already have been forced to release. Is that true? Or are there some previously released sales that we currently are -- or ought to be -- negotiating about? And if so, how do these sales fit within the (nonexistent) list of priorities.
3. The statement about needing twice as much alternative timber has to be deleted. Someday we may be in litigation with purchasers over whether timber we've given them is of like kind and value, and in that context, this statement will come back to haunt us.
4. To expand on the concerns raised by Dinah in her second and third bullitts, can't we cut back on a lot of this memo's statement of the problem? I'd be more comfortable if this memo didn't spend so much time characterizing our legal obligations.
5. I'm of mixed mind as to whether we should say so directly that we will exercise our right to cancel contracts if negotiations are unsuccessful. It might be helpful, from an internal point of view, to put this position on record. More, I doubt it will come as a surprise to the timber industry that we've been thinking about this option. Finally, we will need to state this position, at some point and in some context, if we want to use it as leverage. But I worry that the industry will attempt to use this memo's flat statement against us -- perhaps as a basis for immediately seeking a declaratory judgment regarding our contractual rights, or perhaps as evidence that the cancellations result from broadscale policy concerns, rather than from good faith case-by-case evaluation of the results of contractual performance. I think I would at least like to play with the language to alleviate my concerns on these matters.
6. I don't have the letter to Craig that TJ wrote an e-mail about. Can someone send me a copy?

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 6-MAY-1996 17:10:23.68

SUBJECT: RE: Replacement Timber -- Mystery Solved

TO: Martha Foley (FOLEY_M) (WHO)
READ: 6-MAY-1996 17:19:58.14

CC: Dinah Bear (BEAR_D) (CEQ)
READ: 6-MAY-1996 18:11:08.88

CC: T J Glauthier (GLAUTHIER_T) (OMB)
READ: 6-MAY-1996 17:24:31.76

CC: Kathleen A. McGinty (MCGINTY_K) (CEQ)
READ: 6-MAY-1996 18:49:16.17

CC: Jennifer M. O'Connor (OCONNOR_J) (WHO)
READ: 6-MAY-1996 20:11:11.29

CC: Shelley N. Fidler (FIDLER_S) (CEQ)
READ: 6-MAY-1996 17:28:22.50

CC: Barbara C. Chow (CHOW_B) (WHO)
READ: 6-MAY-1996 17:10:55.87

TEXT:

I didn't say anything on the call home approach, but I do agree with Dinah (and now Martha) on that.

And I think Martha raises a really good question about who and what this memo is for. As it's written, it doesn't seem to DO much of anything. I know I'd have a better sense of what should be in it (e.g., discussion of priorities or of contract cancellation) if I knew what it was supposed to accomplish.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 6-MAY-1996 09:23:23.11

SUBJECT: gsa draft bill

TO: M. Jill Gibbons (GIBBONS_M) (OMB)

READ: 6-MAY-1996 11:42:31.34

TEXT:

It looks ok to me. Have you checked whether Nelson Cunningham (Counsel of the Office of Administration) has any views on the matter? He might be the most likely person to care about this.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 7-MAY-1996 11:38:39.89

SUBJECT: welfare meeting

TO: Jennifer Palmieri (PALMIERI_J) (WHO)

READ: 7-MAY-1996 11:54:14.30

TEXT:

Bruce Reed asked me to talk to you about getting me into tomorrow's welfare meeting. Bruce thinks it might be a good idea to have a lawyer in the room for all the times the HHS folks say that something can't legally be done. Let me know if it's OK for me to attend -- and if so, when the meeting is. Many thanks.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 7-MAY-1996 13:11:42.52

SUBJECT: lrm 4342

TO: Anna M. Briatico

(BRIATICO_A) (OMB)

READ: 7-MAY-1996 14:20:42.20

TEXT:

no objection from the counsel's office.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 7-MAY-1996 13:49:54.10

SUBJECT: photo request

TO: Robert W. McNeely (MCNEELY_R) (WHO)

READ:NOT READ

TEXT:

When you get around to developing the photos from the products liability briefing on May 2, if you could look out for a decent picture that includes me and the President, I'd really, really appreciate it. I'm the one wearing the black pinstripe suit and black pumps. Many thanks.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 7-MAY-1996 18:27:56.35

SUBJECT: RE: amendments to IDEA

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

READ: 7-MAY-1996 18:30:45.98

TEXT:

no. it just came to me in the normal course. it's all yours.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 7-MAY-1996 11:42:51.48

SUBJECT: two matters

TO: Bruce N. Reed (REED_B) (WHO)

READ: 7-MAY-1996 17:05:35.94

TEXT:

1. Just a reminder that you should give me a quick substantive refresher course so that I can call the HHS lawyers.
2. Vicki Radd mentioned to me that you're looking into the question of insurance coverage for battered women. Vicky has asked me to figure out whether the President can do anything with the ABA on the subject of battered women. Would it help for me to know what you're up to?

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 7-MAY-1996 12:11:50.28

SUBJECT: RE: product liability

TO: Jeff P. Dailey (DAILEY_J) (WHO)

READ: 7-MAY-1996 12:12:58.49

TEXT:

Many of these changes seem to me much more than cosmetic. I think you should go with Bruce's version to the maximum extent possible.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 7-MAY-1996 14:29:10.09

SUBJECT: RE: Legal Services Corp

TO: Stephen R. Neuwirth

(NEUWIRTH_S) (WHO)

READ: 7-MAY-1996 14:41:24.98

TEXT:

not me. sorry.

Withdrawal/Redaction Marker Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
003. email	Elena Kagan to Ellen Seidman. Subject: No-fault (1 page)	05/08/1996	P6/b(6)

COLLECTION:

Clinton Presidential Records
Automated Records Management System (Email)
WHO ([From Elena Kagan])
OA/Box Number: 500000

FOLDER TITLE:

[4/24/1996 - 5/13/1996]

2009-1006-F
ke778

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

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

RR. Document will be reviewed upon request.

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

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

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

CREATOR: KAGAN_E (WHO)

CREATION DATE/TIME: 8-MAY-1996 15:31:00.00

SUBJECT: Receipt Notification

TO: SEIDMAN_E (OPD)

READ: 8-MAY-1996 16:57:23.23

TEXT:

This is a Read Receipt Notification for:

Message Title: No-fault
Addressee: KAGAN_E
Date Sent: 08-May-1996 03:02pm
Date Read: 08-May-1996 03:31pm

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 8-MAY-1996 15:47:57.69

SUBJECT: RE: Found an old voice mail from you on my machine from

TO: Martha Foley (FOLEY_M) (WHO)

READ: 8-MAY-1996 15:53:00.78

TEXT:

you know, I don't think so. I think it may have been about the President's statement on the bill to amend the appropriations act.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 8-MAY-1996 08:47:45.66

SUBJECT: RE: interns

TO: Kathleen M. Whalen

(WHALEN_K) (WHO)

READ: 8-MAY-1996 08:49:04.41

TEXT:

pretty damn tough.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 8-MAY-1996 19:15:00.42

SUBJECT: RE: my bio

TO: Erin Kelly (KELLY_E) (WHO)

READ: 9-MAY-1996 08:09:08.32

TEXT:

thanks. i think i'll manage. see you as soon after 8:00 as you can in the mess.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 8-MAY-1996 14:31:09.63

SUBJECT: welfare again

TO: Bruce N. Reed (REED_B) (WHO)

READ: 8-MAY-1996 14:59:17.65

TEXT:

By the way, I suspect there may be some partial and roundabout, but nonetheless real, ways of enforcing a 24-month requirement. Perhaps this will prove wrong, but I wouldn't concede yet that the scheme must be wholly hortatory.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 8-MAY-1996 14:15:28.57

SUBJECT: welfare

TO: Bruce N. Reed

(REED_B) (WHO)

READ: 8-MAY-1996 14:56:11.21

TEXT:

Didn't you tell me that the program people say the lawyers are dealing with these issues? Well, the lawyers say the program people are dealing with them. I told Anna Durand that based on today's meeting, the program people have agreed (as has the Secretary). Durand reiterated that there would be essentially no enforcement mechanism for the 24-month requirement. She also said that there were many critical details yet to be worked out on the paternity regulation. I suggested that sooner, rather than later was the appropriate timeframe. She said that she understood -- and that she'd talk to the program people!

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 8-MAY-1996 08:52:26.80

SUBJECT: RE: interns

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

READ: 8-MAY-1996 08:53:16.54

TEXT:

OK, now we know: I'm leaving this all to you!

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 8-MAY-1996 08:51:21.43

SUBJECT: talking points

TO: Laura Capps (CAPPS_L) (WHO)

READ: 8-MAY-1996 08:56:10.02

TEXT:

I am sending the product liability talking points. Trey Schrader handles medical malpractice for our office; I'd check with him for talking points on that subject. As for tort reform generally, perhaps Bruce Lindsey?, but I suspect we don't have any.

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

ATT CREATION TIME/DATE: 8-MAY-1996 08:48:00.00

ATT BODYPART TYPE:p

ATT CREATOR: Elena Kagan

TEXT:

PRINTER FONT 12_POINT_COURIER

TALKING POINTS ON PRODUCT LIABILITY BILL

The President will veto H.R. 956 because it intrudes on the traditional prerogatives of the states and unfairly tilts the legal playing field against consumers.

? The Administration supports products liability reform at the federal level. Any legislation, however, must respect the important role of the states in our federal system and must fairly balance the interests of consumers with those of manufacturers and sellers. Congress could have passed legislation, appropriately limited in scope and balanced in application, meeting these tests. The President would have been glad to sign such a bill. But this bill unfairly burdens consumers and unduly infringes on the States.

? The bill displaces many rules of state tort law -- and does so in a way that peculiarly disadvantages consumers. As a rule, the bill displaces state law only when that law is more favorable to consumers; it allows state law to remain in effect when that law is more helpful to manufacturers and sellers. It is a one

□

-way street of federalism.

In particular, the President opposes the elimination of joint liability for noneconomic damages (such as pain and suffering) and the caps on punitive damages.

The elimination of joint liability for noneconomic damages would prevent many injured victims of defective products from receiving the full measure of their damages.

? This provision would leave the innocent victim to suffer when one wrongdoer, in any case with multiple wrongdoers, goes bankrupt. Under traditional state law, if one wrongdoer goes bankrupt, the other wrongdoers pick up the tab. This bill relieves the other wrongdoers of this obligation for any noneconomic damages. The innocent victim has to bear this part of the loss on his own.

? This is of real significance because companies sued for manufacturing or selling defective products stand a higher than usual chance of going bankrupt; consider manufacturers of asbestos, breast implants or intra

□

-uterine devices.

? This provision is all the more troubling because it disproportionately affects the most vulnerable members of society -- the elderly, the poor, and nonworking women. This is because the provision applies only to noneconomic damages, thus cutting most deeply into the damage awards of victims who do not have large amounts of lost income.

Capping punitive damages would encourage companies to engage in egregious misconduct, such as knowingly manufacturing and selling harmful products, and thereby endanger the safety of consumers.

? The cap invites potential defendants, deciding whether to manufacture or sell a clearly defective product, simply to weigh the costs of wrongdoing against the potential profits. Punitive awards deter such intentional misconduct by making deliberate wrongdoers pay more than the harm they cause.

? The provision allowing judges to exceed the cap in certain circumstances does not cure the problem, given the intent of Congress, expressed in the Statement of Managers, that "the occasions for additional awards will be very limited."

The President also objects to Congress's failure to exempt negligent suppliers from the provision of the bill limiting lawsuits against suppliers of materials used in devices implanted in the body. A supplier of materials who knew or should have known that the materials, as implanted, would cause injury should not receive any protection from suit.

Finally, the President opposes certain provisions snuck into the Conference Report that expand the scope of the bill and exacerbate its harmful consequences.

? The Conference Report, unlike the Senate version, makes the limitations on noneconomic and punitive damages applicable to negligent entrustment cases -- cases in which, for example, an injured person sues a gun dealer who knowingly sold a gun to a convicted felon or a bar owner who sold a drink to an obviously inebriated customer.

? The Conference Report, unlike the Senate version, would prevent some injured persons from bringing suit against companies that are being reorganized in a bankruptcy court. It does this by eliminating a provision that stopped the statute of limitations from running when a bankruptcy court issues an automatic stay preventing lawsuits from being brought during bankruptcy proceedings.

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

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 8-MAY-1996 12:05:44.44

SUBJECT: RE: products paragraph

TO: Erin Kelly (KELLY_E) (WHO)

READ: 8-MAY-1996 12:11:47.85

TEXT:

not so new, but (I like to think) still exciting.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 8-MAY-1996 15:41:03.57

SUBJECT: RE: No-fault

TO: Ellen S. Seidman (SEIDMAN_E) (OPD)

READ: 8-MAY-1996 16:57:32.87

TEXT:

OK, and how do I describe the McConnell-Horowitz no-fault bill in two simple sentences??

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 8-MAY-1996 11:49:34.39

SUBJECT: products paragraph

TO: Erin Kelly (KELLY_E) (WHO)

READ: 8-MAY-1996 11:54:09.55

TEXT:

How about something like this:

As you all know, the President vetoed the Product Liability Reform Act last week. The President supports the enactment of product liability reform, but such reform must be appropriately limited in scope and balanced in application. The President could not sign the bill that Congress sent him because it failed to meet these standards.

Most generally, the President disapproved of the bill's "one-way preemption" -- the way the bill would have displaced state law that was more favorable to consumers, but deferred to state law that was less so.

The President also opposed, as he stated many times throughout the legislative process, the complete elimination of joint liability for noneconomic damages and the capping of punitive damages. He believes that these provisions would have undermined the ability of courts to provide appropriate relief to victims of defective products and thereby endangered the health and safety of the public. Finally, the President was very disappointed that the Conference moved backward in certain respects from the Senate version of the bill -- first, in widening the application and shortening the length of the statute of repose and second, in applying the bill's limits on damages to "negligent entrustment" suits (suits, for example, against a gun dealer who sells a gun to a convicted felon or a bar owner serves a drink to an obviously inebriated customer).

The President believes that he and Congress can agree on a product liability bill -- a bill that protects businesses from frivolous lawsuits, as the same time as it protects consumers from threats to their safety. This bill just went too far in one direction.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 8-MAY-1996 18:51:24.88

SUBJECT: my bio

TO: Erin Kelly (KELLY_E) (WHO)

READ: 8-MAY-1996 18:51:44.35

TEXT:

here it is.

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

ATT CREATION TIME/DATE: 8-MAY-1996 18:51:00.00

ATT BODYPART TYPE:p

ATT CREATOR: Elena Kagan

TEXT:

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

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
004. email	Elena Kagan to Ron Klain. Subject: question (1 page)	05/09/1996	Personal Misfile

COLLECTION:

Clinton Presidential Records
Automated Records Management System (Email)
WHO ([From Elena Kagan])
OA/Box Number: 500000

FOLDER TITLE:

[4/24/1996 - 5/13/1996]

2009-1006-F
ke778

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

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

RR. Document will be reviewed upon request.

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

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 9-MAY-1996 15:26:22.16

SUBJECT: lunch

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

READ: 9-MAY-1996 18:18:11.64

TEXT:

of course, i can't do monday. thursday is also out. tuesday, wednesday,
thursday??

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 9-MAY-1996 11:09:29.98

SUBJECT: question

TO: Ron Klain

(KLAIN_R) Autoforward to: Remote Addressee

READ:NOT READ

TEXT:

I have a message from Chuck Finnie, who identified himself as the DOJ reporter ofr the Legal Times. I can't think of anything that he'd be calling about other than the great OLC hunt. What do I do?

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
005. email	Elena Kagan to Ron Klain. Subject: legal times (1 page)	05/13/1996	Personal Misfile

COLLECTION:

Clinton Presidential Records
Automated Records Management System (Email)
WHO ([From Elena Kagan])
OA/Box Number: 500000

FOLDER TITLE:

[4/24/1996 - 5/13/1996]

2009-1006-F
ke778

RESTRICTION CODES

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:13-MAY-1996 12:16:19.88

SUBJECT: Re: legal times

TO: CN=Ron Klain/O=OVP

(CN=Ron Klain/O=OVP@OVP@LNGATE@EOPMRX)

READ:NOT READ

TEXT:

why do you think out of olc?

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:13-MAY-1996 17:31:23.31

SUBJECT: TIMBER

TO: Dinah Bear (BEAR_D) (CEQ)
READ:13-MAY-1996 17:52:58.00

TEXT:

I had a long talk with Jennifer O'Connor today regarding where we were on timber. A few things came up that I didn't know or had forgotten the answers to. Specifically:

1. Is the very brief Jack Ward Thomas letter you sent me our only response to the liability letter? Why did we decide not to send the Lyons letter? Are we sending anything else?

2. What did we ever manage to do re the First and the Last sales. I can't believe I've forgotten this, but I think I have. My best recollection is that we provided alternative timber that wasn't all that much better than the original? Am I right?

3. What's going on on salvage? Jennifer showed me a letter from Ed Begley Jr complaining vehemently about the salvage program and urging its suspension; and also a cover memo from Katie to Leon(?) reacting sympathetically. Are we planning anything on this front?

Many, many thanks. You probably want to know about the brief. I know I've said this a lot of times by now, but I promise . . .tomorrow.